

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2009-CP-40-07413

Southern Glass & Plastics, Company, Inc.,.....Respondent,
v.

USAA Casualty Insurance Company, USAA General Indemnity Company and USAA
United States Automobile,.....Appellants.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I) WHETHER THE CIRCUIT COURT ERRED IN AFFIRMING THE MAGISTRATE'S RULING IN FAVOR OF SOUTHERN GLASS WHEN USAA FULLY COMPLIED WITH THE TERMS OF THE INSURANCE POLICY.
- II) WHETHER THE CIRCUIT COURT ERRED IN AFFIRMING THE MAGISTRATE'S RULING WHEN THE MAGISTRATE IGNORED CASE LAW AND FAILED TO FIND SOUTHERN GLASS WAS BOUND BY CONTRACT TO USAA'S QUOTED PRICE.
- III) WHETHER THE CIRCUIT COURT ERRED IN AFFIRMING THE MAGISTRATE'S RULING WHEN IT WAS BASED ON INADMISSIBLE AND IRRELEVANT EVIDENCE.
- IV) WHETHER THE CIRCUIT COURT ERRED IN AFFIRMING THE MAGISTRATE'S RULING WHEN THE MAGISTRATE VIOLATED THE CODE OF JUDICIAL CONDUCT AND DEPRIVED USAA OF A FAIR TRIAL BY CONDUCTING AN INDEPENDENT INVESTIGATION OF THE FACTS.

STATEMENT OF THE FACTS

Southern Glass provides glass repair and glass replacement for automobiles and trucks through its various locations. Before Southern Glass performs and services, it obtains an assignment of insurance proceeds owed the customer/insured pursuant to the customer's insurance policy. Based upon the assignment, Southern Glass submits invoices directly to the insurance carrier for payment. Most insurance companies pay Southern Glass' invoices in full, but a few, including USAA, do not pay in full.

This case was filed in Magistrates Court asking for judgement against USAA for the total "balance due" on 67 invoices submitted by Southern Glass as "ASSIGNEE" of the insured. The Magistrate awarded judgment to Southern Glass for the sum of 7,500.00.

The Appellant did not file a Motion to Alter or Amend pursuant to Rule 19(d) SCRMC.

STANDARD OF REVIEW

In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. *Townes Associates, LTD v. The City of Greenville, South Carolina*, 266 SC 81, 221 S.E. 2d 1973 (1976). An action for breach of contract is an action at law. *Electro Lab of Aiken, Inc. v. Sharp Const Co. of Sumter, Inc.* 357 SC 363, 593 S.E. 2d 170 (Ct App. 2004). *Seckinger v. Vessel Excalibur*, 326 SC 382, 483 S.E. 2d 775.

ARGUMENTS

**1) THE CIRCUIT COURT DID ERR IN AFFIRMING THE
MAGISTRATE'S RULING IN FAVOR OF SOUTHERN GLASS
BECAUSE USAA HAD NOT FULLY COMPLIED WITH THE
TERMS OF ITS INSURANCE POLICY.**

This case is a collection matter and the Plaintiff's theory is basically it takes an assignment of insurance proceeds from its customer, the insured. It then makes the repair or replacement of the glass and sends the invoice to USAA for payment. USAA does not pay the invoices in full and, therefore, has breached its contract with its insured. Tr. pp 5 & 6.

USAA's theory of the case that it, through its third-party administrator - Safelite, takes the glass repair/replacement order, sends a confirmation and work order together with a quoted price of what USSA will pay for the work. The work order also says performance of the work constitutes acceptance of the price. Tr. pp 103 & 114. USAA's argument is once Southern Glass performs the work, a unilateral contract between USAA and Southern Glass is created. USAA is, therefore, only bound to pay the quoted price. Tr. pp 37, lines 1-13; pp 75/57, lines 2-17; pp 103 & 114.

After two days of testimony, the trial judge said
However, the defense's expert told me in the very last of her testimony – and I asked her three times. I think it was three. Did you ever enter a contract with this company or any other company other than Safelite and her answer was no. So even if you have an offer, you never had an acceptance. And your own witness says we never had a contract. Tr. pp 92/128, lines 14-25; pp 93/129, lines 7-15; pp 96/143, lines 3-24.

I'm ruling in favor of Safelite – I mean, Southern Glass and
Plastics in the amount of \$7,500.00 plus \$80 in court cost.

Respondent contends that this finding of fact reasonably supports the judge's findings.

II) THE CIRCUIT COURT DID NOT ERR IN AFFIRMING THE MAGISTRATE'S RULING BECAUSE IT IS IMPOSSIBLE TO DETERMINE FROM THE RECORD IF THE MAGISTRATE IGNORED CASE LAW AND FAILED TO FIND SOUTHERN GLASS WAS BOUND BY CONTRACT TO USAA'S QUOTED PRICE.

Based upon the Respondent's argument in 1) above, the magistrate relied on the fact that the Defendant's expert witness testified that USAA did not have a contract with Southern Glass.

Appellant relies on the North Carolina case of *CIM insurance Corporation v. Cascade Auto Glass, Inc.*, 660 S.E. 2d 907 (NC App 2008), which held, on facts identical to this case that a unilateral contract was formed if the Glass Company performed the work. Tr. pp 16. This issue is a novel issue in South Carolina and the trial judge is not bound by the ruling of another jurisdiction.

III) THE CIRCUIT DID NOT ERR IN AFFIRMING THE MAGISTRATE'S RULING BECAUSE IT IS IMPOSSIBLE TO DETERMINE FROM THE RECORD WHAT THE MAGISTRATE'S RULING WAS BASED UPON.

Appellant argues that the magistrate ruling was based upon inadmissible and irrelevant evidence. The Respondent can find only one basis in the record for the magistrates ruling. That basis is the fact that the Defendant's expert witness testified that there was not a contract between USAA and Southern Glass. Tr. pp 96/143, lines 3-24.

**IV) THE CIRCUIT COURT DID NOT ERR IN AFFIRMING THE
MAGISTRATE'S RULING BECAUSE THERE IS NO EVIDENCE
IN THE RECORD THAT THE MAGISTRATE CONDUCTED AN
INDEPENDENT INVESTIGATION OF THE FACTS.**


The appellant relies upon a statement by the magistrate that he knew who the Chairman of the Board is for Safelite Auto Glass. The Magistrate did not say where he learned this fact or whether he consulted an outside source or whether he googled it. The Chairman of the Board could be the Magistrates uncle, cousin, brother. The record does not support the Appellant's contention.

CONCLUSION

Based upon the foregoing arguments, the Respondent believes the ruling of the Magistrate and the Circuit Court Judge should be affirmed.

RESPECTFULLY SUBMITTED

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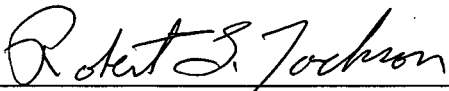
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CERTIFICATE

I, Robert L. Jackson, attorney for Respondent, certify that Final Brief of Respondent complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.

July 5, 2012


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