THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Appellate Case No.: 2015-001452

Levern McCray, Appellant,

v.

Jose Valle, Respondent[1]

RESPONDENT LIBERTY MUTUAL FIRE INSURANCE COMPANY'S INITIAL BRIEF

WALL TEMPLETON & HALDRUP, P.A.

Morgan S. Templeton
Taylor H. Stair
145 King Street, Suite 300
Post Office Box 1200
Charleston, South Carolina 29402
Telephone: 843.329.9500
Facsimile: 843.329.9501
Attorneys for the Respondent
Liberty Mutual Fire Insurance Company

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[1] Respondent is a non-party, Liberty Mutual Fire Insurance Company, that provided uninsured motorist coverage to McCray.

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STATEMENT OF ISSUES ON APPEAL[2]

I. THE TRIAL COURT CORRECTLY HELD THAT MCCRAY'S ORDERS AND/OR JUDGMENTS ARE AGAINST THE TORTFEASOR PARTY, JOSE VALLE, AND NOT MCCRAY'S UNINSURED MOTORIST CARRIER.

II. THE TRIAL COURT DID NOT OVERRULE AN ORDER FROM ANOTHER CIRCUIT COURT JUDGE.

III. INSURANCE COVERAGE ISSUES WERE NOT AND COULD NOT HAVE BEEN RAISED IN THE LIABILITY LAWSUIT AND ARE NOT PROPERLY BEFORE THIS COURT.

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[2] Liberty does not adopt McCray's statement of the issues on appeal.

STATEMENT OF THE CASE[3]

Liberty Mutual Fire Insurance Company ("Liberty") issued an insurance policy to Levern McCray ("McCray") with uninsured motorist ("UM") coverage limits of $50,000 for bodily injury coverage and $10,000 for personal injury protection and/or medical payments coverage. [Bad Faith Complaint]. On December 20, 2008, McCray was involved in an automobile accident with an uninsured motorist. [Liability Lawsuit Complaint].

On May 21, 2010, McCray filed a summons and complaint in the South Carolina Court of Common Pleas for the Ninth Judicial Circuit, Berkeley County, identified as Civil Action number 2010-CP-08-1801, and captioned as *Levern McCray vs. Jose W. Valle* (hereinafter the "Liability Lawsuit"). [Liability Lawsuit Complaint]. The Liability Lawsuit alleged that Jose W. Valle ("Valle") was responsible for causing an automobile collision between McCray and Valle wherein McCray suffered various alleged injuries. [Liability Lawsuit Complaint].

On August 10, 2010, McCray filed a Petition for Order of Publication to serve the Liability Lawsuit Complaint on Valle. [Petition for Order of Publication]. On September 23, 2010, McCray filed an Affidavit of Publication wherein McCray served Valle by publication on September 2, 9, and 16, 2010. [Affidavit of Publication]. Valle did not make an appearance in the Lawsuit despite

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[3] Liberty does not adopt either McCray's statement of the case or statement of facts and rephrases each in Liberty's consolidated statement of the case. In fact, McCray's statement of facts contains numerous assertions which are not supported by the record in accordance with Rule 208 of the South Carolina Appellate Court Rules. See S.C.A.C.R. 208(b)(4). By way of example, McCray makes reference to various alleged settlement negotiations which were not presented to the Trial Court and were not considered by the trial court in granting Liberty's Motion to Quash, which is the subject of McCray's appeal. Furthermore, McCray refers to Liberty as a "Defendant" in the Liability Lawsuit throughout the Initial Brief, which is simply incorrect.

being served by publication.

Liberty was not a party defendant in the Liability Lawsuit. [Liability Lawsuit Complaint]. Rather, Liberty was McCray's UM carrier and participated in the defense of the Liability Lawsuit on behalf of Valle pursuant to S.C. Code Ann. § 38-77-150.

On January 18, 2011, Valle (through counsel for All State Insurance Company ("All State"), a separate uninsured motorist carrier) filed an Offer of Judgment against McCray for $135,000.00. [Valle Offer of Judgment]. Valle's Offer of Judgment was not signed by counsel for Liberty and was not served on counsel for Liberty. [Valle Offer of Judgment]. On January 30, 2011, McCray filed an Offer of Judgment against Valle for $300,000.00. [McCray Offer of Judgment]. McCray's Offer of Judgment was directed to Valle, through counsel for All State. [McCray Offer of Judgment]. McCray's Offer of Judgment specifically provides that "[McCray] . . . 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." [McCray Offer of Judgment] (emphasis added). McCray's Offer of Judgment makes no reference whatsoever to Liberty. [McCray Offer of Judgment].

On August 16, 2012, following a four-day trial before Judge Deadra L. Jefferson ("Judge Jefferson"), a Berkeley County jury rendered a verdict against Valle in the amount of $500,000.00 in actual damages and $147,000.00 in punitive damages. [Liability Lawsuit Judgment]. A judgment was entered against Valle in the amount of $647,000.00, and was filed on August 16, 2012. [Liability Lawsuit Judgment]. Liberty was not identified as a party to the judgment in the Liability Lawsuit. [Liability Lawsuit Judgment]. In fact, the Liability Lawsuit Judgment specifically provides:

INFORMATION FOR THE JUDGMENT INDEX Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
Levern McCray	Jose W. Valle	$ 647,000.00
		$
		$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

[Liability Lawsuit Judgment]. The Form 4 Order plainly provides that the judgment is against Valle, not Liberty.

On or around September 18, 2012, Liberty issued a $50,000 check to McCray for bodily injury claims and $10,000 for personal injury protection and/or medical payments coverage. [Liberty's checks to McCray]. McCray received the total sum of $60,000 from Liberty. [McCray's replies to Liberty's requests for admission].

On January 14, 2013, Judge Jefferson issued an Order for Costs and Interest Pursuant to McCray's Offer of Judgment in the Liability Lawsuit; the Order was subsequently filed on January 17, 2013. [Order for Costs]. The Order for Costs and Interests provided that McCray was entitled to $3,247.01 in costs and $77,569.10 in interest. [Order for Costs]. Liberty was not identified as a party to the Order for Costs and Interests in the Liability Lawsuit. [Order for Costs].

On May 19, 2014, McCray filed a civil action against Liberty in the Circuit Court of Richland County, South Carolina, as Case No. 2014-CP-40-3227 (hereinafter the "Bad Faith Lawsuit"). [Bad Faith Complaint]. Liberty was thereafter served on May 28, 2014. On or around June 27, 2014, the case was removed to the U.S. District Court pursuant to 28 U.S.C. § 1332.

In the Bad Faith Lawsuit, McCray alleged two causes of action, to wit: (1) breach of implied covenant of good faith/fair dealing; and (2) breach of contract. [Bad Faith Complaint]. As part of the Bad Faith Lawsuit, the Complaint specifically alleges that McCray is entitled to recover damages from Liberty as a direct result of the State court's Order for Costs and Interest. [Bad Faith Complaint]. In particular, the Bad Faith Lawsuit seeks damages related to:

> An Order for Costs and Interest Pursuant to [McCray]'s Offer of Judgment [which] was entered on January 17, 2013, awarding [McCray] costs in the amount of $3,427.01 and $77,569.10 in interest; this Offer of Judgment is still outstanding. [Bad Faith Complaint].

On September 18, 2014, after filing the Bad Faith Lawsuit, McCray filed a Motion to Enforce Order of Judgment and Rule to Show Cause (hereinafter the "Rule") against Allstate, a separate UM carrier for McCray, in the Liability Lawsuit. [Rule]. McCray's Rule specifically seeks damages related to the Order of Costs:

> On January 14, 2013, this Court issued its Order ruling the [McCray] is entitled to costs from the date of the Offer of Judgment in the amount of $3,247.01 and that the amount of interest owed to [McCray] is $77,569.10. .... Therefore, the [McCray] respectfully moves for this Court to 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. [Rule].

The Rule was not filed against Liberty. [Rule]. A hearing was held on October 22, 2014, and the Rule was denied by Order of Judge Kristi L. Harrington ("Judge Harrington") on December 1, 2014.[4] [Harrington's Order]. However, Judge Harrington's Form 4 Order provides that "a writ of execution, together with supplementary proceedings, is the proper procedure to enforce the underlying judgment" and further indicates that "this order . . . does not end the case." [Harrington's

[4] Judge Harrington would not allow Liberty to make an appearance because Liberty was not a party defendant.

Order]. The Order does not order any relief against Liberty and does not say McCray is entitled to any relief whatsoever. [Harrington's Order].

On January 27, 2015, McCray filed a writ seeking to have the Sheriff of Berkeley County execute against property owned by Liberty, not Valle. [Writ]. On February 9, 2015, Liberty filed a motion to quash McCray's writ of execution pursuant to Rule 60 of the South Carolina Rules of Civil Procedure. [Motion to Quash]. A hearing was held on May 12, 2015. [Hearing transcript]. On June 10, 2015, Judge Jefferson issued an Order granting Liberty's Motion to Quash. [Jefferson Order]. McCray filed this appeal on July 1, 2015. [Notice of Appeal].

At no time did McCray seek to amend either his Order of Costs or Liability Lawsuit judgment to identify Liberty as a party or judgment debtor.

STANDARD OF REVIEW

Whether to grant or deny a motion under Rule 60(b) of the South Carolina Rules of Civil Procedure lies within the sound discretion of the judge. Raby Const., L.L.P. v. Orr, 358 S.C. 10, 17-18, 594 S.E.2d 478, 482 (2004). The standard of review, therefore, is limited to determining whether there was an abuse of discretion. Id. An abuse of discretion arises where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support. Tri-Cnty. Ice & Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990).

ARGUMENTS[5]

I. THE TRIAL COURT CORRECTLY GRANTED LIBERTY'S MOTION TO QUASH MCCRAY'S "EXECUTION AGAINST [LIBERTY'S] PROPERTY" BECAUSE MCCRAY'S JUDGMENT IS AGAINST THE TORTFEASOR JOSE VALLE AND NOT MCCRAY'S UNINSURED MOTORIST CARRIER.

The trial court correctly granted Liberty's Motion to Quash because: (1) McCray's orders and judgments are against Valle, not Liberty; (2) McCray failed to amend its judgment within one year from the entry of judgment; (3) a writ of execution against a non-party is improper; and (4) Rule 60 of the South Carolina Rules of Civil Procedure does not allow McCray to enforce a judgment against a non-party.

A. McCray's Orders and Judgments are Against Valle, not Liberty.

The trial court correctly determined that a party "can only execute judgments against parties . . . [t]hat's black letter precedent." South Carolina law plainly provides that "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) (emphasis added).

In this case, McCray filed the Lawsuit against Valle on May 21, 2010. [Liability Lawsuit Complaint]. Liberty is not identified as a party in the Summons or Complaint in the Lawsuit. [Liability Lawsuit Complaint]. McCray litigated its claims against Valle for over two years. At no time did Liberty receive or respond to any discovery, written or otherwise, as a party to the Liability Lawsuit. On January 18, 2011, Valle (through counsel for All State) filed an Offer of Judgment

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[5] Pursuant to Rule 208 of the South Carolina Appellate Court Rules, Liberty specifically adopts and incorporates by reference, as if fully stated herein, any and all arguments raised by All State in this appeal. See S.C.A.C.R. 208(b)(6).

against McCray for $135,000.00. [Valle Offer of Judgment]. Valle's Offer of Judgment was not signed by counsel for Liberty and was not served on counsel for Liberty. [Valle Offer of Judgment]. On January 30, 2011, McCray filed an Offer of Judgment against Valle (through counsel for All State) for $300,000.00. [McCray Offer of Judgment]. To the extent McCray pursues any "legal fiction" theory, McCray's Offer of Judgment is directed "against the Defendant", and not Liberty.[6] [McCray's Offer of Judgment]. On August 16, 2012, a Berkeley County jury rendered a verdict against Valle in the amount of $500,000.00 in actual damages and $147,000.00 in punitive damages. [Liability Lawsuit Judgment]. On that same day, McCray entered a judgment against Valle in the amount of $647,000.00. [Liability Lawsuit Judgment]. Liberty was not identified as, and is not, a party to the judgment in the Liability Lawsuit. [Liability Lawsuit Judgment]. Furthermore, McCray failed to seek modification or amendment of the entry of judgment to identify Liberty as a judgment debtor in the Liability Lawsuit. On January 14, 2013, Judge Jefferson issued an Order for Costs and Interests Pursuant to McCray's Offer of Judgment in the Liability Lawsuit. [Order for Costs]. Liberty was not identified as a party to the Order for Costs and Interests in the Liability Lawsuit. [Order for Costs]. Thus, Liberty is not a party to any of the orders or judgments in the Liability Lawsuit.

South Carolina law plainly provides that McCray's judgments are against Valle, the judgment debtor, and not Liberty. See Moore, 359 S.C. at 234. With respect to the Order of Costs, the Order does not identify Liberty in any respect, let alone as a party responsible for paying any costs. [Order

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[6] Interestingly, McCray argues that the Offer of Judgment was served on "both defending uninsured carriers, All State and Liberty" as party defendants, yet McCray's Offer of Judgment is plainly directed at the singular Defendant, which is Valle. [McCray Initial Brief, p. 5; McCray Offer of Judgment].

of Costs]. Thus, even under McCray's "legal fiction" theory, Liberty was not a party to the Order of Costs. With respect to the judgment following trial, the Form 4 plainly provides that the judgment is against Valle, not Liberty. [Liability Lawsuit Judgment]. To the extent McCray contends the uninsured motorist provision statutes constitutes a "legal fiction", McCray failed to modify the judgment to name Liberty as a judgment debtor. The record demonstrates that Liberty is not a party to any of the order or judgments in the Liability Lawsuit. Thus, the trial court did not abuse its discretion in finding that McCray must execute its judgment against Valle, not Liberty.

McCray incorrectly argues that Liberty is the "actual party upon whom the penalties were imposed." [McCray's Initial Brief, p. 17]. In support, McCray relies on Broome v. Watts, 319 S.C. 337, 461 S.E.2d 46 (1995), and Crawford v. Henderson, 356 S.C. 389, 589 S.E.2d 204 (Ct. App. 2003). First, Broome does not address either South Carolina's Offer of Judgment Statute or South Carolina's uninsured motorist provision. Second, Broome does not stand for the proposition that S.C. Code § 15-35-400 (S.C. Offer of Judgment statute) extends a judgment entered against a named defendant to a UM carrier that participates in the defense of that tort action pursuant to S.C. Code 38-77-150. Third, Broome does not stand for the proposition that an unnamed UM carrier becomes a party or judgment debtor simply by defending in the name of an uninsured motorist. In Crawford, the court determined that "there was no direct relationship between the UIM carrier's attorney and the named defendant." Crawford, 356 S.C. at 398. McCray relies upon Crawford because it addresses the attorney-client relationship between a UIM carrier and a named defendant. [Hearing transcript at 9:22-10:4]. The trial court, however, correctly pointed out that the attorney-client relationship is an entirely separate and distinct issue from a UM carrier becoming a party:

THE COURT: But [Crawford]'s not talking about execution of a judgment.

[Crawford]'s not saying that makes them a party for purposes of execution, does it?

[McCray]: It's talking about whether or not we have attorney/client privilege in UIM - -

THE COURT: Yeah, but that's a whole different issue.

[McCray]: - - situations. The issue is whether or not we have a legal fiction here. And there are two issues - -

THE COURT: Legal fiction doesn't make them a party. You can only execute judgments against parties. That's black letter precedent.

[Hearing transcript at 10:5-18]. The trial court correctly determined that neither Broome nor Crawford have any application to the issues at Bar.

McCray incorrectly argues that "under Section 38-77-150, an injured plaintiff is forced to comply and participate in the legal fiction that his claim is against the named insured driver in presenting the liability case; however, this is nothing more than a legal fiction which shields from the trial jury the fact that the actual defendant, the real party in interest, is an insurance company." [McCray's Initial Brief, p. 15]. McCray cites no case or statutory law that support this position. There is no case law in South Carolina that in any way applies McCray's "legal fiction" theory to South Carolina's uninsured motorist provision, S.C. Code Section 38-77-150. In fact, McCray's position is in direct contravention to the law in South Carolina. In Laird v. Nationwide Ins. Co., 243 S.C. 388, S.E.2d 206 (1964), the court found that:

> Recovery under the uninsured endorsement is subject to the condition that the insured establish legal liability on the part of the uninsured motorist. Such an action is one *ex delicto* and the only issues to be determined therein are the liability and the amount of damage. After judgment is entered against the uninsured motorist, a direct action *ex contractu* can be brought to recover from the insurance company on its endorsement, and policy defenses may be properly raised by the insurance company. Laird, 243 S.C. at 394 (emphasis added).

Thus, South Carolina's uninsured motorist provision does not create a "legal fiction" whereby the UM carrier becomes a party in a liability lawsuit. Rather, South Carolina courts have determined that the purpose of S.C. Code Section 38-77-150 is to provide notice to a UM carrier and does not confer status as a party on the UM carrier for defending in the name of the uninsured motorist. See Laird, 243 S.C. 388; see also Franklin v. Devore, 327 S.C. 418, 489 S.E.2d 651 (1997) (determining that the plaintiff did not need to serve the insurer within the three-year statute of limitations period as if it were a party defendant because the statute was a notice statute). The trial court correctly applied the law of South Carolina and did not abuse its discretion.

McCray incorrectly argues that "the insurers were the only parties who made an Offer of Judgment against Plaintiff and the only parties opposing Plaintiff in seeking penalties related to his rejected Offer of Judgment." [McCray's Initial Brief, p. 18]. Liberty was not a party to Valle's Offer of Judgment and was not served with a copy of Valle's Offer of Judgment. [Valle Offer of Judgment]. McCray filed an Offer of Judgment against Valle for $300,000.00. [McCray Offer of Judgment]. McCray's Offer of Judgment was directed to Valle, through counsel for All State. [McCray Offer of Judgment]. The record is entirely devoid of any evidence that Liberty filed or rejected any Offer of Judgment, let alone as a party to the case at Bar.

McCray incorrectly argues that the trial court "accepted [Liberty's] erroneous argument that they were not properly considered parties to the underlying lawsuit and that, therefore, they could not be implicated by the Offer of Judgment statute which refers only to parties." [McCray's Initial Brief, p. 18]. McCray cites no case law, however, which provides otherwise. In fact, the trial court specifically requested that McCray provide it with "some case law that . . . an insurance company

becomes a party just because they file an offer of judgment." [Hearing transcript, p. 15]. McCray responded with referring to authorities referenced in its brief from other states (with different insurance schemes, as noted by the trial court and admitted by McCray), but McCray ultimately conceded that "there is no state law in the State of South Carolina interpreting our offer [in such a manner]." [Hearing transcript, p. 15-16 (emphasis added)]. In particular, McCray improperly relies upon Cox v. Peerless Ins. Co., 774 F.Supp. 83 (D. Conn. 1991), which pertains to an award of prejudgment interest arising from a defense attorney's decision to proceed to trial. [McCray's Initial Brief, p. 20]. However, unlike South Carolina's insurance laws, Connecticut is a "no-fault" and direct action state. As a result, the trial court correctly noted that it "[could not] apply other states' laws when their insurance scheme is so different from [South Carolina]." [Hearing Transcript, p. 16]. The trial court did not abuse in discretion and, in fact, and correctly applied the law of South Carolina.

B. McCray Failed to Amend his Judgment Within One Year Pursuant to Rule 60 of the South Carolina Rules of Civil Procedure.

The trial court correctly held that McCray failed to seek relief from the judgment entered against Valle within the time period established in S.C.R.Civ.P. 60. Rule 60 of the South Carolina Rules of Civil Procedure provides that 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."[7] S.C. R. Civ. P. 60(b) (emphasis added). "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). In interpreting the meaning of the South Carolina Rules of Civil

[7] SCRCP 60(b)(4)-(5) are not applicable; thus, the one year limitations applies. See Brinkley v. Gregory K. Martin, ASL, Inc., 2006 WL 7287050 (Ct. App. 2006).

Procedure, this Court must apply the same rules of construction used to interpret statutes. See Ex parte Wilson, 367 S.C. 7, 15-16, 625 S.E.2d 205, 209 (2005). If a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced. Id.; see also Stark Truss Co., Inc. v. Superior Const. Corp., 360 S.C. 503, 508, 602 S.E.2d 99, 102 (Ct. App. 2004) ("[T]he words of [the rule] must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule.").

In the Liability Lawsuit, a Berkeley County jury rendered a verdict against Valle in the amount of $500,000.00 in actual damages and $147,000.00 in punitive damages and McCray entered a judgment against the tortfeasor party Valle in the amount of $647,000.00, which was filed on August 16, 2012. [Liability Lawsuit Judgment]. Liberty was not identified as a party to the judgment. [Liability Lawsuit Judgment]. To the extent McCray desired to amend or modify its judgment to pursue any "legal fiction" theory pertaining to Liberty, McCray failed to file any motion on or before August 16, 2013 (or one-year after the judgment was entered), or at any time prior to Liberty's Motion to Quash. In fact, McCray has yet to file any motion seeking relief from the judgment to date, more than three years after the judgment was entered. Thus, the trial court correctly held that "any motion to seek relief from a judgment or order shall be made . . . for reasons (1), (2), and (3) [within Rule 60 of the South Carolina Rules of Civil Procedure], not more than one year after the judgment." Furthermore, with respect to the Order of Costs, McCray failed to seek any relief directly from Liberty and the Order of Cost does not order any relief against Liberty. [Harrington's Order]. The trial court did not abuse its discretion in holding that McCray's attempt to modify or amend its judgment was time barred by Rule 60 of the South Carolina Rules of Civil Procedure.

C. McCray's Writ of Execution against Liberty, a Non-Party, is Improper.

The trial court correctly held that McCray "must execute [its judgment] against Valle, not [Liberty]." The South Carolina Rules of Civil Procedure provide that a party may execute a judgment by filing a writ of execution. See S.C.R.Civ.P. 69. Specifically, Rule 69 provides that:

> 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. S.C.R.Civ.P. 69 (emphasis added).

In this case, McCray elected an improper proceeding in which to collect a judgment. McCray filed a writ of execution to enforce its judgments against a non-judgment debtor. Moore, 597 S.E.2d 810. The trial court correctly held that McCray should proceed with a supplemental proceedings against Valle, not entities to which McCray possesses no judgment. See Ex parte Wilson, 367 S.C. 7, 14, 625 S.E.2d 205, 209 (2005).

The procedures for enforcing a writ of execution are governed by statute. S.C. Code Ann. § 15–35–180 provides that:

> When a judgment requires the payment of money or the delivery of real or personal property it may be enforced in those respects by execution as provided in this Title. When it requires the performance of any other act a certified copy of the judgment may be served upon the party against whom it is given or the person or officer who is required thereby or by law to obey it and his obedience thereto enforced. S.C. Code Ann. § 15-35-180 (emphasis added).

In addition, S.C. Code Ann. § 15-39-10 provides that "there shall be three kinds of executions, (a) against the property of the judgment debtor, (b) against his person and (c) for the delivery of the possession of real or personal property or such delivery with damages for withholding the property."

S.C. Code Ann. § 15-39-10 (emphasis added). Thus, Rule 69 of the South Carolina Rules of Civil Procedure and S.C. Code Ann. §§ 15-39-10 and 15-35-180 clearly and unambiguously provide that parties may execute judgments by filing writ of executions against a party or judgment debtor, neither of which pertain to Liberty.

McCray incorrectly argued that Liberty became a party because McCray served Liberty with the Lawsuit against Valle through the Department of Insurance and that Liberty, through counsel retained to defend Valle, filed an Offer of Judgment. However, McCray could not identify any language within S.C. Code Ann. § 38-77-150 (South Carolina's uninsured motorist provide and defense of action by insurer) that in any way implies a UM carrier becomes a party to a lawsuit simply because it has the "right to appear and defend in the name of the uninsured motorist." See S.C. Code Ann. § 38-77-150. In fact, S.C. Code Ann. § 38-77-150, specifically provides that:

> No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision. The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record. S.C. Code Ann. § 38-77-150(B).

Nothing within South Carolina's uninsured motorist provision in any way provides that an insurer becomes a party by defending the uninsured motorist. Furthermore, the trial court pointedly requested that McCray provide it with "some case law that . . . an insurance company becomes a party just because they file an offer of judgment." [Hearing transcript, p. 15]. McCray ultimately conceded that "there is no state law in the State of South Carolina interpreting our offer [in such a manner]." [Hearing transcript, p. 15-16].

It is the duty of this Court to interpret the laws of this State. This Court has no legislative

authority to, and cannot, vary a statutory scheme no matter how logical the basis of the variance. See Benat v. State Farm Mut. Ins. Co., 286 S.C. 132, 134, 333 S.E.2d 57, 58 (Ct. App. 1985). McCray's "legal fiction" theory is contrary to the plain and unambiguous statutory law. See S.C. Code Ann. § 38-77-150(B); S.C. Code Ann. § 15-35-400. McCray points to cases from other jurisdictions holding that courts may enforce judgments against UM carriers, but that it is not the current law in this state. See Stark Truss Co. v. Superior Const. Corp., 360 S.C. 503, 509, 602 S.E.2d 99, 102 (Ct. App. 2004). The trial court specifically asked McCray to provide any South Carolina law to support its position, and McCray provided none. [Hearing transcript, p. 15-16]. The trial court correctly held that "S.C. Code § 15-35-400 does not extend a judgment entered against a Defendant to a UM carrier that participates in the defense of that tort action pursuant to S.C. Code 38-77-150" and did not abuse its discretion in applying the plain, unambiguous, and clear meanings of those respective statutes. See S.C. Code § 15-35-400; S.C. Code 38-77-150.

D. Rule 60 of the South Carolina Rules of Civil Procedure Does Not Allow McCray to Amend or Enforce a Judgment Against a Non-Party.

The trial court correctly held that "attempting to bind a non-party to a judgment extends beyond the relief contemplated by Rule 60" and is not proper. "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." Ex parte S.C. Dept. of Rev. v. Elliot, 350 S.C. 404, 408, 566 S.E.2d 196, 198 (S.C. Ct. App. 2002); see also Ex parte Strom, 343 S.C. 257, 264, 539 S.E.2d 699, 702 (2000) (emphasis added) (indicating a Rule 60 cannot be used to expand the scope of a judgment). In addition, Rule 60 of the South Carolina Rules of Civil Procedure specifically provides for a party's relief from a judgment, not the enforcement of that judgment against non-parties. Id. Attempting to bind a non-

party to a judgment extends beyond the relief contemplated by Rule 60. Id. Thus, the trial court correctly held that McCray's attempt to enforce the judgment against Liberty, a non-party, is prohibited by South Carolina law.

II. THE TRIAL COURT DID NOT OVERRULE ANY ORDER OF ANOTHER CIRCUIT COURT JUDGE.

McCray incorrectly argues that "the trial judge erred in overruling the decision of another circuit court judge." [McCray's Initial Brief, p. 22]. On September 14, 2014, McCray filed a Rule against All State and Liberty to show why enforcement of the judgment has not occurred. [Rule]. However, the Rule was denied by Judge Harrington on December 1, 2014 and the Order specifically provides that "a writ of execution, together with supplementary proceedings, is the proper procedure to enforce the underlying judgment." [Harrington's Order]. The Order does not order any relief against Liberty. [Harrington's Order]. Judge Harrington's Order does not provide that McCray could execute against Liberty; instead, Judge Harrington's Order provides that the proper procedure to try to enforce a judgment was through Rule 69 of the South Carolina Rules of Civil Procedure - as opposed to a Rule to Show Cause. [Harrington's Order]. Judge Harrington's Order contemplates McCray filing a writ of execution against the judgment debtor, Valle - not Liberty. Judge Jefferson's Order granting McCray's Motion to Quash merely affirms what Judge Harrington held: Liberty is not a party to the Liability Lawsuit and McCray must proceed with collecting from the judgment debtor, Valle, who is personally indebted to McCray. See Moore, 359 S.C. at 234.

III. INSURANCE COVERAGE ISSUES WERE NOT AND COULD NOT HAVE BEEN RAISED IN THE LIABILITY LAWSUIT AND ARE NOT PROPERLY BEFORE THIS COURT.

McCray improperly argues that Liberty is responsible for paying costs and/or damages in excess of Liberty's policy limits. [McCray's Initial Brief, pp. 25-26]. South Carolina law provides that an injured party must first establish legal liability on the part of the uninsured motorist. See S.C. Code Ann. § 38-77-150; see also Laird, 243 S.C. at 394 ("Such an action is one *ex delicto* and the only issues to be determined therein are the liability and the amount of damage.") (emphasis added). Issues regarding coverage are not properly before the court in the Liability Lawsuit. Rather, McCray must address any issues regarding costs and/or damages in excess of Liberty's policy limits in the Bad Faith Lawsuit. See Laird, 243 S.C. at 394 ("After judgment is entered against the uninsured motorist, a direct action *ex contractu* can be brought to recover from the insurance company on its endorsement, and policy defenses may be properly raised by the insurance company.") (emphasis added). Furthermore, to the extent McCray argues that Liberty is obligated to pay the entire judgment on behalf of Valle, this issue was neither raised by McCray nor ruled upon by the trial court and, thus, is not properly before this Court.[8]

[8] The trial court's Order did not address this issue and McCray failed to seek clarification regarding this issue pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. See Hardaway Concrete Co. v. Hall Contracting Corp., 374 S.C. 216, 234, 647 S.E.2d 488, 497 (Ct. App. 2007).

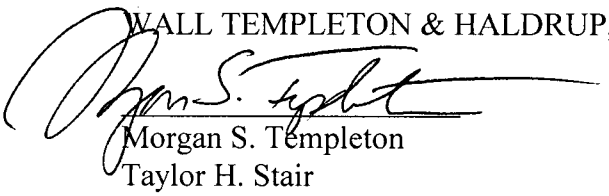
CONCLUSION

For the reasons set forth herein, Respondent Liberty Mutual Fire Insurance Company respectfully requests that this Court affirm the holding of the trial court granting Liberty's Motion to Quash and award costs and attorneys' fees pursuant to Rule 222 of the South Carolina Appellate Court Rules.

Dated this 16th day of November, 2015.

Respectfully submitted,

WALL TEMPLETON & HALDRUP, P.A.



Morgan S. Templeton
Taylor H. Stair
145 King Street, Suite 300
P. O. Box 1200
Charleston, South Carolina 29402
843-329-9500 (phone)
843-329-9501 (fax)
Attorneys for Respondent
Liberty Mutual Fire Insurance Company

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Appellate Case No.: 2015-001452

Levern McCray, Appellant,

v.

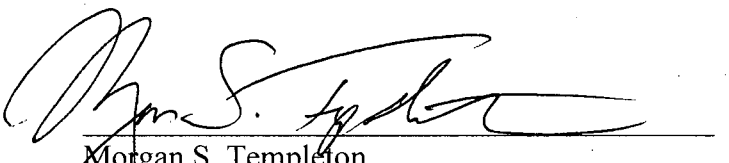
Jose Valle, Respondent

PROOF OF SERVICE

I certify that I have served the Respondent Liberty Mutual Fire Insurance Company's Initial Brief and Designation of Matters on Appeal on counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on November 16, 2015, as follows:

Pamela R. Mullis
Mullis Law Firm
Post Office Box 7757
Columbia, South Carolina 29202
email: prmullis@mullislawfirm.com
ATTORNEY FOR APPELLANT

John T. Lay, Jr.
A. Johnston Cox
Gallivan, White & Boyd, PA
1201 Main Street, Ste. 1200
Columbia, South Carolina 29201
email: jlay@gwblawfirm.com
jcox@gwblawfirm.com
ATTORNEY FOR ALLSTATE INSURANCE COMPANY



Morgan S. Templeton
Taylor H. Stair
Wall Templeton & Haldrup, P.A.
145 King Street, Suite 300
Post Office Box 1200
Charleston, South Carolina 29402
(843) 329-9500
Attorneys for Respondent, Liberty Mutual Fire Insurance Company