THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Circuit Court Judge

Appellate Case No. 2018-000943

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SC Court of Appeals

DR. GREGG N. BATTERSBY, ... Appellant,

v.

PAMELA REID, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and JOHN WILES, Defendants,

Of whom State Farm Mutual Automobile Insurance Company and John Wiles are the .... Respondents.

FINAL BRIEF OF RESPONDENTS

NELSON MULLINS RILEY & SCARBOROUGH LLP

Charles R. Norris
SC Bar No. 004238
E-Mail: charles.norris@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Counsel for Respondents

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STATEMENT OF ISSUES ON APPEAL

I. WAS THERE A CONTRACT BETWEEN THE PLAINTIFF AND STATE FARM TO PAY PAMELA REIDS' MEDICAL BILLS FOR HER TREATMENT FROM THE PLAINTIFF?

II. DOES THE ALLEGED ORAL CONTRACT BETWEEN THE PLAINTIFF AND STATE FARM VIOLATE SOUTH CAROLINA'S STATUTE OF FRAUDS – § 32-3-10 (2)?

III. DID STATE FARM CAUSE THE PLAINTIFF ANY DAMAGES, AND DID THE PLAINTIFF DETRIMENTALLY RELY UPON ANY REPRESENTATION BY STATE FARM?

IV. DID STATE FARM MAKE ANY FALSE OR MISLEADING STATEMENTS TO THE PLAINTIFF?

V. WOULD THE PLAINTIFF'S ATTEMPT TO SETTLE PAMELA REID'S CLAIM AGAINST WILLIAM CALCUTT CONSTITUTE THE UNAUTHORIZED PRACTICE OF LAW?

STATEMENT OF THE CASE

This case was commenced by the filing of a summons and complaint in Anderson County on December 5, 2017 against State Farm, it's employee John Wiles and the Plaintiff's patient, Pamela Reid.[1] (R. 5-22) The complaint alleged contracts and the breach thereof against both Reid and State Farm, alleged fraud against both Reid and State Farm, alleged negligent misrepresentation against State Farm and negligence against State Farm and requested compensatory damages against Reid and State Farm in excess of $25,000 and punitive damages in excess of $1,000,000. On December 28, 2017 State Farm answered the complaint and asserted various affirmative defenses which included the Statute of Frauds, lack of consideration and lack of privity of contract. (R. 23-31)

On February 26, 2018 State Farm moved for summary judgment. (R. 32, 33) This motion was based upon the allegations in the Plaintiff's complaint, the Plaintiff's deposition testimony and the exhibits to that deposition. On April 6, 2018 State Farm filed a memorandum in support of its motion for summary judgment (R. 34-75), and the Plaintiff on April 9, 2018 mailed to counsel for State Farm a memorandum opposing State Farm's motion for summary judgment. (R. 76-93) On April 12, 2018 judge Cordell Maddox heard State Farm's motion for summary judgment. (R. 112-138) After hearing arguments from counsel for State Farm and from the Plaintiff judge Maddox orally granted State Farm's motion for summary judgment. (R. 136, 137) On April 24, 2018 the written order granting State Farm's motion for summary judgment was entered by judge Maddox. (R. 1-4) The Plaintiff did not file a motion for reconsideration under SCRCP 59; instead, the Plaintiff timely filed a notice of appeal on May 17, 2018.

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[1] For the sake of brevity, State Farm and Wiles are collectively referred to as "State Farm".

STATEMENT OF THE FACTS

There are no disputed facts relevant to this appeal. The undisputed facts are that on or about July 10, 2017 Pamela Reid was involved in an automobile accident with William Calcutt. (Plaintiff's Complaint, ¶ 2, under "Memorandum") (R. 6) Calcutt was an insured of State Farm, but Reid was not an insured of State Farm. (Plaintiff's Deposition, pg. 25) (R. 143) No part of the State Farm policy insuring Calcutt stated that State Farm would pay bills owed by Pamela Reid to the Plaintiff. (Plaintiff's Deposition, pg. 39) (R. 147)

The Plaintiff treated Reid on the date after the accident, July 11, 2017, until August 14, 2017 at which time the Plaintiff's treatment of Reid concluded. (R. 143) The Plaintiff's total bill was $5,010. (Plaintiff's Deposition, pg. 16, 22) (R. 141, 143) At the commencement of Reid's treatment by the Plaintiff she signed contracts with the Plaintiff. (Plaintiff Deposition, pg. 19-23; Exhibits 2, 3, 4, 5) (R. 142, 143; 150-153) These contracts between the Plaintiff and Reid gave the Plaintiff a lien on proceeds paid to Reid and purported to assign Reid's rights to the Plaintiff. However, the Plaintiff had no written contract with State Farm whereby State Farm agreed to pay medical bills of the Plaintiff's patients. (Plaintiffs Deposition, pg. 19, 31, 35) (R. 142, 145, 146)

The Plaintiff's contracts with Reid attached as exhibits to the Plaintiff's complaint acknowledged the possibility that after the date of Reid's contracts with the Plaintiff [July 11, 2017] the payor might refuse to pay the Plaintiff. (¶ 2 of the Assignment of Proceeds, Contractual Lien and Authorization) (R. 19) Another agreement signed by Reid on July 11, 2017 and attached as an exhibit to the Plaintiff's complaint titled "Assignment, Lien and Authorization Insurance Benefits and Attorney", authorized Reid's insurance company to make payment directly to Dr. Battersby. (R. 20) Reid, however, was not insured with State Farm. Additionally, this document

acknowledged the possibility that the insurance company "obligated to make payments to me" might refuse to make such payments. (R. 20) Yet another document signed by Reid on July 11, 2017 titled "Lien on my Personal Injury Claim" acknowledged the possibility that in the future the insurance company might refuse to pay Dr. Battersby directly for procedures performed for Reid. (R. 21) It is therefore undisputed that when the Plaintiff entered into written agreements with Reid on July 11, 2017 he was aware of the possibility that any insurance company involved might refuse to pay his bills.

The Plaintiff's treatment of Reid concluded on August 14, 2017. (R. 143) The following day on August 15, 2017 the Plaintiff spoke with John Wiles of State Farm. (Plaintiff's Deposition, pg. 23, 27, 46) (R. 143, 144, 149) There is no dispute about what was said in this conversation because the Plaintiff recorded the conversation (unbeknownst to Wiles) and it has been transcribed. (R. 96-100) The transcript of the Plaintiff's conversation with Wiles on August 15, 2017 was attached as an exhibit to the Plaintiff's memorandum in opposition to State Farm's motion for summary judgement. The pertinent part of that conversation was:

> Dr. Gregg N. Battersby: Okay. Also she [Reid] had signed a lien directing payment to me. Are you going – I will forward that to you, and I believe she has also spoken with – I don't know if it was you or one of the other adjusters reinforcing that, that she does want payment to go to me for her-her care.
>
> John Wiles: Okay.
>
> Dr. Gregg N. Battersby: I would like to honor that.
>
> John Wiles: Yeah, **if she [Reid] wants us to pay you- all directly-, we-we certainly can.** That's not a problem for us. (August 15, 2017 Wiles/Battersby Call Transcript, pg. 2, 3 – emphasis added) (R. 98, 99)

State Farm's direct payment to the Plaintiff of Reid's medical bills was therefore conditioned upon the wishes of Reid. Unfortunately, Reid lied to the Plaintiff by telling him that she had requested that State Farm pay directly to the Plaintiff Reid's medical bill. (Plaintiff's

Deposition, pg. 45, 46; Plaintiff's Complaint, ¶ 51) (R. 148, 149; 10) Instead, Reid instructed State Farm that Reid wanted to be paid the money that Reid owed to the Plaintiff. (Plaintiff's Deposition, pg. 43; Plaintiff's Complaint, ¶ 30) (R. 9, 148) Reid instructed State Farm not to pay the Plaintiff and, instead, to pay her. (Plaintiff's Complaint, ¶ 30; Plaintiff's Deposition, pg. 44) (R. 9, 148) The Plaintiff has sent a bill to Reid, but it has not been paid. (Plaintiff's Deposition, pg. 40) (R. 147)

ARGUMENT

I. NO CONTRACT EXISTED BETWEEN STATE FARM AND THE PLAINTIFF.

The leitmotiv of the Plaintiff's brief is a misrepresentation of the conversation of August 15, 2017 between the Plaintiff and John Wiles. For example, the Appellant's brief makes the following misstatements:

- Wiles told the Appellant that State Farm would pay Appellant directly. (pg. 4)
- Respondents [State Farm/Wiles] said they would pay Appellant directly for the services provided to Reid out of the settlement. (pg. 7)
- Respondents agreed to pay Appellant for the treatment to Reid. (pg. 13)
- Respondents told Appellant that they would pay him. (pg. 15)
- Respondents promised to honor Reid's liens directing payment to Appellant. (pg. 15)
- Appellant justifiably relied on Respondents statement that they would pay Appellant directly. (pg. 17)
- The basis of this complaint is the assurance by Respondents that they would pay Appellant for his services to Reid. (pg. 18)

As set forth in State Farm statement of the facts, Wiles told the Plaintiff on August 15, 2017 that "if she [Reid] wants us to pay you all directly, we-we certainly can." (R. 99) State Farm therefore never unconditionally agreed to directly pay the Plaintiff his bills to Reid for treating Reid. The numerous assertions in the Plaintiff's brief that State Farm agreed without any condition to pay directly to the Plaintiff the amount of Reid's bills is simply not true.

Contrary to the transcript of the conversation between the Plaintiff and Wiles on August 15, 2017 (R. 96-100), even if the Plaintiff believed State Farm had unconditionally agreed to make direct payment to him for Reid's medical bills, there was no meeting of the minds. In order to have a valid, enforceable contract there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Patricia Grand Hotel v. McGuire Enterprises, 643 S.E. 2d 692 (S.C. App. 2007); Nutt Corp. v. Howell Rd., LLC, 721 S.E. 2d 447 (S.C. App. 2011) If the Plaintiff really believed the statements in his brief that State Farm unconditionally agreed to pay Reid's medical bills, but Wiles stated State Farm would pay Reid's medical bills if that is what Reid wanted, there was no meeting of the minds. The meeting of the minds required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party. Instead, it must be based on purpose and intention which has been made known or which from all the circumstances should be known. Byrd v. Livingston, 727 S.E. 2d 620 (S.C. App. 2012)

Yet another element missing from the alleged contract between the Plaintiff and State Farm is consideration. Valuable consideration to support a contract may consist of some right and an interest in a profit or benefit accruing to one party or some forbearance, detriment, legal responsibility given, suffered or undertaken by the other. The forbearance to exercise a legal right is valuable consideration. Prestwick Golf Club, Inc. v Prestwick Partnership, 503 S.E. 2d 184 (S.C. App. 1998)

There was no right, interest, profit or benefit which accrued to State Farm from an agreement to directly pay the Plaintiff for Reid's medical bills. Nor did the Plaintiff offer any forbearance, detriment from a loss or responsibility given as the bills generated from Reid's treatment had already concluded before the Plaintiff ever spoke with Wiles. As explained further

in this brief, the Plaintiff could not have settled Reid's claim against Calcutt because that would constitute the unauthorized practice of law. Additionally, the very wording of the Plaintiff's contracts with Reid reveal that during the course of the Plaintiff's treatment of Reid and prior to his conversation with Wiles, the Plaintiff was on notice that State Farm might refuse to directly pay him for Reid's bills. For example, the "Assignment of Proceeds" signed by Reid on July 11, 2017 state that she agreed to assign her rights, remedies and benefits to the Plaintiff "in the event a payor refuses to pay Dr. Gregg N. Battersby..." (R. 19) The "Assignment, Lien and Authorization" signed by Reid on July 11, 2017 stated that "in the event my insurance company obligated to make payments to me upon the charges made by this office for their services refuses to make such payments, upon demand by me or this office, I hereby assign and transfer to this office any and all causes of action that I might have..." (R. 20) Finally, the "Lien on my Personal Injury Claim" signed by Reid on July 11, 2017 stated that "I understand that if the insurance company chooses not to honor said lien and refuses to pay Dr. Gregg Battersby directly for the procedures performed that I give Dr. Gregg Battersby, or his assignee, full legal rights to settle my personal injury claim..." (R. 21)

It is undisputed the Plaintiff had no written contract with State Farm. The only enforceable contracts were between the Plaintiff and Reid, contracts to which State Farm was not a party. One not a party to an agreement is not bound by its terms and an individual who is not a party to a contract generally cannot be liable for its breach. Pee Dee State Bank v. National Fiber Corp., 340 S.E. 2d 569, 571 (S.C. App. 1986); Trancik v. USAA Ins. Co., 581 S.E. 2d 858 (S.C. App. 2003)

As noted in the trial court's order granting summary judgement to State Farm, prior to the institution of this lawsuit Plaintiff was aware of the Trancik case as that case was cited in a previous, similar case by the Plaintiff against Allstate in an order dismissing that lawsuit. (R. 2)

As noted by the South Carolina Court of Appeals in Trancik v. USAA Ins. Co., 581 S.E. 2d 858 (S.C. App. 2003), because the Plaintiff's patient had no contractual privity with the insurer, the healthcare provider [here, Dr. Battersby] received no greater right from the patient [here, Pamela Reid] through an assignment and, in spite of the obligations incurred by the patient pursuant to the assignment contract, "mere notification of the assignment was insufficient to contractually bind [the insurer]". 581 S.E. 2d 861, 862

Although Reid purported to make an assignment to the Plaintiff "of all my rights, remedies, and benefits," Reid had no right to sue State Farm itself. Master Clean, Inc. v. Star Ins. Co., 556 S.E. 2d 371 (S.C. 2001); Gaskins v. Southern Farm Bureau Cas. Ins. Co., 541 S.E. 2d 269 (S.C. App. 2000) Because Reid could not sue State Farm directly, she could not by assignment vest in the Plaintiff any rights greater than her own because an assignee takes no greater rights than the assignor. Trancik v. USAA Ins. Co., 581 S.E. 2d 858 (S.C. App. 2003); Peterson v. West Am. Ins. Co., 518 S.E. 2d 608 (S.C. App. 1999); Singletary v. Aetna Cas. & Sur. Co., 447 S.E. 2d 869 (S.C. App. 1994); Gray v. State Farm Auto. Ins. Co., 491 S.E. 2d 272 (S.C. App. 1997) – assignments from a chiropractor's patients applied only to the carriers of the patients and not the carriers of third parties.

II. THE ALLEGED ORAL CONTRACT UPON WHICH THE PLAINTIFF'S CASE IS BASED CONTRAVENES THE STATUTE OF FRAUDS AND IS UNENFORCEABLE.

To be legally enforceable, § 32-3-10(2) of the South Carolina Code requires that a promise to answer for the debt of another must be in writing and signed by the party to be charged. Generally, contracts required by the Statute of Frauds to be in writing cannot be orally modified. State v. McIntyre, 415 S.E 2d 399 (S.C. 1992); Windham v. Honeycutt, 302 S.E. 2d 856 (S.C.

1983) Accordingly, even if the Plaintiff did have an oral contract with State Farm, it was unenforceable because it was not in writing.

The oral contract contemplated by the Plaintiff could only concern payment of Pamela Reid's bills owed to the Plaintiff for his treatment of Reid. In fact, the Plaintiff's complaint sued Reid for breach of contract. (¶ 28-32) (R. 8, 9) Paragraph 35 of the Plaintiff's complaint alleges "State Farm agreed to pay Plaintiff directly **for the services rendered to Reid**..." (emphasis added) (R. 9) Paragraph 37 of the Plaintiff's complaint alleges that "State Farm refused to pay Plaintiff **for his services to Reid**." (emphasis added) (R. 9) There can be no doubt that the alleged oral contract between the Plaintiff and State Farm concerned the latter's agreement to pay the Plaintiff for his services to Reid. The charges or the debt in question were not charges to State Farm. Rather, they were for the Plaintiff's charges to Reid and, as such, inherently involved a promise by State Farm to answer for the debt of another – Reid. Such an alleged oral contract falls squarely within the Statute of Frauds.

Page 7 of the Plaintiff's brief alleges "Respondents admitted that they agreed to pay appellant directly for Reid's treatment in paragraph 41 of their answer." This statement misquotes paragraph 41 of State Farm's answer which states that "these defendants admit State Farm agreed to pay the Plaintiff directly **if Reid instructed State Farm to do so but that never happened**..." (emphasis added) (R. 27) In fact, the Plaintiff's complaint alleges "Reid later told State Farm not to pay Plaintiff but to pay her instead." (¶ 30) (R. 9) Paragraph 47 of the Plaintiff's complaint alleges that "after Reid finished treatment she told State Farm she wanted to be paid the money owed to Plaintiff for her treatment." (R. 10) Although parties may plead alternative legal theories, parties cannot plead alternative facts. Allegations in a pleading are conclusive against the pleader. Mellon Bank N.A. v. Carroll, 445 S.E. 2d 466 (S.C. App. 1994) Any allegations, statements or

admissions contained in a pleading are conclusive against the pleader and the party cannot subsequently take a contrary or inconsistent position. Charleston Cty. Sch. Dist. v. Laidlaw Transit, Inc., 559 S.E. 2d 362 (S.C. App. 2001); Town of Kingstree v. Chapman, 747 S.E. 2d 494 (S.C. App. 2013) Having alleged that State Farm agreed to pay the Plaintiff for services rendered to Reid if Reid agreed to have the Plaintiff paid directly (¶ 35) (R. 9) and that after Reid finished treatment she told State Farm she wanted to be paid the money owed to the Plaintiff for her treatment (¶ 47) (R. 10), the Plaintiff cannot now disavow those factual allegations.

Page 8 of the Plaintiff's brief claims that Calcutt was found to have contributed to the collision "thus legally liable for Reid's injuries." The Plaintiff further argues that once Calcutt became legally liable, State Farm became liable to pay for Reid's treatment. (Plaintiff's Initial Brief, pg. 8) This is not true because Reid never obtained a judgement against Calcutt or even filed suit against him. In fact, had Reid sued Calcutt it is entirely possible a jury could have concluded that some or all of Reid's treatment with the Plaintiff was unnecessary or excessive and returned a verdict for less than the amount of Reid's medical bills.

The Plaintiff argues that the insurer's contract to answer for the debt of the insured is provided in the terms of the policy. (Plaintiff's Initial Brief, pg. 8) In fact, there is no term in the policy issued by State Farm to Calcutt which requires State Farm to pay medical bills incurred by a third party injured by a State Farm insured. Instead, the contract of insurance obligates State Farm to pay damages an insured becomes legally obligated to pay. In fact, the Plaintiff even admitted that no part of State Farm's policy insuring Calcutt stated that State Farm would pay bills owed by Pamela Reid to the Plaintiff. (Plaintiff's Deposition, pg. 39) (R. 147)

The Ferst's Sons & Co. v. The Bank of Waycross and Ortis v. The Travelers Insurance Company cases cited at page 8 of the Plaintiff's brief are inapposite. Ferst, a 1900 decision of the

Supreme Court of Georgia, involved the defendant bank directly agreeing to pay the Plaintiff when the Plaintiff extended further credit to a third party, Lee. Ferst then released Lee from his obligation to Ferst "and looked solely to the bank for payment." The Supreme Court of Georgia stated that "the promise of the bank to pay to the Plaintiff's the debt of Lee was an original, and not a collateral, undertaking." Under these facts there was an obligation of the bank itself to pay the Plaintiff, and not a promise to pay for the debt of another. Here, in contrast, the alleged oral contract between the Plaintiff and State Farm involved no consideration by the Plaintiff to State Farm, did not involve State Farm's agreement to directly pay the Plaintiff for an obligation of State Farm and, instead, involved an alleged agreement to pay a debt of a third party – Reid.

Ortis, a 1966 decision of the Court of Appeals of Michigan, is also inapplicable. Ortis involved a settlement agreement confirmed in writing with Travelers Insurance Company. The Court held that Travelers was settling not only its insured's potential liability, "but its own possible obligation to pay and its own duty to defend..." Under these facts, the Court held the Statute of Frauds did not apply. Here, in contrast, the alleged oral agreement did not involve a settlement of Reid's claim against Calcutt. Instead, it allegedly involved State Farm's agreement to pay Reid's medical bills owed to the Plaintiff for the Plaintiff's treatment of Reid. At no time was there an agreement by State Farm to make any payment directly to the Plaintiff for a debt owed by State Farm directly to the Plaintiff. This case falls squarely within the Statute of Frauds and the trial court properly concluded the Plaintiff's alleged oral contract is barred by § 32-3-10(2).

III. STATE FARM DID NOT CAUSE THE PLAINTIFF ANY DAMAGES, NOR DID THE PLAINTIFF DETRIMENTALLY RELY UPON ANY REPRESENTATION BY STATE FARM.

The Plaintiff's damages are the unpaid bills of Reid for the Plaintiff's treatment of Reid. Other than Reid's unpaid bills, the Plaintiff has no damages.

For the Plaintiff to recover under any tort against State Farm, he must prove that State Farm caused his damages as causation is an element of every tort. Troutman v. Facetglas, Inc., 316 S.E. 2d 424 (S.C. App. 1984); McAlhany v. Carter, 781 S.E. 2d 105 (S.C. App. 2015) When a Plaintiff's damages have occurred prior to the alleged tort – here, Wiles' alleged misrepresentation to the Plaintiff on August 15, 2017 – it is impossible for the alleged tortfeasor to have caused the Plaintiff's damages. Stated otherwise, the alleged tort must precede, not follow, the damages in order for the damages to be caused by the tort. Under these undisputed facts State Farm cannot have caused the Plaintiff's damages. [2]

Related to the issue of causation is the concept of detrimental reliance. The lack of detrimental reliance was one of the grounds for State Farm's motion for summary judgment. Although the trial court's order did not rule that specific issue, the Plaintiff never filed a motion under Rule 59 to request a ruling on that part of State Farm's motion for summary judgment. Accordingly, the question of whether the Plaintiff detrimentally relied upon Wiles' statement to the Plaintiff of August 15, 2017 is not preserved for appellate review because one of the four basic requirements to preserve an issue for appellate review is that the issue must have been ruled upon by the trial court.[3] Bruning v. SCDHEC, 795 S.E. 2d 290 (S.C. App. 2016); Johnson v. Sam English Grading, Inc., 772 S.E. 2d 544 (S.C. App. 2015) In any event, the Plaintiff's reliance on

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[2] The trial court's order did not specifically address each ground in State Farm's motion for summary judgment, but the Plaintiff never filed a Rule 59 motion requesting a ruling on each specific ground of State Farm's motion. Nonetheless, this Court can affirm the order of the trial court on any ground which appears in the Record on Appeal. REPKO v. Cty. of Georgetown, 818 S.E. 2d 743 (S.C. 2018); I'on, LLC v. Town of Mount Pleasant, 526 S.E. 2d 716, 723 (S.C. 2000)

[3] Although the Plaintiff claims at page 16 of his initial brief that the trial court opined that the Plaintiff could not establish detrimental reliance, the court's three page order does not discuss detrimental reliance other than the reference to the fact that the Plaintiff's treatment of Reid concluded before the Plaintiff ever spoke with Wiles. The Plaintiff filed no Rule 59 Motion requesting a specific ruling on the issue of detrimental reliance. Additionally, although the Plaintiff argues at page 18 that the trial court erred in opining that State Farm had no pecuniary interest in whether payment was issued directly to the Plaintiff or to Reid, the court's order made no ruling on that issue even though the lack of a pecuniary interest was one of the grounds for State Farm Motion for Summary Judgment. Again, the Plaintiff did not file a Rule 59 Motion requesting a ruling on this specific issue and these arguments are not preserved for appellate review.

Wiles' statement could not have been detrimental reliance because, even assuming Wiles made a false statement to the Plaintiff, the false statement came **after** the Plaintiff's treatment of Reid had concluded. The Plaintiff therefore cannot prove he furnished treatment to Reid in reliance upon State Farm's promise to pay directly to the Plaintiff Reid's bills. See, Stringer v. State Farm Mut. Auto. Ins. Co., 687 S.E. 2d 58 (S.C. App. 2010), which held an insured cannot base coverage upon a representation of coverage where the insured cannot prove he suffered a prejudicial change in position or detrimentally relied on the representation of the insurer. In Stringer the court stated that "here, the representation of coverage occurred after the loss." 687 S.E. 2d at 62 In the present case, the Plaintiff's loss – medical bills for treatment of Pamela Reid from July 11 through August 14, 2017 – occurred before Wiles' alleged misrepresentation to the Plaintiff or, stated differently, the alleged misrepresentation occurred after the loss.

Additionally, the concept of detrimental reliance requires that the party making the statement represent or agree to do one thing, then do another. In other words, detrimental reliance must be predicated upon some false or misleading statement. Here, there was no written contract and all that Wiles stated to the Plaintiff on August 15, 2017 was: "yeah, if she [Reid] wants us to pay you directly, we-we certainly can." (Transcript of Battersby-Wiles call on August 15, 2017, pg. 3) (R. 99) In other words, Wiles simply stated that State Farm would pay the Plaintiff directly if Reid wanted State Farm to pay the Plaintiff directly. That is exactly what is alleged in paragraph 35 of the Plaintiff's complaint- "State Farm agreed to pay Plaintiff directly for the services rendered to Reid if Reid agreed to have Plaintiff paid directly..." (R. 9) By no stretch of the imagination can Wiles' statement to the Plaintiff be considered false or misleading. Wiles' statement was simply conditioned upon something – Reid's agreement to have State Farm pay the Plaintiff directly – which never happened.

The Plaintiff argues the trial court erred in opining that the Plaintiff could not establish he had no way of knowing that State Farm would not pay him directly for Reid's bills. (Plaintiff's Initial Brief, pg. 14) Although the trial court did not explicitly make such a statement in its order, the Plaintiff did have a way of knowing that State Farm would not pay him directly for Reid's bills because:

- In previous litigation the Plaintiff unsuccessfully attempted to assert a similar assignment against Allstate in Battersby v. Allstate, Civil Action No. 2015-CP-04-00667. (State Farm's Memorandum in Support of its Motion For Summary Judgment, pg. 3) (R. 36) Not only did judge Lawton McIntosh grant summary judgment to Allstate, in a subsequent order in the same case judge Scott Sprouse even cautioned the Plaintiff against making similar claims in the future. (R. 52)
- Nothing prevented the Plaintiff from calling State Farm before, instead of after, the Plaintiff's treatment of Reid wherein the Plaintiff could have asked State Farm whether it would agree to pay for his bills in treating Reid.
- The contracts signed by Reid on July 11, 2017 at the inception of her treatment by the Plaintiff acknowledged a possibility that the insurance company might not honor the lien and might refuse to pay the Plaintiff.

The Plaintiff argues that State Farm has provided no proof from Reid that she told them [State Farm] to pay her directly. (Plaintiff's Initial Brief, pg. 15) This argument is unpersuasive for two reasons. First, the burden of proof is upon Plaintiff, not State Farm. Second, State Farm does not need to prove facts asserted in the Plaintiff's complaint. Paragraph 30 of the Plaintiff's complaint alleges Reid told State Farm not to pay the Plaintiff but to pay her instead (See also, ¶ 47 of the Complaint) (R. 9, 10) Again, parties are bound by admissions or assertions in their pleadings and it is unnecessary for State Farm to prove a fact alleged in the Plaintiff's own complaint. Charleston Cty. Sch. Dist. v. Laidlaw Transit, Inc., 559 S.E. 2d 362 (S.C. App. 2001) Allegations, statements or admissions contained in a pleading are conclusive against the pleader and a party cannot subsequently take a contrary or inconsistent position. Mellon Bank N.A. v. Caroll, 445 S.E. 2d 466 (S.C. App. 1994); Doe v. South Carolina State Hospital, 328 S.E. 2d 652, 656 (S.C. App. 1985) A

plaintiff need not prove an allegation of the complaint that has been admitted by the answer. Bates v. City of Columbia, 391 S.E. 2d 733, 734 (S.C. App. 1990) By extension, a defendant need not prove a fact admitted in a complaint.

IV. STATE FARM DID NOT MAKE ANY FALSE OR MISLEADING STATEMENTS TO THE PLAINTIFF.

One of the elements of both fraud and negligent misrepresentation is a false representation. The sole basis for the Plaintiff's claim that a false or negligent misrepresentation was made was Wiles' statement to the Plaintiff on August 15, 2017 that "yeah, if she [Reid] wants us [State Farm] to pay you [Battersby] all directly, we-we certainly can." (Transcript of Battersby-Wiles Conversation of August 15, 2017, pg. 3) (R. 99) As a matter of law, this was not a false representation. Instead, it was an agreement to do what Reid wanted State Farm to do. This fact is even admitted in paragraph 35 of the Plaintiff's complaint which alleges that "State Farm agreed to pay Plaintiff directly for the services rendered to Reid if Reid agreed to have Plaintiff paid directly..." (R. 9) The fact that the sole basis of the alleged false or negligent misrepresentation by State Farm is a fact alleged in the Plaintiff's complaint raises the question how a fact alleged in a complaint can constitute a falsehood. It cannot.

V. ANY ATTEMPT BY THE PLAINTIFF TO SETTLE REID'S CLAIM AGAINST CALCUTT WOULD CONSTITUTE THE UNAUTHORIZED PRACTICE OF LAW.

The Plaintiff claims that his detrimental reliance consisted of his not assuming Reid's claim against Calcutt and settling this claim in the Plaintiff's name. (Plaintiff's Initial Brief, pg. 16) The Plaintiff claims that because State Farm agreed to pay him directly, "Appellant could not take over Reid's claim and prosecute it in Appellant's name." (Plaintiff's Initial Brief, pg. 15) The Appellant

further argues that if he had only known State Farm would not pay him directly he "would have required that Reid obtain a lawyer to settle her claim against Calcutt and protect Appellant's interest." (Plaintiff's Initial Brief, pg. 14, 4)

At oral argument on State Farm's motion for summary judgment the Plaintiff argued he had an option to settle Reid's claim against Calcutt and "I was precluded from settling the case [of Reid against Calcutt] as I saw fit." (Summary Judgment Hearing Transcript, pg. 18) (R. 129) In response, the court stated "I can't give you legal advice" but "I wouldn't do that." (Summary Judgment Hearing Transcript, pg. 19) (R. 130) The Plaintiff then argued "I also could have **required** that Pamela Reid get a lawyer to represent her against William Calcutt..." (emphasis added), in response to which the court replied "well, you could have **asked** her." (Summary Judgment Hearing Transcript, pg. 20) (emphasis added) (R. 131) In its written order granting summary judgment to State Farm, the court stated that while it "cannot furnish legal advice, it does caution the Plaintiff who is not an attorney that his settlement of a third party's personal injury claim may constitute the unauthorized practice of law." (Order Granting State Farm's Motion for Summary Judgment, pg. 2) (R. 2) These admonitions have apparently fallen on deaf ears as the Plaintiff continues argue in his initial brief that he could take over and settle Reid's claim against Calcutt and require Calcutt to hire an attorney.

There is nothing in the contracts signed by Reid which vests the Plaintiff with the authority to require that Reid obtain a lawyer to settle her claim against Calcutt. Even if the contracts between the Plaintiff and Reid did contain such a provision, that provision would likely be against public policy as persons have a right to represent themselves and requiring that they hire an attorney at their own expense to prosecute a claim against a third party would arguably be a violation of public policy.

The "Lien on my Personal Injury Claim" signed by Reid gives the Plaintiff "full legal rights to settle my personal injury claim on my behalf..." (R. 21) The trial judge correctly concluded that the Plaintiff, who is not licensed to practice law, would be engaged in the unauthorized practice of law by settling Reid's personal injury claim on her behalf against Calcutt. Advising insureds on their rights under an insurance policy is the unauthorized practice of law. See also, Linder v. Insurance Claims Consultants, 560 S.E. 2d 612 (S.C. 2002) The management of proceedings on behalf of clients before judges and courts constitutes the practice of law. State v. Despain, 460 S.E. 2d 576 (S.C. 1995) Providing advice on selection of legal forms and how to complete the forms constitutes the unauthorized practice of law. In The Matter of Robert Clarkson, Supreme Court Order dated May 25, 2004 A manager of a homeowner's association filing an action in Magistrate's Court to collect a debt after obtaining a judgment and filing the judgment in Circuit Court constitutes the unauthorized practice of law. Rogers Townsend & Thomas PC v. Peck, 797 S.E. 2d 396 (S.C. 2017) Although what constitutes the practice of law must be decided on the facts and in the context of each individual case (Roberts v. LaConey, 650 S.E. 2d 474 (S.C. 2007)), taking over Reid's claim against Calcutt and settling that claim "as he saw fit" (Plaintiff's Initial Brief, pg. 14) would constitute the practice of law.

If the Plaintiff assumed Reid's claim against Calcutt to "settle it as he saw fit" (Plaintiff's Initial Brief, pg. 14), the Plaintiff would not be suing Calcutt for the Plaintiff's own damages as Calcutt had no liability directly to the Plaintiff. Instead, the Plaintiff would need to exercise judgment as to how much to settle Reid's claim against Calcutt for, if indeed a settlement could be reached. While the Plaintiff's only interest would be in recovering the amount of his medical bills, Reid may have had injuries over and above the amount of her medical bills (e.g. pain and suffering) and the Plaintiff would need to exercise judgment about whether to seek damages unique

to Reid (e.g. pain and suffering, loss of wages, etc.). This would inherently constitute the authorized practice of law. Accordingly, in asserting in his brief that he could assume Reid's claim on his own and settle or resolve the matter as he saw fit (Plaintiff's Initial Brief, pg. 4, 14) the Plaintiff is proposing an illegal activity – the unauthorized practice of law – even after being cautioned against that by the trial court.

CONCLUSION

The Plaintiff had no written contract with State Farm. The only basis for an oral contract with State Farm was Wiles' statement that State Farm would pay the Plaintiff directly for Pamela Reid's medical bills if that is what Reid wanted. If the Plaintiff thought this constituted State Farm's agreement to directly pay the Plaintiff for Reid's medical bills irrespective of what Reid wanted, there was no meeting of the minds. There was also no consideration furnished by the Plaintiff to State Farm to support any contract. Further, the alleged oral contract violated the Statute of Frauds because it purported to require State Farm to pay the debt of a third party – Pamela Reid. The forbearance allegedly undergone by the Plaintiff – assuming and settling as he saw fit Reid's claim against Calcutt and/or requiring Reid to hire an attorney at her own expense – would both violate public policy and constitute the unauthorized practice of law. The simple fact is that Reid had no claim against State Farm to give to the Plaintiff, nor did Wiles make any false or misleading statement to the Plaintiff. The trial court correctly granted State Farm's motion for summary judgment and this order should be affirmed.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: ______________________________

Charles R. Norris
SC Bar No. 004238
E-Mail: charles.norris@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Counsel for Respondents

Charleston, South Carolina

November 14, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2018-000943

DR. GREGG N. BATTERSBY, ... Appellant,

v.

PAMELA REID, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and JOHN WILES, Defendants,

Of whom State Farm Mutual Automobile Insurance Company and John Wiles are the .... Respondents.

PROOF OF SERVICE

I the undersigned Administrative Assistant of the law firm of Nelson Mullins Riley & Scarborough, LLP, attorneys for Respondents, do hereby certify that I have served the pro se Appellant in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by FedEx, postage prepaid, to the following address(es):

Pleadings: RESPONDENTS' FINAL BRIEF

Pro Se Appellant
Served:

Dr. Gregg N. Battersby
7800 Hwy. 81 South
Starr, SC 29864

Grace Hamill
Administrative Assistant

November 15, 2018