THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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SC Court of Appeals

Michael G. Nettles, Circuit Court Judge

Case No. 2018-CP-400-6344

Appellate Case # 2019-001488

MB Hutson/ MB Hudson — Appellant.

v.

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

APPELLATE'S RESPONSE TO Stegmaier, Esq's. RESPONDENTS PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, INC.'S RETURN TO APPELLANT'S EMERGENCY MOTION FOR HEARING

Appellant grows tried of all three lawyers attempting to create long written objections against Appellant and play innocent or either dumb about what this case is really about. This entire case is about Appellant filing a lawsuit against Penn America, Global Indemnity, Tim Newton and JR Murphy, Respondents (formerly Defendants in the lower court). The charges are Fraud, Deception and Co-Conspirators to Extrinsic Fraud and direct Extrinsic Fraud. Appellant shall spearhead his charges making it

crystal clear to the Appeals Court the fraud that is being committed upon the Honorable Appeals Court at the present time.

The following are excerpts written by Tim Newton, who represented Penn America and Global Indemnity at that time: NOTE: Segments of his letter are listed and each listed paragraph subject matter is talking about issues of fraud and extrinsic fraud or his knowledge of extrinsic fraud.

1. The 16-paragraph letter written to Appellant on August 13, 2018, states, as follows:

> ***"Mr. Hutson, I need to remind you that I don't represent you and I can't represent you because I represent Penn-America. To the extent there is a common interest, I note the following".***

Newton admits he does not represent Appellant and then he writes:

> ***"to the extent there is a common interest, I note the following..."***

Respondents Tim Newton and JR Murphy, never represented Appellant and had no reason to write such an incriminating letter to Appellant except due to feelings of guilt, knowing what was happening to this Appellant (the insured). Furthermore, Newton knew what was going to happen to this Appellant at the hands of and through the actions of these Respondents, who were, or who were acting on behalf of, the insurance companies. The ultimate outcome would destroy the Appellant. There was no common interest.

2. At the bottom of par. 16, Respondent writes the following:

> ***"However, that is something you would have to follow up with on your own. I can't undertake 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".***

Respondent Newton is suggesting that Appellant contact Frank Gordon, whom Newton and Penn America hired to represent Appellant asking that Gordon contact (by letter or phone) Penn America, to see if they will change their mind and agree to allow Gordon to notify the courts of the extrinsic fraud. That statement could not mean anything else. That sentence alone points directly to Respondent's knowledge of the undisclosed extrinsic fraud that TLC's attorneys had committed, which was underlying and preventing this Appellant's 'voice' from being heard in court.

3. In the last part of the same sentence Newton writes, referring to Frank Gordon, Esq. who represented this Appellant:

> ***" he and I both have agreed to put everything on hold until the mediation".***

The balance of the sentence is stating that Respondent Newton, being fully aware of the extrinsic fraud committed against Appellant by TLC attorneys, does not matter for he (Newton) has required F. Gordon, Esq. to make no effort to report the extrinsic fraud. Newton is more concerned about getting a settlement agreement with TLC and their attorneys, knowing full well had Newton decided to inform the courts and judges about the extrinsic fraud, *or even* allowed Frank Gordon to do so, they could have stopped further harm to the Appellant, as well as arrest the pending doom to the Appellant. Additionally, the $3.5M judgment could have then been easily set aside due to the underlying extrinsic fraud. Appellant pleaded with Frank Gordon to disclose the fraud. He refused. Gordon's reason to Appellant was that *Penn America*

opposed Newton or Gordon to bring up that subject to anyone for they did not plan to address the extrinsic fraud.

4. In paragraph (3): Respondent Newton wrote:

> ***"The alleged lease between Big Water Resort, LLC and TLC Holdings, LLC, if it existed, was never recorded, although it was for a term of more than a year".***

Respondent Newton is saying he understands that TLC and their lawyers refused to give Big Water Resort, Appellant, a legal lease or contractual agreement to have legal rights to use the 108 acres which legally prevented Appellant from having property with which to honor the Retail Membership Agreements (hereinafter RMA/RMAs) for 70 years. Newton was *acutely aware* that the contract time to purchase the 108 acres was for only 24 months for he had copies of all contracts. Newton was aware that title defects prevented Appellant from ever purchasing the 108 acres causing this Appellant the impossible task of honoring the 740 memberships for 70 years at a cost of $22M dollars. Newton was also totally aware that the owners of TLC had pre-collected the full amount of the cost from each and every RMA. Newton was also fully aware that:

a) the pre-collected moneys at the sales of the RMAs amounted to approximately 6 million dollars, and

b) TLC had taken that money for themselves or spent the same on improving their *property*

c) The property was solely owned by TLC.

d) TLC left the Big Water Resort Campground an empty shell with no retained financial resources and no long-term lease to service the RMAs.

Appellant reminds the Honorable Court that not one attorney drafter of all the fraudulent contracts, nor any of the Respondent attorneys in this case *ever* disclosed to any of the courts the fraudulent actions or documents that this Appellant has listed, nor of their failure(s) to disclose the fraudulent actions of TLC in any courts. All these officers of the courts are now shrouded with the extrinsic fraud since they were fully aware and Appellant was not at all aware... *and* all attorneys knew and understood that Appellant did not understand. Consequently, Appellant could not win any cases.

e) TLC sold Appellant the campground via a sales document named as "Membership Interest Purchase Agreement" hereinafter referred to as MIPA, paired with a Lease/Purchase Agreement for the land, containing a clearly stated purpose of developing private residences thereon.

f) The MIPA owned no assets but 740 membership agreements to honor which became the Appellant's responsibility, along with a hidden obligation of a 22 million dollar liability for supplying those memberships with 70 years of a vacation destination....and NO LAND to operate on. TLC's attorneys concealing these issues is a text-book case of intentional extrinsic fraud.

5. In paragraph 13, Respondent writes:

> ***"The Consent Order filed April 13, 2012, incorporates the Settlement Agreement but does not otherwise mention Big Water Resort, LLC or the campground members. It reads as if it pertains to a mere landlord-tenant dispute".***

Laura Paton, Esquire, hired by Respondents, prepared and wrote approximately 29 different allegations against TLC. Appellant sites a few of her writings: (Please keep in mind that TLC's attorneys had prepared all the contracts (RMAs, MIPA, LPA, Settlement Agreement and associated Consent Order) and continued to represent TLC in the court cases that followed.) Paton wrote:

-"That the TLC parties had a statutory duty to record the encumbrances pursuant to Section 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans'".

-"That as a result of the TLC parties actively, intentionally, knowingly, willfully, wantonly, recklessly, and / or negligently failing to record the timeshares encumbering the property, they knowingly and / or negligently concealed such encumbrances which require disclosure by statute and induced Mr. Hutson to enter into the Agreements.

-"That in relying on the fraudulent representations and / or negligent misrepresentations, Mr. Hutson did materially change his position entering into the Agreements without knowledge of the timeshares believing, as was represented by the TLC parties, that the property was unencumbered".

-"That prior to execution of the Agreements, the TLC parties knew that the operating expenses of BWR exceeded its income".

-"That Mr. Hutson had a right to rely, and did rely, on the various representations of the TLC parties as to the condition of their business and its encumbrances, including, but not limited to, those representations expressly outlined in the Agreements signed by the TLC parties".

-"That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the annual income of BWR and accounting records of BWR, to induce Mr. Hutson to purchase BWR and enter into the Agreements".

-"This constitutes a breach of the Agreements with Mr. Hutson and accompanying this breach was the fraudulent acts":

A. "Knowingly failing to disclose the outstanding debts of BWR, including, but not limited to, Black River Electric".

B. "Advising Mr. Hutson that no financial records were kept as to BWR to conceal the losses: Financial condition of the company".

C. "Failing to record encumbrances required by statute as outlined above".

D. "Advising Mr. Hutson that the Retail Memberships could be divested to allow for development of the lakefront land as discussed".

Therefore, Respondent Newton was *fully aware* and knew that:

a. the extrinsically fraudulent Settlement Agreement required Appellant to develop the 108 acres of land within a few months

b. that hidden title defects would prevent any legal development.

c. that the Settlement Agreement was craftily prepared by TLC attorneys (concealed by the TLC attorneys) and submitted to the lower court judge to execute while never disclosing to the Judge, the Court, or to this Appellant the impossibilities of any such development being possible. Again, a text – book case of extrinsic fraud

d. of the Stewart Title Company letter dated October 2, 2015, clearly verified that the memberships for 70 years caused defective title to the 108 acres preventing any development or small home sales.

e. that the RMA owners sued TLC in a federal class action suit (2:14-CV-01583-DCN-MGB) and won due to their contractual long term *right to use ALL of the land.*

Yet Newton, representing Penn America and Global Insurance Companies, chose to never disclose the underlying extrinsic fraud that TLC authored via their attorneys. TLC proceeded in wrongfully suing this Appellant … and winning all their (TLC's) cases…. as they continued to hide all the underlying fraud they created from each and every Court and Judge. None of these Respondents exposed it EITHER.

6. TLC sued this Appellant in state court for slander, which was not valid and stemmed only from Appellant rightfully alerting the holders of the RMAs that TLC, et. al. were scamming them (which the Federal Court verified and awarded those RMA holders over $2M.)

YET, Respondents required this Appellant to appear as a defendant and go through a farce of a jury trial after the Federal Case (cited above) against those who created the Extrinsic Fraud and defrauded this Appellant in the Settlement Agreement, then, again, later in Federal Court, and then afterwards in SC state court. *Never did even one of the Respondent attorneys disclose to the Court the concealments of the extrinsic fraud perpetrated by TLC's attorneys and subsequently supported by these Respondents*!

7. Respondents, further manipulating this Appellant into submission told this Appellant that *should he not attend* the jury trial, Respondents would take away Appellant's coverage and abandon his "defense". Respondents controlled attorney Frank Gordon, who they hired to replace Laura Paton. Respondents intentionally concealed critical evidence that prevented the Appellant from having his case heard; that makes the Respondents thieves and co-conspirators of that undisclosed extrinsic fraud as it robbed this Appellant of his right to be heard.

The actions of these attorneys at law, officers of the courts, have directly left this Appellant indigent and with an undeserved $3.5M judgment on his record that has caused this Appellant severe damages and crippled his ability to return to his career in development.

Respondents knew that Appellant had been wrongfully evicted and became indigent, which also prevented him from hiring an attorney. Respondents had copies of all L. Paton's and F. Gordon's files, all the related contracts and the depositions providing them with a comprehensive knowledge of the cases. All licensed attorneys are

trained to recognize extrinsic fraud in law school. Even with complete and full knowledge of the extrinsic fraud perpetrated by TLC lawyers, and caught in the Federal Court, Respondents refused to inform the lower Courts. These Respondents are liars, professional oath breakers, disregarders of the SCRPC Rules (notably #402). They have proven themselves to be unscrupulous and have operated in total disregard to the SCRPC and in total secrecy against the insured Appellant. Furthermore, and equally as serious was their demonstration of having more concern for protecting fellow attorneys' crimes than the wrongs perpetrated upon their insured.

All Respondents are fully aware of their unprofessionalism, negligence issues, and that it directly causes this Appellant to remain a victim of extrinsic fraud to this day. Nevertheless, they chose to intentionally conceal the crimes of their fellow attorneys (by protecting TLC's lawyers and willfully failing, even refusing to report the extrinsic fraud to the lower courts) which could have, and would have, allowed this Appellant to have his case(s) clearly heard. The wrongs against this Appellant could have been righted by these Respondents years earlier in Federal and in State Courts. Hopefully this Honorable Appeals Court will uphold justice, recognize that the Federal Court honored the RMA holders as having long-term rights to that land, proving that the LPA and Settlement Agreements were fraudulent and not valid. This should have put an end to the mockery attorneys have made of our court systems. Instead, these Respondents refuse to expose the Extrinsic Fraud which has already been proven in the Federal Court by their awarding the RMA holders millions of dollars for TLC's trying to sell their land rights out from under them for development! These lying, unscrupulous Respondents are a disgrace to the word "Justice".

All Respondents, courts, and judges have copies of and/or access to all the paper work, including depositions. Each Respoindent fully understands that the Federal Court ruling exposes the extrinsic fraud that had been used against this Appellant, including Christian Stegmaier Esq. who now represents Penn America and Global Indemnity and appeared before Judge Nettles. Now, in the Honorable Appeals Court Stegmaier has teamed up with the other attorneys and he, too, is not making any disclosure regarding TLC attorneys' extrinsic fraud even though any attorney is required to report Extrinsic Fraud to the court if they have knowledge of the Court being defrauded by extrinsic fraud. All Respondents have and are currently conspiring against the insured Appellant through the assisting and non-disclosure of the TLC attorneys' fraudulent underlying Settlement Agreement, knowing the insured was victimized. Respondents know the Federal Court has already ruled against TLC's attempt to sell the land. The Respondent attorneys, including Stegmaier, instead use the multiple losses this Appellant has taken as leverage to attempt to convince the Appellate Court that Appellate is at fault, which is NOT the case. The attorneys are at fault and the Federal Court has already established that fact. It is time for Respondents to act accordingly.

The Honorable Appeals Court can simply review any and all pleadings, motions or objections and nowhere will the Court find any disclosure by Respondents regarding the extrinsic fraud carried out by TLC's attorneys. Respondents, including Stegmaier, simply are trying use Appellant's loses to *their* own advantage...even though those actions is an attempt to ignore the Federal Court ruling in order to cover for fellow attorneys. They have no regard for honest disclosures nor do they want Appellant's case to be heard. They all plot together to cover for each other and to win for themselves, and particularly Stegmaier's client, the insurance companies, despite their

underlying failure to execute their duty in these situations according to the law, according to the SCRCP rules and rulings of the Federal Court on the underlying crime(s) and extrinsic fraud.

The question for the Court is simple:

1. Have any papers filed by Respondents reflected reporting the fraud and extrinsic fraud that TLC's attorneys committed or the extrinsic fraud the Respondents committed? No, they haven't. Aren't they skirting the Federal Ruling already issued that totally discredits TLC's actions in attempting to sell land for immediate development that was already encumbered legally by TLC to the owners of the RMAs? This farce simply can not be allowed to continue. All of these lawyers know that extrinsic fraud is against the Courts and Honorable Judges. Attorneys not reporting extrinsic fraud, and attorneys attempting to hide facts treats the Honorable Judges as naive and stupid. What a disgrace. They should be disbarred.

2. The deception by Respondents in the lower courts began after the Federal Court case ended and when these Respondents feloniously purported to this Appellant to be representing him in the lower courts, when despite their legal duty to defend him, they did not. Respondent's simply wanted to settle Appellant's case no matter how much damage it cost the Appellant. Respondents only wanted to keep their fellow attorneys' extrinsic fraud undisclosed and the insurance company satisfied. Respondents did not care what damage came to this Appellant, *even though* Appellant

-was the insured

- had made all insurance payments to the insurance companies, and

-had been raped and tortured via the extrinsic fraud and their lack of reporting it.

Appellant prays again for justice and that this case be sent to a jury. Appellant is certain that any jury will see right through the scheme, deception, lies, lack of duty to the courts, total disregard for the Federal Courts rulings, and failure to perform their duty to defend this Appellant.

Respondents are terrified of the possibility that the Motion for Emergency Hearing might be approved, including Christian Stegmaier. Appellant has given sufficient evidence of the wrong doings of these Respondents, including Stegmaier. How can this Honorable Court ignore these facts and intentional wrong-doings and deception, that not only take advantage of the Appellant, but also flagrantly disregard rulings by the Federal Courts on the underlying issue?

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

1. "On the part of an officer of the Court;"
2. "That is directed to the judicial machinery itself;"
3. "That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth;"
4. "That is a positive averment or is concealment when one is under a duty to disclose;" and
5. "That deceives the Court."

All components are met by these Respondents.

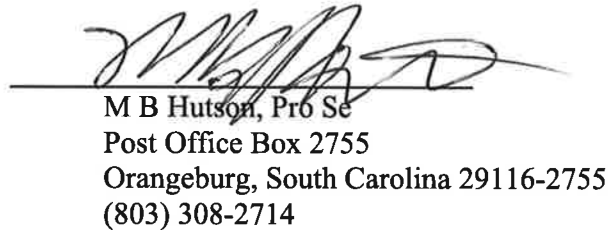
Merriam Webster's Dictionary of Law states: "extrinsic fraud: (as that involved in making a false offer of compromise) that induces one not to present a case in court or deprives one of the opportunity to be heard; also: fraud that is not involved

in the actual issues presented to a court and that prevents a full and fair hearing-called also collateral fraud". All conditions of this definition are met, as well.

Appellant prays that this Honorable Court quickly reverses the lower court's ruling, honors the Federal Court ruling, and sends this case to a jury. Furthermore, the wrongful and dishonest actions carried out by these Respondents should be duly reported to their licensing board so they can be held responsible for their actions against the Courts and its Judges.

Most importantly, "The Respondents respectfully direct this Court's attention to the Court's recent opinion in Couch v. Couch, op no.5744 (S.C. C. ct, appfiled July 15th, 2020." Without having read the case cited, Appellant assures the Respondents and the Honorable Court that no ruling or order prevents the Court from investigating extrinsic fraud intentionally brought against the Honorable Appeals Court especially since this Appellant has thoroughly presented facts and the evidence that directly points to the Respondents crimes against the Honorable Court of Appeals and the Honorable Judges as well as against the Appellant. Will the Court just sit back and allow the Respondents to make a circus out of the Honorable Court and Judges?

July 17, 2020



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PROOF OF SERVICE

I certify that I have served the APPELLATE'S RESPONSE TO RESPONDENTS (PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, INC.) RETURN TO APPELLANT'S EMERGENCY MOTION FOR HEARING on Penn America Insurance Company & Global Indemnity Insurance Company, on July 17, 2020, addressed to the insurance companys' attorney of record, Christian Stegmaier, at Collins & Lacy, 1330 Lady St., 6th Floor, Columbia, SC 29201, and also to J. R. Murphy, Esq., and Timothy Newton, Esq. (both acting as Pro Se, of record, and both at Murphy & Grantland, P.A. at Post Office Box 6648, Columbia, SC 29260.

July 17, 2020

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