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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2020-001708
Civil Action Case No. 2020-CP-40-03810

Penn America Insurance Company and Global Indemnity Group, Inc.,

Plaintiff/Counter-Defendants,

v.

Morris Beach Hutson a/k/a M.B. Hutson,

Defendant/Counter-Plaintiff,

AND

Morris Beach Hutson a/k/a M.B. Hutson,

Third-Party Plaintiff,

v.

Timothy J. Newton, Esq.; Murphy & Grantland, P.A.; Christian Stegmaier, Esq.; and Collins & Lacy P.C.,

Third-Party Defendants.

of whom Morris Hutson is the Appellant,

and Penn America Insurance Company; Global Indemnity Group, LLC; Timothy J. Newton, Esq.; Murphy & Grantland, P.A.; Christian Stegmaier, Esq.; and Collins & Lacy P.C. are the Respondents.

INITIAL BRIEF OF RESPONDENTS PENN AMERICA INSURANCE COMPANY, GLOBAL INDEMNITY GROUP, INC., CHRISTIAN STEGMAIER, ESQ., AND COLLINS & LACY, P.C.

CHRISTIAN STEGMAIER
S.C. Bar No. 68648
cstegmaier@collinsandlacy.com
LAURA R. BAER
S.C. Bar No. 101076
lbaer@collinsandlacy.com
COLLINS & LACY, P.C.
1330 Lady Street, Sixth Floor (29201)
P.O. Box 12487
Columbia, SC 29211
(803) 256-0660 (phone)
(803) 771-4484 (fax)

ATTORNEYS FOR RESPONDENTS PENN AMERICA INSURANCE COMPANY, GLOBAL INDEMNITY GROUP, INC., CHRISTIAN STEGMAIER, ESQ., AND COLLINS & LACY P.C.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

RULES AND STATUTES

COUNTER-STATEMENT OF ISSUES ON APPEAL

I. Whether Appellant waived and abandoned any issues he could have raised on appeal by failing to present any substantive arguments of error in the Circuit Court's rulings in Appellant's briefing to the appellate court?

II. Assuming *arguendo* that Appellant's arguments are not waived and abandoned, whether the Circuit Court properly granted these Respondents' motions to strike certain filings of Appellant?

III. Assuming *arguendo* that Appellant's arguments are not waived and abandoned, whether the Circuit Court properly denied Appellant's motion for temporary injunction?

IV. Whether Appellant's contention that the Circuit Court erred in failing to "recognize" "Stegmaier's blatant lies in the hearing" is unpreserved where it was not raised and ruled upon before the trial court?

STATEMENT OF THE CASE

On August 10, 2020, Respondents Penn America Insurance Company ("Penn America") and Global Indemnity Group, Inc. ("Global"), filed a Complaint and Motion seeking a preliminary and permanent injunction against Appellant Morris Beach Hutson ("Hutson"). R. p.* (Complaint); R. p.* (Plaintiff's Mot. for Temp. Inj.). Penn America and Global filed the action because of Hutson's repeated and vexatious threats to bring additional litigation against it and its former and current counsel. Id.

In response, Hutson brought counterclaims and third-party claims—including his own motion for injunction, filed a partial Answer, and submitted other miscellaneous filings. R. p.* (Hutson's Amd. Cross Compl. and Mot. for Inj., Aug. 26, 2020); R. p.* (Hutson's Memo. to Def.'s Amd. Cross Compl., Sept. 16, 2020); R. p.* (Hutson's Notice of Extrinsic Fraud, Sept. 16, 2020); and R. p.* (Hutson's Answer to Compl., Sept. 25, 2020).

The third-party defendants included Christian Stegmaier ("Stegmaier") and Collins & Lacy, P.C. ("Collins & Lacy"), who represented Penn America and Global in prior litigation instituted by Hutson and who continue to represent them in the related appeal. See Hutson v. Penn America Ins. Co., et al., Civil Action Case No. 2018-CP-40-06344 ("Bad Faith Action"); Appellate Case No. 2019-001488 ("Bad Faith Appeal"). The third-party defendants also include Tim Newton ("Newton") and Murphy & Grantland, P.A. ("Murphy & Grantland"). Newton was previously coverage counsel for Penn America and was also a defendant in the bad faith action and respondent in the related appeal.

Respondents filed their respective motions to stay, strike, and dismiss Hutson's filings. R. p.* (Newton, et al.'s Mot. to Dismiss, or in the alternative, Mot. for Summ. J., Sept. 15, 2020); R. p.* (Penn America, et al.'s Mot. to Stay/Strike/Dismiss Hutson's Amd. Countercl. and Third-Party Claims and Mot. for Temp. and Permanent Inj., Sept. 16, 2020); R. p.* (Penn America Ins. Co, et al.'s Mot. to Strike Defendant's Answer, Sept. 28, 2020); and R. p.* (Penn America Ins. Co, et al.'s Amd. Mot. to Strike Hutson's "Notice of Extrinsic Fraud" and "Mem. to Def.'s Amd. Cross Complaint," Sept. 30, 2020).

On October 15, 2020, the parties appeared the Honorable Robert E. Hood for a hearing on the following motions:

1. Plaintiff's Motion for Temporary Injunction against Hutson;
2. Hutson's Motion for Temporary Injunction against Counter-Defendants and Third-Party Defendants;
3. Third-Party Defendants Murphy & Grantland and Newton's Motion to Dismiss or for Summary Judgment;
4. Penn America, Global, Stegmaier, and Collins & Lacy's Motion to Stay/Strike/Dismiss Hutson's Amended Counterclaims and Third-Party Claims and Motion for Injunction;
5. Penn America, Global, Stegmaier, and Collins & Lacy's Motion to Strike Portions of Hutson's "Answer"; and
6. Penn America, Global, Stegmaier, and Collins & Lacy's Amended Motion to Strike Hutson's "Notice of Extrinsic Fraud" and "Memorandum to Defendant's Amended Cross Complaint."

R. p.* (Oct. 15, 2020 Hr'g Tr.).

Appellant Huston appeared at the hearing *pro se*. Respondents Penn America, Global, Stegmaier, and Collins & Lacy (hereinafter collectively "these Respondents") were represented by Christian Stegmaier and Laura Baer. Respondents Newton and Murphy &

Grantland were represented by John Grantland and Tim Newton. At the conclusion of the hearing, the court took the matter under advisement in order to review the written filings. (Hr'g Tr., p. 76, lines 15-21).

On October 23, 2020, the parties were notified of the Court's rulings on the motions and instructed to draft corresponding Orders. R. p.* (E-mail from chambers, Oct. 23, 2020).

The final Orders were entered on December 9, 2020. R. p.* (Order Granting Newton and Murphy & Grantland, P.A.'s Mot. to Dismiss); R. p.* (Order Granting Penn America, et al.'s Motions to Strike); R. p.* (Order Denying Hutson's Mot. for Inj.); and R. p.* (Order Granting Penn America, et al.'s Mot. for Temp. Inj.).

Hutson filed a timely Notice of Appeal with respect to three of the Circuit Court's Orders. These included: (1) Order Granting Timothy J. Newton and Murphy & Grantland, P.A.'s Motion to Dismiss, or, in the Alternative, Motion for Summary Judgment; (2) Order Granting Penn America Insurance Company, Global Indemnity Group, LLC, Christian Stegmaier, Esq., and Collins & Lacy P.C.'s Motions to Strike; and (3) Order Denying Third-Party Plaintiff's Motion for Temporary Injunction. The Court also entered an Order Granting Plaintiff's Motion for Injunction, but such Order was not included in the Notice of Appeal served to these Respondents. R. p.* (Notice of Appeal).

Thereafter, Hutson sent a letter to the Commission on Lawyer Conduct on January 20, 2021, repeating his accusations of fraud and conspiracy. R. p.* (Hutson Letter to CLC). Upon receipt of the transcript of the October 15, 2020, hearing, Hutson averred that the audio recording was tampered with by Respondents and requested an emergency hearing before the Judge Hood, which he subsequently withdrew. R. p.* (Hutson Amd. Mot. for

Emergency Hr'g); R. p.* (Response to Amd. Mot. for Emergency Hr'g); R. p.* (Hutson Reply to Response to Amd. Mot. for Emergency Hr'g); R. p.* (Form 4 Order, Feb. 17, 2021). Hutson has also threatened to file a lawsuit against Judge Hood. R. p.* (Hutson Ltr to Hood, Feb. 17, 2021).

Nonetheless, Hutson proceeded with filing his Brief of Appellant. This Brief of Respondents follows, addressing the second and third Orders, to which these Respondents were parties.

STATEMENT OF FACTS

These Respondents adopt and incorporate by reference the Statement of Facts presented in the Brief of Respondents Newton and Murphy & Grantland, which provides a detailed account of the original land deal and subsequent myriad of litigation involving Hutson, as well as the instant litigation. Nonetheless, certain background information is necessary to understand the evolution of the Hutson's claims of fraud and an ever-growing conspiracy against him.

Hutson was involved in a land deal with TLC Holdings, LLC ("TLC") in December 2010 in Clarendon County, South Carolina, resulting in execution of both a Lease Purchase Agreement for property and a Membership Interest Purchase Agreement for The Big Water Resort, LLC. In December 2011, TLC filed an ejectment action against Hutson.[1] R. p.* (Ejectment Complaint). Hutson filed counterclaims against TLC, asserting that various misrepresentations and material omissions were made with respect to the property and that TLC interfered with the property's development and operation. R. p.* (Ejectment Answer/Counterclaims). The parties settled the Ejectment Action, and the Settlement Agreement was adopted into a Consent Order filed April 13, 2012.[2] R. p.* (Ejectment Settlement Agreement); R. p.* (Ejectment Consent Order).

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[1] TLC Holdings, LLC v. Hutson, Case No. 2011-CP-14-602 (Clarendon Cnty. Ct. Comm. Pleas) ("the Ejectment Action").

[2] Hutson brought a malpractice action against attorney Paul Weissenstein, who represented him in the Ejectment Action. Hutson v. Weissenstein, Case No 2018-CP-43-1583 (Sumter Cnty. Ct. Comm. Pleas) ("the Weissenstein Malpractice Action"). On February 25, 2019, the Honorable Kristi Curtis granted summary judgment in favor of Weissenstein based upon both the statute of limitations and the merits. R. p.* (Judge Curtis Order). Hutson appealed. Hutson v. Weissenstein, Appellate Case No. 2019-873 (S.C. Ct. App.) ("the Weissenstein Appeal") (pending).

Based upon Hutson's default under the terms of the 2012 Settlement Agreement, TLC later sought to evict Hutson from the Big Water Resort property. Following a hearing, the Honorable George C. James, Jr., entered an order on March 21, 2014, which enforced the terms of the Consent Order and Settlement Agreement. Judge James found that Hutson's claims that TLC "made 'verbal assurances' to Hutson that were incorrect, or that [TLC] failed to make 'important disclosures' to him" were the same claims alleged in the 2012 action and resolved pursuant to the 2012 Settlement Agreement and Consent Order. R. p.* (Judge James Order).

Global is the parent company of Penn America, which issued commercial general liability policy to "BWR, Inc. d/b/a Big Water Resort," effective from October 16, 2013 through April 7, 2014. Hutson was the principal in BWR, Inc., a now defunct corporation. Pursuant to the Policy, PAIC provided a defense and indemnity to Hutson in two lawsuits, known as the Class Action[3] and the Defamation Action.[4]

[3] Big Water Resort, LLC, et al. v. TLC Holdings, LLC, C/A: 2:14-1583-DCN-MGB (D.S.C.) ("the Class Action"). The federal Class Action lawsuit was instituted by a group of Big Water Resort campground members against TLC. TLC then asserted third-party claims for equitable indemnification against Hutson. Hutson asserted various counterclaims against TLC. R. p.* (Class Action Hutson Countercl.). Following cross motions for summary judgment, the Court ruled in favor of TLC on May 20, 2016, finding Hutson's counterclaims barred by res judicata. The Court later also entered an Order granting sanctions against Hutson. R. p.* (Class Action R&R); R. p.* (Class Action Order Granting Summ. J.); R. p.* (Class Action Sanctions Order).

[4] TLC Holdings, LLC, et al. v. Hutson, Case No. 2015-CP-14-0615 (Clarendon Cnty. Ct. Comm. Pleas) ("the Defamation Action"). The Defamation Action was instituted by TLC in state court. TLC's claims related to statements made by Hutson to campground members and their counsel. Hutson raised identical counterclaims against TLC in the Defamation Action as he raised in the Class Action, which were also disposed of on summary judgment by the Honorable R. Ferrell Cothran, Jr. R. p.* (Defamation Hutson Countercl.); R. p.* (Defamation Hutson Response to Mot. for Summ. J.); R. p.* (Judge Cothran Order).

Penn America retained Murphy & Grantland, P.A. as coverage counsel and instituted a coverage action on June 14, 2016.[5] On or about September 16, 2016, Hutson entered into a Settlement Agreement and Release with Penn America in exchange for consideration of Nine Thousand Five Hundred Dollars ($9,500.00). R. p.* (Coverage Action Settlement Agreement and Release).

Following resolution of both lawsuits without any personal liability to Hutson, Hutson initiated a lawsuit against Penn America, Global, and their coverage counsel, Timothy Newton and J.R. Murphy, on December 5, 2018.[6] R. p.* (Bad Faith Amd. Compl.). Following a hearing before the Honorable Michael G. Nettles, the court granted summary judgment in favor of the defendants on all of Hutson's claims. R. p.* (Nettles Hearing Transcript); R. p.* (Nettles Order for PAIC); R. p.* Nettles Order for Newton/Murphy). Hutson has appealed from those Orders, and the appeal is currently pending before this Court.[7]

The underlying Injunction Action was instituted by Penn America and Global after repeated written threats by Hutson during the pendency of the Bad Faith Appeal that Hutson intended to bring a new lawsuit against these Respondents. The Complaint seeks to have Hutson classified as a vexatious litigant and prohibit him from filing pro se

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[5] Penn-America Insurance Company v. BWR, Inc., et al., C/A: 2:16-cv-01943-DCN (D.S.C.) ("the Coverage Action").

[6] Hutson v. Penn America Ins. Co., et al., Case No. 2018-CP-40-06344 (Richland Cnty. Comm. Pleas) ("the Bad Faith Action").

[7] Hutson v. Penn America Inc. Co., et al., Appellate Case No. 2019-001488 (S.C. Ct. App.) ("the Bad Faith Appeal") (pending).

litigation in state court in South Carolina against Penn America, Global, and their past and present attorneys. R. p.* (Pls.' Compl. for Inj.).

Hutson's response to the Complaint was to file exactly the type of frivolous counterclaims and third-party claims that he had threatened; to make more baseless accusations of fraud, conspiracy and professional misconduct against these Respondents; and to seek his own motion for injunction against Respondents. R. p.* (Hutson's Amd. Cross Compl. and Mot. for Inj., Aug. 26, 2020); R. p.* (Hutson's Memo. to Def.'s Amd. Cross Compl., Sept. 16, 2020); R. p.* (Hutson's Notice of Extrinsic Fraud, Sept. 16, 2020); and R. p.* (Hutson's Answer to Compl., Sept. 25, 2020).

Following a hearing, Judge Hood granted these Respondents' motions to strike and denied Huston's motion for injunction. R. p.* (Order Granting Mots. to Strike); R. p.* (Order Denying Hutson Mot. for Inj.). Additional facts relevant to the specific issues on appeal are discussed infra.

ARGUMENT

I. Appellant Waived and Abandoned any Issues He Could Have Raised on Appeal by Failing to Present Any Substantive Arguments of Error in the Circuit Court's Rulings in Appellant's Briefing to the Appellate Court.

It is well settled under South Carolina law that issues raised on appeal must be argued in the appellate brief or are otherwise deemed waived. See Rule 208(b)(1)(B), SCACR (requiring the brief of appellant contain a statement of each of the issues presented for review, providing; "The statement shall be concise and direct as to each issue, and may be stated in question form. Broad general statements may be disregarded by the appellate court. Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); Guinan v. Tenet Healthsystems of Hilton Head, Inc., 383 S.C. 48, 54 n. 4, 677 S.E.2d 32, 36 n. 4 (Ct. App. 2009) (discussing that issues preserved in the lower court will be waived on appeal where not argued in appellate brief); see also Barr v. Barr, 287 S.C. 13, 336 S.E.2d 481 (Ct. App. 1985) (finding appellant abandoned all but one exception raised from family court order by not arguing them in her brief or by failing to assign error in the exceptions).

Further, where appellant fails to cite any supporting authority for his position and makes conclusory arguments, the appellant abandons the issue on appeal. Mulherin–Howell v. Cobb, 362 S.C. 588, 600, 608 S.E.2d 587, 593-94 (Ct. App. 2005); see also First Sav. Bank v. McLean, 314 S.C. 361, 444 S.E.2d 513 (1994) (stating Appellant was deemed to have abandoned issue for which he failed to provide any argument or supporting authority); R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 540

S.E.2d 113 (Ct. App. 2000) (declaring an issue is deemed abandoned if argument in appellate brief is only conclusory).

Here, Hutson's Notice of Appeal cites three Orders, the rulings in which he intended to challenge on appeal. See R. p.* (Notice of Appeal). Hutson articulates two issues on appeal:

> 1. Did the lower court err in failing to recognize the evidence of extrinsic fraud presented and act on it to end the deception?
>
> 2. Did the sitting judge fail to recognize plaintiff attorney Christian Stegmaier's blatant lies in the hearing against Defendant/Appellant who had presented concrete paper evidence to the court which verified Defendant/Appellant's claims as to the falsehood of Stegmaier's claims?

Appellant's Brief, p. 4. However, the argument within the brief fails to articulate any cogent basis upon which to find error in the court's specific rulings in the motions before it and is the epitome of conclusory.

Hutson states that Judge Hood "totally disregarded the concrete evidence [Hutson] presented" but fails to identify any specific evidence presented by Hutson warranting reversal of the Circuit Court. See Appellant's Brief, p. 4. Hutson complains that neither Respondents nor their counsel disclosed evidence of extrinsic fraud to the Court, of which Hutson is convinced we are aware and refuse to do in order to protect ourselves and others.[8] See id. at p. 9. Hutson quotes various statutes and rules and repeats many of the same,

[8] Respondents have addressed in numerous court filings Hutson's erroneous and deceptive labeling of his pro se counterclaims in the prior defamation action as "Laura Paton Esq's fifty-five (55) counts of fraud." Hutson signed the pleading as a pro se defendant and summary judgment on the claims contained therein was ultimately granted in favor of TLC Holdings. See R. p.* (Third Motion to Strike, at Exs. A, B, and C).

rambling allegations made before the Circuit Court and in his filings in the currently pending bad faith appeal. See id. p. 4-11. While Hutson asserts that he had no opportunity for discovery, this was not an argument he ever asserted before the Circuit Court. See id. at p. 11. Hutson spends the remainder of his brief complaining about what he perceived to be a lie told during the October 15, 2020, hearing before Judge Hood, which is not properly before this Court and has no bearing on the merits of the instant action. See IBOA p. 11-20.

Accordingly, this Court may properly affirm the Circuit Court by finding that any issues Hutson could have raised on appeal are waived or abandoned.

II. Assuming *Arguendo* that Appellant's Arguments Are Not Waived and Abandoned, the Circuit Court Properly Granted These Respondents' Motions to Strike Certain Filings of Appellant.

Standard of Review for Motion to Strike

"[A] motion to strike is addressed to the sound discretion of the trial court." Totaro v. Turner, 273 S.C. 134, 135, 254 S.E.2d 800, 801 (1979). "The granting or refusal of a Motion to Strike... will not be reversed except for an abuse of discretion or unless the action of the trial judge was controlled by an error of law." Brown v. Coastal States Life Ins. Co., 264 S.C. 190, 195, 213 S.E.2d 726, 728 (1975). Rule 12(f) of the South Carolina Rules of Civil Procedure permits the filing of a motion to strike from any pleading "any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." Rule 12(f), SCRCP.

Relevant Facts

These Respondents filed motions to strike the following pleadings and filings submitted by Hutson: (1) Hutson's Amended Counterclaims and Third-Party Claims; (2) Portions of Hutson's "Answer;" (3) Hutson's "Notice of Extrinsic Fraud;" and (4) Hutson's "Memorandum to Defendant's Amended Cross Complaint." See R. p.* (Hutson's Stricken Filings); R. p.* (Motions to Strike).

Striking of Crossclaims and Third-Party Claims

With respect to Hutson's "Amended Cross-Complaint," Hutson's counterclaims and third-party claims contained therein accuse these Respondents of engaging in a conspiracy to commit fraud upon the Courts of this State. He purports to present the following causes of action: Count One: Fraud and Extrinsic Fraud; Count Two: Document Fraud; Count Three: Defamation by Extrinsic Fraud; and Count Four: Unfair and Deceptive Trade Practice. Within Count Three, Hutson alleges obstruction of justice and seeks $3.5 Million in damages. R. p.* (Hutson's Amd. Cross Compl. and Mot. for Temp. and Permanent Inj., Aug. 26, 2020).

These Respondents argued that Hutson's counterclaims and third-party claims were his latest iteration of unfounded allegations that Respondents are part of conspiracy to cover-up and perpetuate fraud that relates back to the 2010 land deal and subsequent ejectment and eviction proceedings, with which these Respondents had no role. R. p.* (First Motion to Strike, p. 4). These Respondents further argued that Hutson's claims were improper under Rule 12(b)(1) for lack of jurisdiction over the subject matter, Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action, and Rule 12(b)(8) because

another action is pending between the same parties for the same claim. R. p.* (First Motion to Strike, pp. 4-9).

At the October 15, 2020, hearing, Hutson had ample opportunity to explain the nature and basis of the fraud he alleged against these Respondents and how it differed from what Hutson asserted in past actions. (Hr'g Tr. p. 25, line 3 – p. 55, line 10; p. 56, line 10 – p. 58, line 1; p. 59, lines 1-23; p. 72, line 12 – p. 74, line 12; p. 75, line 25 – p. 76, line 14). Hutson pointed to two pieces of correspondence he received from Newton, who was acting in his capacity as coverage counsel for Penn America at the time. They include an August 13, 2018 e-mail and a November 8, 2018 letter. The e-mail stated that, based on Hutson's allegations, "there **might possibly** be extrinsic fraud on the court" but advises that Newton cannot provide legal advice or representation to Hutson regarding the same. (emphasis added). (Hr'g Tr. p. 33, line 6 – p. 34, line 24); R. p.* (Newton E-mail, Aug. 13, 2018). The November 8, 2018 letter denied that Penn-America or its counsel had "acknowledged the existence of fraud upon the court." (Hr'g Tr. p. 34, line 25 – p. 35, line 24); R. p.* (Nov. 8, 2018 Letter).

While Hutson claimed that the e-mail and letter were inconsistent, the Circuit Court disagreed. The August 13 e-mail did not acknowledge the existence of fraud—it provided that fraud "might possibly" exist. There was no evidence that Newton had actual knowledge of any fraud or perpetrated any fraud himself. (See Hr'g Tr. p. 42, line 20 – p. 44, line 23). Moreover, there was nothing new about Hutson's claims that distinguish them from the claims he previously raised in the bad faith action, which remains pending on appeal. R. p.* (Order Granting Motions to Strike, p. 3). Thus, the court found that Hutson's

counterclaims and third-party claims were redundant, immaterial, impertinent and scandalous, and ordered them stricken. Id. at p. 4.

Striking of Answer

With respect to Hutson's Answer, the majority of the allegations in the Complaint were admitted by operation of Hutson's failure to respond to paragraphs 1 through 8 and 16 through 111 of the Complaint and his unqualified admission of Paragraph 10 of the Complaint. See R. p.* (Hutson's Answer). It was Hutson's responses to paragraphs 9 and 11 through 15 of the Complaint, as well as his extraneous statements, which were the subject of the Motion to Strike. R. p.* (Second Motion to Strike). Instead of admitting basic, non-argumentative facts asserted in the Complaint, which were easily verifiable, Hutson asserted that documents, past litigation, and the underlying Complaint itself were wrought with fraud. Hutson further cited elements of extrinsic fraud, alleged a conflict of interest in Collins & Lacy's continued representation of Penn America and Global, and made other averments and scandalous allegations that are not responsive to the allegation of the Complaint. Id. at pp. 3-6.

The Circuit Court agreed that portions of Hutson's Answer failed to comport with the Rules of Civil Procedure by either denying indisputable facts or making assertions nonresponsive to the Complaint. Thus, the Court granted the motion to strike paragraphs 1, 3 through 9, and 11 thorough 13 of Huston's Answer, as well as the textual paragraphs on pages 16 and 17 of the Answer. R. p.* (Order Granting Motions to Strike, p. 4).

Striking of "Notice of Fraud" and
"Memorandum to Amended Cross-Complaint"

With respect to Hutson's "Notice of Fraud," it was not a proper pleading or motion contemplated under Rule 11, SCRCP. R. p.* (Third Motion to Strike, pp. 5-6). The "Notice" states that "fraud is presently being perpetrated upon the Honorable Common Pleas and the Court of Appeals, its Judges, and on this Defendant by all the Plaintiffs/Third Party Defendants," who he then lists. R. p.* (Notice of Fraud).

Hutson's "Memorandum to Defendant's Amended Cross Complaint" was likewise not a proper pleading, motion, or memorandum in support of a motion. R. p.* (Third Motion to Strike, pp. 6-7). In Hutson's "Memorandum," he first cited a portion of Rule 3.3 of the Rules of Professional Conduct and portions of Newton's August 13, 2018 e-mail. R. p.* (Memo. to Amd. Crosscl.). Hutson then repeated his allegations that Respondents all knew about TLC Holding's fraud, are illegally protecting one another, and failed to disclose the fraud to any court. Id. Hutson's further cites to the paragraphs of a pleading filed by Laura Paton in the defamation action. Id. Hutson failed to disclose that these paragraphs were actually the pro se counterclaims in the defamation action, which were signed only by Hutson and not by attorney Paton. R. p.* (Third Motion to Strike, at Exs. A-C). Hutson's "Memorandum" continued to hurl more unfounded accusations of obstruction of justice and defamation against Respondents and contended Hutson lost millions of dollars as a result. R. p.* (Memo. to Amd. Crosscl.).

Thus, these Respondent's argued that the contents of the "Notice" and "Memorandum" were improper, impertinent and scandalous. R. p.* (Third Motion to

Strike). The Circuit Court agreed that Hutson's "Notice" and "Memorandum," which continued to make malicious allegations of criminal and professional misconduct, were impertinent and scandalous. Moreover, neither filing was a proper pleading, motion, or memorandum under our Rules. Thus, the Court granted the motion to strike the Notice" and "Memorandum."

Discussion

The impact of the Circuit Court's grant of the motions to strike was to strike the improper denials and extraneous information contained in Hutson's Answer and to strike Hutson's counter and third-party claims for various iterations of fraud. "[T]he matter of striking from a pleading is largely within the discretion of the [Circuit Court]." Robinson v. Code, 384 S.C. 582, 585, 682 S.E.2d 495, 496 (Ct. App. 2009). An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support. Patel v. Patel, 359 S.C. 515, 529, 599 S.E.2d 114, 121 (2004). Here, there was ample evidence to support the Circuit Court's rulings and no error of law committed.

Even prior to the codification of the civil rules of procedure, South Carolina courts recognized the striking of pleadings like those filed here. Etiwan Fertilizer Co. v. Johns, 202 S.C. 29, 24 S.E.2d 74, 76 (1943) ("A sham answer is one good in form, but false in fact, and not pleaded in good faith; being a mere pretense, set up in bad faith and without color of fact."); id. ("The rule adopted by this Court is that the power will be very sparingly exercised, and only where the pleading is manifestly false, interposed to delay and defeat the plaintiff's action, and only in cases free from doubt."); see also Ins. Co. of N. Am. v.

Hyatt, 290 S.C. 159, 163, 348 S.E.2d 532, 535 (Ct. App. 1986) ("Motions to strike an answer or defense as sham are not favored in law and should be granted only where the evidence demonstrates that the pleading is manifestly false and made in bad faith.").

Hutson's Answer admitted almost the entirety of the allegations in the Complaint by virtue of his failure to respond to them. See Rule 8(b), SCRCP ("Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading."). For those paragraphs which were the subject of the motion to strike, these Respondent presented as exhibits the documentary evidence that contradicted Hutson's denial. See R. p.* (First Motion to Strike and exhibits thereto). At the motions hearing, Huston even admitted that some of the factual allegations were true. Others he claimed not to remember. (See Hr'g Tr. p. 45, lines 4 p. 50, line 2).

The remainder of the material stricken were unfounded allegations of fraud and conspiracy against these Respondents, which were manifestly false and made in bad faith. See R. p.* (First Motion to Strike). These allegations are similar to the content of Hutson's counterclaims and third-party claims, which purport to assert causes of action for "Fraud and Extrinsic Fraud," "Document Fraud," "Defamation by Extrinsic Fraud," and "Unfair and Deceptive Trade Practice," as well in Hutson's filed "Notice" and "Memorandum." See R. p.* (Second Motion to Strike); R. p.* (Third Motion to Strike).

With respect to Hutson's claim for "fraud and extrinsic fraud," these were the same claims previously raised against Penn American and Global in the bad faith action before Judge Nettles, such that Huston was precluded from raising them under the doctrine of res

judicata and Rule 12(b)(8), SCRCP. See Judy v. Judy, 383 S.C. 1, 8, 677 S.E.2d 213, 217 (Ct. App. 2009) ("When claims arising out of a particular transaction or occurrence are adjudicated, res judicata bars the parties to that suit from bringing subsequent actions on either the adjudicated issues or any issues that might have been raised in the first suit."). Further, these Respondents' involvement in this decades long saga did not begin until well after the original land deal and subsequent enforcement and eviction proceedings. Stegmaier and Collins & Lacy were not retained until after the filing of Hutson's bad faith action, and Huston failed to articulate any factual basis to support his claims against them. See Ardis v. Cox, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993) ("A complaint is fatally defective if it fails to allege all nine elements of fraud."); Chewning v. Ford Motor Co., 354 S.C. 72, 86, 579 S.E.2d 605, 613 (2003) ("[A]ny claim of fraud upon the court must be accompanied by particularized allegations. Claims which are not made in good faith are subject to sanction pursuant to Rule 11, SCRCP.").

Hutson's claim for "document fraud" was premised upon 8 U.S.C. § 1324c, which prohibits immigration-related document fraud. While a state court would lack subject matter jurisdiction to adjudicate an alleged violation of the Immigration and Nationality Act, the substance Hutson's allegations are directed at these Respondents preparation of various litigation documents. In addition to lack of specificity, it is notable that neither "Document Fraud" nor "Defamation by way of Extrinsic Fraud" are recognized civil causes of action in state court, nor is a claim for "obstruction of justice."

To the extent Hutson attempted to articulate a claim for defamation, he failed to articulate the elements needed to sustain such a cause of action. See McBride v. Sch.Dist. of Greenville Cty., 389 S.C. 546, 559, 698 S.E.2d 845, 852 (Ct. App. 2010) (listing the elements of defamation). On the contrary, rather than claiming that these Respondents made an affirmatively false and defamatory statement, Hutson claims that they failed to expose past fraud committed by other individuals.

Finally, Hutson's claim for Unfair and Deceptive Trade Practice references S.C. Code Ann. § 39-5-10, et seq., which is wholly unrelated to his allegations in this matter.

Hutson does accurately allege in his filings that these Respondents have refused to acknowledge and report any extrinsic fraud to the courts, but this is because these Respondents cannot in good faith make such an acknowledgment. The Circuit Court reviewed the e-mail and letter from Newton, upon which Hutson primarily relied to support his position, and properly concluded that Newton made a qualified statement that "there might possibly be extrinsic fraud," which was not inconsistent with Newton's subsequent letter denying that he had "acknowledged the existence of fraud upon the court." Judge Hood aptly told Hutson that his argument was speculative and that Huston could not give him any evidence that anything Hutson said was true. (Hr'g Tr. p. 42, line 20 – p. 44, line 23). He further noted the "haphazard" manner in which Hutson used the terms "know" and "knew." (Hr'g Tr. p. 52, line 3 – p. 53, line 11).

In sum, there was ample evidence to support the Circuit Court's striking of Hutson's Answer, Counterclaims and Third-Party Claims, "Notice of Fraud," and "Memorandum to Defendant's Amended Cross Complaint." Accordingly, the rulings should be affirmed.

Though these Respondents have not yet pursued it, the next step in the underlying litigation below will be to pursue its permanent injunction against Hutson. See Helsel v. City of N. Myrtle Beach, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992) ("A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and when other issues are brought to trial, they are determined without reference to the temporary injunction."). If the Circuit Court's rulings stand, all allegations in the Complaint for Permanent Injunction will be deemed admitted. [9]

III. Assuming *Arguendo* that Appellant's Arguments Are Not Waived and Abandoned, the Circuit Court Properly Denied Appellant's Motion for Temporary Injunction.

Standard of Review for Motion for Temporary Injunction

"Actions for injunctive relief are equitable in nature." Wiedemann v. Town of Hilton Head Island, 344 S.C. 233, 236, 542 S.E.2d 752, 753 (Ct. App. 2001). In equitable actions, the appellate court may review the record and make findings of fact in accordance with its own view of a preponderance of the evidence. Id.; Walker v. Brooks, 414 S.C. 343, 347, 778 S.E.2d 477, 479 (2015). "However, this broad scope of review does not require this court to disregard the findings at trial or ignore the fact that the trial judge was in a better position to assess the credibility of the witnesses." Laughon v. O'Braitis, 360 S.C. 520, 524-25, 602 S.E.2d 108, 110 (Ct. App. 2004).

[9] While the Circuit Court retains jurisdiction over "matters not affected by the appeal," to the extent that these Respondents would rely on the striking of the denials in Hutson's Answer in support of the same, it would appear that the Complaint for Permanent Injunction is "affected by the appeal." See Rule 205, SCACR; Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 589, 694 S.E.2d 15, 18 (2010) ("unless ordered by the trial court, an appeal from a preliminary injunction order does not prevent the case moving forward on the merits").

Relevant Facts

As part of his "Amended Cross Complaint," Hutson requested a temporary and permanent injunction against Respondents "due to the fact of their committing extrinsic fraud." R. p.* (Hutson Amd. Crosscl., p. 1). Hutson avers that Respondents all have knowledge of fraud committed by TLC Holdings and their counsel in the original land deal and with the respect to the 2012 Consent Order, which Respondents have failed to disclose to the courts such that they have become co-conspirators in the alleged fraud. Id. Thus, Hutson asked the Circuit Court to issue an injunction requiring Respondents to "fully disclose their complete knowledge of the Extrinsic Fraud." Id. at p. 16-17.

At the motions hearing, Hutson summarized his request for injunction: "I'm asking you to order them to disclose like they are required to do by law that my cases were never heard in court because of extrinsic fraud." (Hr'g Tr. p. 54, line 22 – p. 55, line 10). He later stated:

> And all I want them to do is just start telling the truth. The truth. The truth. I'm entitled as a human being to have the truth. Don't file something and pretend like it's genuine when, in fact, they know darn well it's not. That's fraud upon the court. They've got to stop doing it. That's all my injunction is asking, that you order them not to do it. Then we won't have a problem.

(Hr'g Tr. p. 73, line 22 – p. 74, line 4).

The Circuit Court denied Hutson's motion for preliminary injunction, finding that Hutson failed to make a prima facie case that any fraud has been committed or is known by Respondents in order to show a likelihood of success on the merits, and found that the allegations of fraud were being considered in the Bad Faith Appeal, such that there was no

evidence of irreparable injury or an inadequate remedy at law. R. p.* (Order Denying Hutson Mot. for Inj.).

Discussion

"To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law." Richland Cty. v. S.C. Dep't of Revenue, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018) (quoting Denman v. City of Columbia, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). "[T]he sole purpose of a temporary injunction is to preserve the status quo ...." Powell v. Immanuel Baptist Church, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973); Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010) ("A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law.").

The Circuit Court, which was in the best position to assess Hutson's credibility, found Hutson's allegations of fraud and conspiracy against Respondents to be speculative and noted there was nothing that Hutson could show him to demonstrate that any of the arguments he made to the court were true. (Hr'g Tr. p. 42, line 20 – p. 44, line 23); (Hr'g Tr. p. 52, line 3 – p. 53, line 11).

On the other hand, there is substantial documentation that Hutson made claims of fraud against TLC Holdings as early as 2011 and waived those claims pursuant to a 2012 settlement agreement and consent order, which was upheld in 2014. Nonetheless, Hutson

raised allegations of fraud against TLC Holdings again by virtue of counterclaims in the Class Action and the Defamation Action, which he pursued pro se and lost on summary judgment in both courts.

Hutson has never provided any factual basis to distinguish his prior allegations of fraud related to the initial land deal, from those he now asserts purportedly related to the 2012 Settlement Agreement. Hutson relies upon Newton's August 13, 2018 e-mail as "proof" that Newton, and by extension all other Respondents, "knew" of extrinsic fraud upon the Court. However, as Newton explained at the hearing before Judge Hood, his e-mail to Hutson was based upon documentation provided to him by Hutson that raised some concern over whether the area of the property that Hutson was ordered to develop was subject to the Big Water campground memberships. Newton, who was coverage counsel for Penn America at the time, did not undertake further investigation into whether there was an any actual fraud committed in the procurement of the 2012 Settlement Agreement and Consent Order. Rather, he wrote to Hutson and made a qualified statement that there "might possibly" be extrinsic fraud and advised him to look to obtain independent legal representation. (Hr'g Tr. p. 64, line 7 – p. 72, line 11). Newton unequivocally stated that he has no personal knowledge that any fraud was committed. (Hr'g Tr. p. 71, lines 7-19).

Likewise, there is no evidence that Penn America, Global, Stegmaier, or Collins & Lacy have any actual knowledge of whether any fraud was committed in the 2012 Settlement Agreement and Consent Order, which was years before their involvement in these matters. Accordingly, Hutson failed to make a prima facie showing that these Respondents possess any actual knowledge that any fraud was committed. See Compton

v. S.C. Dep't of Corr., 392 S.C. 361, 365-67, 709 S.E.2d 639, 642 (2011) ('In evaluating whether a plaintiff is entitled to a preliminary injunction, the court must examine the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief."). Moreover, Hutson raised these identical claims of fraud in the Bad Faith Action, though he has now added Stegmaier and Collins & Lacy to the list of alleged co-conspirators against him. Thus, there is an adequate and available forum currently reviewing whether Hutson has released any claims against Respondents and whether there was any genuine issue of material fact as to whether Respondents committed or covered up fraud.

In sum, there is no basis in the record to grant Hutson's requested injunction, requiring these Respondents to "disclose their complete knowledge of the Extrinsic Fraud." Accordingly, the Circuit Court's Order denying Hutson's motion for injunction should be affirmed.

IV. Appellant's Contention That The Circuit Court Erred In Failing To "Recognize" "Stegmaier's Blatant Lies In The Hearing" Is Unpreserved Where It Was Not Raised And Ruled Upon Before The Trial Court.

"It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved." Pye v. Estate of Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006). "Generally, an issue must be raised to and ruled upon by the Circuit Court to be preserved." Id. (citing Elam v. S. Carolina Dep't of Trans., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (noting a party must file a Rule 59(e) motion "when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review")).

Hutson alleges that the Circuit Court erred in "fail[ing] to recognize plaintiff attorney Christian Stegmaier's blatant lies in the hearing against Defendant/Appellant who had presented concrete paper evidence to the court which verified Defendant/Appellant's claims as to the falsehood of Stegmaier's claims." See Appellant's Brief, pp. 4, 11-20. However, none of the Orders appealed from address or rule upon any allegation that Respondent Stegmaier lied at the October 15, 2020, hearing. See R. p.* (Hood Orders). Further, Hutson failed to file any motion pursuant to Rule 59(e), SCRCP, asking the trial court to reconsider its ruling(s) in light of the alleged proof of malfeasance. Accordingly, the issue Hutson attempts to raise has not been ruled upon in order for this Court to properly exercise appellate review.

Despite its lack of preservation and relevance in the instant appeal, Respondent Stegmaier takes seriously the false allegation that he lied to the Circuit Court. Hutson's contention that he submitted "concrete paper evidence to the court which verified" that any falsehood was told by Stegmaier is wholly inaccurate.

As an illustration of Hutson's history of misrepresentation, Stegmaier stated at the hearing: "On two occasions with regards to this action, Mr. Hutson sends two e-mails telling me how he had talked to the clerk of court and that the judge had been assigned to this matter and that a hearing was imminent. That certainly wasn't the case." (Hr'g Tr., p. 60, line 1-5). Hutson responded by stating "that's a lie" and "I sent him a copy." (Hr'g Tr., p. 60, line 6-10). Huston later related that he sent Stegmaier a copy of an e-mail from Athena Borer, in the Clerk's office, showing she had scheduled the motions hearing with a female whose name he could not remember on a date certain. He claimed that he sent

Stegmaier a follow-up e-mail whereby Ms. Borer related that it was scheduled but had to be rescheduled. (Hr'g Tr., p. 63).

On September 14, 2020, Huston e-mailed Stegmaier stating that a hearing was set for September 22 and that a judge was assigned to hear the case. A subsequent review of the roster after he made that representation revealed no scheduled hearing; moreover, a follow up call to the Clerk's office related that no hearing had been set at that time.

The document that Hutson pasted into his brief, titled "Defendant's Answers to Plaintiff's Fraudulent Complaint Second Copy due to 'lost' in mail," apparently included a portion of Hutson's e-mails with Clerk's Office employee Athena Borer. See Appellant's Brief, pp. 14-18. However, a copy of Huston's complete *ex parte* e-mail chain with Athena Borer was provided to the trial court following the hearing. R. p.* (Hutson E-mail to Court, Oct. 16, 2020).

When reviewed in its entirety, Hutson's e-mails reflect that on September 3, 2020, Hutson made an ex parte request that a hearing on the motions for injunction be set for September 22 or 23 and inquired about the judge assigned to that term of court. There was nothing from the Clerk to Hutson stating that a hearing would actually occur on one of those days. She only responded that the Honorable Jocelyn Newman was presiding over motions for that week. Nonetheless, Hutson falsely represented that a hearing was set and a judge assigned. When Huston inquired of the Clerk by e-mail further on September 17, 2020, he was informed by the Clerk that the motions would be set for an in-person hearing the week of October 12.

Thus, the e-mail correspondence provided by Hutson does not support his claim that Stegmaier made any false statement to Court and instead reveals Hutson's continued misinterpretation and misrepresentation of what should be simple matters to understand and communicate. Moreover, none of this is material to the merits of the Orders entered by the Circuit Court or preserved for review.

CONCLUSION

Based on the foregoing, these Respondents respectfully request that the Orders of the Circuit Court be affirmed.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted,
COLLINS & LACY, P.C.

*s/Christian Stegmaier*_____

CHRISTIAN STEGMAIER
S.C. Bar No. 68648
cstegmaier@collinsandlacy.com
LAURA R. BAER
S.C. Bar No. 101076
lbaer@collinsandlacy.com
1330 Lady Street, Sixth Floor (29201)
P.O. Box 12487
Columbia, SC 29211
(803) 255-0404 (phone)
(803) 771-4484 (fax)

ATTORNEYS FOR RESPONDENTS PENN AMERICA INSURANCE COMPANY, GLOBAL INDEMNITY GROUP, INC., CHRISTIAN STEGMAIER, ESQ., AND COLLINS & LACY, P.C.

INITIAL BRIEF OF RESPONDENTS PENN AMERICA INSURANCE COMPANY, GLOBAL INDEMNITY GROUP, INC., CHRISTIAN STEGMAIER, ESQ., AND COLLINS & LACY, P.C.

Columbia, South Carolina
March 8, 2021

CERTIFICATE OF SERVICE
(Appellate Case No. 2020-001708)

I, the undersigned, attorney for Respondents Penn America Insurance Company, Global Indemnity Group, Inc., Christian Stegmaier, Esq., and Collins & Lacy, P.C. do hereby certify that I have this date served the foregoing **Initial Brief of Respondents Penn America Insurance Company, Global Indemnity Group, Inc., Christian Stegmaier, Esq., and Collins & Lacy, P.C.** upon all parties, by electronic mail and/or by placing a copy in the United States mail, postage prepaid, on March 8, 2021, addressed to the following:

MB Hutson/MB Hudson
Post Office Box 2755
Orangeburg, SC 29116
hutson4444@gmail.com
Pro Se Appellant
(Sent via U.S. Mail and E-mail)

John R. Murphy, Esquire
Timothy J. Newton, Esquire
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260
jgrantland@murphygrantland.com
tnewton@murphygrantland.com
Attorneys for Respondents Timothy J. Newton, Esq. and Murphy & Grantland, P.A.
(Sent via E-mail Only)

s/Christian Stegmaier
CHRISTIAN STEGMAIER
LAURA R. BAER
Attorneys for Respondents Penn America Insurance Company, Global Indemnity Group, Inc., Christian Stegmaier, Esq., and Collins & Lacy, P.C.

Dated: March 8, 2021