

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM Horry COUNTY
COURT OF COMMON PLEAS

Honorable D. Craig Brown, Presiding Judge

Case No. 2015-CP-26-902

RECEIVED

SEP 18 2018

SC Court of Appeals

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

v.

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

PETITION FOR A WRIT OF CERTIORARI

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

Counsel for Respondents:

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CERTIFICATE OF APPELLANT

The Appellant certifies that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on August 16, 2018.

QUESTIONS PRESENTED

- I. DID THE COURT OF APPEALS ERR IN FINDING THAT THE TRIAL JUDGE CORRECTLY GRANTED 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 on February 1, 2016. The Respondents submitted their responses to the discovery requests on March 3, 2016. As a result of 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.

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.

The Court of Appeals affirmed the judgment of the circuit court. *Jones vs. State Farm Mutual*, Op. No. 2016-001701 (S.C. Ct. App. filed June 6, 2018). Petitioner seeks a writ of certiorari to review that decision.

I.

THE COURT OF APPEALS ERRED IN FINDING THAT THE TRIAL JUDGE WAS
CORRECT 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, SCRPC. 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

For reasons stated the petitioner asked the Court to grant the Petition for Writ of Certiorari.

September 11, 2018

Respectfully submitted,



Harold F. Jones
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Appellant

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Appellate Case No. 2016-001701

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

v.

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

PROOF OF SERVICE

I, Harold F. Jones, the Appellant, do hereby certify that on the 11th day of September, 2018, I served Petition for Writ of Certiorari of the Appellant in the above-captioned action by depositing copies of same in the United States Mail, postage prepaid, in envelopes securely sealed (except as to the Supreme Court and Court of Appeals which is being sent via Federal Express), and addressed to:

Charles R. Norris, Esquire (1 copy)
PO Box 1806
Charleston, SC 29402

Hon. Daniel E. Shearouse (Orig. and 6 copies)
1231 Gervais Street
Columbia, SC 29201

Matthew Wyatt Orville, Esquire (1 copy)
151 Meeting Street, Suite 600
Charleston, SC 29401

Hon. Jenny Abbott Kitchings (1 copy)
1220 Senate Street
Columbia, SC 29201

the same being their usual business addresses.



Harold F. Jones
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Appellant

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September 11, 2018

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SC Court of Appeals

Hon. Daniel E. Shearouse
Clerk, S.C. Supreme Court
1231 Gervais Street
Columbia, SC 29201

**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 Mr. Shearouse:

Please find enclosed for filing the original and six copies of the Petition for Writ of Certiorari as well as two copies of the Appendix for the above-referenced matter. You will also find enclosed my check for the filing fee in the amount of One Hundred and No/100s (\$100/00) Dollars made payable to the S.C. Supreme Court. By copy of this letter, I am serving the Clerk of the Court of Appeals and the attorneys for the Respondents with a copy of this Petition for Writ of Certiorari.

Yours very truly,



Harold F. Jones

Enclosures

CC:

Ms. Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
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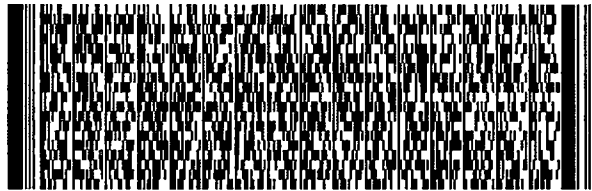
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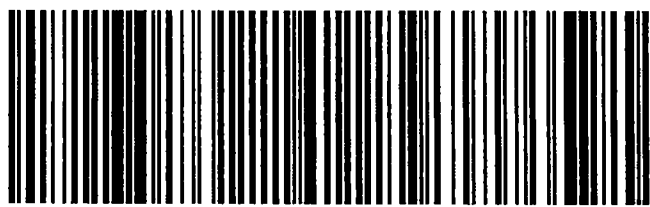
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SC Court of Appeals

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