

FORM 13
BRIEF OF APPELLANT*

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

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APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

FEB 05 2018

Judge James B. Jackson, Jr. Circuit Court Judge

SC Court of Appeals

Case No. 2017-CP-38-00299

South Carolina Farm Bureau
Mutual Insurance Company,

Respondent,

v.

Robert Cox, Robert M Cox,
Tech To Go, LLC

Appellant.

[INITIAL] BRIEF OF APPELLANT

Robert M Cox
Tech To Go, LLC
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Appellant

* Under Rule 267(e), SCACR, the cover of the final briefs should be the following colors: brief of appellant - blue; brief of respondent - red; reply brief - gray; and amicus curiae or intervenor - green.

TABLE OF CONTENTS

Table of Contents..... 1

Table of Authorities.....2

Statement of Issues on Appeal3

Statement of the Case4

Arguments

1.....BECAUSE SC LAW REGARDING DECLARATORY JUDGMENTS APPLIES TO ALL PARTIES WHO “CLAIM INTEREST”, THE COURT ERRED IN DISMISSING APPELLANT’S MOTIONS FOR JOINDER.....5

2.....BECAUSE CASE LAW, PRECEDENT, AND SCHOLARSHIP HAVE DETERMINED THAT ANTI-ASSIGNMENT CLAUSES WITHIN INSURANCE POLICIES DO NOT APPLY TO POST-LOSS ASSIGNMENTS, THE COURT ERRED BY USING THOSE POLICY PROVISIONS TO DECLARE APPELLANT’S ASSIGNMENT INVALID.....5

Conclusion..... 7

TABLE OF AUTHORITIES*

CASES

Co-Operative Fire Association v. Borchardt & Company, 123 Ga. 181, 51 S.E. 429 at 430 (Ga.1905).....6

Narruhn v. Alea London Ltd., 745 SE 2d 90 - SC: Supreme Court 2013.....6

Leon v. Martinez, 84 N.Y.2d 83, 88, 614 N.Y.S.2d 972, 638 N.E.2d 511 (N.Y.1994).....5

Hinkle Iron Co. v. Kohn, 229 NY 179 (1920).....5

Coastal Commercial v. Kosoff & Sons, 10 AD 2d 372 - NY: Appellate Div., 4th Dept. (1960).....5

Patten v. Mutual Ben. Life Ins. Co., 192 S.C. 189, 6 S.E.2d 26, 29, 126 A.L.R. 91.....6

Southern General Factors v. Parker Concrete Pile, 236 F. Supp. 103 - Dist. Court, D. SC 1964...6

Thomasson v. Ocean Point Golf, Inc., 386 SE 2d 282 - SC: Court of Appeals 1989.....6

DIXIE WOOD PRES. CO. v. ALBERT GERSTEN, 135 SE 2d 368 - SC: Supreme Court 1964..6

Singletary v Aetna Cas. & Sur. Co., 316 S.C. 199, 201, 447 S.E.2d 869, 870 (Ct.App.1994).....6

STATUTES

S.C. Code Ann. § 15-53-80 (1976).....5

S.C. Code Ann. § 15-53-90 (1976).....7

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

1. DID THE COURT ERR BY FAILING TO RECOGNIZE AND FOLLOW RELEVANT LEGISLATION AND CASE LAW IN DENYING APPELLANT'S MOTION(S) FOR JOINDER?
2. DID THE COURT ERR BY CITING AND EMPLOYING POLICY PROVISIONS TO DENY APPELLANT'S MOTIONS FOR JOINDER?
3. DID THE COURT ERR BY CITING POLICY PROVISIONS TO DECLARE APPELLANT'S ASSIGNMENT INVALID?
4. DID THE COURT ERR BY FAILING TO CITE RELEVANT CASE LAW AS THE BASIS FOR DECLARING APPELLANT'S ASSIGNMENT INVALID?
5. DID THE COURT ERR BY FAILING TO CONSIDER RELEVANT CASE LAW REGARDING POST-LOSS ASSIGNMENTS AND ANTI-ASSIGNMENT CLAUSES PRESENTED DURING THE MOTION HEARING BY APPELLANT?
6. DID RESPONDENT KNOWINGLY OR NEGLIGENTLY ABUSE THE COURT PROCESS BY IGNORING APPELLANT'S ASSIGNMENT AND BRINGING SUIT AGAINST DEFENDANT(S)?
7. DID THE COURT ERR BY ACCEPTING RESPONDENT'S INTERPRETATION OF POLICY PROVISIONS?

STATEMENT OF THE CASE

(Note: this Case is nearly identical to Case# 2017-CP-38-00358 and Appellant requests that the Court consider Consolidating the two.)

This Case(s) comes before the Court as the result of an ongoing dispute regarding damage caused by Hurricane Matthew in October of 2016 that Appellant and Defendant(s) believe is covered under an Insurance Policy issued by Respondent.

On or about December 16th, 2016, Defendant(s) invoked Appraisal in Writing via Email per the requirements of the Insurance Policy issued by Respondent. Respondent dismissed the demand, informing Defendant(s) that Appraisal would only set the Amount of the Damage, and would not resolve disputes regarding coverage.

Since Defendant(s) was unable to resolve the dispute with Respondent, Defendant(s) chose to Assign Defendant's (') Claim to Appellant who pursued resolution through Lexington County Magistrate's Court, Case# 2017-CV-32-1060417, which was filed on March 1st, 2017. After receiving notice of Appellant's suit, Respondent filed a Declaratory Judgment suit(s) in the Orangeburg County Court of Common Pleas against Defendant(s).

Defendant(s) has refused to make Defendant's (') property available to Respondent's Appraiser and the Court Appointed Umpire; therefore, Defendant(s) is in violation of the Court Order, so this Case(s) is ongoing and no Final Order has been issued.

ARGUMENTS

I. BECAUSE SC LAW REGARDING DECLARATORY JUDGMENTS APPLIES TO ALL PARTIES WHO "CLAIM INTEREST", THE COURT ERRED IN DISMISSING APPELLANT'S MOTIONS FOR JOINDER

SC Code, SECTION 15-53-80, states,

"When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration."

Since an Appellant's Assignment is an explicit transfer of interest from Assignor to Assignee, Appellant has an interest that would be affected by the Court's Declaration and thus must be joined to this suit; however, Appellant's Assignment is not the controlling aspect, the governing Legislation is.

The Legislature obviously intended the Declaratory Judgments be inclusive, rather than exclusive, since simply claiming interest is sufficient for one to be made a Party, with no expressed threshold or bar. While this does not preclude or deny authority to the court to determine the validity of a claim, the Legislature clearly intended for claims to be broadly and leniently interpreted, so as to prevent the accidental infringement or denial of rights that may not be clearly expressed, understood, or valued by the Plaintiffs and Defendants in Suits for Declaratory Relief.

II. BECAUSE COURTS HAVE DETERMINED THAT CLAUSES BARRING ASSIGNMENT WITHIN INSURANCE POLICIES DO NOT APPLY TO POST-LOSS ASSIGNMENTS, THE COURT ERRED BY USING THOSE POLICY PROVISIONS TO DECLARE APPELLANT'S ASSIGNMENT INVALID

Courts have held that assignments are simple transfers of rights and control:

"An assignment consists of three elements: (1) an assignor, (2) an assignee, and (3) transfer of control of the thing assigned from the assignor to the assignee."; Leon v. Martinez, 84 N.Y.2d 83, 88, 614 N.Y.S.2d 972, 638 N.E.2d 511 (N.Y.1994); Donahue v. Multimedia, Inc., 608 SE 2d 162 - SC: Court of Appeals 2005

"No particular words are necessary to effect an assignment; it is only required that there be a perfected transaction between the assignor and assignee, intended by those parties to vest in the assignee a present right in the things assigned (*see*, 4 Corbin, Contracts § 879, at 528 [1951]"; Hinkle Iron Co. v. Kohn, 229 NY 179 - 1920; Coastal Commercial v. Kosoff & Sons, 10 AD 2d 372 - NY: Appellate Div., 4th Dept. 1960

Courts have recognized that this transfer of rights and control is binding upon the obligor or debtor:

"It is well settled that a debtor has the right to deal with his creditor until notified of the assignment of the debt."; Patten v. Mutual Ben. Life Ins. Co., 192 S.C. 189, 6 S.E.2d 26, 29, 126 A.L.R. 91; Southern General Factors, Inc. v. Parker Concrete Pile Co., 236 F. Supp. 103 - Dist. Court, D. South Carolina 1964; Thomasson v. Ocean Point Golf, Inc., 386 SE 2d 282 - SC: Court of Appeals 1989

"...acceptance by debtor was not necessary to effectuate assignment of a debt, and once debtor had notice of the assignment he is bound to pay in accordance therewith."; Dunbar v. Johnston, 169 SE 846 - 1933; Southern General Factors, Inc. v. Parker Concrete Pile Co., 236 F. Supp. 103 - Dist. Court, D. South Carolina 1964; DIXIE WOOD PRES. CO. v. ALBERT GERSTEN, 135 SE 2d 368 - SC: Supreme Court 1964

"In South Carolina, it is well established that an "assignee ... stands in the shoes of its assignor ..."; Singletary v. Aetna Cas. & Sur. Co., 316 S.C. 199, 201, 447 S.E.2d 869, 870 (Ct.App.1994); TWELFTH RMA PARTNERS v. NAT. SAFE CORP., 518 SE 2d 44 - SC: Court of Appeals 1999

"When a contract is assigned, the assignee should have all the same rights and privileges, including the right to sue on the contract, as the assignor."; TWELFTH RMA PARTNERS v. NAT. SAFE CORP., 518 SE 2d 44 - SC: Court of Appeals 1999

Which has resulted in the Courts consistently denying the effect of provisions within an Insurance Policy, intended to restrict assignments that may increase an insurer's liability and exposure, from being applied to Post-Loss Assignments of Benefits:

"The policies of insurance having been assigned after loss, the assignee simply stood in the shoes of the assignor, and any valid defense which the insurer might have had against the insured could be set up against the assignee. No right of the insurer being affected by the assignments of the policies, it would be a mere act of caprice or bad faith for it to take advantage of the stipulation that the transfers were subject to its consent, by withholding such consent, in order to defeat the claim of the assignee."; Georgia Co-Operative Fire Association v. Borchardt & Company, 123 Ga. 181, 51 S.E. 429 at 430 (Ga.1905)

"As a general principle, a clause restricting assignment [in an insurance policy] does not in any way limit the policy-holder's power to make an assignment of the rights under the policy ... after a loss has occurred.... It is now a vested claim against the insurer and can be freely assigned or sold like any other chose in action or piece of property."; Narruhn v. Alea London Ltd., 745 SE 2d 90 - SC: Supreme Court 2013

CONCLUSION

All of the aforementioned being True, the Court erred by: denying Appellant's Motions for Joinder; using Policy Provisions to declare Appellant's Assignment invalid; and denying Appellant's claim to be the Party of Interest in this Case(s).

Appellant seeks direct relief from the order issued on November 15th, 2017 in this Case(s) by Judge James B. Jackson, Jr in the Orangeburg County Court of Common Pleas, and stipulates that such specific and direct relief should include: Joinder of Appellant as the Sole Defendant in this Case(s); Immediate scheduling of this Case(s) for Trial by Jury in the Orangeburg County Court of Common Pleas(S.C. Code Ann. § 15-53-90 (1976)); Annuling or vacating all previous orders issued by all Judges in this Case(s); and any other relief that the Court deems implicit, necessary, mandatory, obligatory, effective, predicative, predictive, consequential, or punitive.

February 2, 2018

Respectfully submitted,


/s/ Robert M Cox

Robert M Cox

Tech To Go, LLC

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Appellant

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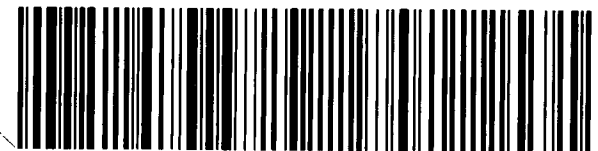
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