THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS
Edgar W. Dickson, Circuit Court Judge

Case No: 2021-000797

Saundra R. Hoffman,……..…….…..Appellant,

v.

State Farm Fire and Casualty
Company,…….……...Respondent.

INITIAL BRIEF OF APPELLANT

October 27, 2021

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TABLE OF AUTHORITIES

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STATEMENT OF ISSUES ON APPEAL

1. **Did the trial court err in granting summary judgment as a matter of law for the Defendant, dismissing Plaintiff's cause of action for breach of contract based upon S.C. Code Ann. § *15-3-530* for failing to timely file her claim within the three-year statute of limitations for a breach of contract when the Plaintiff filed her claim within three years from the date the Defendant wrongly refused to pay her insurance claim?**

2. **Did the trial court err in granting summary judgment where Plaintiff offered more than a mere scintilla of evidence showing the Plaintiff was not aware there was any statute of limitations or any deadline in her insurance policy to submit her claim and therefore not aware the Defendant had breached the contract of insurance to the Plaintiff?**

3. **Did the trial court err in granting summary judgment where the Plaintiff offered a scintilla of evidence demonstrating all the essential elements of breach of contract accompanied by fraud where the Defendant did not have a time limitation in the insurance contract for submitting items for payment by the Defendant, the Defendant mislead the Plaintiff in continuing to submit items pursuant to her insurance claim by actively participating in submission of Plaintiff's damaged items, and where the Defendant had no intention of paying her insurance claim?**

4. **Did the trial court err in granting summary judgment to Defendant on Plaintiff's action for Breach of Contract accompanied by Fraud based on a prior order where there was no finding by the Court the Plaintiff's pleading were insufficient to meet the elements of fraud; no finding the facts in the complaint were viewed in the light most favorable to the Plaintiff; no finding the pleadings were liberally construed so that substantial justice is done between the parties and where the matter is more properly submitted to and decided by a jury?**

5. **Did the trial court err in granting summary judgement to the Defendant on the Plaintiff's Bad Faith Cause of Action; where the Plaintiff offered a mere scintilla of evidence of all the essential elements of bad faith; and specifically where the Defendant does not have any explicit time limitation in their insurance contract for submitting items for payment by the Defendant but wrongfully refuses to pay the Plaintiff's claim for breach of contract, the Defendant was aware of the limitations in the insurance contract and mislead the Plaintiff into continuing to act pursuant to the contract with no intention of performing under the contract?**

STATEMENT OF THE CASE

Plaintiff filed a complaint on October 12, 2018, against her insurance company Defendant State Farm Fire and Causality Company for breach of contract, Breach of contract accompanied by fraud, and bad faith. The Defendant filed an Answer and then an Amended Answer alleging the Plaintiff had failed to cooperated pursuant to the contract of insurance, the Plaintiff had made material misrepresentations or misleading statements in connection with her insurance claim, was barred by the doctrine of laches, and the Plaintiff had failed to file her claim within the applicable statute of limitations which the Defendant claimed was three years from the date of the damage to her property on January 8, 2014.

Defendant filed a motion to change venue and a motion to dismiss, heard by L. Casey Manning in June 2019. Plaintiff did not object to the venue being changed and Judge Manning permitted the Plaintiff to amend her pleadings to add more specificity to her fraud allegations in the motion hearing. The Plaintiff did not prepare a proposed order granting the change of venue, denying the motion to dismiss and permitting the Plaintiff to amend her pleadings to more specifically plead fraud. The pleadings were not amended as Plaintiff believed them to be sufficient. There were no findings in the Order regarding the pleadings' insufficiency, the Court had not made any ruling in regard to the pleadings but merely permitted the amendment based on the allegations of insufficiency made in the Defendant's motion to dismiss. The Order was signed by Judge L. Casey Manning dated August 16, 2019.

Thereafter, a hearing on Defendant's Motion for Summary Judgment was held before the Honorable Edgar W. Dickson on December 17, 2020. On February 9, 2021, Judge Dickson granted Defendant's Motion for Summary Judgment upon finding that Plaintiff had failed to timely file her case within the applicable statute of limitations *S.C. Code Ann. § 15-3-530*. The Court

further dismissed Plaintiff's Fraud cause of action for failing to amend her pleadings.

Finally, the Defendant was granted summary judgment on Plaintiff's Bad Faith action for failure to put forth a mere scintilla of evidence meeting the elements of Bad Faith, specifically the element related to State Farm's reasonable basis for denying the claim.

Plaintiff's Motion for Reconsideration pursuant to Rule 59, SCRCP, was denied by form order served on April 27, 2021; Appellant's Notice of Appeal was served and filed on May 14, 2021. This appeal follows.

STATEMENT OF THE FACTS

The Defendant State Farm Insurance Company (hereinafter "State Farm" or Defendant) provided a contract of insurance to the Plaintiff Saundra R. Hoffman for the contents of her home located at 503 Timber Trail Court. *(State Farm Policy – Exh.B)* The insurance policy insured losses from - "sudden and accidental discharge . . of water . . . from within a plumbing . . system. . ." *(SF Policy -pg. 8 para 12).* The policy spells out under SECTION I- LOSS SETTLEMENT COVERAGE A- DWELLING an insured must repair or replace damaged parts of the property and make claims under this section "**within two years** after the date of loss, . . ." *(SF Policy pg. 11 Sec I , coverage A - 1.(a) (3))*

However, under the COVERAGE B- PERSONAL PROPERTY section the policy has no time limitation and states "if property is not repaired or replaced within two years after the date of loss, (State Farm) will pay only the cost to repair or replace less the depreciation." *(SF Policy pg. 12 – Coverages B – 1(a)(3))* The policy distinguished between damages to the insured's dwelling and the insured's personal property and does not include any language placing a time limit on which an insured has to submit her damages or a list of damaged items pursuant to the policy.

On **January 8, 2014**, the Plaintiff suffered a covered loss pursuant to the valid insurance policy. The Plaintiff promptly reported the claim to her insurance company State Farm and began a long and arduous process of listing, classifying, photographing, documenting, and researching her damages which included hundreds of items that were stored in her garage and the FROG, room over her garage, where the water damage had occurred. The Plaintiff actually called State Farm the morning of the incident when she did not know how to turn off the water and later reported the incident, as required by the policy, on February 4, 2014 as per the claims note and conversation between the parties. *(Depo Hoffman pg. 17 – pg. 18 ln 20; State Farms claims file pg.12)*. As part of this process the Plaintiff was emailed a link by the Defendant's adjuster where she submitted items into a database/computer system called Enservio that she could log into and submit information. The Plaintiff was not told by anyone at her insurance company that she had a time limit to upload or submit her damages or the information about the individual items in her claim. (*Plaintiff. Depo pg. 56 ln 21 to pg. 57 ln 5, Exh A)* The Defendant's adjuster who was assisting the Plaintiff, advised the Plaintiff about the value of her claims pursuant to her policy and the time limits related to those valuations but .. "never discussed the statute of limitations with Ms. Hoffman at any time…" *(T. Edwards Depo pg. 122 ln 23-25; pg. 123 ln 1)*

On, October 25, 2017, more than three years after her date of loss, Plaintiff is continuing to have detailed conversations with the Defendant's adjuster regarding her lost items and inputting information into the claims system, Enservio. *(Id at 60 ln 5-10)* The Adjuster did not advise the Plaintiff she could not submit any more items, did not tell the Plaintiff to stop spending her time photographing and researching the value for her hundreds of personal items and fails to advise the Plaintiff the Defendant State Farm considers her claim time barred because the statute of limitations has run on the claim . *(Id at pg. 60 ln 11- 21)* The adjuster further testifies her manager

later advised her of the three-year statute of limitations, and that managers typically review files every 30 days. However, this adjuster had continued to assist the Plaintiff in submitting additional items into Enservio, and had multiple phone conversations with her regarding her damages items. *(Id pg. 61)* When asked if the claim was handled properly the Defendant's claims adjuster testified, she "would have made the policyholder aware of the statute of limitations. . .. (that) should have been explained to the insured" *(Id at pg. 85 ln 1-9).* Furthermore, the difference in how the claim was paid pursuant to her policy was not only unclear to the Plaintiff but the Defendant's adjuster who stated, "so that could have been explained more to the insured as well." *(Id at pg. 85 ln 25 – pg. 86 ln1)* The adjuster also indicated the best practice would have been to verbally explain policy limitations and statutes of limitations and follow up with a letter, however, even when the adjuster explained the difference in payments made pursuant to the policy, she failed to follow up with a letter to the Plaintiff. *(Id. At pg. 86, ln 16 -25 pg. 87 1- 11).*

At the request of the Defendant's adjuster, Tamyachta Edwards, the Plaintiff researched, photographed, and submitted information regarding her items that were damaged in her claim throughout this time and into 2017. The Plaintiff and adjuster were having twenty (20) minute conversations regarding the damaged items and the Plaintiff's claims in April and October of 2017. *(Depo T Edwards pg. 55 ln 21 – pg. 58 ln 19)* This included the submission by the Plaintiff of 2,055 photographs to the Defendant. The Plaintiff was sent a check September 28, 2016, for property damage including replacement costs of personal property she lost due to this incident, however the check was not cashed by the Plaintiff as she did not know if cashing the check would close out her claim and the Plaintiff had additional items she wanted to add to the claim. The Plaintiff's concerns were justified when she continued to submit damaged items after State Farm

sent her an initial check in 2016 because she and the Defendant's adjuster had difficulty submitting more items into the claims system later *(Depo. S. Hoffman pg53. Ln 15 – pg. 54 ln 6).*

Beginning on April 3, 2017, and throughout 2017 the Plaintiff continued to sort items in her home and attempted to determine the value of her lost property including some large Persian rugs she believed were valued over thousands of dollars each. The Defendant's records indicate the Plaintiff continued communicating with and submitting information to the Defendant's Adjuster Tamyachta Edwards. *(SF Claims File -Hoffman SF 4-3-2017, pg. 20 – 18).*

On April 3, 2017, the Plaintiff called State Farm and the Defendant's adjuster called her back. The Plaintiff told the adjuster how her daughter had put some bags of wet clothes that were damaged in the attic and the Plaintiff had just found them and she wanted to add them to the claim. The claims note indicates a discussion regarding forwarding the additional contents and images to Enservio, and the Plaintiff needing to "email anything that needs revision that may have been incorrect before" *(SF Claims file Hoffman SF 20).*

October 25, 2017, Adjuster responded to an email from the Plaintiff and called her to discuss specific items and values of items including, antique clowns, antique butler, and Persian rugs. The adjuster needed more information regarding the rugs quality and the Plaintiff was to take pictures of the rugs. *(SF claims file 20).* On November 20, 2017, the Defendant's adjuster received an email from the Plaintiff with updated pricing, but the claims file does not indicate a phone call or conversation. *(SF claims file 19)*.

On August 19, 2020, the Defendant's adjuster who assisted the Plaintiff throughout this claim provided deposition testimony. She indicated she had been working for the Defendant State Farm for twelve years as a claims processor and then as a claims specialist, and that she normally handled any single claim for two years, pursuant to the policy. *(Depo. Defendant State Farm adjuster T.*

Edwards pg 87, also Exh C) This is because there is a two-year policy provision that an insured is paid replacement costs for items after the date the loss occurred. *(Edwards Depo, p. 9)* The adjuster also testified that she believes State Farm has a duty to advise their insured if there is an approaching time limitation to make claims under their policy. *(Edwards Depo 20 ln 14 pg. 21 ln 9)* The adjuster testified the Plaintiff submitted damaged items for her claim thorough a program called Enservio. The adjuster testified the State Farm claims file indicated the Plaintiff initially reported the claim on February 4, 2014, but would not have a record of the Plaintiff having called her own State Farm agent weeks earlier on January 8, 2014. *(Edwards Depo 24-25)*

The adjuster testified on November 9, 2015, Plaintiff was having problems with her claims forms and called State Farm asking for assistance. The adjuster called the Plaintiff back to assist her with her problems with her claims forms this was NOT, as the Defendant alleged in their Motion for Summary Judgment, a phone call initiated by State Farm to Hoffman to "remind her" of a benefit deadline. *(Edwards Depo. Pg 37-38; Def Mot for SJ Facts section)*

On January 18, 2016 the adjuster was performing 'adjustments' of the Plaintiff's items submitted in Enservio for payment of the replacement costs pursuant to her policy. In these adjustments the State Farm adjuster was revaluing personal items and they were 'depreciated based on age and condition". *(Edwards Depo pg. 39).* The adjuster testified the Plaintiff continued to put information regarding her damaged items into Enservio until December 6, 2017, and the adjuster stated she was permitted to update her pricing (correct the value of her damaged items) throughout 2017. *(Edwards Depo 34-35).* The adjuster testifies pursuant to the policy items submitted by the Plaintiff in her claim prior to two years are paid replacement costs value and items submitted by the Plaintiff after two years are paid actual cash value. *(T. Edwards Depo. Pg. 44 ln16-20)*

On December 6, 2017 State Farm supervisor Nicholas Frampton reviewed the file and informed the adjuster that the Plaintiff was "submitting this new information past the statute of limitations" he instructed the adjuster that State Farm was "unable to determine if damages were related to this loss or a new event" and the adjuster was to advise the policy holder "that this will not be covered due to late reporting . . " . *(SF claims file pg. 3)*

In January of 2018, State Farm with no prior notice of the closing of the claim advised the Plaintiff they were no longer accepting any other information regarding damaged items related to this incident and denied payment on all the items she had submitted over the past year. *(Exh. E - SF letter dated 1/10/2018)*. The Plaintiff filed suit on October 12, 2018, for breach of contract by the Defendant.

STANDARD OF REVIEW

a. The Proper Standard of Review For The Dismissal of Plaintiff's Causes of Actions Based on Defendant's Summary Judgment Motion.

Summary judgment is appropriate where there is no genuine issue of material fact, and it is clear the moving party is entitled to judgment as a matter of law. *Rule 56(c),SCRCP*. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.,* 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994) citing *Hancock v. Mid-South Mgmt. Co.,* 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009).

As established in *Hill v. York County Sheriff's Dep't,* 313 S.C. 303, 305, 437 S.E.2d 179, 180 (Ct.App.1993), when evidence is susceptible to more than one reasonable inference, the issue should be submitted to the jury; *Vaughan v. Town of Lyman,* 370 S.C. 436, 448, 635 S.E.2d 631, 638 (2006). "At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a jury for summary

judgment to be denied." *Hill,* 313 S.C. at 308, 437 S.E.2d at 182; *see also Hancock at* 330. (clarifying and reaffirming in cases applying the preponderance of the evidence burden of proof, the nonmoving party is only required to submit a mere scintilla of evidence to withstand a motion for summary judgment); *Murphy v. Tyndall*, 384 S.C. 50, 54, 681 S.E.2d 28, 30 (Ct.App. 2009).

b. <u>The Standard of Review For the Dismissal of Plaintiff's Fraud Cause of Action Based on the Prior Order and Defendant's Motion to Dismiss.</u>

In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court. *Doe v. Marion,* 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. *Id.*

In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, state any valid claim for relief. *Brazell v. Windsor,* 384 S.C. 512, 515, 682 S.E.2d 824, 826 (2009). "The trial court and this [C]ourt on appeal must presume all well pled facts to be true." *Morrow Crane Co. v. T.R. Tucker Constr. Co.,* 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct. App. 1988). "[P]leadings in a case should be construed liberally so that substantial justice is done between the parties. Further, a judgment on the pleadings is considered to be a drastic procedure by our courts." *Russell v. City of Columbia,* 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) (citation omitted). The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Doe,* 373 S.C. at 395, 645 S.E.2d at 248; *HHHunt Corp. v. Town of Lexington,* 389 S.C. 623, 631-32, 699 S.E.2d 699, 703 (Ct. App. 2010)

ARGUMENT

I The Statute of Limitations For Breach of Contract Based upon S.C. Code Ann. § *15-3-530* Is Three Years from the Date of the Breach.

A statute of limitations generally begins to run on the date a cause of action accrues, and a breach of contract action usually accrues at the time a contract is breached or broken. *Richland-Lexington Airport Dist. v. American Airlines, Inc.,* 306 F. Supp. 2d 548, 566 (D.S.C.2002); *Livingston v. Sims,* 197 S.C. 458, 462, 15 S.E.2d 770, 772 (1941), *overruled on other grounds by Santee Portland Cement Co. v. Daniel Intl. Corp.,* 299 S.C. 269, 384 S.E.2d 693 (1989) (discovery rule applies in contract actions), *overruled on other grounds by Atlas Food Systems & Servs., Inc. v. Crane Natl. Vendors Div. of Unidynamics Corp*., 319 S.C. 556, 462 S.E.2d 858 (1995). *State v. McClinton*, 369 S.C. 167, 173, 631 S.E.2d 895, 898 (2006).

An action for breach of contract must be brought within three years from the date the action accrues. *S.C. Code Ann. § 15-3-530(1) (2005*). *Sapp v. Wheeler*, 402 S.C. 502, 509, 741 S.E.2d 565, 569 (Ct. App. 2013). A breach of contract action accrues when the parties are aware the contract is breached. The Plaintiff had no action against the Defendant until the Defendant breached the contract with the Plaintiff. *Rumpf v. Mass. Mut. Life Ins. Co.,* 357 S.C. 386, 394-95, 593 S.E.2d 183, 187 (Ct. App.2004) *Carolina Marine Handling, Inc. v. Lasch,* 363 S.C. 169, 176, 609 S.E.2d 548, 552 (Ct. App. 2005) [The discovery rule determines the date of accrual for a **breach** of **contract** action,]" and "pursuant to the discovery rule, a **breach** of **contract** action accrues not on the date of the **breach**, but rather on the date the aggrieved party either discovered the **breach**, or could or should have discovered the **breach** through the exercise of reasonable diligence"]. Here, the Plaintiff continued to evaluate collect and submit damaged items through the Defendant's claims system throughout 2017 as she reasonably believed the Defendant was continuing to adjust her claim for property damage

pursuant to her policy. Likewise, the Defendant continued to adjust the claim and communicate with the Plaintiff regarding submission of damaged items in October 2017, three years after the Defendant now claims the Plaintiff failed to comply with the terms of her policy. *(SF claims file – pg. 3-4 Exh. D*) The adjuster was emailing and having twenty (20) minute phone conversations with the Plaintiff regarding her claim and her damages items in April and October of 2017.

The Defendant cannot now claim there is some policy limit of three years to submit the Plaintiff's personal property damages pursuant to this policy, when the adjuster was actively participating in the adjustment of the claim. The law in South Carolina is clear, the three-year limitation begins to run when the Plaintiff became aware of the breach of the contract by the Defendant when her claim for benefits pursuant to her policy were first denied in January 2018. The statute of limitations on this claim does not run at the earliest, until January 10, 2021.

The Defendant also claims the Plaintiff failed to promptly submit portions of her property damage claim to the Defendant pursuant to her policy. However, the Plaintiff provided 'immediate notice' as required by the policy of the incident reporting her claim first to her own agent on the day of the incident and then formally filing a claim on February 4, 2014, as per the claims note and conversation between the parties. *(State Farms claims file pg.12)*. Furthermore, the Plaintiff operated in good faith to protect hundreds of individual damaged items from further loss or damage, and the misplacing of a couple of bags of wet clothes of minimal value in the total value of the overall claim, by her daughter simply does not invalidate an entire claims policy for thousands of dollars of personal property damage.

Policies are construed **in favor** of **coverage**, and exclusions in an **insurance** policy are construed against the insurer. *Buddin v. Nationwide Mutual Ins. Co.,* 250 S.C. 332, 337, 157 S.E.2d 633, 635 (1967), *M & M Corp. v. Auto-Owners Ins. Co.,* 390 S.C. 255, 259, 701 S.E.2d 33, 35 (2010).

The Defendant cannot simply refuse to pay a claim because the Plaintiff's daughter moved a bag of clothes that constituted a mere fraction of the items damaged in the insured's claim. The Defendant has not identified any policy language that states a deadline for the Plaintiff's submission of her personal damages, the damaged items in her claim and does not require the Plaintiff to complete her claim within three years from the date of the triggering incident.

Furthermore, the Defendant claims the Plaintiff was entitled to recover replacement costs for two years from the date of loss pursuant to her policy. *(Def. Mot for SJ Facts – referencing policy - Exh. B p.31)* This is still not a policy limitation or deadline for submitting her damages. The policy states under COVERAGE B- PERSONAL PROPERTY 1. B1- Limited Replacement Cost Loss Settlement. (a)(3) "if property is not repaired or replaced within two years after the date of loss, we will pay only the costs to repair or replace less depreciation." *(SF Policy - Exh B pg. 12*) This policy provision does not, of course, limit an insured from continuing to submit items for payment that have been damaged, it merely establishes how the items would be valued by State Farm for payment. This was confirmed by the Defendant's adjuster in deposition:

> Q: So any items that she'd submitted prior to the two years she's entitled to replacement costs and after the two years you'd only pay actual cash value?
>
> A: Yes.
>
> *(Depo. Def. SF adjuster T. Edwards, Exh. C. p. 44 ln16-20)*

The Defendant State Farm decided to stop adjusting the Plaintiff's claim that was properly formally reported February 2014 pursuant to her policy. *(SF claims file - Exh D pg. 12 & 3)* The Plaintiff was complying with the Defendant's arduous process of providing research on the value of every item along with multiple photos of her damaged items. The Defendant's claims adjuster communicated with the Plaintiff throughout the process including throughout 2017 over three years

after the initial incident that damaged the Plaintiff's dwelling and personal property and triggered the policy. Since the policy, drafted by the Defendant, is silent regarding a deadline for submitting her personal property under the claim, the mere failure by the Plaintiff to complete the claim within three years does not prevent her from making her claim pursuant to her policy. There is no failure to file a claim within the statute of limitation because the statute of limitations for a breach of contract claim is three years from the date of the breach. The Defendant State Farm breached their insurance policy with the Plaintiff in January of 2018.

II The Discovery Rule Applies to Breach Of Contract Actions and The Defendant's Continuing Conduct Demonstrates the Plaintiff Was Not Aware of Any Limitation to File a Claim Under the Policy.

Under South Carolina law, certain conduct can be determined an inducement and can estop a defendant from claiming the statute of limitations as a defense " *Black v. Lexington Sch. Dist. No. 2*, 327 S.C. 55, 488 S.E.2d 327, 330 (S.C. 1997) (citations omitted); see *also Kleckley v. Northwestern Nat. Cas. Co*., 338 S.C. 131, 526 S.E.2d 218, 220 (S.C. 2000); *Holy Loch Distribs., Inc. v. Hitchcock*, 332 S.C. 247, 503 S.E.2d 787 (S.C. Ct. App.1998). This inducement may merely consist of conduct suggesting a lawsuit is not necessary. *Black*, 488 S.E.2d at 330. That conduct would include where the defendant's conduct would lead a plaintiff either to believe that an amicable adjustment of the claim will be made without suit or to forbear exercising the right to sue. *Republic Contracting Corp. v. South Carolina Dep't of Highways & Pub. Transp.,* 332 S.C. 197, 503 S.E.2d 761 (S.C. Ct. App.1998). *Ellison v. Rehab. Servs. of Columbus*, No. 3:06-1053-CMC, 2006 U.S. Dist. LEXIS 62343, at 3-4 (D.S.C. Aug. 30, 2006). The issue of whether a defendant is estopped from claiming the statute of limitations is ordinarily a question of fact, summary judgment is appropriate only where there is no evidence of conduct on the defendant's

part warranting estoppel. *Vines v. Self Mem. Hosp.,* 314 S.C. 305, 443 S.E.2d 909 (1994). *Black at 61.*

The Defendant is taking the position the statute of limitations ran on the Plaintiff's claim three years from the date of the loss, as opposed to three years from the breach of contract by the Defendant. Three years from the date of the occurrence in 2017 the Defendant's adjuster was continuing to participate in the active adjustment of the Plaintiff's claim. *(Depo. Edwards pg. 57 ln 6 to 58 ln19).* The Defendant's adjuster was having 20-minute phone conversations with the Plaintiff about her claim, the items in her claim, assisting the Plaintiff in submitting additional items into the Defendant's database for the claim and discussing the value of items in her claim. The Plaintiff had no reason to believe her claim was closed, there was any time limit for submitting personal property damages pursuant to her policy, the statute of limitations had run on her claim, or she could no longer submit items for payment under her policy since she was submitting items for payment pursuant to her policy with the assistance of the Defendant's adjuster.

The Defendant implies the Plaintiff continued to somehow submit unauthorized items under her claim. This is irrational. The Defendant states:

> Hoffman claims that in March or April 2017, she called State Farm and asked whether she could add additional items to the claim. She alleges that State Farm said that she could. (Id. P 68-69)

See Def. Motion For Summary Judgment filed Nov. 6, 2019 – Facts.

The Defendant's own claims file clearly shows the Plaintiff called State Farm regarding adding additional items to her claim. The Defendant is accusing the Plaintiff of misrepresenting that State Farm allowed the Plaintiff to continue to submit items into Enservio, by stating the Plaintiff "claims" to have done something while also having in their possession their own

insurance claims file with the Plaintiff's phone call logs between the Plaintiff and the Defendant's adjuster in May 2017. The file logs show the adjuster calling the Plaintiff back, emailing the Plaintiff and assisting with submitting items under her claim into the Defendant's claims system. *(SF Claims File entry date 4-3-2017, pg. 4)*. Clearly the Defendant's adjuster was actively participating in the evaluation of the Plaintiff's damages for her claim which would reasonably lead the Plaintiff to believe her claim was still open and valid and active and no time limit had run.

Here, the Plaintiff reasonably relied on the relationship with her own insurance company who had a contractual duty to act in good faith in dealing with the Plaintiff and in adjusting the Plaintiff's claim. The Defendant continued to adjust the claim throughout 2017 accepting submitted items from the Plaintiff and discussing the value of the items she submitted. The Plaintiff testified that she did not know about any deadline for submitting her items for reimbursement to State Farm, she did not know what the statute of limitations was for her claim, the policy does not actually state a limitation for when she has to submit her damages, or any items for compensation pursuant to her policy and she testified "… I just assumed that since she told me about the opening of the claim, that she would tell me if the claim was coming near the closing" *(Plaintiff Depo. Pg. 18,1n 17-19).* The Plaintiff has offered a mere scintilla of evidence that the Defendant's conduct induced her into failing to timely assert a claim or file a breach of contract claim within three years of the date of this loss.

III The Plaintiff Has Offered More Than a Mere Scintilla Of Evidence Showing She Is Entitled To Recover Against The Defendant For Fraud.

In order to recover in an action for fraud and deceit, based upon misrepresentation, the following elements must be shown by clear, cogent and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its

truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury. *M. B. Kahn Const. Co., Inc. v. South Carolina Nat. Bank of Charleston,* 271 S.E.2d 414 (1980).

A. The Plaintiff Can Offer Sufficient Evidence With Which A Jury Could Find The Defendant Made A False Misrepresentation of A Material Fact.

Here, the Defendant made misrepresentations of material facts, (elements one, two and three above) by first allowing the Plaintiff throughout 2017 to continue to sort and attempt to value and submit items within her claim to State Farm that the Defendant did not intend to pay. Second throughout the claim, the Defendant adjuster was adjusting the claim and depreciating the value of items that were supposed to be paid replacement cost to the Plaintiff and failed to warn her of the change in valuation of the claim from replacement value to actual cash value pursuant to the policy. Finally, the Defendant misrepresented that the Plaintiff had a time limitation or missed any statute of limitations on her claim.

It is undisputed that as the Plaintiff's own insurance company, the Defendant owes the Plaintiff a duty of good faith and fair dealing when investigating, evaluating, communicating and negotiating with the Plaintiff. *Doe v. South Carolina Med. Mal. Liab. Joint Underwriting Assoc.,* 347 S.C. 642, 649, 557 S.E.2d 670, 674 (2001) ("there is an implied covenant of good faith and fair dealing in every **insurance** contract 'that neither party will do anything to impair the other's rights to receive benefits under the contract'"); *Tadlock Painting Co. v. Maryland Cas. Co.,* 322 S.C. 498, 501, 473 S.E.2d 52, 54 (1996) ("Implicit . . . is the extension of a **duty** of good

faith and fair dealing in the performance of all obligations undertaken by the insurer for the **insured**.")

The allegations of the Plaintiff are that the Defendant throughout 2017 continued to participate in assisting the Plaintiff with researching, investigating and submitting information for her claim that the Defendant then denied and claimed had expired three years from the date of loss. *(Depo. Edwards pg. 57 ln 6 to 58 ln19, Complaint para. 7-9)*

Q: And then it looks like you got a -- take a look at that. October 25th, 2017 conversation with her, does that sound right?
A: Yes. Based on the follow-up, I had a conversation with her October 25th, 2017.
Q: Okay. And then -- so I show a phone call then of 24 minutes and that's 844-485-4300, do you know if that would be a State Farm number?
A: Yes, that's a State Farm number.
Q: Okay. That was a 24-minute conversation, is that consistent with your notes?
A: It's possible it was 24 minutes, but I don't know for sure.
Q: So give us the substance of that conversation, the notes on that.
A: Yes. The notes state that I did receive an email from Ms. Hoffman and she detailed her injury regarding, that she occurred with a family member. She gave, let's see, I'm looking at the notes, just a moment.

58

Q: Yes, ma'am.
A: She gave updated pricing on about six items and I placed a call to let her know or to discuss with her that I received the email. She advised that she submitted the bag of clothing list that wasn't added, where she forgot to place, that had been placed in the attic. She stated she will go onto Enservio again to confirm it was received and also I advised her that, I'm sorry, I advised her I will go into Enservio to make sure the items were received that was on the clothing list, and then I also

advised her that I received information for the six items and the rug.
Q: Okay. So were you having a conversation with her specifically about Persian rugs that she was attempting to replace?
A: I did have a discussion, those are two of the items on the list, the two Persian rugs, yes.

Therefore, the facts indicate the Defendant's adjuster was having specific conversations with the Plaintiff regarding submissions of her claimed damages in October of 2017 which were inconsistent with the position the Defendant then took a few months later in January of 2018 when the Defendant represented to the Plaintiff, she had missed her deadline under her policy which would have been on January 4, 2017, (a year earlier) for submitting her damaged personal property under her insurance policy. *(State Farm letter to Plaintiff dated 1/10/2018).*

The Defendant took the position in their summary judgment motion to the Court the Defendant was acting in good faith and assisting the Plaintiff in submitting items pursuant to her insurance contract. Unfortunately, this is deceptive, the Defendant claims:

> When Hoffman had not submitted any paperwork to support her claim on or about November 9, 2015 – twenty -two months after the loss – State Farm called Hoffman to remind her of this benefit deadline." (Hoffman Dep., p 142)
>
> (*Def. Motion For Summary Judgment filed Nov. 6, 2019 – Facts.)*

The deposition testimony of the Plaintiff does indicate the Plaintiff talked to State Farm, however when the claims notes are referenced the Defendant DID NOT actually contact the Plaintiff to assist her or advise her regarding her policy provisions as the Defendant states. *(SF claims file pg. 7)* The Defendant actually returned a phone call from the Plaintiff who was unable to access the on-line portal in order to send claims items to the Defendant and was requesting assistance. The information regarding the valuation of the items as to 'replacement costs' may have been included in the conversation to the Plaintiff; however, the Defendant cannot offer any testimony from the

Plaintiff as to how the Defendant determined the value of her items. Furthermore, the adjuster testified that she was going back into the system and readjusting the value of the Plaintiff's items which involved the items being 'depreciated based on age and condition" this would be redundant and inconsistent with paying replacement value of damages items. *(Edwards Depo pg. 39).* The Plaintiff has no idea the difference between the replacement cost and actual cash value paid pursuant to her insurance policy and the Defendant was inconsistent at best in how this was paid.

Furthermore, in September of 2016, the Defendant's adjuster failed to properly advise the Plaintiff of the two-year valuation change under her policy included on page 12 reducing the Plaintiff's damages from replacement value to actual cash value.

Q: Okay. And the discussion that you and Ms. Hoffman were having at that time were cost related to replacement cost not actual cash value of items, is that correct?
A: That is correct.
Q: Okay. And in this conversation did you advise her that she was no longer entitled to make claims for replacement cost because it was two years after the claim pursuant to the policy?
A: Not on September 28th, 2016

(Exh C- Edwards Depo. pg. 54 ln 7-16)

Here, the Defendant's adjuster made multiple false misrepresentations of material fact related to the Plaintiff's claim regarding the timing of the claim pursuant to the Plaintiff's policy, and the valuation of the Plaintiff's damages pursuant to the policy.

B. <u>The Plaintiff Can Offer Sufficient Evidence With Which A Jury Could Find the Defendant Made the Misrepresentations with Reckless Disregard of its Truth or Falsity and with the Intent the Plaintiff Act upon the Misrepresentation.</u>

The Plaintiff must merely offer circumstantial evidence to show the representation was made with reckless disregard of its truth or falsity and intent that the representation be acted upon because

the Court recognizes that the fourth element and the fifth element must usually be proven circumstantially. *Mylin v. Allen-White Pontiac, Inc.,* 281 S.C. 174, 314 S.E.2d 354 (Ct.App.1984); (fourth element); *State v. Carroll,* 277 S.C. 306, 286 S.E.2d 382 (1982) (fifth element); *May v. Hopkinson,* 347,S.E.2d508 (S.C.App. 1986). *(Also see Complaint Para. 7-8)*

The general rule is that fraud must relate to a present or pre-existing fact and cannot ordinarily be predicated on unfulfilled promises or statements as to future events. However, where one promises to do a certain thing, having at the time no intention of keeping his agreement, it is a fraudulent misrepresentation of a fact, and actionable as such. *Davis v. Upton,* 250 S.C. 288, 157 S.E.2d 567, 568 (1967); *Woodward v. Todd***,** 240 S.E.2d 641 (1978).

The adjuster continued to participate in adjusting and evaluation the Plaintiff's claim throughout 2017. The Defendant's adjuster did not properly advise the Plaintiff of the change in value pursuant to her policy and never advised her that the Defendant intended to end or close the claim after three years. The adjuster continued, four years after the original incident, in October of 2017 to participate in discussions including a 24-minute phone conversation with the Plaintiff regarding her claim. This would have been a year after the Defendant is now claiming the statute of limitations ran in January of 2017.

The Plaintiff was actively communicating with the Defendant's agent regarding her claim that began in January of 2014 and continued to research and attempt to submit information to the Defendant for her claim which a jury could find the Defendant never informed the Plaintiff the Defendant had no intention of honoring.

C. **The Plaintiff Can Offer Sufficient Evidence With Which A Jury Could Find the Plaintiff was Not Aware the Defendant was Misrepresenting the Defendant's Intentions And Relied on The Defendant's Misrepresentations.**

The Plaintiff was clearly unaware the Defendant did not have every intention of paying her insurance claim. The Plaintiff continued to contact the Defendant adjuster, research her damaged items and submitted them to State Farm's computer system Enservio. The adjuster and the Plaintiff continued to have discussion regarding the claim, as evidenced by their phone conversations and the adjuster was actively reviewing the submitted damages. *(SF-claims file pg.3-4)*.

Furthermore, the Plaintiff relied on the Defendant's representations as the Defendant and Plaintiff had a contractual relationship which created a duty between the parties. The Plaintiff believed the Defendant was acting in good faith and was assisting her with her claim. She testified in her deposition; - "Did you talk with anyone at State Farm concerning the statute of limitations at any time? A: No. Like I said, I just assumed that since she told me about the opening of the claim, that she would tell me if the claim was coming near the closing. " . *(Plaintiff. Depo pg. 181 ln 15-19 Exh A)* In the adjuster's deposition she indicated she also did not advise the Plaintiff regarding her limitations on how long she had to submit items in her claim in 2015, "And at -- in that phone call did you advise Ms. Hoffman of how long she had to provide this information? A: Based on this file, no, I did not. *(Depo. Def Edwards Pg. 32 ln 22 -25) (Also see Complaint Para. 6-10)*

Therefore, the Plaintiff can offer sufficient facts with which a jury could find the Plaintiff relied on the misrepresentations made by the Defendant and was not aware the Defendant's representations were false.

D. <u>The Plaintiff Can Offer Sufficient Evidence With Which A Jury Could Find the Plaintiff had a Right to Rely on the Defendant's Misrepresentations</u>.

The right to rely is determined in light of the Plaintiff's duty to use reasonable prudence and diligence under the circumstances and is made on a case-by-case basis. Various circumstances which will be considered include the form and materiality of the representation; the respective age, experience, intelligence and mental and physical conditions of the parties; and the relations and respective knowledge and means of knowledge of the parties. *Parks v. Morris Homes Corporation,* 245 S.C. 461, 141 S.E.2d 129 (1965). *Florentine Corp., Inc. v. PEDA Inc*.,339 S.E.2d 112(1985). Finally, where the relationship between the parties is a fiduciary relationship, the Plaintiff would be reasonable in relying on the statement of the Defendant. *Thomas v. American Workmen,* 197 S.C. 178, 14 S.E.2d 886 (1941); *King v. Oxford,* 282 S.C. 307, 318 S.E.2d 125 (S.C.App.1984).

Here, the Plaintiff is making a claim for a loss with an experienced insurance claims specialist/adjuster who has worked in the insurance business and has the experience and training to advise the Plaintiff regarding her claim. The adjuster testified she had a duty to advise the Plaintiff regarding her limitations on her claim –

So do you think that State Farm has a duty to advise their insured when they've got an approaching limitation on making their claim?

A: Yes. I believe State Farm does have a duty to make them aware.

Q: Okay. And it -- but in 2017 State Farm was

76

continuing to have a conversation with Ms. Hoffman about her claim and she was continuing to provide information to State Farm about the things that she was claiming. Are y'all aware that this was taking time out of her life to file these claims?

A: I'm sure it took time to send us the information, yes.

Q: So when the supervisor reviewed the file in

February did that supervisor didn't advise you to send in the letter at that point?
A: No, they did not.
Q: Because that would have been three years past. February, no? Yeah, February of 2016. So, two supervisors reviewed this file before it took one to realize that it had been three years past the date of incident, is that correct?
A: Yes, that's correct.

(Depo. Def Edwards Pg. 75:19 - 76:20*)*

Therefore, the party's relationship is clearly one of huge disparity between the experience, knowledge and position of the two actors as one is an experienced and trained insurance adjustor, and the Plaintiff has no insurance or claims background. The Plaintiff has a twelfth-grade education, worked in fast food most of her life and for Michelin for ten years until she became disabled due to her asthma. Finally, consideration should be given to the fact that the entire misrepresentation and basis for the fraud would result in finical gain for the Defendant State Farm and ending the claim under an asserted statute of limitations defense saves the Defendant from paying for hundreds of validly claimed lost items rightfully covered pursuant to the Plaintiff's policy.

The Plaintiff can offer sufficient evidence with which a jury could find the Plaintiff had a right to rely on the representations and actions of the Defendant and their agents in their claims handling and failure to advise the Plaintiff regarding an impending limitation in her policy, of a value change in her damages and an asserted statute of limitations.

E. <u>The Plaintiff Can Offer Sufficient Evidence With Which A Jury Could Find the Plaintiff Suffered Consequent and Proximate injury.</u>

Finally, the Plaintiff as indicated above was not properly warned in advance or properly notified of the change in the valuation of her claimed damages from replacement value after two years

to actual cash value pursuant to her policy, nor was she warned of any three-year limitation to make a claim for her damages under her policy. The Plaintiff throughout 2017 three years after the claim, was still working with the Defendant's adjuster compiling and submitting photographs for some 700 items into the program used by the Defendant at the time, most of which were not a bag of wet clothes. *(SF Claims file 3-4)* The Plaintiff can show a monetary loss in this matter of personal property, the time and expense of research and time in compiling the information for the Defendants that they knew or should have known they were going to disregard, as well as, costs and fees in pursuing this matter with which a jury could award damages based upon.

Therefore, based upon the evidence and all inferences which can be reasonably drawn therefrom viewed in the light most favorable to the Plaintiff, the Plaintiff can offered genuine issues of material fact in dispute with which a jury could find the Defendant made material misrepresentations to the Plaintiff with a reckless disregard of the its truth or falsity, with the intent the representation be acted upon and knowledge the Plaintiff was ignorant of the falsity of the representations while rightfully relying upon the truth of the representations and suffering injury therefrom.

IV. The Court Erred In Dismissing Plaintiff's Fraud Cause Of Action Based On The Prior Court Order Denying the Motion To Dismiss.

The Defendant filed a motion to dismiss February 8, 2019, pursuant to Rule 12, challenging the particularity of the Plaintiff's allegations in her Complaint claiming the Plaintiff failed to specifically allege Fraud as required by Rule 9(b).

Pursuant to Rule 12, the Court must consider whether the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, state any valid

claim for relief. *Brazell v. Windsor,* 384 S.C. 512, 515, 682 S.E.2d 824, 826 (2009), *(see Rule 12, SCRCP)*, "The trial court and this [C]ourt on appeal must presume all well pled facts to be true." *Morrow Crane Co. v. T.R. Tucker Constr. Co.,* 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct. App. 1988). "[P]leadings in a case should be construed liberally so that substantial justice is done between the parties. Further, a judgment on the pleadings is considered to be a drastic procedure by our courts." *Russell v. City of Columbia,* 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991). *HHHunt Corp. v. Town of Lexington,* 389 S.C. 623, 631-32, 699 S.E.2d 699, 703 (Ct. App. 2010).

Rule 9(b) requires that allegations " . . . constituting fraud … shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally". *Rule 9(b), SCRCP.* In contrast, most other causes of action need only be pled with "a short and plain statement of the facts showing that the pleader is entitled to relief" " *Rule 8(a)(2), SCRCP.* Finally, Rule 12(e) specifically addresses motions for a More Definite Statement:

> **(e) Motion for More Definite Statement.** If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within 15 days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.
>
> *Rule 12(e), SCRCP.*

The Defendant's motion to dismiss alleged the Plaintiff's complaint failed to plead fraud with enough particularity to put State Farm on notice of the "who, what, when, where and how" required in a fraud complaint. In the hearing on June 10, 2019, Judge Manning denied the Defendant's Motion to Dismiss the Plaintiff's Complaint pursuant to Rule 12 and permitted the Plaintiff to allege fraud with more particularity. The Plaintiff believing her complaint allegations to be sufficient did not amend the complaint.

In the subsequent motion on December 12, 2020, the Court erred in basing the granting of the Summary Judgment motion on the prior Rule 12 Order – for the Motion to Dismiss without any consideration of; the sufficiency of the fraud pleadings, or any findings they failed to meet the pleading standards for fraud pursuant to Rule 9. Finally, the Court failed to make any findings the Plaintiff failed to comply with the August 16, 2019, court Order which would not **require** the dismissal of the Plaintiff's fraud cause of action but indicates the "court **may** strike the pleadings . .. ". *Id (emphasis added).* Finally, the striking of the Plaintiff's pleadings under the circumstances would amount to unjust sanctions since the Plaintiff alleged all the essential elements in her complaint to put the Defendant on sufficient notice of all the allegations of fraud as required by Rule 12 and Rule 9 and the striking of the pleadings resulted in an unjust Order of the Court.

The Defendant's motion for a more specific statement is required to specifically "point out the defects complained of and the details desired". *Id.* The Defendant requested: "Who, what , when, where and how" in their motion regarding the fraud claim.

Plaintiff's complaint alleges January 8, 2014, she had a contract of insurance with the Defendant State Farm Insurance Company, had suffered a covered event at her home and was itemizing the contents of her garage and the loss over a number of years, providing the specifics on the claim at the request of the Defendant's adjuster Tamyachta Edwards. *(Plaintiff Complaint para. 2-5)* This is the who, when and where of the Defendant's motion. There is no ambiguity for the Defendant as to the identity of the actors and witnesses that are involved in the fraud claim, the incident which forms the basis of the fraud and the location of the incident.

The complaint then details how and what the Defendant did to the Plaintiff related to the misrepresentations which she relied on which include: continuing to represent to the Plaintiff that she could make her claim; never properly communicating with her the limitations in regard to when she

had to submit her claim; failing to advise of any time limit for her claim; never advising of any limitations on her ability to make her claim, permitting her to continue to add items to the claim after 2017; misrepresenting the claim was still open and active and accepting items into the Defendant's portal to complete a claim that the Defendant never intended to honor. *(Complaint 6-9).*

The Court erred in failing to consider the Plaintiff's complaint properly pursuant to Rule 12 and Rule 9, the Plaintiff's pleadings should have been in the least considered by the Court prior to being dismissed and more likely should have been given a liberal pleading consideration. The dismissal by the Court based on the February 8, 2019, court Order is equivalent to a judgment on the pleadings and is a drastic remedy which was improper without a finding that the Plaintiff's pleadings were insufficient. The Plaintiff plead with sufficient particularity giving the Defendant reasonable and proper notice of the allegations of the fraud and the Court should reverse the dismissal of the fraud cause of action and remand the matter for trial.

V. The Court Erred in Granting The Defendant's Motion For Summary Judgment For Bad Faith As the Plaintiff Can Offer A Mere Scintilla Of Evidence To Satisfy The Elements in Dispute.

Under South Carolina law, the elements of an action for bad faith under an insurance contract include: (1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; (2) refusal by the insurer to pay benefits due under the contract; (3) resulting from the insurer's bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing arising on the contract; (4) causing damage to the insured. *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 415 S.E.2d 393, 396-97 (S.C. 1992). *Wactor v. Jackson Nat'l Life Ins. Co.,* No. 8:11-3167-TMC, 2013 U.S. Dist. LEXIS 96383, at 10 (D.S.C. July 10, 2013). There is no dispute the parties had a contract of insurance, that the Defendant is now refusing to pay, and the

Plaintiff is suffering the loss of thousands of items that the Defendant is refusing to pay that are claimed owed by the Plaintiff pursuant to the contract (elements 1, 2 and 4).

An insurer acts in bad faith when there is no reasonable basis to support the insurer's decision. *Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996). But "if there is a reasonable ground for contesting a claim, there is no bad faith." *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 360, 415 S.E.2d 393, 397 (1992). *Helena Chem. Co. v. Allianz Underwriters Ins. Co.,* 357 S.C. 631, 645, 594 S.E.2d 455, 462 (2004). The Defendant's claim State Farm had a reasonable basis for denying the Plaintiff's insurance claim specifically because "the plaintiff waited over four years to inform State Farm of an alleged loss to seven hundred items of personal property" *(Def Mot for Sum Jmt).*

The Defendant's bad faith refusal to pay pursuant to the policy claiming a three-year statute of limitations for a breach of contract action is per se bad faith. Had the Defendant investigated the claim for six months and then notified the Plaintiff they were denying the claim the statute of limitations would begin to run from the date of the breach, here the notification, the statute does not run from the date of loss that triggered the claim for the policy.

The Defendant drafted the policy and failed to include a deadline for submission of damaged personal items in the claim the same way there is a deadline for claims under the dwelling portion of the policy and now seeks to avoid payment for these losses under the contract claiming a statute of limitations defense. There is no provision in the State Farm policy that provides a limitation on how long the Plaintiff must submit personal items under the contract of insurance. State Farm wrote the policy, and the policy is interpreted, liberally in favor of coverage, and interpreted in favor of the Plaintiff against the scrivener. In South Carolina, clauses of inclusion should be broadly construed in favor of coverage, and when there are doubts about the existence or extent of coverage, the

language of the policy is to be "understood in its most inclusive sense." *Buddin v. Nationwide Mutual Ins. Co.,* 250 S.C. 332, 337, 157 S.E.2d 633, 635 (1967) *Cook v. State Farm Auto. Ins. Co.,* 376 S.C. 426, 430, 656 S.E.2d 784, 786 (Ct. App. 2008)

The statute of limitations for a contract action is three years from the breach and the Defendant has failed to identify any failure to provide notice of the claim pursuant to the policy as the Plaintiff was working with a State Farm adjuster on her claim actively for years. On deposition, the Defendant's adjuster handling the file took the position the statute of limitations was three years from the date of incident, when the Plaintiff's FROG flooded. The file was supposed to be reviewed by a supervisor every 30 days but was reviewed in February 2016 and not again until December 2017 creating an almost 2-year gap. *(T. Edwards Depo. Pg 62 ln 1 – pg. 53 ln1).* When reviewed by another supervisor in December 2017 - the claims file indicates the State Farm adjuster is not only alleging a statute of limitations time limit defense but claims their insured, the Plaintiff, is submitting items that may not have been damaged in this event " We are unable to determine if damages were related to this loss or a new event." *(SF Claims file pg. 3)*. The adjuster alleges the Plaintiff is committing insurance fraud in this claim while denying her valid claim for coverage under her policy based on a time limitation that is NOT actually in her State Farm policy.

Therefore, the Court should reverse the granting of summary judgment as the Defendant is not entitled to summary judgment on the bad faith cause of action as the Plaintiff can show a mere scintilla of evidence proving the Defendant unreasonably denied the Plaintiff's claims in bad faith and in breach of an implied covenant of good faith and fair dealing.

CONCLUSION

For all the forgoing reasons the Court should reverse the grant of summary judgment and remand the matter for trial.

Respectfully submitted:

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