

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

DEC 15 2016

Honorable D. Craig Brown, Presiding Judge

SC Court of Appeals

Case No. 2015-CP-26-902

Harold F. Jones d/b/a Butch Jones Body Shop, Appellant,

v.

State Farm Mutual Automobile Insurance Company and Clint Cudd, Respondents,

INITIAL BRIEF OF APPELLANT

December 14, 2016

Harold F. Jones
P.O. Box 1068
Myrtle Beach, SC 29572
(843) 267-5254
Appellant

Counsel for Respondents:

Charles R. Norris, Esquire
Nelson, Mullins, Riley & Scarborough, LLP
151 Meeting Street, Suite 600
Charleston, SC 29401

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL JUDGE ERR IN GRANTING THE RESPONDENTS' MOTION FOR SUMMARY JUDGMENT?

STATEMENT OF THE CASE

This is an appeal from an Order of Honorable D. Craig Brown, Granting the Respondents' Motion for Summary Judgment and Denying the Appellant's Motion for Reconsideration, finding that there are no genuine issues of material fact to be tried in this case. The Order granting summary judgment filed on May 5, 2016, and the Order denying the Respondent's Motion for Reconsideration was filed on July 26, 2016.

The Appellant commenced this action against Respondents in the Court of Common Pleas for Horry County in February of 2016, alleging several causes of actions, including defamation per se, respondent superior and injunctive relief as against State Farm Mutual Automobile Insurance Company, and Clint Cudd. The Respondents timely filed their Answer denying the material allegations of the Complaint. Thereafter, the Appellant served the Respondents with Standard Interrogatories and Request for Production of Documents, and the Respondents submitted their responses to the discovery requests, essentially objecting to standard requests. Due to the non-responsive answers to discovery requests, the Appellant filed a Motion to Compel. In the interim, the Respondents filed a Motion for Summary Judgment. As a result, Judge Brown issued his Order for summary judgment on May 5, 2016, without having heard or addressed the Appellant's Motion to Compel. The Appellant timely filed a Motion for Reconsideration of the May 5, 2016, and by form order, Judge Brown denied the Appellant's motion on July 26, 2016. Thereafter, the Appellant timely filed this appeal.

STATEMENT OF FACTS

The Appellant has been engaged in the automobile body repair business for decades and

makes his living and supports his family as an automobile body repairman. As part of his business, the Appellant regularly dealt with the Respondent, State Farm, and also had to deal with the Respondent, Clint Cudd in his capacity as an adjuster and employee of State Farm.

Over the past several years, the business relationship between the Appellant and the Respondents deteriorated due the actions of Cudd. Specifically, the Appellant asserts that Cudd has engaged in a pattern of actively discouraging policy holders of State Farm from using the services of the Respondent in repairing their vehicles. Furthermore, the Appellant alleges that Cudd engaged in a pattern of slandering and defaming the Appellant and his work, and had on several occasions sought to prevent or stop policy holders of State Farm from ever dealing with the Appellant.

The Appellant sought to keep Cudd from coming to his business and specifically requested of State Farm that they assign another adjuster to handle any claims where the Appellant is doing the work. Despite the Appellant's request, State Farm continued to assign Cudd to claims involving the Appellant, and Cudd continued to engage in slanderous and defamatory conduct towards the Appellant. Once the Appellant was directly informed to the slander and defamation by Cudd, the Appellant filed this action.

I.

THE TRIAL JUDGE ERRED IN GRANTING THE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

An appellate court reviews a grant of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* Under Rule 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman, 306 S.C. at 115, 410 S.E.2d at 545. With respect to an issue upon which the nonmoving party has the burden of proof, this initial responsibility

may be discharged by pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case. *Id.* In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. Sumner v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., *supra*. Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. Baughman v. American Tel. & Tel. Co., *supra*. This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Id.* Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Baugus v. Wessinger, 303 S.C. 412, 401 S.E.2d 169 (1991).

The Appellant timely and diligently served discovery responses on the Respondents, and the responses of the Respondents were wholly inadequate and not done in good faith. As a result, the Appellant timely filed a Motion to Compel; however, the Court chose to grant summary judgment without considering the Appellant's Motion. With additional discovery, the Appellant could have brought forth all evidence supporting his claims; however, his efforts were unfairly short-circuited by the actions of the Respondents and the Order of the trial judge.

CONCLUSION

Based upon the foregoing, the trial judge erred in granting the Respondents' Motion for Summary Judgment and this Court should reverse the trial judge's order.



Harold F. Jones
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Appellant

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Harold F. Jones d/b/a Butch Jones Body Shop, Appellant,

v.

State Farm Mutual Automobile Insurance Company and Clint Cudd, Respondents,

CERTIFICATE OF SERVICE

I, Harold F. Jones, the Appellant, do hereby certify that on the ^{14th} day of December, 2016, I served Initial Brief of Appellant and Designation of Matters of Matter to Be Included in the Record on Appeal in the above-captioned action by depositing copies of same in the United States Mail, postage prepaid, in envelopes securely sealed, and addressed to:

Charles R. Norris, Esquire
Nelson, Mullins, Riley & Scarborough, LLP
151 Meeting Street, Suite 600
Charleston, SC 29401
Attorney for Respondents

The same being his usual business address.



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HAROLD F. JONES
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Ms. Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
PO Box 11629
Columbia, SC 29211

**Re: Harold F. Jones, individually and d/b/a Butch Jones Body Shop,
Appellant vs. State Farm Mutual Automobile Insurance Company and
Clint Cudd, Respondents
Case No.: 2015-CP-26-902**

Dear Ms. Kitchings:

Enclosed please find the originals of the Initial Brief of Appellant, Designation of Matter to Be Included in Record on Appeal, and Certificate of Mailing. By copy of this letter, I am providing Respondent's lawyer with a copy of this letter and the enclosed documents as well.

Yours very truly,



Harold F. Jones

CC:

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SC Court of Appeals



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