

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 28 2020**

**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  
MOTION FOR SANCTIONS**

Respondent Timothy J. Newton hereby moves for sanctions against Appellant for the following reasons. Newton joins the Motion filed by Penn-America Insurance Company and Global Indemnity Group, Inc. on July 24, 2020 and incorporates the grounds and arguments cited in their Memorandum herein. Newton also incorporates the arguments raised in support of Respondents' Motion to Dismiss this Appeal. For the reasons set forth below, dismissal of this appeal is an appropriate sanction.

Appellant M.B. Hutson continues to accuse Respondents herein of committing fraud upon this Court. He has recently insinuated that this Court would become a co-conspirator if it fails to rule in his favor. (Appellate's Resp. to Penn America's Returns to Appellant's Emergency Mot. for Hearing filed Jul. 20, 2020, p. 4.) However, Hutson has failed to timely serve the Record on Appeal. Instead, he has demanded an "emergency hearing" based upon allegations that Respondents had a duty to report two occurrences of "extrinsic fraud" to the courts.

Hutson asserts that the first occurrence of extrinsic fraud involved his contract with a third party, TLC Holdings, LLC (hereinafter "TLC") to purchase certain property known as the "Big Water Resort" property. (Hutson Resp. filed July 15, 2020, p. 2.) Hutson claims, among other things, that the lifetime campground memberships were not disclosed him and were not discovered when he performed a title search. (Id. at pp. 3-4.) Hutson alleges that Respondents refused to expose this to the courts.<sup>1</sup> (Id. at p. 5.) The second alleged occurrence of extrinsic fraud involved Penn-America's settlement of the claims TLC asserted against Hutson in the Defamation Action. (Id. at pp. 6-7.)

These allegations are made without any supporting evidence. Hutson conveniently omits the fact that he was deemed to have released TLC from all claims relating to his lease-purchase transaction with TLC by breaching a settlement agreement. (TJN Exh. G: James Order.) Courts have repeatedly held that Hutson's release is enforceable. (Penn-Am Mot. for Sanctions, pp. 4-5 and Exhibits D, E, and F.) Moreover, any alleged

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<sup>1</sup> The conversation Hutson alleged in final paragraph of page 5 of his Return filed July 15, 2020 never occurred. (See Resp't. Murphy and Newton Init. Br., pp. 20-21.)

nondisclosure by Respondents is irrelevant because the judicial opinions, on their face, demonstrate that the merits of Hutson's fraud claims were considered.

If and when the Record on Appeal is filed with this Court, one of the documents therein will be an e-mail from Hutson's realtor to the attorney for TLC. (Exh. Z: E-mail.) This e-mail is dated November 11, 2010—before Hutson executed the Lease-Purchase Agreement with TLC. In the e-mail, Hutson's realtor asks the following:

My buyer is concerned about the "life time" members 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?

(Id.) The November 11, 2010 e-mail was used in several court cases against Hutson. Magistrate Judge Mary Gordon Baker's finding that Hutson's settlement with TLC could not be set aside for fraud was based on this e-mail. Reed v. Big Water Resort, LLC, Civ. Action No. 2:14-1583-DCN-MGB, 2016 WL 7435620 at \*13 n.5 (see Penn-Am. Mot. for Sanctions, Exh. D). The e-mail was made an exhibit at trial in the Defamation Action. (See id., p. 4 n.4.) It was also the basis for the finding in the Weissenstein Malpractice Action that Hutson knew about the lifetime memberships before he entered into the transaction with TLC. (See id. at p.9.)

Incredibly, Hutson continues to allege he was defrauded in his transaction with TLC. Nearly a decade later, in the Court of Appeals, against parties who had nothing to do with the transaction, Hutson brazenly accuses Respondents (and this Court) of fraud and conspiracy. He makes these allegations in flagrant violation of Rule 11, SCRCP, and his own duty of candor to the court.

Hutson's allegation that he lost all his prior cases due to Respondents' misconduct is ridiculous. The truth is that courts have repeatedly found that Hutson knew about the

lifetime campground memberships before he purchased the property for development, and that he sought to terminate the memberships so he could get clear title. (Exh. Z: E-mail.)

Even after Penn-America filed its Motion for Sanctions, Hutson refused to cease and desist with his campaign of harassment and defamation. On July 26, 2020, Hutson served a putative Response claiming that “[a]ll materials that Respondents have filed are irrelevant to this complaint and merely an attempt to mislead, distract and ultimately continue to conceal from the courts . . . .” (Exh. SS: Response, p. 2.) Hutson again claimed TLC defrauded him by failing to disclose the lifetime campground memberships. (Id. at p. 4, ¶ 2.a.) Hutson allegation that Respondents should have disclosed this “extrinsic fraud” to the courts is belied by Hutson’s own failure to disclose to this Court that he knew about the campground memberships before he entered into the transaction with TLC.

Hutson continues to barrage Respondents with threatening e-mails. In addition to the e-mails attached to Penn-America’s Motion for Sanctions, Hutson has recently sent Newton the following:

- On July 22, 2020, Hutson sent an e-mail stating: “Good morning. Look forward to discovery prior to jury trial.” (Exh. TT: E-mail.)
- On July 27, 2020, Hutson sent all Respondents a “Notice of pending lawsuit.” Therein, Hutson threatens to “take these immoral actions to court rightaway.” (Exh. UU: E-mail.)
- On July 28, 2020, Hutson sent another e-mail requesting Newton to accept service for another lawsuit Hutson intends to file for defamation. (Exh. VV: E-mail.)

Dismissal of an appeal is a proper sanction for misconduct amounting to contempt of court. Scelba v. Scelba, 342 S.C. 223, 228, 535 S.E.2d 668, 671 (Ct. App. 2000); 17 C.J.S. Contempt § 175 (June 2020 Update). In a different context, courts have held that a litigant may not avoid dismissal by willfully withholding evidence from the court.

What the rule seeks to prevent is a situation in which a plaintiff is able to maintain a claim for fraud by extracting an isolated statement from a document and placing it in the complaint, even though if the statement were examined in the full context of the document, it would be clear that the statement was not fraudulent.

In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997). This precedent has been followed by South Carolina courts. See Hall v. Family YMCA of Greater Augusta, Civ. Action No. 1:17-cv-00337-JMC, 2017 WL 3158776 at \*7 (D.S.C. signed July 25, 2017) (quoting Am. Chiropractic Ass'n v. Trigon Healthcare, Inc., 367 F.3d 212, 234 (4th Cir. 2004)).

Although Respondents are not seeking dismissal based upon Rule 12(b)(6), SCRCF, their motion is based upon similar misconduct by Hutson. If Hutson had merely sought leave serve the Record on Appeal out of time, his oversight might be excusable. Instead, Hutson has made numerous court filings accusing Respondents of engaging in fraud and other serious misconduct. He has made new allegations that were not raised to the trial court, and refused to withdraw them after notice that he was out of line. In effect, he has sought to try the case on motions outside the record. His allegations are all based upon a single e-mail sent in the course of settlement discussions that he has mischaracterized and taken out of context.

Hutson has complained about the size of the Record on Appeal. What he omits is that every time Hutson mischaracterizes the facts, Respondents are obliged to submit



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July 28, 2020

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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 for filing Respondent Timothy J. Newton's Motion for Sanctions along with exhibits G, Z, TT, UU, VV, and as an exhibit, Appellant's Response to Respondents Motion for Sanctions with Proof of Service.

For ease of reference, a copy of a check in the amount of \$50.00 for the appropriate motion filing fee has been placed in the mail to the Court of Appeals accordingly.

Thank you for your cooperation with this matter.

With kind regards, I am

Sincerely yours,

Sharon M. Hughes  
Paralegal to Timothy J. Newton

/smh  
Enclosures