

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

ON APPEAL FROM
Court of Common Pleas, Sumter County
R. Ferrell Cothran, Jr., Chief Administrative Judge

RECEIVED
OCT 25 2017
SC Court of Appeals

Docket No. 2016-CP-43-00414
Appellate Case No. 2017-002068

Charlie L. Jones, Appellant,

v.

Certain Interested Underwriters at Lloyd's, London Subscribing to Policy Number TMASHO144229; Tapco Underwriters, Inc.; Creech, Roddey & Watson; and Crawford & Company, Respondents.

RESPONDENT CREECH, RODDEY & WATSON'S MOTION TO DISMISS APPEAL

Respondent Creech, Roddey & Watson hereby moves for an Order dismissing Appellant's appeal as it relates to the trial court order dated July 10, 2017 granting them summary judgment.

This motion is made pursuant to Rules 240 and 260(a), SCACR.

Through his October 3, 2017 Notice of Appeal, Appellant appeals the following Orders issued by the Honorable R. Ferrell Cothran, Jr.:

1. Order Granting Summary Judgement to Defendant Certain Interested Underwriters at Lloyd's, London Subscribing to Policy Number TMASHO144229 dated September 18, 2017;
2. Order Granting Summary Judgment to Defendants Tapco and Crawford dated June 9, 2017; and

3. Order Granting Summary Judgment to Defendant Creech, Roddey & Watson dated July 10, 2017.

Appellant previously filed a Notice of Appeal with this Court on July 5, 2017 appealing the Creech, Roddey & Watson Order, which was not signed by the Honorable R. Ferrell Cothran until July 10, 2017. *See Exhibit 1.* However, Appellant moved to withdraw this appeal and an order was issued on August 7, 2017 dismissing it. *See Exhibit 2.* Following receipt of the signed order granting summary judgment to the Respondent Creech, Roddey & Watson, a copy of the Order was served upon the Appellant on July 11, 2017. *See Exhibit 3.* At no time did the Appellant file and serve a Notice of Appeal within thirty (30) days after receipt of written notice of entry of the order granting summary judgment as required by South Carolina Appellate Court Rule 203. Appellant now seeks to appeal the Creech, Roddey & Watson Order for the second time.

In light of Appellant's prior appeal of the Creech, Roddey & Watson Order and this Court's subsequent dismissal of that appeal, Appellant cannot now appeal the same order beyond the thirty-day deadline mandated by Rule 203(b), SCACR. "Rule 203(b), SCACR requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of subject matter jurisdiction and results in dismissal of the appeal." *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 4, 524 S.E.2d 416, 418 (Ct. App. 1999). "The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008).

Appellant's Notice of Appeal does not timely appeal a summary judgment order that was issued on July 10, 2017. This Court therefore lacks jurisdiction to consider Appellant's second appeal of the Creech, Roddey & Watson Order and Appellant's appeal of that order should be dismissed.

"[A]n order dismissing some, but not all, of the claims in a case by summary judgment... is immediately appealable because it finally determines some substantial matter forming the whole or a part of some cause of action or defense." Jean Hoefler Toal, *et al.*, *Appellate Practice in South Carolina*, 162 (3rd ed. 2016); *see Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011). "Similarly, summary judgment as to some, but not all, of the parties to a lawsuit is immediately appealable." Jean Hoefler Toal, *et al.*, *Appellate Practice in South Carolina*, 162 (3rd ed. 2016); *see Murphy v. Owens-Corning Fiberglas Corp.*, 346 S.C. 37, 41, 550 S.E.2d 589, 591 (Ct. App. 2001) (order granting a Rule 12 motion as to some, but not all, of the defendants in a case is immediately appealable under S.C. Code Ann. § 14-3-330(2) because it affects a substantial right). Because Creech, Roddey & Watson was granted summary judgment outright on July 10, 2017, that order was immediately appealable within thirty (30) days after Appellant's receipt of written notice of its entry. Appellant's prior appeal was timely, but when he subsequently withdrew it, the July 10, 2017 order became final.

Appellant may argue that the July 10, 2017 order was interlocutory, rendering his current appeal timely pursuant to S.C. Code Ann. § 14-3-330. That argument is untenable. Section 14-3-330(1) of the South Carolina Code states, in pertinent part:

The Supreme Court shall have appellate jurisdiction ... and shall review upon appeal:

- (1) Any intermediate judgment...; provided, that ***if no appeal be taken*** until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment ***not before appealed from***;

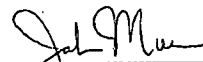
S.C. Code Ann. § 14-3-330 (1) (Rev. ed. 2017) (emphasis added).

Even if the July 10, 2017 order were interlocutory, which it was not, Appellant's prior appeal of that order takes it outside the purview of S.C. Code Ann. § 14-3-330(1).

Ultimately, this case is controlled by the holding in *Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 544 S.E.2d 38 (Ct. App. 2001). In *Olson*, this Court ruled that when summary judgment is granted as to all causes of action pending against a particular defendant, it becomes incumbent upon a plaintiff to file a notice of appeal within the timeframes established by Rule 203, SCACR, even when the case remains pending as against other parties. 344 S.C. at 213-14, 544 S.E.2d at 48. *Olson* is on all fours with this case.

Therefore, for the reasons stated above, this Court should dismiss Appellant's appeal as to the Creech, Roddey & Watson Order.

Respectfully submitted,



John R. Moorman
BRYAN LAW FIRM OF SC, LLP
17 E. Calhoun Street
Sumter, South Carolina 29150
Telephone: (803) 775-1263
Facsimile: (803) 778-1300
jmoorman@bryanlaw.com
Attorney for Respondent Creech, Roddey & Watson

October 24, 2017.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2016-CP-43-414

Charlie L. Jones,

PLAINTIFF,

vs.

Certain Interested Underwriters at Lloyd's,
London Subscribing to Policy Number
TMASHO144229, Tapco Underwriters,
Inc., Creech, Roddey & Watson, and
Crawford & Company,

DEFENDANT(s).

**ORDER GRANTING SUMMARY
JUDGMENT TO THE DEFENDANT
CREECH, RODDEY & WATSON**

This matter came before this Court on the Monday, June 5, 2017 for a hearing on the Defendant Creech, Roddey & Watson's Motion for Summary Judgment on all causes of action asserted by the Plaintiff, Charlie L. Jones, against the Defendant, Creech, Roddey & Watson.

Present at the hearing were the Plaintiff, Charlie L. Jones, Kirby D. Shealy, III, attorney for the Defendants Certain Interested Underwriters at Lloyd's, London Subscribing to Policy Number TMASHO144229, Tapco Underwriters, Inc., and Crawford & Company, and John R. Moorman, attorney for the Defendant, Creech, Roddey & Watson.

On October 5, 2016, South Carolina experienced a severe rain storm that caused significant flooding across South Carolina. In the late afternoon of Friday, October 9, 2015, the Plaintiff, Charlie L. Jones, came to the Defendant Creech, Roddey & Watson's office located at 25 E. Calhoun Street to file an insurance claim relating to damage allegedly sustained to a



building located at 901 Manning Avenue in Sumter, South Carolina on October 5, 2015. On Monday morning, October 12, 2015, the Plaintiff's claim was reported to the Defendant, Tapco Underwriters, Inc., by the Defendant Creech, Roddey & Watson's employees. The Plaintiff claimed that "rain caused roof ceiling, wall, damage" to his property located at 901 Manning Road in Sumter, South Carolina. The Plaintiff's claim was ultimately denied by the Defendant, Tapco.

In his Complaint, the Plaintiff alleged general allegations of bad faith against the Defendant, Creech, Roddey & Watson, for not paying a claim form for damages to his residence located at 901 Manning Avenue in Sumter, South Carolina. The Plaintiff also alleged that the Defendant, Creech, Roddey & Watson, acted in bad faith by not providing him with a claim form pursuant to South Carolina Code Annotated §38-59-10.

Summary judgment should be granted where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. S.C.R.Civ.P. 56(c). Walters v. Canal Ins. Co., 294 S.C. 150, 151, 363 S.E.2d 120, 121 (Ct. App. 1987).

In the present case, the Defendant, Creech, Roddey & Watson, did not act in bad faith. The elements of a cause of action for bad faith refusal to pay first party benefits under a contract of insurance are: (1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; (2) refusal by the insurer to pay benefits due under the contract; (3) resulting from the insurer's bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing arising on the contract; (4) causing damage to the insured. Bartlett v. Nationwide Mutual Fire Insurance Co., 290 S.C. 154, 348 S.E.2d 530 (Ct.App.1986).

First, no contract of insurance existed between the Plaintiff, Charlie L. Jones, and the Defendant, Creech, Roddey & Watson. Furthermore, in his deposition, the Plaintiff, Charlie L. Jones, testified that the Defendant, Creech, Roddey & Watson, did not handle the adjustment of his claim, did not deny his claim, was not responsible for the adjustment of his claim, and was not responsible for paying his claim. Based upon the Plaintiff's deposition testimony, it is clear that no genuine issue of material fact exists to show that the Defendant, Creech, Roddey & Watson acted in bad faith. It is undisputed that the Defendant, Creech, Roddey & Watson, had no role in the adjustment or handling of the Plaintiff's insurance claim other than submitting a claim form on the Plaintiff's behalf.

While the Plaintiff states that the failure to provide a claim form was bad faith on the part of the Defendant, Creech, Roddey & Watson, this is not the case. The Defendant Creech, Roddey & Watson's employees submitted the Plaintiff's claim to the Defendant, Tapco, on Monday, October 12, 2015 after the claim was reported on Friday, October 9, 2015. The affidavit of S. Lathan Roddey, III submitted by the Defendant, Creech, Roddey & Watson, with its Motion for Summary Judgment detailed the role of the Defendant, Creech, Roddey & Watson, in the Plaintiff's claim.

Additionally, South Carolina Code Annotated §38-59-10 does not create a private right of action. South Carolina Code Annotated §38-59-10 states that in event that a claim form is "not furnished within twenty days after the receipt of the notice, the claimant is considered to have complied with the requirements of the policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss written proof covering the occurrence, character, and extent of the loss for which claim is made." The Plaintiff's claim in the present case was clearly submitted to the Defendant, Tapco, in a timely manner and was adjusted by the other Defendants

in this action. The decision to accept or deny the Plaintiff's claim rested solely with a Defendant, other than the Defendant, Creech, Roddey & Watson.

Therefore, it is the order of this Court, for the reasons set forth above, that summary judgment be granted to the Defendant, Creech, Roddey & Watson, as to all causes of action set forth in Plaintiff's Complaint pursuant to Rule 56(c), SCRPC.

The Honorable R. Ferrell Cothran, Jr.

Sumter, South Carolina
June _____, 2017



Sumter Common Pleas

Case Caption: Charlie L Jones VS Lloyds Of London , defendant, et al

Case Number: 2016CP4300414

Type: Order/Summary Judgment

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

The South Carolina Court of Appeals

Charlie L. Jones, Appellant,

v.

Certain Interested Underwriters at Lloyd's London
Subscribing to Policy Number TMASHO144229; Tapco
Underwriters, Inc.; Creech, Roddey & Watson; and
Crawford & Company, Respondents.

Appellate Case No. 2017-001485

The Honorable R. Ferrell Cothran, Jr.
Sumter County
Trial Court Case No. 2016CP4300414

ORDER

Appellant filed a motion to withdraw this appeal. Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY *V. Claire Adams, Deputy*
CLERK

Columbia, South Carolina

cc:

Charlie L. Jones
Kirby Darr Shealy, III, Esquire
John Richard Moorman, Esquire

FILED

August 7, 2017



BRYAN LAW FIRM OF SC, L.L.P.

Attorneys at Law
17 E. Calhoun Street • P.O. Box 2038
Sumter, S.C. 29151-2038

G. WERBER BRYAN (1914-1990)
A. S. BAHNMULLER
DAVID W. GOLDMAN
JOSEPH T. McELVEEN, JR. †
JOHN P. FORD
THOMAS M. BULTMAN † *
J. THOMAS McELVEEN, III
JOHN R. MOORMAN †

July 11, 2017

TELEPHONE (803) 775-1263
Ext.: 226

TELEFAX (803) 778-1300
EIN 45-3953021

Attorney: jmoorman@bryanlaw.com
Paralegal: mstone@bryanlaw.com

† Certified Circuit Court Mediator

† Certified Family Court Mediator

* Fellow, American Academy of Matrimonial Lawyers

VIA USPS FIRST CLASS MAIL

Charlie L. Jones
901 Manning Ave.
Sumter, SC 29150

RE: Charlie L. Jones v. Lloyds of London (1), Tapco Underwriters,
Inc. (2), Creech, Roddey & Watson (3), and Crawford & Company (4)
Civil Action No.: 2016-CP-43-4414

Dear Mr. Jones:

Please find enclosed, a copy of the Order Granting Summary Judgment to the Defendant Creech, Roddey & Watson in the above captioned matter, which I hereby serve upon you.

Should you have any questions, please contact my office.

Kindest regards.

Sincerely,



Michelle A. Stone
Paralegal to John R. Moorman

JRM/mas

Enclosure: Order Granting Summary Judgment to the Defendant Creech, Roddey & Watson





Sumter Common Pleas

Case Caption: Charlie L Jones VS Lloyds Of London , defendant, et al
Case Number: 2016CP4300414
Type: Order/Summary Judgment

So Ordered

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First, no contract of insurance existed between the Plaintiff, Charlie L. Jones, and the Defendant, Creech, Roddey & Watson. Furthermore, in his deposition, the Plaintiff, Charlie L. Jones, testified that the Defendant, Creech, Roddey & Watson, did not handle the adjustment of his claim, did not deny his claim, was not responsible for the adjustment of his claim, and was not responsible for paying his claim. Based upon the Plaintiff's deposition testimony, it is clear that no genuine issue of material fact exists to show that the Defendant, Creech, Roddey & Watson acted in bad faith. It is undisputed that the Defendant, Creech, Roddey & Watson, had no role in the adjustment or handling of the Plaintiff's insurance claim other than submitting a claim form on the Plaintiff's behalf.

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Additionally, South Carolina Code Annotated §38-59-10 does not create a private right of action. South Carolina Code Annotated §38-59-10 states that in event that a claim form is "not furnished within twenty days after the receipt of the notice, the claimant is considered to have complied with the requirements of the policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss written proof covering the occurrence, character, and extent of the loss for which claim is made." The Plaintiff's claim in the present case was clearly submitted to the Defendant, Tapco, in a timely manner and was adjusted by the other Defendants

in this action. The decision to accept or deny the Plaintiff's claim rested solely with a Defendant, other than the Defendant, Creech, Roddey & Watson.

Therefore, it is the order of this Court, for the reasons set forth above, that summary judgment be granted to the Defendant, Creech, Roddey & Watson, as to all causes of action set forth in Plaintiff's Complaint pursuant to Rule 56(c), SCRCF.

The Honorable R. Ferrell Cothran, Jr.

Sumter, South Carolina
June _____, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

ON APPEAL FROM
Court of Common Pleas, Sumter County
R. Ferrell Cothran, Jr., Chief Administrative Judge

RECEIVED

OCT 25 2017

SC Court of Appeals

Case No. 2016-CP-43-00414
Appellate Case No. 2017-002068

Charlie L. Jones,Appellant,

v.

Certain Interested Underwriters at Lloyd's, London Subscribing to Policy Number
TMASHO144229; Tapco Underwriters, Inc.; Creech, Roddey & Watson; and Crawford &
Company, Respondents.

CERTIFICATE OF SERVICE

I, John R. Moorman, of counsel for the Respondent, Creech, Roddey & Watson, certify that I have served the within Motion to Dismiss on the Appellant and the Respondents by depositing a copy of the same in the United States Mail, postage prepaid, addressed to Charlie L. Jones 901 Manning Avenue, Sumter, South Carolina 29150 and the Respondents attorney of record, Kirby D. Shealy, III, Esq., 1501 Main Street, 5th Floor, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 24th day of October, 2017.



John R. Moorman
Bryan Law Firm of SC, L.L.P.
Post Office Box 2038
Sumter, South Carolina 29151
(803) 775-1263

Attorney for Respondent Creech, Roddey & Watson

BRYAN LAW FIRM OF SC, L.L.P.

Attorneys at Law
17 E. Calhoun Street • P.O. Box 2038
Sumter, S.C. 29151-2038

G. WERBER BRYAN (1914-1990)
A. S. BAHNMULLER
DAVID W. GOLDMAN
JOSEPH T. McELVEEN, JR. †
JOHN P. FORD
THOMAS M. BULTMAN °±
J. THOMAS McELVEEN, III
JOHN R. MOORMAN †

TELEPHONE (803) 775-1263
Ext.: 226

October 24, 2017

TELEFAX (803) 778-1300
EIN 45-3953021

Attorney: jmoorman@bryanlaw.com
Paralegal: mstone@bryanlaw.com

† Certified Circuit Court Mediator

° Certified Family Court Mediator

* Fellow, American Academy of Matrimonial Lawyers

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

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SC Court of Appeals

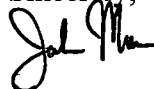
RE: Charlie L. Jones v. Certain Interested Underwriters at Lloyd's, London
Subscribing to Policy Number TMASHO144229; Tapco Underwriters, Inc.;
Creech, Roddey & Watson; and Crawford & Company
Appellate Case No.: 2017-002068

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Respondent Creech, Roddey & Watson's Motion to Dismiss the above-referenced appeal along with our certificate of service. By copy of this letter, I am serving the Appellant Charlie L. Jones and Kirby D. Shealy, III, attorney for the Respondents.

With kind regards, I am

Sincerely,



John R. Moorman
Bryan Law Firm of SC, L.L.P.
Post Office Box 2038
Sumter, South Carolina 29151
(803) 775-1263
Attorney for Respondent Creech, Roddey & Watson

JRM:wp
Enclosures

cc: Charlie L. Jones
901 Manning Avenue
Sumter, South Carolina 29150
Appellant
Kirby D. Shealy, III, Esq.
1501 Main Street, 5th Floor
Columbia, South Carolina 29201.
Attorney for Respondent

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Bryan Law Firm of SC, LLP
Attorneys at Law
17 E. Calhoun Street
PO Box 2038
Sumter, South Carolina 29150-2038

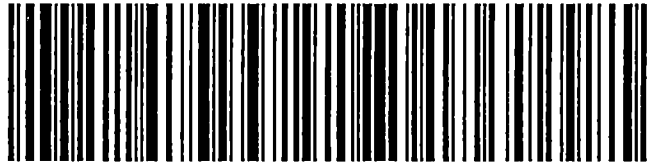
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Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211-1629



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SC Court of Appeals