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JAN 19 2016

SC Court of Appeals

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\*\* Also Licensed in Georgia

January 15, 2016

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

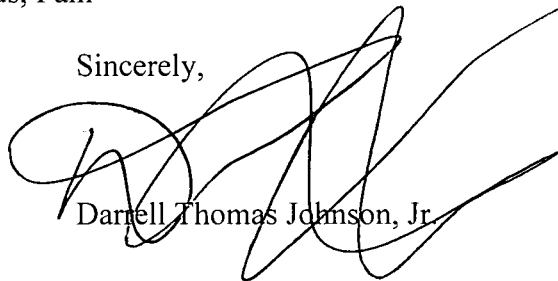
Re: Mary Wiggins, as Personal Representative of Kelvin Marquise Wiggins, Appellants  
vs.  
Enterprise Leasing South East, LLC  
Case No.: 2013-CP-27-00577  
Notice of Appeal from Jasper County Court of Common Pleas  
Appellate Case No.: 2016-000041

Dear Clerk Kitchens:

Pursuant to your letter of January 12, 2016, a copy of which is included herein for reference, I am enclosing a copy of the Orders which are being appealed in the above referenced matter.

Thank you and with kind regards, I am

Sincerely,



Darrell Thomas Johnson, Jr.

DTJ/lme/enc

COPY 1



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## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
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COLUMBIA, SOUTH CAROLINA 29201  
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January 12, 2016

Mr. Darrell T. Johnson, Jr., Esquire  
PO Box 1125  
300 Main Street  
Hardeeville SC 29927

Mr. Warren Paul Johnson, Esquire  
PO Box 1125  
300 Main Street  
Hardeeville SC 29927

Re: Mary Wiggins v. Enterprise Leasing  
Appellate Case No. 2016-000041

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, it lacks the title of the judge. You may correct this deficiency by including the judge's title on subsequent filings with this Court.
- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal.

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1/15/16

RECEIVED FOR FIRST TIME  
10:21 AM  
JAN 7, 2016

STATE OF SOUTH CAROLINA  
COUNTY OF JASPER  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-27-0577

Enterprise Leasing Company-South East, LLC

Mary Wiggins, as Personal Representative of Kelvin Marquise Wiggins

COPY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Leigh Ellen Gray

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court: Plaintiff's Motion for Reconsideration is hereby denied.

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk :

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)
		\$
		\$
		\$

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.

Circuit Court Judge

2142

Judge Code

10-20-15  
Date

POSTED  
DATE 10/16/15

COPY

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF JASPER )  
 )  
 Mary Wiggins, as Personal Representative )  
 of Kelvin Marquise Wiggins, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Enterprise Leasing Company- )  
 SouthEast LLC, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 13-CP-27-577

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ORDER JAN 19 2016

SC Court of Appeals

This matter is before the Court on Enterprise Leasing Company—SouthEast, LLC’s (“Defendant Enterprise”) motion for summary judgment. The Court heard oral argument on August 13, 2015. Defendant Enterprise supported their motion with written memoranda. Plaintiff filed memoranda in opposition. After hearing oral argument from counsel and reviewing the parties’ submissions, the Court hereby grants summary judgment to Defendant Enterprise and dismisses with prejudice this case in its entirety.

**Legal Standard**

A court should grant a motion for summary judgment when it is apparent that “there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Rule 56, SCRCP. When a court rules on a motion for summary judgment, the evidence and the inferences reasonably to be drawn from that evidence must be viewed in a light most favorable to the non-moving party. Id. However, a party bearing the burden of proof on a particular claim must factually support each element of that claim and a “complete failure of proof concerning an essential element [of that claim] necessarily renders all other facts immaterial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 320 (1986).

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DATE 10-8-15

*Hardware Insurance Co.*, 251 S.C. 203, 161 S.E.2d 240 (1968)). If the named insured has expressly prohibited a permittee from allowing a third party to operate the vehicle, a third party driver is not a permissive user and therefore not an insured. *Id.* (see also, *Keeler v. Allstate Insurance Co.*, 261 S.C. 151, 198 S.E.2d 793 (1973); *Southern Farm Bureau Casualty Insurance Co. v. Hartford Accident and Indemnity Co.*, 255 S.C. 427, 179 S.E.2d 454 (1971); *Dearybury v. New Hampshire Insurance Co.*, 255 S.C. 398, 179 S.E.2d 206 (1971)). Additionally, S.C. Code Ann. § 38-77-140 mandates liability coverage, including uninsured motorist coverage, but only to insure against “damages arising out of the ownership, maintenance, or use” of a motor vehicle.

**I. Plaintiff failed to establish Kelvin Wiggins was an insured.**

South Carolina law requires the party seeking coverage to establish permission was given, to the operator, by the named insured. *Liberty Mutual Insurance Company and S & S Leasing d/b/a/ Holiday Rent A Car v. Lisa G. Edwards, et al.*, 294 S.C. 368, 364 S.E.2d 750 (S. C. 1988) (citing *Allstate Insurance Co. v. Federated Mutual Implement and Hardware Insurance Co.*, 251 S.C. 203, 161 S.E.2d 240 (1968)). Defendant Enterprise is a self-insured company. See S.C. Code Ann. § 56-9-60 (2015). A self-insurer holds a dual role as insurer and insured. *Collins*, 276 S.C. at 467, 279 S.E.2d at 612. There is no evidence Defendant Enterprise, the named insured, gave Kelvin Wiggins permission to operate the vehicle.

**II. Plaintiff failed to establish the injury arose out of the ownership, maintenance, or use of the automobile.**

South Carolina law mandates liability coverage, including uninsured motorist coverage, but only to insure against “damages arising out of the ownership, maintenance, or use” of a motor vehicle. S.C. Code Ann. § 38-77-140 (2015) South Carolina employs a three-part test for whether an injury arises out of the ownership, maintenance, or use of an automobile. This test requires that:

### Findings of Facts

On October 5, 2011 Kelvin Marquise Wiggins was the driver of Defendant Enterprise's rental vehicle traveling southbound on Deerfield Road in Hardeeville, South Carolina. An unknown, John Doe, driver passed Wiggins's vehicle in the northbound lane of Deerfield Road and fired several shots into Wiggins's vehicle, striking Wiggins in the head. Wiggins died as a result of the gunshot wound. Approximately a week before the incident, Shala Kelly rented the vehicle driven by Wiggins from the Enterprise Rental branch located in Bluffton, South Carolina. Enterprise Leasing Company owned the vehicle. Kelly signed an Enterprise Rental Agreement that reflects no additional authorized drivers are permitted without the owner's written approval. Moreover, Kelly did not request Enterprise's permission to allow additional drivers. She understood she was not allowed to give other drivers permission to operate the vehicle. However, Kelly gave the vehicle to her cousin Travis Wiggins. Travis Wiggins then gave the vehicle to Kelvin Marquis Wiggins. The owner did not give Kelvin Marquis Wiggins permission to use the vehicle.

### Applicable Law

Defendant Enterprise is a self-insured company pursuant to S.C. Code Ann. § 56-9-60. As a self-insured company, Enterprise provides the minimum liability limits required by § 38-77-140 on each vehicle it owns and leases to customers. A self-insurer holds a dual role as insurer and insured. *Collins Cadillac, Inc. v. Bigelow-Sanford, Inc.*, 276 S.C. 465, 467, 279 S.E.2d 611, 612, 1981 S.C. LEXIS 388, 3 (S.C. 1981). The burden is on the party seeking coverage to establish that permission was given by the named insured. *Liberty Mutual Insurance Company and S & S Leasing d/b/a/ Holiday Rent A Car v. Lisa G. Edwards, et al.*, 294 S.C. 368, 364 S.E.2d 750 (S. C. 1988) (citing *Allstate Insurance Co. v. Federated Mutual Implement and*

1. There exists a *causal connection* between the vehicle and the injury; and
2. No act of independent significance breaks the causal link; and
3. The vehicle is being used for transportation at the time of the assault.

*State Farm v. Aytes*, 332 S.C. 30, 502 S.E.2d 744 (1998) (see *Holmes v. Allstate*, 786 F.Supp.2d 1022 (D.S.C. 2009); see also, *State Farm v. Bookert*, 337 S.C. 291, 523 S.E.2d 181 (1999)). The shooting of Kelvin Wiggins by John Doe did not arise out of the ownership, maintenance or use of Defendant Enterprise's vehicle or of the John Doe vehicle. There is no causal connection between Kelvin Wiggins' injury and either vehicle because the vehicles were not an active accessory to the injury. The injury sustained by Wiggins was neither foreseeably identifiable with the normal use of an automobile, nor were the vehicles more than simply the site from which John Doe's wrongful actions emanated and where Wiggins was located when he was injured.

NOW, THEREFORE, Defendant, Enterprise Leasing Company—SouthEast, LLC's Motion for Summary Judgment is granted and all claims are hereby dismissed with prejudice.

AND IT IS SO ORDERED!



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The Honorable Carmen T. Mullen  
Presiding Judge  
Fourteenth Judicial Circuit

September 30, 2015  
Beaufort, South Carolina