

Dennis Robert Mitton

Danny James

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PLAINTIFF(S)

Oct 16 2020

DEFENDANT(S)

Submitted by:	SC Court of Appeals	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
		or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

Order assigning rights to the Plaintiff.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Robert E. Lee
 Robert E. Lee, Special Referee

Judge Code

Date

9/14/2020

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
 (Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A # 2018-CP-21-03002

Dennis Robert Mitton,
Plaintiff,

Vs.

Danny James,
Defendant.

ORDER
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Oct 16 2020
SC Court of Appeals

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Plaintiff previously obtained a judgment against Defendant (the "Judgment"). The Judgment was filed in the office of the Florence County Clerk of Court and entered in the judgment rolls of the office of the Florence County Clerk of Court. Defendant has not satisfied the Judgment.

This matter came before me on August 31, 2020 for a hearing pursuant to the Order and Rule to Show Cause dated May 14, 2020. Specifically, pursuant to that Order, this hearing is for the purpose of supplemental proceedings pursuant to S.C. Code Ann. § 15-39-310, *et seq.* (1976, as amended), including for Plaintiff to examine Defendant regarding his assets.

Defendant did not personally appear at the hearing by agreement of the parties.

However, Plaintiff provided the Court with evidence that Defendant has a potential asset which he requested be applied toward satisfaction of the Judgment. Specifically, Plaintiff asked the Court to order a judicial assignment to Plaintiff of all potential contract and tort claims Defendant may have against his liability insurance company, South Carolina Farm Bureau Insurance Company ("SCFB"). SCFB insured Defendant for the

motor vehicle collision Defendant negligently caused and which resulted in Plaintiff's personal injuries, the present lawsuit, and the Judgment. The Judgment exceeds the amount of liability coverage provided by SCFB to Defendant pursuant to the contract of insurance between those parties. As such, Plaintiff contends that, if SCFB failed to act reasonably to protect Defendant from the excess judgment, SCFB could be liable to Defendant in damages for breach of contract and in tort for breach of the duty of good faith and fair dealing. See, e.g., *Sentry Select Ins. Co. v. Maybank Law Firm*, 826 S.C. 154, 826 S.E.2d 270 (2019), citing *Tyger River Pine Co. v. Maryland Cas. Co.*, 163 S.C. 229, 234-35, 161 S.E. 491, 493-94 (1931). For ease in reference, these potential claims are hereinafter referred to as "Defendant's claims against SCFB."

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In supplemental proceedings, the Court has the power to apply property of a judgment debtor that has been identified by affidavit or otherwise – including choses in action – toward satisfaction of a judgment. *Katzburg v. Katzburg*, 410 S.C. 184, 764 S.E.2d 3 (Ct. App. 2014) ("In addition to their discovery functions, supplementary proceedings 'furnish a means of reaching, in aid of the judgment, property beyond the reach of an ordinary execution, such as choses in action.'"), quoting *Lynn v. International Brotherhood of Firemen & Oilers*, 228 S.C. 357, 362, 90 S.E.2d 204, 206 (1955); accord *Johnson v. Service Mgmt.*, 319 S.C. 165, 459 S.E.2d 900, 902 (Ct. App. 1995) (after conducting supplemental proceedings a court may order a defendant's non-exempt property, including choses in action, to be applied toward satisfaction of a judgment).

Thus, the questions before this Court are whether Defendant's claims against SCFB are choses in action and whether they are assignable. I find and conclude that those claims are both. See *Schneider v. Allstate Ins. Co.*, 487 F. Supp. 239, 242-43

(D.S.C. 1980) (an insured's right of action against his insurer is a chose in action both *ex contractu* and *ex delicto* and is assignable); *Moore v. Weinberg*, 373 S.C. 209, 219-20, 644 S.E.2d 740, 745 (Ct. App. 2007) (rights to causes of action and choses in action can be validly assigned), *aff'd* 383 S.C. 583, 681 S.E.2d 875 (2009). As such, Defendant's claims against SCFB are assignable via supplemental proceedings to a judgment creditor, provided the rights assigned are no greater than those of the judgment debtor and the assignment is subject to the insurer's rights and defenses, if any, under the insurance contract. See *Narruhn v. Alea London Ltd.*, 404 S.C. 337, 343, 745 S.E.2d 90, 94 (2013); accord *C. Anastopoulo, A New Twist on Remedies: Judicial Assignment of Bad Faith Claims*, 50 Ind. L. Rev. 727, 747-50 (2017) (discussing assignability of bad faith claims in various states).

IT IS THEREFORE ORDERED that all contract and tort claims Defendant has or may have against SCFB, if any, are hereby assigned to Plaintiff; and

IT IS FURTHER ORDERED that this assignment is not a ruling or commentary on the viability or validity of Defendant's claims against SCFB; and

IT IS FURTHER ORDERED that, as assignee, Plaintiff receive this assignment subject to any rights or defenses that SCFB may have including those it could have asserted against Defendant, as assignor, had he chosen to pursue the claims himself; and

IT IS FURTHER ORDERED that Plaintiff receives this assignment subject to any challenges SCFB may have as to the validity of the assignment or Plaintiff's right to pursue the assigned claims; and

IT IS FURTHER ORDERED that any amounts Plaintiff may recover by pursuing the assigned claims shall be applied toward satisfaction of the Judgment and, if Plaintiff recovers more than an amount to satisfy the Judgment (including accrued interest and costs), then the parties shall apply to this Court for a determination on how to distribute the excess funds.

AND IT IS SO ORDERED!

Handwritten: 12/4



ROBERT E. LEE
SPECIAL REFEREE

Sept. 14, 2020

Florence, South Carolina

Kelli Martin

From: efiledonotreply@sccourts.org
Sent: Friday, September 18, 2020 1:18 PM
To: Blake Williams
Cc: Kelli Martin; Laurie Jennings
Subject: Courtesy NEF RE: 2018CP2103002

◀**External Email**▶ - From: prvs=4530ce0dff=efiledonotreply@sccourts.org

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP2103002

Official File Stamp: 09-18-2020 01:17:49 PM
Court: CIRCUIT COURT
Common Pleas
Florence
Case Caption: Dennis Robert Mitton VS Danny James
Document(s) Submitted: Special Referee/Order/Assigning Rights to Plaintiff Special Referee/Order/Other
Filed by or on behalf of: Tucker Kelley

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Shanon N. Peake for Danny James
William P. Hatfield for Dennis Robert Mitton
Robert Thomas King for Danny James
Blake Terence Williams for Danny James
Bert Glenn Utsey, III for Dennis Robert Mitton
Robert E. Lee for Danny James
E. Hood Temple for Dennis Robert Mitton
G. Murrell Smith, Jr. for Danny James

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Robert Thomas King for Allstate Fire And Casualty Insurance Company

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.