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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

The Hon. Paul M. Burch, Circuit Court Judge

Case No. 13-CP-16-0317

Appellate Case No. 2014-000626

Jonathan Teal and Stacy Teal.....Appellants,

v.

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

BRIEF OF RESPONDENT GOVERNMENT
EMPLOYEES INSURANCE COMPANY

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE CIRCUIT COURT CORRECTLY DIMISSED THE TEALS' CLAIM FOR EXTRINSIC FRAUD WHERE THE ALLEGED FRAUDULENT CONDUCT WAS COMMITTED BY THEIR OWN ATTORNEY, AND NOT AN OPPOSING PARTY?
- II. WHETHER THE CIRCUIT COURT CORRECTLY DIMISSED THE TEALS' REQUEST FOR EQUITABLE RELIEF FOR FRAUD UPON THE COURT WHERE THEY POSSESS ADEQUATE REMEDIES AT LAW?
- III. WHETHER THE CIRCUIT COURT CORRECTLY DIMISSED THE TEALS' CLAIM FOR EQUITABLE RELIEF FOR FRAUD WHERE THE ALLEGED MISCONDUCT OF THEIR OWN COUNSEL DID NOT RISE TO THE LEVEL OF A FRAUD UPON THE COURT?
- IV. WHETHER THE CIRCUIT COURT CORRECTLY FOUND THAT THE TEALS ARE BOUND BY THE ACTS OF THEIR OWN COUNSEL TAKEN WITHIN THE SCOPE OF HIS APPARENT AUTHORITY?

STATEMENT OF THE CASE

By complaint filed on April 15, 2013, the Appellants, Jonathan and Stacie Teal (the "Teals"), brought this action for alleged injuries sustained in a June 29, 2010 automobile accident and for purported fraud upon the court allegedly perpetrated by their own attorney. (*See R. pp. 20-25.*) The Teals named as defendants not only Mary Elizabeth Hickman-Tedder, the alleged at-fault driver in the accident, but also Allstate Property and Casualty Insurance Company ("Allstate"), Ms. Hickman-Tedder's liability insurance carrier, Government Employees Insurance Company ("GEICO") as underinsured motorist ("UIM") carrier for Jonathan Teal, and Nationwide Mutual Insurance Company ("Nationwide") as UIM carrier for Stacie Teal. (*R. pp. 19-20.*) Ms. Hickman-Tedder was not served with the summons and complaint until November 20, 2013. (*See R. p. 148.*)

At various times the Defendants all moved to dismiss the complaint pursuant to Rule 12(b)(4), 12(b)(5) and/or 12(b)(6) of the South Carolina Rules of Civil Procedure. (See R. pp. 59-67.) After a hearing on November 21, 2013, the Hon. Paul M. Burch, Circuit Court Judge, granted the Defendants' motions to dismiss and dismissed the Teals' complaint. (See R. pp. 3-8.) The Teals thereafter moved for reconsideration of that order. (See R. pp. 135-145.) That motion for reconsideration was denied by Form 4 order filed February 5, 2014. (See R. pp. 9-10.) The Teals served their Notice of Appeal on March 19, 2014.

STATEMENT OF FACTS

On June 29, 2010, the Teals and Ms. Hickman-Tedder were involved in an automobile accident in Darlington County, South Carolina. (R. p. 20.) The Teals allege that Ms. Hickman-Tedder negligently caused the accident, and that they sustained personal injuries as a result. (R. pp. 20-21.)

On September 3, 2010, the Teals employed William J. Rivers, III ("Rivers"), and his law firm of Schurilknight & Rivers, P.A., to represent them in their personal injury claims arising out of the accident. (R. p. 22.) They entered into a representation contract on that same date. (R. p. 22, 31.) On June 16, 2011, Rivers filed a lawsuit on behalf of the Teals against Ms. Hickman-Tedder in the Darlington County Court of Common Pleas. (R. p. 22.)

Rivers, purportedly on behalf of the Teals, negotiated a settlement with Ms. Hickman-Tedder's liability carrier, Allstate, in the amount of \$25,000.00, the limit of Ms. Hickman-Tedder's policy. (R. p. 23.) A covenant not to execute in favor of Ms. Hickman-Tedder and Allstate was signed on March 30, 2011. (R. pp. 23-24, 33.) The

Teals allege that their signatures on that covenant were forged, and that they never received any of the settlement proceeds. (R. pp. 23-24.)

Rivers, purportedly on behalf of Jonathan Teal, negotiated a settlement with his UIM carrier, GEICO, in the amount of \$25,000.00, the applicable limit of that policy. (R. p. 24.) A covenant not to execute relating to that settlement was signed on May 12, 2011. (R. pp. 24, 35-39.) The Teals allege that their signatures on that covenant were also forged, and that they never received any of those settlement proceeds either. (R. p. 24.)

Rivers also negotiated a settlement with Stacie Teal's UIM carrier, Nationwide, in the amount of \$50,000.00, representing the applicable limits under that policy. (R. p. 24.) A covenant not to execute relating to that settlement was signed on June 20, 2011. (R. pp. 24, 41.) The Teals allege that the signature on that covenant was forged as well. (R. p. 24.)

On June 13, 2012, Rivers signed and filed a Stipulation of Dismissal dismissing the Teals' claims against Ms. Hickman-Tedder in their entirety, with prejudice. (R. pp. 25, 43) That stipulation provided, in its entirety: "It is hereby stipulated by and between counsel for all parties to this action that this action be and hereby is dismissed, discontinued, and forever ended with prejudice pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure." (R. p. 43.)

The Teals claim that Rivers failed to inform them that their claims had been settled or that the lawsuit filed against Ms. Hickman-Tedder in 2011 had been dismissed. (R. pp. 22-25.) In an effort to avoid the effects of the with-prejudice dismissal of their claims against Ms. Hickman-Tedder, the Teals filed the instant action invoking the equity jurisdiction of the court by alleging that Rivers, their own attorney, perpetrated a fraud on

the court. (R. pp. 25-26.) The Teals then attempt to re-assert a personal injury claim arising out of the accident against Ms. Hickman-Tedder. (R. pp. 26-28.)

In granting the Defendants' motions to dismiss, the circuit court found that the Teals' complaint failed to state a claim for fraud upon the court. Initially, the court determined that the Teals had adequate remedies at law to address the misconduct of Rivers and his firm such that a claim in equity for fraud upon the court could not lie. (R. pp. 4-5.) The court then concluded that because the Teals' claim for fraud upon the court related to the alleged misconduct of their own attorney, not the opposing party, the claim could not be sustained. (R. pp. 6-7.) The court noted as well that the Teals' complaint fails to allege that Rivers made even a misrepresentation to the court, and that Rivers's alleged misconduct would not even likely rise to the level of constituting a fraud upon the court. (R. p. 7.)

The circuit court found additionally that Rivers's acts of settling the Teals' claims and filing the stipulation of dismissal were within his apparent authority as their chosen attorneys, and that under South Carolina's agency laws, the Teals are bound thereby. (R. pp. 5-6.) The court held that the Teals, as the principals, rather than the Defendants as innocent third-parties, should bear the losses caused by their own agent's alleged misconduct. (R. pp. 5-6.)

Finally, the circuit court found that the Teals failed to timely institute their claim for negligence against Ms. Hickman-Tedder. (R. pp. 7-8.) The accident at issue occurred on June 29, 2010. Though the instant action was filed on April 15, 2013, it was not served upon Ms. Hickman-Tedder until November 20, 2013. The court concluded that since the Teals failed to serve Ms. Hickman-Tedder within 120 days after filing, they

failed to institute this action under Rule 3(a), SCRCF, prior to the expiration of the statute of limitations on June 29, 2013. (R. pp. 7-8.)

ARGUMENT

I. BECAUSE THE TEALS' CLAIM FOR FRAUD UPON THE COURT RESTS UPON THE ALLEGED MISCONDUCT OF THEIR OWN COUNSEL, AND NOT THAT OF AN OPPOSING PARTY, THEIR COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

In order for a party to obtain equitable relief from a judgment or order based upon a fraud upon the court, "the fraud must be extrinsic." Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605, 610 (2003) (citing Bryan v. Bryan, 220 S.C. 164, 66 S.E.2d 609 (1951)). Extrinsic fraud is "fraud or deception *practiced upon a party by its adversary* which has prevented the party from trying its case or having a real contest of the subject matter of the suit in court." Mr. G. v. Mrs. G., 320 S.C.305, 465 S.E.2d 101, 105 (Ct. App. 1995) (quoting 47 Am. Jur. 2d § 832 at 309-10) (*emphasis added*). The essence of extrinsic fraud is that the conduct of one party deprives "*the other party* of his right to a fair opportunity to present his case to the court." *Id.*, 465 S.E.2d at 103 (citing City of San Francisco v. Cartagena, 35 Cal. Rptr. 2d 797, 801 (Cal. App. 1995)) (*emphasis added*); see also Ray v. Ray, 374 S.C. 79, 647 S.E.2d 237, 240 (2007) (conduct constitutes extrinsic fraud where it deprives "the other party of the opportunity to fully exhibit and try his case"); Bryan, 66 S.E.2d at 611 (equitable relief not warranted where no showing that respondent "was prevented by appellants from fully presenting his case"). Equitable relief based on attorney fraud should be granted "only when the adverse party's attorney commits the fraud." Purcell Int'l Textile Group, Inc. v. Algemene AFW N.V., 647 S.E.2d 667, 670 (N.C. App. 2007)

Under the South Carolina Rules of Civil Procedure, a party is entitled to relief from a judgment or order upon a showing of “fraud, misrepresentation, or other misconduct *of an adverse party*.” Rule 60(b)(3), SCRPC (*emphasis added*). There is not a similar provision allowing for relief based upon the fraud of the party seeking the relief (or his own attorney).

Here, the Teals’ claim for equitable relief for purported fraud upon the court is based exclusively upon the alleged conduct of their own attorney. There is no allegation that Ms. Hickman-Tedder or any of the carriers engaged in any fraudulent activity, much less any fraudulent activity which rose to the level of extrinsic fraud, from which relief is sought. (*See Complaint.*) The Teals are not entitled to equitable relief for fraud upon the court or to relief under Rule 60(b)(3) where it is the alleged misconduct of their own attorney, not that of an adverse party, which deprived them of their day in court. As such, the allegations of the complaint do not, as a matter of law, set forth facts sufficient to support a claim for extrinsic fraud, and the circuit court properly dismissed their claim for fraud upon the court pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

II. THE TEALS HAVE ADEQUATE REMEDIES AT LAW TO ADDRESS THE MISCONDUCT OF THEIR OWN ATTORNEY; THEREFORE, THEY ARE NOT ENTITLED TO EQUITABLE RELIEF FOR ALLEGED FRAUD UPON THE COURT.

A claim for “fraud upon the court” lies in equity. Bryan, 66 S.E.2d at 610; Chewning, 579 S.E.2d at 610. Where a party “possesses an adequate remedy at law, equity will not intervene.” Van Robinson Ins. Agency, Inc. v. Harleysville Mut. Ins. Co., 272 S.C. 127, 249 S.E.2d 744, 745 (1978); Nutt Corp. v. Howell Rd., LLC, 396 S.C. 323, 721 S.E.2d 447, 449 (Ct. App., 2011) (“equity is generally only available when a party is

without an adequate remedy at law”). “An ‘adequate’ remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity.” Nutt, 721 S.E.2d at 449 (*quoting* Milliken & Co. v. Morin, 386 S.C. 1, 685 S.E.2d 828, 832 (Ct. App. 2009)).

In the present matter, even if the complaint sets forth sufficient facts to support a claim for extrinsic fraud, the Teals are not entitled to the equitable relief they seek because they have adequate remedies at law to address their attorney’s alleged misconduct. Assuming the truth of the well-pled factual allegations of the Complaint, *see* HHHunt Corp. v. Town of Lexington, 389 S.C. 623, 699 S.E.2d 699, 703 (Ct. App. 2010) (on motion to dismiss, court presumes the truth of “all well pled facts”), the Teals entered into a contractual relationship with Rivers and his firm, and the terms of that contract prohibited their attorney from settling their case without consent. Despite the provisions of this contract, Rivers negotiated settlements of their liability and UIM claims without the Teals’ knowledge or consent. Whenever the Teals called Rivers’s office about the status of their case, they were not informed about any settlements, but were instead told that their case was progressing and that nothing was required of them. Further, Rivers or someone at his firm forged the Teals’ names to the settlement documents and dismissed their pending civil action without the Teals’ knowledge or permission. Finally, Rivers never sent the Teals any of the settlement funds.

These well-pled facts clearly and indisputably support several potential adequate claims at law against Rivers and his firm. *See* Motley v. Williams, 374 S.C. 107, 647 S.E.2d 244, 247 (Ct. App. 2007) (relief from an attorney’s acts in binding his clients against his actual authority “rests in an action against the lawyer”). First, given the

existence of a contractual relationship between the Teals and their attorney, they possess an obvious and adequate claim at law for breach of contract for which they could recover damages. *See Nutt Corp.*, 721 S.E.2d at 450-51 (finding breach of contract action an adequate remedy at law which precludes equitable relief). Second, the Teals could pursue claims for legal malpractice, unfair trade practices, and/or breach of fiduciary duties, all of which sound in law and all of which support an award of damages. *RFT Management Co. v. Tinsley & Adams, L.L.P.*, 399 S.C. 322, 732 S.E.2d 166, 171-74 (2012) (holding that breach of fiduciary duty claims may be distinct from legal malpractice claim, and that Unfair Trade Practices Act applies to legal profession). Third, given the alleged misrepresentations made by their attorney regarding the status of their case and the failure to disclose the settlements that had been reached, the Teals would have action for fraud and breach of contract accompanied by a fraudulent act. *Armstrong v. Collins*, 366 S.C. 204, 621 S.E.2d 368, 375-77 (2005) (elements of claims for fraud and breach of contract accompanied by fraudulent act). Fourth, the Teals could pursue a claim against their attorney for the alleged conversion of the settlement proceeds. *See Moore v. Weinberg*, 383 S.C. 583, 681 S.E.2d 875, 878-879 (2009) (wrongfully disbursed settlement proceeds can be the subject of a conversion claim); *see also* S.C. Code Ann. § 36-3-420(a) (action for conversion of instrument). This list of potential actions at law is certainly not exhaustive.

There is no reason why any of these actions at law are any less “certain, practical, complete and efficient” than pursuing an action in equity to set aside the dismissal, undoing the settlements which the carriers negotiated in good faith, and being allowed to proceed with a negligence claim against Ms. Hickman-Tedder, also an innocent third-

party to the Teals' attorney's alleged fraud. In fact, given the viability, as found by the circuit court, of Ms. Hickman-Tedder's statute of limitations defense as to the Teals' negligence claim (the only claim in this action which would support any recovery), the Teals' claims against their attorney and his firm are more certain, complete, and efficient. And given that an action in law against Rivers and his firm would focus liability where it should be focused, that is on the perpetrators of the fraud rather than on innocent third-parties who were also victims of the fraud, the equities dictate that the Teals pursue their remedies at law, and are not entitled to the equitable relief they seek.¹

For this reason, too, the circuit court correctly found that the Teals' were not entitled to equitable relief, and properly dismissed their claim for fraud upon the court.

III. THE TEALS' ATTORNEY'S MISCONDUCT DID NOT INVOLVE A "CORRUPTION OF THE JUDICIAL PROCESS ITSELF," AND THUS DID NOT RISE TO THE LEVEL OF A FRAUD UPON THE COURT.

A fraud upon the court is a particularly egregious species of fraud which involves a "corruption of the judicial process itself." Chewning, 579 S.E.2d at 608. "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 a fraud on the court." Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 (5th Cir. 1978). It "requires a showing that one has acted with an intent to deceive or defraud the

¹ The Teals conspicuously do not argue that they, in actuality, lack potential adequate remedies at law; instead, they argue that the circuit court erred when it failed to accept as true the conclusory allegation that "Plaintiffs do not have an adequate remedy at law" (R. p. 26.). (Appellants' Initial Brief pp. 8-9.) When ruling on a motion to dismiss, a court must accept as true all well-pled facts, but is not required to accept as true conclusory allegations of law. Jones v. Gilstrap, 288 S.C. 525, 343 S.E.2d 646, 648 (Ct. App. 1986) (allegations "are conclusory only and are therefore demurrable"); *see also* Stroud v. Riddle, 260 S.C. 99, 194 S.E.2d 235, 237 (1973) ("[c]onclusions of law describe a legal status, condition, or legal offense"). The bald allegation that the Teals "do not have an adequate remedy at law" is nothing more than a conclusory allegation of law, and the circuit court was not required to accept it as true.

court.” *Id.* (quoting United States v. Buck, 281 F.3d 1336, 1342 (10th Cir. 2002)); *see also Ray*, 647 S.E.2d at 241 (the fraud must be intended to deceive the court). A party must show “an unconscionable plan or scheme which is designed to improperly influence the court in its decision.” Rozier, 573 F.2d at 1338 (quoting England v. Doyle, 281 F.2d 304, 309 (9th Cir. 1960)).

Here, Rivers’s alleged misconduct involved settling the Teals’ claims without their consent or knowledge, forging their names to the settlement documents, absconding with the settlement funds, and filing a stipulation of dismissal of the lawsuit. The only act of Rivers which in any way involved the court was the filing of the stipulation of dismissal. In that stipulation Rivers made no representations other than that the action was dismissed pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure. (See R. p. 43.) With that document Rivers did not seek or obtain court approval of the settlements, or even represent that the claims had been settled. He did not request any action of the court whatsoever, and no court order or other action was necessary to effect the dismissal. *See* Rule 41(a)(1), SCRCF (voluntary dismissal by plaintiff without order of court). Accepting all of the Teals’ well-pled factual allegations as true, Rivers’s conduct was certainly egregious, but it simply did not involve a deception of the court or a “corruption of the judicial process.”

The complained-of “fraud” was directed at the Teals (and the innocent third-parties who relied upon Rivers’s apparent authority to settle the cases). It was not directed at the court. It involved an assault on the integrity of the attorney-client relationship, but not on “the integrity of the Court itself.” Chewning, 579 S.E.2d at 608 (quoting Evans v. Gunter, 294 S.C. 525, 366 S.E.2d 44, 46 (Ct. App. 1988).) A violation

of the attorney-client trust warrants relief through an action against the lawyer, and is appropriately redressable in an action at law; it does not, however, justify overriding the interests of finality to reopen a settled and dismissed case. *Id.*, 579 S.E.2d at 609 (“court must balance interest of finality against the need to provide a fair and just resolution of the dispute”).

For this reason, too, the circuit court properly dismissed the Teals’ claim for fraud upon the court pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

IV. THE TEALS ARE BOUND BY THE ACTS OF THEIR CHOSEN ATTORNEY TAKEN WITHIN THE SCOPE OF HIS APPARENT AUTHORITY.

The “acts of an attorney are directly attributable to and binding upon the client.” Arnold v. Yarborough, 281 S.C. 570, 316 S.E.2d 416, 417 (Ct. App. 1984). As our Supreme Court has held, “the employment of an attorney in a particular suit implies his client’s assent that he may do everything upon which the court may approve in the progress of the cause.” Ex Parte Jones, 47 S.C. 393, 25 S.E. 285 (1986). “Litigants must necessarily be held bound by the acts of their attorneys in the conduct of a cause in court, in the absence, of course, of fraud.” Arnold, 316 S.E.2d at 417. Even where an attorney’s conduct exceeds his actual authority, if the action is within the attorney’s apparent authority, “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.” Motley, 647 S.E.2d at 247.

Here, accepting the Teals’ allegations as true, they contracted with Rivers for him to act as their attorney to seek recovery for their personal injuries arising out of the accident with Ms. Hickman-Tedder. During the course of that representation and in

furtherance of the Teals' claims, he filed a lawsuit against Ms. Hickman-Tedder. Ultimately, Rivers filed a stipulation of dismissal of that lawsuit with prejudice. While the Teals allege that they were unaware that their case had been dismissed and did not consent thereto, it is undisputed that at the time the stipulation was filed, Rivers was employed as their counsel. Even though they were not informed about the dismissal of their case, they are bound by his acts. See Wilson v. N.E. Isaacson of Ga., Inc., 229 S.E.2d 29, 30 (Ga. App. 1976) (“[t]he 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”). The Teals’ sole recourse is an action against Rivers and his firm. See Motley, 647 S.E.2d at 247 (relief “rests in an action against the lawyer”).

Moreover, the attorney-client relationship is governed by principles of agency law. Purcell, *supra*, 647 S.E.2d at 670. Under the doctrine of apparent authority, “the principal is bound by the acts of his agent when he has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption.” Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869, 879 (2006). It is well-settled 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)). As our Supreme Court explained:

The rule is founded upon public policy and convenience, for in no other way could there be any safety to third persons in their dealings, either directly with the principal, or indirectly with him through the instrumentality of agents. In every such case the principal holds out his agent as competent and fit to be trusted, and thereby, in effect, he warrants his fidelity and good conduct in all matters within the scope of the agency ...Seeing that some one must be loser by the deceit, it is more reasonable that he who employs and confides in the deceiver should be the loser than a stranger.

Spence, 628 S.E.2d at 880.

During the course of his representation of the Teals, Rivers negotiated settlements of their claims. Assuming the Teals' well-pled allegations to be true, Rivers lacked actual authority to negotiate those settlements; however, there is no allegation that Ms. Hickman-Tedder or any of the carriers were complicit in any fraud in procuring the settlement, or were anything but innocent third-parties who relied upon Rivers's apparent authority to resolve his client's claims. *See, e.g., Arnold*, 316 S.E.2d at 417 ("[a]bsent fraud or mistake, where attorneys of record for a party agree to settle a case, the party cannot later repudiate the settlement"); *Motley*, 647 S.E.2d at 246 ("[i]t is a long-standing and well-settled rule that an attorney may settle litigation on behalf of his client and that the client is bound by his attorney's settlement actions" (*and cases cited therein*).) Even though the Teals may have been innocent victims of their attorney's deceit, so, too, were Ms. Hickman-Tedder and the carriers which negotiated with Rivers in good faith and actually paid significant sums of money to resolve the Teals' claims. As between the innocent parties, the Teals must bear the loss of the misconduct of the agent whom they employed and clothed with authority. *See Purcell, supra*, 647 S.E.2d at 671 (client bound by attorney's settlement agreement even where attorney lacked actual authority to reach agreement, never advised client of agreement, and forged client's names to settlement

agreement); In re Dreier, LLP, 450 B.R. 452, 459-60 (S.D.N.Y. 2011) (“[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 quotes and cites omitted*)); Cohen v. Goldman, 132 A.2d 414, 417 (R.I. 1957) (client bound by settlement reached by attorney who forged client’s name to settlement documents because “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.”); Rothman v. Fillette, 469 A.2d 543, 545-46 (Pa. 1983) (client bound by settlement reached by attorney who forged client’s name to settlement documents because “[w]here one of two innocent persons must suffer, the loss should be borne by him who put the wrongdoer in a position of trust and confidence and thus enabled him to perpetrate the wrong”).

For these reasons, too, the circuit court correctly dismissed the Teals’ complaint for failure to state a claim pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.²

² Additionally, the circuit court determined that the Teals’ claims for negligence against Ms. Hickman-Tedder were barred by the statute of limitations. (Contrary to the Teals’ argument, the circuit court did not find the claim for fraud upon the court to be time-barred as that argument was never made by any party. (*See* R. pp. 3-8).) It is anticipated that Ms. Hickman-Tedder will address the statute of limitations issue in her appellate brief; however, that, too, would be an additional sustaining ground for a dismissal of all claims against GEICO as UIM carrier. *See Williams v. Selective Ins. Co. of Southeast*, 446 S.E.2d 402, 315 S.C. 532 (1994) (plaintiff must pursue action against at-fault driver to recover UIM benefits).

CONCLUSION

For the foregoing reasons, the circuit court's order dismissing this action should be affirmed.



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December 10, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

SC Court of Appeals

The Hon. Paul M. Burch, Circuit Court Judge

Case No. 13-CP-16-0317

Appellate Case No. 2014-000626

Jonathan Teal and Stacy Teal.....Appellants,

v.

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

CERTIFICATE OF COUNSEL

I, Robert T. King, attorney for Respondent Government Employees Insurance
Company, hereby certify that the Brief of Respondent Government Employees Insurance
Company complies with Rule 211(b) of the South Carolina Appellate Court Rules.



Robert T. King