79684

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

RECEIVED
MAY 26 2016
SC Court of Appeals

Case No. 14- CP-40-4661

Appellate Case No. 2016-000986

Porthemos Curry ....Respondent

v.

Carolina Insurance Group of SC, Inc. and Maurice Derrick..............................Appellants

VERIFIED PETITION TO LIFT AUTOMATIC STAY OR, IN THE ALTERNATIVE, DISMISS THE APPEAL AS UNTIMELY

Pursuant to Rules 241 and 242(d), SCACR, the Respondent, Porthemos Curry, hereby moves and petitions this Court for an order lifting the automatic stay imposed by the Honorable Allison R. Lee, as evidenced by the certified Form 4 Order filed May 20, 2016, attached hereto as **Exhibit A**.

Respondent filed the underlying lawsuit in July 2014, and alleges claims for negligence and gross negligence against Appellants relating to the procurement of a vacant structures insurance policy. A copy of the amended complaint is attached as **Exhibit B**. Appellants deny they were negligent in procuring the policy, and assert they conformed to the standard of care for insurance agents. A copy of the amended answer is attached as **Exhibit C**.

Appellants now appeal from an order of the Honorable Robert E. Hood granting summary judgment in favor of respondent as to the affirmative defense of release.[1] The *gravamen* of the Appellants' argument is that it is a question of fact for the jury to decide whether the Appellants were released from liability in this lawsuit by virtue of a settlement agreement entered into between Porthemos Curry (Respondent herein) and Scottsdale Insurance Company.[2]

Appellants asserted ten (10) affirmative defenses in this case *in addition to the defense of illegality*, as evidenced by the amended answer attached as **Exhibit C**.[3] Petitioner submits that the granting of summary judgment as to this single defense should not act to stay the trial of this matter, which has been set for a date certain trial in Richland County by Judge Lee twice – for the term beginning April 18, 2016, and for the term beginning May 16, 2016.

Both trial dates were continued on the eve of trial due to the Respondents' filing of a motion for summary judgment filed on April 15, 2016, (first date certain), and the instant appeal filed on May 11, 2016 (second date certain).

Legal Standard

"The question of when a lower court may proceed with a case after one of its orders has been appealed can be a difficult one to answer." Tillman v. Oakes, 398 S.C. 245, 728 S.E.2d 45 (Ct. App. 2012) "An automatic stay under Rules 205 and 241 is not unassailable: a party to the

[1] Respondent, seeking only to preserve his rights, also filed a notice of appeal from the separate order granting Appellants' motion to amend their answer to assert the defense of release.

[2] Scottsdale Insurance Company was a former defendant in the underlying lawsuit. Plaintiff reached a settlement with Scottsdale for his claims for statutory bad faith; common law bad faith; and breach of contract in November 2015, and Scottsdale was dismissed from the lawsuit in December 2015.

[3] The Honorable R. Ferrell Cothran, Jr., notified the parties on May 20, 2016 that the Plaintiff's motion for summary judgment as to the affirmative defense of illegality was granted; however, no order has been issued as of today's date.

action need only petition either the trial court or the appellate court for an order lifting the stay." In Estate of Connor, Opinion No. 2009-UP-502 (Ct. App. Oct. 29, 2009) (*unpublished*).[4]

"When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending.

The answer to the first question is governed by the stay and supersedeas provisions of Rule 241. If a stay exists, either automatically under Rule 241(a) or by supersedeas under Rule 241(c), the appealed order may not be carried out or enforced during the pendency of the appeal. This is the purpose of a stay under Rule 241—to determine whether the appealed order may be carried out or enforced—not to determine whether the action may proceed in the lower court while the appeal is pending.

The second question is whether the lower court may proceed with the action during the pendency of the appeal, and its answer is governed by Rule 205, SCACR. The rule provides: "Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal...." Under Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal, but is specifically allowed to proceed with matters not affected by the appeal. The rule states: "Nothing in these Rules shall prohibit the lower court ... from proceeding with matters not affected by the appeal." Rule 205, SCACR; see also Rule 241(a), SCACR ("The lower court ... retains jurisdiction over matters not affected by the appeal...."). Thus, the existence or nonexistence of a stay under Rule 241 does not control the [lower] court's power to proceed with the action and address matters not affected by the appeal. Rather, the lower

[4] Petitioner is mindful of the Court's view of unpublished authority and acknowledges this case has no precedential value.

court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a "matter [ ] affected by the appeal" under Rules 205 and 241(a)." See Tillman, 728 S.E.2d at 50-51 (internal citations omitted).

Argument

An automatic stay of this matter subverts the interest of justice and, further, opens the door to multiple appeals following the eventual trial of this matter. The trial of this matter can go forward without the Appellants asserting the defense of release; in the event a verdict is returned in favor of Mr. Curry, Appellants can then appeal such a verdict and necessarily include Judge Hood's order in such appeal. To stay an entire case based upon the dismissal of a single defense is highly prejudicial to the plaintiff, who has now prepared for and subpoenaed witnesses for two (2) separate date certain trials.

In the event that the appeal is successful, the Respondent would still, at trial, be able to make a motion *in limine* as to the admissibility of the release itself, on the grounds that allowing the jury to see the release would be prejudicial and improperly allow the jury to consider set-off. Additionally, Respondent would still be able to make a directed verdict motion at trial as to the affirmative defense, which, if successful, the Appellants could then appeal – again – to this Court.

Depending on the trial court's ruling on the motion *in limine*, both parties could also appeal the evidentiary ruling post-trial. In addition, in the event of a verdict in favor of the Appellant, the Respondents could file an additional appeal asserting that the denial of directed verdict as to this very defense (in the event this Court issues a ruling in favor of the Appellants) was clear error. Or, in the event of a defense verdict, the Respondent could appeal.

In the alternative, Respondent requests that the appeal be dismissed as premature and untimely. "Generally, section 14-3-330(2) has been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed . . . [A] narrow construction of section 14-3-330(2) requires [the Court] to focus on the effect of the order, not the label given to the motion or to the order granting it." Thornton v. SCE&G, 391 S.C. 297, 705 S.E.2d 475, 478 (Ct. App. 2011). In Thornton, the Court held that an order of granting summary judgment was not immediately appealable because it neither involved the merits nor affected a substantial right. Id. at 480-481. The Court relied in part on Breland v. Love Chevrolet, where the Supreme Court held that immediate appeals under 14-3-330(2) have been allowed in situations where the substantial right could not be vindicated on appeal after the case. Id. at 479, fn. 7 (citing Breland v. Love Chevrolet, 339 S.C. 89, 529 S.E.2d 11 (2000)). In the instant case, the trial can go forward and, in the event of a verdict in favor of the Respondent, any substantial right can be vindicated on appeal after the case.

Conclusion

Wherefore, Respondent/Movant respectfully requests that this Court issue an order lifting the automatic stay or, in the alternative, dismiss the appeal.

GOODWYN LAW FIRM, LLC

Rachel Peavy

T. Jeff Goodwyn, Jr. Esquire [#73789]
Rachel G. Peavy, Esquire [#69397]
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517
Jgoodwyn@Goodwynlaw.com
Attorneys for Respondent/Movant

Dated: May 25, 2016

Other Counsel of Record:
Wesley R. Peel, Esq.
Bryan M.J. Triplett
PO Box 61110
Columbia, SC 29260-1110
Attorneys for Appellants

-Verification Follows-

Verified Statement of Respondent/Movant

I, Porthemos Curry, being duly sworn, do hereby state and aver that the foregoing Petition is true and accurate.

Porthemos Curry

Sworn to before me this 25th day of May, 2016

Notary Public of South Carolina
My commission expires: 10-19-2019

MARY S. BUSH
Notary Public, State of South Carolina
My Commission Expires October 19, 2019

RECEIVED
MAY 26 2016
SC Court of Appeals

GOODWYN LAW FIRM, LLC

T. Jeff Goodwyn, Jr.*
Christopher J. Archer

Special Counsel:
Rachel G. Peavy

Of Counsel:
E. Crosby Lewis

*Also Licensed in Georgia

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RECEIVED
MAY 26 2016
SC Court of Appeals

May 26, 2016

VIA HAND DELIVERY
The Honorable Jenny Abbott Kitchens
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: ***Porthemos Curry v. Carolina Ins. Group of SC, Inc.***
Appellate Case No.: 2016-000986
Case No.: 2014-CP-40-04661
Our File No.: 3000-0106

Dear Ms. Kitchens:

Enclosed for filing please find the original and six (6) copies of Respondent's Petition to Lift Automatic Stay, Verification, Certificate of Service, and the $25.00 filing fee. I also enclose a copy of the Notice of Appeal, along with its proof of service.

Should you have any questions, please do not hesitate to contact my office. I am leaving today on a short vacation and will return on May 31, 2016. However, Mr. Goodwyn will be available in the event you require any additional information.

Thank you for your courtesy in this matter.

Very truly yours,

Rachel G. Peavy

RGP/
Enclosures
cc: Wesley D. Peel, Esquire (w/encl.)
Porthemos Curry (w/encl.)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Jocelyn Newman, Circuit Court Judge

Case No.: 2014-CP-40-04661

Appellate Case No.: 2016-000986

Porthemos Curry...Respondent,

v.

Carolina Insurance Group of SC, Inc. and Maurice Derrick...............................Appellants.

PROOF OF SERVICE

I certify that I have served the **Verified Petition to Lift Automatic Stay or, in the Alternative, Dismiss the Appeal as Untimely** on Wesley D. Peel, Counsel for the Appellants at the address below by depositing a copy of same in the United States Mail, postage prepaid, on May 25, 2016.

Wesley D. Peel, Esquire
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260-1110

Mary S. Bush
Paralegal to Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, South Carolina 29205
(803) 251-4517

May 25, 2016

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014-CP-40-04661

Porthemos Curry
PLAINTIFF(S)

Scottsdale Insurance Company, et al.
DEFENDANT(S)

RICHLAND COUNTY FILED
2016 MAY 20 AM 10:56
JEANETTE W. McBRIDE C.C.P.

Submitted by: ______	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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other ______

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

ORDER INFORMATION

The automatic stay in this matter was temporarily lifted to allow Judge Cothran to conduct a hearing on May 16, 2016, on Defendants' Motion for Summary Judgment related to their defense of illegality. Judge Cothran has taken this Summary Judgment Motion under advisement. Plaintiff's motion to lift the automatic stay for the trial of this case is hereby DENIED.

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk : ______

INFORMATION FOR THE PUBLIC 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
		$
		$
		$

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 [signature] **Judge Code** 2118 **Date** 5/18/2016

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of ______, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 23 day of May, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Rachel Gottlieb Peavy
ATTORNEY(S) FOR THE PLAINTIFF(S)

Wesley Dickinson Peel
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter ______

Clerk of Court [signature]

EXHIBIT
A

COPY OF ORIGINAL FILED
Jeanette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Civil Action No.: 14-CP-40-4661

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company, Carolina Insurance Group of SC, Inc., and Maurice Derrick,

Defendants.

AMENDED COMPLAINT
(Jury Trial Requested)

2015 OCT -1 AM 11:28
JEANETTE W. McBRIDE
C.C.P. & G.S.

The Plaintiff, Porthemos Curry, complaining of the Defendants, would show as follows:

1. Plaintiff is a citizen and resident of Richland County who is the owner of a vacant structure located at 1001 Pineland Drive, Columbia, SC 29203 (hereafter "the Property").

2. Defendant Scottsdale Insurance Company ("Scottsdale") is a foreign corporation doing business in the State of South Carolina, including Richland County.

3. Defendant Carolina Insurance Group of South Carolina, Inc. is a corporation with an office located at Two Notch Road in Richland County, South Carolina.

4. Defendant Maurice Derrick is a citizen of the State of South Carolina who, upon information and belief, resides in Richland County.

5. On or about August 21, 2013, Defendants Carolina Insurance Group and Derrick sold Plaintiff a 3-month vacant structure policy with Scottsdale Insurance Company, Policy No. CPS1816463, with an expiration date of November 21, 2013. A copy of this Scottsdale policy is attached as **Exhibit A.**

EXHIBIT
B

6. Between the dates of November 22, 2013 and December 1, 2013, there was no insurance coverage on the Property.

7. On or about December 2, 2013, Defendant Derrick telephoned the Plaintiff to inquire as to whether he still needed vacant structure coverage for the Property, and Plaintiff told Derrick that he did.

8. On December 2, 2013, Defendant Derrick offered to place another vacant structure policy on the property, to which Plaintiff agreed.

9. As part of the underwriting process, Defendants Derrick and Carolina Insurance Group submitted an Application for a Vacant Structures Policy, a copy of which is attached hereto as **Exhibit B**. Upon approval, TAPCO prepared a Binder Summary Sheet which was forwarded to Defendants Derrick and Carolina Insurance Group and is attached hereto as **Exhibit C**. Defendant Scottsdale thereafter issued Policy No. CPS1884774 to the Plaintiff and a copy of the Policy is attached as **Exhibit D**.

10. On December 2, 2013, Plaintiff paid the premium amount of $344.50 by utilizing his Bank of America account to transfer payment to TAPCO Underwriters, the underwriter for Defendant Scottsdale.

For a First Cause of Action
Breach of Contract

11. The Preceding allegations are incorporated herein as if repeated verbatim.

12. Defendant Scottsdale is an insurer offering, among other things, policies to cover vacant structures.

13. Plaintiff procured vacant structure insurance ("the Policy") from Defendant Scottsdale, which coverage included loss by vehicle or by fire.

14. While the Policy was in force, a white vehicle collided with the Property on February 21, 2014, prior to midnight, as evidenced by the affidavits attached hereto as **Exhibit E**.

15. The collision resulted in a fire being ignited at the Property, causing severe damage as a result.

16. Plaintiff provided to Defendant Scottsdale the information regarding the accident and the Policy.

17. This loss was covered by the Policy.

18. Plaintiff timely reported the loss to the Defendants.

19. Defendant Scottsdale has refused to pay the claim, and contends that the Policy expired at 12:01 a.m. on February 21, 2014, as evidenced by the letter attached hereto as **Exhibit F**. Defendant Scottsdale has further refused to pay the claim by asserting that the Policy was somehow "backdated" to November 21, 2013 and had therefore lapsed by the time the fire department responded to calls in the early morning of February 22, 2014, despite the fact that the agent did not even bind coverage on the Property until December 2013.

20. Defendant Scottsdale's failure to pay the claim and failure to cover the loss are breaches of the insurance contract entitling the Plaintiff to recover such amount as established at trial.

For a Second Cause of Action
Statutory Bad Faith

21. The preceding allegations are incorporated herein.

22. Defendant Scottsdale has failed to pay the sum due and owing within 90 days.

23. Defendant has failed to pay any amounts to Plaintiff due under the Policy.

24. Defendant Scottsdale has failed to discharge its statutory and contractual obligations in good faith and has acted without reasonable cause in failing to pay covered losses within 90 days.

25. Pursuant to S.C. Code Ann. 38-59-40, Plaintiff is entitled to an award of attorney's fees of one third of the judgment entered in this action.

For a Third Cause of Action
Common Law Bad Faith

26. The preceding allegations are incorporated herein as if repeated verbatim.

27. Defendant Scottsdale had a duty to act in good faith which required it to use due care not to deprive Plaintiff of his rights under the Policy.

28. Defendant Scottsdale's explanation of delay in processing Plantiff's claim was based on a lack of knowledge of the Policy terms and conditions and is nonsensical.

29. Defendant Scottsdale has forced Plaintiff to pursue litigation in order to obtain payment for the loss covered by the Policy.

30. Defendant Scottsdale's failure to properly adjust Plaintiff's claim and failure to make payment as required by the terms of the Policy was the result of bad faith and the reckless and/or intentional disregard for Plaintiff's rights under the Policy.

31. Defendant Scottsdale's acts entitle Plaintiff to an award of punitive damages in an amount to be determined at trial.

For a Fourth Cause of Action
Negligence and Gross Negligence

32. To the extent not inconsistent, the preceding allegations are incorporated herein.

33. Defendant Maurice Derrick is an insurance broker employed by Defendant Carolina Insurance Group of SC, Inc.

34. Defendants Maurice Derrick and Carolina Insurance are agents of Defendant Scottsdale.

35. In addition to other activities, Defendants Derrick and Carolina Insurance submit applications for coverage with Scottsdale, receive premiums on behalf of Scottsdale, and deliver and present insurance contracts on behalf of Scottsdale.

36. Because Plaintiff had no special knowledge in the area of vacant coverage insurance, Plaintiff engaged Defendants Derrick and Carolina Insurance to procure vacant property coverage for the Property for the appropriate period of time while the Property was under renovation.

37. Plaintiff was assured by Defendants Derrick and Carolina Insurance that they offered coverage at competitive prices and that Defendants were well suited to work with a customer such as Plaintiff.

38. Defendants Derrick and Carolina Insurance undertook to procure insurance coverage for Plaintiff at two (2) different periods of time; first, in August 2013, when Plaintiff first began renovating the Property, and second, in December 2013, when Defendants inquired as to whether the Property was still under renovation and informed the Plaintiff that he needed a new policy, as the Lloyd's of London policy had expired.

39. In accepting the Scottsdale Policy procured by Defendants Derrick and Carolina Insurance in December 2013, Plaintiff, in reliance upon the knowledge, experience, and expertise of all of the Defendants, believed the Defendants would procure coverage sufficient to protect Plaintiff against the foreseeable insurance risk exposures faced by Plaintiff's Property for three (3) months.

40. According to positions taken by Defendant Scottsdale with respect to Plaintiff's loss that is the subject of this action, Plaintiff's loss is excluded from coverage under the terms of the Policy.

41. Prior to being informed of Scottsdale's position, Plaintiff had never been informed by any of the Defendants that the Policy was "backdated" and therefore the policy premium which was paid for in December 2013 actually was not a "three month policy" and did not cover the Property for 3 months.

42. As now relied upon by Defendant Scottsdale, the Policy is rendered materially deficient and insufficient to protect the Plaintiff.

43. Had the Defendants informed Plaintiff that the three month policy he was paying for provided less than 3 months of coverage, Plaintiff could have sought suitable insurance from another carrier or, in the alternative, sought to renew the Policy after the alleged expiration date of February 21st.

44. In permitting the Policy to be "shortened" in essence, without informing Plaintiff of this material limitation, Defendants failed to exercise the duty of ordinary care applicable to insurance carriers and professionals and such failure was, in fact, grossly negligent, reckless, and in contravention of the duties and standards imposed upon insurance professionals in similar situations.

45. As a result of the Defendants' failure to exercise ordinary care and failure to inform Plaintiff that the three month Policy was, in effect, 2 months plus 20 days, and willful or reckless failure to renew or seek to renew the Policy after the February loss, Plaintiff has been damaged in the amount of its losses to the Property, plus such other and further damages, including punitive damages, as may be proved at

trial, to include but not limited to, lost profits and income due to the destruction of the property; damage to credit rating; damage to reputation; and additional interest paid on credit cards due to failure to complete renovation and sale of the home.

WHEREFORE, Plaintiff prays for a trial by jury and judgment as follows:

As against Defendant Scottsdale, an award of damages in the amount of his unpaid losses as established at trial; attorney's fees in an amount of one third of the judgment under his statutory bad faith claim; and an award of punitive damages in an amount to be determined by the jury;

As against all Defendants, judgment in the amount of Plaintiff's unpaid losses as established at trial, and all incidental, punitive, and consequential damages as may be shown at trial;

Prejudgment interest and costs against all Defendants; and

For such other and further relief as the Court deems just and proper.

GOODWYN LAW FIRM, LLC
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T. Jeff Goodwyn, Jr. Esquire
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(803) 251-7527 (f)
JGoodwyn@Goodwynlaw.com
Attorneys for Plaintiff

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Civil Action No.: 14-CP-40-4661

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company, Carolina Insurance Group of SC, Inc., and Maurice Derrick,

Defendants.

CONSENT TO AMENDMENT OF COMPLAINT

RICHLAND COUNTY FILED
2015 OCT -1 AM 11:28
JEANNETTE W. MCBRIDE C.C.P. & G.S.

COUNSEL HEREBY CONSENTS TO THE AMENDMENT OF THE COMPLAINT TO ASSERT A CLAIM FOR GROSS NEGLIGENCE/PUNITIVE DAMAGES AS AGAINST DEFENDANTS MAURICE DERRICK AND CAROLINA INSURANCE GROUP OF SC, INC.:

Wesley D. Peel by Rachel S. Peavy (w/permission) 9/28/15
Wesley D. Peel, Esquire
Counsel for Defendants Maurice Derrick and Carolina Insurance Group of SC, Inc.

JR Murphy by Rachel S. Peavy (w/permission) 9/28/15
J.R. Murphy, Esquire
Counsel for Defendant Scottsdale Insurance Company

EXHIBIT A

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)

Porthemos Curry, Plaintiff, vs. Scottsdale Insurance Company, Carolina Insurance Group of SC, Inc. and Maurice Derrick, Defendants.	Civil Action No.: 2014-CP-40-04661 **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on **October 6, 2015**, copies of the foregoing **Amended Complaint** were served on the following party by placing a copy of the same Via U.S. Regular Mail, postage prepaid at the address shown below:

J.R. Murphy, Esquire Murphy & Grantland, P.A. 4406-B Forest Drive Columbia, South Carolina 29206	Wesley D. Peel, Esquire Bruner Powerll Wall & Mullins, LLC P.O. Box 61110 Columbia, SC 29260

Mary S. Bush
Mary S. Bush
Paralegal to Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	**Civil Action No. 2014-CP-40-04661**
Porthemos Curry, **Plaintiff,** vs. **Scottsdale Insurance Company, Carolina Insurance Group of SC, Inc. and Maurice Derrick,** **Defendants.**	**AMENDED ANSWER ON BEHALF OF DEFENDANTS CAROLINA INSURANCE GROUP OF SC, INC. AND MAURICE DERRICK**

2016 APR 19 8:48

The Defendants, Carolina Insurance Group of SC, Inc ("Carolina") and Maurice Derrick ("Derrick"), referred to collectively as the Defendants, answer the allegations of the complaint as follows:

FOR A FIRST DEFENSE
(General Denial)

1. The Defendants deny each and every allegation of the complaint not otherwise admitted, qualified, or explained herein.

2. The Defendants admit the allegations of Paragraphs 1, 2, 3, 4, and 5.

3. The Defendants deny the allegations of Paragraphs 6.

4. The Defendants would show that, with respect to the allegations of Paragraph 7, that on December 2, 2014, the plaintiff contacted Derrick to renew the policy; the remaining allegations of Paragraph are denied and strict proof is demanded thereof.

5. The Defendants deny the allegations of Paragraph 8, as the Plaintiff requested to renew the existing coverage.

6. The Defendants admit the allegations of Paragraph 9.

EXHIBIT
C

7. As to the allegations of Paragraph 10, the Defendants admit that the Plantiff paid the premium required for the policy.

8. The Defendants admit the allegations of Paragraph 12.

9. The Defendants admit the allegation of Paragraph 13 that the plaintiff procured vacant structure insurance from defendant Scottsdale Insurance Company ("Scottsdale"). The remaining allegations of Paragraph 13 are denied, and the Defendants crave reference to said policy (policy number CPS 18884774).

10. The Defendants deny the allegations of paragraphs 14 and 15.

11. The allegations of Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 are allegations against other defendants and do not make any allegations against the Defendants. However, to the extent any allegations in Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 may be construed as allegations against the Defendants, said allegations are denied and strict proof demanded thereof.

12. Paragraph 32 do not make any allegations against the Defendants and does not require a response from the Defendants. To the extent that Paragraph 32 may be construed to contain allegations against the Defendants, said allegations are denied and strict proof is demanded thereof.

13. Defendants admit the allegations of Paragraph 33.

14. Defendants deny the allegations of Paragraphs 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45 of the complaint.

FOR A SECOND DEFENSE
(Failure to State a Claim)

15. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

16. The complaint fails to state a claim on which relief can be granted and, accordingly, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Contributory Negligence)

17. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

18. The Defendants affirmatively allege that any injury sustained by the plaintiff, as alleged in his complaint, occurred as a direct result of plaintiff's negligent failure to exercise ordinary care, in that the plaintiff failed to read the policy of insurance. Therefore, plaintiff's alleged losses were caused in whole or in part, or were contributed to, by the plaintiff's own negligence, and not by any negligence of the Defendants.

FOR A FOURTH DEFENSE
(Lack of Proximate Cause)

19. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

20. The Defendants would show the Court that no act or omission of the Defendants, agents or servants, proximately caused any injuries to the plaintiff, which therefore bars any recovery from the Defendants.

21. Any damages sustained by the plaintiffs are the result of the sole negligence and/or breaches of contract of third-parties for which Defendants have no liability and as a result of which plaintiffs' claims against Defendants are barred.

FOR A FIFTH DEFENSE
(Failure to Mitigate Damages)

22. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

23. The plaintiff failed to purchase insurance coverage for the alleged losses in the complaint and, therefore, has failed to mitigate his damages. The Defendants accordingly plead the failure to mitigate damages as an affirmative defense to the plaintiff's complaint.

FOR A SIXTH DEFENSE
(Set-Off)

24. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

25. Any damages sustained by the plaintiffs are the result of the sole negligence and/or breaches of contract of third-parties for which Defendants have no liability and as a result of which plaintiffs' claims against Defendants are barred.

FOR AN SEVENTH DEFENSE
(Estoppel)

26. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

27. The plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

FOR AN EIGHTH DEFENSE
(Unclean Hands)

28. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

29. The plaintiff's claims are barred by virtue of the doctrine of unclean hands.

FOR A NINTH DEFENSE
(Failure of Proximate Cause)

30. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses

31. The plaintiff's claims against this defendant are barred in whole or in part by the fact that no action or inaction of the Defendants constituted the proximate cause of any injury or damage alleged by Plaintiff.

FOR A TENTH DEFENSE
(Reservation of Rights)

32. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

33. The Defendants reserve the right to assert additional affirmative defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

FOR A ELEVENTH DEFENSE
(Illegality)

34. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

35. The plaintiff's claims are barred by virtue of the doctrine of illegality.

FOR A TWELTH DEFENSE
(Release)

36. The Defendants repeat and reallege the foregoing responses to the extent they are consistent with the following responses.

37. The Defendants were expressly released from any alleged liability to the plaintiff. Defendants accordingly plead release as an affirmative defense to plaintiff's complaint.

(SIGNATURE PAGE TO FOLLOW)

WHEREFORE, having fully answered, the Defendants pray for judgment in their favor, for costs, and for such other and further relief as the Court finds just and fair.

Bruner, Powell, Wall & Mullins, LLC

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Columbia, South Carolina

April 19, 2016

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	**Civil Action No. 2014-CP-40-04661**
Porthemos Curry,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
Scottsdale Insurance Company, Carolina	)	
Insurance Group of SC, Inc. and Maurice	)	**CERTIFICATE OF SERVICE**
Derrick,	)	
Defendants.	)	
	)	

I, Rita D. DeCarlis, with the law firm of Bruner, Powell, Wall & Mullins, LLC, Attorneys for the Defendants, Carolina Insurance Group of SC, Inc. and Maurice Derrick, do hereby certify that on this 19th day of April 2016, I served the **AMENDED ANSWER ON BEHALF OF DEFENDANTS CAROLINA INSURANCE GROUP OF SC, INC. AND MAURICE DERRICK** upon opposing counsel via electronic mail and by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

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Rita D. DeCarlis
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Columbia, South Carolina
April 19, 2016