RECEIVED
May 23 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 Ins. Co.,

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.

INITIAL BRIEF OF DEFENDANT-APPELLANT MARION L. DRIGGERS

Reese R. Boyd, III
Davis & Boyd LLC
1110 London Street, Suite 201
Myrtle Beach, SC 29577
Phone: (843) 839-9800
Fax: (843) 839-9801
Attorney for Defendant-Appellant, Marion L. Driggers

May 23, 2022

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES iii

INTRODUCTION 1

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STANDARD OF REVIEW 4

FACTS 6

ARGUMENT 7

I. The Trial Court erred by granting summary judgment where (a) discovery has not been completed, and (b) additional inquiry into the facts of this case is necessary before any claims of Appellant/Defendant Marion L. Driggers may be summarily disposed of 7

II. The lower Court erred by granting interpleader "by consent," effectively releasing the Defendant Travelers Home and Marine Insurance Company from further liability from all claims, where the record reflects that all Parties did not consent to the release of Travelers by such Interpleader 10

III. There are Genuine Issues of Material Fact that need to be resolved in this case, and those Issues of Material Fact should have precluded the lower Court from granting Summary Judgment in favor of Travelers 11

CONCLUSION 15

TABLE OF CASES AND AUTHORITIES

Cases

Page

Baril v. Aiken Regl Med. Ctrs., 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002) 4

Bayle v. South Carolina Dept of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001) 5

Cunningham v. Anderson County, 402 S.C. 434, 741 S.E.2d 545 (S.C. App. 2013) 7, 10

Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003) 5

Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 564 S.E.2d 94 (2002) 5

Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002) 4

Fountain v. First Reliance Bank, 398 S.C. 434, 730 S.E.2d 305 (S.C. 2012) 12

George v. Fabri, 345 S.C. 440, 548 S.E.2d 868 (2001) 5

Grecy v. S.C. Bank & Trust Co., 422 S.C. 509, 812 S.E.2d 750 (S.C. App. 2018) 12

Hendricks v. Clemson Univ., 353 S.C. 449, 578 S.E.2d 711 (2003) 4

Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 563 S.E.2d 331 (S.C. 2002) 7, 8, 10

Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers, 355 S.C. 104, 584 S.E.2d 375 (2003) 4

Lee v. Chesterfield Gen. Hospital, Inc., 289 S.C. 6, 344 S.E.2d 379 (S.C. App. 1986) 14

McNair v. Rainsford, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998) 4

Park v. Safeco Insurance Company of America, 251 S.C. 410, 162 S.E. 2d 709 (1968) 13

Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999) 5

Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003) 4, 5

Redwend Ltd. Pship v. Edwards, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003) 4

Russell v. Wachovia Bank, N.A., 353 S.C. 208, 578 S.E.2d 329 (2003) 4

Sauner v. Public Serv. Auth., 354 S.C. 397, 581 S.E.2d 161 (2003) 4

SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990) 5

Trivelas v. South Carolina Dept of Transp., 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001) 5

USAA Property and Cas. Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (S.C. 2008) 11

Young v. South Carolina Dept of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999) 4

Statutes and Authorities

S.C. Code Ann. §38-75-20 9

S.C. Code Ann. §28-75-350 9

Rule 56(c), SCRCP 4, 5

INTRODUCTION

This is an appeal from Williamsburg County, Court of Common Pleas, of two Orders issued by the Honorable Kristi F. Curtis, which were entered on March 4, 2021 and March 30, 2021, whereby the Court granted Motions for Summary Judgment previously filed by Defendant-Respondent Travelers Home and Marine Insurance Company ("Travelers"), and a third Order entered on April 19, 2021, which granted Traveler's claim for Interpleader in the Court below.

STATEMENT OF ISSUES ON APPEAL

I. Did the lower court err in granting summary judgment where (a) discovery had not been completed, and (b) additional inquiry into the facts of this case is necessary before any claims of Appellant/Defendant Marion L. Driggers may be disposed of as a matter of law?

II. Did the Williamsburg County Court of Common Pleas commit reversible error by granting Interpleader "by consent," effectively releasing the Defendant Travelers Home and Marine Insurance Company from further liability from all claims, where the record reflects that all Parties did not consent to such release of Travelers?

III. Are there Genuine Issues of Material fact such that Summary Judgment and Interpleader to Travelers should have been denied?

STATEMENT OF THE CASE

This appeal arises from a suit filed in Williamsburg County, Court of Common Pleas, by South Carolina Farm Bureau Insurance Company, on or about March 7, 2014. The case was brought against Marion L. Driggers, Shiralee Driggers, Tammy D. Floyd, the Estate of Arthur McKenzie, The Travelers Home and Marine Insurance Company, the United States of America acting by and through its agent, The Internal Revenue Service, and The South Carolina Tax Commission. The case, primarily a declaratory judgment action, arises from the fire damage and loss to a house located in Williamsburg County, that was insured by two different insurance policies, issued by two different insurance companies, to two different named insureds, on the same property. The declaratory judgment action includes causes of action for Declaratory Judgment, Misrepresentation, Breach of Contract, and Equitable Indemnity. South Carolina Farm Bureau's Complaint seeks (a) a determination of the insured value of the property in question at the time of loss, (b) the ownership or distribution of the insurable interests in the property at the time of such loss, and (c) the amount due under each insurance policy, and to whom, as a result of such loss. South Carolina Farm Bureau, argued that it was not liable for a claim submitted by its insured, Marion L. Driggers, as the policy proceeds paid by Travelers to Defendant Arthur McKenzie already exceeded the value of the property in question. (Complaint, pp. 5-6) Defendants Marion L. Driggers, Shiralee Drigers and Tammy D. Floyd answered the complaint on April 8, 2014, asserting counterclaims against Arthur McKenzie and Travelers and arguing that McKenzie did not have an insurable interest in the property due to his violation of a lease-purchase agreement between the parties, and that

Travelers and McKenzie conspired to avoid payment of viable claims by the remaining defendants and failed to appropriately investigate this claim. (Answer of Driggers, Driggers and Floyd, pp 6-8.) After the Plaintiff filed an Amended Complaint on July 13, 2016, Defendant Travelers filed an Answer, that contained a counterclaim for Interpleader and contribution, which acknowledged that it denied the claim of Marion Driggers and that Defendant Driggers had a policy of insurance with Farm Bureau for the same property. (Travelers Answer, p.2, 6-8.)

After hearing various motions filed by the parties for Summary Judgment, along with the Travelers Motion for Interpleader, the Court granted the Travelers Motion for Summary Judgment. The lower court issued Orders on March 4, 2021 and March 31, 2021 granting summary judgment and an Order on April 19, 2021 dismissing Travelers from this action.

Appellant, Marion L. Driggers appeals to this Court the following Orders issued by the lower court:

(1) March 4, 2021 Order granting Summary Judgment to Travelers on Civil Conspiracy, Breach of Contract, and Bad Faith, reconsideration denied on June 25, 2021; and

(2) March 30, 2021 Order granting Summary Judgment to Travelers on Equitable Estoppel, reconsideration denied on April 12, 2021; and

(3) April 19, 2021 granting Travelers Interpleader, and otherwise dismissing Travelers from the action.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court shall apply the same standard which governs the trial court under Rule 56(c), SCRCP: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers, 355 S.C. 104, 584 S.E.2d 375 (2003); Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002); Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003); Redwend Ltd. Pship v. Edwards, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Sauner v. Public Serv. Auth., 354 S.C. 397, 581 S.E.2d 161 (2003); Hendricks v. Clemson Univ., 353 S.C. 449, 578 S.E.2d 711 (2003); McNair v. Rainsford, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998); see also Laurens Emergency Med. Specialists, 355 S.C. at 108, 584 S.E.2d at 377 (stating that in reviewing summary judgment motion, facts and circumstances must be viewed in light most favorable to non-moving party). If triable issues exist, those issues must go to the jury. Baril v. Aiken Regl Med. Ctrs., 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002); Young v. South Carolina Dept of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999).

Summary judgment is appropriate where 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 the moving party is entitled to judgment as a matter of law. Russell v. Wachovia Bank, N.A., 353 S.C. 208, 578 S.E.2d 329 (2003); Regions Bank, 354 S.C. at 659, 582 S.E.2d at 438; Rule 56(c), SCRCP. All

ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Bayle v. South Carolina Dept of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001); see also Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002) (On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.).

Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Regions Bank, 354 S.C. at 659, 582 S.E.2d at 438; Trivelas v. South Carolina Dept of Transp., 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponents case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank, 354 S.C. at 660, 582 S.E.2d at 438. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990); Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999); Rule 56(c), SCRCP. The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003); George v. Fabri, 345 S.C. 440, 548 S.E.2d 868 (2001).

FACTS OF THE CASE

On or about April 25, 1997, Lisa Gamble and Tammy Floyd entered into a "Lease to Own Agreement" for 200 W. Highway 378 Bypass, Lake City, South Carolina (the "Property")(Order of 3/04/2021, at pp. 1-2). The lease-purchase contract included an insurance clause, whereby the tenant/buyer was required to name the owner of the property as an additional insured on a policy of insurance. The agreement further stipulated that the tenant/buyer, Ms. Gamble, had "no equity" in the property until the final installment payment was made. Ms. Gamble thereafter assigned her rights in the agreement to Arthur McKenzie on October 13, 2006, which assignment was recorded on January 5, 2009. Marion L. Driggers was concerned that Mr. McKenzie might not abide by the insurance requirement in the Agreement and purchased a policy of insurance with South Carolina Farm Bureau Insurance Company in order to protect his interests in the property. (Deposition of Marion L. Driggers, pp. 59-60)

In or around May of 2009 Arthur McKenzie purchased homeowners insurance through Travelers Home and Marine Insurance Company and on November 26, 2009 the home was destroyed by fire. (Deposition of Arthur McKenzie, pp. 51-52). Mr. McKenzie filed a claim with Travelers for damage to the house and personal property. (Sworn Statememt in Proof of Loss dated April 17, 2010). Thereafter, in April of 2010 Mr. McKenzie stopped making payments under the lease to own agreement and was considered in default under the agreement. He was subsequently evicted through an Order of Default and Order of Ejectment issued on March 6, 2013. (Order of the Williamsburg Magistrate Court dated March 6, 2013).

Prior to the eviction proceeding, Marion L. Driggers filed an insurance claim with South Carolina Farm Bureau Insurance Company. South Carolina Farm Bureau filed a complaint on March 6, 2014 and Mr. Driggers filed a crossclaim against Arthur McKenzie for breach of contract and quite title and against Travelers Home and Marine Insurance Company for breach of contract, conspiracy and bad faith. Throughout the lengthy litigation in this matter the lower court granted Traveler's Interpleader, denied Marion Drigger's motion to amend his answer to include counterclaims and cross claims against Travelers. Travelers' motions for summary judgment in connection with the cross claims of Shiralee Driggers, Tammy Floyd and Marion L. Driggers were granted and Defendant Marion L. Driggers filed a motion for reconsideration on March 17, 2021. The lower court thereafter issued an order on April 19, 2021, granting Travelers' claim for Interpleader and dismissing Travelers from the action.

For additional treatment of the facts of this case in greater detail, this Appellant also adopts the Statement of Facts as set forth by the Appellant South Carolina Farm Bureau in their Brief on Appeal.

ARGUMENT

I. The Trial Court erred by granting summary judgment where (a) discovery has not been completed, and (b) additional inquiry into the facts of this case is necessary before any claims of Appellant/Defendant Marion L. Driggers may be summarily disposed of.

It is well-settled law that summary judgment is a drastic remedy that should not be granted unless and until all parties have had a full and fair opportunity to conduct and complete their discovery. *See, e.g.,* Cunningham v. Anderson County, 402 S.C. 434, 741 S.E.2d 545 (S.C. App. 2013), *reh'g denied, affirmed in part, reversed in part*, 515 S.C. 298,

778 S.E.2d 884. Appellant Marion Driggers would also draw the Court's attention to the case of Lanham v. Blue Cross and Blue Shield, wherein the S.C. Supreme Court held that it was improper to grant summary judgment to a health insurer, where the insurer had canceled a policy based on an alleged misrepresentation in the application, but where discovery as to the insurer's underwriting standards and policies had not been completed, and the insured's motions to compel discovery of documents containing the insurer's standards and policies had not been completed. Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 563 S.E.2d 331 (S.C. 2002).

Here, the trial court below seemed to focus on the age of the case in granting summary judgment to Travelers. However, the Court does not seem to have adequately considered the numerous factors contributing to the ago of the case, including the death of Mr. McKenzie, which required an Estate to be opened and a Personal Representative to be appointed, further delays caused by the COVID-19 pandemic, numerous changes in counsel for the various parties throughout the course of these proceedings, as well as the delays caused by the involvement of a *pro se* litigant, Marion L. Driggers, in the proceedings below. Moreover, the concerns of the trial court regarding the length of time the case has been pending should not foreclose the clear need to plumb all material issues and claims before granting summary judgment to a party.

Significantly in this case, Marion L. Driggers, along with Shiralee Driggers and Tammy Floyd, have asserted a cross-claim to quiet title in the subject property, due to Mr. McKenzie's alleged breach, and the subsequent termination of the "rent to own" agreement dated April 25, 1997. For the reasons discussed in the hearings below,

discovery on this issue, as with other issues before the lower court, has not been completed. (Mtn. Hear'g Transcript, Feb. 18, 2021, at pp. 6, 8, 9, 15, 18, 21, 22.) However, the question of McKenzie's equity interest is a fundamental and threshold issue; if Mr. McKenzie had no equity interest in the property, the Traveler's payments to him in December of 2020 were improper, as Mr. McKenzie would have had as a result, no equity interest in the property, and the payments to him would have been invalid, both as a matter of South Carolina law, and pursuant to the terms of Traveler's own contract with McKenzie. (*See* S.C. Code Ann. 38-75-20 and 38-75-350, and Traveler's Contract, at p. 14, ¶1 and p. 19, both of which preclude payments of insurance proceeds to any party that does not have an insurable interest in the insured property.) In this case, proper resolution of this narrow question is fundamental to the resolution of the case in its entirety. If the evidence and discovery in this case bear out the conclusion, or the likelihood that a jury may conclude, that Arthur McKenzie had no insurable interest in the real estate at issue in this matter, then a proper resolution of this matter is utterly and fundamentally different from what the Court has ordered in its rulings on the summary judgment motions, and Travelers has paid out to its insured, Arthur McKenzie, no less than $65,630 in benefits that were improper, both under South Carolina law and under the terms of Traveler's own policy[1]. If Travelers had not improperly paid out the funds in such manner, and if it is determined, for example, that McKenzie's equity interest in the property has been extinguished, then the proper

---

[1] On or about Dec. 2, 2020, Travelers paid to Arthur McKenzie, through his counsel, the sum of $115,140.40, of which, $65,630.03 were paid for losses to the building (other payments being for replacement of personal property ($44,904.75), and "other expenses" ($4605.62), respectively.) *See* Copy of Payment of Travelers referenced in the February 18, 2021 hearing at page 12.

distribution of insurance proceeds in this case will be almost entirely different from what the trial court below has thus far ruled.

It is well-settled law that summary judgment is appropriate only where parties have had a full and fair opportunity to complete discovery, Cunningham, *supra.*, and where further discovery is not needed to clarify the application of law to the facts of a case, Lanham, *supra.* In this case, additional discovery is necessary in order to resolve open questions of material fact which have not yet been fully developed, and in order to clarify the proper application of the law to the complex fact pattern at issue here. For these reasons, the appealed-from summary judgment rulings were improper, and should be reversed.

II. The lower Court erred by granting Interpleader "by consent," and releasing the Defendant Travelers Home and Marine Insurance Company from further liability from all claims, where the record reflects that all Parties did not consent to the release of Travelers by such Interpleader.

The January 5, 2021 Order of the Common Pleas Court below granted the motion of Travelers for Interpleader (*See* Order dated 1/5/21). The court states that the motion of Travelers for Interpleader to pay funds into court was granted with the consent of all parties (9/17/20 transcript at page 54). However, the transcript of September 17, 2020 does not contain any testimony indicating that the parties consented to a grant of Interpleader and full release to Travelers (1/4/21 transcript at page 7, 33). Rather, the parties agreed to allow the substitution of the Estate of Arthur McKenzie for MR. McKenzie individually, in light of Mr. McKenzie's passing. (9/17/20 Transcript at p. 14). Defendant-Appellant Driggers specifically asked the Court, at the September 17, 2020 hearing, if Travelers was not going to be released from this lawsuit and the Court

confirmed that "[t]hey're going to pay that money into court" and that no ruling would be made on the motion for summary judgment of Travelers at that time. (9/17/20 Transcript at page 58). (Emphasis supplied). However, and notwithstanding this exchange with the Parties from the bench and on record, the Court subsequently issued an Order, granting the requested Interpleader, and further providing that "Travelers is hereby dismissed form this action with prejudice." (*See* Order of April 19, 2021, at p. 1).

As the Court has ruled in a manner substantively different from its instructions to the Parties in court, and Defendant-Appellant Driggers has been prejudiced as a result, Defendant-Appellant Driggers believes that the Court's Order of April 19, 2021, should be vacated, reversed, and remanded to the trial court for further proceedings consistent with the Court's original ruling from the bench. The record does not support a finding that the Parties "consented" to the dismissal of Travelers from this action with prejudice.

III. There are Genuine Issues of Material Fact that need to be resolved in this case, and those Issues of Material Fact should have precluded the lower Court from granting Summary Judgment in favor of Travelers.

While summary judgment is appropriate where there are plain, palpable, and indisputable facts upon which reasonable minds cannot differ, summary judgment is not appropriate where further inquiry into the facts of a case is desirable to clarify the application of the facts to the law. *See* USAA Property and Cas. Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (S.C. 2008)(*reh'g denied*). In cases where a "preponderance of the evidence" standard of proof will apply, as here, the non-moving party is only required to show a mere "scintilla of evidence" to withstand a motion for summary judgment.

See, Fountain v. First Reliance Bank, 398 S.C. 434, 730 S.E.2d 305 (S.C. 2012); *see also*, Grecy v. S.C. Bank & Trust Co., 422 S.C. 509, 812 S.E.2d 750 (S.C. App. 2018).

Here, there are numerous open questions of material fact, for which more than a mere scintilla of evidence exists, which should preclude for numerous reasons the summary judgment rulings in favor of Travelers below. As previously noted, herein above, there are open questions as to whether the Estate of Arthur McKenzie retains an equity (and therefore an insurable) interest in the property sufficient to support and justify the payments already made by Travelers to Mr. McKenzie. The Court's orders and the Travelers' contract with Mr. McKenzie certainly provide more than a scintilla of evidence that Mr. McKenzie did not have an insurable interest in the property sufficient to support the payments that Travelers has already made to him. (Contract, at pp. 19; Order of the Williamsburg County Circuit Court in Matthews v. McKenzie, dated July 10, 1996, at p. 5). On its face, the Travelers contract limits Travelers' insured, Arthur McKenzie, to payments made for his "insurable interest," which in this case appears to be his personal property only. In such instance, payment of Mr. McKenize's attorneys' fees and other expenses from the Travelers' policy proceeds would have been improper, but there is well more than a scintilla of evidence that such payments were made.

Travelers' insured, Arthur McKenzie, has also acknowledged that Mr. Driggers is a "Mortgagee" on the property in question. (See Travelers call logs dated 1/2/2010 and Travelers Policy with McKenzie at p. 16, #12.) Moreover, the "proof of loss" documentation produced by Travelers in this matter, and dated April 17, 2010, make it very clear that Travelers received actual notice of the Driggers' mortgage interest in the property, no later than that date. (See Proof of Loss Form dated 4/17/2010.) Call logs

produced by the Travelers, dated January 2, 2010, also make clear that Travelers received notification of the Driggers' mortgage on that date, and in their internal file notes from February 28, 2010, Travelers representatives note in the file that the question of ownership of the house is confusing, and there are two large tax liens associated with the property. (See Travelers call logs dated 1/2/2010)

Further, Travelers' own contract with McKenzie states that "we will pay you unless some other person is legally entitled" to receive such payment. Yet, having all of this information readily at hand, Travelers nonetheless paid out insurance funds to its insured, Arthur McKenzie, in an amount that far exceeds the apparent value of any "insurable interest" (see above), thereby compromising Travelers' ability to pay other, legitimate claims to the insurance proceeds, to include, without limitation, Marion Driggers' claims to the funds as a mortgagee of the property.

Thus, there are significant questions related to the existence of a mortgage in favor of Marion and Shiralee Driggers, and Travelers' knowledge and actual notice of that mortgage, that must be resolved before summary judgment in favor of the Travelers could properly be granted. The Order of the trial court below, granting summary judgment to Travelers, cites the case of Park v. Safeco Insurance Company of America, 251 S.C. 410, 162 S.E. 2d 709 (1968), for the proposition that the Driggers and Floyd parties are "strangers" to the Travelers policy and therefore do not have standing to assert any of their cross-claims against the Travelers. However, Park v. Safeco is distinguishable in that in Park, an injured driver, sued the at-fault driver's insurance company following an automobile accident. There, the court held that the injured driver did not bring suit against an at-fault driver, and was therefore a stranger to the

insurance contract, therefore had no standing. This case is very distinguishable. First, both parties here assert a claim to the same asset. Second, Driggers did assert a claim against McKenzie in the same lawsuit, and is awaiting judgment on that claim (now pending due to this present appeal). Third, while Marion Driggers may not be a signatory or a named party to the Travelers insurance contract with Mr. McKenzie, he is a third party beneficiary of that contract, because the contract provides that the appropriate payee for insurance benefits under the policy is the person (or persons) "legally entitled to receive payment." (*See* Travelers' Contract, at p. 16, ¶ 6.) McKenzie is not the individual legally entitled to receive payment for the building, as he has no equity interest in the building, and therefore no *insurable interest* in the building, and cannot therefore, legally receive that portion of the Traveler's insurance proceeds. There is well more than a scintilla of evidence that supports this particular argument, and this conclusion on this open issue of material fact, and therefore, summary judgment in favor of the Travelers was not proper.

Additionally, in its order granting summary judgment to Travelers, the lower court relies on the case of Lee v. Chesterfield Gen. Hospital, Inc., 289 S.C. 6, 14, 344 S.E.2d 379 (S.C. App. 1986), for the proposition that the Driggers and Floyd parties have no standing to sue for civil conspiracy; however, the lower court's reliance on the Lee case in this instance is misplaced. In Lee, the hospital in question refused to allow Dr. Lee to perform certain medical procedures, and Dr. Lee's complaint against the hospital alleged that a conspiracy between the hospital and certain of its other doctors, with the goal of procuring a larger share of such services performed at the hospital, to Dr. Lee's detriment and his pecuniary loss. In Lee, the Court founds that Dr. Lee had standing to

pursue a claim against Hospital on those grounds. Here, the Driggers and Floyd parties have made the allegations in their cross-claims that the Travelers and its insured, Arthur McKenzie, cooperated or worked together to financially harm Mr. Driggers, and the other cross-claimants, by virtue of the funds that have been improperly disbursed, as discussed herein above. As Mr. Driggers and the other cross-claimants have been financially harmed by these actions, they have more than sufficient standing under Lee and other controlling case law to bring these claims. Moreover, as set forth at length herein above, there is well more than a mere scintilla of evidence that improper payments to Mr. McKenzie have been made, and that in the process of adjusting this file for the benefit of its insured, Travelers has financially harmed Mr. Driggers.

As there is well more than a scintilla of evidence of financial harm to Mr. Driggers, and the other cross-claimants, the cross-claimants have standing, and dismissing their cross-claim for civil conspiracy by way of summary judgment, as the lower court has done, is improper. This aspect of the lower court's ruling should be reversed, and the matter remanded back to the trial court for further proceedings.

CONCLUSION

For the reasons set forth herein, Defendant-Appellant Marion L. Driggers respectfully requests that this Court reverse the rulings of the trial court below that have granted summary judgments in favor of the Travelers, and released them from further liability in this matter by way of their Interpleader motion, which was improperly granted by the trial court below. Mr. Driggers requests that this Court reverse the appealed-from judgments of the lower court below, and restore this action as an active matter in the Circuit Court below, for further proceeding consistent with

the Court's opinion.

Respectfully submitted,

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: May 23, 2022
Myrtle Beach, South Carolina