

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

On Petition for Writ of Certiorari
Of the Decision of South Carolina Court of Appeals

Appellate Case No.: 2018-000061

United Auto Insurance Company,

Respondent,

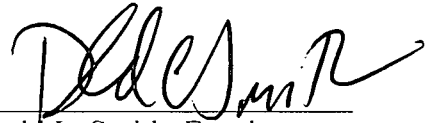
v.

*Willie Freeman, Michael Craft,
Kimberly Sanford and Antonio Craft,*

Petitioners.

PETITIONERS' REPLY TO RESPONDENT'S
RETURN TO PETITION FOR WRIT OF CERTIORARI

February 21, 2018



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STATEMENT OF ISSUE

The Court of Appeals Erred in Upholding the Circuit Court's Decision That There Was Proper Cancellation Of the Policy.

ARGUMENT

§ 56-10-280 espouses a public policy doctrine that demonstrates a clear legislative intent to avoid having uninsured motorists on South Carolina roads. See, e.g., *Bankers Trust of South Carolina v. Bruce*, 275 S.C. 35, 267 S.E. (2d) 424 (1980) (the cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent wherever possible). According to S.C. Ann. § 38-77-10, one of the stated purposes of the Automobile Insurance statutes is that every automobile insurance risks that is insurable under the statute be insured and that evasion of coverage be penalized. Furthermore, S.C. Ann. § 38-77-20 specifically states under [Statutory] Construction that Chapter 77 as it relates to automobile insurance coverage be *liberally construed* to achieve its purposes. United Automobile Insurance Company has intentionally violated this statute in contradiction of the public policy requiring coverage.

Therefore, based on the plain language of the relevant statutes, the legislature's intent, and public policy considerations, this Court should hold that Respondent could not have issued a cancellation notice until Kimberly Sanford's payment became delinquent on February 3, 2013.

S.C. Code Ann. §56-10-280 A(4) provides that a contract or policy of insurance remains in effect within sixty days, and may be cancelled within the first sixty days only under specified circumstances, one of which is the non-payment of the premium, **when due**.¹

¹ S.C. Code Ann. §56-10-280 (2013) states:

(A) Contracts or policies of insurance issued to meet the financial responsibility requirements prescribed in this chapter must be issued for not less than six months. A contract or policy of insurance remains in effect at least sixty days notwithstanding a power of attorney which may purport to give the attorney-in-fact the right to effect

Petitioners do not contest that the policy may be cancelled within the first sixty days for defaulting in payment of premium. Petitioners assert that this provision must be read in relation to §38-77-120.

Insured Sanford has a monthly installment policy. Her initial payment was made on January 3, 2013, and therefore her next payment is due on February 3, 2013. Having defaulted, insured Sanford's policy may be cancelled by Respondent company. The law, however, provides that before an insurer may cancel a policy, a prescribed form of notice must be given by the insurer to the insured, at least fifteen (15) days in advance of the effective date of cancellation. Respondent company must comply with the requirements of §38-77-120, which states:

Sec. 38-77-120. Requirements for notice of cancellation or refusal to renew policy:

(a) *No cancellation or refusal to renew by an insurer of a policy of automobile insurance is effective unless the insurer delivers or mails to the named insured at the address shown in the policy a written notice of cancellation or refusal to renew. This notice:*

(1) *must be approved as to form by the director or his designee before use;*

cancellation on behalf of the insured. However, a contract or policy may be canceled within the first sixty days only under one or more of the following circumstances:

(1) a check or bank draft tendered by the insured for payment to an agent, an insurance company, or a premium finance company is returned unpaid for insufficient funds or other reason by the insured's financial institution. If the check or draft is an initial payment made by an applicant for insurance or a payment made by an insured to renew a policy, the cancellation is effective as of the policy inception or renewal date;

(2) the insured produces satisfactory proof from the Department of Motor Vehicles that he has sold or otherwise disposed of the insured vehicle or surrendered its tags and registration;

(3) the insured has secured another policy that meets the financial responsibility requirements prescribed in this chapter;

(4) the insured fails to pay when due the premium for the policy, an installment of the premium, or an installment payment under a premium service contract. The contract or policy of insurance must remain in effect for at least thirty days.

- (2) *must state the date not less than fifteen days after the date of the mailing or delivering on which the cancellation or refusal to renew becomes effective;*
- (3) *must state the specific reason of the insurer for cancellation or refusal to renew and provide for the notification required by subsection (B) of Section 38-77-390. However, those notification requirements must not apply when the policy is being canceled or not renewed for the reason set forth in Section 38-77-123(B).*
- (4) *must inform the insured of his right to request in writing within the fifteen days of the receipt of notice that the director review the action of the insurer. The notice of cancellation or refusal to renew must contain the following statement to inform the insured of such right.*

"IMPORTANT NOTICE

Within fifteen days of receiving this notice, you or your attorney may request in writing that the director review this action to determine whether the insurer has complied with South Carolina laws in canceling or nonrenewing your policy. If this insurer has failed to comply with the cancellation or nonrenewal laws, the director may require that your policy be reinstated. However, the director is prohibited from making underwriting judgments. If this insurer has complied with the cancellation or nonrenewal laws, the director does not have the authority to overturn this action."

- (5) *must inform the insured of the possible availability of other insurance which may be obtained through his agent, through another insurer, or through the Associated Auto Insurers Plan. It must also state that the Department of Insurance has available an automobile insurance buyer's guide regarding automobile insurance shopping and availability, and provide applicable mailing addresses and telephone numbers, including a toll-free number, if available, for contacting the Department of Insurance.*

Nothing in this subsection prohibits any insurer or agent from including in the notice of cancellation or refusal to renew, any additional disclosure statements required by state or federal laws, or any additional information relating to the availability of other insurance. The insurer must disclose in writing whether the insured is ceded to the facility."

The question then boils down to, when should the notice of cancellation be issued, and how.

Contrary to Respondent's interpretation of the Petition, Petitioner contends that the notice of cancellation should have been issued once the deadline for payment of installment has elapsed, without insured performing her obligation to pay. In this case, payment was due on February 3, 2013. Insured Kimberly defaulted. The earliest time that Respondent could have issued its notice of cancellation was on February 4, 2013. Respondent sent its notice of cancellation on January 22, 2013. There was no reason to cancel the policy as there has been no violation at that time.

And even assuming that Respondent is entitled to an anticipatory breach, Petitioners reiterate its allegation that the former did not effect a valid notice of cancellation. Under S.C. Code Ann. §38-77-120, provides that "*no cancellation ... is effective unless the insurer delivers or mails to the named insured ... a written notice of cancellation...which among others, state the date not less than fifteen days after the date of the mailing or delivering on which the cancellation or refusal to renew becomes effective.*" In this case, only twelve (12) days have elapsed between the mailing of the notice of cancellation (January 22, 2013), and the date that the policy was cancelled (February 3, 2013). It is obvious that the coverage of the policy does not end until after the notice requirements are met. Any other construction would render useless the requirement that notice be given.

Respondent relied on Stringer v. State Farm Mutual Auto Insurance Co., 386 S.C. 188, 192, 687 S.E.2d 58, 60 (Ct. App., 2009), where the Court ruled that State Farm was not required to provide coverage for a car accident that occurred after the policyholder was mailed a notification that his policy would be canceled. The doctrine in Stringer cannot be applied in the

instant case since in that case, State Farm complied with the fifteen-day notice requirement. In Stringer, State Farm mailed its notice of cancellation on July 11, 2002, while cancellation took effect on July 29, 2002. Eighteen days have expired between the mailing and the cancellation. In the instant case, only twelve days (12) days have elapsed between the mailing of the notice of cancellation (January 22, 2013), and the date that the policy was cancelled (February 3, 2013).

In sum, Petitioners aver that the notification requirements of § 38-77-120 would become operative only after a missed payment. Respondent has stated, and the trial court found, that the second installment was due February 3, 2013. Because of the required fifteen-day notice period, the policy could not have been canceled until February 18, 2013.

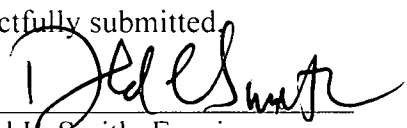
In the alternative, Respondent's cancellation of the insurance is ineffective as it violated the fifteen-day notice requirement. Therefore, the Court of Appeals erred in affirming the ruling of the lower court, which found that Respondent properly canceled Kimberly Sanford's insurance policy on February 3, 2013.

CONCLUSION

For the reasons stated above, Petitioners pray this Honorable Court reverse the Court of Appeals decision affirming the trial court's judgment. Petitioners pray the Honorable Court hold find that there was no proper cancellation of insured Kimberly's policy, and as such, it is effective at the time of the accident.

February 21, 2018

Respectfully submitted,


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PROOF OF SERVICE
MOTION TO ALLOW LATE FILING OF REPLY TO RESPONDENT'S RETURN ON
PETITION FOR CERTIORARI, REPLY TO RESPONDENT'S RETURN ON PETITION
FOR CERTIORARI AND PETITION FOR A WRIT OF CERTIORARI
AND ITS APPENDIX WITH CORRECT CAPTION

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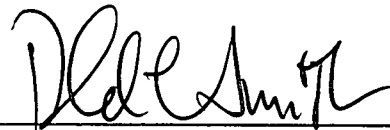
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PROOF OF SERVICE

I certify that I have served a copy of Petitioners' Motion To Allow Late Filing Of Reply To Respondent's Return On Petition For Certiorari, Reply To Respondent's Return On Petition For Certiorari, and Petition For A Writ Of Certiorari And Its Appendix With Correct Caption and Proof of Service , upon The Honorable Daniel Shearouse, Clerk of Court South Carolina Supreme Court, PO Box 11330, Columbia SC 29211, and Respondent, by and through counsel of record, George V. Hanna IV, Esquire and Trevor P. Eddy, Esquire at 1508 Washington St., PO Box 12009, Columbia, SC 29211 by depositing a copy in the United States Mail, postage prepaid, on February 21, 2018.

February 21, 2018



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