

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC 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.

RESPONDENTS PENN AMERICA INSURANCE COMPANY, GLOBAL INDEMNITY GROUP, INC., CHRISTIAN STEGMAIER, ESQ., AND COLLINS & LACY P.C.'S MOTION TO STRIKE APPELLANT'S "MEMORANDUM" FILED MARCH 5, 2021, APPELLANT'S "NOTICE" FILED MARCH 8, 2021, AND APPELLANT'S "REPLY BRIEF" FILED MARCH 10, 2021 AND REQUEST FOR SANCTIONS

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

Pursuant to Rule 269 of the South Carolina Appellate Court Rules and other applicable authority, Respondents Penn America Insurance Company (“Penn America”), Global Indemnity Group, Inc. (“Global”), Christian Stegmaier, Esq. (“Stegmaier”); and Collins & Lacy P.C. (Collins & Lacy) (collectively “these Respondents”), move to strike Appellant’s “Memorandum” filed March 5, 2021, Appellant’s “Notice” filed March 8, 2021, and Appellant’s “Reply Brief” filed March 10, 2021, and in support thereof state as follows:

INTRODUCTION

“When a witch’s brew has been stirred in the crucible of litigation, it is not the role of [the appellate] court to strain the concoction for chestnuts left to burn through vincible ignorance of the law. Nor is it [the court’s] role to conduct a review de novo of rulings on motions or to order entry of judgments on issues never presented to the jury or to the trial court.” Devices for Medicine, Inc.v. John Boehl, Cardiovascular Instruments, Inc. and Orlandoregional Medical Center, Inc., 822 F.2d 1062 (Fed. Cir. 1987). 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).

The three filings of Appellant that these Respondents seek to have stricken are not proper appellate motions or briefs and fail to comply with the South Carolina Appellate Court Rules. The sole filing captioned as a “Reply Brief” is not a brief at all and contains

allegations never made to the Circuit Court. Moreover, all of the filings contain impertinent and scandalous material. This abuse and misuse of the appellate process by Appellant has been experienced repeatedly in his other appeals pending before this Court and met, thus far, without consequence.¹ These Respondent's seek the Court's intervention in order to bring these antics to a halt and efficiently and expediently dispose of the instant appeal.

RELEVANT FACTS

Hutson was involved in a land deal with TLC Holdings, LLC (“TLC Holdings”) 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. Respondents Penn America and Global's first involvement with litigation involving Appellant Hutson came after they were notified in December 2015 of pending claims by TLC Holdings against Hutson in two lawsuits—the Class Action² and the Defamation Action.³ Hutson was an officer of their insured, BWR, Inc. d/b/a Big Water Resort, and was provided a defense in both lawsuits subject to

¹ See Hutson v. Penn-America, et al., Appellate Case No. 2019-001488; Hutson v. Weissenstein, Appellate Case No. 2019-000873.

² See Big Water Resort, LLC, et al. v. TLC Holdings, LLC, C/A: 2:14-1583-DCN-MGB (D.S.C.) (“the Class Action”) (instituted by a group of Big Water Resort campground members against TLC Holdings, which then asserted third-party claims for equitable indemnification against Hutson).

³ See TLC Holdings, LLC, et al. v. Hutson, Case No. 2015-CP-14-0615 (Clarendon Cnty. Ct. Comm. Pleas) (“the Defamation Action”) (instituted by TLC Holdings related to statements made by Hutson to campground members and their counsel).

a reservation of rights. Both cases were ultimately resolved without any personal liability to Hutson.

Nonetheless, in December 2018, Hutson instituted a civil lawsuit against Penn America, Global, and their coverage counsel, in the Richland County Court of Common Pleas (“the Bad Faith litigation”). Defendants Penn America and Global were represented by attorneys Christian Stegmaier and Laura Baer of Collins & Lacy, P.C. (“Collins & Lacy”). Defendants J.R. Murphy (“Murphy”) and Timothy Newton (“Newton”) of Murphy & Grantland, P.A. (“Murphy & Grantland”) represented themselves pro se. Following a hearing before the Honorable Michael G. Nettles on June 26, 2019, Hutson lost on summary judgment, the appeal from which is pending in this Court in Appellate Case No. 2019-1488 (“the Bad Faith appeal”).

The instant appeal arises from litigation initiated by Respondents Penn America and Global against Appellant Hutson in August 2020, which sought temporary and permanent injunctive relief following Hutson’s repeated threats to bring additional, duplicative litigation against Respondents and their counsel and Hutson’s history as a vexatious litigant.

Huston responded to the underlying Complaint by asserting counterclaims against Penn America and Global and asserting third-party claims against Stegmaier, Collins & Lacy, Newton, and Murphy & Grantland.

Following a hearing before the Honorable Robert E. Hood on October 15, 2020, the Court granted Respondents Penn America and Global Indemnity’s motion for temporary

injunction and Respondents posted the requisite Five Thousand Dollar (\$5,000) bond. This Order was not appealed.

However, on January 4, 2021, Huston noticed an appeal from three other Orders entered by the Circuit Court, including: (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 Hutson's Motion for Temporary Injunction.

Hutson filed his initial brief in the instant appeal on January 26, 2021, followed by an amended initial brief on February 6, 2021. Respondents filed their initial briefs on March 8 and 9, 2021, respectively. In the interim and thereafter, Appellant filed the three documents that are the subject of the instant motion:

1. On March 5, 2021, Appellant Hutson filed a document entitled "More Proof that Respondents are Liars; this shows how Common Pleas Judge Robert Hood Intentionally Ignored the Extrinsic Fraud By Twisting the Law," which the Appellate Court has labeled as "Appellant's Memorandum in Support of Appeal." The attachment thereto is a copy of Appellant's Complaint against Judge Hood, which he filed in the Richland County Court of Common Pleas on March 2, 2021. See Huston v. Hood, Case No. 2021-CP-40-946.
2. On March 8, 2021, Appellant Hutson filed a 32-page document with no caption entitled "NOTICE (to be filed)," which makes factual assertions and legal arguments not made to the Circuit Court; continues to misrepresent the

pro se counterclaims filed by Hutson in the underlying defamation lawsuit against him as citations of fraud by attorney Laura Paton; cites various rules, canons, and case law regarding judicial and attorney ethics and fraud; quotes a portion of an August 2018 e-mail from Newton to Hutson; and purports to give an example of extrinsic fraud.

3. On March 10, 2021, Appellant Hutson filed a document entitled “Appellate’s[sic] Reply Brief to Respondents’: Penn America, et al; Timothy J. Newton, Esq., JR Murphy, Esq., and John Grantland, Esq., of Murphy Grantland, P.A. and Christian Stegmaier, Esq. of Collins and Lacy, P.C. Initial Brief. ‘Silver Bullet.’” The body of this filing was identical to that of the filing made on March 8, 2021.

LAW/ANALYSIS

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 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.”

In a direct appeal, the appellant is permitted two opportunities to argue the merits of his appeal, an initial brief and a reply brief. See Rule 208, SCACR. Pursuant to the appellate rules, “[a]ll reply briefs shall contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with

references to the pages of the reply brief where they are cited.” Rule 208(b)(3), SCACR. Further, the length of a reply brief is limited to 25-pages absent permission to exceed the page limitation from the appellate court. See Rule 208(b)(5), SCACR.

Here, after the filing of his initial brief and prior to the filing of Respondents’ briefs, Appellant Huston filed a copy of his spurious Complaint against Judge Hood, who presided over the underlying motions hearing. This document was not included in Huston’s Designation of Matter to be included in the Record on Appeal, and was not considered by the Circuit Court as it was only filed on March 2, 2021, months after the Court’s rulings and the initiation of this appeal. Huston adds the additional insult of titling his filing with the suggestion that his Complaint against Judge Hood was “more proof that Respondents are liars,” illustrating Huston’s continued confusion over the difference between his bald allegations and actual evidence. The title further alleges that Huston’s Complaint against Judge Hood “shows” how Judge Hood “intentionally ignored the extrinsic fraud by twisting the law.” In light of the fact that the March 5, 2021, filing is not a proper motion, brief, or part of the Record, it should be stricken and not considered by the Court in this appeal.

Appellant Huston also filed two copies of a document identical in content except that one was titled as a Notice and the other was titled as a Reply Brief. The only Notice to be filed in a direct appeal is the Notice of Appeal, such that the March 8, 2021 filing is improper and should be stricken and not considered by the Court in this appeal. The second attempt on March 10, 2021, merely changed the title to that of a reply brief in a post hoc attempt to bring the filing within the scope and boundaries of the appellate rules. However,

Hutson failed to comply with the requirements of Rule 208, as his filing lacks a table of contents and a table of authorities and exceeds the 25-page limitation. Moreover, it fails to serve the purpose of a reply brief, which is to respond to points raised in the briefs of respondents.

Beyond these technical errors, Hutson’s “Notice” and “Reply Brief” raise a new and unsupported allegation not raised before the Circuit Court. Specifically, Hutson falsely claims that the Respondents knew about extrinsic fraud upon the courts because “they each had *all the documents and filings* made by TLC Holdings, LLC’s attorneys at... Turner Padgett Graham and Laney, and Womble, Carlyle, Sandridge and Rice (Thomas Harper, Esq.).” These law firms represented TLC Holdings well before any involvement of the insurance carrier or their coverage and defense counsel. Those public filings of which Respondents were aware did not evince any actual evidence of extrinsic fraud, which it should be noted Hutson alleges occurred with respect to a 2012 Settlement Agreement and Consent Order with TLC Holdings years prior. Hutson further spends numerous pages discussing judicial canons and ethics, which have nothing to do with the rulings made in the three Orders from which this appeal arises.

To the extent Hutson’s filings raise new issues and arguments not raised to the Court or addressed in his initial brief, such issues and arguments are improper. To the extent other portions of the filings are a rehashing of the same allegations and insults—that these Respondents are co-conspirators, fraudsters, cowards, liars, law and rule breakers, obstructionists, and that the attorneys deserve to lose their law licenses—these unfounded allegations are impertinent and scandalous.

In sum, the filings discussed *supra* are not proper motions or briefs and should be stricken by this Court.

CONCLUSION

Based on the foregoing, Respondents Penn America, Global, Stegmaier and Collins & Lacy respectfully request that their Motion to Strike be granted and that the Court impose any and all sanctions against Appellant Hutson for his continued abuse of the appellate system as this Honorable Court deems just and proper.

These Respondents are *not* seeking to hold any deadline for the filing of the Record in Appeal in abeyance during the pendency of the instant Motion, as the content of the Record will not be affected by the Court's ruling. See Rule 240(b), SCACR ("Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition....").

[SIGNATURES ON NEXT PAGE]

Respectfully submitted,
COLLINS & LACY, P.C.

s/Christian Stegmaier

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**RESPONDENTS PENN AMERICA
INSURANCE COMPANY, GLOBAL
INDEMNITY GROUP, INC., CHRISTIAN
STEGMAIER, ESQ., AND COLLINS &
LACY P.C.'S MOTION TO STRIKE
APPELLANT'S "MEMORANDUM"
FILED MARCH 5, 2021, APPELLANT'S
"NOTICE" FILED MARCH 8, 2021, AND
APPELLANT'S "REPLY BRIEF" FILED
MARCH 10, 2021 AND REQUEST FOR
SANCTIONS**

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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 **Respondents Penn America Insurance Company, Global Indemnity Group, Inc., Christian Stegmaier, Esq., And Collins & Lacy P.C.’S Motion To Strike Appellant’s “Memorandum” filed March 5, 2021, Appellant’s “Notice” filed March 8, 2021, and Appellant’s “Reply Brief” filed March 10, 2021 and Request for Sanctions** upon all parties, by electronic mail and by placing a copy in the United States mail, postage prepaid, on March 22, 2021, addressed to the following:

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Dated: March 22, 2021