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Sep 11 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2019-001488

MB Hutson/MB Hudson,Appellant,

v.

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

**RESPONDENTS’ JOINT RETURN TO APPELLANT’S “MOTION TO ALLOW
APPELLANT TO INCLUDE EVIDENCE FORMERLY FILED IN THIS APPEAL CASE
PROVING EXTRINSIC FRAUD UPON THE APPEALS COURT BY THE
RESPONDENTS”**

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

Respondents Penn America Insurance Company and Global Indemnity Group, Inc. (“Respondents PAIC”), Timothy J. Newton (“Newton”) and J.R. Murphy (“Murphy”) (collectively “Respondents”), respond to Appellant’s “Motion to Allow Appellant to Include Evidence Formerly Filed in This Appeal Case Proving Extrinsic Fraud Upon the Appeals Court by the Respondents,” as follows:

INTRODUCTION

This appeal arises from the trial court's July 18, 2020 Orders granting the dispositive motions in favor of Respondents in the pro se action filed against them by Appellant. Respondents PAIC issued a Commercial General Liability Policy to their named insured, BWR, Inc. d/b/a Big Water Resort, for which Appellant was a corporate officer. Respondents PAIC provided Appellant with a defense, subject to a reservation of rights, in two lawsuits. Both lawsuits were resolved within policy limits and without any personal liability to Appellant.

Nonetheless, Appellant sued Respondents PAIC and their coverage counsel, Respondents Newton and Murphy, in state court, asserting a variety of claims in contract and tort. These claims centered around the alleged failure of the insurer to pursue counterclaims on Appellant's behalf, or otherwise undertake an independent action to set aside a 2012 Consent Order based upon a theory of "extrinsic fraud." The Circuit Court found that Appellant's claims against Respondents could not be sustained for a myriad of reasons discussed fully in the Orders on file with this Court as attachments to the Notices of Appeal.

Instead of focusing on the actual issues before this Court regarding the propriety of the lower court's rulings, Appellant has lobbed allegations that Respondents and their counsel are now active perpetrators of fraud both in the underlying action and in this appeal. Appellant even requested that this Court convene an evidentiary hearing to investigate the "extrinsic fraud" he contends is being perpetrated; Appellant's motion was denied.

The Record on Appeal in this matter was due to be served upon Respondents on September 8, 2020, on which date Appellant delivered a large stack of documents to Respondents. However, the content and format of the Record prepared by Appellant are deficient in numerous respects. Accordingly, Respondents have sent correspondence to Appellant identifying these deficiencies

and requesting he seek additional time from this Court to correct them. (See Exhibit A, attached hereto, Sept. 11, 2020 Deficiency Letter). As the Record is currently prepared, Respondent's cannot prepare their final briefs.

Meanwhile, in Appellant's instant motion, he requests that the two of his appellate court filings be "made a part of this Record on Appeal." Specifically, he seeks to include the following:

1. Appellant's Response to Respondents Penn American [sic] Insurance Company and Global Indemnity Group, Inc.'s Motion for and Memorandum in Support of Imposition of Sanctions Against Appellant (filed July 27, 2020).
2. Appellant's Response to (Penn America, et. Al.) Respondents' Initial Brief (filed August 6, 2020).

Appellant appears to seek their inclusion in support of his contention that Respondents are concealing information from the Court and acting as a part of a fraudulent conspiracy.

ARGUMENT

Appellant's proposal to include two of his appellate filings in the Record on Appeal is both improper and unnecessary. Rule 212 of the South Carolina Appellate Court Rules provides, in relevant part: "With the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences. Without such consent or after argument commences, a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so." Rule 212(b), SCACR. However, Rule 210 of the South Carolina Appellate Court Rules provides: "The Record shall not, however, include matter which was not presented to the lower court or tribunal." Rule 210(c), SCACR. Even a Supplemental Record must comply with the content requirements of Rule 210.

Here, the first document Appellant proposes to include in the Record is Appellant's Response to Respondents PAIC's Motion for Sanctions, which was served on July 27, 2020 and received by this Court on July 29, 2020. As an initial matter, the copy of Appellant's Return to

the Motion for Sanctions attached to the instant motion omits the July 27, 2020 e-mail attached to the filed Return and adds two exhibits that are already designated in the Record on Appeal, labeled as Exhibit 4.0(4.1-4.4) and Exhibit 21 in Appellant's lower court filings. The Record on Appeal can only be comprised of matter presented to the lower court. See Rule 210(c), SCACR. Thus, with respect to the Return and exhibit thereto that were filed by Appellant, these documents were drafted in July 2020 and obviously were not before the lower court, such that they cannot properly be a part of the Record on Appeal. Further, prior to receipt of Appellant's Return, the Court filed an Order denying Respondent PAIC's Motion for Sanctions. (See Order, filed July 28, 2020). Accordingly, with the Motion for Sanctions resolved, Appellant's Return to the Motion is not relevant to the appellate issues pending before this Court. With respect to the documents labeled 4.1-4.4 and 21, which were attached to the instant motion, their supplemental designation would be duplicative since they were already included in the Designations of Matter filed by Respondents.

The second document Appellant proposes to include in the Record is Appellant's Response to Initial Brief of Respondent Penn America, et al., which was served on August 6, 2020 and received by this Court on August 10, 2020. Though not titled as such, this filing is Appellant's Initial Reply Brief, which he filed following this Court's Order denying his motion to exceed the page limits for his initial reply brief. (See Order, filed July 28, 2020). Thus, the inclusion of this filing in the Record is completely unnecessary. The Initial Reply Brief should be converted to a Final Reply Brief and filed in accordance with Rule 211 of the South Carolina Appellate Court Rules.

CONCLUSION

Based upon the foregoing, Respondents respectfully request that this Honorable Court deny Appellant's "Motion to Allow Appellant to Include Evidence Formerly Filed in This Appeal Case Proving Extrinsic Fraud Upon the Appeals Court by the Respondents."

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

s/Christian Stegmaier

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ATTORNEYS FOR RESPONDENTS PENN
AMERICA INSURANCE COMPANY AND
GLOBAL INDEMNITY GROUP, INC.

s/John R. Murphy (with permission)

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PRO SE RESPONDENT

s/Timothy J. Newton (with permission)

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PRO SE RESPONDENT

**RESPONDENTS' JOINT RETURN TO
APPELLANT'S "MOTION TO ALLOW
APPELLANT TO INCLUDE EVIDENCE
FORMERLY FILED IN THIS APPEAL CASE
PROVING EXTRINSIC FRAUD UPON THE
APPEALS COURT BY THE RESPONDENTS"**

Columbia, South Carolina
September 11, 2020

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CERTIFICATE OF SERVICE

SC Court of Appeals

I, the undersigned, attorney for Respondents Penn America Insurance Company and Global Indemnity Group, Inc., do hereby certify that I have this date served the foregoing RESPONDENTS' JOINT RETURN TO APPELLANT'S "MOTION TO ALLOW APPELLANT TO INCLUDE EVIDENCE FORMERLY FILED IN THIS APPEAL CASE PROVING EXTRINSIC FRAUD UPON THE APPEALS COURT BY THE RESPONDENTS" by causing the same to be deposited in a United States Postal Service mailbox, postage prepaid, addressed to the following:

MB Hutson/MB Hudson
Post Office Box 2755
Orangeburg, SC 29116
Pro Se Appellant

s/ Christian Stegmaier

CHRISTIAN STEGMAIER

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ATTORNEYS FOR RESPONDENTS PENN
AMERICA INSURANCE COMPANY AND
GLOBAL INDEMNITY GROUP, INC.

Dated: September 11, 2020

EXHIBIT A



Christian Stegmaier | D: 803.255.0454 | E: cstegmaier@collinsandlacy.com

September 11, 2020

VIA EMAIL & UNITED STATES MAIL

M.B. Hutson
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Orangeburg, SC 29116
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***Re: MB Hutson/MB Hudson v. Penn America Insurance Company, Global Indemnity Group, Inc., Timothy J. Newton, Esq., J.R. Murphy, Esq., John Doe #1, and John Doe #2
Appellate Case No. 2019-001488
Claim No. 16011284
C&L File No. 000774-01021***

Dear Mr. Hutson:

We appreciate your efforts at complying with your duty to prepare the Record on Appeal in the above-referenced appeal, which was delivered to our office on September 8, 2020. However, upon review of the voluminous documents delivered to our office, we note several deficiencies in the content and preparation of the Record, which must be corrected before the Record is filed with the Court and before the Respondents can prepare their final briefs.

The South Carolina Appellate Court Rules governs the requirements of a Record on Appeal. The text of the Rules are available on-line, including at www.sccourts.org under the Quick Links section "Court Rules." Based upon our review of the Rules and the Record, we note the following deficiencies, which are problems in both the Record provided to our office and to Murphy & Grantland unless otherwise noted:

1. The Record is required to be consecutively paginated. See Rule 211(b)(1), SCACR (explaining that references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal). The Record you prepared has no page numbers. Consecutive page numbers must be added to the Record.
2. The Record is required to contain an Index. See Rule 210(e). While you prepared a chart, the absence of corresponding page numbers renders the chart useless. A proper and complete Index must be added to the Record and include references to the page numbers of the Record where the documents can be found. This lack of pagination has led to inconsistencies in the order of the documents provided to our office and to Murphy & Grantland.
3. The Record is not permitted to contain matters not included in the Designation of Matter to be Included in the Record on Appeal. See Rule 210(c), SCACR. The portions of your Record numbered pages 2 through 10, which begin with a "Table of Contents" and end

with a signature block dated September 8, 2020, appear an attempt to make additional arguments to the Court. The inclusion of this section in the Record is improper and must be removed.

4. The Record is required to include all matter designated to be included by any party under Rule 209. See Rule 210(c), SCACR. The following material designated by one or more of the Respondents is inaccurate or incomplete in the Record and must be corrected:
 - a. With respect to the document you labeled “Exhibit 4,” the Amended Complaint that should have been included in the Record is eighteen pages. Only the first six pages of the Amended Complaint are included in the Record behind “Exhibit 4.” The remaining pages were inserted in the midst of the document labeled “Exhibit 5.”¹
 - b. With respect to the document you labeled “Exhibit 5,” the Exhibits that accompanied your Amended Complaint consisted of 145 pages, labeled Exhibits 1.0 through 13.0. These documents are not exact reproductions of the exhibits filed with the Circuit Court or are missing. Specifically:
 - i. None of the Exhibits are marked with their respective exhibit numbers from the Circuit Court filing in the upper right corner.
 - ii. An e-mail dated August 8, 2016 is included but was not a part of the Circuit Court filing.
 - iii. Exhibit 5.0 does not have the handwritten notations included in the copy filed with the Circuit Court, includes a page entitled “Exhibit A” that is completely void of the text below, and is missing the page entitled “Exhibit B.”
 - iv. Exhibit 9.0 should be an eight-page Settlement Agreement and a one-page plat. The first two pages are separated from the remaining pages by the portion of “Exhibit 4” placed within “Exhibit 5.”
 - v. Exhibit 13.0 is missing page 3 in the copy provided to Murphy & Grantland and page 3 is out of order in the Record provided to our office.
 - c. With respect to the document you labeled “Exhibit 7,” the Motions hearing transcript should be the last item to appear in the Record. See Rule 210(c), SCACR.
 - d. With respect to the document you labeled “Exhibit 10,” the relevant designation provided: “Newton’s Memorandum in Support of Motion to Dismiss, filed May 30, 2019 (310 pages total, including Exhibits A through AA).” You included only the text of the Memorandum and none of the Exhibits thereto.
 - e. With respect to the document you labeled “Exhibit 11,” the relevant designation provided: “Newton’s Reply Memorandum in Support of Summary Judgment with

¹ In the copy of the Record provided to Murphy & Grantland, the Amended Complaint was provided in its entirety behind the page labeled “Exhibit 4.”

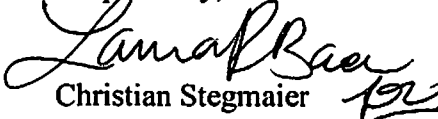
Exhibits BB and CC, filed June 13, 2019 (30 pages total).” You included only the text of the Reply Memorandum and none of the Exhibits thereto.

- f. With respect to the document you labeled “Exhibit 10,” page 7 of Newton’s Reply Memorandum is missing.
 - g. With respect to the document you labeled “Exhibit 20,” the relevant designation provided: “PAIC’s Memorandum in Support of Summary Judgment with Exhibits A and B, filed June 25, 2019 (134 pages total).” You included only the text of the Memorandum and none of the Exhibits thereto.
 - h. The Record does not include the material designated in your Designation of Matter, which you filed on November 12, 2019. Specifically, you designated the “RICHLAND COUNTY COMMON PLEAS Case History for Case 2018CP4006344.”
5. With respect to the documents you labeled “Exhibit 13,” “Exhibit 14,” and “Exhibit 15,” though they appear to be provided in their entirety, the pages were scrambled in the copy provided to Murphy & Grantland.
 6. The Record lacks the Appellant’s Certification required by Rule 210(g), SCACR, that “the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.” Though you attached the two-page document to your designation, unless you intend to withdraw your designation, it must be included in the Record.

In its current incomplete state, without any pagination, Respondents cannot convert their initial briefs to final briefs. Thus, we are writing to you in an effort to provide you with an opportunity to request additional time from the Court to correct the deficiencies noted above. If you do not request an extension from the Court by Wednesday, September 16, 2020, or if you file the Record on Appeal in its current state, we will be forced to engage in additional motions practice in the appellate court.

We will be filing a Response in Opposition to your recent motion seeking to add to the Record on Appeal. Therein we intend to notify the Court of the current dispute over the content and format of the Record on Appeal and our efforts to resolve the same.

Thank you for your attention to this matter.

Respectfully,

Christian Stegmaier

CS/lrb

cc (via email):

J. R. Murphy, Esquire
Timothy Newton, Esquire