

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.:2010-CP-08-1801

Levern McCray,

Plaintiff,

v.

Jose W. Valle,

Defendant.

**RECEIVED**  
**ORDER**

AUG 21 2015

SC Court of Appeals

MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

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FILED

Presiding Judge:  
Date of Hearing:  
Plaintiff's Attorney:  
Defendant Liberty Mutual Fire  
Ins. Co. Attorney:  
Defendant Allstate Insurance:  
Court Reporter:

Deadra L. Jefferson  
May 12, 2015  
Pamela Mullis, Esq.

Morgan Templeton, Esq.  
Johnston Cox, Esq.  
Denise Lauder

This matter came before the Court on May 12, 2015, on Allstate Insurance Company's ("Allstate") Motion to Quash Plaintiff's Execution Against Property filed February 12, 2015. Plaintiff filed the Writ, entitled "Execution Against Property" on January 27, 2015 seeking to have the Sheriff execute against the property owned by Allstate arising out of a judgment entered against Jose W. Valle ("Valle"), the Defendant in the above-captioned action. The judgment was entered against Valle on August 16, 2012, which was followed by an order for costs entered on January 27, 2013 and an order for costs from the South Carolina Court of Appeals dated December 22, 2014. The matter was fully briefed by the parties in advance of the hearing. After careful consideration of the materials before the Court and the arguments of counsel, the Court grants Allstate's Motion and makes the following findings of fact and conclusions of law.

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## FINDINGS OF FACT AND PROCEDURAL HISTORY

On December 20, 2008, Plaintiff was involved in an automobile accident with Valle. Plaintiff's vehicle was struck when Valle's vehicle crossed the center line. As a result of the accident, Plaintiff sustained injuries, including injury to his ankle and pain in his knee and hip. Plaintiff filed a summons and complaint against Valle on May 21, 2010 and sought to serve him by publication on August 10, 2010, which service was done on September 2, 6, and 16, 2010.

Allstate issued an automobile insurance policy number 0 90 746371 12/06 ("the policy") to Named Insured, Ollie E. Walton-McCray. Plaintiff was a listed driver on the policy. The policy included uninsured motorist coverage. Plaintiff was also insured under a policy of insurance issued by Liberty Mutual Fire Insurance Company ("Liberty Mutual"), which also included uninsured motorist coverage. Because Valle did not make an appearance in the lawsuit, Allstate and Liberty Mutual filed answers on behalf of Valle and participated in the defense of the instant action. Allstate was not identified as a party to the lawsuit.

Plaintiff filed an Offer of Judgment in his lawsuit against Valle, the Defendant, on February 15, 2011. Specifically, in his Offer of Judgment, Plaintiff stated:

... Plaintiff ...offers the total sum of Three Hundred Thousand (\$300,000) Dollars as full compromise and settlement of his claim against the **Defendant** for personal injury...**Defendant** has twenty (20) days from the date indicated below to accept this offer and, if notice of acceptance is not given by the **Defendant**, in writing, the offer is withdrawn and cannot be given in evidence.

(emphasis added) (See Offer of Judgment, attached as Exhibit A).

Following a four-day jury trial in this case, a jury returned a verdict in favor of Plaintiff in the amount of \$500,000 in actual damages and \$147,000 in punitive damages. Accordingly, judgment was entered against Valle in the amount of \$647,000, and the judgment against Valle was filed on August 16, 2012. The Judgment in a Civil Case states that the Order ends the case

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and includes information for the judgment index to enroll the judgment. (See Judgment, attached as Exhibit B).

Following a hearing "in regard to the setting of the proper amount of costs and interest ... in regard to Plaintiff's Offer of Judgment ...," the Court issued an Order for Costs and Interest Pursuant to Offer of Judgment ("Order for Costs") dated January 14, 2013 and filed on January 17, 2013. (See Order for Costs, attached as Exhibit C). The Order for Costs provided that Plaintiff was entitled to \$3,247.01 in costs and \$77,569.10 in interest. Plaintiff did not file an Offer of Judgment as to Allstate or Liberty Mutual, and neither Allstate nor Liberty Mutual was identified in the Order for Costs.<sup>1</sup>

On September 18, 2014, Plaintiff filed a Motion to Enforce Order of Judgment and Rule to Show Cause. Plaintiff requested that the court "enforce the Order of Judgment and issue a Rule to Show Cause directly against the insurers ordering payment of the Judgment pursuant to the statute." The Rule was denied by Order of the Court on December 1, 2014.

On January 27, 2015, Plaintiff filed the writ seeking to execute against Allstate and Liberty Mutual. Allstate filed its motion to quash on February 12, 2015.

### CONCLUSIONS OF LAW AND ANALYSIS

"A judgment represents a judicial declaration that a judgment debtor is personally indebted to a judgment creditor for a sum of money." *Home Port Rentals, Inc. v. Moore*, 359 S.C. 230, 234, 597 S.E.2d 810, 812 (Ct. App. 2004). Plaintiff's Offer of Judgment was specifically made as to Valle, not Allstate or Liberty Mutual. The Order of Judgment was issued with regard to the Offer of Judgment. Because Plaintiff did not file an order of judgment

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<sup>1</sup> On May 19, 2014, Plaintiff filed a separate lawsuit against Allstate in the Court of Common Pleas for Richland County, South Carolina, and this matter was removed to the United States District Court for the District of South Carolina. Plaintiff alleges that he is entitled to recover damages from Allstate under the Order of Costs.

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specifically stating that the order was filed as to Allstate, he cannot now seek to enforce the Order of Judgment against Allstate. Therefore, Plaintiff must execute his judgment against Valle, not Allstate.

Plaintiff's effort to enforce his judgment against Allstate through the Writ is improper.

South Carolina Rule of Civil Procedure 69 provides:

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be as provided by law. In the aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for obtaining discovery.

Rule 69, SCRPC. Plaintiff has improperly filed the Writ to enforce the judgment against a non-judgment creditor. Pursuant to Rule 69, SCRPC, Plaintiff is required to seek a writ of execution issued by the sheriff as to Valle to attempt to collect on the judgment. Plaintiff cannot bypass the proper procedure as mandated by South Carolina law.

Finally, to the extent Plaintiff seeks to change the scope of the judgments previously entered in this case, South Carolina law does not permit such an alteration. South Carolina Rule of Civil Procedure 60(b), the procedure by which a judgment may be altered, provides:

**(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;

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[Signature]

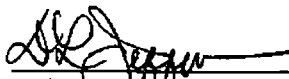
(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken....

"While a court may correct mistakes or clerical errors by its own process to make it conform to the record, it cannot change the scope of the judgment." *Dion v. Ravenel, Eiserhardt Assocs.*, 316 S.C. 226, 230, 449 S.E.2d 251, 253-254 (Ct. App. 1994). "In addition, Rule 60 specifically provides for a party's relief *from* a judgment, not the enforcement of that judgment against non-parties." *See also Ex parte South Carolina Dep't of Revenue*, 350 S.C. at 408, 566 S.E.2d at 198, n. 1 (italics in original). "Attempting to bind a non-party to a judgment extinguishing its lien changes the scope of the original judgment and extends beyond the relief contemplated by Rule 60, SCRPC." *Id.* Finally, any motion to seek relief from a judgment or order "shall be made within a reasonable time, and for reasons (1), (2), and (3), not more than one year after the judgment." Rule 60(b), SCRPC. "The one year limit for motions pursuant to Rule 60(b)(1)-(3) is an *absolute time limit*." *Coleman v. Dunlap*, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992) (emphasis added).

IT IS THEREFORE ORDERED, that Allstate Insurance Company's Motion to Quash Plaintiff's Execution Against Property is GRANTED.

**AND IT IS SO ORDERED.**

  
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Judge Debra Jefferson  
Presiding Judge  
Ninth Judicial Circuit

June 4, 2015  
Charleston, South Carolina  
At Chambers

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