

Apr 01 2022

EXHIBIT A

SC Court of Appeals

FORM 4

JUDGMENT IN A CIVIL CASE

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

CASE NO. 2017 CP-04-00541

State Farm Mutual Automobile Insurance Company

Rory Bell

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : [] Plaintiff [] Defendant
or
[] Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- [] JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
[X] DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. [] See Page 2 for additional information.
[] ACTION DISMISSED (CHECK REASON): [] Rule 12(b), SCRPC; [] Rule 41(a), SCRPC (Vol. Nonsuit); [] Rule 43(k), SCRPC (Settled); [] Other
[] ACTION STRICKEN (CHECK REASON): [] Rule 40(j), SCRPC; [] Bankruptcy; [] Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; [] Other
[] STAYED DUE TO BANKRUPTCY
[] DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): [] Affirmed; [] Reversed; [] Remanded; [] Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: [X] See attached order (formal order to follow) [] Statement of Judgment by the Court:

ORDER INFORMATION

This order [X] ends [] does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Table with 3 columns: Judgment in Favor of (List name(s) below), Judgment Against (List name(s) below), Judgment Amount To be Enrolled (List amount(s) below). Rows show empty cells with a dollar sign (\$).

If applicable, describe the property, including tax map information and address, referenced in the order:

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denied any involvement in the loss of the motorcycle. Further, the Defendant filed a counter claim for breach of contract and bad faith refusal to pay benefits owed by the Plaintiff.

The Court held a week-long jury trial that took place in Anderson County beginning on October 25, 2021. The jury found in favor of the Defendant on the Plaintiff's declaratory judgment action and on Defendant's breach of contract claim and awarded damages in the amount of \$18,000. *See* Verdict Form (e-filed 11/2/2021). The jury found in favor of the Plaintiff on the Defendant's claim of bad faith. After the jury's award, Defendant filed its motion for Motion for Attorney's Fees and Costs and for a New Trial *Nisi Additur*.

New Trial Nisi Additur

The Defendant's Motion for New Trial Nisi Additur is based on the lack of any evidence in the record contesting the value of the claim given by the Defendant. The Defendant testified that that the value of the motorcycle in question was "between \$36,000 and \$37,000." There was no corroboration of that value, merely the Defendant's testimony. There was testimony that the Defendant had attempted to sell the motorcycle without success and that he had done work to it. However, the Plaintiff presented no testimony nor any valuation evidence to contradict the monetary figure given by the Defendant.

Motions for new trial nisi additur are appropriate under South Carolina law under relatively narrow circumstances. Invading the province of the jury must be supported by "compelling reasons." *Bailey v. Peacock*, 318 S.C. 13, 14, 455 S.C.2d 690, 691 (1995) (citing *Pelican Bldg. Ctrs. v. Dutton*, 311 S.C. 56, 61, 427 S.E.2d 673, 676 (1993)). The Court has the power to grant a new trial nisi additur when it finds the amount of the verdict to be merely inadequate. *Ligon v. Norris*, 371 S.C. 625, 640 S.E.2d 467 (Ct. App. 2006). When a party moves

for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." Allstate Ins. Co. v. Durham, 314 S.C. 529, 431 S.E.2d 557, 558 (1993).

In our present case, the jury deliberated for a significant amount of time, coming back before the Court with questions and indications that they would be unable to reach a verdict. The Court gave the jury an Allen charge. Subsequently, the jury was able to reach a verdict of \$18,000.00 in favor of the Defendant. The Court has no evidence of any impropriety in the jury's deliberations, therefore making it impossible for any finding of a verdict that was the result of "passion, caprice or prejudice." Neither side has alleged an improper quotient verdict in their arguments, although the verdict is exactly a fifty (50%) percent award of the claim to the Defendant.

The jury ultimately awarded the verdict on the contractual issue. The issue was whether or not there was coverage on the motorcycle in question. While characteristics of the motorcycle were put into evidence (unsuccessful sale, improvements, etc.) there was no testimony or evidence of any kind contradicting the monetary value given for it by the Defendant. No argument was made to the jury by the Plaintiff that the value of the motorcycle given by the Defendant was inaccurate or the value should be discounted. The issue was whether or not the Plaintiff was bound contractually to pay the claim. The jury found that the Plaintiff had a contractual responsibility to pay the claim. The Court finds that the verdict was unduly conservative given the uncontroverted testimony in the case. Accordingly, the Court GRANTS the Defendant's Motion for New Trial Nisi Additur and modifies the judgment to the sum of \$36,000.00.

Attorney Fees and Costs

The second issue before the Court is the Defendant's motion for attorney fees and costs. The Defendant has submitted an attorney fee affidavit alleging that \$109,995.00 in attorney's fees should be awarded. The Plaintiff argues that an award of attorney fees and costs is improper in this matter.

It is the well-settled law in South Carolina that attorney fees are not recoverable unless authorized by statute or contract. This is known as the "American Rule" and was discussed at length by the parties in their briefs and arguments. The parties center their arguments around the case of *Hegler v. Gulf Insurance Company*. The issue in *Hegler* is whether an insured is entitled to recover attorney's fees incurred by him in the successful defense of a declaratory judgment action brought by the insurer to absolve itself from covering a claim submitted by the insured. *Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 548, 243 S.E.2d 443, 443 (1978). In *Hegler*, the Defendant insurer filed a declaratory judgment action against its insured, the Plaintiff, seeking a determination that it was not liable under the policy to defend a third-party claim brought against the Plaintiff. *Id.* at 550. As a result of the declaratory judgment action, the Plaintiff was forced to retain counsel and incur costs to defend itself against the third-party claim and the Defendant's declaratory judgment action. *See Id.* In determining that the Defendant was liable, the Supreme Court of South Carolina focused its analysis on the attorney's fees "incurred" by the Plaintiff in defending its suit against the Defendant. *Id.* at 551. The Court specified that the Defendant had "guessed wrong as to its duty, and should be compelled to bear the consequences thereof[:]" the costs and attorney's fees *incurred* (emphasis added) by the Plaintiff in its defense. *Id.*

The Defendant also cites the case of *State Auto Prop. & Cas. Ins. Co. v. Reynolds*, 357 S.C. 219 (2004) in which it was held that "...it is well-settled in South Carolina that when a

defendant insured prevails in a declaratory judgment action, the insured is entitled to recover attorney's fees. The Court cited *Hegler* in that opinion. The Defendant also cites several federal cases.

The Plaintiff argues that the *Hegler* standard should be narrowly applied since it fundamentally changes a common law principle regarding attorney's fees. Since *Hegler* involved a specific question of whether the insurance company was contractually bound to defend the insured in a third-party claim, the Plaintiff argues that the case should apply only in that narrow situation. The Defendant argues that *Hegler* should apply to any case in which the insurance company files a declaratory judgment action against its insured.

In considering this issue, the nature and amount of the attorney fees must be considered. Defense counsel informed the Court that the case was taken on contingency, as are most such representations in which attorneys represent individuals in cases involving personal injury and/or insurance claims. The Defendant is obligated contractually to pay forty (40%) of whatever sum is recovered in attorney fees. Defense counsel submitted an extensive hourly billing summary which totaled \$109,995.00, although the parties are bound by a contingency contract.

I find that, even if the Defendant's argument that attorney fees should be awarded under a *Hegler* analysis is accepted by the Court, the fees in question are forty (40%) percent of the award. In light of the Court's ruling on the motion for new trial nisi additur above, that would make the attorney fees in question \$14,400.00. The Court again notes that the language of *Hegler* itself uses the word "incurred" for attorney fees. The word "recoupment" also is used in other cases. Any claim for attorney fees should be limited to what the client actually owes. The Court does not believe that the law would provide for such a windfall as would occur if \$109,995.00

were awarded in attorney fees when the entire claim is only \$36,000.00 in the event that the Defendant's argument regarding the applicability of attorney's fees is accepted.

The Court must also determine which side "prevailed" in the litigation. The Plaintiff argues that the Defendant did not prevail because he was unsuccessful in his claim for bad faith and that the jury discounted the amount claimed under the contract issue. The Defendant argues that he prevailed since the jury found that there was coverage, albeit discounted.

The parties made several claims in their pleadings. The Plaintiff sought a finding that it was not contractually bound to pay the claim. The Defendant prevailed on that claim. The Defendant counterclaimed for bad faith and alleged several types of damages in addition to the basic value of the claim. Under the bad faith counterclaim, the Defendant sought damages as follows:

"67. Plaintiff's breach caused damage to Defendant as follows:

- a. Delayed payment of money owed;
- b. Deprivation of a replacement motorcycle;
- c. Damage to reputation;
- d. Loss of time and expense, and the capacity to earn wages;
- e. Costs of defending Plaintiff's declaratory judgment lawsuit; and
- f. Any other consequential damages shown by necessary proof."

The jury found for Plaintiff on the issue of bad faith. The Defendant also was unsuccessful in his claim for punitive damages, in that the jury did not find that the Plaintiff acted in a reckless, willful or wanton manner that warranted punitive damages. If the contractual coverage issue had been the only issue, it would be clear that the Defendant was the prevailing party. However, in light of considering all the other issues and the other damages claimed by the Defendant, the

Court finds that the net balance in the case swings toward the Plaintiff in considering who prevailed in the lawsuit. Accordingly, the Court DENIES the Defendant's motion for attorney fees and costs. In light of this finding, the issue of whether *Hegler* applies to the issues in this case is moot.

WHEREFORE, it is ordered that,

1. The Defendant's Motion for a New Trial Nisi Additur is GRANTED, and the judgment amount increased to \$36,000.00.
2. The Defendant's Motion for Attorney's Fees and Costs is DENIED.

AND IT IS SO ORDERED!

Walhalla, South Carolina

February 9, 2022

R. Scott Sprouse, Judge

Tenth Judicial Circuit



Anderson Common Pleas

Case Caption: State Farm Mutual Automobile Insurance Company VS Rory Bell

Case Number: 2017CP0400541

Type: Order/Other

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit