

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

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SC Court of Appeals

MB Hutson/MB Hudson, ...Appellants,

v.

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

**RESPONDENT TIMOTHY J. NEWTON'S
MEMORANDUM
IN OPPOSITION TO APPELLANT HUTSON'S
EMERGENCY MOTION TO HAVE OPEN HEARING
AND IN SUPPORT OF NEWTON'S
MOTION TO DISMISS APPEAL**

Respondent Timothy J. Newton submits the following Memorandum in opposition to Appellant MB Hutson/MB Hudson's "Appellate's Emergency Motion To Have Open Hearing Due to Respondents Committing Extrinsic Fraud on the South Carolina Court of

Appeals and its Judges” (hereinafter “Emergency Motion”). Newton’s above-referenced Memorandum is also submitted in support of his Motion to Dismiss this appeal.

BACKGROUND

This is an appeal from two Orders granting Respondents’ motions for summary judgment. Appellant Hutson¹ generally alleged in this action that Respondents failed to take appropriate actions to vindicate his rights with respect to a third party, TLC Holdings, LLC and its principals (hereinafter collectively “TLC”), who Hutson alleges committed fraud upon the court in prior related lawsuits. Judge Michael G. Nettles granted Respondents’ dispositive motions on July 18, 2019.

This appeal has been fully briefed. Appellant Hutson filed his Initial Brief on March 3, 2020. Respondents J.R. Murphy and Timothy J. Newton filed their Initial Brief and Designation of Matter for the Record on Appeal on April 2, 2020. Respondents Penn-America Insurance Company and Global Indemnity Group, Inc. (hereinafter collectively “Penn-America”) filed their Initial Brief and Designation of Matter on April 23, 2020. Appellant filed his reply brief to Newton and Murphy on April 27, 2020. Hutson’s reply brief to Penn-America was filed on May 7, 2020.

On May 18, 2020, Respondents Penn-America filed a Motion to Strike certain matters from Appellant Hutson’s briefs because they were not raised to the trial court. Respondent Newton also filed a Motion to Strike for similar reasons on June 15, 2020. This Court has not yet ruled on those motions.

¹ Appellant’s legal name is Morris Beach Hutson. This was established when Hutson produced a copy of his driver’s license for his deposition on May 18, 2015 in a prior related action, William Reed, et al. v. Big Water Resort, LLC, et al., Civ. Action No. 2:14-cv-01583-DCN (D.S.C.) (hereinafter, “the Class Action”). Hutson’s driver’s license is attached as Exhibit JJ.

The briefing is now closed. The deadline for Hutson to serve the Record on Appeal was June 26, 2020. Rule 201(a), SCRCF, as modified by the Appellate Courts' Amended Coronavirus Emergency Order filed May 29, 2020. However, Hutson has failed to comply with this requirement. (See Respondents Motion to Dismiss Appeal.)

Rather than serve the Record on Appeal and withdraw the material that Appellant Hutson improperly presented in his briefs, Hutson apparently filed a cross-motion seeking an "open hearing." (Hutson Emergency Motion served upon the undersigned via U.S. Mail on July 6, 2020, but filing is unconfirmed as of this date due to Coronavirus quarantine.) Hutson has also asserted new allegations in an apparent attempt to assert a new cause of action for fraud in this Court. Hutson's Motion is improper, and it represents an attempt to circumvent the Appellate Court Rules and to re-try the case on appeal.

HUTSON'S ALLEGATIONS

In Hutson's Emergency Motion, he cited the elements for fraud upon the court as articulated by the federal Sixth Circuit. Demjanjuk v. Petrovsky, 10 F.3d 338 (6th Cir. 1993). Hutson argued in his Emergency Motion that all Respondents and current counsel for Penn-America, Christian Stegmaier, are "actively perpetrating extrinsic fraud." (Emergency Mot., p. 2.) Hutson alleged that this fraud "prevents Appellant the opportunity from his case being heard and believed." (Id.) Hutson further alleged that Respondents and Stegmaier are "actively plotting against this Appellant's cry to be heard in order to protect themselves from professional and financial repercussions for their breaking the professional oath and the SC Ruled of Professional Conduct." (Id.)

Hutson alleged that that he was Penn-America's putative insured, and that he was "being sued by attorneys who orchestrated and perpetrated the original Extrinsic Fraud

upon the Court. (Emergency Mot., p. 3.) Hutson alleged that due to Respondents' failure to disclose this "crime," Hutson "consequently lost all cases" that were filed against him. (Id.) Hutson alleged he "was unaware of the fraud that had been discovered by these Respondents." (Id. at p. 4.)

Hutson alleged that "Respondents Newton and Murphy filed a complaint to terminate Appellant's insurance in the middle of the Federal Court suit that reflects their "blatant efforts to distance themselves from the underlying fraud." (Emergency Mot., p. 3.) Hutson alleged that Penn-America "made a business decision not to defend him." (Id. at p. 7.) However, Hutson admitted that Penn-America retained Laura Paton, and later Frank Gordon, to defend him. (Id.)

Hutson alleged that Respondent Newton admittedly knew of the purported fraud and refused to expose it. (Id.) As alleged, none of the Respondents advised Hutson "that his doom was going to be directly and consequentially caused by the Insurance company(s) choosing not to defend/disclose the underlying Extrinsic Fraud." (Id. at p. 7.)

Hutson argued that Respondents "bec[ame] part and parcel to the Extrinsic Fraud" by "concealing critical, criminal information from the Courts" their knowledge of the alleged fraud. (Emergency Mot., p. 7.) He alleged that the defense Penn-America provided was a mere "farce" because it could "never win." (Id.) Hutson alleged that:

Respondents still refuse to disclose to the Appeals Court that they orchestrated a mission to hush all knowledge about the fraud initiated by their fellow attorneys and that they 'professionally' concealed that truth as they appeared before many Circuit, State, and now Appellate Judges. Respondents concealed the attorney plotted and executed plan against Appellant in the courts.

(Emergency Mot., p. 8.) Hutson alleged that this alleged fraudulent concealment "prevent[ed] legal punishment on the attorney group(s) and thereby cement[ed]

Appellant's losses in court and ma[de] Appellant their sacrifice on the bloody alter of self pride and the perpetuation of fraud to protect their fellow attorneys." (Id.)

Hutson's fraud claim is based upon Respondents' knowledge of two documents. The first is an excerpt from an unfiled counterclaim upon which Hutson handwrote the following: "Prepared by Laura Paton August 8, 2016." (Emergency Mot., first exhibit, hereinafter "Alleged Paton Counterclaim.") Hutson alleged that "Paton stated that she prepared the attached document based on her investigation and her review of all contracts, paperwork and legal records." (Emergency Mot., p. 3.) Hutson argued that this document "clearly shows in detail that TLC Holdings, LLC's attorneys committed the initial and underlying extrinsic fraud." (Id.)

The second document upon which Hutson relies is an e-mail dated August 13, 2018 from Newton to Hutson under the heading "Fwd: Setting aside the Judgment." (Emergency Mot., second exhibit, hereinafter "Newton E-mail".) Hutson argued that this e-mail proves that Newton knew of the underlying fraud and refused to expose it. (Emergency Mot., p. 4.)

Hutson also points to an e-mail he sent to the mediator on October 23, 2018. (Emergency Mot., p. 8.) In that e-mail, Hutson alleged that TLC's lawyers at the firms Womble Carlyle Sandridge & Rice and Turner Padgett Graham & Laney were engaged in fraud and extrinsic fraud upon the court. (Emergency Mot., fourth exhibit.) As alleged, TLC's lawyers "authored fraudulent contracts, which structured and concealed the fraud." (Id.) This fraud was allegedly committed in a Lease Purchase Agreement and Membership Interest Purchase Agreement in December 2010 and also in the Settlement Agreement and Consent Order signed by now-Justice George C. James Jr. in 2012. (Id.)

As a result of this alleged fraud, Hutson claimed that Penn-America's settlement money was "not useable." (Id. at p. 2.) Hutson warned that settlement negotiations should halt because Hutson "plan[ned] to file to set aside the fraudulent 2012 Settlement Agreement and Consent Order prior to your meeting planned for November 2, 2018." (Id. at p. 2.) Hutson put Penn-America and Newton on notice that they should not pursue settlement negotiations with TLC "until after my set aside complaint is concluded." (Id.)

Hutson also attached to his Emergency Motion an Affidavit of Mark W. Hardee. (Fifth exhibit.) In that Affidavit, Hardee averred that Hutson "retained Paul Weissenstein to represent him in litigation involving TLC Holdings LLC and Big Water Resort." (Id. at ¶ g.) As averred, Hutson intended to purchase and develop property through a lease purchase agreement that included an ongoing business. (Id. at ¶ h.) According to the Affidavit, Hutson was unaware that a title defect existed on the property due to "hundreds of 70 year right to sole use agreements" TLC had sold that made the property undevelopable. (Id. at ¶¶ i. and j.) These title defects and other misrepresentations by TLC "doomed" Hutson's project "from the start." (Id. at ¶ l.) Hutson retained Weissenstein to represent him in eviction proceedings brought by TLC. (Id. at ¶ l.) Upon Weissenstein's advice, Hutson settled with TLC and signed a release. (Id. at ¶¶ m. and n.) Hardee's affidavit is the basis for a separate attorney-malpractice appeal against Weissenstein that is pending before this court. M B Hutson v. A. Paul Weissenstein, Appellate Case No. 2019-000873.

RESPONSE TO HUTSON'S NEW ALLEGATIONS

The arguments and evidence Hutson submitted in support of his Emergency Motion are generally a rehash of his arguments that have been briefed for appeal.

However, Hutson's Emergency Motion makes certain new claims that were not argued to the trial court. Hutson now contends that Respondents are actively perpetrating an ongoing fraud against Hutson and this Court. Whereas Hutson's argument to the trial court was that Respondents *knew* of a purported fraud upon the court committed by TLC and failed to disclose it, Hutson now contends that Respondents are *actively engaged* in the alleged fraud. Hutson has begun alleging that Penn-America's counsel in this action, Christian Stegmaier, is conspiring with Respondents to perpetuate the alleged fraud. Hutson has requested that this Court conduct a hearing on his allegations of fraud upon this Court. Furthermore, Hutson has stated that he has filed a complaint with the South Carolina Commission on Lawyer Conduct that is awaiting the disposition of this appeal. For these reasons, the undersigned finds it necessary to address Hutson's allegations that Respondents and their counsel are actively participating in an ongoing fraud.

The factual background for this appeal has been briefed and need not be repeated here. The undersigned craves reference to the Statement of the Facts in Respondents J.R. Murphy and Timothy J. Newton's Initial Brief filed April 2, 2015, pages 2-15 (hereinafter "Newton Brief"), and incorporates that Statement of Facts as if fully set forth herein. The exhibits attached to Hutson's Emergency Motion sufficiently demonstrate that the "initial underlying fraud" allegedly committed by TLC and its attorneys relates to Hutson's lease-purchase transaction with TLC and Settlement Agreement and Consent Order from TLC's 2011 Ejectment Action against Hutson. (See Newton Brief, pp. 3-5, 7-9.)

Through his exhibits, Hutson admits that he was represented by counsel when he entered into the Settlement Agreement in the Ejectment Action. (Emergency Motion, fifth exhibit: Aff. of Hardee, ¶ 1.) Hutson entered into the Settlement Agreement and Consent

Order upon advice of his attorney at the time, A. Paul Weissenstein. (Id. at ¶¶ m. and n; accord Newton Brief at p. 9.)

The undersigned showed in his Initial Brief that several judicial orders ruled that Hutson released all claims against TLC with respect to the original transaction by breaching the Settlement Agreement and Consent Order. (Newton Brief, pp. 8 (Order of Judge (now Justice) George C. James, Jr.); 9-11 (Report and Recommendation of Magistrate Judge Mary Gordon Baker); 11 (Order of District Judge David C. Norton); 12 (Order of Judge R. Ferrell Cothran, Jr.)) Hutson was sanctioned in federal court for continuing to raise this same issue after it had been ruled upon. (Newton Brief, pp. 12-13.) Respondents were not parties to any of these cases.

Hutson's allegation that Penn-America's declaratory judgment action was filed in a blatant effort to distance itself from the underlying fraud (see Emergency Motion, p. 3) is nothing more his personal opinion. The Complaint in the Coverage Action raised issues concerning Hutson's status as an insured and the existence of coverage for Hutson's intentional misconduct. (Newton Brief, p. 13.)

The undersigned showed in his Initial Brief that the judicial rulings that barred Hutson's claims against TLC predated Respondents' involvement. Justice James' ruling that Hutson breached the Settlement Agreement and Consent Order was from March 2014. (Newton Brief, p. 8.) The automatic release provision in the Settlement Agreement was enforced in Magistrate Judge Baker's ruling on April 5, 2016. (Id. at p. 10.) Penn-America's declaratory judgment action was not filed until June 14, 2016. (Id. at p. 13.) By the time Respondents had any involvement in Hutson's litigation with TLC, it had already been judicially established that Hutson breached the Settlement Agreement and

Consent Order and thereby released all claims he may have against TLC relating to Hutson's lease-purchase transaction with TLC.

The undersigned demonstrated that Hutson could not prove Respondents knew of provable fraud upon the court by TLC and/or its counsel. Hutson knew about the lifetime campground memberships before he entered into the lease purchase transaction with TLC. (Newton Brief, p. 22.) It was also proven that deposition testimony did not corroborate Hutson's claim that all of the property at issue was subject to the lifetime memberships. (*Id.* at 23.) Thus, Hutson's only possible remaining course of action against TLC—an attempt to set aside the judicial rulings based upon fraudulent inducement—was doubtful and disputed.

Hutson made no attempt to deal with the evidence Newton marshalled in his Initial Brief. Hutson merely repeated his allegations in his Reply Brief. (Appellant's Response to (Timothy Newton and J.R. Murphy) Respondents' Initial Brief filed April 27, 2020.) Hutson new claims of fraud and active participation in fraud upon the court by Respondents is not based upon any new evidence.

I. Hutson's request for an open hearing is procedurally improper.

Hutson's Emergency Motion is frivolous because appellate courts do not have jurisdiction to conduct evidentiary hearings. The South Carolina Court of Appeals only has appellate jurisdiction; the governing statute does not confer original jurisdiction. S.C. Code Ann. § 14-8-200. The South Carolina Rules of Appellate Procedure have no mechanism for holding evidentiary hearings. Appellate courts merely correct errors of law or facts and, if necessary, remand for further factfinding by the trial court. See Modern

Fin. Co. v. Hicks, 235 S.C. 212, 110 S.E.2d 859 (1959) (distinguishing between an appellate court's original and appellate jurisdiction).

II. Hutson's fraud claims fail on the merits.

Furthermore, Hutson's Emergency Motion is meritless. His contention that Respondents are involved in extrinsic fraud is based upon two documents. Neither of them come close to proving knowledge of fraud upon the court or fraud against Hutson.

A. The Alleged Paton Counterclaim

The first is a counterclaim from a prior lawsuit that was allegedly prepared by an attorney Penn-America retained to represent Hutson, Laura Paton. (See Init. Br. of Appellant filed Mar. 3, 2020, p. 14.) This cannot prove knowledge of participation in fraud upon the court because allegations, in and of themselves, do not constitute evidence.

Pleadings merely inform the opposing party of the legal and factual positions the pleader will attempt to prove at trial. Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573–74, 743 S.E.2d 778, 785 (2013). A party cannot withstand a motion for summary judgment merely by relying upon pleadings. Rule 56(c), SCRPC. Pleadings generally become evidence only when they are admitted by the opposing party. 32 C.J.S. Evidence § 546 (June 2020 Update). Pleadings in one case generally may not be used as evidence in a subsequent case. 32 C.J.S. Evidence § 547 (June 2020 Update).

The opposing party in that action, TLC Holdings, LLC (hereinafter "TLC"), did not admit the allegations in Hutson's counterclaim. In fact, Judge Ferrell Cothran, Jr., granted TLC's motion for summary judgment as to Hutson's counterclaim by Order filed March 2, 2017. (See Newton Brief, pp. 11-12; Exh. C: Cothran Order, attached.).

Hutson's allegations against TLC and its principals are just that—allegations. As a matter of law, Hutson's reliance upon Respondent's knowledge of Hutson's allegations against a third party as proof of alleged fraud is misplaced.

Furthermore, the handwritten notation on the pleading appears to be inaccurate in at least one respect. The handwritten notation indicates that Paton prepared the counterclaim on August 8, 2016. (Emergency Motion, first exhibit.) The exhibit appears to be pages 9 through 25 of Hutson's Amended Answer to Complaint and Counter-claims Back. That pleading was filed in the state Defamation Action on March 29, 2016, over six months prior to the date Hutson provided. (Newton Brief, p. 11.) A copy was filed in this action on May 30, 2019 as Exhibit H to Newton's Memorandum in Support of his Motion to Dismiss or Motion for Summary Judgment. (Id.)

This inaccuracy is important for two reasons. First, the actual filing date occurred before a key judicial ruling. On April 5, 2016, Magistrate Judge Mary Gordon Baker issued her Report and Recommendation in which she found that Hutson could not prove the release could be set aside for fraud. (See Newton Brief, p. 10.) Magistrate Judge Baker found that Hutson's counterclaims against TLC in the Class Action were nearly identical to Hutson's prior counterclaims in the Ejectment Action. Reed v. Big Water Resort, LLC, Civ Action No. 2:14-1583-DCN-MGB, 2016 WL 7435620 at p. *8 (D.S.C. signed Apr. 5, 2016 (hereinafter "Baker Order")) (a copy is attached as Newton Exh. A.) She specifically found that all of Hutson's fraud claims related to the original transaction, not the release. Id. at *14. She found that Hutson failed to provide any evidence that he was fraudulently induced to enter into the Settlement Agreement and the Consent Order.

Id. Thus, even if Paton believed Hutson was defrauded as of the time the counterclaim was pled, that belief was undermined by the subsequent judicial ruling.

The inaccuracy is also important because it reflects on the credibility of the handwritten information. Hutson never presented any evidence that Paton prepared the counterclaims. Moreover, the content of the counterclaim is merely a rehash of allegations that Hutson asserted in a prior action, as found by Magistrate Judge Baker.

B. The Newton E-mail

Hutson also relies upon an e-mail to him from the undersigned dated August 13, 2018. (Emergency Motion, second exhibit.) In that E-mail, the undersigned warned Hutson of a possible claim he may have against TLC. The content of the e-mail is summarized in the briefing for this appeal. (Newton E-mail, pp. 5-6.) Hutson's argument that this e-mail proves fraud against Hutson and fraud upon this Court are meritless.

1. The evidence Hutson presented does not prove fraud.

To prove fraud, Hutson must demonstrate, by clear and convincing evidence, (1) a representation, (2) its falsity, (3), its materiality, (4) either knowledge of its falsity or a reckless disregard for its truth or falsity, (5) intent that the representation be relied upon, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to rely thereon, and (9) the hearer's consequent and proximate injury. M.B. Kahn Constr. Co. v. S.C. Nat'l Bank, 275 S.C. 381, 384, 271 S.E.2d 414, 415 (1980). Failure to prove any of the nine elements is fatal to recovery. Id.

Hutson cannot prove that Newton made a false representation in the e-mail. A "representation," for purposes of a fraud claim, does not relate to an attorney-client relationship. A representation has been defined as "a statement (or a set of

‘communicative’ actions) which concerns an *existing fact*.” F. Patrick Hubbard and Robert L. Felix, The South Carolina Law of Torts, p. 371 (4th ed. 2011).

Hutson does not allege that the information Newton provided to him in the e-mail is false. Hutson’s use of the E-mail throughout this litigation is based upon his recognition that the information therein is true. If it were not true, then Hutson would have no basis for claiming it should have been brought to the attention of the courts. Hutson’s fraud claim stumbles at the gate. Thus, Hutson cannot demonstrate the need for an open hearing on his new claim that Respondents defrauded him.

2. Hutson’s evidence does not prove fraud upon this Court.

Hutson’s core claim is that Newton’s failure to notify the courts of the content of his E-mail constitutes fraud upon the court. Hutson’s new claim that Respondents committed fraud upon this Court is just as meritless.

A claim for fraud upon the court seeks to re-open a prior judgment that was allegedly obtained by fraud. There has been no prior litigation between Hutson and Respondents. There is no prior judgment to set aside—fraudulent or otherwise.

Hutson’s claim does not involve misconduct by Respondents before this Court by which they obtained a prior judgement against him. It involves Respondents’ alleged failure to disclose misconduct by third parties (TLC) that was allegedly committed against Hutson in a prior case. Respondents were not involved in the prior case in any way. Moreover, Respondents did not conceal the alleged fraud from Hutson. Newton’s E-mail conclusively demonstrates that Respondents disclosed TLC’s conduct to Hutson.

Penn-America did not fail to defend Hutson in the cases in which his defense and indemnification was tendered. Penn-America paid its limit to settle those cases. The only

thing Penn-America declined to do was to retain counsel on his behalf to prosecute Hutson's affirmative claims against TLC—claims that require the filing of a separate lawsuit. What Hutson means by “defend” is that, in his view, Penn-America should have either prosecuted his claims against TLC for him or paid his demand of \$500,000. Penn-America owes no such duty, nor must it accede to Hutson's attempted extortion.

A claim for fraud upon the court is inapplicable under the facts of this case. Moreover, Respondents' alleged conduct does not constitute fraud upon the court.

Applicable law

Fraud upon the court invokes the equitable power of a court to set aside judgments that are tainted with fraud. The seminal case is Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944). In that case, the court found a “deliberately planned and carefully executed scheme to defraud not only the Patent Office but the Circuit Court of Appeals.” Id. at 245. This fraudulent scheme was set forth in detail in the opinion.

Hartford applied for a patent and was confronted with opposition by the Patent Office. Id. at 240. To buttress the patent application, Hartford procured an expert named William P. Clarke to sign a spurious article that was actually written by one of Hartford's lawyers, and that was subsequently published in a trade journal. Id. at 240-41. Based upon the spurious article, Hartford's patent was granted. Id.

Hartford then sued Hazel for patent infringement. 322 U.S. at 241. The District Court dismissed the case. On appeal, Hartford raised the spurious article and the District Court's ruling was reversed. Id.

Hazel learned that Hartford's lawyers admitted drafting the spurious article and hired an investigator to interview Clarke. 322 U.S. at 241-42. Hartford sent a

representative who secretly paid off Clarke to sign an affidavit stating that Clarke was the true author of the spurious article. Id. at 242-43.

The Supreme Court of the United States held that the above-described misconduct constituted fraud upon the court. It was not merely a case of a judgment obtained with the aid of a witness who was subsequently believed to have committed perjury. U.S. 238 at 245. It was a deliberate scheme to tamper with the administration of justice. Id. at 246. The misconduct was not only fraudulent, it was illegal. Id. at 250.

South Carolina's fraud-upon-the-court jurisprudence is based upon Hazel-Atlas. Chewning v. Ford Motor Co., 354 S.C. 72, 79, 579 S.E.2d 605, 609 (2003). Chewning involved allegations that Ford suborned perjury from an expert witness and concealed key documents to avoid liability for Bronco II rollover accidents. Id. at 76, 579 S.E.2d at 607. The Supreme Court of South Carolina held that this type of misconduct, when committed by an attorney, constitutes extrinsic fraud. Id. at 82-83, 579 S.E.2d at 610-11.

On the other hand, mere failure to disclose to an adversary or court matters which would defeat one's own case is intrinsic fraud. Chewning, 354 S.C. at 81, 579 S.E.2d at 610. Relief from a judgment is granted for extrinsic fraud, but not for intrinsic fraud. Id. at 82, 579 S.E.2d at 610.

The alleged non-disclosure does not constitute fraud upon the court

Hutson cited case law stating that fraud upon the court may arise from either a "positive averment" or concealment when one is under a duty to disclose. (Emergency Motion, p. 2.) Hutson has not alleged or produced evidence of any overt actions taken by Respondents in this case to deceive this Court. His claim is that Respondents knew about the TLC's alleged fraud upon a prior court, but failed to acknowledge it before this Court.

Thus, Hutson must prove that Respondents were under a duty to disclose. Hutson can prove no such duty.

Hutson relies upon Demjanjuk 10 F.3d 338, which is frequently cited for the proposition that mere nondisclosure constitutes fraud upon the court. Douglas R. Richmond, Critical Contours of Fraud on the Court, 37 Rev. Litig. 1, 35 (2018). Demjanjuk was an extradition and denaturalization case in which the prosecutors failed to produce exculpatory material under Brady v. Maryland, 373 U.S. 83 (1963). Richmond, p. 35. The government allegedly failed to disclose information in its possession that another guard was “Ivan the Terrible.” Demjanjuk, 10 F.3d at 340. Demjanjuk does not apply in civil cases because discovery violations do not rise to the level of fraud upon the court. U.S. v. Sierra Pac. Indus., Inc., 862 F.3d 1157, 1171–72 (9th Cir. 2017).

Here, Hutson cannot demonstrate any duty to disclose. This case does not involve a government’s duty to produce Brady material in a criminal prosecution. Hutson did not even serve discovery responses because he had already been dismissed from the Coverage DJ at the time of Newton’s Email. Hutson’s claim is based solely upon his opinion as to Penn-America’s fiduciary duties as his liability insurer.

The Rules of Professional Conduct do not support Hutson’s claim that the undersigned had a duty to disclose information to either Hutson or the court. Rule 4.1(b) prohibits an attorney from “fail[ing] to disclose a material fact when disclosure is necessary to avoid assisting in a criminal or fraudulent act *by a client*” Despite Hutson’s incessant name-calling, he has not alleged or produced evidence of any fraud or crime that Newton’s client at the time, Penn-America, intended to commit against Hutson.

The Comments specifically state that a lawyer has no duty to inform an opposing party of relevant facts. Rule 407, SCACR, Rule 4.1, Comment [1].

This Court is not the proper forum for adjudicating Hutson's claim

Furthermore, a claim of fraud upon the court must be brought in the court in which the fraud was allegedly perpetrated. Chewning v. Ford Motor Co., 35 F. Supp. 2d 487 (D.S.C. 1998). Federal courts cannot enjoin state court proceedings. Id. at 492.

Penn-America retained Murphy and Newton to represent it in a federal declaratory judgment action. (Newton Brief, pp. 3, 13.) The fraud Hutson alleges was committed in the Ejectment Action, which was filed in the Court of Common Pleas for Clarendon County. (Newton Brief, pp. 7.) The Ejectment Action was closed after Justice James issued his Order in March 2014. Hutson's sole avenue for recovery was to file an independent action to set aside the judgment in state court in Clarendon County. The undersigned showed in his brief that Penn-America had no duty to file separate litigation on Hutson's behalf. (Newton Brief, pp. 18-19.)

Respondents lack standing to prosecute Hutson's claims against TLC

Hutson fails to recognize that Respondents never had standing to raise his claim of fraud upon the court. "A party with no interest in the litigation generally has no standing." Herring v. F.D.I.C., 82 F.3d 282, 285 (9th Cir. 1995). A non-party's interests must be directly affected to raise a claim of fraud upon the court. Id. Courts lack inherent power to police claims of fraud upon the court when there is no justiciable case or controversy. Id. at 285-86. Thus, "the court properly refuses to set aside a judgment based on possible fraud on the court where the claim is raised by a nonparty without an interest in the litigation." 21A Fed. Proc., L. Ed. § 51:202 (June 2020 Update).

As Respondents have repeatedly emphasized, they were not parties to the lawsuits in which TLC's alleged underlying fraud was committed. Respondents could obtain no direct benefit from prosecuting Hutson's alleged claim of fraud upon the court against TLC. Penn-America's liability coverage concerned TLC's defamation and equitable indemnity claims against Hutson, not Hutson's affirmative claims against TLC. At most, Penn-America had an interest in any indirect benefit that might accrue if TLC's claims were undermined or devalued through Hutson's success in his claim that TLC defrauded the court.

The Supreme Court of South Carolina has held that liability insurers are not real parties in interest, and thus they lack standing to intervene into underlying actions against their insureds. Ex Parte Gov't Employee's Ins. Co., 373 S.C. 132, 138-39, 644 S.E.2d 699, 702 (2007). Until recently it was uncertain whether insurers may intervene to seek an allocation between covered and non-covered damages. However, the Supreme Court has settled that question by reaffirming Ex Parte GEICO. Ex Parte: Builders Mut. Ins. Co., Op. No. 27970 (S.C. Sup. Ct. filed May 13, 2020) (Shearouse Adv. Sh. No. 19 at 48) (petition for rehearing pending). These cases address an insurer's ability to intervene to assert its own rights. Neither Penn-America nor its counsel had standing to appear before the state court and assert Hutson's claim of fraud upon the court.

Penn-America filed a motion to intervene in the Defamation Action, but it was withdrawn after the hearing because TLC withdrew its pending Motion to Amend. (See Exh. KK: Motion to Intervene.) Hutson has argued that Newton should have informed the trial judge of TLC's alleged fraud during that hearing. Hutson's argument misses the mark for several reasons.

First, the motion was heard approximately eight months prior to the time Hutson told Newton that all of the property was subject to the campground memberships. (See Exh. V excerpts: Hutson e-mails.) Newton's E-mail references testimony at trial, which occurred after Penn-America's Motion to Intervene was heard. (See Newton E-mail, ¶¶ 1, 2, 14.) Moreover, as discussed above, Hutson is the only one who has standing to assert his rights. Newton appeared at the hearing on behalf of Penn-America. Furthermore, TLC's Rule 30(b)(6) designee testified in the Coverage Action that all of the property was *not* subject to the campground memberships. (Exh. CC: TLC Deposition excerpts.) It would have been entirely inappropriate for Newton to have suggested to the trial judge in TLC's defamation action against Hutson that TLC or its principals may have perjured themselves in another case.

By the time Penn-America's Motion to Intervene was heard, Hutson's counterclaims had been dismissed by the Baker and Cothran Orders. Both Orders found that all of Hutson's allegations of fraud related to the original transaction, rather than the release. (Exh. A: Baker Order at *14; Exh. C: Cothran Order at 11.) Hutson's allegation that TLC concealed from him that all of the property was undevelopable, if proven, could have supported a claim that Hutson was fraudulently induced to sign the release. However, only Hutson has the standing and the ability to prove that allegation.

Hutson cannot demonstrate that any court was deceived

Moreover, Hutson cannot prove any court was deceived. Hutson essentially argues several prior lawsuits were wrongly decided because Hutson's claims were not fully heard. A review of the prior judicial orders demonstrate that most of the evidence Hutson characterizes as "extrinsic fraud" was taken into consideration in those rulings.

In particular, United States Magistrate Judge Mary Gordon Baker thoroughly analyzed Hutson's evidence and specifically ruled that Hutson could *not* prove he was defrauded. (Exh. A: Baker Order, p. *12). She specifically found, based upon e-mails submitted in that case, that Hutson knew about the lifetime campground memberships Hutson claims made the property he purchased from TLC undevelopable before he purchased the property. Id. at *13 n.5. Magistrate Judge Baker considered Hutson's allegation that he was "placed . . . in an impossible situation which prevented him from successfully purchasing the land and developing a subdivision in the middle of the campsites." Id. at *3 (quoting Hutson ¶ 72). She considered the fact that the campground membership agreements were not recorded and found no evidence of fraud because Hutson knew about the campground memberships before he contracted to purchase the property. Id. at *13 n.5.

The only new and distinguishing factor in the Newton E-mail was Hutson's allegation that TLC, at the time of his transaction with TLC, failed to disclose that *all* of the property subject to the transaction was undevelopable. (See Newton Brief, p. 21.) The E-mail upon which Hutson relies, on its face, reflects that it was *not possible* to ascertain which property was subject to the campground membership agreements. The membership agreements were not recorded. (Newton E-mail, ¶ 4.) The Membership Interest Purchase Agreement did not specify which property was subject to the campground membership agreements. (Id. at ¶ 8.) A campground member testified at trial she thought all of the property was subject to the membership agreements. (Id. at ¶ 14.)

Missing from the E-mail is any definitive proof that all of the property was undevelopable. The undersigned could not have misled Hutson on this point because he

was not involved in any of Hutson's transactions with TLC. As stated in the E-mail, the documentary evidence does not specify which property was subject to the membership agreements. Hutson could prevail on a claim against TLC only through a "swearing contest." Thus, Newton could only have informed the courts of a factual dispute—one that Hutson himself never undertook to resolve in his favor.

The only person with personal knowledge of the TLC-Hutson transactions was Hutson. It was Hutson who transacted with TLC to purchase the property. (Exh. A: Baker Order, p. *1.) Hutson was the principal in Big Water Resort, LLC, which held the campground membership agreements. *Id.* at *2-*3. Hutson took possession of the property and lived there for three years until he was evicted. *Id.* Hutson alone has both standing and the personal knowledge to attempt to prove that TLC's judgments against him were fraudulent. This right is not affected by any conduct by Respondents.

Respondents did not conceal anything from Hutson

Finally, Newton's E-mail conclusively demonstrates that Respondents did not conceal the relevant information from Hutson, the only party who had standing. The E-mail proves that the undersigned acted to protect Hutson's interests. Hutson was provided with the information that could support his potential claim against TLC and advised that he should retain counsel if he wished to pursue it. (Newton E-mail.)

Hutson's own exhibits demonstrate his recognition that he could pursue a claim for fraud upon the court against TLC. Hutson demanded that Penn-America refrain from settlement negotiations with TLC until after Hutson pursued his claim. Hutson's e-mail says: "I plan to file to set aside the fraudulent 2012 Settlement Agreement and Consent Order prior to your meeting planned for November 2, 2018," (Emergency Motion, fourth

exhibit, p. 2.) Hutson demanded that Penn-America cease settlement negotiations “until after my set aside complaint has concluded. (*Id.*) Penn-America proceeded with the settlement only after Hutson reversed himself and demanded that Penn-America proceed with the settlement. (See e-mail attached to Newton Mot. to Strike.)

The evidence Hutson provided does not demonstrate fraud upon this Court. There is nothing to indicate that Respondents embarked on a deliberate scheme to deceive either Hutson or any court. Newton’s e-mail proves that Hutson was informed of a potential claim that only he could assert. Nothing Respondents have done prevents Hutson from vindicating his rights, should he choose to assert them. Hutson has not proved fraud.

III. Hutson has no basis for seeking emergency equitable relief.

Hutson’s Emergency Motion seeks a stay of this appeal. He provided no authority in support of his request for this relief. The Motion is full of hyperbole, but the evidence he submitted is merely a rehash of his arguments on appeal.

Hutson is seeking equitable relief. *Chewning*, 35 F. Supp. 2d at 491. “He who seeks equity must do equity.” *Ingram v. Kasey’s Assocs.*, 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000). A party is not entitled to equity if he has unclean hands. *Id.* at 107 n.2, 531 S.E.2d at 292 n.2.

If any party to this dispute is guilty of seeking to exploit non-disclosure, it is Hutson himself. Hutson instigated this litigation by misrepresenting to Newton that all of the property he purchased from TLC was subject to the lifetime campground memberships. (Newton Brief, pp. 6-7; Exh. V excerpts: Hutson e-mails.) Newton’s E-mail was responsive to and based on that assumption: “If you were ordered to develop property that was subject to lifetime use rights, that probably should have been brought to

the court's attention.” (Newton E-mail, ¶ 15 (emphasis added).) Hutson did not deny sending Newton those e-mails. Instead, he habitually quotes Newton's E-mail without any regard to the fact that its content is conditional upon misinformation supplied to Newton from Hutson himself.

Hutson has repeatedly claimed that all of the land was deemed unmarketable through the federal Class Action. (Init. Br. of Appellant filed Mar. 3, 2020, pp. 5, 11.) Hutson have never provided any documentation to support that allegation. (See Newton Brief, p. 23.)

When Newton drove to Manning to copy the court file from the Ejectment Action, he discovered evidence of misrepresentations by Hutson against TLC in the case in which Hutson claims he was defrauded. TLC filed a Motion for Order Requiring Tenant to Pay All Rent Due, or, in the alternative, for Appointment of a Receiver on or about February 16, 2012. (A copy of that Motion and supporting Affidavit is attached as Exhibit LL.) In that Motion, TLC requested the appointment of a receiver, in part, based upon Hutson's misrepresentation to TLC as to his true identity.

While negotiating the Lease Purchase Agreement, Hutson represented his surname to TLC as “Hudson” to prevent TLC from obtaining Hutson's background information. (Exh. LL, p. Bates labeled EJECT_000237.) After the transaction was executed, TLC learned his true name and found from public records that Hutson has “a history of arrests, criminal warrants, and public complaints related to his business practices.” (*Id.*) One of TLC's principals averred that from the public record search he learned that “Hutson had been an interstate fugitive from Georgia, extradited from the State of Florida, and had been involved in real estate or business transactions in Tennessee and Georgia for which

the other parties had filed or posted complaints against his conduct.” (Id. at pp. EJECT_000276, ¶¶ 12-13.)

Evidence TLC submitted to the court in the Ejectment Action—the court Hutson claims TLC defrauded—indicates that Hutson entered into the lease-purchase transaction under a false name to prevent TLC from learning about Hutson’s background. In this action, Hutson set a trap for Newton by claiming that TLC wrongfully withheld from him that all of the property was subject to the lifetime campground memberships—a claim he has never been able to prove. Newton briefed a prior affidavit submitted by Hutson in which he admitted he attempted to force the campground members out so he could build on the property. (Newton Brief, p. 24.) Hutson had no answer in his Reply brief.

Hutson’s Emergency Motion evidences an attempt by Hutson to have his appeals decided based upon his allegations alone without reference to the evidence. Hutson is in no position to accuse Respondents of concealing evidence.

Because Hutson has unclean hands, he cannot assert a claim for fraud upon the court. He has provided no basis for emergency relief. Hutson’s Emergency Motion should also be denied because it lacks merit for all the reasons discussed above.

IV. This appeal should be dismissed.

Hutson has refused to timely serve the Record on Appeal, which contains numerous documents that support Respondents’ defenses in this appeal. Instead, he seeks a *de novo* hearing in which only his allegations are considered. Hutson should be estopped to assert fraudulent concealment by Respondents when he himself, through his Emergency Motion, seeks to avoid disclosure of evidence to this Court of evidence favorable to Respondents.

Although courts are usually reluctant to dismiss a case on procedural grounds, dismissal is warranted under the circumstances of this case. Appellant Hutson continues to file motions with this Court, and to threaten filing such motions, that are frivolous, false, and defamatory.

Hutson's proposed "Emergency Motion" demonstrates his intent to continue his pattern of frivolous filings and abuse of the judicial system. On June 16, 2020, Hutson accused Respondents of "misinforming the Court and Appeal Judges" and said Respondents should be "removed from practicing law." (Exh. MM: E-mail.) On June 22, 2020, Hutson threatened to file a frivolous lawsuit against current counsel for Penn-America, Christian Stegmaier, despite the fact that Hutson knows Stegmaier had nothing to do with any of the prior cases in this litigation. (Exh. NN: E-mail.) In that e-mail, Hutson accused Stegmaier of conspiring with the undersigned and of "cheating against me." (Id.) He sent another missive in the same vein on July 6, 2020. (See Exh. OO: E-mail.) In yet another e-mail dated July 8, 2020, Hutson threatens to slander Respondents on the internet. (Exh. SS: E-mail.)

The documents contained in the Record on Appeal demonstrate that:

- (a) Respondents (including Penn-America's current counsel, Christian Stegmaier) did not know of any proven or provable fraud upon any court;
- (b) Respondents had no standing to file motions to set aside prior judgments against Hutson; and
- (c) Respondents did not commit fraud against Hutson or this Court.

Hutson, as the Appellant, has the obligation to file and serve the Record on Appeal and to prove the merits of his appeal from the documents contained therein. Hutson has no right to demand a *de novo* hearing. Moreover, Hutson's conduct is improper because the judicial system is not a mechanism for harassment and slander.

Magistrate Judge Baker chronicled a lengthy list of Hutson's similar acts of misconduct in the federal court proceeding. (Exh. A: Baker Order, pp. *5 to *7.) In that Order, she did not recommend sanctions against Hutson because he had not yet been warned. *Id.* at *8. However, District Judge David C. Norton subsequently imposed sanctions against Hutson for continuing his pattern of frivolous and slanderous court filings after the Baker Order was issued. Reed v. Big Water Resort, LLC, Civ. Action No. 2:14-cv-01583, 2017 WL 4480195 (D.S.C. filed Oct. 6, 2017.) Hutson's continuation of that pattern of misconduct in this case warrants dismissal.

CONCLUSION

Hutson's Emergency Motion should be dismissed. Hutson is merely attempting to circumvent the appellate process by making new allegations that he seeks to have heard in the absence of the evidence marshalled against him.

Furthermore, Hutson's appeal should be dismissed for lack of prosecution. Hutson's appeal is patently frivolous, as can be ascertained by the documents contained in the Record on Appeal. Moreover, he has demonstrated a continuing pattern of abusing the judicial system to harass and slander those who become involved in this litigation, however innocently. For all these reasons, this appeal be dismissed.

Respectfully submitted,

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

Columbia, SC
July 8, 2020

Exhibit A

2016 WL 7435620

Only the Westlaw citation is currently available.
United States District Court, D.
South Carolina, Charleston Division.

William REED, Donna Reed, Bonnie
Youmans, Jane Yates, Phillip Caulder, all
individually and for the benefit and on behalf
of all others similarly situated, Plaintiffs,

v.

BIG WATER RESORT, LLC; TLC Holdings,
LLC; Richard Clark; James Thigpen; Jimmy
"Steve" Lovell; and Ocoee, LLC, Defendants.

TLC Holdings, LLC; Richard Clark;
James Thigpen; Jimmy "Steve" Lovell;
and Ocoee, LLC. Third-Party Plaintiffs,

v.

M.B. Hutson a/k/a M.B.
Hudson, Third-Party Defendant.

C/A: 2:14-1583-DCN-MGB

Signed 04/05/2016

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Third-Party Plaintiffs.

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REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE

MARY GORDON BAKER, UNITED STATES
MAGISTRATE JUDGE

*1 This matter is before the Court upon various motions:
(a) a Motion for Sanctions filed by Big Water Resort
LLC, Richard Clark, Jimmy Lovell, Ocoee LLC, TLC
Holdings LLC, James Thigpen (Dkt. No. 179); (b) a
Motion for Summary Judgment filed by Richard Clark,
Jimmy Lovell, Ocoee LLC, TLC Holdings LLC, James
Thigpen (Dkt. No. 183); and (c) a Motion for Summary
Judgment filed by M.B. Hutson a/k/a M.B. Hudson (Dkt.
No. 228). Pursuant to the provisions of Title 28, United
States Code, Section 636(b)(1) and Local Rule 73.02(B)
(2)(c), D.S.C., all pretrial matters in cases involving *pro*
se litigants are referred to a United States Magistrate for
consideration. A hearing was held before the undersigned
on March 16, 2016 at 10:00 a.m. (See Dkt. No. 257; Dkt.
No. 267.) For the reasons set forth herein, the undersigned
recommends denying Third-Party Plaintiffs' Motion for
Sanctions (Dkt. No. 179), granting Third-Party Plaintiffs'
Motion for Summary Judgment (Dkt. No. 183); and
denying Hutson's Motion for Summary Judgment (Dkt.
No. 228).

FACTUAL BACKGROUND

Plaintiffs are all purchasers of memberships in the club
known as "Big Water Resort." (*See generally* Am.
Compl.) The crux of the dispute between Plaintiffs and
Defendants centers upon whether Plaintiffs' memberships
in the Big Water Resort, LLC entitled Plaintiffs to the
use of a private, members-only resort, or whether that
resort could be opened to the public. Plaintiffs contend
that they purchased memberships in a private, members-
only resort. (*See generally* Am. Compl.) Defendants, on
the other hand, contend that the membership agreements
"do not promise exclusivity[.]" and any evidence to the
contrary is inadmissible under the parol evidence rule
and under the terms of the merger clause contained in
the agreement." (Dkt. No. 88 at 13.) This portion of
the dispute has been settled, and on February 1, 2016,
Judge Norton entered an Order granting the Motion for
Preliminary Approval of the Settlement. (See Dkt. No.

248; *see also* Dkt. No. 242.) Ancillary disputes are before the Court today.

Defendants/Third-Party Plaintiffs¹ filed a Third-Party Complaint against Third-Party Defendant M.B. Hutson a/k/a M.B. Hudson (hereinafter “Hutson”). Third-Party Plaintiffs allege that their third-party complaint “arises from ... Hutson’s failure to operate the Big Water Resort campground in a manner beneficial to the members.” (Dkt. No. 72 ¶ 133.) Third-Party Plaintiffs allege that in December of 2010, they sold their membership interests in Big Water Resort, LLC to Hutson, “making Hutson the sole member of that LLC.” (*Id.* ¶ 134.) According to Third-Party Plaintiffs, the sale price was \$500,000, “of which \$499,990 was payable under a promissory note executed by Hutson in favor of” Third-Party Plaintiffs Clark, Lovell, and Thigpen. (*Id.*) Third-Party Plaintiffs further allege that in December of 2010, they “entered into a lease-purchase agreement with ... Hutson,” under which Third-Party Plaintiffs “agreed to sell certain property to Hutson,” including the land on which the Big Water Resort campground was located. (*Id.* ¶ 135.) Third-Party Plaintiffs allege that Hutson “defaulted on both the promissory note and the lease-purchase agreement.” (*Id.* ¶ 136.)

*2 Third-Party Plaintiffs allege that in December of 2011, they instituted an action against Hutson in state court “for breach of the lease-purchase agreement, seeking damages and ejectment.” (*Id.* ¶ 137.) Third-Party Plaintiffs further allege as follows:

In March 2012, the parties to the lease—purchase agreement entered into a Settlement Agreement. The terms of the Settlement Agreement imposed many duties on Third-Party Defendant Hutson, including the duty to make certain improvements to the campground property and the duty to make certain payments to Third-Party Plaintiff TLC Holdings, LLC. The Settlement Agreement was approved by a consent order in April 2012.

(*Id.* ¶ 138.) Third-Party Plaintiffs allege that Hutson defaulted under the March 2012 Settlement Agreement and was notified of such default in February of 2013 but did not cure the defaults. (*Id.* ¶¶ 139-40.) Third-Party Plaintiffs assert that they filed an affidavit of default in December of 2013, and in response, Hutson filed a “motion to set aside the affidavit of default and a motion for a temporary restraining order.” (*Id.* ¶ 141.) Third-Party Plaintiffs further allege, *inter alia*,

144. In an Order dated March 20, 2013, Judge James declined to set aside the affidavit of default or issue a preliminary injunction and ruled that the March 2012 Settlement Agreement and April 2012 Consent Order should be enforced. Specifically, he ordered that the lease—purchase agreement was terminated and that Third-Party Defendant Hutson was required to vacate the property.

145. Third-Party Defendant Hutson vacated the property in April 2014, at which time Third-Party Plaintiffs Clark, Lovell, and Thigpen were able to resume control and operation of the Big Water Resort campground.

(*Id.* ¶¶ 144-45.)

Third-Party Plaintiffs allege a cause of action for equitable indemnity against Hutson. (*Id.* ¶¶ 146-150.) Third-Party Plaintiffs allege that Hutson has “exposed Third-Party Plaintiffs to potential liability” by “his alleged wrongful acts” and that they “have incurred, and may continue to incur, expenses necessary to protect their interest in defending the claims brought by the members of the Big Water Resort campground.” (*Id.* ¶¶ 147, 150.) Third-Party Plaintiffs allege that Hutson “is solely responsible for the acts that have allegedly harmed the members that compose the class in the underlying action” and that they “have no fault and did not join in Third-Party Defendant Hutson’s allegedly wrongful acts.” (*Id.* ¶ 149.) According to Third-Party Plaintiffs, the relationship between them and Hutson “is such that an obligation in equity exists on Third-Party Defendant Hutson to indemnify Third-Party Plaintiffs.” (*Id.* ¶ 148.)

Hutson answered the third-party complaint and filed a counterclaim against Third-Party Plaintiffs. (*See* Dkt. No. 75.) Hutson alleges that in December of 2010, he “became aware of the Big Water Resort through a conversation

with a realtor ..., who stated that the resort was for sale as a campground and for other uses." (Dkt. No. 75 ¶ 51.) Hutson alleges that after various discussions with the realtor and Third-Party Plaintiffs, he met with Clark and Lovell in Chattanooga. (*Id.* ¶¶ 52-54.) According to Hutson, Clark and Lovell told Hutson, *inter alia*, that if Hutson purchased three tracts of land, he "would also be required to purchase the rights to approximately 700 existing club memberships." (*Id.* ¶ 54.) Hutson alleges that when he asked Clark and Lovell how much profit or loss the campground was experiencing, "[t]heir response was that it was not making a profit yet but had much potential." (*Id.* ¶ 55.) Hutson further alleges,

*3 At or about the end of December, 2010 the Third-Party Defendant agreed to purchase the rights to the club memberships and the option to purchase all the tracts of real property and Third-Party Defendant moved onto the property. Prior to these transactions Third-Party Defendant told the Third-Party Plaintiffs that he intended to develop the property for sale to the public and the Third-Party Plaintiffs understood this and never indicated to Third-Party Defendant that he would be prohibited from doing so by virtue of any of the terms of the club membership agreements or otherwise.

(*Id.* ¶ 56.)

Hutson alleges that when he moved onto the property, he discovered there was only approximately \$5,000 in the club's checking account, and that over the next few weeks, he determined "that there was not likely enough income to properly operate and maintain the campground." (*Id.* ¶ 57.) Hutson asserts he "had no choice but to dismiss" most of the campground's employees and cut back on various other expenses "because of lack of money and income from the campground resort operation." (*Id.* ¶ 58.) Approximately two months after moving onto the property "and discovering the ...

situation," Hutson "realized at that time that the resort was a seasonal business," something Third-Party Plaintiffs "never disclosed" to Hutson. (*Id.* ¶ 61.) Hutson alleges he told Clark that "there was no business from the club members and that the resort was essentially dead." (*Id.* ¶ 61.) Hutson states that Clark suggested raising club members' fees, which Hutson did. (*Id.* ¶¶ 62-66.) Hutson further alleges that Clark told Hutson that Third-Party Plaintiffs "did not want to be responsible for the obligations to the class members, and that perhaps if [Hutson] raised the membership fees drastically then members would be encouraged to drop their memberships." (*Id.* ¶ 64.) Hutson alleges that Clark also told him "that if the members dropped their memberships it would provide an opportunity for [Hutson] to seek business from the general public as opposed to only the club members and that it would lessen the potential of a class-action lawsuit against TLC Holdings, LLC and its owners." (*Id.* ¶ 65.) According to Hutson, when he raised fees, "members began to drop their memberships and threatened to file a class-action lawsuit, stating that they thought they had been scammed and that their memberships had become worthless." (*Id.* ¶ 66.)

Hutson alleges that prior to his involvement in the Big Water Resort, Third-Party Plaintiffs "were allowing members of the public to rent campsites, despite [the fact] that the club membership agreements arguably created a private club resort exclusive to the club's members." (*Id.* ¶ 70.) Hutson further alleges, *inter alia*,

71. Eventually, by the end of 2013, Third-Party Defendant realized that TLC Holdings, LLC and its owners intended to use him as a scapegoat. Once the Third-Party Plaintiffs collected millions of dollars from the lifetime club members the Third-Party Plaintiffs immediately began to quietly market the property for sale through realtor Susan Stroman. Susan Stroman has subsequently told Third-Party Defendant that she was instructed by the Third-Party Plaintiffs not to list the property for sale, but to instead ... quietly and privately help them find a buyer.

72. Unbeknownst to Third-Party Defendant, the Third-Party Plaintiffs placed him in an impossible situation which prevented him from successfully purchasing the land and developing a subdivision in the middle of the campsites, despite that Third-Party Plaintiffs were fully aware, prior to entering into the ... transactions with Third-Party Defendant, that this was Third-Party

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Defendant's plan and reason for entering into the transactions with Third-Party Plaintiffs.

*4 73. Third-Party Plaintiffs intentionally misled and failed to disclose vital information to Third-Party Defendant, including but not limited to the facts that Third-Party Plaintiffs had previously promised the benefits of club membership including the exclusive right to enjoy the club land and property to club members for two lifetimes into the future, that Big Water Resort was losing approximately \$250,000 per year and had insufficient reserves or income for proper maintenance of the resort club, that the local authorities had imposed a sewer moratorium on the subject tracts of land, and that the Big Water Resort was subject to exorbitant charges by the Black River Electric utility company.

74. Third-Party Plaintiffs acknowledged to Third-Party Defendant, after they had entered into the transactions with Third-Party Defendant for the purchase of the rights to the club memberships and the lease-purchase agreement for the land, and after entering into the ... settlement agreement with Third-Party Defendant, that Third-Party Plaintiffs' real reason for entering into these transactions with Third-Party Defendant was [to] distance themselves from the club members and avoid a potential class-action lawsuit against Third-Party Plaintiffs.

(Dkt. No. 75 at ¶¶ 71-74.)

Hutson alleges that "[b]ecause of the wrongful acts and omissions" of Third-Party Plaintiffs, he "became financially destitute and was forced to file for Chapter 11 bankruptcy." (*Id.* ¶ 76.) Hutson asserts he "became in a state of duress and suffered mental anguish because of this situation." (*Id.*) Hutson alleges that Third-Party Plaintiffs "have falsely told third-parties, verbally and in writing, that the failure of Third-Party Defendant's ability to successfully operate and maintain the Big Water Resort was Third-Party Defendant's fault, defaming him and damaging his reputation." (*Id.* ¶ 77.) Hutson contends that Third-Party Plaintiffs "were fully aware that Big Water Resort, LLC was totally insolvent and financially vulnerable prior to contracting" with him. (*Id.* ¶ 78.) Hutson lists the following causes of action against Third-Party Plaintiffs: breach of contract; breach of contract accompanied by fraud; fraud and fraud in the inducement; negligent misrepresentation; constructive fraud; breach of

the covenant of good faith and fair dealing; negligence; recklessness, wilfulness and wantonness; and defamation. (Dkt. No. 75 at 15-18 of 19.)

DISCUSSION

As noted above, three motions are pending before the Court: (a) Third-Party Plaintiffs' Motion for Sanctions (Dkt. No. 179); (b) Third-Party Plaintiffs' Motion for Summary Judgment (Dkt. No. 183); and (c) Third-Party Defendant's Motion for Summary Judgment (Dkt. No. 228). The undersigned addresses the motions in turn.

A. Motion for Sanctions (Dkt. No. 179)

In the Motion for Sanctions, Third-Party Plaintiffs seek sanctions against Hutson. (*See generally* Dkt. No. 179-1.) Third-Party Plaintiffs state, *inter alia*,

Throughout the course of this litigation, Third-Party Defendant Hutson has engaged in a pattern of behavior designed to harass and unduly burden Third-Party Plaintiffs and which has made a mockery of the judicial system. He has also attempted to extort a settlement from Third-Party Plaintiffs on numerous occasions by threatening them with criminal prosecution. This behavior has manifested itself primarily through Third-Party Defendant's filings with this Court and his communications with counsel for Third-Party Plaintiffs.

(Dkt. No. 179-1 at 2 of 15.) Third-Party Plaintiffs list a litany of actions taken by Hutson that they contend warrant sanctions. (*See* Dkt. No. 179-1 at 3-15 of 15; *see also* Dkt. No. 179-2; Dkt. No. 179-3; Dkt. No. 179-5; Dkt. No. 179-6; Dkt. No. 179-7; Dkt. No. 179-8; Dkt. No. 179-9; Dkt. No. 179-10; Dkt. No. 179-11; Dkt. No. 179-12; Dkt. No. 179-13; Dkt. No. 179-14; Dkt. No. 179-15; Dkt. No. 179-16; Dkt. No. 179-17; Dkt. No. 179-18; Dkt. No. 179-19; Dkt. No. 179-20; Dkt. No. 179-21; Dkt. No.

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179-23; Dkt. No. 179-27; Dkt. No. 179-28; Dkt. No. 179-29; Dkt. No. 179-30.)

*5 Rule 11(b) of the Federal Rules of Civil Procedure provides as follows:

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

FED. R. CIV. P. 11(b).

Third-Party Plaintiffs present evidence of the following in support of their motion for sanctions:

- In an email dated March 25, 2015 to Attorneys Byrd and Wilkerson, Hutson stated that it was his "civic duty to report and provide evidence to the claims department" of Auto Owners Insurance, letting the insurance company know "that TLC's members are up to more no good." (Dkt. No. 179-2.) Hutson asserted TLC is "[t]rying to defraud more victims." (*Id.*) He "[r]espectfully" inquired, "How can someone file an insurance claim for something they plotted and planned and finally got caught?" (*Id.*)

- Hutson has frequently filed motions in this case with "no supporting exhibits" and no "supporting factual information or legal authority." (See Dkt. No. 179-1

at 2.) Third-Party Plaintiffs point to his May 5, 2015 motion asking the court to "set aside" his deposition in his bankruptcy case. (See Dkt. No. 112.)

- On June 29, 2015, Hutson filed a Motion "to be Allowed to Use Tape Recordings Found During Jury Trial." (Dkt. No. 138.)² Third-Party Plaintiffs assert this motion was "an attempt ... to circumvent this Court's Order compelling him to respond to Third-Party Plaintiffs' first set of requests for production by May 24, which he did not comply with." (Dkt. No. 179-1 at 4.) During his 2014 deposition, Hutson stated that he had not recorded anybody in the room (which included Clark); in this motion, however, he asserts he was able to find a 2011 recording he made of Clark. (See Dkt. No. 138; Dkt. No. 179-5 at 10, 13 of 14.)

- On July 5, 2015, Hutson sent an email to Mr. Wilkerson stating that if they were not able to settle, Hutson "plan[s] to quickly move in some new directions to get justice and restitution regarding [his] case that will soon go in another direction plus the civil with [sic] also remain." (Dkt. No. 179-6.) Third-Party Plaintiffs assert this is a "thinly-veiled threat at instituting criminal prosecution of Third-Party Plaintiffs." (Dkt. No. 179-1 at 5.)

- *6 • On July 11, 2015, Hutson emailed a copy of a draft complaint against Turner Padgett Graham & Lancy to Attorneys Byrd, Wilkerson, and Cromer. (Dkt. No. 179-7; Dkt. No. 179-8.) The email itself was blank other than the subject line of "Revised Federal Complaint final draft." (Dkt. No. 179-7.) In the draft complaint, Hutson complained about his treatment when deposed by Attorney Byrd at Turner Padgett's office. (Dkt. No. 179-8.) Hutson also accused Turner Padgett of, *inter alia*, "unprofessional behavior" and violating the "SC Bar Association's Code of Conduct." (Dkt. No. 179-8 at 2 of 2.)

- One day later, on July 12, 2015, Hutson emailed Attorneys Byrd, Wilkerson, and Cromer with an updated draft of the complaint against Turner Padgett. (Dkt. No. 179-9; Dkt. No. 10.) In the email, Hutson told Wilkerson that the draft complaint "will be filed this coming Wed. and also an additional motion request[ing] that your law firm be barred from representing the Class Action/TLC Holdings/ Third Party Defendant MB Hutson based on multiple conflicts of interest." (Dkt. No. 179-9.) Hutson also told

Wilkerson that he "believe[s] that [Wilkerson's] clients will soon need criminal attorneys." (*Id.*) In the updated draft, Hutson continued to accuse Turner Padgett attorneys of "ethics and civil rights violations." (Dkt. No. 179-10 at 3 of 4.) The draft complaint had a "cc" line to the "State Bar Association of South Carolina," though it is unclear whether the draft complaint was in fact forwarded to the Bar. (*Id.* at 4 of 4.)

- One day later, on July 13, 2015, Hutson emailed Wilkerson and told Wilkerson that he was prepared to pay the filing fee and file the complaint against Turner Padgett. (Dkt. No. 179-11.) Hutson stated, *inter alia*, "I have prepared the necessary paper work for the South Carolina State Bar and will attach all necessary exhibits and other documents including depositions regarding your firm's involvement.... I honestly can't see how the State Bar Association will allow or support your firm being involved under these clear circumstances." (Dkt. No. 179-11.)
- On July 29, 2015, Hutson emailed Wilkerson, Byrd, and Cromer; the subject line was "Motion to consider criminal first." (Dkt. No. 179-14.) Hutson attached a draft motion entitled "Motion Asking the Honorable Court to Prioritize the Issue of Criminal Felony Theft Over the Civil Issues Involving Certification." (Dkt. No. 179-15.) It does not appear this motion was ever filed with the court.
- On or about July 29, 2015, Hutson filed a motion entitled "Third-Party Defendant's Motion Citing Reasons for the Piercing of Any Veil that Owners of TLC Holdings, LLC Do and Could Hide Behind, and a Formal Plea for the Immediate Investigation of Criminal Wrongsdoings by TLC Holdings, LLC., et al. to Be Made by This Honorable Court to the Appropriate Investigative Departments of the United States." (Dkt. No. 160.)³ This motion was withdrawn on or about December 3, 2015. (Dkt. No. 213.)
- On July 30, 2015, Hutson emailed Byrd, Wilkerson, Cromer, Padgett, Thomas, and Perry. (Dkt. No. 179-18.) The email was blank other than the subject line, which stated "Wayne Byrd Conspiracy." (*Id.*) A draft motion was attached; that draft motion was entitled, "Third-Party Defendant's Motion Regarding Third Parties Defense Attorney Wayne Byrd Showing a Conspiring Rol[e] to Protect Their Clients Felony Theft By Deception." (Dkt. No. 179-19.) Hutson filed this

motion on or about August 3, 2015, and withdrew it on or about December 3, 2015. (Dkt. No. 162; Dkt. No. 213.)

- *7 • On or about July 31, 2015, Hutson filed a document entitled "Third-Party Defendant Shows To Honorable Court How TLC Committed Felony Theft by Deception According to Federal Law." (Dkt. No. 161.) In that filing, Hutson "prays" that the Court "immediately turn this entire scheme into a First Class WHITE COLLAR FELONY CRIME case, having all three TLC owners arrested and charged with FELONY THEFT BY DECEPTION and prosecuted...." (Dkt. No. 161 at 2 of 2.)
- On July 31, 2015, Hutson emailed Byrd, Wilkerson, Cromer, Padgett, Thomas, and Perry. (Dkt. No. 179-20.) The email is blank other than the subject line, which states, "WAYNE Byrd." (*Id.*) The document he attached to that email was entitled "The Supreme Court of South Carolina Office of Disciplinary Counsel Has Opened Investigation into TLC Holdings, LLC's Defense Team & CEO, Wayne Byrd Regarding this Case. Thus Third Party Defendant Asks that the Turner Padgett Defense Team for TLC Holdings, LLC Be Barred Based on Various, Potentially Serious, Conflicts." (Dkt. No. 179-21.) Hutson filed that document on or about August 7, 2015. (Dkt. No. 168.) Hutson asserted therein that Byrd is "in such blatant disregard of ethical and professional behavior that he is now under investigation by the Supreme Court of South Carolina's Disciplinary Counsel pertaining to this case." (Dkt. No. 168.)
- In an email dated August 4, 2015 to Byrd, Wilkerson, Padgett, Thomas, Harper, and Perry, Hutson stated that he planned to file suit in the South Carolina Court of Common Pleas "regarding case number 11cp-14602," asking that the "case number and rulings be dropped, reversed or over-turned on the grounds of fraud, theft, deception, and entrapment." (Dkt. No. 179-23.)
- On September 1, 2015, Hutson emailed Byrd, Wilkerson, Cromer, Thomas, and Padgett; the email was blank except for the subject line of "Amended [sic] filing 9/1/15." (Dkt. No. 179-27.) Hutson attached a draft motion to his email; the draft motion was entitled "Motion Citing Felony Theft by Deception Committed by TLC Holdings, LLC Owners." (Dkt. No. 179-28.) Hutson therein asserted that the Third-Party Plaintiffs

violated South Carolina Code Section 16-13-260. (Dkt. No. 179-28.) Hutson filed this motion on or about September 9, 2015 and withdrew it on December 3, 2015. (Dkt. No. 186; Dkt. No. 213.)

* On September 2, 2015, Hutson emailed Byrd, Wilkerson, Cromer, Padget, and Thomas. (Dkt. No. 179-29.) The email was blank except for the subject line, which stated "ORIGINAL Federal Header TLC." (Dkt. No. 179-29.) Hutson attached a draft motion entitled "Third-Party Defendant's Motion Outlining Reasons for All Pending Motions to Be Heard in Court Before the Honorable Judge Baker." (Dkt. No. 179-30.) Although Hutson did not name this individual by name, presumably he was describing Byrd when Hutson said, "Third Party Plaintiff's Counsel (CEO) is shrewd, conniving, involved, [and] entwined with his clients in fraudulent and dishonest actions...." (Dkt. No. 179-30.) Hutson filed this document on September 9, 2015. (Dkt. No. 185.)

*8 The instant Motion for Sanctions was filed on September 3, 2015. (See Dkt. No. 179.) As noted above, Rule 11 "specifies that attorneys and *pro se* plaintiffs must sign pleadings, motions or other papers filed with the court" and that such a signature "constitutes a certification that (1) the paper is not being presented for any 'improper purpose,' (2) legal contentions therein are 'warranted,' (3) allegations have evidentiary support, and (4) denials of allegations are warranted on the evidence." *Johnson v. Lyddane*, 368 F. Supp. 2d 529, 532 (E.D. Va. 2005). "The purpose of Rule 11 is to deter conduct that frustrates the just, speedy, and inexpensive determination of civil actions." *Laurent-Lopez v. Se. Tidewater Opportunity Ctr.*, 968 F. Supp. 1075, 1078 (E.D. Va. 1997). Although *pro se* pleadings are held to less stringent standards than formal pleadings drafted by lawyers, see *Haines v. Kerner*, 404 U.S. 519 (1972), Rule 11 sanctions can still be appropriate against an individual despite his or her *pro se* status. See *Harmon v. O'Keefe*, 149 F.R.D. 114, 116 (E.D. Va. 1993).

In the case *sub judice*, Hutson has accused Turner Padget's attorneys of a variety of nefarious actions, though it does appear Hutson ultimately withdrew the motions accusing Turner Padget of criminal activities. (See Dkt. No. 209; Dkt. No. 213.) Despite being previously told that motions pertaining to trial (such as to exclude evidence) are premature, Hutson continued to file such motions. (See, e.g. Dkt. No. 145; Dkt. No. 260.) In addition, he re-

filed the motion pertaining to his deposition that Judge Marchant previously denied. (See Dkt. No. 255; see also Dkt. No. 121.)

Given Hutson's *pro se* status, the fact that he withdrew many objectionable filings prior to Third-Party Plaintiffs' filing the Motion for Sanctions, the fact that Hutson had not been previously warned that he was in violation of Rule 11, and the fact that Hutson will no longer be proceeding *pro se* if the District Judge adopts the undersigned's recommendation as to Third-Party Plaintiffs' Motion for Summary Judgment (Dkt. No. 183),⁴ the undersigned recommends denying Third-Party Plaintiffs' Motion for Sanctions (Dkt. No. 179). See *Pizzuto v. Smith*, Civ. A. No. 5:12-CV-149, 2014 WL 1648269, at *15 (N.D. W. Va. Apr. 23, 2014), adopted at 2014 WL 2155039 (N.D.W. Va. May 22, 2014) ("Courts that have imposed sanctions against *pro se* parties frequently attach importance to the fact that the party had already been placed on notice that she was close to violating Rule 11."); see also *Sharp v. Town of Kitty Hawk, N.C.*, Civ. A. No. 2:11-cv-13-BR, 2011 WL 5520432, at *2 (E.D.N.C. Nov. 14, 2011) ("While plaintiff's complaint in this action was largely factually and legally duplicative of the one she filed in her earlier action here, such repetition does not rise to a level violative of 'an objective standard of reasonableness' worthy of Rule 11 sanctions. Nor is it indicative of the bad faith and vexatious behavior necessary to invoke the court's inherent power to sanction.").

B. Motion for Summary Judgment (Dkt. No. 183)

Third-Party Plaintiffs seek summary judgment as to all of Hutson's counterclaims against them. Third-Party Plaintiffs contend they are entitled to summary judgment "on Hutson's Counterclaims because the Counterclaims are barred by the doctrine of *res judicata*." (Dkt. No. 183-1 at 7.) Specifically, Third-Party Plaintiffs assert Hutson's claims against them "are barred by *res judicata* due to the Settlement Agreement which was incorporated into Judge James' 2012 Consent Order." (Dkt. No. 183-1 at 9.) As explained below, many of the claims Hutson raises in the case *sub judice* are the identical claims he raised in the state court case of *TLC Holdings, LLC v. M.B. Hudson aka M.B. Hutson*, Civ. A. No. 2011-CP-14-602 (hereinafter the "State Court Case"); the parties to that action settled it and entered into a release. For the reasons set forth below, the undersigned recommends concluding

Hutson's claims for breach of contract; breach of contract accompanied by fraud; fraud and fraud in the inducement; negligent misrepresentation; constructive fraud; breach of the covenant of good faith and fair dealing; and negligence, recklessness, wilfulness and wantonness are barred by the release he executed in settling the state court action. The undersigned further recommends concluding that Hutson's claim for defamation fails as a matter of law. Accordingly, Third-Party Plaintiffs' Motion for Summary Judgment (Dkt. No. 183) should be granted.

*9 Before turning to the legal analysis, the undersigned will review the allegations, the settlement, and the Orders issued in the State Court Case.

1. The Allegations in the State Court Case (2011-CP-14-602)

The case *sub judice* is not the first civil action between the parties; TLC filed suit against Hutson in the State Court Case. The 2012 Consent Order to which Third-Party Plaintiffs refer was issued in the State Court Case. Most of the allegations Hutson makes against Third-Party Plaintiffs in the case *sub judice* are the same allegations he made against them in the State Court Case.

In the State Court Case, Hutson filed a counterclaim against TLC Holdings, LLC and a Third-Party Complaint against Clark, Lovell, and Thigpen. (See Dkt. No. 183-5.) Hutson raised the Third-Party Plaintiffs' knowledge (and failure to disclose) —and Hutson's lack of knowledge— that the South Carolina Public Health and Environmental Control “had imposed a moratorium on the property that prevented the property from tying into public water and sewer services.” (Dkt. No. 183-5 at ¶¶ 42-44; ¶ 58.) Hutson also raised therein Third-Party Plaintiffs' knowledge that Hutson intended to develop condominiums and other residential structures and failure to disclose that “there was no sewer capacity at that time.” (*Id.* ¶¶ 47-48.) He also alleged as follows:

49. Pursuant to the contract, Hutson caused a title examination to be made of the premises and found that [TLC Holdings, LLC] was involved in litigation affecting the premises. The Sellers in the contract disclosed the existence of that litigation, but set forth a Covenant, Consent and Agreement that included language that said “Seller covenants, consents and agrees that these actions shall be dismissed or otherwise addressed on or before closing of the entire premises, so

that said pending legal action shall in no way encumber the property or hinder such closing.” To date, those actions are still pending and Hutson has been unable to proceed to purchase the property.

(*Id.* ¶ 49.) He also alleged that Third-Party Plaintiffs interfered with his development of the property; specifically, Hutson alleges therein that Third-Party Plaintiffs notified Clarendon County Council of the pending litigation in order to “delay and hinder ... [Hutson] from further performance pursuant to the Lease Purchase Agreement.” (*Id.* ¶ 85.) He also alleged that Third-Party Plaintiffs “deliberately and maliciously [took] steps to try to cause [him] to fail at this project in order for them to recover same with the value of the project enhanced through [his] efforts.” (*Id.* ¶ 89.) Hutson further asserted therein that he should be given an equitable interest in the property for his improvements. (See *id.* ¶¶ 55-56.)

2. The Orders in the State Court Case

The Settlement Agreement to which Third-Party Plaintiffs point was signed by Hutson on March 30, 2012. (See Dkt. No. 183-6 at 10 of 10.) The Settlement Agreement purports to be between Hutson and TLC Holdings, LLC. (See Dkt. No. 183-6 at 1 of 10.) However, it also provides as follows:

2. This Settlement Agreement shall be incorporated into a Consent Order (the “Consent Order”) entered in the above-referenced case (the “Litigation”). Although Richard U. Clark, Jimmy S. Lovell and James C. Thigpen are parties to this Settlement Agreement by virtue of being parties to the [Lease Purchase] Agreement, and are named as Third Party Defendants in the Litigation, they have not been served with the pleadings in the Litigation and shall not be deemed to have appeared in the Litigation by their execution of this Settlement Agreement. This Settlement Agreement shall be binding upon all of the undersigned parties even though Richard U.

Clark, Jimmy S. Lovell and James C. Thigpen have not appeared in the Litigation and are not parties to the Consent Order.

Section 23, the "Release," provides as follows:

*10 (Dkt. No. 183-6 at 1-2 of 10.) The Settlement Agreement further provides, *inter alia*,

4. Pursuant to the Consent Order, in the event that Mr. Hutson fails to comply with the terms of the Settlement Agreement, unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in this Settlement Agreement, time being of the essence, then the Plaintiff is entitled to the following immediate relief, without further notice of the court or notice to Defendant or his attorney: (a) termination of the [Lease Purchase] Agreement, (b) cancellation [sic] of the lis pendens filed by Hudson in this action, (c) immediate vacation of the Property by Mr. Hudson except for his personal residence, which shall be vacated within 15 days, enforceable by the Charendon County Sheriff; and (d) the provisions of Section 23 shall be effective. Prior to any such default by Hudson hereunder, the parties acknowledge that the Lease remains in full force and effect in accordance with its terms, as modified by this Settlement Agreement, and during the Primary Term (as may be extended as provided herein), Hutson shall have full possession of the Property in accordance with, and subject to, the terms of the Lease as modified by this Settlement Agreement.

23. As a material consideration of this Settlement Agreement, in the event of the termination of the [Lease Purchase] Agreement pursuant to Section 4 above as a result of Hudson[s]'s breach hereof, then automatically and without further action of the parties, as of the date of such termination (the "Termination Date"). Hudson shall be deemed to have released, forever discharged and promised never to sue TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, and their respective agents, attorneys, insurance companies, parent companies, subsidiaries, affiliates, predecessors, successors, or assigns (together, the "TLC Parties"), from any and all injuries, personal or property, known or unknown, causes of action, demands, warranty claims, damages, suits at law or in equity, of whatsoever kind and nature, or because of any matter or thing done, omitted or suffered to be done, by the TLC Parties, prior to and including the Termination Date, on account of all injuries and damages, including attorneys' fees and litigation expenses, arising from the Lease or the relationship between Hudson, on the one hand, and TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, on the other hand, and any causes of action, known or unknown, relating to the Lease, including any and all claims alleged, or which could have been alleged, in the Litigation.

(Dkt. No. 183-6 at 6-7 of 10.)

(Dkt. No. 183-6 at 2 of 10.)

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On April 12, 2012, Judge James issued a Consent Order that approved the Settlement Agreement and incorporated the Settlement Agreement into the Consent Order by reference. (See generally Dkt. No. 183-7; see also Dkt. No. 183-7 at 2 of 7.) In an Order dated March 20, 2014, Judge James addressed various motions in the State Court Case, including Hutson's Motion to Set Aside Affidavit of Default and Motion for Temporary Restraining Order. (See generally Dkt. No. 183-8; see also Dkt. No. 183-8 at 3 of 12.) Judge James found that Hutson had breached several provisions of the Settlement Agreement, including, *inter alia*, failing to pay the arrearage prior to December 31, 2012. (Dkt. No. 183-8 at 6 of 12.) Judge James' Order further stated,

*11 10. Pursuant to the express terms of the Consent Order, effective upon the filing of the Affidavit of Default in this action on December 11, 2013, Plaintiff was entitled to have the following immediate relief, without further order of the Court or notice to Defendant or his counsel of record: (a) termination of the Lease Purchase Agreement, (b) cancellation of the Lis Pendens [filed by Defendant in this case], (c) immediate vacation of the Property by Defendant except for his personal residence thereon, which shall be vacated within fifteen (15) days; and (d) the provisions of Section 23 shall be effective." Consent Order at ¶ 2.

11. Therefore, the Lease Purchase Agreement was terminated, according to its terms as modified by the Settlement Agreement and Consent Order, as of December 11, 2013 (the "Termination Date"), and Hutson was required to vacate the Property immediately, except only for his personal residence thereon, which he was required to vacate within fifteen (15) days (i.e., December 26, 2013).

(Dkt. No. 183-8 at 11 of 12.) That order further provides,

[I]t is hereby;

...

FURTHER ORDERED, that the Settlement Agreement and Consent Order are to be enforced according to their terms.

FURTHER ORDERED, that, in conjunction with enforcing the Consent Order according to its terms, pursuant to Paragraph 2 of the Consent Order, upon the filing of the Affidavit of Default on December 11, 2013,

Plaintiff was and is entitled to, and is hereby awarded, the following immediate relief, without the need for further Order of this Court:

(a) The Lease Purchase Agreement was deemed automatically terminated and of no further force or effect; [and]

(b) The lis pendens filed by Defendant against the Property was deemed automatically cancelled, terminated of record, and of no further force or effect....

...

FURTHER ORDERED, that pursuant to the Consent Order, Defendant is deemed to have granted the TLC Release to the TLC parties, as set forth more fully in Section 23 of the Settlement Agreement.

(Dkt. No. 183-8 at 11-12 of 12.)

3. Release

Hutson's claims for breach of contract; breach of contract accompanied by fraud; fraud and fraud in the inducement; negligent misrepresentation; constructive fraud; breach of the covenant of good faith and fair dealing; and negligence, recklessness, wilfulness and wantonness are barred by the release he entered in settling the State Court Case. As in *Bowers v. Department of Transportation*, 360 S.C. 149, 600 S.E.2d 543 (Ct. App. 2004), the Settlement Agreement in the case *sub judice* is a contract. *Bowers*, 360 S.C. at 153, 600 S.E.2d at 545; see also *Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735 (D.S.C. 2001). In *Bowers*, the South Carolina Court of Appeals upheld dismissal of two suits against the Department of Transportation, concluding that the releases executed by two drivers in an accident released the Department of Transportation. The court noted that the release was a contract and that since the release "unambiguously sets forth the contracting parties' intent, [the court is] bound by that clearly expressed intent without resort to extrinsic evidence." *Bowers*, 360 S.C. at 153, 600 S.E.2d at 545. The court further stated,

The terms of the Release do not evince an intent to limit its scope to any specifically identified parties. Rather, the Release is general and all encompassing in its scope. It clearly states that the Appellants released the tortfeasor "and all other persons, firms or corporations liable, or who might be claimed to be liable." This

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language is a clear, explicit, and unequivocal indication of the parties' intent that *all* claims arising from the accident-now and in the future-are barred under the terms of the Release. Had Appellants intended a contrary result and desired to limit the operation of the Release to named persons only, the terms of the Release could have been easily tailored to that end. We are constrained by the plain, unambiguous language of the Release to find that Appellants' claims against SCDOT fall within the terms of the Release.

*12 *Id.* at 154, 600 S.E.2d at 545-46.

Turning to the case *sub judice*, the Release paragraph 23 of the Settlement Agreement—unequivocally provides that if the Lease Purchase Agreement is terminated as a result of Hutson's breach, Hutson "shall be deemed to have released, forever discharged and promised never to sue" Third-Party Plaintiffs for "any and all injuries, personal or property, known or unknown, causes of action, demands, warranty claims, damages, suits at law or in equity, of whatsoever kind and nature, or because of any matter or thing done, omitted or suffered to be done" by Third-Party Plaintiffs, "prior to and including" December 11, 2013. (Dkt. No. 183-6 at 6-7 of 10; *see also* Dkt. No. 183-8 at 11 of 12.) This Release is cut and dry.

Hutson has clearly released Third-Party Plaintiffs from liability for actions they took (or actions they failed to take) prior to December 11, 2013.

A contract can be set aside for fraud, *see First Equity Inv. Corp. v. United Serv. Corp. of Anderson*, 299 S.C. 491, 497, 386 S.E.2d 245, 249 (1989) ("As a general rule, a defrauded party to a contract has a choice of remedies; he may rescind the contract and recover what he has paid, or he may affirm the contract and recover damages."), and Hutson asserts he has been defrauded. However, having reviewed all of Hutson's allegations and assertions, the undersigned concludes—for the reasons set forth below—that this Settlement Agreement and Release *cannot* be set aside due to fraud.

In arguing that the Settlement Agreement and Release should be set aside due to fraud, Hutson refers to the January 2009 meeting minutes as well as the "2015 depositions." (Dkt. No. 192; *see also* Dkt. No. 200-1 at 9-11 of 28.) Hutson asserts the minutes of the January 2009 meeting reveal the "severe options" TLC was "consider[ing] to rid themselves of the BWR campground and its members." (Dkt. No. 200 at 3 of 7.) Although

Hutson refers to "2015 depositions," the only deposition transcript he attached to his filings opposing the Motion for Summary Judgment were transcripts from Lovell's deposition taken on February 16, 2011. (*See* Dkt. No. 200-1 at 15-16, 21 of 28.)

In his Supplemental Response in Opposition, Hutson contends that TLC knew—as of April 2003—that sewer service was needed to support further development at the Big Water Resort and that such service was not available until the water treatment plant in Manning was enlarged. (Dkt. No. 200 at 1 of 7.) Hutson states, "TLC Holdings, LLC and its owners were fully aware of this serious long term problem as it prevented ANY developer from getting any of the necessary local governmental approvals to develop at that location." (*Id.* at 2 of 7.) According to Hutson, TLC's owners "knew that water and sewer as an essential component for the Buyer signing," and they also knew that "water and sewer WAS NOT AVAILABLE." (Dkt. No. 200 at 4 of 7.)

To support his claim for "FELONY THEFT BY DECEPTION," Hutson asserts that although TLC "was not EVER with clear title to close, they continued to collect hundreds of thousands of dollars from [Hutson] for a 'right to purchase.'" (Dkt. No. 200 at 5 of 7.) He states, "Is it not theft by deception to then add mandatory cash requirements totaling hundreds of thousands of dollars for the 'Right to Purchase'—even if they could be credited toward closing—since the Seller had NO INTENTION to close?" (Dkt. No. 200 at 2 of 7.) Hutson points to TLC's admission that "they had financially subsidized" the Big Water Resort "just to keep the gates open." (Dkt. No. 200 at 2 of 7.)

*13 Hutson asserts that TLC knew—as outlined in its January 2009 minutes—that the membership agreements "creat[ed] un-marketable title for home loans." (Dkt. No. 202 at 1 of 2; *see also* Dkt. No. 202-1.)⁵ According to Hutson, TLC found several buyers "who wanted to buy and develop the property into a condo subdivision," but these developers "found that TLC Holdings, LLC could not get marketable title." (Dkt. No. 200 at 2-3 of 7.) Hutson notes that Community Resource Bank had a "very large lien on all of the property for approximately two years," and each time Hutson asked Clark "if the title was now clear in order for Third Party Defendant to start making plans to acquire purchase contracts from potential Buyers to move toward closing," "[n]ever once did the

Seller or any of its agents inform the Buyer[] that clear title had been resolved.” (Dkt. No. 200 at 4 of 7.) Hutson contends he was required to close within 24 months, but he was “trapped and unable to close” because of the liens on the property. (*Id.*)

*14 Hutson asserts Third-Party Plaintiffs “intentionally held back and misrepresented critical information (ex.: sewer ...) and the sixty year obligation to family members for an exclusive right to use all property covered by the contract and improvements thereon.” (Dkt. No. 200 at 5 of 7.) Hutson contends he had seven months under the contract to “repave all private roads, parking lots and recreational vehicle (RV) parking spaces on the Premises,” but it was impossible to do so within seven months because “the municipalities would not approve any permanent asphalt roads” unless he was able to address the sewer issues. (Dkt. No. 200 at 5 of 7.)

According to Hutson, Third-Party Plaintiffs never had any plan to “actually sell” the property but that instead their “plan was to stage it so they could re-call the property.” (Dkt. No. 200 at 6 of 7.) He asserts that Third-Party Plaintiffs knew—“as far back as January 16, 2009”—that they could not sell real estate that was leased for an extended period of time. (Dkt. No. 200 at 6 of 7.) Hutson claims “theft” in that he “was not offered nor given” an “equitable interest” for accomplishments during [his] tenure on-site, which was appraised at over one million dollars ... WITHOUT the impact of the restaurant.” (Dkt. No. 200 at 6 of 7.)

As to contractual interference, Hutson asserts that attorney Thomas Harper, who was representing TLC, “contractually interfered, on behalf of TLC Holdings, LLC ... by contacting government approval agencies to slow down [Hutson’s] progress in acquiring approvals for the development project,” negatively impacting his “ability to close within the contract’s 24 months.” (Dkt. No. 200 at 6 of 7.)

Hutson asks this Court to “set aside paragraph 23 [of the Settlement Agreement] for it was designed to be a fraudulent buffer providing protection to TLC Holdings, LLC and its [sic] owners to carry out the criminal acts,” (Dkt. No. 192 at 3 of 4.)

Hutson’s claims for breach of contract; breach of contract accompanied by fraud; fraud and fraud in the inducement;

negligent misrepresentation; constructive fraud; breach of the covenant of good faith and fair dealing; and negligence, recklessness, wilfulness and wantonness all arise out of the Lease Purchase Agreement and Hutson’s dealings with TLC, Thigpen, Lovell, and Clark in purchasing the Big Water Resort. The Release plainly releases all claims against Third-Party Plaintiffs for claims that arose on December 11, 2013 or before. (See Dkt. No. 183-8 at 11 of 12.)

Hutson has not alleged fraud that took place after December 11, 2013, and there is accordingly no basis to set aside the Release.⁶ Most of the circumstances to which he now points (with the exception of his claim for defamation, discussed below) were raised in his counterclaim and third-party claim in the state court action, so he clearly had notice of these circumstances at the time he entered into the Settlement Agreement and Release. All of Hutson’s claims pertaining to fraud relate to the *original* transaction, *not the Release*. In other words, Hutson cannot set aside the Release because he has not made any showing that fraud induced him to enter into the Release. See *House v. Aiken Cnty. Nat’l Bank*, 956 F. Supp. 1284, 1291-92 (D.S.C. 1996) (granting motion to dismiss—treated as motion for summary judgment—without prejudice where “[t]he only issue before this Court is whether the release signed as a result of that previous settlement is invalid because of fraud, misrepresentation or like circumstances. Plaintiffs have failed to provide any evidence, other than their own conclusory allegations, that they were induced to enter into this release because of fraud or misrepresentation.”); see also *Hopkins v. Fidelity Ins. Co.*, 240 S.C. 230, 125 S.E. 2d 468 (1962).

*15 Moreover, to establish fraud, Hutson would have to prove the following elements:

- (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer’s ignorance of its falsity; (7) the hearer’s reliance on its truth; (8) the hearer’s right to rely thereon;

and (9) the hearer's consequent and proximate injury.

Armstrong v. Collins, 366 S.C. 204, 218-19, 621 S.E.2d 368, 375 (Cl. App. 2005) (quoting *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 444-45 (Cl. App. 2003)). Although Hutson frequently contends he was defrauded, he has not clearly alleged the elements of fraud. For example, it is not clear upon what representation or representations he asserts he relied, nor is it clear such representation was false or that he had the right to rely on such representation(s).⁷

Although Hutson repeatedly asserts fraud, none of his assertions of fraud pertain to the Release. He is therefore not entitled to set aside the Release. *See House*, 956 F. Supp. at 1291-92; *see also Hopkins*, 240 S.C. 230, 125 S.E.2d 468. Third-Party Plaintiffs are entitled to summary judgment on the following claims Hutson makes against them: breach of contract; breach of contract accompanied by fraud; fraud and fraud in the inducement; negligent misrepresentation; constructive fraud; breach of the covenant of good faith and fair dealing; and negligence, recklessness, willfulness and wantonness.

4. Defamation

Hutson's claim for defamation requires a slightly different analysis, as the events giving rise to this claim occurred after execution of the Settlement Agreement and Release. At the hearing, Mr. Hutson clarified that the only basis for his defamation claim is the April 3, 2014 letter from TLC to "Members of the Big Water Resort Campground." (*See* Dkt. No. 77-17.) That letter provides, in relevant part,

Over the course of the past three (3) years, Mr. Hutson breached his obligations under the [Lease Purchase] Agreement in numerous respects. Those breaches began just months after he took over the property. For example, he failed to pay rents he owed to TLC Holdings, LLC, and taxes owing to Clarendon County that were his responsibility under the Agreement. He failed to pave or repave the roads as required by the Agreement, which would have been a benefit to everyone at the campground. At times, he failed to carry insurance that was necessary to protect the property and the club [that] operated on it. TLC Holdings, LLC has been forced to make tax payments and

insurance payments to protect the property that were Mr. Hutson's responsibility under the Agreement.

Beginning in 2011, TLC Holdings has endeavored to enforce the obligations of Mr. Hutson with regard to the campground. As a result of Mr. Hutson's breaches, TLC Holdings, LLC sued him in state court back in 2011. Mr. Hutson has vigorously resisted TLC Holdings' efforts to enforce his obligations. After protracted litigation in the state court, when TLC Holdings was finally on the verge of success in evicting Mr. Hutson from the property, Mr. Hutson then filed for bankruptcy on January 8th of this year, delaying for a few more months TLC Holdings' recovery of the property. For all these months that Mr. Hutson has resisted TLC Holdings' efforts to recover the property, he has continued the breaches of the Agreement that have hurt TLC Holdings, LLC, and the club members who have used the property.

*16 ...

As a result of TLC Holdings' successes in the state court and bankruptcy court, TLC Holdings, LLC is now finally in control of the campground property for the first time since December, 2010. Much has changed over those three years, and it appears that much work is needed....

Unfortunately, because the records recovered by TLC Holdings, LLC from Mr. Hutson are incomplete in some respects, we ask that you provide to us your understanding of your current status with regard to your membership agreement with Big Water Resort....

...

We understand that this protracted litigation may have confused or frustrated you. It certainly has us ...

(Dkt. No. 77-17.)

The undersigned recommends granting summary judgment as to Hutson's claim for defamation. "The tort of defamation allows a plaintiff to recover for injury to her reputation as the result of the defendant's communication to others of a false message about the plaintiff." *Holtzschetter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998); *see also Parrish v. Allison*, 376 S.C. 308, 321, 656 S.E.2d 382, 389 (Cl. App. 2007) ("A communication is defamatory if it tends

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to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating with him.” (citing *Holtzschetter*, 332 S.C. at 530, 506 S.E.2d at 513 (Toal, J., concurring)). As stated in *Parrish*,

To recover for defamation, the plaintiff must establish by a preponderance of the evidence, that there was (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged communication; (3) fault on the defendant's part in publishing the statement; and (4) either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication.

Parrish, 376 S.C. at 320, 656 S.E.2d at 388 (citations omitted).

Hutson complained at the hearing that TLC stated he filed for bankruptcy but did not explain why he filed for bankruptcy. Because Hutson *did* file for bankruptcy, however, TLC's statement is true, and Hutson cannot prevail on a claim of defamation for such a statement. See *Fountain v. First Reliance Bank*, 398 S.C. 434, 442-44, 730 S.E.2d 305, 309-10 (2012). The same can be said of the other statements contained in the April 3, 2014 letter. The letter indicated that Mr. Hutson “failed to pay rents he owed to TLC Holdings, LLC and taxes owing to Clarendon County.” (Dkt. No. 77-17.) The Settlement Agreement in the State Court Action – which Mr. Hutson signed – indicated that Hutson was in arrearage to TLC in the amount of \$199,969.19. (See Dkt. No. 183-6 at 2 of 10.) Mr. Hutson stated in his deposition that he “didn’t have enough money to pay the taxes on the property like [he] was supposed to.” (Hutson Dep. at 199; Dkt. No. 135.) As to the statement that Hutson failed to carry insurance, there is undisputed evidence in the record that Hutson did not always carry insurance. (See Clark Dep. at 21-22; Dkt. No. 134.) Similarly, as to the statement in the letter that Hutson failed to pave the roads, Hutson admitted that he did not pave the roads. (Hutson Dep. at 80, 82; Dkt. No. 135.) In the letter of April 3, 2014,

TLC states that Hutson “has continued the breaches of the [Lease Purchase] Agreement. (Dkt. No. 77-17.) Of course, that is exactly what Judge James found in the State Court Action in his Order dated March 20, 2014. (See Dkt. No. 183-8; Dkt. No. 183-8 at 6 of 12.) Because the undisputed evidence reveals that the statements of which Hutson complains were, in fact, true, Third-Party Plaintiffs are entitled to summary judgment as to Hutson’s claim against them for defamation.

C. Motion for Summary Judgment (Dkt. No. 228)

*17 Hutson seeks summary judgment as to Third-Party Plaintiffs’ claim against him for equitable indemnity. (See Dkt. No. 228.)⁸ As stated in *Vermeer Carolina’s, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999),

For a party to recover under a theory of equitable indemnification, three things must be proven: (1) the indemnitor was liable for causing the Plaintiff’s damages; (2) the indemnitee was exonerated from any liability for those damages; and (3) the indemnitee suffered damages as a result of the Plaintiff’s claims against it which were eventually proven to be the fault of the indemnitor.

Vermeer, 336 S.C. at 63, 518 S.E.2d at 307. Stated another way, in order for Third-Party Plaintiffs to recover pursuant to a theory of equitable indemnification, Third-Party Plaintiffs must prove that (1) Hutson “was liable for causing the Plaintiff’s damages”; (2) Third-Party Plaintiffs were “exonerated from any liability for those damages”; and (3) Third-Party Plaintiffs suffered damages as a result of the Plaintiff’s claims against [them] which were eventually proven to be the fault of” Hutson. See *Vermeer*, 336 S.C. at 63, 518 S.E.2d at 307.

In his written filings, Hutson asserts he is entitled to summary judgment on the claim for equitable indemnity because “Third Party Plaintiffs were sued by the Class due to broken promises and fraudulent behaviors by the Third Party Plaintiffs in the years prior to Third

Party Defendant's arrival." (Dkt. No. 251 at 16 of 20.) Hutson points to Judge Norton's Order of February 1, 2016 to support his position that Third Party Plaintiffs "convert[ed] the 'club' to a public club and allowed the public onto the property several years prior to 2011." (Dkt. No. 251 at 16 of 20.)

At the hearing, Hutson argued that he is entitled to summary judgment as to Third-Party Plaintiffs' claim for equitable indemnity because the Court can find as a matter of law that TLC is at fault for the circumstances "that we find ourselves here in today." Hutson asserted that TLC violated several South Carolina statutes by not recording the membership agreements or the "purported lease" between Big Water Resort and TLC—which he contends is negligence per se. Hutson argued that negligence per se is fault and that, as a matter of law, TLC is at fault and cannot prevail on its claim for equitable indemnity.

The undersigned recommends denying Hutson's Motion for Summary Judgment (Dkt. No. 228.) Hutson's arguments about Third-Party Plaintiffs' failure to record—while interesting—are red herrings. Even if TLC violated the South Carolina Code in failing to record the membership agreements and the lease between Big Water and TLC, this failure did not cause the *Plaintiffs'* damages. See *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Constr., LLC*, 413 S.C. 615, 619, 625-26, 776 S.E.2d 426, 428, 432 (Ct. App. 2015) (noting that the party seeking equitable indemnification (the general contractor Marick) "cannot recover for equitable indemnity" from Clear View (the subcontractor) "if [Marick] had any fault in causing Stoneledge's damages," where Stoneledge "brought this lawsuit seeking damages resulting from construction defects that allowed water into the townhomes" and "[t]wo of the construction defects alleged by Stoneledge related to the stonework performed by Clear View"). The crux of Plaintiffs' claim is that they were injured when the resort changed from a private resort to a public resort. Simply put, whether lease and the membership agreements were recorded had nothing to do with changing the resort from a private resort to a public resort. Whatever damages Hutson contends he suffered due to the failure to record, it is clear that the *Plaintiffs* suffered no damages.

*18 To the extent Hutson argues that Judge Norton's order of February 1, 2016 supports his position that it was Third-Party Plaintiffs who converted the club from

a private club to a public club, the undersigned finds no such support therein.⁹ The portion of the Order to which Hutson points provides.

The Defendants asserted numerous defenses arguing among other things that the conversion of the club to a public club was not a breach of contract and that the public was allowed onto the property several years prior to 2011 which would render all claims time barred by the statute of limitations.

(Dkt. No. 248 at 3 of 10.) The fact that Defendants pled the statute of limitations as a defense does not mean that they cannot also argue that Plaintiffs' damages were caused by a third party, as inconsistent defenses may be pleaded. See F.E.D. R. CIV. P. 8(d)(3) ("A party may state as many separate claims or defenses as it has, regardless of consistency."); see also *Little v. Texaco, Inc.*, 456 F.2d 219, 220 (10th Cir. 1972) ("[A] defendant is at liberty to deny and at the same time advance an affirmative defense.").

Third-Party Plaintiffs contend that Hutson is the one who opened Big Water Resort up to the public, thereby causing Plaintiffs' damages, and Hutson contends Third-Party Plaintiffs opened Big Water Resort to the public, thereby causing Plaintiffs' damages. Who in fact opened the resort to the public—Third-Party Plaintiffs or Hutson—is a classic factual dispute;¹⁰ accordingly, Hutson's Motion for Summary Judgment as to the claim for equitable indemnity should be denied. See *Stoneledge*, 413 S.C. at 626, 776 S.E.2d at 432 ("Marick cannot recover for equitable indemnity if it had any fault in causing Stoneledge's damages. We have carefully examined the record in this case, and we cannot say as a matter of law Marick is at fault. Rather, we find the evidence is conflicting, and viewing the evidence in the light most favorable to Marick, the record contains evidence a factfinder could reasonably find supports the conclusion Marick was not at fault. Because of this conflicting evidence, the equitable indemnity cause of action must be remanded for a trial."). While Third-Party Plaintiffs "cannot recover for equitable indemnity if they had any fault in causing Plaintiffs' damages," because the evidence

of who is at fault is conflicting, Hutson's motion should be denied. *See id.* at 626, 776 S.E.2d at 432.

for Summary Judgment (Dkt. No. 183) be GRANTED, and that Third-Party Defendant's Motion for Summary Judgment (Dkt. No. 228) be DENIED.

IT IS SO RECOMMENDED.

CONCLUSION

*19 It is therefore RECOMMENDED, for the foregoing reasons, that Third-Party Plaintiffs' Motion for Sanctions (Dkt. No. 179) be DENIED. It is further RECOMMENDED that Third-Party Plaintiffs' Motion

All Citations

Not Reported in Fed. Supp., 2016 WL 7435620

Footnotes

- 1 Third-Party Plaintiffs are TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC (hereinafter "Third-Party Plaintiffs").
- 2 This motion was denied via text order on July 2, 2015. (Dkt. No. 145)
- 3 To the extent Hutson attempts to have criminal charges brought against Thigpen, Lovell, and/or Clark, he cannot do so in the instant civil action. *See Sattler v. Johnson*, 857 F.2d 224, 227 (4th Cir. 1988) (rejecting argument that the plaintiff "had an enforceable right as a member of the public at large and as a victim to have the defendants criminally prosecuted," stating, "There is . . . no such constitutional right....").
- 4 Hutson has counsel as to the claim against him for equitable indemnity. (See Dkt. No. 253.) Counsel does not represent Hutson as to Hutson's counterclaims against Third-Party Plaintiffs. (*Id.*)
- 5 Hutson knew about the membership agreements at the time he purchased the Big Water Resort. (See Dkt. No. 266-1 at 7 of 35; see also Dkt. No. 266-1 at 31-34 of 35.) Renee Roark was Hutson's realtor in connection with the purchase of Big Water Resort. (See Dkt. No. 266-1 at 4-7 of 15.) On November 11, 2010, Ms. Roark emailed Mr. Coffey of Coffey Chandler & Kent; that email stated, *inter alia*,
Attached is Susan's lifetime membership info. regarding Big Water camp ground. My buyer is concerned about the "life time" memberships and the impact they can have on the future development of the property. In other words, in your opinion, what is the easiest, legal way to terminate the lifetime memberships of Big Water? Will these memberships have an impact on obtaining clear title for the property?
(Dkt. No. 266-3 (emphasis added).) At the hearing, Mr. Hutson stated, "I knew that there were memberships, but I did not know, and was not ever told that the memberships created defective title." On the one hand, Hutson stated at the hearing that he knew there were memberships but "was told that they were annual," and on the other hand, he stated that he "asked Renee Roark if the . . . lifetime memberships would affect the title." Hutson complained at the hearing that he never received an answer as to whether the lifetime memberships would have an impact on obtaining clear title. He also stated at the hearing that he bought Big Water Resort without looking at the books or business records. Furthermore, the Lease Purchase Agreement contained the following provision:
Purchaser shall, within ninety (90) days after the Effective Date, investigate Seller's title to the Premises and identify any exceptions to title which are not acceptable to Purchaser (any such exception being referred to herein as a "Title Exception"). Purchaser shall within ninety (90) days after the Effective Date provide Seller notice of any such Title Exception. If Purchaser does not notify Seller in writing of Title Exceptions within ninety (90) days after the Effective Date, then Purchaser shall be deemed to have accepted title to the Premises with all exceptions and conditions.
(Dkt. No. 266-6 at 5 of 34.) The "Effective Date" was in December of 2010. (See Dkt. No. 266-3 at 1, 25-27 of 34.) Hutson admitted at the hearing that he had access to the membership agreements within this ninety day period. Hutson was also represented by an attorney—Andrew Tucker—in conjunction with his purchase of Big Water Resort (See Dkt. No. 266-1 at 9-13 of 35.) At his deposition, Hutson stated that approximately four or five days after Christmas of 2010, he and Tucker "actually started reading some of the membership agreements." (Dkt. No. 266-1 at 15 of 35.) Hutson continued,
And lo and behold, I can't tell you why. [Tucker] never picked up on the fact that I was obligated, according to you, for 60 years, for each one of these people. Because if so, it would be—why—why bother to get a—a sales contract and charge me \$10-\$10,000 a month, when they know good and well that I can't develop, because I've got to keep this place as a whole for 60 years?

(Dkt. No. 266-1 at 15-16 of 35.) Hutson indicated that he and Tucker "sat at the table together and went over" the membership agreements before closing. (Dkt. No. 266-1 at 16 of 35.)

6 At the hearing, Hutson argued he was "misled" via "six direct fraudulent paths" and submitted a document laying out his arguments. (See Hutson Ex. 3.) The alleged misrepresentations which, according to Hutson, constitute fraud, are as follows:

(a) Big Water Resort has no known debt, when the campground was operating with an annual shortfall;

(b) The financial reports listed memberships as a "present net value" of over \$1.7 million, when they "were in fact a liability";

(c) "[T]here w[ere] no actions, suits, or proceedings, either at law or equity ... or to the knowledge of Sellers, threatened," where Third-Party Plaintiffs were aware of the threat of suit by the individuals who purchased membership agreements;

(d) "[The] Seller represents, warrants and covenants to Purchaser" that seller is "[i]n compliance with all laws, regulation and orders applicable to its business," where Third-Party Plaintiffs failed to record the membership agreements pursuant to South Carolina Code § 27-33-30;

(e) Third-Party Plaintiffs had "[g]ood and marketable title" to all "properties and assets," where Big Water Resort "did not own any real estate"; and

(f) Third-Party Plaintiffs had "[g]ood and marketable title" where (1) the sellers "agreed to owner finance the purchase," as it "appeared from their willingness to owner finance that they were confident in the value of the property and the marketability of their title" and where (2) the sellers "agreed to be paid from the proceeds of the sale of condominiums and lots," as the sellers' "willingness to accept a percentage gave confidence that they had good and marketable title to the property."

(Hutson's Ex. 3.) All of these alleged "fraudulent paths" arise out of Hutson's purchase of the Big Water Resort, they do not pertain to the Release.

7 For example, Hutson indicates he asked Lovell and Clark—"right before [he] bought" Big Water—how much money the campground was making, and Hutson admits they said none. (See Dkt. No. 135 at 28, 83-84 of 328.) He complains, however, that TLC "didn't bother to tell [him] it was losing \$300,000 a year." (*Id.*)

8 From a reading of Hutson's motion, it is not entirely clear to the undersigned whether Hutson also seeks summary judgment as to his counterclaims against Third-Party Plaintiffs. (See Dkt. No. 228.) To the extent Hutson seeks summary judgment as to his counterclaims against Third-Party Plaintiffs, such a request should be denied because, as set forth above, Hutson's counterclaims against Third-Party Plaintiffs fail.

9 Hutson also asserts that Third-Party Plaintiffs "have agreed to pay damages/restitution to the Class Members because they are guilty of contract violations for the exclusivity of use to the Class Members." (Dkt. No. 251 at 17 of 20.) However, the Settlement Agreement contains no admission of liability. (See Dkt. No. 218-1.)

10 The record contains evidence that Big Water Resort was opened to the public before Hutson ever arrived. One of the named Plaintiffs in this case—Bonnie Youmans—testified at her deposition that in 2008 or 2009, she noticed that nonmembers were coming in off I-95 and staying for just one night; she indicated these people were not at the resort for a tour. (Youmans Dep. 14-15, 20; Dkt. No. 91-9.) Ms. Youmans testified that she, along with Linda Hudson and Frances McDonald, consulted an attorney in 2008 or 2009 about a possible class action. (Youmans Dep. 34-35; Dkt. No. 91-9.) Of course, the record also contains evidence that Hutson was the one who opened the resort to the public. On or about August 19, 2011, Hutson sent a letter to the "Members"; that letter stated, *inter alia* (verbatim),

Regarding the issue of taking in the public, please let us clear this up. The same as each member use to be (public prior to becoming a member) other outsiders who express an interest are being considered. The only difference is we allow perspective new members to visit our park under trial membership which allows us the opportunity to observe that potential member for longer yearly memberships. All new members will and do pay more money for each visit for campsites and cabin sites. Existing members will always pay far less. The new system will help with the financial growth of Big Water and provide opportunity for Big Water to offer more than ever, with your help and support...

(Dkt. No. 77-23 at 1-2 of 2.) Hutson testified during his deposition that Big Water began to "take every person that we could coming in from the public" about six months after his August 2011 letter (in other words, in early 2012). (Hutson Dep. at 320-21; Dkt. No. 126-1.) He also testified, however, that members complained to him about public access to the resort as early as five or six days after he arrived there. (Hutson Dep. 58-65, 68, 91; Dkt. No. 135.)

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Exhibit C

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS
Civil Action No. 2015-CP-14-0615

TLC Holdings, LLC, Richard Clark, and
Jimmy S. Lovell,

Plaintiffs,

vs.

M. B. Hutson a/k/a M. B. Hudson,

Defendant.

ORDER GRANTING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AS TO
DEFENDANT'S COUNTERCLAIMS

2017 MAR 2 PM 2:59
CLERK OF COURT
CLARENDON COUNTY, SC

This matter is before the Court upon the motion of Plaintiffs TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell for summary judgment as to Defendant M. B. Hutson a/k/a M. B. Hudson's counterclaims. For the reasons set forth below, the Court grants Plaintiffs' motion.

BACKGROUND

This case arises from events related to the Big Water Resort campground ("Big Water"), which is located on the shores of Lake Marion in Clarendon County, South Carolina. Big Water provides campsites, cabins, pools, clubhouse, beach access, boat launch/storage, etc. Big Water began operation in 2003 and memberships were sold from 2003 until sales activities ended in 2010.

Prior to December 31, 2010, the three members of Big Water Resort, LLC,¹ were Richard Clark, Steve Lovell, and James Thigpen. Thigpen served as managing member until June 2008, at which time Steve Lovell became the managing member. In December 2010, Plaintiffs Clark and Lovell, along with Thigpen, sold their membership interests in Big Water Resort, LLC to

¹ Big Water Resort, LLC was the entity that operated the campground.

Defendant M. B. Hutson a/k/a M. B. Hudson, making Hutson the sole member of that LLC. The sales price was \$500,000, of which \$499,990 was payable under a promissory note ("Note") executed by Hutson in favor of Clark, Lovell, and Thigpen. (Ex. A to Plaintiffs' Memorandum in Support of their Motion for Summary Judgment.) At the same time, TLC Holdings, LLC, Clark, Lovell, and Thigpen entered into a lease-purchase agreement ("Lease-Purchase Agreement") with Hutson, under which TLC Holdings, Clark, Lovell, and Thigpen agreed to sell certain property to Hutson. (Ex. B to Plaintiffs' Memorandum.) This property included the land on which the Big Water Resort campground was located. Hutson also executed a pledge agreement in favor of Clark, Lovell, and Thigpen as security for the transaction. (Ex. C to Plaintiffs' Memorandum, Pledge Agreement.) Hutson ultimately defaulted on both the Note and the Lease-Purchase Agreement.

In December 2011, TLC Holdings, LLC instituted an action in Clarendon County Court of Common Pleas against Hutson for breach of contract, seeking damages and ejectment. (Ex. D to Plaintiffs' Memorandum, State Court Summons and Complaint.) Hutson answered and asserted several counterclaims against TLC Holdings and also filed a third-party complaint against Clark, Lovell, and Thigpen. (Ex. E to Plaintiffs' Memorandum, Hutson Answer and Third-Party Complaint.) On March 30, 2012, the parties to the Lease-Purchase Agreement (TLC Holdings, LLC, Clark, Lovell, Thigpen, and Hutson) entered into a Settlement Agreement. (Ex. F to Plaintiffs' Memorandum, Settlement Agreement.) The terms of the Settlement Agreement imposed many duties on Hutson, including the duty to make certain improvements to the campground property and the duty to make certain payments to Plaintiff TLC Holdings, LLC. The Settlement Agreement provided, in part, that a breach by Hutson would terminate the Lease-Purchase Agreement, would require Hutson to vacate the property, and would operate as a

release by Hutson of any and all claims he had against Plaintiffs, whether or not alleged in that lawsuit. *Id.* Hutson was represented by counsel in connection with the negotiation of the settlement agreement. The Settlement Agreement was approved by, and incorporated into, a consent order signed by the Honorable George C. James, Jr. in April 2012 (Ex. G to Plaintiffs' Memorandum, Consent Order).²

By December 31, 2012, Hutson had breached the Settlement Agreement in numerous respects. (Ex. H to Plaintiffs' Memorandum, Judge James' Order, p. 4.) Counsel for Clark, Lovell, and TLC Holdings notified Hutson in February 2013 that he was in default of the Lease-Purchase Agreement and Settlement Agreement. (Ex. I to Plaintiffs' Memorandum, Feb. 2013 Default Letter.) Hutson did not cure the defaults. (Ex. H to Plaintiffs' Memorandum, p. 5.)

TLC Holdings, LLC sent Hutson another default letter in December 2013, notifying him that he had failed to cure the defaults outlined in the February 2013 default letter and that they would proceed with filing an affidavit of default. (Ex. J to Plaintiffs' Memorandum, Dec. 2013 Default Letter.) TLC Holdings subsequently filed the affidavit of default, which was signed by Clark. (Ex. K to Plaintiffs' Memorandum, Affidavit of Default.) In response, Hutson filed a motion in Clarendon County Court of Common Pleas to set aside the affidavit of default and a motion for a temporary restraining order against TLC Holdings, LLC. (Ex. L to Plaintiffs' Memorandum, Motion to Set Aside Affidavit; Ex. M to Plaintiffs' Memorandum, Motion for TRO.) The court granted the temporary restraining order, which prevented TLC Holdings from pursuing further proceedings arising from its issuance of an affidavit of default.

² Because Clark, Lovell, and Thigpen were not made parties to that action due to Hutson's failure to serve them in that action, the Consent Order was between only TLC Holdings, LLC and Hutson. (Ex. G to Plaintiffs' Memorandum, p. 2.) Clark, Lovell, and Thigpen were parties to the Settlement Agreement, however.

A hearing on these motions was held on January 8, 2014 before Judge James. During or immediately prior to this hearing, which Hutson did not attend, Hutson filed a Chapter 11 bankruptcy petition, which automatically stayed the state court proceedings. (Ex. H to Plaintiffs' Memorandum, p. 6.) In February 2014, the Bankruptcy Court granted relief to TLC Holdings, LLC from the automatic stay so that Judge James could determine whether Hutson had any interest in the property that is the subject of the Lease-Purchase Agreement, as of the date of filing the bankruptcy petition. (Ex. H to Plaintiffs' Memorandum, p. 6.)

After a hearing on March 6, 2014, regarding these issues, Judge James issued an order on March 20, 2014, in which he declined to set aside the affidavit of default or issue a preliminary injunction and ruled that the March 2012 Settlement Agreement and April 2012 Consent Order should be enforced. (Ex. H to Plaintiffs' Memorandum, pp. 8-9.) Specifically, he ordered that the Lease-Purchase Agreement was terminated and that Hutson was required to vacate the property. (Ex. H to Plaintiffs' Memorandum, pp. 9-10.) Hutson vacated the property in late March 2014.

In the midst of TLC Holdings' efforts to evict Hutson from the property, he made numerous statements about Plaintiffs, which statements Plaintiffs allege are defamatory, including mailing a postcard to hundreds of current and former campground members asserting that they, along with him, were victims of a scam perpetrated by Plaintiffs. These allegedly defamatory statements led to the initiation of the instant case.

Following Hutson's allegedly defamatory statements, a group of campground members filed a putative class action in federal court against TLC Holdings, Richard Clark, Jimmy Lovell, and other parties,³ alleging a variety of claims.⁴ Those defendants then filed a third-party

³ William Reed, et al. v. Big Water Resort, LLC, et al. (D.S.C. 2:14-cv-01583).

complaint against Hutson, alleging a claim for equitable indemnity. In response, Hutson asserted a variety of counterclaims, including breach of contract, fraud, misrepresentation, negligence, and defamation. See Ex. I, Hutson Answer & Counterclaims, *Reed Case*. TLC, Clark, Lovell, and the other third-party plaintiffs moved for summary judgment as to Hutson's counterclaims on the basis that they were barred by the doctrine of *res judicata*. Magistrate Judge Mary Gordon Baker agreed, finding that Hutson had released his claims against the third-party plaintiffs and that Hutson's claims were precluded by Judge James' Order. (Ex. N to Plaintiffs' Memorandum, Judge Baker's Report and Recommendation.) District Judge David C. Norton then issued an Order adopting Judge Baker's R&R and granting third-party plaintiffs' motion. (Ex. O to Plaintiffs' Memorandum, Judge Norton's Order.)

Returning focus to the instant case, Hutson, acting pro se, asserted counterclaims against Plaintiffs. These counterclaims consist of the following:

- Fraud / Negligent Misrepresentation
- Defamation / Libel Per Se
- Breach of Contract / Breach of Contract Accompanied by a Fraudulent Act
- Violation of the South Carolina Unfair Trade Practices Act
- Amalgamation / Alter Ego / Piercing the Corporate Veil

Plaintiffs then filed the motion at hand, asking this Court to grant their motion for summary judgment on these claims.

LEGAL STANDARD

A trial court may properly grant summary judgment when "the pleadings, depositions,

⁴ TLC Holdings, Clark, Lovell, and the other defendants in that matter ultimately defeated the plaintiffs' attempts to certify a class and also succeeded in getting certain causes of action dismissed. The parties then reached a settlement agreement, which was approved by the district court.

answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Simmons v. Tuomey Regional Medical Center*, 341 S.C. 32, 533 S.E.2d 312 (2000).

Once the party moving for summary judgment meets its initial burden of showing a lack of genuine issue of material fact, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Bravis v. Dunbar*, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994). Rather, the nonmoving party must set forth or point to specific facts showing that there is a genuine issue for trial. *Id.*

DISCUSSION

The doctrine of *res judicata* "bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *S.C. Pub. Interest Found. v. Greenville County*, 401 S.C. 377, 385, 737 S.E.2d 502, 506 (Ct. App. 2012) (citation and internal quotation marks omitted). "Res judicata may be applied if (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication of the issue by a court of competent jurisdiction." *Catawba Indian Nation v. South Carolina*, 407 S.C. 526, 538, 756 S.E.2d 900, 907 (2014). "Under the doctrine of *res judicata*, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (citation and internal quotation marks omitted).

As stated above, in December 2011, Plaintiff TLC Holdings, LLC instituted an action against Hutson in this Court for breach of the Lease-Purchase Agreement and ejectment. Hutson counterclaimed and filed a third-party complaint against Plaintiffs Clark and Lovell. Hutson alleged that Plaintiffs "knew that defects existed in regard to the premises," including that a moratorium was imposed on the property for sewer installation and that there were large utility bills outstanding. Ex. E to Plaintiffs' Memorandum, Hutson Answer and Third-Party Complaint, pp. 7, 13, 14.) Defendant Hutson further alleged that Plaintiffs "made misrepresentations . . . or otherwise concealed relevant and material statements of facts regarding the condition, usefulness, and ability to develop the property." *Id.* at 12. The parties in that case ultimately entered into the Settlement Agreement, discussed *supra*, which includes the following provisions:

This Settlement Agreement shall be incorporated into a Consent Order (the "Consent Order") entered in the above-referenced case (the "Litigation"). Although Richard U. Clark, Jimmy S. Lovell and James C. Thigpen are parties to this Settlement Agreement by virtue of being parties to the [Lease-Purchase] Agreement, and are named as Third Party Defendants in the Litigation, they have not been served with pleadings in the Litigation and shall not be deemed to have appeared in the Litigation by their execution of this Settlement Agreement. This Settlement Agreement shall be binding upon all of the undersigned parties even though Richard U. Clark, Jimmy S. Lovell and James C. Thigpen have not appeared in the Litigation and are not parties to the Consent Order.

....

Pursuant to the Consent Order, in the event that Hudson fails to comply with the terms of this Settlement Agreement, unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in this Settlement Agreement, time being of the essence, then the Plaintiff is entitled to the following immediate relief, without further order of the court or notice to Defendant or his attorney: "(a) termination of the [Lease-Purchase] Agreement, (b) cancelation of the lis pendens filed by Hudson in this action, (c) immediate vacation of the Property by Hudson except for his personal residence, which shall be vacated within 15 days, enforceable by the Clarendon County sheriff; and (d) the provisions of Section 23 shall be effective."

Exhibit JJ

DRIVER LICENSE *Tennessee* THE VOLUNTEER STATE

DL NO: 117621804 DOB: 08/20/1944
 EXP: 08/20/2018 EXP: 07/07/2014
 CLASS: D CLASS: NONE
 REST: NONE
 SEX: M SEX: F
 DOB: 08/20/1944 DOB: 08/20/1944
HUTSON
MORRIS BEACH
2240 OLD GRAYSVILLE RD
DAYTON, TN 37321

Save Time, Renew Online
 WWW.TENNESSE.GOV
 08/20/1944
 Rev 12/02/2011
 ENDORSEMENTS:
 NONE

CLASS: D Vehicles <25,000 (Operator)
 RESTRICTIONS: NONE

ORGAN DONOR I hereby certify that I am 18 or older, of sound mind, and
 upon my death, wish to make an anatomical gift noted here: ☐ Any Organ/Tissue
☐ Specific Organ(s)/Tissue Date: ☐ Entire Body
 Blood Type: ☐ RH Factor: ☐

PHOTO

EXHIBIT
104 HUTSON
S.B.15 MR

Exhibit KK

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

TLC Holdings, LLC, Richard Clark and Jimmy
Lovell
☐ Plaintiff

v.

M.B. Hutson a/k/a M.B. Hudson,
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2015-CP-14-00615

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: R. Wayne Byrd, Esquire
Address: P.O. Box 2116, Myrtle Beach, SC 29578
Phone: 843-213-5500 Fax: 843-213-5620
Email: wbyrd@turnernadjet.com

Defendant's Attorney: Timothy J. Newton, Esquire
Address: P.O. Box 6648, Columbia, SC 29260
phone: 803-782-4100 fax: 803-782-4140
e-mail: newton@murphyverantland.com other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Intervene

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

January 19, 2018
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2015-CP-14-00615

TLC Holdings, LLC, Richard Clark, and
Jimmy Lovell,

Plaintiff,

vs.

M.B. Hutson a/k/a M.B. Hudson,

Defendants.

**NOTICE OF MOTION AND
MOTION TO INTERVENE BY
PENN-AMERICA INSURANCE COMPANY
FOR THE LIMITED PURPOSE OF
SUBMITTING A SPECIAL VERDICT FORM
OR SPECIAL INTERROGATORIES**

TO: ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT pursuant to Rule 24(a)(1), SCRPC, or, in the alternative, pursuant to Rule 24(b)(2), SCRPC, Applicant, Penn-America Insurance Company (hereinafter Penn-America) hereby moves to intervene in this action for the limited purpose of submitting a special verdict form or special interrogatories to the jury.

Penn-America is entitled to intervention as the commercial general liability ("CGL") insurer that issued a policy to BWR, Inc., whose principal is M.B. Hutson, as its rights may be affected by a disposition of this case on the merits. This motion is made on the following grounds:

1. BWR, Inc. is the named insured under a CGL policy (hereinafter "the Policy") issued by Penn-America. Policy number PAC7045167 went into effect on October 16, 2013. The Policy was originally scheduled to remain in effect until October 16, 2014. However, it was cancelled at the request of the finance company effective April 7, 2014. The policy limits are \$1,000,000 per occurrence and \$2,000,000 in the aggregate. A Copy of the Policy is attached.

2. With respect to the claims at issue, Coverage B of the Policy only covers claims for "personal and advertising injury" caused by an offense that was committed during the policy period. (Policy Form CG 0001, ¶ I.B.1.b.)

3. The Policy only covers claims for "personal and advertising injury" that were caused by an offense arising out of the business of BWR, Inc. (Id.)

4. Under the terms of the policy, Hutson is an insured only when acting on behalf of BWR, Inc. (Id. at Section II – Who Is An Insured.)

5. The Policy contains endorsement S2041 (06/03), entitled "Limitation of Coverage to Designated Classifications of Operations." This endorsement limits coverage to only those activities that are listed in the Classification section in the Policy declarations. The activities listed in the Classification section of the declarations all pertain to the operation of the Big Water Resort campground.

6. The Policy excludes coverage for punitive damages. (Policy, endorsement S2002 (06/02)).

7. The Policy excludes coverage for "personal and advertising injury" by the insured with knowledge that the act would violate the rights of another and cause "personal and advertising injury." (Policy, ¶ I.B.2.a.)

8. The Policy excludes coverage for "personal and advertising injury" arising out of a defamatory statement published by the insured with knowledge of its falsity. (Policy, ¶ I.B.2.b.)

9. Penn-America is defending Hutson in this action under reservation of rights.

10. Upon information and belief, the Plaintiffs in this matter have recently moved to amend their Complaint and intend to present evidence of an alleged defamatory statement by Hutson that was published to the internet on May 19, 2014.

11. Coverage does not exist for damages awarded for the alleged defamatory statement made on May 19, 2014. This offense did not occur during the policy period because the policy was cancelled effective April 7, 2014. It does not appear to arise out of the business of BWR, Inc. or to have been made by Hutson in his capacity as a principal or agent of BWR, Inc. This alleged

statement does not appear to arise out of any activity listed in the Policy declarations under the Classification section since Hutson was evicted from the property in late March or early April 2014 at the latest. To the extent damages are awarded against Hutson for the internet posting made on May 19, 2014, they are not damages to which the Policy applies, and they are therefore not covered.

12. Any damages awarded in this action for “personal and advertising injury” caused by Hutson with knowledge his actions violated the rights of the Plaintiffs or for defamatory statements made by Hutson with knowledge of their falsity are not covered.

13. Any punitive damages are awarded against Hutson are not covered.

14. The contractual terms of the Policies and South Carolina law require an allocation between covered and non-covered damages.

15. Penn-America contends that this allocation does not involve relitigating the issue of damages; it is rather a determination of the amount of covered damages under the contractual terms of the Policy and South Carolina law based upon a review of the evidence submitted at trial in this action. Nevertheless, the Supreme Court of South Carolina has recently held in *dicta* that this contractual allocation of covered damages may not be made in a separate coverage action. Harleysville Group Ins. v. Heritage Cmities, Inc., et al., 2017 WL 105021, Op. No. 27698 (S.C. Sup. Ct. filed Jan. 11, 2017) (Shearouse Adv. Sh. No. 2 at 21, 36 n.11).

16. The court did not clarify this holding in its final opinion. Harleysville Group Ins. v. Heritage Cmities, Inc., et al., 420 S.C. 321, 803 S.E.2d 288 (2017). Instead, the court cited a prior case in which allocation was not allowed due to failure to raise the issue in an underlying arbitration proceeding. See Auto Owners Ins. Co. v. Newman, 385 S.C. 187, 198, 684 S.E.2d 541, 547 (2009). Thus, it appears that South Carolina law may not allow insurers to obtain facts necessary for determinations involving liability coverage in separate declaratory judgment actions.

17. Generally, insurers lack standing to intervene in underlying actions to determine liability. Ex Parte Gov't Employee's Ins. Co., 373 S.C. 132, 138-39, 644 S.E.2d 699, 702-03 (2007); Baker Hosp. v. Fireman's Fund Ins. Co., 314 S.C. 98, 101, 441 S.E.2d 822, 823 (1994) (citing Blue Cross and Blue Shield of S.C. v. S.C. Indus. Comm'n, 274 S.C. 204, 262 S.E.2d 35 (1980)). These holdings were based upon the understanding that factual determinations for coverage purposes could be litigated in separate coverage actions. See Ex Parte GEICO, 373 S.C. at 137, 644 S.E.2d at 702. Harleysville appears to contradict this prior understanding.

18. Notice and opportunity to be heard are fundamental requirements of due process. If Penn-America is denied any forum for obtaining facts necessary for its allocation for coverage purposes, then its due process rights are violated in violation of both state and federal law.

19. Accordingly, Penn-America hereby moves to intervene in this action for the limited purpose of participating in the drafting of a special verdict form or submitting special interrogatories to the jury regarding the amount of any damages award that is for covered damages.

20. Under South Carolina law, a party seeking intervention under Rule 24(a)(2), SCRPC, must: (1) establish timely intervention; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties. In re Horry County State Bank, 361 S.C. 503, 508, 604 S.E.2d 723, 725 (Ct. App. 2004).

21. Penn-America's motion to intervene is timely. This motion is being filed in response to a motion to amend filed by the Plaintiffs this week that purports to add claims that are not covered by the policy. The parties participated in a mediation held in December 2017 in a good faith effort to resolve the case out of court, but a settlement could not be reached.

22. Penn-America has an interest relating to the property or transaction which is the subject of this action. As discussed above, this action represents the only forum in which Penn-America can obtain an allocation as to the amount of covered damages under the Policies.

23. Penn-America is in a position such that, without intervention, disposition of this action will impair or impede its ability to protect that interest. The Supreme Court appears to have held that if intervention is not sought, an insurer waives its right to seek an allocation as to the amount of covered damages. Harleysville, 2017 WL 105021 at *7 n.11; Newman, 385 S.C. at 198, 684 S.E.2d at 547.

24. Penn-America is not adequately represented by other parties to this action. None of the parties to this action have an incentive to seek an allocation as to the amount of covered damages. The interests of the Plaintiffs and Hutson are aligned against the interest of Penn-America. Indeed, federal courts often realign parties to coverage litigation to reflect the fact that the interests of the liability carrier are adverse to the interests of both the plaintiffs and the defendants in the underlying tort litigation. See Bi-Lo, LLC v. Nat'l Union Fire Ins. Co. of Pittsburgh, C.A. No. 0:14-cv-00335-CMC, 2014 WL 12605522 at *7-8 (D.S.C. Apr. 30, 2014). When the interests of the party seeking intervention are adverse to the interests of the party litigants, "there is an obvious lack of adequate representation." In re Horry Bounty State Bank, 361 S.C. at 509, 604 S.E.2d at 726.

25. Accordingly, Penn-America has satisfied all of the elements for intervention of right under Rule 24(a)(2). The use of the mandatory term "shall be permitted to intervene" demonstrates that this right is not subject to this Court's discretion.

26. In the alternative, Penn-America also moves to intervene under Rule 24(b). Permissive intervention is allowed at the court's discretion based upon the existence of a common question of fact or law between the underlying litigation and the intervenor's claims or defenses.

S.C. Tax Comm'n v. Union County Treasurer, 295 S.C. 257, 263, 368 S.E.2d 72, 75 (Ct. App. 1988). Sound administrative procedure favors the disposition of all claims or defenses in a single action. Id. As discussed above, this action represents the only forum in which an allocation of covered versus non-covered damages can be made.

27. Penn-America's motion to intervene is made for the limited purpose of presenting the jury with a special verdict or special interrogatories for a finding as to allocation between covered and non-covered damages. Courts have allowed limited intervention for a special purpose. Davis v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991) (holding that intervention is appropriate for third-party challenges to protective orders).

28. Upon information and belief, the granting of this motion will not unduly delay or prejudice the adjudication of the rights of the original parties to the instant action, in that intervention is for the limited purpose of determining the form of the verdict to be submitted to the jury, and intervention will not impact the ability of the original parties to present their claims and/or defenses at trial.

Penn-America respectfully moves to intervene in this action pursuant to Rule 24(a) and (b) for the limited purpose of participating in the drafting of a special verdict or submitting special interrogatories to the jury in order to obtain findings of fact necessary for an allocation between covered and non-covered damages under the Policies. The grounds for this Motion are set forth above.

[Signature page follows]

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



J.R. Murphy, Esquire (SC Bar #7941)
Wesley B. Sawyer (SC Bar #100229)
Timothy J. Newton, Esquire (SC Bar 71640)
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100; ext. 1242
(803) 782-4140 (facsimile)
Email: tnewton@murphygrantland.com
Attorneys for Penn-America Insurance Company

Columbia, South Carolina
January 18, 2018

Exhibit LL

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)
TLC Holdings, LLC,)

IN THE COURT OF COMMON PLEAS

CASE NO.: 11-CP-14-602

Plaintiff,

vs.

M.B. Hudson a/k/a M.B. Hutson,

Defendant.

**NOTICE OF MOTION AND MOTION
FOR ORDER REQUIRING TENANT
TO PAY ALL RENT DUE, OR, IN THE
ALTERNATIVE, FOR APPOINTMENT
OF RECEIVER**

M. B. Hudson a/k/a M. B. Hutson,

Defendant and Third Party Plaintiff,

v.

Richard U. Clark, Jimmy S. Lovell and James
C. Thigpen,

Third Party Defendants.

The Plaintiff, TLC Holdings, LLC, ("Plaintiff", "TLC" or "Landlord"), landlord of Defendant, M.B. Hudson a/k/a M.B. Hutson ("Defendant", "Hutson", or "Tenant"), hereby moves the court for: (a) an order pursuant to S.C. Code Ann. §§ 27-37-150 and 27-37-155 requiring Tenant to pay Rent (as defined in the Lease) owed to Landlord through January 30, 2012 and Rent that continues to accrue until this Motion is heard; or (b) in the alternative, for an order appointing a receiver to manage the Premises (as defined herein), pursuant to South Carolina Rule of Civil Procedure 66 and S.C. Code Ann. §§ 15-65-10 *et. seq.*

I. Motion for Rents.

Tenant has failed to comply with the requirements of S.C. Code Ann. §§ 27-37-150 and 27-37-155. Landlord filed a Breach of Lease and Ejectment action on or about December 14,

EJECT_000234

2011 for Tenant's failure to pay Rent and other sums due under the terms of the Lease Purchase Agreement (the "Lease") dated December 15, 2011, by and among Landlord, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, and Tenant, for property located in Clarendon County, South Carolina commonly known as the Big Water Resort (the "Premises"). A copy of the Lease is attached hereto and incorporated herein by reference as Exhibit "A." As shown by the Complaint on file with the Court, Tenant owed Landlord the sum of \$78,186.44 as of November 22, 2011. Rent continues to accrue since the filing of the above-referenced action. Accordingly, as of the date of this Motion and pursuant to the terms of the Lease, the sum of \$165,840.07 as of January 26, 2012 is now due and owing from Tenant to Landlord. A chart showing the amounts due from Tenant to Landlord through January 26, 2012 is attached hereto and incorporated herein by reference as Exhibit "B."

Plaintiff duly served Tenant and its counsel with the Summons, Complaint, Application for Ejectment and Rule to Vacate or Show Cause. Tenant, through his counsel, filed an answer or other responsive pleading in response to the Complaint. Tenant requested a jury trial. However, Tenant failed to pay Landlord Rent in contravention to the terms of the Lease. Therefore, Tenant is in violation of, without limitation, S.C. Code Ann. §§ 27-37-150 and 27-37-155 for failing to pay Landlord Rent through the date of this Motion, which amounts to the sum of \$165,840.07 as of January 26, 2012. Accordingly, Plaintiff is entitled to the immediate payment of \$165,840.07 as of January 26, 2012, together with Rent accruing after that date in accordance with the Lease. If Tenant fails to pay Landlord this amount, then pursuant to S.C. Code Ann. §§ 27-37-150 and 27-37-155, Tenant must be evicted from the Premises without a jury trial.

II. Motion to Appoint Receiver.

In the alternative to the foregoing, Plaintiff hereby moves for an Order appointing a Receiver to manage the Premises, pursuant to South Carolina Rule of Civil Procedure 66 and South Carolina Code Sections 15-65-10 *et. seq.* Plaintiff requests that the Court grant the Receiver power and authority necessary and appropriate to do the following: (i) to take possession of said Premises, and manage and maintain the same during the pendency of this action; and (ii) to collect the rents, revenues and profits from the Premises, and hold such rents and profits pending further Order of this Court in the foregoing action. Plaintiff does not seek to grant the Receiver the power to operate the "Big Water Club", which is a separate business operation held by a separate entity which is not a party to this action, and which is owned by Hutson, but does seek to empower the Receiver to recover possession of the Premises from Hutson and the Big Water Club if the Rent owing under the Lease is not paid as required thereunder.

The grounds for this motion are that (a) the Plaintiff has an apparent right to the Premises that is the subject of the action by virtue of the termination of the Lease in October, 2011; (b) the Premises is currently in the possession of Hutson, a party adverse to Plaintiff; and (c) the Premises, or its rents, revenues and profits, are in danger of being lost or materially injured or impaired. Without limiting the foregoing, as set forth more fully in the affidavit of Richard U. Clark attached hereto as Exhibit "C", Hutson has failed to pay: (a) the property taxes owing upon the Premises, jeopardizing the loss of the same at a delinquent tax sale if Plaintiff had not paid the taxes itself; (b) various insurance premiums required to be maintained under the Lease, which has caused the possible loss of liability insurance coverage protecting the Premises and

TLC; and (c) rent owing to the South Carolina Public Service Authority for the lakefront portion of the Premises, jeopardizing the value of the remainder of the Premises.

In addition, as set forth more fully in the affidavit of Richard U. Clark, it appears that Hutson intentionally misled Plaintiff about his true identity prior to the execution of the Lease. In numerous conversations, and in the Lease and other documentation executed concurrently therewith by the parties, Defendant identified his surname as "Hudson" when in fact it is "Hutson". A search of the public records indicates that Defendant Hutson has a history of arrests, criminal warrants, and public complaints related to his business practices, facts which Plaintiff was unable to discover before the Lease was signed due to Hutson's intentional misrepresentation of his name. See Clark Affidavit ¶ 13. Those facts would have led TLC to refuse to sign the Lease had it been able to investigate Defendant's true identity before the Lease was signed. See Clark Affidavit ¶¶ 13 and 14. Defendant's prior record, coupled with his concealment of his true identity, evidences that the Premises are in danger while in his possession.

[Remainder of Page Left Blank Intentionally]

This Motion is based on the exhibits attached hereto, the pleadings on record, any additional supporting and/or responsive affidavits, South Carolina law, and the pleadings on file with the Court, a supporting memorandum to be filed with the Court as well as the argument of counsel. The motion is further based upon such other materials and evidence that may be submitted to the Court at the hearing on this Motion or otherwise.

WOMBLE, CARLYLE, SANDRIDGE & RICE, LLP


Thomas L. Harper, Jr. (S.C. Bar # 11335)
Jana B. Baker (S.C. Bar # 72487)
5 Exchange Street (29401-2530)
P.O. Box 999
Charleston, South Carolina 29402-0999
Telephone: 843-722-3400

ATTORNEYS FOR PLAINTIFF

February 16, 2012
Charleston, South Carolina

WCSR 7138714v2

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EJECT_000238

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)
TLC Holdings, LLC,)

Plaintiff,

vs.

M.B. Hudson a/k/a M.B. Hutson,
Defendant.

M. B. Hudson a/k/a M. B. Hutson,
Defendant and Third Party Plaintiff,

v.

Richard U. Clark, Jimmy S. Lovell and James
C. Thigpen,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 11-CP-14-602

AFFIDAVIT OF RICHARD U. CLARK

COMES NOW, Richard U. Clark, who, being duly sworn, deposes and says as follows:

1. I am a Member of Plaintiff TLC Holdings, LLC ("TLC" or the "Company"), and have personal knowledge of the matters contained in this affidavit. I am duly authorized by TLC to give this affidavit on its behalf.

2. I have read the Complaint, the Application for Ejectment, and the Motion for Order Requiring Tenant to Pay All Rent Due or, in the Alternative, for Appointment of Receiver (the "Motion") filed in this action by Plaintiff and know the contents thereof, and the same are true to the best of my knowledge, except as to the matters therein stated to be on information and belief, and as to those matters, I believe them to be true.

WCSR 7/26/2010v2

1

EJECT_000274

EL ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

3. In or around December, 2010, I was introduced to the Defendant in this action, M.B. Hudson a/k/a Morris B. Hutson ("Defendant" or "Hutson"). In the numerous conversations I had with him, he consistently identified himself as being named "M.B. Hudson".

4. Hutson approached TLC about purchasing the Clarendon County real property which is the subject of this action and which is commonly known as the Big Water Resort (the "Property"). At the time that he approached us, the Property was not listed or being actively marketed for sale.

5. When Hutson approached us and offered to purchase the Property, he originally offered to structure the transaction as a traditional purchase agreement whereby he would purchase the Property within 60 business days following the date the contract was signed, paying the entire purchase price at that closing. There was no lease component in his initial proposal.

6. However, before a purchase agreement was signed, and while he was conducting his due diligence investigations about the Property, Hutson discovered that there was no available water and sewer capacity to support the construction of new development at the Property, and that future development of the Property would require the extension or expansion of additional sewer facilities to the Property. He disclosed this information to Steve Lovell (another TLC member) and me before any agreement was executed.

7. Hutson advised Lovell and me that, in light of the additional time and money that such infrastructure would require, he wanted to structure our agreement not as an "all cash" purchase within 60 business days following the date the contract was signed, but instead as a "lease/purchase" arrangement, which included both (a) a right to purchase the Property within two years (not 60 business days), and (b) a lease of the Property, which would permit Hutson, during the course of up to two years, to take possession of the Property, paying monthly rent and operating expenses related

thereto, and operating the Big Water Club thereon, while he proceeded to extend or expand water and sewer capacity to the Property in order to facilitate the future development he envisioned.

8. The foregoing discussions occurred prior to the drafting and negotiation of the Lease Purchase Agreement which is the subject of this action.

9. Based on the statements Hutson made to me prior to the execution of any agreement, I am informed and believe that he was fully aware of the lack of water and sewer capacity for future development at the Property before he executed the Lease Purchase Agreement.

10. Hutson had his attorney prepare the Lease Purchase Agreement, including his requested 2-year lease of the Property. That Lease Purchase Agreement (the "Lease", the "Lease Purchase Agreement", or the "Agreement") was executed on or about December 15, 2010, by and among TLC, Defendant, Lovell, James C. Thigpen and me.

11. Pursuant to the commercial lease contained within the Agreement, TLC delivered possession of the Property to Hutson, who has remained in possession of the Property since that time.

12. After the Lease was executed, I learned that the Defendant is not named "M.B. Hudson", as he had identified himself in all prior communications with Lovell and me, but is instead named "Morris B. Hutson". In numerous conversations with Lovell and me, and in various legal documents executed by him and TLC in conjunction with the Lease, the Defendant had always identified his last name as "Hudson".

13. After discovering that the Defendant's true last name was "Hutson", and not "Hudson", I conducted an investigation of "Morris Hutson". In the course of that investigation, I obtained evidence from a public records search that revealed, among other things, that Hutson had been an interstate fugitive from Georgia, extradited from the State of Florida, and had been involved

in real estate or business transactions in Tennessee and Georgia for which the other parties had filed or posted public complaints against his conduct.

14. Irrespective of whether these public records showing the existence of civil and criminal complaints against the Defendant are true and correct – and I am not saying that they are – TLC, Lovell and I would not have executed the Agreement with the Defendant had we known of the existence of those complaints and records beforehand.

15. Upon information and belief, had Hutson disclosed his true identity to Lovell and me prior to the execution of the Lease, allowing us to investigate him adequately, we would have discovered complaints and records against him, and TLC and we would not have executed the Lease Purchase Agreement.

16. Since the Lease was executed, Hutson has failed to pay TLC, the landlord under the Lease, rent and other sums due under the terms of the Lease. As shown by the Complaint on file with the Court, Tenant owed Landlord the sum of \$78,186.44 as of November 22, 2011. Rent continues to accrue since the filing of the above-referenced action.

17. As of January 26, 2012, Hutson owes TLC the sum of \$165,840.07 under the terms of the Lease, exclusive of interest, late fees, and Plaintiff's attorneys' fees and litigation costs, all of which are owing under the terms of the Lease. A schedule showing the amounts due from Tenant to Landlord through January 26, 2012 is attached hereto and incorporated herein by reference as Exhibit "A".

18. Pursuant to the Lease Purchase Agreement, as a result of Hutson's numerous breaches thereof, TLC terminated the Lease Purchase Agreement as of October 17, 2011, by written notice delivered to Hutson.

19. Despite the termination of the Lease Purchase Agreement in October, 2011, and despite not having paid Rent owing since July, 2011, more than seven (7) months ago, Hutson has continued to occupy the Property and refuses to vacate the same.

20. Despite not having paid the Rent owing to TLC under the Lease, Hutson has continued to receive rents, revenues and profits from the Property, including, without limitation, rents owing by the truck stop operator and rents received from certain cabin or storage rentals. In addition, Hutson is operating his business, the Big Water Resort, upon the Property, and, upon information and belief, he is collecting dues and other revenues from his Big Water Resort club members.

21. Without limiting the foregoing, Hutson has also failed to pay rent owing to South Carolina Public Service Authority for a portion of the Big Water Resort situated along Lake Marion, as required under the Lease. As a result of Hutson's failure, TLC was required to pay such amounts to protect the leasehold interest. The amounts that TLC advanced, which are properly owing by Hutson to TLC, are shown on Exhibit "A".

22. Hutson has failed to pay the real estate taxes owing upon the Property, as required under the Lease. As a result of Hutson's failure, TLC was required to pay such amounts to avoid delinquency and possible tax sale of the Property. The amounts that TLC advanced, which are properly owing by Hutson to TLC, are shown on Exhibit "A".

23. Hutson has failed to pay the insurance owing upon the Property, as required under the Lease. As a result of Hutson's failure, TLC was required to pay the premiums on such policies to protect the Property. The amounts that TLC advanced, which are properly owing by Hutson to TLC, are shown on Exhibit "A".

24. In early February, I received another notice that the insurance that Hutson is required to maintain under the Lease to protect the Property and TLC was scheduled to be cancelled for nonpayment of premiums. TLC advanced funds to pay the premium on the prior policy (the amounts of which are included on Exhibit "A"), but that policy is about to lapse and, according to this February notice, Hutson has failed to pay this premium, further jeopardizing TLC and the Property to uninsured liability.

25. I am informed and believe that Hutson has failed to pay certain utility bills owing for the Property, as required under the Lease. I am informed and believe that as a result of Hutson's failure, electricity service to the Property was suspended during this winter, which jeopardized the Property and improvements thereon.

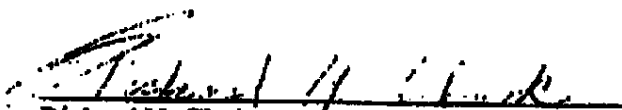
26. Since the Lease was executed, Hutson has collected various rentals, dues and revenues from the lease or operation of the Property, all without paying the rent he owes to TLC as landlord under the Lease, as well as the taxes, insurance, and certain other operating expenses pertaining to the Property.

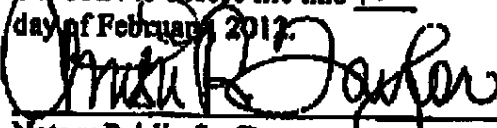
27. As a result of Hutson's breach of the Lease, TLC terminated the Lease, and is entitled to possession of the Property.

28. The property remains in the possession of Hutson, who is retaining the rents and profits thereof, all of which, along with the Property itself, are in danger of being lost or materially injured or impaired.

29. I am informed and believe that Defendant does not have sufficient working capital to preserve and protect the rents and profits derived from the Property, further jeopardizing those revenues to which Plaintiff is entitled under the Loan Documents.

FURTHER AFFIANT SAYETH NOT.


Richard U. Clark

SWORN to before me this 15th
day of February, 2013.

Notary Public for Tennessee
My Commission Expires: 11-30-2013

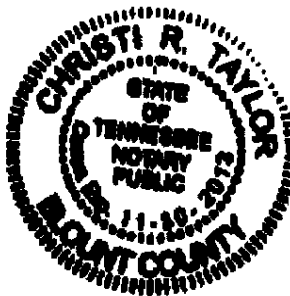


EXHIBIT A
(Amounts Owling by Defendant under Lease Purchase Agreement as of 1/26/12)

BASE RENT, CALCULATED AS FOLLOWS:		\$58,000.00
July 2011	\$10,000.00	
August 2011	8,000.00	
September 2011	8,000.00	
October 2011	8,000.00	
November 2011	8,000.00	
December 2011	8,000.00	
January 2012	8,000.00	
RENT DUE AND OWING TO SCPSA		\$22,860.00
LIABILITY INSURANCE		\$13,326.44
(1)	\$5679.85	
(2)	\$7646.59	
PROPERTY TAXES		\$71,653.63
TOTAL		\$165,840.07*

* -- Exclusive of (but Plaintiff reserves the right to collect, pursuant to the terms of the Lease Agreement) interest, late fees, and Plaintiff's attorneys' fees and litigation costs, together with other damages and amounts allowed under the Lease Purchase Agreement or applicable law, all of which are to be added to the foregoing amounts and are owing by Defendant.

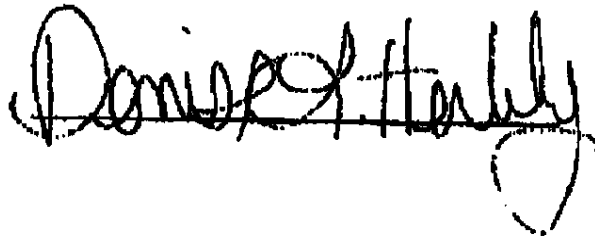
CERTIFICATE OF SERVICE

I do hereby certify that on the 16th day of February, 2012, I served a copy of the within *NOTICE OF MOTION AND MOTION FOR ORDER REQUIRING TENANT TO PAY ALL RENT DUE, OR, IN THE ALTERNATIVE, FOR APPOINTMENT OF RECEIVER* to Counsel of Record in the within entitled matter by sending a copy of the same in an envelope with the correct postage prepaid addressed to:

Paul Weissenstein, Jr.
Weissenstein Law Firm, LLC
106 Broad Street
P.O. Box 2446
Sumter, SC 29151-2446

ATTORNEYS FOR DEFENDANT

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

A handwritten signature in black ink, appearing to read "Denise G. Harley", written over a horizontal line.

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

TLC HOLDINGS, LLC

Plaintiff,

vs.

M.B. HUDSON a/k/a M.B. HUTSON

Defendant.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

CASE NO.: 2011-CP-14-602

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney:

Thomas L. Harper, Jr., Bar No. 11553

Address:

Womble Carlyle Sandridge & Rice, LLP
PO Box 999, Charleston, SC 29402
Phone: 843/722-3400 Fax 843/723-7398
E-mail: tharper@wcsr.com Other: _____

Defendant's Attorney:

Paul Weissenstein, Jr., Bar No. _____

Address:

Weissenstein Law Firm, LLC
106 Broad Street, PO Box 2446
Sumter, SC 29151-2446
Phone: 803/418-5700 Fax 803/934-1505
E-mail: _____ Other: _____

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Order Requiring Tenant to Pay All Rent Due, et al.

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff ☐ Defendant2/16/12.
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE CODE _____

Date: _____

EJECT_000283

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

EJECT_000284

Exhibit MM

Tim J. Newton

From: H Hutson <hutson4444@gmail.com>
Sent: Tuesday, June 16, 2020 7:30 AM
To: Tim J. Newton; J. R. Murphy; Christian Penn Amer
Cc: Hmr226621@gmail.com
Subject: Notice

Good morning Respondent Tim Newton and J.R. Murph;

Putting you on notice that I plan to file for a emergency hearing Motion before the Appeals Court asking that I be allowed to cross examine all lawyers who are committing extrinsic fraud upon the Appeals Court and the Judges. In addition, I will ask that the Honorable Judge swear all lawyers in prior to the questioning.

How can I win this appeal while you lawyers conceal from the Courts for it prevents me from having my case fully heard. I am going to ask for a stay until we are allowed the emergency hearing. Had enough of lies and concealment. I will declare that you lawyers are misinforming the Court and Appeal Judges and should be removed from practicing law. I will remind the Appeals Court that Tim Newton had full opportunity and a legal responsibility to reveal the extrinsic fraud before the Judge residing over the jury trial while in Private meetings of which I was present but told not to speak and a few other things.

Respectfully,

MB Hutson

--

803-308-2714

Total Control Panel

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

[Login](#)

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

Exhibit NN

Tim J. Newton

From: Paul, Glenn <gpaul@global-indemnity.com>
Sent: Monday, June 22, 2020 11:17 AM
To: Tim J. Newton
Subject: FW: Participating in extrinsic fraud

Tim,

e-mail per our phone call.

glenn

From: H Hutson <hutson4444@gmail.com>
Sent: Monday, June 22, 2020 8:14 AM
To: Christian Penn Amer <cstegmaier@collinsandlacy.com>; Paul, Glenn <gpaul@global-indemnity.com>
Cc: Hutson4444@gmail.com
Subject: Participating in extrinsic fraud

June 22, 2020

Good morning Christian, this saddens me having to seriously consider bringing a immediately separate action against you for participating with Tim Newton and JR Murphy in extrinsic fraud upon the Appeals Court and the lower Court. You are sticking with Murphy & Grantland including filing documents that play their defense against me and against what's right and truthful.

Do any attorneys exist who want hesitate to step over the line of what's right and legal? Penn America and Global were fully aware that making a business decision to not defend me in order to remove the extrinsic fraud could only cause one outcome. In addition, they had an obligation to come to me advising me of what they had decided to do and how I was going to be destroyed by their decision since I was the insured and through me and my business, the insurance companies got their monthly payments for coverage.

I plan to serve the insurance companies copies of the complaint as well as serving you. I find this to be a crying shame. I would hope that you would have done the right thing immediately. I simply need and want real Justice. You are cheating against me.

Respectfully,

MB Hutson

--

803-308-2714

Total Control Panel

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To: newton@murphygrantland.com [Remove](#) this sender from my allow list
From: gpaul@global-indemnity.com

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

Exhibit OO

Tim J. Newton

From: H Hutson <hutson4444@gmail.com>
Sent: Monday, July 06, 2020 9:32 AM
To: Christian Penn Amer; Tim J. Newton; J. R. Murphy; Insurance Glenn Paul
Cc: Hutson4444@gmail.com
Subject: You can't win this case

July 6, 2020

Christian, this case boils down to a few simple facts:

1. All Respondents were aware of the TLC/lawyers extrinsic fraud.
2. All Respondents made a decision *not* to remove the extrinsic fraud even though they fully understood that if they did not, I would be ruined and damaged.
3. All Respondents had a duty, moral obligation and a professional legal obligation to write a letter advising me (since I was the insured) that they had made the decision *not* to remove the fraud and as a result, I could never win any related case and would be destroyed. Furthermore, all Respondants fully understood that not writing/informing me that their decision was going to cost me enormous and continual damages including losing all cases due to the unexposed extrinsic fraud, leaving a \$3.5M judgement on my record that further crippled my ability to move forward professionally and sealed my becoming indigent, which continues, making it impossible for me to hire an attorney.
4. Tim Newton's personally written letter is more than enough evidence that Respondant's actions more than exceeded reasonable doubt. The letter even suggested that "Possibly Frank could file a motion if Penn-America approves it, but he and I both have agreed to put everything on hold until the mediation." Newton was talking about filing a motion to get the extrinsic fraud out of the way so I could prevail like I was entitled to do, not conceal winning evidence due to a business decision on the part of all Respondents to get my case off their books.

All Respondents were in possession of and took the opportunity to review, study, and investigate all the contracts and court actions which clearly identified TLC/lawyers' extrinsic fraud including your firm. Should you, as counsel to Penn America, continue to conceal pertinent facts that prevents my case/s from being heard, *you* will become equally guilty of undisclosed extrinsic fraud upon the courts. We both know that could possibly result you to be ultimately held professionally responsible and/or lose your license to practice law. Do not cheat me out of my case being heard. I would like to remind you of the following:

The United States Court of Appeals for the Sixth Circuit has delineated five (5) elements of conduct that constitute extrinsic fraud upon the court:

- A. "On the part of an officer of the court:"
- B. "That is directed to the judicial machinery' itself;"
- C. "That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth;"
- D. "That is a positive averment or is concealment when one is under a duty to disclose;" and
- E. "That deceives the court."

By hiding the facts of the existing and underlying extrinsic fraud upon the courts to protect your clients, Penn America, et al., you will likely find yourself personally and professionally entwined. I am not writing this email to you to threaten or extort but simply to remind you that your inaction to disclose extrinsic fraud underlying these actions in the court are wrong and dishonest to the Appeals Court and Judges, as well to me. You are intentionally concealing pertinent facts that you have a legal and professional obligation to bring to the attention of the Court. You intentionally failed to bring attention to this in Judge Nettles' court about the known concealments, also.

I have filed my Emergency Motion, as you know, and mailed you a copy. If I don't hear from you within the next (5) business days, I will proceed with a complaint in State or Federal Court against you. This entire situation should come to an end.

Respectfully,

MB Hutson

--

803-308-2714

Total Control Panel

[Login](#)

To: tnawton@murchvarentland.com

[Remove](#) this sender from my allow list

From: hutson4444@gmail.com

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

Exhibit SS

Tim J. Newton

From: H Hutson <hutson4444@gmail.com>
Sent: Wednesday, July 08, 2020 9:15 AM
To: Tim J. Newton; J. R. Murphy; Christian Penn Amer; Fournier, Doreen; Insurance Glenn Paul; Laur Paton; Mediator Charleston Bill Lyles; Frank Gordon; Att Chip Emge Insurance Attorney

Dear Christian,

Simply wish to give you a heads up.

Since all actions and fraudulent conduct by Penn America and Global Indemnity, including some of their employees, as well as attorneys representing or associated with Penn America and Global by way of representation, I plan to bring to the entire public's attention how easy it is for an insurance company and their attorneys to defraud / plot against the insured either to save money, protect other lawyers or drop the duty to protect and defend the insured via extrinsic fraud.

I can use the Internet, among other methods. I plan to name every person, every law firm and lawyer as well as every person who has assisted in plotting to defraud me including persons who work for Penn America or Global Indemnity. Should anyone refer to my actions as defamation, I welcome any new lawsuit that allows me to further expose the injustice carried out by the following:

Tim Newton @ Murphy & Grantland South Carolina
JR Murphy @ Murphy & Grantland South Carolina
Christian Stegmaier @ Collins & Lacy P.C. South Carolina
Doreen Fournier @ Global Indemnity
Laura Paton @ Carlock, Copeland Stair LLP
Chip Emge @ Carlock, Copeland Stair LLP
Frank Gordon, Esq. based in Raleigh, N C
Bill Lyons, Esq. of Charleston, South Carolina
... To name a few.

--

803-308-2714

Total Control Panel

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

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Exhibit V
(excerpts)

Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Saturday, August 11, 2018 9:04 PM
To: Tim J. Newton
Subject: Setting aside the Judgement
Attachments: Blank pages; ATT00001.txt

Total Control Panel

To: tnewton@murphyrcanland.com [Remove this sender from my allow list](#)
From: hmr226621@gmail.com

[Login](#)

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

Reasons why the Settlement Agreement was Fraudulent:

1. There were over 700 family members who prepaid for two life times of "Sole Use" of the property held by TLC Holdings, LLC.
2. The Settlement Agreement agreed to by the Court and the Honorable Judge James ordered Hutson to purchase the 108 acres of land and develop the proposed subdivision in a confined time frame when in fact, the 108 acres was defective in title due to the 700 family members prepaid two life times "Sole Use" of all property.
3. Those 700 family memberships had been sold and in most cases, all monies had been pre-collected by TLC Holdings, LLC. All memberships had been pre-sold years prior to Hutson's arrival creating the defective title whereby no loans could be made for lot take out nor no loans could be obtained for construction for private occupation and ownership of new proposed homes to the general public due to the membership 70 year "Sole Use".
4. The defective property did not have public sewer or water which was required but a moratorium existed on such public water and public sewer preventing Hutson to move forward with the project being a factor in his inability to develop.
5. Hutson holds a sworn affidavit by an expert attorney outlining that the option to buy property was defective in title. TLC Holdings, LLC was aware of that fact at the time of the execution of the Settlement Agreement but withheld this information from the Court.
6. In addition, TLC Holdings, LLC three members also prepared a contract to sell the Big Water Resort to Mr. Hutson which required Hutson to accept and assume full responsibility of some 700 family members for up to 70 years all having "Sole Use" of the property which prevented Hutson from ever closing or purchasing the 108 acres.
7. TLC Holdings, LLC three members withheld the full knowledge that Big Water Resort owned no right to use any of the 108 acres of land nor was there any type of contractual agreement between TLC Holdings, LLC and the three members to allow Big Water Resort the right to provide said 108 acres to it's 700 family members. This action placed Big Water Resort in an Impossible position to honor the long term contracts.
8. The entire contracts named Settlement Agreement and Consent order was fraud upon the Honorable Judge and Court and since such two orders were legally impossible to honor or comply to, such Settlement Agreement and Consent Order were and are null and void. The intentions of TLC and it's three members were to deceive and trick both Hutson, his attorney, the Judge and the Honorable Court.
9. TLC's only reason for conducting such dishonesty upon the Court was to gain an unfair advantage over Hutson causing Hutson to fail and be evicted.

Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Saturday, August 11, 2018 9:59 PM
To: Tim J. Newton
Subject: Slender Letter TLC.pdf
Attachments: Slender Letter TLC.pdf; ATT00001.txt

Tim, notice in this defamatory letter to the members, TLC states that all the property was owned by them and used for the members.

Also notice that they intentionally fail to tell the members that they sold me the Big Water Resort and memberships and I could not operate said business due to the lack of land and lack of contractual agreements.

We can checkmate the crooks and ride the 3.5 by getting the Fraudulent judgement set aside. I beg you to move quickly and let's get a game plan to move forward. Merely filing to set aside will cause TLC to fall to their feet.

TLC has been in the drivers seat long enough. Bill Padgett put them in their place. We must do the same thing and fasttttttttttt.

Total Control Panel

Log In

To: tnewton@murphywarrantland.com **Remove** this sender from my allow list
From: hmr226621@gmail.com

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

Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Sunday, August 12, 2018 12:40 PM
To: Tim J. Newton
Subject: From Hutson
Attachments: Blank 2.pages; ATT00001.txt

Total Control Panel

To: tjnewton@murphyviantland.com [Remove](#) this sender from my allow list
From: hmr226621@gmail.com

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

Notes to Tim from Hutson

Failed to disclose that BWR was losing \$300,000 per year.

Failed to disclose to me that because of that, BWR was be obligated for \$20 million dollars to honor the hundreds of family members.

At the time of the Settlement Agreement which TLC pushed hard for, I did not know the following and TLC did:

- A. All of the property except the small gas station was fully used by the family members and each family member had the "Sole Use" of all property causing defective title due to the "Sole Use" of all property, therefore, all monies I paid for the option to purchase was wasted and lost due to the fact I could never develop the property nor a divide small lots for a 200 lot subdivision.
- B. It stated in the Option to Purchase that my method of paying for the property was to allow TLC to collect 35 percent of each individual lot sale at each individual closing.
- C. TLC required me to buy and take ownership of BWR simultaneously executing the Option to purchase the 108 acres of land.
- D. QUESTION: What did I receive by buying the BWR as required? After signing the Settlement Agreement and the Consent Order,
- E. I later learned that the only thing I acquired was a hidden \$20 million dollars worth of indebtedness in order to operate the campground for 70 years which was required.
- F. BWR did not own ANY land to honor the hundreds of members who TLC had pre-collected the cost for the 70 years nor had TLC allocated any contractual agreement providing protection to BWR to be able to have land to service the \$20 million dollars of obligation.
- G. TLC furnished a fraudulent financial statement showing that BWR was worth \$1.7 million dollars when in fact it was worth nothing leaving me no way to survive operating BWR nor buying the 108 acres due to defective title.
- H. The Honorable Court merely took the word of the layers who drafted the Settlement Agreement and the Consent Order that all was well. It never entered into the Court's mind that the Court that TLC was withholding and concealing grave issues that would cause me not to be successful exposing me to many lawsuits. Hutson was doomed and consequently has lost 5 years of his life, profit on what could have been made with the land subdivision. This entire thing was pre planned and plotted.

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

Jul 09 2020

SC Court of Appeals

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

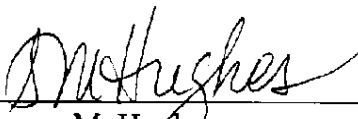
I, the undersigned, as employee of Respondent Timothy J. Newton, do hereby certify that on July 9, 2020, I served a copy of Respondent's Motion to Dismiss Appeal and Respondent Timothy J. Newton's Memorandum in Opposition to Appellant Hutson's Emergency Motion to Have Open Hearing and in Support of Newton's Motion to Dismiss Appeal with corresponding exhibits in connection with the above-referenced case by Electronic and U.S. Mail to:

M.B. Hutson
P.O. Box 2755
Orangeburg, SC 29116-2755
Hutson4444@gmail.com

Appellant Pro se

Christian Stegmaier, Esq.
Laura Baer, Esq.
Collins & Lacey, P.C.
P.O. Box 12487
Columbia, SC 29211
cstegmaier@collinsandlacy.com
lbaer@collinsandlacy.com

*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
July 9, 2020



MURPHY & GRANTLAND, P.A.

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

July 9, 2020

RECEIVED

Jul 09 2020

SC Court of Appeals

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

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's Motion to Dismiss Appeal and Respondent Timothy J. Newton's Memorandum in Opposition to Appellant Hutson's Emergency Motion to Have Open Hearing and in Support of Newton's Motion to Dismiss Appeal with corresponding exhibits to his Memorandum, along 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 together with a check for the appropriate filing fee.

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