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SEP 13 2021

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price, Circuit Court Judge

Appeal No. 2020-001679

Elizabeth McCrabb, PlaintiffRespondent,

v.

Christine Baxter, Defendant.....Appellant.

JOINT CONSENT MOTION TO DISMISS APPEAL AND VACATE ORDERS

COMES NOW, Respondent, Elizabeth McCrabb, jointly and with consent of Appellant, Christine Baxter, and Travelers Insurance Company, the alleged UIM carrier, by and through the undersigned legal counsel, does hereby move to dismiss the present appeal, Appeal No. 2020-001679, pursuant to Rule 260(b) of the South Carolina Appellate Court Rules. Appellant Christine Baxter's consent to this motion is specifically contingent on this Court ordering and directing the circuit court to vacate the two orders pending on appeal. The parties respectfully request this Honorable Court enter an order pursuant to Rule 260(c) of the South Carolina Appellate Court Rules dismissing the present appeal. The basis for this request is that the parties have reached an agreement pursuant to Rule 261(a) & (d).

Appellant, Christine Baxter, agrees to withdraw and dismiss the present appeal in exchange for Respondent's agreement and request to vacate, and specifically contingent on this Court

ordering and directing the circuit court to vacate the following two orders currently pending on appeal: the Order of the Honorable Bentley D. Price, Circuit Court Judge, Ninth Judicial Circuit granting Respondent's motion for partial summary judgment on the issue of liability, dated July 6, 2020, and the Order of the Honorable Bentley D. Price, Circuit Court Judge, Ninth Judicial Circuit denying Appellant's motion for reconsideration of the order granting partial summary judgment. Rule 261(d), SCACR, dated December 18, 2020. The parties respectfully submit for approval a Proposed Joint Consent Motion to Vacate Order and Proposed Joint Consent Order Vacating Grant of Partial Summary Judgment. Rule 261(d), SCACR. (Exhibit A). Appellant and Respondent agree and stipulate that, in the event this appeal is dismissed pursuant to this Joint Consent Motion, each party will be responsible for her own costs and fees associated with the present appeal and that costs allowable pursuant to Rule 222 of the South Carolina Appellate Court Rules shall not be imposed against either Appellant or Respondent. Rule 260(b), SCACR.

The factual basis for the parties' request rests upon several factors. First, Respondent has agreed to release Appellant from the order granting partial summary judgment on the issue of liability, as well as the order denying Appellant's motion for reconsideration, and to continue discovery and litigation on the question in the trial court. Respondent's agreement provided Appellant with the relief sought in the present appeal. In exchange, Appellant agrees she will not seek to impose the allowable costs and fees of the present appeal against Respondent that she may have been awarded if her appeal was successful. The parties understand the considerable number of matters presented to this Honorable Court for resolution and seek to withdraw this appeal in the pursuit of judicial economy and substantial justice.

Summary judgment is a drastic remedy which should be cautiously invoked so that a litigant is not improperly deprived of a trial on disputed factual issues. Madison ex rel. Bryant v.

Babcock Ctr., Inc., 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006). “The trial court must deny the motions when the evidence yields more than one inference, or its inference is in doubt.” Bailey v. Segars, 346 S.C. 359, 550 S.E.2d 910 (Ct. App. 2001). In any given matter, the jury is free to accept or reject in whole or in part the testimony of any witness, including an expert witness. Sauers v. Poulin Bros. Homes, Inc., 328 S.C. 601, 605-6, 493 S.E.2d 503, 505 (Ct. App. 1997). Appellant provides this Court with a correct statement of the law. The principle proffered by Appellant in this matter is exemplified by the following: “Even if the expert's uncontradicted testimony did establish [defendant]'s *negligence* as a matter of law, it did not establish [defendant]'s *liability* as a matter of law. Negligence is actionable only if it is a proximate cause of the injury.” *Id.* (citing Hanselmann v. McCardle, 275 S.C. 46, 267 S.E.2d 531 (1980); Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct.App.1996) (affirming it was for the jury to determine whether any negligence on the part of [defendant] proximately caused the damage [alleged])).

The present agreement between parties and accompanying Proposed Order Vacating Order Granting Partial Summary Judgment on Liability returns the parties to the previous status quo immediately before the grant of partial summary judgment and does not prejudice either Respondent’s prosecution or Appellant’s defense of the underlying matter.

Therefore, Appellant and Respondent jointly request this Honorable Court enter an order dismissing the present appeal and directing the Chief Administrative Judge for Common Pleas, Ninth Judicial Circuit, Charleston County to enter the proposed order vacating the two orders dated July 6, 2020 and December 18, 2020.

[Consent signatures appear on following page]

WE HEREBY JOINTLY MOVE AND CONSENT:

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**Attorney for Travelers, as alleged UIM
Carrier**

MCANGUS GOUDELOCK & COURIE

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Attorney for Christine Baxter

Submitted this 10 September 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

)
)
)

IN THE COURT OF COMMON PLEAS

ELIZABETH MCCRABB,
Plaintiff,

)
)
)

Civil Action No. 2019CP1005613

v.

)
)
)

**JOINT CONSENT MOTION FOR
RELIEF FROM ORDERS GRANTING
PARTIAL SUMMARY JUDGMENT
AND DENYING REHEARING**

CHRISTINE BAXTER,
Defendant.

)
)
)

Pursuant to Rule 60(b)(5), SCRCF, the parties hereby jointly move for relief from this Court's July 6, 2020 Form 4 Order granting partial summary judgment to Plaintiff Elizabeth McCrabb, and the December 18, 2020 Form 4 Order denying Defendant Christine Baxter's Motion for Reconsideration. The basis for this joint motion is that Plaintiff Elizabeth McCrabb does hereby release Defendant Christine Baxter from the above-referenced Orders, and in exchange, Defendant Christine Baxter agrees to dismiss the pending appeal, contingent upon this Court entering an order granting this Joint Consent Motion.

[Consent signatures appear on following page]

WE CONSENT:

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APPEAL FROM CHARLESTON COUNTY
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The Honorable Bentley D. Price, Circuit Court Judge

Appeal No. 2020-001679

Elizabeth McCrabb, Plaintiff Respondent,

v.

Christine Baxter, Defendant..... Appellant.

PROOF OF SERVICE

I certify that I have served the parties' Joint Consent Motion to Dismiss Appeal and Vacate Orders on the other parties to this appeal by emailing a copy of this pleading addressed to their attorneys of record as follows:

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W. Mullins McLeod, Jr., Esq.
MCLEOD LAW GROUP, LLC
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Attorneys for Travelers, appearing pursuant to S.C. Code § 38-77-160

[SIGNATURE ON FOLLOWING PAGE]

September 10, 2021

s/Helen F. Hiser

Helen F. Hiser

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Attorneys for Appellant Christine Baxter

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Reply To
HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

September 10, 2021

VIA S.C. COURTS E-FILING & U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Elizabeth McCrabb v. Christine Baxter
Civil Action No.: 2019CP1005613 (Charleston)
Date of Incident: October 27, 2017
Carrier Claim No.: H2J5957
MGC File No.: 20527.19544
Appeal No.: 2020-001679

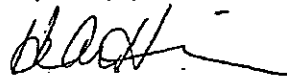
Dear Ms. Kitchings:

Enclosed please find the original of the parties' Joint Consent Motion to Dismiss Appeal and Vacate Orders, and the Proof of Service in the above-referenced matter. We are serving counsel of record via email.

We will send our firm's check in the amount of \$50 for filing the motion via U.S. Mail with a copy of this letter.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Helen F. Hiser

Enclosures

cc: Michael T. Cooper, Esq. (via email)
Jessica L. Salerno, Esq. (via email)

mgc

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COLUMBIA, SC 29211



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The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
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