

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2018-CP-40-06344

Appellate Case No. 2019-001488

RECEIVED

Jun 15 2020

SC Court of Appeals

MB Hutson / MB Hudson, Appellant,

v.

Penn America Insurance Company, Global Indemnity
Group, Inc., Timothy J. Newton, Esq., J.R. Murphy, Esq.,
John Doe #1, John Doe #2, Respondents,

**RESPONDENT
TIMOTHY J. NEWTON'S
MOTION TO STRIKE**

Respondent Timothy J. Newton hereby moves to strike Appellant MB Hutson/MB Hudson's appellate briefs in this appeal. Respondent Newton incorporates the grounds set forth in the Motion to Strike filed by Respondents Penn-America Insurance Company and Global Indemnity Group, Inc. on May 18, 2020.

Respondent Newton also moves to strike certain extraneous comments and scurrilous allegations from Appellant Hutson's appellate briefs in this appeal. Respondent would show in support thereof the following:

In his Response Brief filed April 27, 2020, Hutson alleged in paragraph 4 that Respondents "are concealing facts which create extrinsic fraud before this Court and Judges. This is criminally wrong." This is a new allegation that was not raised to the trial court.

In the same paragraph, Hutson alleged certain statements were made by Respondent Newton in settlement discussions. These allegations were not raised to the trial court. Respondent Newton objects to Hutson's use of briefing before this Court for the purpose of unsubstantiated slurs and defamatory comments.

In paragraph 6, Hutson alleged that "the Settlement Agreement . . . was researched by these Respondent's and fraud and co-extrinsic fraud were identified." Hutson cites his Exhibit 20, which is a three-page letter Hutson wrote to Newton and the mediator in which Hutson alleged fraud was committed by attorneys representing TLC Holdings, LLC (hereinafter "TLC") in a prior case. Hutson has never presented evidence that this alleged fraud was proven.

In paragraph 8, Hutson alleged that Respondents "had all contracts and fully understood the extrinsic fraud." Hutson again alleged criminal wrongdoing in that paragraph. Hutson never presented any evidence that Respondents had all the documents from his prior cases to the trial court. In fact, Newton filed an Affidavit before the trial court in which he averred he drove to Manning and copied the court record from the prior action in which Hutson claims fraud was committed, and that he did not have these

documents before that date. (Aff. of Timothy J. Newton filed June 24, 2019.) Hutson never presented any evidence that Respondents in this appeal had any involvement in Hutson's litigation with TLC until 2016, after court rulings had already been made regarding Hutson's claims against TLC.

In Hutson's Response Brief filed May 7, 2020, Hutson again alleged that Respondents "were provided with all contracts, documents and papers and had ample time to investigate." (pp. 1-2.) As discussed above, this unsubstantiated allegation was not argued to the trial court.

On page 3, Hutson alleged that Respondents concealed the fraud. He alleged on page 5 that Respondents "became participants" in the fraud. Then on pages 8 through 11, Hutson alleged, for the first time, that Respondents defrauded him. Hutson did not allege in his pleadings or argue to the trial court that Respondents defrauded him. It is inappropriate to raise new allegations for the first time on appeal. Pye v. Estate of Fox, 369 S.C. 555, 564-65, 633 S.E.2d 505, 510 (2006).

Throughout his Response Briefs, Hutson relied extensively upon his lack of candor toward this Court to present Respondents in a false light. Although Hutson is a *pro se* litigant, he has a responsibility for complying with the law. State v. Burton, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003). In this appeal, Hutson has accused Newton of fraud and ethical, moral, and criminal wrongdoing. Hutson is aware that litigants have a responsibility to refrain from making false statements to the tribunal. Rule 407, SCACR, Rule 3.3(a)(1). (See Appellant's Init. Br., p. 29.) Litigants are prohibited from falsifying evidence. Rule 3.4(b). Moreover, litigants are prohibited from threatening criminal and ethical charges to gain advantage in a civil matter. Rule 4.5.

Newton provided numerous documents to the trial court demonstrating that the information he had was, at best, doubtful and disputed as to whether fraud was committed in the prior case. (See, e.g., Def. Newton's Resp. to Pl's. Supp. Mem. filed June 24, 2019.) At the hearing, Newton pointed out that his e-mail was conditional: "*If you were ordered to develop property that was subject to lifetime membership rights, maybe that should have been brought to the court's attention.*" (Tr. p. 57 (emphasis added).) Hutson had no response. (Id.) Hutson has never come forward with evidence that Respondents knew of provable fraud. He relies on what are, at most, recitations of allegations by Newton and Laura Paton that are based upon information supplied to them by Hutson himself. Yet his briefs are full of the vilest accusations of fraud and moral, ethical, and criminal misconduct by Respondents.

Finally, Hutson attached a portion of an e-mail that was not presented to the trial court in a response brief. (Hutson Response Br. filed May 7, 2020, p. 7.) Because Hutson opened the door and has used the excerpt to portray the facts in a false light, the entire e-mail exchange is herewith provided. Hutson asked if the excess carrier was threatening to sue Penn-America. (Exh. 1.) Newton's response e-mail states: "You and [the excess carrier] both threatened to sue Penn-America if it didn't hurry up and settle." Hutson then e-mailed the attorney for the excess carrier (Kim Jackson) and demanded that the excess carrier participate in the settlement. (Id.)

Hutson appears to be using his briefing in this appeal as a vehicle for slander and harassment. Newton requests that this Court direct Hutson to confine his arguments to the record and to his grounds for contending, in non-disparaging terms, that the trial court erred in its ruling.

A federal judge has sanctioned Hutson for his similar misconduct before that tribunal during the course of this litigation. (Newton Exh. K.) In that Order, Judge David C. Norton found that Hutson had “established a pattern of making misrepresentations to the court, of making unsupported allegations of unethical and criminal conduct by [TLC], and of using the judicial process as a mechanism for harassment. . . . Indeed, Hutson routinely fails to provide factual or legal support for anything he files with the court.” (Id. at p. 6.) Hutson has continued that pattern in this appeal.

Accordingly, Respondent Newton hereby moves to strike the above-referenced allegations from Hutson’s Response Briefs. Newton also requests an order directing Hutson to refrain from further disparaging comments and to confine himself to appropriate arguments based upon the law and the facts before this Court.

Respectfully submitted,

s/ Timothy J. Newton
Timothy J. Newton, *pro se*
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100

Columbia, SC
June 15, 2020

EXHIBIT 1 TO NEWTON'S MOTION TO STRIKE

Tim J. Newton

From: Tim J. Newton
Sent: Friday, November 30, 2018 10:55 AM
To: Hutson
Subject: RE: Question

You and Torus both threatened to sue Penn-America if it didn't hurry up and settle.



Murphy & Grantland, P.A.
 Tim J. Newton, Esquire
tnewton@murphygrantland.com
 Post Office Box 6648
 Columbia, South Carolina 29260
 803-782-4100 ext. 1242
 803-454-1242 dd
 803-782-4140 fax
www.murphygrantland.com

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

From: Hutson <hutson4444@gmail.com>
Sent: Friday, November 30, 2018 10:52 AM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Re: Question

Kim refuses to speak to me. Don't understand, he's the guy threatening to sue Penn America if PA did not hurry and settle, right?

On Nov 30, 2018, at 10:50 AM, Tim J. Newton <tnewton@murphygrantland.com> wrote:

As we discussed, Penn-America can't settle the whole thing. You'll have to contact Kim Jackson.

<image003.png>

Murphy & Grantland, P.A.
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tnewton@murphygrantland.com
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From: Hutson <hutson4444@gmail.com>
Sent: Friday, November 30, 2018 10:49 AM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Re: Question

What part of this should I not be informed on. Please help me to understand. I am trying to move forward.

On Nov 30, 2018, at 10:45 AM, Hutson <hutson4444@gmail.com> wrote:

That does not tell me a thing. Is Torus cooperating since they were in such a hurry????

On Nov 30, 2018, at 10:44 AM, Tim J. Newton <tnewton@murphygrantland.com> wrote:

TLC is making things difficult

<image003.png>
Murphy & Grantland, P.A.
Tim J. Newton, Esquire
tnewton@murphygrantland.com
Post Office Box 6648
Columbia, South Carolina 29260
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From: Hutson <hutson4444@gmail.com>
Sent: Friday, November 30, 2018 10:43 AM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Re: Question

Considering I need my files, should I not be brought up to date, how much longer is this going to be dragged out?

On Nov 30, 2018, at 10:41 AM, Tim J. Newton <tnewton@murphygrantland.com> wrote:

Mr. Hutson,

It is not completely settled yet. I don't have any of your files, Frank would have them.

Tim N.

<image003.png>

Murphy & Grantland, P.A.
Tim J. Newton, Esquire
tnewton@murphygrantland.com
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803-782-4100 ext. 1242
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From: Hutson <hutson4444@gmail.com>
Sent: Friday, November 30, 2018 10:39 AM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Question

Wondering if I can get a usb thumb drive copy of my files. Also, if you could call Frank and let him know that I am picking up my files that it is ok.

Thanks. I have to simply assume that all has been settled. It would seem that I would get something by email telling me all is settled. But nothing.

Respectfully,

Hutson

Total Control Panel

[Login](#)

To: tnewton@murphygrantland.com [Remove](#) this sender from my allow list
From: hutson4444@gmail.com

You received this message because the sender is on your allow list.

Tim J. Newton

From: Hutson <hutson4444@gmail.com>
Sent: Friday, November 30, 2018 11:00 AM
To: Kim M Jackson. Torus; Tim J. Newton
Subject: Attention Kim Jackson

Kim, It's my understanding that Torus was going to sue Penn America if they did not agree to settle. I have a letter from Penn America stating that they are willing to pay their full max but you are the hold up.

This hold up is getting ready to cost me lots of money in damages. Should I not hear from you today, I will write you another letter and copy TLC the same. This is ridiculous that you want return my phone calls or emails. Getting impatient very fast over this.

Respectfully,

Hutson
803 308 2714

November 30, 2018

Total Control Panel

[Login](#)

To: tnewton@murphygrantland.com [Remove](#) this sender from my allow list
From: hutson4444@gmail.com

You received this message because the sender is on your allow list.

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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Court Judge

Case No. 2018-CP-40-06344

Appellate Case No. 2019-001488

M.B. Hutson / M.B. Hudson, Appellant,

v.

Penn America Insurance Co., Global Indemnity Group, Inc.,
Timothy J. Newton, Esq., J.R. Murphy, Esq., John Doe #1, John
Doe #2, Respondents,

PROOF OF SERVICE

I, the undersigned, for Defendant, Timothy J. Newton, do hereby certify that on June 15, 2020, I have served a copy of Respondents Timothy J. Newton's Motion to Strike in the above-referenced case by electronic mail and/or by placing same in the U.S. mail, postage pre-paid to:

M.B. Hutson
P.O. Box 2755
Orangeburg, SC 29116-2755

Appellant Pro se

Christian Stegmaier, Esq.
Laura Baer, Esq.
Collins & Lacey, P.C.
P.O. Box 12487
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cstegmaier@collinsandlacy.com
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*Counsel for Respondents Penn-America Ins. Co
And Global Indemnity Group, Inc.*



Sharon M. Hughes
Paralegal to Timothy J. Newton, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260

Columbia, SC
June 15, 2020

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fax

TO: Clerk of Court, SC
Court of Appeals

FROM: Sharon Hughes, Paralegal to
Timothy J. Newton

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Jun 15 2020

FAX: 803-734-1839

PAGES: 14

SC Court of Appeals

PHONE: 803-734-1890

DATE: June 15, 2020

RE: Appellate Case 2019-001488

CC:

- Urgent
- For Review
- Please Comment
- Please Reply
- Please Recycle

Comments:

Please see the attached Motion to Strike for filing. Any questions or concerns, please contact Sharon Hughes at (803) 782 4100 ext. 1307.

Thank you,

Sharon Hughes



MURPHY & GRANTLAND, P.A.

Timothy J. Newton
Direct dial 803-454-1242
tnewton@murphygrantland.com

June 15, 2020

VIA FACSIMILE 803.734.1839 & U.S.MAIL

Jenny Abbott Kitchings, Clerk of Court
S.C. Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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Jun 15 2020

SC Court of Appeals

Re: MB Hutson/MB Hudson v. Penn America Insurance Company, Global Indemnity Group, Inc., Timothy N. Newton, Esquire, JR Murphy, Esquire, John Doe #1 and John Doe #2

Civil Action No.: 2018-CP-40-06344
Appellate Case No.: 2019-001488
Our File No.: 1565-0050

Dear Ms. Kitchings:

Please find attached Respondent Timothy J. Newton's Motion to Strike and Exhibit One (1) to his motion, together with Proof of Service for filing in the above-referenced matter. A hard copy of same has been placed in the U.S. Mail to the South Carolina Court of Appeals pursuant to Rule 262(a)(2), SCACR.

With kind regards, I am

Sincerely yours,

s/Timothy J. Newton

Timothy J. Newton

TJN/smh
Attachments

cc: M.B. Hutson, Appellant *Pro se*
All Counsel of Record