THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Appellate Case No. 2018-000381

ACCC Insurance Company.. Respondent,

v.

Patricia Williams, Ronald Williams, Patrick Benjamin Myers, Brittany Stanley a/k/a Brittany Standley, and State Farm Mutual Automobile Insurance Company, Defendants

Of whom
Patricia Williams and Ronald Williams are.. Appellants,

And
State Farm Mutual Automobile Insurance Company is...................... Respondent.

BRIEF OF RESPONDENT ACCC INSURANCE COMPANY

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STATEMENT OF ISSUES ON APPEAL

1. Was State Farm timely named as a respondent in this appeal pursuant to Rule 203, SCACR?

2 Did the Trial Court abuse its discretion in granting the joint Rule 41(a)(2), SCRCP motion?

3. Did the Trial Court abuse its discretion in ruling that Appellants' multiple pending motions were rendered moot by the Order granting the motion to dismiss?

STATEMENT OF THE CASE

Respondent ACCC Insurance Company (hereinafter referred to as "ACCC") filed a Declaratory Judgment action naming as defendants State Farm Mutual Automobile Insurance Company (hereinafter referred to as "State Farm") and ACCC's insureds, Patrick Benjamin Myers (hereinafter referred to as "Myers") and Brittany Stanley, a/k/a Brittany Standley (hereinafter referred to as "Stanley"), on September 14, 2016. Appellants and State Farm filed Answers. Defendants Myers and Stanley did not file responsive pleadings.

The Declaratory Judgment action sought to determine whether Myers was who he claimed to be and, if so, whether he had an ownership interest in a motor vehicle insured by ACCC. After discovery showed Myers's identity was correct and he owned the insured motor vehicle, ACCC and State Farm jointly moved on August 4, 2017 to dismiss the Declaratory Judgment action pursuant to Rule 41(a)(2), SCRCP. On September 6, 2017, Appellants filed a

Motion to Alter or Amend their Answer to assert a counterclaim that there was no coverage under the insurance policy at issue on the basis that defendants Myers and Stanley made material misrepresentations in their application for insurance.

The Honorable Larry B. Hyman, Jr. held a hearing on ACCC and State Farm's Joint Motion to Dismiss on November 1, 2017. Judge Hyman issued an Order on November 15, 2017 and granted the Motion to Dismiss with prejudice.

On November 11, 2017, Appellants filed a Rule 59(e), SCRCP Motion for Reconsideration of the dismissal. Judge Hyman held a hearing on Appellants' Motion for Reconsideration on January 8, 2018. Judge Hyman denied the Appellants' Rule 59(e), SCRCP Motion for Reconsideration by an Order dated February 1, 2018.

On March 1, 2018, Appellants filed and served a Notice of Appeal. Appellants' Notice of Appeal failed to name State Farm as a Respondent. Appellants filed and served an Amended Notice of Appeal on March 2, 2018 and again failed to name State Farm as a Respondent. On April 9, 2018, Appellants wrote a letter to the Clerk of Court apologizing for the failure to properly name State Farm as a Respondent. Appellants submitted a new proposed caption listing State Farm as a Respondent.

STATEMENT OF FACTS

Appellant Patricia Williams was involved in a motor vehicle accident on March 18, 2016 in Horry County, South Carolina when her vehicle was struck by a 2004 Chevrolet Monte Carlo driven by Myers. (R. p. 18, ¶ 8). The South Carolina Department of Motor Vehicles Traffic Collision Report ("Accident Report") listed Myers's date of birth as June 28, 1987, states Myers was the owner of the 2004 Chevrolet Monte Carlo, and lists Myers's driver's license number as

100375877. (R. p. 18, ¶ 9; R. pp. 60-61). The Accident Report states the 2004 Chevrolet Monte Carlo was uninsured at the time of the Accident. (R. p. 60). Appellants were insured by State Farm. (R. p. 18, ¶ 9; R. p. 60).

ACCC issued a policy of insurance, policy number SCE0052102-1 (hereinafter referred to as the "Policy") to "Patrick Myers" and "Brittany Standley" providing bodily injury and property damage coverage to the 2004 Chevrolet Monte Carlo SS, VIN 2G1W12K949368935. (R. p. 66). The Policy declarations page lists Myers as a policy holder and states his birthday is May 12, 1961 and his South Carolina driver's license number is 100375876. (R. p. 66). The policy declarations page also lists "Brittany Standley" as a policy holder and states her date of birth is November 26, 1990. (R. p. 60).

On April 14, 2016, ACCC tendered its $25,000 bodily injury and $25,000 property damage coverage to Appellants, but Appellants did not accept that policy limits tender. (R. pp. 63-64). Appellants argued that, due to the discrepancies between the dates of birth and driver's license numbers between the Policy and the Accident Report, Myers was not who he said he was and he did not own the 2004 Chevrolet Monte Carlo. (R. p. 67-74). As a result, on September 14, 2016 ACCC filed a declaratory judgment action in the Horry County Court of Common Pleas and asked the court for a determination whether Myers was who he said he was and whether Myers or Stanley actually owned the 2004 Chevrolet Monte Carlo. (R. pp. 17-22). The Petition averred that Myers and Stanley made material misrepresentations about their identities when applying for coverage with ACCC and that neither of them had an ownership interest in the 2004 Chevrolet Monte Carlo involved in the March 18, 2016 motor vehicle accident (R. p. 17-22).

During discovery, ACCC determined that Myers was in fact who he claimed to be and that he was the owner of the 2004 Chevrolet Monte Carlo involved in the motor vehicle accident. On August 4, 2017, ACCC and appellant State Farm filed a Joint Motion to Dismiss this action. (R. pp. 37-38). ACCC again tendered its liability coverage limits to Appellants. (R. p. 37). The Motion to Dismiss was filed jointly and consented to by ACCC and State Farm. (R. p. 38). Counsel for Appellants did not consent to the dismissal. (R. p. 38). The Joint Consent Motion to Dismiss asked that the case be dismissed with prejudice. (R. p. 38). On September 6, 2017, before Appellants filed their Motion to Amend, counsel for ACCC sent a letter to Appellants' counsel explaining that South Carolina Code Ann. § 56-9-20(5)(b) mandates that an automobile insurance carrier may not deny liability coverage where an insured makes a material misrepresentation in the application. (R. pp. 100-101). The letter advised Appellants, "We believe the law is so clear on this point that your assertions and efforts to circumvent the applicable law to create an uninsured vehicle is wholly frivolous." (R. p. 101).

On September 6, 2017, after receiving ACCC's letter, Appellants filed a Rule 15, SCRCP Motion to Alter or Amend their Answer to assert counterclaim against ACCC. (R. p.67). Appellants' proposed counterclaim contended that alleged misrepresentations by Myers and Stanley voided their insurance policy with ACCC *ab initio*. (R. pp. 67-74). ACCC filed a Response Memorandum and pointed out that Appellants did not cite any applicable law or evidence to support any counterclaim against ACCC or to overcome S.C. Code Ann. § 56-9-20(5)(b). (Supplemental Record on Appeal R. p. ___; ACCC's Memorandum in Opposition to Appellants' Motion to Amend, generally). State Farm paid Appellants under Appellants' UIM coverage with

State Farm and Appellants accepted that payment. (Supplemental Record on Appeal R. p. ___; ACCC Memorandum of Law in Opposition to Amend, p. 2).

Judge Larry B. Hyman, Jr. conducted a hearing on the joint Motion to Dismiss on November 1, 2017. Appellants argued there was a justiciable controversy concerning the validity of the Policy, which Judge Hyman held was without merit. (R. pp. 8-13). Appellants also stated they purchased more uninsured motorist ("UM) coverage than underinsured ("UIM") coverage with State Farm. (R. p. 174). Judge Hyman entered an Order dismissing this matter with prejudice on November 15, 2017. (R. pp. 8-13). Judge Hyman's November 15, 2017 order noted that State Farm had already tendered its underinsured (UIM) policy limits to Appellants before the declaratory judgment action had been filed. (R. p. 9). Judge Hyman found that South Carolina Code Ann. § 56-9-20(5)(b) was controlling law and that code section "dictates that there is liability coverage under the ACCC policy and ACCC is willing to pay its liability limits to the [Appellants]. The Court finds that there is liability coverage under the ACCC policy." (R. p. 9). The November 15, 2017 Order of Dismissal also stated, "The Court further finds that all arguments presented by the Williams, asserting that a justiciable controversy exists in support of the Williams' challenge to the enforceability and validity of the ACCC liability policy, are without merit." (R. p. 9).

Appellants filed a Motion for Reconsideration on November 2, 2017. ACCC filed a Memorandum of Law in opposition to Appellants' motion, which pointed out that Appellants' Motion for Reconsideration was a re-arguing of the same issues regarding Appellants' lack of standing, lack of any justiciable controversy, and that S.C. Code Ann. § 56-9-20(5)(b) precludes Appellants' potential counterclaim. (R. pp. 140-144).

On January 8, 2018, Judge Hyman held a hearing on Appellants' Motion to Reconsider. On February 1, 2018, Judge Hyman entered an Order denying Appellants' Motion to Reconsider. (R. pp. 14-15). The February 1, 2018 Order stated that "The Court in its [November 15, 2017] Order also found that based upon its ruling the motions filed by the Williamses were rendered moot." (R. p. 15).

Appellants filed and served the Notice of Appeal on March 1, 2018. Appellants then filed an Amended Notice of Appeal on March 2, 2018. Neither of these Notices name State Farm as a Respondent. On April 19, 2018, Appellants wrote the Court a letter apologizing for failing to name State Farm as a Respondent. As of the date of this Initial Brief, ACCC is not aware of State Farm being named as a Respondent in a Notice of Appeal in this action.

ARGUMENTS

I. APPELLANTS' NOTICE OF APPEAL AND AMENDED NOTICE OF APPEAL FAILED TO NAME STATE FARM AS PARTY TO THE APPEAL IN VIOLATION OF RULE 203, SCACR

State Farm is not a proper party to this appeal because Appellants never included State Farm as a party. Accordingly, State Farm should be dismissed from this appeal.

A notice of appeal is a jurisdictional requirement in the South Carolina appellate courts. Conner v. City of Forest Acres, 348 S.C. 454 (2002). The Court of Appeals has no authority to extend or expand the time in which a notice of intent to appeal must be served. Conner, 348 S.C. at 461. An appellant's failure to properly designate a party as a "respondent" in an appeal is not a mere clerical or scrivener's error. Id. To the contrary, the failure to properly name a respondent in an appeal within the time period set forth in Rule 203, SCACR is grounds for a dismissal of the party not properly named. Id.

In Connor v. City of Forest Acres, the South Carolina Supreme Court held that adding respondents that were defendants before the lower court, but who were not included as respondents in the appeal after the 30-day period to serve a notice of appeal had expired, was insufficient to bring those defendants before the appellate court. The Court dismissed the purported respondents from the appeal. Conner, 348 S.C. at 462.

In the instant case, Appellants had two opportunities to properly file their Notice of Appeal designating State Farm as a Respondent. Appellants failed in both instances. When Appellants submitted a letter to the Court on April 9, 2018 advising State Farm also should be named as a Respondent, that letter was beyond the required 30-day time period to serve a proper Notice of Appeal pursuant to Rule 203, SCACR. As of the date of this Initial Brief, ACCC is not aware of Appellants ever filing a Notice of Appeal naming State Farm as a respondent. State Farm was never properly named as a respondent and should be dismissed from this appeal.

Appellants seek a ruling from this Court that the ACCC liability policy is void and that State Farm must provide Appellants with uninsured motorist (UM) coverage, rather than the UIM coverage State Farm already paid and which Appellants accepted. State Farm was a joint movant with ACCC in the Motion to Dismiss, has been a party to this action from the beginning, and would be bound from this Court's decision. Appellants now seek through this appeal to impose obligations against State Farm, but never followed Rule 203 SCACR to provide State Farm with a Notice of Appeal. Accordingly, because State Farm was never properly named as a Respondent, this Court cannot provide Appellants relief through this appeal. Therefore, the Court should dismiss this appeal in its entirety.

II. THE TRIAL COURT WAS WITHIN ITS DISCRETION IN GRANTING THE JOINT RULE 41 (a)(2), SCRCP MOTION TO DISMISS

Assuming, *arguendo*, the Court finds State Farm was timely named as a Respondent or the trial court still did not abuse its discretion in granting ACCC and State Farm's Rule 41(a)(2), SCRCP Motion to Dismiss.

A. Judge Hyman Had Discretion under Rule 41 (a)(2) to Dismiss This Action

The dismissal of an action by the trial court upon the request of a plaintiff pursuant to Rule 41(a)(2), SCRCP, is within the discretion of the trial court. Bowen & Smoot v. Plumlee, 301 S.C. 262 (1990).

> If a counterclaim has been pleaded by a defendant ***prior*** to service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Rule 41(a)(2), SCRCP (emphasis added).

The dismissal of an action by the Court upon the request of a plaintiff pursuant to Rule 41(a)(2), SCRCP is within the discretion of the trial court. Id. If a counterclaim has been pleaded by a defendant prior to service upon him of the plaintiff's Motion to Dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Id. A South Carolina appellate court reviewing a motion to dismiss "applies the same standard of review as the trial court." Carolina Park Assocs., LLC v. Marino, 400 S.C. 1, 6 (2012); Doe v. Marion, 373 S.C. 390, 395 (2007).

In this case, ACCC and State Farm filed the Rule 41(a)(2), SCRCP motion a month before Appellants filed a Motion to Amend their answer and assert a counterclaim. The language of Rule 41(a)(2) is unambiguous about the Court's discretion to dismiss a case. Appellants' argument that Judge Hyman abused his discretion when he dismissed this declaratory judgment action with

prejudice simply because Appellants claimed to have potential counterclaims is without merit. First, Appellants had not yet been given leave of court to file a counterclaim. Second, as discussed in Sections B and C, *infra.*, even if the trial court allowed Appellants to assert a counterclaim, those claims would have been dismissed immediately because Appellants have no justiciable controversy against ACCC, have no standing to assert a counterclaim against ACCC, and because Appellants' purported counterclaim would force ACCC to violate S.C. Code Ann. § 56-9-20(5).

Judge Hyman had discretion to dismiss this case with prejudice. This Court should affirm the trial Court's dismissal of this declaratory judgment action.

B. Appellants Suffered No Legal Prejudice

Appellants incorrectly argue at great length that the trial court must consider the legal prejudice of granting a Rule 41(a)(2) motion where a counterclaim has been previously asserted, even though Appellants never asserted any counterclaim. Appellants would have this Court ignore what transpired at two lengthy hearings before Judge Hymen discussing Appellants' lack of standing and absence of a justiciable controversy. (R. pp. 171-187; 189-199). The record is replete with Appellants' baseless arguments why Appellants should be allowed to amend their answer to assert a counterclaim. (R. pp. 171-187; 189-199). However, at no point during the oral arguments on November 1, 2017 or January 8, 2018 did the Appellants address the fact that the joint Rule 41(a)(2) Motion to Dismiss was filed more than a month before Appellants' asked to amend their answer to assert a counterclaim.

Appellants lack standing and there is no justiciable controversy between Appellants and ACCC. As a threshold matter, Appellants needed to satisfy the trial court there was a justiciable controversy and standing to assert the purported counterclaim in order to defeat ACCC and State

Farm's joint Rule 41(a)(2), SCRCP Motion to Dismiss. Appellants failed at both these requirements.

1. Appellants Have No Justiciable Controversy against ACCC

Before any action can be maintained, there must exist a justiciable controversy. Byrd v. Irmo High Sch., 321 S.C. 426, 430 (1996). "A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination as distinguished from a contingent, hypothetical or abstract dispute." Pee Dee Elec. Coop v. Carolina Power & Light Company, 297 S.C. 64, 66 (1983).

Once discovery clearly confirmed Myers's identity, that he had an insurable interest in the 2004 Chevrolet Monte Carlo, and that, as a matter of law, there was coverage for appellant Patricia Williams's accident, there was no longer any justiciable controversy about the liability coverage in the declaratory judgment action. At the November 1, 2017 hearing, Judge Hyman posed multiple, specific questions to Appellants addressing the lack of a judiciable controversy for a counterclaim after ACCC determined there was coverage for this accident. (R. pp. 183-187; 196-200). Appellants never answered Judge Hyman's questions.

Appellants never presented any cognizable rationale or colorable argument to show a justiciable controversy. Appellants' only response was a previously unknown affidavit from attorney Gerald Finkel which Appellants provided ACCC and State Farm two days before the November 1, 2017 hearing. (R. p. 145). Appellants' proposed affidavit likewise never answered Judge Hyman's questions how there is a justiciable controversy. Nevertheless, Appellants argued at length at both the November 1, 2017 and January 8, 2018 hearings that the mere existence of the affidavit somehow created a justiciable controversy. (R. pp. 170-188; 188-201). The trial court

considered the affidavit, but as discussed in Section C, *infra.*, found that S.C. Code Ann. § 56-9-20 controlled and ACCC's determination to provide liability coverage was wholly in accord with South Carolina law. (R. p. 9). Judge Hyman was completely within his discretion to dismiss this matter. The facts show unequivocally that Myers was who he claimed to be and that he owned the 2004 Chevrolet Monte Carlo involved in the underlying accident.

Accordingly, there is no justiciable controversy or legal basis whatsoever for Appellants' counterclaim. Appellants' attempt to void Myers's insurance policy with ACCC is without merit and in order to gain a pecuniary benefit with their own insurer, State Farm. (R. pp. 141; 196-200). Judge Hyman correctly determined Appellants had no justiciable controversy with ACCC and he was well within his discretion to dismiss this case.

2. Appellants Have No Standing to Assert Any Claims Against ACCC Under the Policy

Appellants have cited no controlling legal authority giving them standing to assert any claims against ACCC.

An insurance policy is a contract between the insured and the insurance company, and the policy's terms are to be construed according to the law of contracts. Williams v. GEICO, 409 S.C. 586 (2014); Auto Owners Ins. Co. v. Rollison, 378 S.C. 600 (2008). A party may not maintain a lawsuit against an insurance carrier absent privity of contract. Major v. Nat'l Indem. Co., 267 S.C. 517, 520-21 (1976). "Under the common law, no privity [of contract exists] between an injured person and the tortfeasor's liability insurer, and the injured person has no right of action at law against the insurer." Traneik v. USAA Ins. Co., 354 S.C. 549, 554 (Ct. App. 2003) (*quoting* 44 Am. Jur. 2d Insurance 1445 (1982)); Swinton v. Chubb & Son, Inc., 283 S.C. 11, 15 (Ct. App. 1983).

Appellants produced no evidence they have privity of contract with ACCC for the insurance policy at issue in this action. Appellants are neither ACCC policy holders nor named insureds or loss payees. Appellants have no connection with ACCC other than they allege an ACCC insurer injured them and now ACCC wants to pay Appellants for damages allegedly caused by Meyers. Any connection between Appellants and ACCC is, at best, merely incidental. This incidental connection certainly does not create privity of contract. Major, 267 S.C. at 520, 521; Traneik, 354 S.C. at 554. Appellants have no standing to assert any cause of action against ACCC. Judge Hyman heard and considered Appellants' lack of privity during the November 1, 2017 and January 8, 2018 hearings. Judge Hyman was completely within his discretion to dismiss ACCC's Declaratory Judgment action.

Appellants then incorrectly argued at the November 1, 2017 hearing that, even though they may not have privity of contract, they somehow were third-party beneficiaries under ACCC's insurance policy with Myers (R. p. 181). Appellants' argument is contrary to South Carolina law. A third-party beneficiary must show the contracting parties intended to benefit him. Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340 (2005); Touchberry v. City of Florence, 295 S.C. 47 (1988) (third party must show the contracting parties intended him to be a direct beneficiary of the contract). A third-party without privity of contract has no right to enforce that contract unless "the contracting parties intended to create a direct, rather than incidental or consequential, benefit to such third person." Johnson v. Sam English Grading, Inc., 412 S.C. 433. 448-49 (Ct. App. 2015) (*quoting* Hardaway Concrete Co. v. Hall Contracting Corp. 374 S.C. 216, 225 (Ct. App. 2007); Svenningsen v. Knight, 286 S.C. 299 (Ct. App. 1985).

Nothing in the record remotely suggests Appellants were intended third-party beneficiaries to Myers's insurance policy. To the contrary, Myers, not Appellants, is the beneficiary of his own liability insurance policy with ACCC. Any benefit to Appellants would, at best, be incidental to the benefits intended for ACCC's actual insured Myers.

Interestingly, Appellants arguments for privity of contract or third-party beneficiary status are contradictory. It is axiomatic there can be no third-party beneficiary unless a valid contract exists. Thompson v. Pruitt Corp., 416 S.C. 43, 57 (Ct. App. 2016). However, Appellants turn logic on its head and argue on one hand that the ACCC policy issued to Myers is void *ab initio,* but on the other hand argue they either have privity of contract or are third-party beneficiaries to a contract they claim is void.

Appellants would have this Court hold that every time an insurance company determines there is coverage for its insured, a third-party claimant can contest that determination. The South Carolina courts anticipated this potentiality in Swinton,

> The courts would be potentially besieged with so called 'bad faith' suits in every instance in which as whenever third-party claimants, rightly or wrongly, disagreed with adjusters over the handling or settlement of claims against the insured. Clearly the Legislature did not intend such a course. Swinton, 283 S.C. at 16.

Appellants lack any standing to challenge the validity of the ACCC policy and the trial court's dismissal with prejudice was therefore not an abuse of discretion. This Court should affirm the trial court's dismissal.

C. S.C. Code Ann. § 56-9-20(5)(b) Prevents Appellants from Asserting Any Counterclaims against ACCC or Otherwise Voiding the Insurance Policy

Finally, even assuming, *arguendo*, that Appellants have standing to contest the validity of

the ACCC liability policy, Appellants proposed counterclaims would force ACCC to violate established South Carolina statutory law. S.C. Code Ann. § 56-9-20 states in relevant part:

> *(5) "Motor vehicle liability policy": An owner's or an operator's policy of liability insurance that fulfills all the requirements of Sections 38-77-140 through 38-77-230, certified as provided in Section 56-9-550 or 56-9-560 as proof of financial responsibility and issued, except as otherwise provided in Section 56-9-560, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person or persons named therein as insured, and any other person, as insured, using the vehicle described therein with the express or implied permission of the named insured, and subject to the following special conditions:*
>
> . . .
>
> *(b) Provisions deemed incorporated in such policy. Every motor vehicle liability policy is subject to the following provisions, which need not be contained therein:*
>
> *(1) The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by the motor vehicle liability policy occurs;*
>
> *(2) The policy may not be canceled or annulled as to the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage;*
>
> *(3) No Statement made by the insured or on his behalf and no violation of the policy shall defeat or void the policy;*

Appellants' counterclaims against ACCC incorrectly allege misrepresentations by Myers and Stanley in the policy application somehow render the ACCC insurance policy *ab initio*. (R. p. 184). These allegations are irrelevant under S.C. Code Ann § 56-9-20(5)(b). Nothing in Appellants' motions to the trial court, oral arguments at the hearings, or in their Initial Appeal Brief ever discuss how Appellants can overcome the express language of S.C. Code Ann. § 56-9-20(5)(b)(1-3). ACCC and State Farm argued at the November 1, 2017 hearing that S.C. Code Ann. § 56-9-20 was dispositive on Appellants' purported counterclaim that misrepresentation or fraud voids an automobile insurance policy. (R. p. 180). The trial court agreed and ruled that S.C. Code Ann. §

56-9-20(5)(b) was dispositive and the trial court correctly dismissed this case. (R. pp. 8-13; 14-16).

South Carolina law unequivocally dictates that no statement made by the insured or on his behalf and no violation of the policy shall defeat or void the policy. S.C. Code Ann. § 56-9-20(5)(b)(3). Once ACCC determined Myers's identity and that he owned the insured 2004 Chevrolet Monte Carlo, Section 56-9-20(5)(b) required ACCC to provide liability coverage to Myers for the March 18, 2016 accident. Outsiders such as Appellants have no right to void Myers's liability policy with ACCC simply because they made a regretful decision about the amount of excess insurance they purchased. Appellants suffered no prejudice when the trial court dismissed this case.

The trial court considered Appellants' arguments they should be allowed to amend their Answer and assert a counterclaim, and also considered the arguments of ACCC and State Farm concerning a lack of a justiciable controversy, lack of standing, and the dispositive applicability of S.C. Code Ann. § 56-9-20. The trial court was well within its discretion when it held that the dismissal sought by ACCC and State Farm under Rule 41(a)(2), SCRCP should be with prejudice. Hence, this Court should affirm the trial court's Order dismissing the Appellants' case with prejudice.

III. APPELLANTS' PENDING MOTIONS WERE RENDERED MOOT BY THE DISMISSAL

The trial court did not abuse its discretion in holding Appellants' other pending motions were rendered moot by the dismissal. The Motion to Compel Mediation filed by Plaintiff's was irrelevant as to any substantive issue presented to the trial court at the November 1, 2017 hearing. Appellants argued at the November 1, 2017 hearing that mediation was required by the

mandatory ADR Rules to which no contest was made. (R. pp. 176-178). Had the Court denied the Motion to Dismiss, mediation would have been scheduled as none of the parties were opposed to conducting mediation. It should be pointed out the Motion to Compel Mediation was filed on August 4, 2017, after ACCC and State Farm already filed their Joint Motion to Dismiss. The trial court was within its discretion finding the Motion to Compel Mediation was rendered moot by the dismissal Order.

Also pending was a Motion to Compel a Rule 30(b)(6), SCRCP deposition of an ACCC representative, which Appellants did not file until October 26, 2017. Had the case not been dismissed, the 30(b)(6) deposition would have gone forward as previously scheduled. The Court did not abuse its discretion in ruling this motion also was rendered moot by the dismissal Order.

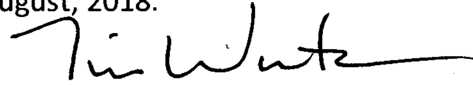
Finally, Appellants filed a Motion for a Status Conference and Scheduling Order on August 7, 2017. Again, if the Court had denied the Motion to Dismiss a status conference and a consent scheduling order probably would have been needed.

None of Appellants' pending motions had any substantive bearing whatsoever on any dispositive issue presented to the trial court. Appellants were not prejudiced these motions being rendered moot by the dismissal. The Court did not abuse its discretion in the granting of the motion to dismiss.

CONCLUSION

For the reasons stated, this Court should dismiss State Farm from the appeal and affirm the judgment of the trial court Orders dated November 15, 2017 and February 1, 2018 as to the only remaining Respondent, ACCC.

Respectfully submitted, this the 20th day of August, 2018.



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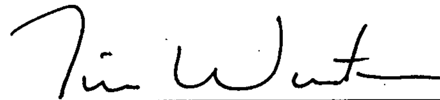
Patricia Williams and Ronald Williams are.. Appellants,

And
State Farm Mutual Automobile Insurance Company is...................... Respondent.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.



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