THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM WILLIAMSBURG COUNTY

Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Appellate Case No: 2021-000494

South Carolina Farm Bureau Ins. Co, Appellant
v.

Marion L. Driggers, 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, Defendants,

Of Which The Travelers Home and Marine Insurance Company is the Respondent.

FINAL REPLY BRIEF OF APPELLANT

Submitted By:

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REPLY TO RESPONDENT'S STATEMENT OF THE CASE

Appellant Farm Bureau has appealed the dismissal of Travelers, both as to the Interpleader dismissal, which was discretionary, and as to the Summary Judgment dismissal as to Farm Bureau's Indemnity claim, which was erroneous as a matter of law. It is of note that Appellant has also appealed from the denial of its ten (10) page, detailed Motion to Alter, Amend, Reconsider. The Motion to Reconsider addressed numerous grounds as to the dismissal of Travelers, and specifically addressed the ground that Travelers acted in bad faith as to Farm Bureau by paying out a large portion of its coverage while it had a claim for indemnity pending. **(R. pp. 546-568; R. pp. 536-545)**

Farm Bureau's Motion for Reconsideration also raised the issue that the Court's dismissal of Travelers failed to rule as to the relationship between Farm Bureau's *pro rata* claim and its claim for Indemnity. It also raised issues as to the granting of partial Indemnity and addressed the prior Order and Motion in that Regard. Farm Bureau had made a Motion to Alter, Amend, Reconsider or Clarify the prior Order allowing the deposit of Funds. As Respondent's Brief notes, the Form Orders of April 12, 2021 denied both Motions For Reconsideration. The Motion to Alter, Amend, Reconsider or Clarify as to the Funds Order raised numerous issues, including the finding, without supporting evidence, that the funds to be deposited would cover all remaining claims, including those as to the application of the Pro Rata Statute, Indemnity and Attorney's Fees and Costs, and it raised issues as to whether the Order was intended to discharge Travelers. The subsequent Orders, including those for Dismissal, clarified or confirmed the Court's intent to dismiss Travelers from the action and Appellant's Motion to Alter, Amend, Reconsider followed.. **(R. pp. 536-545; R. pp. 511-513; R. pp. 36-44; Respondent's Amended Initial Brief, p. 3)**

Like the rest of this case, the procedural history is twisted, tangled and complex. However, Farm Bureau has appealed from all relevant Orders addressed in its Initial Brief.

REPLY TO RESPONDENT'S STATEMENT OF FACTS

Respondent appears to claim that it insured the ownership interest of the late Mr. McKenzie on a Fire Policy, but that Farm Bureau insured the mortgage interest of Mr. Driggers on a Fire Policy. That is not the case. Farm Bureau does not write mortgage insurance. Both policies insured the ownership interest as to the subject property. That interest and the relative percentages were on a sliding scale since McKenzie was, essentially renting to own the property, and payments were set by Contract. See: Contract For Sale And Purchase, Dec & Policy of Farm Bureau, Dec & Policy of Travelers, Summons & Complaint, Summons & Amended Complaint. Thus, both policies involved covered the same interest in the same property within the meaning of the Pro Rata Statute. §38-75-20, S.C. Code Ann.

Further, Travelers contends that it owes no duty to Driggers because its policy covers only McKenzie. *Respondent's Initial Brief, p. 6.* That ignores the prior, never appealed Order of Judge Shuler which required that McKenzie maintain insurance of at least $80,000 to protect the interests of seller Marion Driggers, Shiralee Driggers or their designee, their daughter, Tammy Floyd, the titled owner of the property. **(R. pp. 760-761)**

Respondent claims that additional discovery will "not change what is already known." *Respondent's Initial Brief, p.6.* That ignores the fact that Farm Bureau's Summary Judgment Motion was denied, pending additional discovery and that later, Travelers Summary Judgment Motion was granted, despite additional discovery being already scheduled. Travelers deposition was set and canceled because of the issuance of the dismissal Order. Not only was Travelers never

deposed, Mr. Driggers, Mrs. Driggers and Tammy Floyd were not deposed at the time of the dismissal, although they have been deposed since. When Travelers was dismissed, Farm Bureau's Indemnity Claim was dismissed, and Farm Bureau's Pro Rata claim was never considered, and depositions had not been taken. In this case involving the novel issue of whether carriers involved in a Pro Rata Statute situation have a special relationship, the Court could have and should have had the benefit of full discovery. Dismissal of Travelers, in this situation, was an error of law.

REPLY TO RESPONDENT'S STANDARD OF REVIEW

The general Summary Judgment standard requires the Court to construe the evidence, all inferences to be drawn from it and all ambiguities that arise from it in the light most favorable to the nonmoving party. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001*); Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976)*. While the evidence and the facts should be viewed most favorable to the nonmoving party, the interpretation of a statute is an issue to be decided as a matter of law and without any deference to the lower court. *Marshall v. Dodds, 426 SC 453, 827 SE2d 570 (2019).*

Summary Judgement is a drastic remedy, and it must not be granted until the opposing party has a full and fair opportunity to complete discovery. *Baughman v. American Tel. Tel. Co., 306 SC 101, 112, 410 SE2d 537 (1991).* Summary Judgment is premature if the opposing party demonstrates that further discovery will uncover additional relevant evidence, and the opposing party was not dilatory in seeking discovery. In considering whether the opposing party was dilatory in seeking discovery, the Court should consider whether the delay was solely due to the nonmoving party's inaction, the complexity of the case, the reasons for delays, and it should take notice if depositions are scheduled. In a case involving whether a duty exists, the record may need

to be more fully developed. *Doe ex Rel. Doe v. Batson, 345 SC 316, 548 SE2d 854 (2001); Baughman, supra.*

All novel issues do not require a trial, but Summary Judgment is not appropriate if further inquiry into the facts is needed to clarify the law. *ML-Lee Acquisition Fund, L.P. v. Deloitte Touche, 327 SC 238, 489 SE2d 470 (1997); Doe v. Batson, 338 SC 291,* 525 SE2d 909 (Ct.App., 1999); modified at *345 SC 316, 548 SE2d 854 (2001).*

REPLY TO RESPONDENT'S ARGUMENT AS TO THE TRIAL COURT'S ERROR IN GRANTING SUMMARY JUDGMENT AS TO INDEMNITY

Travelers contends that Farm Bureau first raised the novel issue of the special relationship between carriers involved in a Pro Rata Statute coverage situation in this appeal and that the issue was not raised to the trial court. In fact, the issue was first raised in Farm Bureau's Amended Complaint as the existence of a special relationship is required for equitable indemnity to stand. **(R. pp. 300-391)** Farm Bureau specifically raised the issue to the Court in its Motion to Alter, Amend, Reconsider. **(R. pp. 538-543)**

As the Respondent notes, Farm Bureau does not contend that a special relationship exists between the carriers merely because they insure the same property. Rather, Farm Bureau contends that the special relationship arises by virtue of the Pro Rata Statute. **(Appellant's Final Brief, pp. 21-22)**

Respondent's argument that no other authority in the state addresses the Special Relationship that must exist under the Pro Rata Statute in order to carry out the legislative intent of the Statute underscores the importance of this appeal. However, Respondent errs in arguing that both policies do not insure the same interest. As noted above, Farm Bureau does not write mortgage insurance and both of these policies were Fire Insurance Policies covering an ownership

interest in the property created by the Contract. **See: (R. pp. 744-755; R. pp. 657-694; R. pp. 695-737; R. pp. 47-139; R. pp. 300-391)**

REPLY TO RESPONDENT'S ARGUMENT AS TO THE TRIAL COURT'S ERROR IN GRANTING RESPONDENT'S MOTION FOR INTERPLEADER AND IN DISCHARGING OR DISMISSING TRAVELERS

Appellant Farm Bureau properly appealed from the grant of Interpleader and the dismissal of Travelers with Prejudice. It is of note that Appellant has also appealed from the denial of its ten (10) page, detailed Motion to Alter, Amend, Reconsider. The Motion to Reconsider addressed numerous grounds as to the dismissal of Travelers, and specifically addressed the ground that Travelers acted in bad faith as to Farm Bureau by paying out a large portion of its coverage while it had a claim for indemnity pending. **(R. pp. 546-568; R. pp. 536-545; R. pp. 511-513)** As Respondent's Brief notes, the Form Orders of April 12, 2021 denied both Motions For Reconsideration. **(R. pp. 536-545; R. pp. 511-513; R. pp. 36-44; Respondent's Amended Initial Brief, P. 3)**

While indemnity is a matter of right, the release or discharge of the Interpleader plaintiff is a matter of the Court's discretion. *SCRCP, Rule 22(a)* text and notes, and *SCRCP, Rule 22(b).* In this case, Farm Bureau opposed the deposit of funds and opposed the discharge and dismissal of Travelers because (1) Travelers paid out most of its coverage after it initially sought the remedy in its Answer; (2) Claims for the Pro Rata Statute interests, Equitable Indemnity and Attorneys Fees were pending; and (3) Discovery was incomplete and there was no evidence in the record to establish the payment record under the Contract which controlled the percentages of ownership by McKenzie and Driggers, the value of that ownership and the coverage owed. The Court decided

that the remining coverage was sufficient to compensate everyone, and it did so without evidentiary basis. **(R. pp. 15-18; R. pp. 511-513; R. pp. 536-545)**

Interpleader exists to shield a neutral stakeholder from liability for paying a disputed claim to the wrong party by giving the Interpleader claimant the right to bring an action against all involved parties so that claims to the funds or stake can be litigated. *First Union Nat. Bank of South Carolina v. FCVS Communications, 321 SC 496, 499, 469 SE2d 613, 616 (Ct. App. 1996).* In this case Travelers did not bring such a claim. The only carrier that has sought to bring this to Court for resolution is Farm Bureau. However, Travelers did allege a responsive claim for Interpleader -- before it paid out a large part of the stake it had sought to interplead.

Travelers did not deposit into Court the amount claimed, as required by the Rule. The amount claimed was Travelers coverage, and Travelers deposited significantly less than its coverage of Two Hundred Eighty-Seven Thousand and No/100 ($287,000) Dollars after it voluntarily settled with McKenzie, which it did while the claim for Interpleader was pending. **(R. pp. 442-450; R. pp. 765-768; R. pp. 30-35; R. pp. 45-46)**

Because of the very limited state opinions on the issue, the Respondent cites to a Federal decision of the Eastern District of Pennsylvania to support its claim that the amount of the stake to be deposited is the amount stated by the stakeholder. *United Benefit Life Insurance Company v. Leech, 326 F. Supp. 598 (ED PA 1971).* The United Benefit case does not support Travelers' position that it can deposit a partial, or remainder stake and then be discharged or dismissed. United Benefit was a jurisdiction case, and was a statutory interpleader action, not a FRCP Rule 22 interpleader action. There, the ED of PA held that it did not have jurisdiction because the amount claimed by the stakeholder as owed was less than the then jurisdictional amount of $10,0000. *Id.* United Benefit holds that for the Court to have jurisdiction in a statutory

interpleader case, the stakeholder must deposit into Court the highest amount claimed by a disputing party, although the stakeholder would only admit liability to the amount it claims/states. *United Benefit, supra.*

As to Federal Rule 22 Interpleaders, the stakeholder deposits the amount it believes is in dispute, although a physical deposit may or may not be required, depending upon Court Order. The amount of the deposit does not bind the Court or the parties as to the amount, or coverage, ultimately determined to be due. It is **improper to dismiss or discharge** a stakeholder that disputes the amount of liability. *Midland Nat'l Life Ins. Co. v. Rivas, 318 F.R.D. 303, 308 (E.D. Pa 2016); Phoenix Ins. Co. v. Small, 307 F.R.D. 426, 426, 434-435 (ED Pa 2015); Nationwide Mut. Ins. Co. v. Eckman, 555 F. Supp. 775, 778 (D. Del. 1983).*

In this case, Travelers sought to interplead less than the full amount of its coverage, which makes that the amount that Travelers claims or states as subject to the disputed claims. Those disputed claims include Farm Bureau's DJ, Pro Rata and Equitable Indemnity Claims, and Mr. Driggers Bad Faith Claims (as to which, the trial court's Summary Judgment in favor of Travelers is presently under appeal in this court). Given that Travelers sought Interpleader, then later settled with McKenzie and reduced its available coverage, then sought to deposit and deposited into Court an amount significantly less than the amounts claimed as due by disputing parties, including the Appellant, it was error for the Trial Court to discharge or dismiss Travelers.

REPLY TO RESPONDENT'S ARGUMENT AS TO THE IMPLICATIONS OF THE PROPER INTERPRETATION OF THE PRO RATA STATUTE SOUGHT BY FARM BUREAU

Farm Bureau did not receive a loss report from its insured until just under a month prior to the running of the Statute of Limitations for a claim by the insured, and this was a deliberate

decision by Driggers based on his belief that Travelers owed the money. **(R. pp. 47-139; R. pp. 300-391; R. pp. 631-632)** Nearly three years passed between the fire loss, the reporting to Farm Bureau, and the carrier having the opportunity to investigate. Time is of the essence in fire loss investigation, especially in the case of deliberately set fires, like this one. **(R. pp. 810-812; R. pp. 781-786; R. pp. 787-809)** Travelers got timely notice, knew of Farm Bureau's prior coverage of many of Driggers' properties and it even contacted Farm Bureau about a questionable prior fire. **(R. p. 773; R. pp. 801-802)** Despite Travelers knowing of Farm Bureau's likely involvement or coverage, it made no effort to work with Farm Bureau to determine if this was a Pro Rata Statute situation so that the carriers could work together and with the insureds per the requirements of the Pro Rata Statute as to ownership, valuation and coverage.

Travelers predicts dire consequences if the special relationship advocated by Farm Bureau is recognized by the Court. The Respondent claims that Farm Bureau asks the Court to recognize a special relationship between all property insurance carriers and that such would have far-reaching and negative impacts on carriers and insureds. This misconstrues and misrepresents what Farm Bureau seeks. The Appellant asks that this court recognize a special relationship between property insurers *involved in a Pro Rata Statute* situation. Farm Bureau believes that the legislative intent behind the Pro Rata Statute requires that a special relationship exists between involved carriers in order to carry out the requirements of the Pro Rata Statute.

Whether insurance carriers should be held to have a special relationship with each other generally is a determination for this Court on another day, in another matter. Here, Farm Bureau's contention is that such a special relationship exists or is intended to exist in order to carry out the requirements of the Pro Rata Statute.

CONCLUSION

In a case involving a novel question of law, Travelers was dismissed prior to the carrier or Mr. or Mrs. Driggers being deposed. The delay in taking depositions was not the fault of Farm Bureau as depositions were attempted and adjourned and scheduled and canceled several times. Instead, this is a case with complex facts involving individuals with a contentious relationship. During the course of this action, attorneys and representation changed several times, the administrative judge for the circuit changed several times and the earliest involved judge ascended to the appellate bench while a critical and contested Motion for Production of Personnel Files of Farm Bureau was pending. A party died, Mr. Driggers refused to attend a prior mediation and did not agree to be deposed unless all lawyers were deposed. Covid happened with at least one of the attorneys being afflicted. The Covid restrictions and impacts on in-person hearings limited motions as Mr. Driggers was *pro se* and the Court determined that most hearings needed to be in person.

Despite incomplete discovery and depositions, the Court discharged or dismissed Travelers after it paid in the remaining coverage under its policy – following a voluntary settlement by Travelers with McKenzie after Travelers had first sought Interpleader. As case law noted above under the Federal Interpleader statute shows, it was error for the trial court to discharge or dismiss Travelers after the depleted and partial Interpleader payment.

It was also error for the trial court to grant Travelers Summary Judgment as to the Interpleader claim and particularly for it to do so without developing a full record and discovery as to the novel question presented here. Contrary to Travelers' contention, from its early pleadings through its Motion for Reconsideration, Farm Bureau has contended that a Special Relationship exists or must exist between involved carriers in order to effectuate the intent of the Pro Rata

Statute. So, Farm Bureau has not sought a determination that a Special Relationship always exists between carriers or property insurance carriers. Appellant only asks that the Court recognize the Special Relationship that must exist in order for involved carriers to comply with the Pro Rata Statute.

For all of the reasons expressed above and in Farm Bureau's Second Amended Initial Brief, Appellant asks that the Orders of the trial court as to Interpleader and Summary Judgment be reversed, and that the case be remanded.

Respectfully Submitted,

/s/ J. Dwight Hudson

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