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Jan 28 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Williamsburg County Court of Common Pleas
Kristi F. Curtis, Circuit Court Judge
Case No.: 2014-CP-45-00132

Case No.: 2021-000835

**South Carolina Farm Bureau Mutual
Insurance Company,**

Plaintiff-Appellant,

v.

Marion L. Driggers,

Defendant-Appellant,

and

**Shiralee Driggers, Tammy D. Floyd,
Estate of Arthur McKenzie, The
Travelers Home and Marine Insurance
Company, The United States of
America acting by and through Its
agency, The Internal Revenue Service,
and The South Carolina Tax
Commission,**

Of Whom,

**The Travelers Home and Marine
Insurance Company is the,**

Defendant-Respondent.

PROOF OF SERVICE

I certify that on August 2, 2021, the Notice of Appeal was served, by then *pro se* Defendant, Marion L. Driggers, on each party via electronic mail to counsel of record as prescribed by the applicable Rule of Civil Procedure and as approved by Order of

the Court on December 10, 2021. Attached hereto as Exhibit "A" is a copy of the email transmittal dated August 2, 2021.

J. Dwight Hudson, Esq.
Hudson Law Offices
PO Box 70218
Myrtle Beach, SC 29572
mgraham@hudsonlawoffice.com
Attorney for Plaintiff-Appellant

William P. Davis, Esq.
Baker, Ravenel, & Bender, LLP
3710 Landmark Dr. Ste 400
PO Box 8057
Columbia, SC 29204
wdavis@brblegal.com
Attorney for Respondent Travelers

Mr. Edward K. Pritchard, III
Pritchard Law Group, LLC
8 Cumberland St., Ste 200
Charleston, SC 29401
epritchard@pritchardlawgroup.com
Attorney for Defendants Shiralee Driggers and Tammy Floyd

Mr. Daryl James Corbin
PO Box 447
Florence, SC 29503-0447
dcorbin@corbinlawsc.com
Attorney for Defendant Estate of Arthur McKenzie a/k/a Auther McKenzie

Mr. George John Conits
U.S. Attorney's Office
55 Beattie Place, Ste 700
Greenville, SC 29601
George.conits@usdoj.gov
Attorney for IRS

Ms. Tasha B. Thompson
S.C. State House Finance and Development Authority
300C Outlet Pointe Blvd.
Columbia, SC 29210
Tasha.thompson@schousing.com
Attorney for SC Tax Commission

s/ Reese R. Boyd, III

Reese R. Boyd, III, Esq. (SC Bar #: 7151)
Davis & Boyd, LLC
Post Office Box 70517
Myrtle Beach, SC 29572
(843) 839-9800
(843) 839-9801 (fax)
reese@davisboydlaw.com

Attorney for Defendant-Appellant

Dated: January 28, 2022
Myrtle Beach, South Carolina

----- Forwarded Message -----

From: Marion Driggers <mldriggers@yahoo.com>
To: Curtis, Kristi F. Law Clerk (Kimberly Land) <kcurtislc@sccourts.org>
Cc: Edward Pritchard <epritchard@pritchardlawgroup.com>; Daryl Corbin <dcorbin@corbinlawsc.com>;
Mgraham Hudsonlawoffice. Com <mgraham@hudsonlawoffice.com>; William P. Davis <wdavis@brblegal.com>;
Laura Brown <laura.brown@wc.sc.gov>; Conits George (USASC) <george.conits@usdoj.gov>;
tasha.thompson@schousing.com <tasha.thompson@schousing.com>
Sent: Monday, August 2, 2021, 12:42:51 PM EDT
Subject: 2014-CP-45-132

Please see attached

M. L. Driggers
3497 Main Rd
Leno City, SC 29260

The Hon. Jerry Albert Kitchens
Chief, SC Court of Appeals
P O Box 11629
Columbia, SC 29211

Re: South Carolina Farm Bureau Mutual Insurance Company v. Minton, L. Chasens, et al.
Fair Court Case No. 2014-CP-45-132

Dear Ms. Kitchens:

Enclosed is an original and copy of a Notice of Appeal in the above case. Also enclosed are the following:

1. Notice warning Summary Judgment to Travelers Insurance Company
2. Motion to Reconsider
3. Request for Clarification of Motion
4. Proof of Loss
5. Check for Court of Appeals fee (\$750 (two hundred fifty dollars))

I will be serving all other parties by email on this date.



Marion L. Driggers
August 3, 2021

M. L. Driggers
3497 Hebron Rd
Lake City, SC 29560

The Hon. Jenny Abbott Kitchings
Clerk, SC Court of Appeals
P O Box 11629
Columbia, SC 29211

Re: South Carolina Farm Bureau Mutual Insurance Company v. Marion L. Driggers, et.al.
Trial Court Case No: 2014-CP-45-132

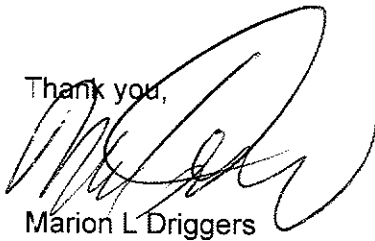
Dear Ms. Kitchings:

Enclosed is an original and copy of a Notice to Appeal in the above case.
Also enclosed are the following:

1. Notice granting Summary Judgement to Travelers Insurance Company
2. Motion to Reconsider
3. Request for Clarification of Motion
4. Proof of Loss
5. Check for Court of Appeals for \$250 (two hundred fifty dollars).

I will be sending all other parties by email on this date.

Thank you,



Marion L Driggers

August 3, 2021

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Jan 28 2022

SC Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas,

Kristi F. Curtis Circuit Court Judge

Case No. 2014-CP-45-132

Mrs. Mariel D. Norton,
Baker, Ravenel & Bender, LLP

Respondent,

v.

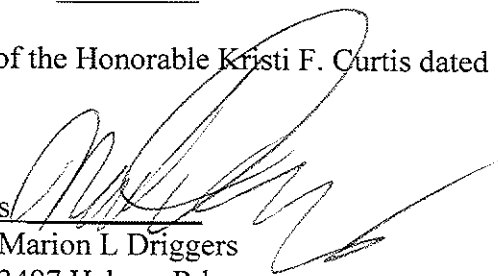
Marion L Driggers,

Appellant.

NOTICE OF APPEAL

Marion L Driggers appeals the order of the Honorable Kristi F. Curtis dated March, 04, 2021.

August 3, 2021


s. Marion L Driggers
Marion L Driggers
3497 Hebron Rd
Lake City, South Carolina 29560
(843) 598-0735
Pro Se

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF WILLIAMSBURG)	C/A NO.: 2014-CP-44-00132
)	
South Carolina Farm Bureau Ins. Co.,)	
)	
Plaintiff,)	
)	ORDER GRANTING CROSS-
vs.)	DEFENDANT THE TRAVELERS HOME
)	AND MARINE INSURANCE
Marion L. Driggers, Shiralee Driggers,)	COMPANY'S MOTION FOR SUMMARY
Tammy D. Floyd, Arthur McKenzie, a/k/a)	JUDGMENT
Arther McKenzie, The Travelers Home)	
and Marine Insurance Company,)	
The United States of America acting by)	
and through its agency, The Internal)	
Revenue Service and The South Carolina)	
Tax Commission)	
)	
Defendant.)	

RECEIVED
Jan 28 2022
SC Court of Appeals

This matter came before the Court on Cross-Defendant The Travelers Home and Marine Insurance Company's ("Travelers") Motion for Summary Judgment. For the reasons set forth below, Travelers's motion is **GRANTED**.

FACTUAL BACKGROUND

This declaratory judgment action arises out of two insurance policies issued by two different insurers to different insureds on the same house located in Williamsburg County:

- (1) Policy number 984761288 633 1 –Travelers issued this homeowner's policy to Defendant Arthur McKenzie on a home located at 200 W. Highway 378 By-pass in Lake City, South Carolina for the period from May 7, 2009 to May 7, 2010.
- (2) Policy number FI 0401219 – Plaintiff South Carolina Farm Bureau Insurance Company ("Farm Bureau") issued this dwelling fire policy on the same property to Defendant Marion L. Driggers for the period from May 24, 2009 to May 24, 2010.

On or about April 25, 1997, Defendant Tammy Floyd and Lisa Gamble entered into a

Contract for Sale and Purchase of the property. On or about October 13, 2006, Ms. Gamble assigned the Contract for Sale and Purchase to Defendant McKenzie.

On or about November 26, 2009, the insured home was damaged by fire, and Defendant McKenzie made a claim under his Travelers policy. The adjustment of Defendant McKenzie's losses was complicated by tax liens of Defendants The United States of America, acting by and through its agency, The Internal Revenue Service, and The South Carolina Tax Commission. Travelers settled Defendant McKenzie's claims for \$232,073.45, of which the sum of \$116,933.05 has been paid for his attorneys' fees and expenses in connection with said claim, leaving a balance of \$115,140.40. Travelers moved to deposit that amount with the Court pursuant to its interpleader cross-claims. This Court granted that motion under a separate order.

In their Answer to the within action, Mr. and Mrs. Driggers and Tammy D. Floyd asserted cross-claims against Travelers alleging that:

- (1) Travelers and Mr. McKenzie "have conspired with one another with the object . . . of avoiding the payment by the Travelers of any sums toward the lawful claims of Mr. and Mrs. Driggers and Tammy D. Floyd;
- (2) Travelers' "delay in investigating, processing, and paying the McKenzie claim has damaged [them] in that they have not yet been paid the value of their claim; and that they have had to claim against their own policy of insurance, which should have been secondary; and in that they have had to defend this action"; and
- (3) Travelers has "acted in legal bad faith toward the rights [of] these defendants and have damaged these defendants."

Travelers's Answer to the cross-claims denies these allegations and includes several affirmative defenses, including that the cross-claimants are without standing to prosecute their cross-claims against Travelers and that the cross-claimants are strangers to the subject insurance contract with no rights thereunder.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCF. The purpose of summary judgment is to expedite disposition of cases not requiring the services of the factfinder. *Bankers Trust of S.C. v. Benson*, 267 S.C. 152, 155 226 S.E.2d 703, 705 (1976).

DISCUSSION

“Standing to sue is a fundamental requirement in instituting an action.” *Connor Holdings, LLC v. Cousins*, 373 S.C. 81, 84, 644 S.E.2d 58, 60 (2007). It is a part of the concept of justiciability that concerns whether a party may make a legal claim or argument. *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct.App.2008). The general rule in South Carolina is that for parties to have standing, they must have (1) a personal stake in the subject matter of a lawsuit and (2) be a real party in interest. *Ex Parte Gov't Employee's Ins. Co.*, 373 S.C. 132, 644 S.E.2d 699 (2007). “A real party in interest ... is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action.” *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994).

Beyond the general rule are three elements that must be met: (1) the plaintiff must have suffered an injury in fact - an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the conduct complained of - the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court; and (3) it must be likely, as opposed to merely

speculative, that the injury will be redressed by a favorable decision. *Smiley v. S.C. Dep't of Health and Env'tl Control*, 374 S.C. 326, 649 S.E.2d 31 (2007) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)). “The party seeking to establish standing carries the burden of demonstrating each of the three elements.” *Sea Pines Ass'n for the Protection of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001).

Travelers cites *Park v. Safeco* to support its position that the Cross-Claimants are strangers to its policy and therefore do not have standing to assert any of the cross-claims asserted against it. See *Park v. Safeco Insurance Company of America*, 251 S.C. 410, 162 S.E.2d 709 (1968). In *Park v. Safeco*, Mr. Park, who alleged that he had been injured in a motor vehicle accident in which a Mr. McCall was at fault, brought a declaratory judgment action against McCall's automobile liability carrier, Safeco Insurance Company (“Safeco”). Mr. Park also named his own uninsured motorist carrier, Southern Home Insurance Company (“Southern Home”), as a defendant. He sought a judicial determination as to whether Safeco had successfully denied liability coverage to McCall, among other things. He had not brought suit against McCall. The Supreme Court affirmed the lower court's having sustained Safeco's demurrer. One of the grounds was that, because Mr. Park had not procured a judgment against McCall, and was a stranger to the Safeco insurance contract, he lacked standing to seek declaratory judgment as to that policy:

Counsel for plaintiff argues, with some appeal, that an injured party should have as much right to ask the court to determine the validity of a tortfeasor's liability insurance policy as the insurer or the insured. We think the fallacy of this argument lies in the fact that the injured person is not a party to the contract and has, under the facts of this case, no primary standing to litigate a dispute between the insured and insurer until and unless he establishes liability against McCall.

Id. at 415, 162 S.E.2d at 711.

Travelers contends that *Park v. Safeco* is controlling, as the Cross-Claimants are not

parties to the insurance policy issued by Travelers and therefore do not have primary standing to litigate their allegations against Travelers.

Cross-Claimants contend that, as a required loss payee and the actual owners of the insured property, they have rights under Travelers's policy. Specifically, Cross-Claimants allege that they have, at a minimum, an equitable lien on the subject property that Travelers is legally obligated to pay.

The Cross-Claimants do not allege that they have any contractual relationship with Travelers. Rather, they admit the allegations in paragraph ten (10) of the Complaint that Defendant McKenzie occupied the house in question pursuant to a "rent to own" agreement, according to which he was to have insured the property and listed Cross-Claimants as loss payees, insureds or additional insureds. Cross-Claimants were not listed as loss payees, insureds or additional insureds on the Travelers policy. Apparently concerned that was the case, Cross-Claimants purchased their own policy insuring their own interests in the property.

- **Cross-Claimants are not insureds under the Travelers policy and do not have standing to pursue a cause of action for civil conspiracy.**

Cross-Claimants' allegations of civil conspiracy fail as a matter of law. A civil conspiracy is "(1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage." *Lee v. Chesterfield Gen'l Hosp, Inc.*, 289 S.C. 6, 10-11, 344 S.E.2d 379, 381-82 (Ct. App. 1986), citing *Charles v. Texas Co. (Charles I)*, 192 S.C. 82, 5 S.E.2d 464 (1939). It cannot be contended that Travelers's adjustment and resolution of the claim of its insured, Defendant McKenzie, pursuant to their contract injured Cross-Claimants – let alone that it was done for that purpose. Cross-Claimants are strangers to Travelers contract, a fact of which they were very well aware as evidenced by their procurement of an insurance contract of their own with Plaintiff Farm Bureau.

Even if Travelers had breached a contract with Cross-Claimants, it would not amount to civil conspiracy. “A mere breach of contract is not a civil conspiracy; the damages for breach of contract cannot satisfy the requirement of special damages.” HUBBARD AND FELIX, THE SOUTH CAROLINA LAW OF TORTS, 2d ed. p. 387, citing *Vaught v. Waites*, 300 S.C. 201, 387 S.E.2d 91 (Ct. App. 1989).

- **Cross-Claimants are not insureds under the Travelers policy and do not have standing to pursue a cause of action for breach of contract.**

Next, Cross-Claimants allege that Travelers’s purported delay in adjusting its named insured’s claim has damaged them. The fallacy of this allegation is that Travelers’s duties with regard to the adjustment of the claim were owed to its name insured – not to Cross-Claimants.

Similar to the situation presented in *Park v. Safeco*, Cross-Claimants are not parties to the Travelers insurance contract and have no standing to complain about how the claim of the named insured, Defendant McKenzie, was resolved. After all, when they became concerned that their alleged interests had not been protected under Defendant McKenzie’s policy, they could have taken steps then to enforce the provision in the buy and sell agreement that purportedly required that their interests be protected under the policy. Instead, they chose to purchase a policy of their own to protect their interests.

- **Cross-Claimants are not insureds under the Travelers policy and do not have standing to pursue a cause of action for bad faith.**

Finally, Cross-Claimants cannot assert a bad faith claim against Travelers because they are not parties to the Travelers insurance contract. “The elements of an action for bad faith refusal to pay benefits 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.” *Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 6, 466 S.E.2d 727, 730 (quoting *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 359-60, 415 S.E.2d 393, 396-97 (1992)).

CONCLUSION

Ultimately, Cross-Claimants are strangers to the insurance contract between Travelers and Defendant McKenzie. As such, Cross-Claimants’ claims are without legal foundation, as a result of which Travelers is entitled to summary judgment.

For the forgoing reasons, Travelers’s motion for summary judgment is hereby **GRANTED** and all the cross-claims against Travelers are hereby dismissed with prejudice.

AND IT IS SO ORDERED.

The Honorable Kristi F. Curtis



Williamsburg Common Pleas

Case Caption: South Carolina Farm Bureau VS Marion L Driggers , defendant, et al
Case Number: 2014CP4500132
Type: Order/Summary Judgment

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

SC FARM BUREAU V DRIGGERS 2014-CP-45-00132

March 15, 2021

Motion to Reconsider

To: Judge Kristi Curtis

Dear Judge Curtis;

There are some serious errors that Mr. Davis stated in his Motion for Summary Judgement. This contract was forged by Mr. McKenzie in 2006. But it was not recorded until just before his fire. In S.C., a forged contract will not stand.

Also, as I stated to you before, the contract that he is using to make a claim states in Judge Shuler's order that any paperwork not signed by both parties is null and void. This has already been tried by Thomas Cooper in Williamsburg County and found that S.C. Code 27-35—60 controls on real estate contracts and that it cannot be transferred without the permission of the landlord. This was appealed by me and a friend and it was tried by the Court of Appeals. Judges Cureton, Hearn and Huff upheld this verdict.

I am enclosing a Proof of Loss written to Moore & Associates, which is Travelers' agent. This statement shows clearly that Tammy Floyd is the contract holder. This should tell a person of average intelligence that a lien is on the property. And sure enough, Travelers' Investigator found it and gave it to her boss and told him that Travelers was on notice. This would appear that Mr. Davis is distorting the truth.

I am attaching a few opinions that state the laws of S.C. Judge Shuler's order states in Part 8 that no changes can be made without a separate agreement. The way I interpret this is that it can't be altered by another circuit judge. It would need to go to a higher court and this was not done.

I think that I have already mentioned that I have received no discovery from either insurance company regarding Judge David Norton's order nor have I heard from you about it being a valid order.

For the foregoing reasons, I ask the Court to Reconsider the Summary Judgement as premature.

Sincerely,

Marion L Driggers

To Judge Curtis

CASE 2014-CP-45-132

REQUEST FOR CLARIFICATION

I have not received your official denial of my Motion to Reconsider but I have obtained a copy. I am very concerned that you denied my motion without clarifying the Rules of Law involved.

Here are some points I would like to submit you:

1. Does this court allow forged assignments to stand in SC?
2. Does a circuit court judge have the authority to override another judge?
3. Does this Court have the authority to override an Appellate Court opinion?
4. Has this Court spoken to Mr. Davis or his investigator to confirm his truthfulness? I have sent this Court a Proof of Loss showing that Travelers has known about the Driggers' claims since early 2010. Does this make a difference?
5. At this point, I need discovery on Judge Norton's order to prove my case. I have asked this Court if this federal order on waiver is good in this state and have not received discovery nor an answer.
6. I have spent 12 years trying to collect a mortgage and to have a home repaired that has been awarded to my family. It has been before 6 different judges and 2 mediations. My family has not received any compensation, although we have paid all taxes and upkeep. I have placed 12 motions before this Court and I am now 0-12. I am now at the point that I must ask you to recuse yourself and hope that I get better results from a judge from the county roster.

I thank you for a quick response to this request because it is time sensitive.

Sincerely,

Marion L. Driggers

attachments

(A) \$86,100

SWORN STATEMENT IN PROOF OF LOSS

Amount of policy at time of loss: \uparrow \$ (A) \$287,000 (C) 200,900		Claim Number: 09B5767
Date issued: 5/7/2009	Date expires: 5/7/2010	Agent Name/Agency Address: MOORE ASSURANCE, 40 Box 9, Lake City, SC 29560

To the The Travelers Home And Marine Insurance Company of
 At the time of loss, by the above indicated policy, you insured ARTHUR M. KENZIE
 against the loss HO-3 (Fire & EC: Loss of Use) the property described according to the terms and conditions of said
 policy and of all forms, endorsements, transfers and assignments attached thereto.

TIME AND ORIGIN

A Fire loss occurred about the hour of 6 o'clock AM (circle one) on the
26th day of November in the year 2009. The cause and origin of the said loss were:
BASED ON INFORMATION AND BELIEF, THE LOSS WAS FROM ELECTRICAL SHORTAGE

OCCUPANCY

The building described, or containing the property described, was occupied at the time of the loss as follows and for no other purpose
 whatever: RESIDENCE OF ARTHUR M. KENZIE

TITLE AND INTEREST

At the time of the loss, the interest of your insured in the property described therein was PURCHASER UNDER CONTRACT
 had any interest therein AS CONTRACT SELLER ("HOLDER") or encumbrance thereon, except TAMMIE FLOYD

CHANGES

Since the said policy was issued, there has been no assignment thereof, or change of interest, use, occupancy, possession, location or
 exposure of the property described, except: NONE

TOTAL INSURANCE

THE TOTAL AMOUNT OF INSURANCE upon the property described by this policy was, at the time of the loss, \$
 as more particularly specified in the apportionment attached besides which there was no policy or other contract of insurance, written
 or oral, valid or invalid.

Value	THE ACTUAL CASH VALUE of said property at the time of the loss was:	<u>HOUSE ACV \$287,000.00</u>
Loss	THE WHOLE LOSS AND DAMAGE was: <u>Use \$150,400</u>	<u>PERSONAL PROP \$133,630.85</u>
Amount Claimed	THE AMOUNT CLAIMED under the above numbered policy is:	<u>LOSS OF USE \$0.00</u> <u>\$292,030.85</u>

STATEMENTS OF INSURED

The said loss did not originate by any act, design or procurement on the part of your insured, or this affiant; nothing has been done by
 or with the privity or consent of your insured or this affiant, to violate the conditions of the policy, or render it void; no articles are
 mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss; no property saved has in any
 manner been concealed, and no attempt to deceive the said company, as to the extent of said loss, has in any manner been made. Any
 other information that may be required will be furnished and considered a part of this proof.

The furnishing of this blank or the preparation of proofs by a representative of the above insurance company is not a waiver
 of any of its rights.

State of South Carolina Insured Arthur M. Kenzie
 County of Florence

Subscribed and sworn to before me this 17th day of April, 2010
Ashley O. Cohen
 Notary Public