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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SEP 28 2020

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

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 MOTION TO STRIKE
(1) FINAL BRIEF OF APPELLANT, AND
(2) APPELLANT'S REPLY TO RESPONDENTS' JOINT RETURN TO APPELLANT'S
MOTION TO SUPPLEMENT THE RECORD ON APPEAL**

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"), jointly move to Strike (1) the Final Brief of Appellant, and (2) Appellant's Reply to Respondents' Joint Return to Appellant's Motion to Supplement the Record on Appeal, and in support thereof state 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, to claims made against him in two lawsuits by TLC Holdings, LLC. The claims against Appellant in 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.¹

¹ Appellant has consistently threatened additional litigation outside of this appeal and regardless of its result. On August 10, 2020, Penn America and Global filed a separate action for temporary and permanent injunctive relief in the Circuit Court, seeking classification of Hutson as a vexatious litigant and the imposition of restrictions upon Hutson's ability to file future litigation. Hutson filed crossclaims against Penn America and Global and third-party claims, adding Tim Newton,

This matter is now at the point for the service and filing of the Record on Appeal, followed by final briefing. Appellant has not served a complete and proper Record on Appeal, yet he has filed his Final Brief. Appellant further filed a motion seeking to supplement the Record on Appeal, which Respondents opposed in a return to the motion, and to which Appellant filed a reply. As discussed more fully *infra*, Respondents seeks to strike the Final Brief of Appellant and Appellant's Reply to Respondents' Joint Return to Appellant's Motion to Supplement the Record on Appeal.

APPLICABLE LAW

"The South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State." Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). "A *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." State v. Burton, 356 S.C. 259, 265, n. 5, 589 S.E.2d 6, 9 n. 5 (2003). While technical rules are often applied with "much less stringency," "established rules of procedure are not to be discarded, either in the trial court or on appeal, merely because the defendant has been his own lawyer." State v. Hollman, 232 S.C. 489, 498, 102 S.E.2d 873, 877 (1958), overruled on other grounds by Stevenson v. State, 335 S.C. 193, 516 S.E.2d 434 (1999).

Pursuant to Rule 269 of the South Carolina Appellate Court Rules: "Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after

Murphy & Grantland, P.A., Christian Stegmaier, and Collins & Lacy, P.C. to the action. See Penn America Ins. Co., et al. v. Hutson, Civil Action No. 2020-CP-40-03810.

ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.”

ARGUMENT

I. The Court Should Strike the Final Brief of Appellant Because it is Premature and Does Not Comply with Rule 211, SCACR.

Relevant Facts

On July 28, 2020, this Court ordered Appellant to comply with the applicable page limits for briefing and file an Amended Reply Brief, which he did on or about August 6, 2020. Thus, the Record on Appeal in this matter was due to be served upon Respondents on September 8, 2020.

On September 8, 2020, Appellant delivered a large stack of documents to Respondents. However, the content and format of the Record prepared by Appellant were deficient in numerous respects. Most glaringly, the Record lacked any pagination and failed to include all of the documents designated by the parties. As the Record is currently prepared, Respondent’s cannot prepare their final briefs.

On September 11, 2020, in an effort to avoid additional motions practice, Respondents sent correspondence to Appellant identifying all of the deficiencies in the Record on Appeal in detail and requested Appellant seek additional time from this Court to correct them.

On or about September 15, 2020, Appellant served a Request for Extension, which states: “Appella[nt] filed his Record on Appeal on September 8, 2020. Appella[nt] requests an extension of thirty (30) days beginning upon his receipt of notice from the Appellate Court identifying the specific deficiencies which might exist.”²

² It is unclear to Respondents whether Appellant both served and filed the Record on Appeal on September 8, 2020. Rule 210 of the South Carolina Appellate Court Rules requires a copy of the Record on Appeal to be served on each party within and that proof of service of the Record to be immediately filed with the Clerk of the appellate court. Rule 210(a), SCACR. The Record on

However, on September 21, 2020, Respondents received copies of what purports to be the Final Brief of Appellant. Appellant did not serve a Final Reply Brief.

Discussion

Rule 210(a) of the South Carolina Appellate Court Rules requires Appellant to prepare and serve the Record on Appeal on each party who has served a brief. This provides the attorneys with an opportunity to review the content of the Record on Appeal and resolve any areas of disagreement prior to its filing with the Court. See Rule 211(b), SCACR. In this instance, numerous deficiencies were noted by Respondents and promptly reported to Appellant for correction. Appellant seems to acknowledge that some deficiencies exist, though he has requested that the Court enumerate them to him also.

Without a complete and proper Record on Appeal, Appellant's filing of his final brief is out of order. Rule 211(b) of the South Carolina Appellate Court Rules provides that final briefs be identical to the initial briefs except that: "The references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal. These revised references may be in place of or in addition to the initial references, and shall be in the form indicated by the following examples: (R. p. 15, line 4) (R. p. 75, lines 8-20) (R. p. 90, line 1-p. 101, line 14) (R. pp. 29-31)." This was obviously an impossible task for Appellant because there are no page numbers in the Record on Appeal for him to reference in the final brief.

Indeed, a review of the Final Brief of Appellant served to Respondents reveals that the only change made was to cover page, substituting "Initial Brief" for "Final Brief." Appellant also left off pages 33 and 34 of his brief in the copies he served. Respondents note that there are citations

Appeal must be filed with the Appellate Court no later than the date Appellant's briefs are due to the appellate court. Rule 210(b), SCACR.

to documents that should be contained in the Record on pages 4, 10, 12, 14, 15-19, and 21 of Appellant's brief, none of which have added or substituted a reference to the Record.

In sum, the filing of the Final Brief of Appellant is premature because the Record on Appeal is not yet complete and the brief itself is not in compliance with Rule 211 because it lacks citations to the Record. Accordingly, this Court should strike the Final Brief of Appellant.

II. The Court Should Strike Appellant's Reply to Respondents' Joint Return to Appellant's Motion to Supplement the Record on Appeal Because it is Not Responsive to the Return and Contains Impertinent and Scandalous Material.

Relevant Facts

On or about September 3, 2020, Appellant filed a motion he titled "Appella[nt]'s Motion to Allow Appellant to Include Evidence Formerly Filed in This Appeals Case Proving Extrinsic Fraud Upon the Appeals Court by the Respondents." The content of the motion was essentially a motion to supplement the Record on Appeal, seeking to include two documents: Appellant's Response to Respondents' Motion for Sanctions and Appellant's Reply Brief, both of which were filed in this appeal.

On September 11, 2020, Respondent's filed a joint return in opposition to Appellant's motion. Respondents argued that neither filing was proper or necessary for inclusion in the Record on Appeal because they were not before the lower court and Appellant's Reply Brief will be a substantive brief before by the Court once the matter is submitted for consideration.

On or about September 15, 2020, Appellant filed a reply to Respondent's joint return to his motion to supplement the Record. On the second page of the reply, Appellant writes: "FRAUD IS PRESENTLY BEING PERPETRATED UPON THE HONORABLE APPEALS COURT, ITS JUDGES, AND THIS APPELLANT BY ALL THE RESPONDENTS: J.R. MURPHY, ESQ., TIMOTHY NEWTON, ESQ., AND NOW ALSO INCLUDING CHRISTIAN STEGMAIER,

ESQ., COUNSEL FOR PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY.” (App.’s Reply to Return to Mot. to Supp. the Record, p. 2). The reply briefly references Respondent’s return and states that Rules 210, 211, and 212 of the South Carolina Appellate Court Rules are superseded by the extrinsic fraud that has and continues to be perpetrated. (Id. at p. 3). Though Appellant’s original motion was one to supplement the Record, his reply demands that his case be sent to a jury. (Id.). Appellant later “demands that the clerk hand this official complaint and sworn affidavit immediately and directly” to the proper appellate judge “in order that these unconscionable illegal acts are stopped!” (Id. at p. 4). He further requests the imposition of sanctions upon the attorneys and their law firms. (Id.).

Appellant then begins a litany of allegations that he considers evidence of fraud. He states that Respondents know he was defrauded years ago with respect to contracts prepared by and for TLC Holdings; that no court has “refuted” the 77 “counts” that comprised Hutson’s *pro se* counterclaims against TLC Holdings; that Hutson was not provided a defense in the lawsuits against him; that Hutson did not recognize the extrinsic fraud when his counter-claims were filed; and that Timothy Newton’s e-mail recognized the existence of extrinsic fraud but refused to expose it. (App.’s Reply to Return to Mot. to Supp. the Record, pp. 5-7). None of this true, nor is it evidence.

Discussion

Respondents are not aware of any evidence to support Appellant’s contention that he was defrauded in the original land deal. To the extent Appellant did possess such a belief and claim, it is Respondents’ understanding that he released those claims many years ago. Appellant is correct that TLC never disclosed any fraud to the courts; rather, they vehemently denied any wrongdoing and pursued their own claims against Appellant. While Laura Paton did incorporate Appellant’s

pro se counterclaims into the Answer she filed on his behalf, both the state and federal courts granted summary judgment in favor of TLC Holdings on those counterclaims. Appellant further takes Newton's e-mail out of context and misrepresents that Newton recognized the fraud. Newton had little information at the time, responded to information supplied to him by Appellant, and told Appellant to discuss it with his defense counsel or pursue it on his own. Newton has never represented Appellant. Moreover, PAIC resolved the claims against Hutson within the policy limits, with no personal liability to him.

The narrow issue before this Court on Appellant's original motion to supplement the Record is whether the documents identified are proper for such designation and inclusion in the Record on Appeal. Appellant has instead used motions practice as an opportunity to cast more aspersions against these Respondents and their counsel, threatening to repeat them to additional entities, including the Governor's Office, the Attorney General's Office, the Commission on Lawyer Conduct, the Commission on Judicial Conduct, the Office of Disciplinary Counsel, and the South Carolina State Law Enforcement Division. Appellant's baseless allegations of fraud, conspiracy, criminal conduct, and professional malfeasance against Respondents and their counsel must stop. The first step is to strike his scurrilous filing, which was not responsive to Respondents' joint return.

CONCLUSION

Based upon the foregoing, Respondents respectfully request that this Honorable Court grant their Motion to Strike (1) the Final Brief of Appellant, and (2) Appellant's Reply to Respondents' Joint Return to Appellant's Motion to Supplement the Record on Appeal. Respondents further request that this Court impose such additional and further sanctions against Appellant as are just and proper.

Respectfully submitted,

s/Christian Stegmaier

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AMERICA INSURANCE COMPANY AND
GLOBAL INDEMNITY GROUP, INC.

s/John R. Murphy (with permission)

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s/Timothy J. Newton (with permission)

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PRO SE RESPONDENT

**RESPONDENTS' JOINT MOTION TO STRIKE
(1) FINAL BRIEF OF APPELLANT, AND
(2) APPELLANT'S REPLY TO RESPONDENTS'
JOINT RETURN TO APPELLANT'S MOTION
TO SUPPLEMENT THE RECORD ON APPEAL**

Columbia, South Carolina
September 25, 2020

CERTIFICATE OF SERVICE

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 MOTION TO STRIKE (1) FINAL BRIEF OF APPELLANT, AND (2) APPELLANT'S REPLY TO RESPONDENTS' JOINT RETURN TO APPELLANT'S MOTION TO SUPPLEMENT THE RECORD ON APPEAL by causing the same to be deposited in a United States Postal Service mailbox, postage prepaid, addressed to the following:

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Post Office Box 2755
Orangeburg, SC 29116
Pro Se Appellant

s/ Christian Stegmaier

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GLOBAL INDEMNITY GROUP, INC.

Dated: September 25, 2020

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

SEP 28 2020

SC Court of Appeals

September 25, 2020

VIA U.S. MAIL AND EMAIL

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201
ctappfilings@sccourts.org

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 Ms. Kitchings:

Please find enclosed the unbound original of *Respondents' Joint Motion to Direct Appellant to Correct Record on Appeal and Hold Final Briefing Deadlines in Abeyance*, together with our firm's check in the amount of \$50.00 for filing in the above referenced matter.

Also enclosed is the unbound original of *Respondents' Joint Motion to Strike (1) Final Brief of Appellant, and (2) Appellant's Reply to Respondents' Joint Return to Appellant's Motion to Supplement the Record on Appeal*, together with our firm's check in the amount of \$50.00 for filing in the above referenced matter.

Pursuant to the Supreme Court's Amended Order "re: Operation of the Appellate Courts During the Coronavirus Emergency" (2020-05-29-02, Appellate Case No. 2020-000447), we have not included any additional copies. If any additional copies are required, please let us know.

By copy of this letter and enclosure, we are serving same on all parties.

Thank you for your time and attention. Should you have any questions or concerns, please do not hesitate to contact us.

Respectfully,

Christian Stegmaier

CS/net
Encl.

The Honorable Jenny A. Kitchings

September 25, 2020

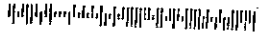
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cc (via U.S. Mail and email):

M. B. Hutson, Appellant *pro Se*

John Robert Murphy, Esquire, Murphy & Grantland, P.A.

Tim Newton, Esquire, Murphy and Grantland, PA



Haster
09/25/2020
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