

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM DARLINGTON COUNTY  
Court Of Common Pleas

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The Honorable Paul M. Burch, Judicial Circuit Court Judge SC Court of Appeals  
Case No.: 2013-CP-16-00317

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Appellate Case No. 2014-000626

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Jonathan Teal and Stacie Teal..... Appellants,

v.

Mary Elizabeth Hickman-Tedder, Allstate Property & Casualty Insurance  
Company, Government Employees Insurance Company and Nationwide Mutual  
Insurance Company..... Respondents.

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FINAL BRIEF OF RESPONDENT ALLSTATE PROPERTY & CASUALTY  
INSURANCE COMPANY

---

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ALLSTATE PROPERTY & CASUALTY  
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## STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT CORRECTLY DISMISS APPELLANTS' COMPLAINT FOR FAILURE TO STATE A CLAIM AGAINST ALLSTATE WHERE APPELLANTS ALLEGED THAT APPELLANTS' OWN ATTORNEY SETTLED AN ACTION WITHOUT THEIR KNOWLEDGE, ENTERED A STIPULATION OF DISMISSAL AGAINST ALLSTATE'S INSURED, AND ABSCONDED WITH THE SETTLEMENT PROCEEDS, WITHOUT ANY ALLEGATION OF WRONGDOING AGAINST ALLSTATE?

## INTRODUCTION

The circuit court's dismissal of the Complaint filed against Respondent Allstate Property & Casualty Insurance Company ("Allstate") should be affirmed because Appellants Jonathan and Stacie Teal ("Appellants") have failed to articulate a cognizable legal basis for the relief they seek against Allstate.

This case arises from an automobile accident that occurred when an automobile driven by Mary Elizabeth Hickman-Tedder ("Hickman-Tedder") allegedly pulled into the path of the vehicle being driven by Stacie Teal ("Teal"). The vehicle driven by Hickman-Tedder was insured under an automobile insurance policy issued by Allstate. Appellants retained attorney William J. Rivers III ("Rivers") to assist them with their claim for the damages sustained during the automobile accident. Rivers submitted a settlement demand to Allstate, and Allstate accepted the demand and issued a settlement check to Rivers and his clients in exchange for a Covenant Not to Execute and Settlement Agreement ("Covenant Not to Execute"). The settlement check was negotiated and the Covenant Not to Execute was executed<sup>1</sup> and returned to Allstate. Rivers filed a lawsuit on behalf of his clients against Hickman-Tedder in the Court of Common Pleas for Darlington County, South Carolina. Rivers executed and later filed a Stipulation of Dismissal with prejudice of all claims against Hickman-Tedder.

Appellants have filed this lawsuit alleging that Rivers improperly made the settlement with Allstate and improperly accepted the settlement proceeds without their knowledge or permission. Appellants allege that Rivers' law firm did not inform them of

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<sup>1</sup> The Appellants claim that their signatures on the Covenant Not to Execute were forged.

the settlement, forged their signatures on the release, and absconded with the money in violation of their agreement with the firm.

There are no allegations of wrongdoing by Allstate or Hickman-Tedder. Rather, Appellants allege that because the lawyer *they* hired to represent *them* stole money from *them*, Allstate is required to pay its policy limits again and Allstate's insured is not entitled to be released from liability for the accident. In short, Appellants' position is that Allstate and its insured, neither of which played a part in the alleged fraud committed against them by their own attorney, should be punished for their own attorney's misconduct.

The trial court correctly determined that the allegations contained in the Complaint do not state a valid cause of action under South Carolina law entitling Appellants to the relief they seek – invalidation of the settlement agreement and the Stipulation of Dismissal. Because Appellants failed to state facts sufficient to constitute a cause of action against Allstate, the circuit court properly granted the motion to dismiss the Complaint thereby refusing to set aside the valid and enforceable settlement agreement. The circuit court's decision should be affirmed.

## STATEMENT OF THE CASE

On April 15, 2013, Appellants filed a Summons and Complaint against Hickman-Tedder, Allstate, Government Employees Insurance Company (“GEICO”), and Nationwide Mutual Insurance Company (“Nationwide”) alleging causes of action for negligence against Hickman-Tedder and for fraud on the court against Allstate, GEICO, and Nationwide. Allstate filed a Motion to Dismiss on May 24, 2013 seeking dismissal of the Complaint for failure to state facts sufficient to constitute any cause of action and alleging that the claims were barred as a matter of law by the doctrines of payment, accord and satisfaction, settlement, and res judicata. Further, Allstate contended that Appellants lacked standing to bring claims against Allstate. On August 9, 2013, Allstate filed an Amended Motion to Dismiss or in the Alternative to Sever seeking severance of the claims against Allstate as an alternative to dismissing the lawsuit.

On November 21, 2013, the circuit court heard oral argument of the parties. After hearing oral argument and considering written argument and evidence, by Order dated December 17, 2013, the circuit court granted Allstate’s Motion to Dismiss. In granting the Motion to Dismiss, the court explained that “[t]he Complaint does not allege any knowledge of or participation in the wrong doing of Attorney Rivers on the part of any of the Defendants.” (R., p. 4) Further, the court concluded that the equitable relief based on “fraud upon the court” could not be granted because Appellants had “multiple remedies at law.” (R., p. 4-5) The court also noted that the cause of action for “fraud on the court,” while being recognized in South Carolina, was “limited to fraud committed by an opposing party.” (R., p. 6) Finally, the court determined that South Carolina’s principles of agency law required that Appellants “bear the risk of their chosen attorney’s

misconduct” and that “[b]y filing the lawsuit with [their] permission, Rivers acquired apparent authority to enter into settlements with all of the Defendants and to consummate the settlements by execution of appropriate releases or covenants and the filing of a stipulation of dismissal.” (R., p. 5)

On January 10, 2014, Appellants filed a Motion to Reconsider, Alter, or Amend Order Dated December 13, 2013 and Motion for Hearing on Plaintiffs’ Motion to Reconsider, Alter, or Amend Order Dated December 13, 2013. The circuit court denied the Motions and entered an on order denying the Motions on February 5, 2014. Appellants filed a Notice of Appeal on March 24, 2014.

## STATEMENT OF FACTS

On June 29, 2010, while driving her vehicle in Darlington County, South Carolina, Hickman-Tedder pulled into the path of the Appellants, which caused a collision. (R., p. 20) On September 3, 2010, Appellants retained Rivers to represent them with regard to a claim involving the June 29, 2010 automobile accident. (R., p. 22) On June 16, 2011, Rivers filed a lawsuit related to the claim in the Court of Common Pleas for Darlington County, South Carolina (“Underlying Lawsuit”). (R., p. 22) During the pendency of Appellants’ claim and the Underlying Lawsuit, Appellants “consistently contacted” Rivers and his firm and were informed that the “Claim was moving along, that nothing further was needed from them, and that someone would get back in touch with them when there was news to report.” (R., p. 22)

Before filing the Underlying Lawsuit, Rivers’ law firm negotiated a settlement with Allstate in the amount of \$25,000, the full amount of policy limits purchased by Hickman-Tedder. (R., p. 23). On March 30, 2011, Rivers and/or his firm allegedly forged Appellants’ signatures on a Covenant Not to Execute and Settlement Agreement (“the Agreement”) dated March 30, 2011. (R., p. 24) The Agreement provided, in relevant part:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the undersigned Jonathan Teal and Stacie Teal, in consideration of the sum of \$25,000.00 Dollars and 0/100 Cents paid to Jonathan Teal and Stacie Teal, the receipt of which sums are hereby acknowledged, do hereby release and forever discharge Walter Tedder and Mary Tedder, the Allstate Property and Casualty Insurance Company..., which Jonathan Teal and Stacie Teal may have against Walter Tedder and May Tedder on account of the accident on June 29, 2010....

Rivers also entered into settlements on behalf of Appellants with GEICO and Nationwide, the underinsured motorist carriers for the full amount of coverage available under those policies. (R., p. 24) Rivers and/or his firm allegedly forged Appellants' signatures on a Covenant Not to Execute, which was executed in favor of GEICO, on May 12, 2011. (R., p. 24) In addition, Rivers and/or his firm allegedly forged Appellants' signature on a Release for Underinsured Motorist Coverage, which was executed in favor of Nationwide, on June 20, 2011. (R., p. 24, 41)

On June 13, 2012, Rivers filed a Stipulation of Dismissal with prejudice dismissing the Underlying Lawsuit against Hickman-Tedder with prejudice. (R., p. 25)

## ARGUMENT

### I. Standard of Review

“When reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCPP, this court applies the same standard of review as the trial court.” *McNeil v. S.C. Dep’t of Corrections*, 404 S.C. 186, 190, 743 S.E.2d 843, 846 (Ct. App. 2013) (citing *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)). The standard of review of a grant of a motion to dismiss “requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the ‘facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.’” *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). However, the court is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Builder Mart of Am., Inc. v. First Union Corp.*, 349 S.C. 500, 512, 563 S.E.2d 352, 358 (2002), *overruled on other grounds by, Farmer v. Monsanto Corp.*, 353 S.C. 553, 579 S.E.2d 325 (2003) (quoting *Papasan v. Allain*, 478 U.S. 265 (1986)).

“The circuit court may dismiss a claim when the defendant demonstrates the plaintiff’s failure to state facts sufficient to constitute a cause of action in the pleadings filed with the court.” *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 122, 634 S.E.2d 5 (2006) (internal punctuation omitted) (quoting *FOC Lawshe Ltd. P’ship v. Int’l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 408 (Ct. App. 2002)).

Here, the facts contained in the Complaint do not state a cause of action under South Carolina law entitling Appellants to void the settlement agreement and set aside the Stipulation of Dismissal. The circuit court properly dismissed the Complaint and the dismissal should be affirmed.

## **II. The Circuit Court Properly Granted Allstate’s Motion to Dismiss.**

The allegations of the Complaint fail to state a viable claim against Allstate. The Complaint does not establish a basis upon which the settlement agreement that Allstate entered into with Rivers, as Appellants’ chosen counsel could be set aside. In addition, the Complaint fails to state a valid cause of action for “fraud on the court.” Therefore, the circuit court properly granted Allstate’s Motion to Dismiss.<sup>2</sup>

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<sup>2</sup> During oral argument on November 21, 2013, counsel for Hickman-Tedder also noted that Appellants failed to serve Hickman-Tedder as required under the South Carolina Rules of Civil Procedure and that due to such failure Appellants are barred from bringing suit against her because the statute of limitations expired. (R., p. 163-164, 171-172) We anticipate this issue will be addressed in Hickman-Tedder’s submission to the Court. However, we note that if there can be no valid cause of action against Hickman-Tedder, likewise, there is no basis for any cause of action against Allstate to pay on her behalf, again.

Also, as a point of clarification, in the Order, the circuit court does not base its dismissal of the fraud on the court count of the Complaint on the running of the statute of limitations. Rather, the court’s discussion of this issue is with regard to the sole count against Hickman-Tedder.

**A. The circuit court correctly determined that Appellants are bound by the acts of Rivers as their chosen agent.**

Appellants admit that they retained Rivers to represent them in connection with the lawsuit arising out of the June 29, 2010 accident. (R., p. 22) Further, Appellants admit that in the course of his representation of them, Rivers filed the Underlying Lawsuit. (R., p. 22) Because Rivers' actions were in the course of his representation of Appellants, the circuit court correctly determined that under South Carolina law, Appellants are bound by his actions taken with regard to the Underlying Lawsuit. Because Rivers negotiated settlement of and filed the dismissal with prejudice in the Underlying Lawsuit in his capacity as Appellants' attorney and chosen agent, Appellants are not entitled to set aside the settlements and dismissal.

***1. The settlement agreement is binding on Appellants***

Allstate negotiated the settlement agreement with Rivers, as Appellants' attorney and agent. The Complaint includes no allegations contending that Allstate negotiated the settlement in bad faith or did anything that would justify setting aside the settlement agreement that resulted in payment of the policy limits in exchange for the Covenant Not to Execute, which was negotiated to protect Allstate's insured, Hickman-Tedder. Rather, Appellants contend that the settlement should be set aside because of the fraudulent actions of Rivers, the attorney they chose. This is not the law in South Carolina, and the circuit court's decision should be affirmed.

It is a "well-settled principle" under South Carolina law that "when one of two innocent persons must suffer, the loss must fall upon him who put it in the power of a third person to cause such a loss, as well as upon the principle that, when an agent is

clothed with apparent authority to do an act, he may bind his principal, within the limits of that authority, whatever may have been his private instructions.” *Sullivan v. Williams*, 21 S.E. 642, 649 (S.C. 1895) (quoting *Fowler v. Allen*, 32 S.C. 236, 10 S.E. 947 (1890)). See also *Spence v. Spence*, 368 S.C. 106, 126-127, 628 S.E.2d 869, 880 (2006) (““Seeing that some one [sic] must be [the] loser by the deceit, it more reasonable that he who employs and confides in the deceiver should be the loser than a stranger.””) (quoting *West v. Serv. Life & Health Ins. Co.*, 220 S.C. 198, 202, 66 S.E.2d 816, 817 (1951)).

Other jurisdictions have applied this same principal in cases involving similar facts in which the courts determined that the client was bound by the acts of the attorney. In its Order, the circuit court cited the North Carolina Court of Appeals decision in *Purcell International Textile Group, Inc. v. Algemene AFW N.V.*, 647 S.E.2d 667 (N.C. App. 2007) with approval. In *Purcell International*, the court determined that the settlement entered into by the attorney on the client’s behalf was enforceable. The plaintiff brought suit against defendants for breach of contract, unfair and deceptive trade practices, and fraud. As the date for trial approached, the attorney for defendants began settlement negotiations, and he was able to reach a settlement agreement with the plaintiff by telephone. Thereafter, “the parties announced the agreement in open court on the trial date.” *Purcell Int’l*, 647 S.E.2d at 670. While the attorney represented to the plaintiff that he had the defendants’ approval of the settlement amount, in fact he did not and the total amount of the settlement exceeded the authority he was given to settle the case. “In fact, [he] never informed any of the defendants of the agreement, never sent defendants the written agreement, never produced a signed confession of judgment, and forged all of the signatures forwarded to plaintiff.” *Id.* at 670. The defendants contended they had no

knowledge of the settlement agreement until after the court entered judgment against them. At that point, they retained new counsel and moved for relief from the judgment. The trial court denied the motion.

On appeal, the court affirmed the trial court's denial. The court explained that "[s]etting aside judgments pursuant to Rule 60(b)(6) is only appropriate if (1) extraordinary circumstances exist, (2) there is a showing that justice demands its, and (3) the movant shows a meritorious defense." *Id.* Further, the court explained that "[r]elief from attorney fraud on the court 'is to be granted only where the judgment was obtained by the improper conduct of the party in whose favor it was rendered.'" *Id.* (quoting *Henderson v. Wachovia Bank of N.C., N.A.*, 551 S.E.2d 464, 468 (2001)). The court reasoned it could "grant relief on the basis of attorney fraud only when the adverse party's attorney commits the fraud." *Id.* at 671. The court also explained that "North Carolina presumes an attorney has the authority to act for a client he represents, and that presumption must be rebutted by proving to the satisfaction of the court that the attorney's actions were unauthorized" and further stated:

An act is within the power of an agent if the agent has the legal ability to bind the principal to a third person thereby, even though the act constitutes a violation of the agent's duty to the principal....When a[n]...agent acts within the scope of his apparent authority, and the third party has no notice of the limitation on such authority, the [principal] will be bound by the acts of the agent, and...where one of two persons must suffer loss by the fraud or misconduct of a third person, he who first reposes the confidence or by his negligent conduct made it possible for the loss to occur, must bear the loss.

*Id.* (quotations omitted).

The court reasoned that the attorney "worked as defendants' attorney, and the court did not rely on any representations he made to render a judgment in favor of his

clients, and therefore, defendants [were] not entitled to relief from any fraud [he] may have committed.” *Id.* Further, the court reasoned that “plaintiff could have reasonably assumed that offer was within [the attorney]’s authority and had no reason to know that [he] had exceeded his limits.” *Id.* The court determined “the agreement negotiated by [the attorney] bound defendants despite the fact that [he] exceeded his authority and violated his duty to defendants.” *Id.* Finally, the court explained that the “circumstances were not extraordinary, but dealt with basic North Carolina agency law” and that “[b]ecause [he] acted with apparent authority as defendants’ agent, defendants fail to meet the criteria for setting aside the judgment.” *Id.*

*See also In re Dreiler LLP*, 450 B.R. 452, 459-460 (Bankr. S.D.N.Y. 2011) (determining that the parties who hired the attorney “must bear the loss” and that “[a]s a rule, payment to any attorney of a claim which he is employed to recover or collect operates as payment to the client himself, absent specific contrary arrangements [and i]f the attorney absconds with the cash without paying it over to his client, the client may not thereafter compel the debtor or tort-feasor to pay a second time.”) (internal quotations omitted) *and Cohen v. Goldman*, 132 A.2d 414, 417 (R.I. 1957) (“[W]e believe that i[n] a case such as this where two innocent parties are involved, justice requires that of the two the least culpable should not be made to suffer. Where either party to a transaction made with an agent is to suffer by his neglect, it should be his principal.”).

Here, Appellants have made no allegation of any wrongdoing by Allstate. Rather, all of the allegations of wrongdoing and fraudulent conduct are centered on Rivers’ behavior in entering the settlement without Appellants’ authority. The fact Rivers may have neglected to consult with his clients regarding the settlement does not invalidate the

settlement agreement with regard to Allstate, and by extension, its insured, Hickman-Tedder. Appellants chose Rivers as their attorney, and South Carolina law mandates that “when one of two innocent persons must suffer, the loss must fall upon” the Appellants who hired Rivers and clothed him with the apparent authority to act on their behalf. *See Sullivan*, 21 S.E. at 649.

Appellants’ reliance upon case law in other jurisdictions is unavailing, as the South Carolina Supreme Court has repeatedly rejected the line of reasoning adopted in those jurisdictions. Our Supreme Court adheres to the overarching principle that Appellants, as the parties retaining their lawyer, must suffer the loss occasioned by his fraud upon *them*. And with good reason – there is no equitable or legal foundation in South Carolina law to punish innocent parties to a transaction for the sins committed by another party’s agent or attorney. Accordingly, the circuit court properly determined that the settlement and Stipulation of Dismissal should not be set aside.

**2. *The dismissal of the Underlying Lawsuit with prejudice is binding on Appellants.***

Under South Carolina law, an attorney who files suit on behalf of a client has the authority to settle or dismiss the case. This principle was articulated in *Arnold v. Yarborough*, 281 S.C. 570, 316 S.E.2d 416 (Ct. App. 1984), wherein the Court explained that the “[a]cts of an attorney of record for a party are directly attributable to and binding upon the client.” In *Arnold*, the Court determined that the defendant was bound by the settlement agreement entered into and agreed upon by his attorney, despite the defendant’s insistence that he had not seen or agreed to the settlement. The court noted that the defendant “testified he never authorized his attorney to settle the case on the

terms provided by” “letters exchanged between the attorneys.” *Arnold*, 281 S.C. at 571, 316 S.E.2d at 417.

The Court specifically rejected this argument and explained that it was “undisputed that [the defendant]’s attorney was representing him and acting on his behalf when he agreed to the terms of the settlement.” *Id.* at 572, 316 S.E.2d at 417. In rejecting this argument, the Court noted that the Supreme Court of South Carolina’s decision in *Ex parte Jones*, 47 S.C. 393, 25 S.E. 285 (1896) was instructive. The Court specifically noted that the *Ex parte Jones* court stated:

...the employment of an attorney in a particular suit implies his client’s assent that he may do everything which the court may approve in the progress of the cause. Upon this distinction in a large measure rest the certainty, verity, and finality of every judgment of a court. Litigants must necessarily be held bound by the acts of their attorneys in the conduct of a cause in court, the absence, of course, of fraud.

*Id.*, 316 S.E.2d at 417 (quoting *Ex Parte Jones*, 47 S.C. 393, 397, 25 S.E. 285, 286 (1896)).

Likewise, here, Appellants are bound by the actions of Rivers, as attorney of record in the Underlying Lawsuit. *See also Crowley v. Harvey & Battey, P.A.*, 327 S.C. 68, 70, 488 S.E.2d 334, 334 (Ct. App. 1997) (“In South Carolina, an attorney may settle litigation on behalf of his client, absent fraud or mistake, such a settlement is binding on the client.”) and *L.R. Wilson v. N.E. Isaacson of Georgia, Inc.*, 229 S.E.2d 29, 30 (Ga. App. 1976) (“The agreement by and consent of counsel of record to dismiss a pending case is binding upon his client even though the client may not have known of his attorney’s consent or agreement and did not assent thereto....Where one retains an attorney at law to represent him in bringing and prosecuting an[] action against certain

defendants, and the attorney appears as attorney of record in such action, and...the attorney by letter authorizes or directs the clerk of the court in which the action is pending to dismiss the case...and the case is dismissed pursuant to said letter, the plaintiff in the case, in absence of any fraud...is...bound by the act of the attorney in dismissing the case, and can not thereafter have his case reinstated on the ground that the dismissal was [unauthor]ized.”) (quotations omitted)). Therefore, the circuit court’s grant of Allstate’s Motion to Dismiss should be affirmed.

**B. The circuit court correctly determined that Appellants’ Complaint did not state a valid cause of action for “fraud on the court.”**

***1. The circuit court correctly determined that a cause of action for “fraud on the court” is limited to fraud by the opposing party.***

The circuit court correctly interpreted the reasoning of the South Carolina Supreme Court in *Chewning v. Ford Motor Company*, 354 S.C. 72, 579 S.E.2d 605 (2003) to limit a cause of action for “fraud on the court” to fraud by the opposing party. Appellants’ argument to the contrary lacks merit and is not supported by the clear reasoning of the *Chewning* court. In defining “fraud on the court”, the court noted that it has been described as:

“[T]hat species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetuated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.”...Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court. Less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court.

*Chewning*, 354 S.C. at 78, 579 S.E.2d at 608 (quoting *Evans v. Gunter*, 294 S.C. 525,

529, 366 S.E.2d 44, 46 (Ct. App. 1988) and *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir. 1978)). In discussing the application, the court explained that “where an attorney—an officer of the court—suborns perjury or intentionally conceals documents, he or she effectively precludes the *opposing* party from having his day in court.” *Id.* at 82, 579 S.E.2d at 611 (emphasis added). The court clearly explains that the effect of the fraud on the court must affect the opposing party, and Appellants’ claims to the contrary are unavailing.<sup>3</sup>

Further, the court’s decision in *Ray v. Ray*, 374 S.C. 79, 647 S.E.2d 237 (2007) does not support Appellants’ argument. The fraudulent acts at issue in that case were committed by the *opposing* party. Here, however, there are allegations of fraud only being committed by Rivers, the Appellants’ attorney. There are no allegations that Allstate knew of Rivers allegedly fraudulent behavior or was in any way complicit with Rivers’ actions. There are no allegations of fraud with regard to Allstate. Therefore, the circuit court’s determination that there was no fraud upon the court by an opposing party warranted a dismissal of the Complaint should be affirmed.

**2. *The circuit court properly determined that no fraud exception existed.***

Appellants contend that the circuit court did not consider the “fraud” exception to the general rule that a client is bound by the actions of the attorney. In support of this contention, Appellants rely on case law from other jurisdictions. While Appellants

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<sup>3</sup> Equally unpersuasive is Appellants’ argument that the North Carolina Court of Appeal’s decision in *Henderson* supports their arguments. The court specifically stated, in dicta, that it was *not* “holding today [that] there may be situations so egregious that would entitle a party to be relieved of fraud on it by its own attorney....” *Henderson*, 551 S.E.2d at 469.

contend that these opinions provide support for their argument, Appellants fail to explain that the substantive law of agency upon which these courts' rulings was based is not analogous to the agency principles under South Carolina law.

Aside from this fact, South Carolina Rule of Civil Procedure 60(b) provides a mechanism whereby parties may request relief from a judgment upon a showing of "fraud, misrepresentation, or other misconduct of an *adverse* party." 60(b), SCRPC (emphasis added). Even the rule under which Appellants could arguably be seeking relief from the dismissal of the Underlying Lawsuit clearly provides that the fraud must be by the adverse party. Any alleged fraud committed by Rivers, even if he did commit any fraud with regard to the court, would not relieve Appellants from the dismissal of the Underlying Lawsuit.

South Carolina law clearly demonstrates that in order to set aside a dismissal of an action, the opposing party must have acted in a fraudulent matter. There is no legal basis to set aside the dismissal of the Underlying Lawsuit, and the circuit court's grant of Allstate's Motion to Dismiss should be affirmed.

**C. The circuit court's grant of Allstate's motion to dismiss may also be upheld because Appellants are not entitled to invoke the court's equitable jurisdiction because they have adequate remedies at law.**

While the circuit court properly determined that Appellants failed to state a valid cause of action for "fraud on the court," even if they had stated a valid cause of action, the circuit court correctly determined that they are not entitled to seek a remedy in equity because they have adequate remedies at law. *See EllisDon Constr., Inc. v. Clemson Univ.*, 391 S.C. 552, 555, 707 S.E.2d 399, 401 (2011) ("As the circuit court explains, equity is only available when a party is without an adequate remedy at law.") *and Santee*

*Cooper Resort, Inc. v. The S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) (“Equitable relief is generally available only where this is no adequate remedy at law.”).

Appellants argue that the circuit court was compelled to accept their bald assertion that there were no adequate remedies at law available to them and rule in their favor. Appellants misapprehend South Carolina law. A court considering a motion to dismiss is not obligated to accept as true legal conclusions that have been couched as factual allegations. See *Builder Mart of Am., Inc.*, 349 S.C. at 512, 563 S.E.2d at 358. See also *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (“A demurrer admits facts well pleaded in a complaint but does not admit conclusions of law.”). Rather, the court is merely required to accept the well-pleaded *facts* of the Complaint as true and view them in the light most favorable to the plaintiff, not to ignore the law.

Here, the circuit court properly determined that Appellants were not entitled to invoke the circuit court’s equitable jurisdiction. Multiple remedies are available to Appellants. For example, Appellants certainly are able to bring a claim for legal malpractice against Rivers and/or his law firm. See *Motley v. Williams*, 374 S.C. 107, 112, 647 S.E.2d 244, 247 (Ct. App. 2007) (“[I]f an attorney has apparent authority to confess, or consent to, judgment, it is ordinarily binding and conclusive on the client, notwithstanding an actual lack of authority unknown to the court or the opposing party, the sole remedy in such a case being against the attorney.”) (quotation omitted) and *Purcell Int’l Textile Group, Inc.*, 647 S.E.2d at 141 (“As in *Henderson*, defendants’ proper remedy is to seek relief through a malpractice claim against [the attorney].”). In addition, Appellants may also bring suit against the bank who cashed the check based on


the alleged forged signatures endorsing the check. *See* S.C. Code Ann. § 36-3-420(a). The court properly reasoned that Appellants have available to them adequate and sufficient remedies at law without the need to resort to the court's equitable powers. Therefore, the circuit court's determination that adequate remedies at law were available to Appellants should be affirmed. *See EllisDon Constr.*, 391 S.C. at 555, 707 S.E.2d at 401 (affirming the circuit court's determination that the appellant was not entitled to equitable relief because there was an adequate remedy at law provided for in the contract).

### CONCLUSION

The circuit court properly granted Allstate's Motion to Dismiss. Construing the Complaint in the light most favorable to Appellants reveals that their attorney, Rivers, entered into the settlement agreements to compromise and settle their claims and failed to inform them of the settlements or distribute the settlement funds to them. Appellants may have a valid cause of action against their attorney, his family, his law firm, the bank that negotiated the checks and maintained Rivers' IOLTA account, and the Lawyers Fund for Client Protection, but Appellants do not have a valid cause of action against Allstate and have no legal right to reopen the Underlying Lawsuit by setting aside the dismissal and the settlement. Allstate entered into a valid settlement agreement with Rivers, Appellants' chosen attorney, and paid its liability limits under the policy to protect the interests of its insured, Hickman-Tedder. There is no basis to set aside that settlement. Therefore, Allstate respectfully requests this Court affirm the circuit court's grant of its Motion to Dismiss.

*(Signature on next page)*

December 11, 2014

By: 

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COMPANY

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**SC Court of Appeals**

APPEAL FROM DARLINGTON COUNTY  
Court Of Common Pleas

The Honorable Paul M. Burch, Judicial Circuit Court Judge  
Case No.: 2013-CP-16-00317

Appellate Case No. 2014-000626

Jonathan Teal and Stacie Teal..... Appellants,

v.

Mary Elizabeth Hickman-Tedder, Allstate Property & Casualty Insurance Company,  
Government Employees Insurance Company and Nationwide Mutual Insurance  
Company..... Respondents.

CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that Respondent Allstate Property & Casualty Insurance Company's Final Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

December 11, 2014

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