THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

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

Appellate Case No.: 2014-000626

JONATHAN TEAL AND STACIE TEAL.. Appellants

-vs.-

MARY ELIZABETH HICKMAN-TEDDER, ALLSTATE PROPERTY & CASUALTY INSURANCE COMPANY, GOVERNMENT EMPLOYEES INSURANCE COMPANY AND NATIONWIDE MUTUAL INSURANCE COMPANY........................ Respondents

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APPELLANTS' FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. The trial court erred in dismissing Plaintiffs' Complaint for fraud upon the court based upon the statute of limitations because there is no statute of limitations for fraud upon the court, because a statute of limitations argument was not properly before the court, because Plaintiffs sought to reopen a case that had previously been filed and served and because equitable tolling might apply.

II. The trial court erred in making factual findings that contradicted Plaintiffs' Complaint and by failing to view the allegations in Plaintiffs' Complaint in the light most favorable to Plaintiffs.

III. The trial court incorrectly found that Chewning v. Ford Motor Co. applies only to fraud committed by an opposing party.

IV. The trial court ignored an exception to the rule that an attorney's settlement actions are generally binding on a client.

V. The lower court erred in applying normal agency principles to the allegations of fraud on the court and attorney fraud.

VI. The trial court erred in analyzing the equities between the parties and not considering the integrity of the judicial system.

STATEMENT OF THE CASE

This is an action for fraud on the court. This case does not concern only private parties because the administration of justice has been tampered with. It involves far more than an injury to a single litigant.

Jonathan and Stacie Teal were involved in a traffic accident on June 29, 2010. (R. p. 20 ¶¶ 7-9; R. pp. 45-46 ¶¶ 11-12). Jonathan sustained significant injuries including but not limited to a subarachnoid hemorrhage caused by head trauma as well as injuries to his cervical spine, chest, and knees. Stacie suffered a fracture of her middle left finger and a fracture of her left distal radius, causing her permanent impairments to her left hand and wrist. The Teals retained William J. Rivers, III, and Schurlknight & Rivers, P.A.

(hereinafter "Schurlknight & Rivers"), to represent them related to the accident. (R. p. 22 ¶ 13).

The Teals entered into a contract (hereinafter "Contract") with Schurlknight & Rivers dated September 3, 2010. The Contract specifically provided that Schurlknight & Rivers would "make no settlement without consent of" the Teals. (R. p. 22 ¶¶ 13-15 and R. p. 31).

On or about June 16, 2011, Schurlknight & Rivers filed a lawsuit related to the Teals' claim in the Darlington County Court of Common Pleas (Civil Action No. 2011-CP-16-00416). The Teals consistently contacted Schurlknight & Rivers asking for updates on their case and were always informed that their case was going. (R. p. 22 ¶¶ 17-21; R. 46 ¶ 16; R. p. 53 ¶¶ 13-14).

On November 20, 2012, Nicholas W. Lewis, Esquire, was appointed by the South Carolina Judicial Department, Office of Disciplinary Counsel, to assume responsibility for Schurlknight & Rivers' client files. (R. p. 23 ¶¶ 22-24; R. p. 46 ¶ 18; R. p. 53 ¶¶ 18-20). On or about December 10, 2012, the Teals received a letter from Lewis advising (1) Schurlknight & Rivers would no longer be serving as the Teals' attorneys, (2) Lewis had the Teals' file related to their Claim, and (3) they should come pick up their file. (R. p. 23 ¶¶ 25-26).

The Teals traveled to Florence from Chesterfield a few days later to pick up their file. After reviewing the file, the Teals discovered that Schurlknight & Rivers had fraudulently settled the Teals' case, and had filed a fraudulent and unauthorized stipulation of dismissal with the Darlington County Circuit Court. The Darlington County Circuit Court accepted the fraudulent stipulation of dismissal and dismissed the

Teals' case from the docket. The Teals further discovered that their names had been forged on all of the settlement paperwork, including the settlement checks and release documents. (R. pp. 23-25 ¶¶ 26-41 and R. pp. 33-43; R. p. 53, ¶¶ 24, 26, 28-29). The Teals knew nothing about the settlement, never received any of the settlement proceeds, and never knew settlement negotiations were taking place. (R. p. 22, ¶ 20; R. pp. 23-25 ¶¶ 27-38).

Schurlknight & Rivers perpetrated fraud on the Court by fraudulently filing a stipulation of dismissal related to the Teals' case and fraudulently representing to the Court that the parties had reached a satisfactory resolution of the issues related to the case. (R. pp. 25-26, ¶¶ 41-49). The trial court relied upon the stipulation of dismissal and dismissed the Teals' case from the docket, with prejudice.

The Teals filed the instant Complaint raising an action for fraud upon the court, requesting that the judicial system undo the fraud that occurred and allow the Teals to proceed on their underlying claims of negligence. (R. pp. 12-43). Defendants all moved to dismiss the Teals' Complaint. (R. pp. 59-67).

The trial court held a hearing on the motions to dismiss on November 21, 2013. The trial court issued an order granting the motions to dismiss on December 13, 2013. (R. pp. 3-8). The Teals timely filed a Motion to Reconsider and a Motion requesting a hearing on the Motion to Reconsider. (R. pp. 135-147) Both motions were denied. (R. pp. 9-11). The Teals timely appealed.

STANDARD OF REVIEW

When reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court uses the same standard of review as the trial court, and when considering whether a complaint states facts sufficient to constitute a cause of action, the appellate court must base its ruling solely on the allegations set forth in the complaint. Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007); Cricket Cove Ventures, LLC, v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Ct. App. 2010). Thus, "[t]he motion cannot be sustained if the facts alleged in the complaint and deductions reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." FOC Lawshe Ltd. Partnership v. International Paper Co., 352 S.C. 408, 574 S.E.2d 408 (Ct. App. 2002).

SUMMARY OF ARGUMENT

The trial court erred in dismissing Plaintiffs' Complaint against Defendant Hickman-Tedder for fraud upon the court based on the statute of limitations because there is no statute of limitations for a fraud upon the court cause of action and because Defendant Hickman-Tedder failed to raise this argument in her Answer and Motion to Dismiss. The trial court also erred in dismissing Plaintiffs' Complaint against all Defendants based upon errors of law. The trial court made factual findings that directly contradict the allegations of Plaintiffs' Complaint and failed to view the allegations in the light most favorable to Plaintiffs. The trial court incorrectly defined fraud upon the court only as fraud committed by an opposing party. The trial court completely ignored the fraud exception to the general rule that an attorney's settlement actions are generally binding on a client. Finally, the trial court erred in applying normal agency principles to Plaintiffs' Complaint.

ARGUMENT

I. The trial court erred in dismissing Plaintiffs' Complaint for fraud upon the court based upon the statute of limitations because there is no statute of limitations for fraud upon the court, because a statute of limitations argument was not properly before the court, because Plaintiffs sought to reopen a case that had previously been filed and served, and because equitable tolling might apply.

A. There is no statute of limitations for fraud upon the court.

The trial court ruled that the "statute of limitations ran on June 29, 2013" and that Plaintiffs failed to serve their complaint "within the statute of limitations." (R. p. 7). "[T]here is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the court . . . ." Chewning v. Ford Motor Co., 354 S.C. 72, 84, 579 S.E.2d 605, 610 (2003). The trial court erred.

The trial court erroneously applied the statute of limitations from the underlying negligence action, ignoring the cause of action for fraud upon the court. This faulty logic eviscerates causes of action for fraud upon the court. Otherwise, the fact that there is no statute of limitations for fraud upon the court is meaningless, and all a litigant needs to do to overcome the "no statute of limitation" rule is refer to the statute of limitations in the underlying case.

B. A statute of limitations argument was not properly before the court.

The trial court erred in dismissing the Complaint based on the statute of limitations and/or Rule 3, SCRCP, because none of the Defendants moved for dismissal on these grounds or raised the statute of limitations as an affirmative defense in their Answers.

Rule 7(b)(1), SCRCP, requires that a moving party state with particularity the grounds of a motion. A review of the Motions to Dismiss and Answers reveals that none

of the Defendants ever moved to dismiss Plaintiffs' Complaint for failing to serve the Complaint within the statute of limitations. In fact, the words "statute of limitations" do not appear anywhere in the Motions to Dismiss or Memorandum in Support, and Rule 3 is not cited or otherwise referenced in any Defendants' Answer or Motions to Dismiss. See Rule 8(c), SCRCP (a statute of limitations defense is an affirmative defense that "shall [be] set forth affirmatively."). Because the Motions to Dismiss did not comply with Rule 7(b)(1), Plaintiffs did not have notice that Defendant was planning to raise a Rule 3 or statute of limitations argument. On December 13, 2013, Plaintiffs' Counsel wrote the Court explaining this situation and objecting to any substantive rulings on the statute of limitations argument. (R. pp. 177-186).

In Unisun v. Hawkins, 342 S.C. 537, 537 S.E.2d 559 (Ct. App. 2000), cert. dismissed as improvidently granted by 350 S.C. 6, 564 S.E.2d 676 (2002), the Court of Appeals concluded that Hawkins' Answer, which contained an averment that "Plaintiffs have failed to serve defendant Bruce Hawkins within the three year statute of limitations," was insufficient, standing alone, to raise a Rule 12(b)(5) defense relating to insufficiency of process. Id. at 541, 537 S.E.2d at 561. The Court of Appeals stated "[h]ere, Bruce failed to identify that he was moving to challenge service of process pursuant to Rule 12 and failed to specify any defects in the service of process. Having failed to allege process with even a minimal amount of specificity in his responsive pleading, Bruce may not now bootstrap the defense to his statute of limitations argument, a separate affirmative defense likewise subject to waiver." Id. at 543, 537 S.E.2d at 562. In addition, the Court of Appeals "reject[ed] Bruce's assertion that insufficiency of service of process is a 'lesser included offense' of the total failure to serve, such that

proper pleading of the defense of non-service requires less specificity than the defense of insufficiency of service of process." Id.

Defendant Hickman-Tedder moved to dismiss Plaintiffs' Complaint "[p]ursuant to Rule 12(b)(4) and/or (5) of the South Carolina Rules of Civil Procedure inasmuch as the Plaintiffs **have failed to properly serve** said Defendant[.]" (R. 59) (emphasis added). Prior to the time of the hearing, Defendant Hickman-Tedder was served, mooting the failure to serve argument. (R. p. 148; R. p. 164, lines 19-25). Aside from the fact that the statute of limitation argument fails as a matter of law, Defendant Hickman-Tedder cannot bootstrap the statute of limitations argument onto her failure "to properly serve" argument. [1]

C. Plaintiffs' sought to reopen a case previously filed and served.

In their Complaint, Plaintiffs sought to set aside the order dismissing Teal v. Hickman-Tedder, 2011-CP-16-00416, and to reopen the 2011 case due to fraud on the court. In Paragraph 49, Plaintiffs allege "[t]herefore, the Court should enter an order dismissing or otherwise voiding the dismissal entered in Civil Action 2011-CP-16-00416, and allow Plaintiffs to litigate their claims in the normal course." (R. p. 26). Based on the allegations of their Complaint, Plaintiffs sought to reopen a Complaint that was already filed and already served. More importantly, the South Carolina Supreme Court has found "there is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the court." Chewning, 354 S.C. at 84, 579 S.E.2d at 610.

[1] The Motions to Dismiss could not have included the Rule 3 and/or statute of limitations argument because assuming, arguendo, that the incorrect analysis raised by Defendant Hickman-Tedder and adopted by the Court applies, the statute of limitations arguably expired on June 29, 2013. However, Defendant's Answer and Motion to Dismiss were filed in May of 2013. Therefore, it was impossible for Defendant Hickman-Tedder to include a statute of limitations argument in her May of 2013 Motion to Dismiss when, accepting Defendant Hickman-Tedder's flawed logic, the statute of limitations did not expire until June 29, 2013.

D. Equitable tolling might apply.

Even if the within suit did have to be filed and served within three years of the automobile collision at issue, and even if Defendants had properly raised the argument in their Answers and Motions, there are factual issues that need to be resolved to determine whether or not equitable tolling would apply. (R. p. 172, lines 12-13). Equitable tolling is a judicial creation that "stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness." Magnolia North Property Owners' Ass'n, Inc. v. Heritage Communities, Inc., 397 S.C. 348, 371-372, 725 S.E.2d 112, 125 (Ct. App. 2012).

In this case, Plaintiffs called Schurlknight & Rivers and monitored their case. Despite their efforts, Plaintiffs found out in December of 2013 that their case had been fraudulently settled and dismissed by the trial court. Plaintiffs brought this proceeding approximately three months later. Fundamental practicality and fairness dictate that any possible statute of limitation be tolled during the time Plaintiffs believed (in good faith) that their claims were properly proceeding in court.

II. The trial court erred in making factual findings that contradicted Plaintiffs' Complaint and by failing to view the allegations in Plaintiffs' Complaint in the light most favorable to Plaintiffs.

A. Incorrect factual findings at odds with Plaintiffs' Complaint

The trial court found that an action for fraud upon the court sounded in equity and that "equity must first consider whether the Plaintiffs have adequate remedies at law before providing equitable relief." (R. p. 4). The trial court then concluded, with no

analysis or explanation, that "Plaintiffs have multiple adequate remedies at law . . . ." (R. pp. 4-5). This ruling was in error.

"A ruling on a motion to dismiss a claim must be based solely on the allegations set forth on the face of the claim. The motion cannot be sustained if the acts alleged and the inferences reasonably deductible therefrom would entitle the plaintiff to **any** relief on **any** theory of the case." Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009) (emphasis added and internal citations omitted). When considering a Rule 12(b) motion, "the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Ashley River Properties I, LLC, v. Ashley River Properties II, LLC, 374 S.C. 271, 277, 648 S.E.2d 295, 299 (Ct. App. 2007). In other words, "[t]he question is whether, viewing the allegations in the light most favorable to the plaintiff, the complaint states any valid claim for relief, even if the court doubts that the plaintiff will prevail." Clearwater Trust v. Bunting, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006). In the light most favorable to the Plaintiff means that every possible doubt must be resolved in the Plaintiff's favor. Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

Plaintiffs alleged in Paragraph 48 of their Complaint that they "do **not** have an adequate remedy at law." (R. p. 26) (Emphasis added). Rather than resolving any doubt as to whether or not this was correct in Plaintiffs' favor, the trial court made a ruling in direct contravention of the allegations of the Complaint and concluded that Plaintiffs have "multiple adequate remedies at law." This was an error as a matter of law.

B. Failing to view the allegations in Plaintiffs' Complaint in the light most favorable to Plaintiffs and dismissal because Plaintiffs might not prevail.

The trial court found "[t]herefore, it is doubtful that the conduct of Plaintiff's counsel would even constitute fraud on the court." (R. p. 7). However, the standard of review for motions to dismiss requires a court to deny motions to dismiss even if the judge believes plaintiffs will not ultimately prevail on the causes of action. Ashley River Properties, 374 S.C. at 278, 648 S.E.2d at 299. Thus, when deciding a Motion to Dismiss, the trial court, after viewing the allegations in the light most favorable to the plaintiff, must determine whether "the complaint states any valid claim for relief, **even if the court doubts that the plaintiff will prevail**." Clearwater Trust, 367 S.C. at 343, 626 S.E.2d at 335 (emphasis added).

Here, Plaintiffs clearly raised a cause of action for fraud on the court, thus stating a valid claim for relief. The fact that the trial court doubted that Plaintiffs would ultimately prevail on their fraud on the court claim is not a reason to dismiss the action. This Court should apply the appropriate standard of review for a Motion to Dismiss and reverse the trial court's Order granting the Motions to Dismiss.

III. The trial court incorrectly found that Chewning v. Ford Motor Co. applies only to fraud committed by an opposing party.

The trial court found that Chewning, 354 S.C. at 72, 579 S.E.2d at 605, applies only to factual scenarios where the fraud is committed by the opposing party. This was in error.

First, the South Carolina Supreme Court has rejected an attempt to limit Chewning's holding. In Ray v. Ray, 374 S.C. 79, 647 S.E.2d 237 (2007), the South

Carolina Supreme Court rejected the argument that Chewning holds that fraud on the court can only be committed by an attorney:

> However, **our holding in Chewning does not limit the finding of extrinsic fraud to misconduct of an attorney or an officer of the court.** As we noted in Evans, fraud upon the court has been defined as "that species of fraud which does, or attempts to, subvert the integrity of the Court itself, ***or*** is a fraud perpetrated 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." Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (1988) (quoting H. Lightsey, J. Flanagan, *South Carolina Civil Procedure,* 408 (2nd ed. 1985)) (emphasis added).

Id. at 85, 647 S.E.2d at 240 (emphasis added).

Second, none of the definitions of fraud in Chewning limit the fraud to fraud committed by the opposing party only. In Chewning, the South Carolina Supreme Court quotes several definitions of fraud on the court such as "that species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated 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[,]" "[f]raud upon the court is a serious allegation . . . involving corruption of the judicial process itself[,]" and "fraud on the court, whatever else it embodies, requires a showing that one has acted with an intent to deceive or defraud the court." Id. at 78, 579 S.E.2d at 608. Nothing in these definitions limits fraud on the court only to fraud committed by an opposing party, and the trial court erred in so holding.

To support its holding, the trial court cites the North Carolina Court of Appeals' opinion in Purcell Intern. Textile Group, Inc., v. Algemene AFW NV, 647 S.E.2d 667 (N.C. App. 2003). In Purcell Intern., the North Carolina Court of Appeals states that "Henderson[v. Wachovia Bank of N.C., N.A., 551 S.E.2d 464, 468 (2001)] allows a

court to grant relief on the basis of attorney fraud only when the adverse party's attorney commits the fraud." However, the North Carolina Court of Appeals in Henderson held that "[w]ithout so holding today, there may be situations so egregious that would entitle a party to be relieved of fraud on it by its own attorney, but this is not one of those situations." Id. at 469. North Carolina courts clearly contemplate situations where a party would be entitled to be relieved of fraud by its own attorney, and the trial court's reliance upon contrary findings are misplaced. While the facts of Henderson may not have supported such a finding, the facts of the instant case certainly do, especially under the standard of review for a motion to dismiss.

Third, nothing in the definition of extrinsic fraud limits extrinsic fraud only to fraud committed by the other party. The Court in Chewning focused on whether or not a party was deprived "of the opportunity to be heard. . . . because the fraud prevented a party from fully exhibiting and trying his case" and whether or not "there has never been a real contest before the court on the subject matter of the action." Id. at 81, 579 S.E.2d at 610.

The definitions of fraud upon the court and extrinsic fraud quoted above focus on whether a litigant has the chance for a full and impartial adjudication of his or her case. The litigation process is the only avenue available to Plaintiffs to resolve their dispute with Defendants. When there is only one method of dispute resolution, public policy requires that the method be fair, impartial, and free from fraud and that litigants be able to reopen and relitigate a case that was fraudulently resolved.

In this case, Plaintiffs never had the chance to present their case and were deprived of the opportunity to be heard so that there has never been a real contest before

the Court as to the underlying negligence allegations. The fraud here qualifies in all respects as extrinsic fraud on the court. The trial court erred in dismissing Plaintiffs' Complaint.

IV. The trial court ignored an exception to the rule that an attorney's settlement actions are generally binding on a client.

The general rule in South Carolina is that the settlement actions of an attorney are binding on a client, and that if the client is unhappy with the settlement, he must take that up with his attorney. Motley v. Williams, 374 S.C. 107, 111, 647 S.E.2d 244, 246 (Ct. App. 2007) ("It 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.").

However, it is equally well settled that the general rule does not apply in cases of fraud. Id. (citing Arnold v. Yarborough, 281 S.C. 570, 572 316 S.E.2d 416, 417 (Ct.App.1984) ("**Absent fraud or mistake**, where attorneys of record for a party agree to settle a case, the party cannot later repudiate the agreement. . . . 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**."); Crowley v. Harvey & Battey, P.A., 327 S.C. 68, 70, 488 S.E.2d 334 (1997) ("In South Carolina, an attorney may settle litigation on behalf of his client, and **absent fraud or mistake**, such a settlement is binding on the client."); Shelton v. Bressant, 312 S.C. 183, 208, 439 S.E.2d 833, 834 (1993) ("We uphold and reaffirm the long standing rule that a client is bound by his attorney's actions in the settlement of a case. Acts of an attorney are directly attributable to and binding upon the client. **Absent fraud or mistake**, where attorneys of record for a party agree to settle a case, the party cannot later repudiate the agreement.").

Other jurisdictions have specifically addressed the settlement fraud/forgery issue in cases involving facts virtually identical to this one and found that the fraud was not binding on the client. See e.g., NC-DSH, Inc. v. Garner, 218 P.3d 853 (Nev. 2009); Nehleber v. Anzalone, 345 So. 2d 822 (Fla. App. 1977); Henderson v. Great Atlantic and Pacific Tea Co., 32 N.W.2d 75 (Mich. 1975); Blakney v. Leathers, 867 N.Y.S.2d 145 (App. Div. 2d Dep't 2008); Coates v. Drake, 346 N.W.2d 858 (Mich.App.1984); Miotk v. Rudy, 605 P.2d 587 (Kan. App. 1980); Perkins v. Philbrick 443 A.2d 73, 34 UCCRS 210 (Me 1982); Walker v. Stephens, 626 S.W.2d 200 (Ark. App. 1981); Liquori v. Giordano, 42 Conn.Supp. 122, 603 A.2d 782, 5 Conn.L.Rptr. 121 (1991); Ball v. Teissonniere, 2000 WL 1868243 (Conn. Super. 2000); Humphreys v. Chrysler Motors Corp., 399 S.E.2d 60 (W.Va. 1990).

Although the trial court recognized in its Order that "South Carolina law is clear that any attorney may settle litigation on behalf of his client, absent fraud or mistake, and that such settlement is binding on the client," it flatly ignored the "absent fraud or mistake" exception and did not mention or otherwise address it in its order. (R. p. 6).

Because it is well recognized that fraudulent actions of an attorney are not binding on a client under these circumstances, the trial court erred in dismissing Plaintiffs' Complaint.

V. The lower court erred in applying normal agency principles to the allegations of fraud on the court and attorney fraud.

The lower court found that normal agency principles required the dismissal of Plaintiffs' Complaint. However, normal agency principles do not apply in cases of fraud upon the court.

South Carolina has, as discussed above, created an exception to normal agency rules for fraud on the court. However, no South Carolina Court has directly addressed this rule in the lawyer/client/third-party context.

Cases from other jurisdictions support the fact that normal agency principles do not apply in cases of fraud on the court and attorney fraud. When faced with very similar factual scenarios, courts from other jurisdictions have found that a client is not bound by a settlement obtained through fraud, misrepresentations, and/or forgeries. E.g., Capital Dredge & Dock Corp. v. City of Detroit, 800 F.2d 525, 533 (6th Cir. 1986) ("in the settlement context, if the attorney is serving only his own interest in absconding with the settlement proceeds . . . under this general principle of agency the client is not bound by the settlement"); Walker v. Stephens, 626 S.W.2d 200 (Ark. 1981) (finding that settlement documents forged by plaintiff's counsel in automobile accident case were not binding); Ball v. Teissonniere, 2000 WL 1868243 (Conn. Super. 2000) (finding that allowing a plaintiff to re-litigate claim fraudulently settled by prior counsel was "admittedly harsh, but the balance is more fairly struck by maintaining the plaintiffs' right of access to the courts in order to pursue their underlying claim."); Liquori v. Giordano, 603 A.2d 782 (Conn. Super. 1991) (finding that it "would be harsh justice . . . to bar an injured person who had never authorized or received the fruits of a settlement from having a day in court against an alleged tortfeasor, simply because that person had engaged an attorney who turned out to be criminally dishonest"); Nehleber v. Anzalone, 345 So. 2d 822 (Fla. App. 1977) (finding that in case where "former attorney, who, without the knowledge or consent of his client, negotiated a settlement with . . . insurance company, accepted a $6,000.00 check, forged his client's endorsement, cashed the check,

and absconded with the funds," such a settlement "is of no effect and may be repudiated or ignored and treated as a nullity by the client"); Miotk v. Rudy, 605 P.2d 587 (Kan. 1980) (holding "that the trial court abused its discretion in denying plaintiff's motion . . . to set aside the judgment of dismissal" where plaintiff's attorney forged plaintiff's endorsement to the draft made payable to the plaintiff and received the proceeds himself); Perkins v. Philbrick 443 A.2d 73 (Me, 1982) (finding the parties' obligations to "have not been discharged by the forged release and drafts"); Henderson v. Great Atlantic and Pacific Tea Co., 132 N.W.2d 75 (Mich. 1975) (in answering the following question: "Where a check is given for settlement of a claim in good faith by a defendant to an attorney at law who purports to represent a claimant, and that attorney wrongfully forges the client's name to said check, and keeps the entire proceeds thereof, is a later suit by the client against the defendant barred because of the wrongful acts of the attorney?" court found that the settlement was not binding and that plaintiff should "be allowed to proceed with her claim in the circuit court . . ."); Coates v. Drake, 346 N.W.2d 858 (Mich.App.1984) (holding that when a plaintiffs' attorney forged the clients' names to a settlement check and absconded with the funds, "the settlement is not binding on the client."); NC-DSH, Inc. v. Garner, 218 P.3d 853 (Nev. 2009) (finding fraud upon the court, holding that a settlement agreement fraudulently signed by a claimant's attorneys was not enforceable and stating "[w]e recognize the substantial countervailing argument that a client who hires a lawyer establishes an agency relationship and that, ordinarily, the sins of an agent are visited upon his principal, not the innocent third party with whom the dishonest agent dealt. However, courts do not treat the attorney-client relationship as they do other agent-principal relationships . . . when the question is whether a settlement

agreed to by the attorney binds the client."); Blakney v. Leathers, 867 N.Y.S.2d 145 (App. Div. 2d Dep't 2008) (finding that vacation of general release and stipulation of discontinuance, and restoration of action to active calendar were warranted, where plaintiff asserted that he neither authorized nor consented to a settlement, that signature on the general release and endorsement on settlement check were forgeries, and that he never received any of the proceeds); Humphreys v. Chrysler Motors Corp., 399 S.E.2d 60 (W.Va. 1990) (pointing out that a definite meeting of the minds of the parties is essential to a valid compromise, the court stated that there was no meeting of the minds because the plaintiffs did not approve of the compromise made by their lawyer without their authority. Concluding that the settlement was unauthorized by the purchasers and that their lawyer lacked authority to settle the case, the court refused to enforce the settlement agreement).

Defendants may attempt to minimize the applicability of these cases, arguing that they originate in jurisdictions in which an attorney does not have the implied authority to compromise a client's claims. While an attorney in South Carolina may settle litigation on behalf of a client under certain circumstances, one circumstance in which an attorney may **not** bind a client for settlement purposes is when fraud is present. See, e.g., Crowley, 327 S.C. at 70, 488 S.E.2d at 334, Motley, 374 S.C. at 111, 647 S.E.2d at 246, Arnold, 281 S.C. at 572, 6316 S.E.2d at 417. Here, Plaintiffs have clearly alleged fraud and therefore cannot be bound by the fraudulent settlement.

Under the arguments raised by Defendants, which the trial court adopted *in toto*, any purported settlement by an attorney is binding on the client, no matter what. Under this logic, if defense counsel fraudulently agreed to settle a claim for $1 billion when the

coverage limits were only $100,000.00, then the insurance company is bound by that agreement and would be legally required to pay $1 billion. Fraudulent actions in the settlement process should not cause such draconian results, which is presumably why South Carolina expressly recognizes that an attorney's settlement actions are binding on the client "absent fraud or mistake."

In the instant case, Schurlknight & Rivers served only their own personal interests in fraudulently settling Plaintiffs' case, forging settlement documents, lying to the trial court, and absconding with the settlement proceeds. Plaintiffs have never had their day in court, and they should not be prevented from having their day in court due to the dishonesty and fraud of Schurlknight & Rivers. A dishonest attorney should not be permitted to totally upend the judicial system. Moreover, the judicial system should not be helpless or unwilling to respond. Otherwise, the entire judicial system is subverted at the hands of an attorney willing to commit fraud. The trial court erred in dismissing the Teals' Complaint and preventing them from litigating their claims.

VI. The trial court erred in analyzing the equities between the parties and not considering the integrity of the judicial system.

In Chewning v. Ford Motor Co., the South Carolina Supreme Court addressed the concept of "fraud upon the court" by citing with approval Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944). In Hazel-Atlas, the Court noted the significance of fraud upon the Court, and why it is necessary to look beyond the equities to the litigants in correcting it:

> [Fraud on the Court] is not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence, is believed to have been guilty of perjury. Here . . . we find a deliberately planned and carefully executed scheme to defraud . . . the Circuit Court

> of Appeals . . . . This matter does not concern only private parties. . . . [T]ampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society.

Chewning v. Ford Motor Co., 354 S.C. 72, 79, 579 S.E.2d 605, 609 (2003) citing Hazel-Atlas Glass Co. The significance of fraud on the court is also evident in the fact that there "is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the court" and that "a litigant who has been defrauded need not establish prejudice." Chewning, 354 S.C. at 84, 579 S.E.2d at 611.

The South Carolina Supreme Court has also recognized that lawyer fraud can qualify as fraud upon the court. "Attorney fraud calls into question the integrity of the judiciary and erodes public confidence in the fairness of our system of justice. Accordingly, where an attorney embarks on a scheme to either suborn perjury or intentionally conceal documents, extrinsic fraud constituting a fraud upon the court occurs." Chewning, 354 S.C. at 83-84, 579 S.E.2d at 611.

Other jurisdictions addressing whether lawyer fraud in connection with a stipulated judgment/dismissal qualifies as fraud upon the court have found that it does. Specifically, the Nevada Supreme Court found as follows:

> The question thus comes down to whether lawyer fraud in connection with a stipulated final judgment can qualify as a fraud upon the court . . . . The district court found that Davidson committed a "fraud upon the court" when he signed and submitted a stipulated judgment for dismissal with prejudice to the court, which the court then signed and entered, terminating the Garners' claims. Fraud upon the court has been recognized for centuries as a basis for setting aside a final judgment, sometimes even years after it was entered. It is, of course, true that in most instances

> society is best served by putting an end to litigation after a case has been tried and judgment entered. For this reason, a final judgment, once entered, normally is not subject to challenge. However, the policy of repose yields when the court finds after a proper hearing that fraud has been practiced upon it, or the very temple of justice has been defiled. A case of fraud upon the court calls into question the very legitimacy of the judgment. Put another way, when a judgment is shown to have been procured by fraud upon the court, no worthwhile interest is served in protecting the judgment.

NC-DSH, Inc. v. Garner, 125 Nev. 647, 653, 218 P.3d 853, 858 (2009) (internal quotations omitted).

CONCLUSION

For the reasons contained herein and as raised in Appellants' Final Reply Brief and at oral arguments, the Order of the trial court should be reversed as stated herein.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned, J. Ashley Twombley, certifies that the herein Final Brief of Appellants complies with Rule 211(b) the South Carolina Appellate Court Rules.

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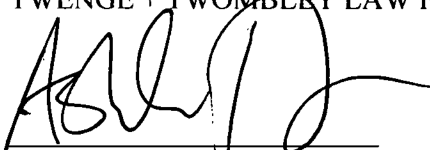
BY: 

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