

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Donna Jensen,)
)
)
)
 Plaintiff,)
)
 vs.)
)
 MATTHEW B. WISEMAN and PEOPLES)
 UNDERWRITERS INC.,)
)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT
 CASE No. 2012-CP-18-2797

ORDER DENYING MOTION FOR
 NEW HEARING BASED ON NEWLY
 DISCOVERED EVIDENCE

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 MELANIE J. JAGGINS-WARD
 CLERK OF COURT
 HORRY COUNTY
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 SC Court of Appeals

This matter is before the Court by way of the Plaintiff's Motion for new hearing based on newly discovered evidence under Rule 60(b). To receive a new trial based on newly discovered evidence, the moving party must establish that the newly discovered evidence: "(1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching." *Lanier v. Lanier*, 364 S.C. 211, 217, 612 S.E.2d 456,459 (Ct.App.2005).

The newly discovered evidence that is contemplated in this motion is evidence that was in the possession of the plaintiff at the time of the summary judgement motion but was not presented to the Court.¹ This evidence was subsequently presented to the Court in both the plaintiff's motion to reconsider and amended motion to reconsider which were both denied. Therefore, this evidence could have been presented to the Court at the time of the motion for summary judgment and cannot be considered newly discovered evidence as contemplated by

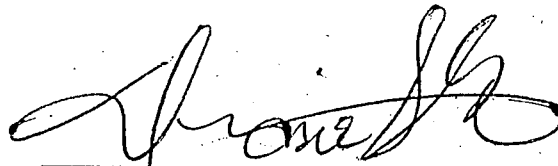
¹ During argument on this motion plaintiff's counsel turned to his client and then counsel indicated that the vehicles were registered in her name. Counsel failed to provide any evidence of ownership. As indicated in this Courts order denying plaintiff's motions to reconsider, our case law provides that statements of fact presented only in attorney's argument should not be considered by the court in determining whether a genuine issue of material fact exists. See *West v. Gladney*, 341 S.C. 127, 135, 533 S.E.2d 334, 338 (Ct.App.2000).

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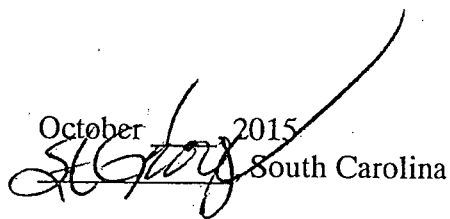
Rule 60(b). Evidence is not “newly discovered” if it is known to the party at trial and in the party's possession. *Lanier v. Lanier*, 364 S.C. 211, 218, 612 S.E.2d 456, 459 (Ct.App.2005).

Plaintiff's motion for new trial is DENIED.

AND IT IS SO ORDERED.



Judge Diane S. Goodstein

October 2015

South Carolina