THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr, Judge

Case No. 2017-CP-04-02099
Appellate Case No. 2020-000421.

John Harbin, Appellant,

v.

April Blair, Tracy Dunn, HUB Enterprises, Inc.,
Shawn Conway, Gallivan White & Boyd,
Sam Nikopoulos, and John Doe, Respondents,

RECORD ON APPEAL

---

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ORDER, DATED JULY 20, 2020

(Denying Plaintiff's Motion for Reconsideration)

ELECTRONICALLY FILED - 2020 Jul 20 3:42 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	C.A. No.: 2017-CP-04-02099
John E. Harbin,	)	
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION
	)	
v.	)	
	)	
April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe,	)	
	)	
Defendants.	)	

This matter comes before the Court upon Plaintiff John E. Harbin's Motion for Reconsideration of the Court's April 7, 2020 Order Granting Defendant April Blair's Motion to Dismiss Plaintiff's Amended Complaint. Having heard the arguments and reviewed the submissions of the parties, Plaintiff's Motion for Reconsideration is hereby denied for the reasons below.

The Court has carefully reviewed Plaintiff's Motion for Reconsideration. The Motion does not raise any issue or point of law that was previously argued or raised to the Court that it misunderstood, did not fully consider or that it failed to rule upon, nor does it call the Court's attention to a possible misapprehension of Plaintiff's previous arguments.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Reconsideration is Denied.

IT IS SO ORDERED.

_____
Honorable J. Cordell Maddox, Jr.

July 10, 2020

ELECTRONICALLY FILED - 2020 Jul 20 3:42 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

ORDER, DATED APRIL 7, 2020

(Granting April Blair's Motion to Dismiss)

ELECTRONICALLY FILED - 2020 Apr 07 12:34 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	C.A. No.: 2017-CP-04-02099
John E. Harbin,	)	
	)	
Plaintiff,	)	ORDER
	)	
v.	)	
	)	
April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe,	)	
	)	
Defendants.	)	

Defendant April Blair's ("Blair") Motion to Dismiss came before the Court for a hearing on February 28, 2018. Donald L. Smith appeared on behalf of the Plaintiff. James P. Walsh appeared on behalf of Defendant Blair. Having heard the arguments and reviewed the submissions of the parties, Blair's Motion to Dismiss Plaintiff's Amended Complaint is hereby granted for the following reasons. The Court notes that it granted defendant Blair's motion to dismiss from the bench at the hearing. However, due to a scrivener error a written order was not submitted regarding the order to dismiss the case against Blair.

FACTUAL ALLEGATIONS OF THE COMPLAINT

The allegations of Plaintiff's Amended Complaint arise from an underlying dispute that Plaintiff had with Blair and Defendant Tracy Dunn. Plaintiff was shot by Dunn in the leg while he was at Blair's house. Defendant Gallivan White & Boyd represented Blair who had homeowners coverage through State Farm Insurance Company ("State Farm"), in a suit brought by Plaintiff and bearing Civil Action No. 2014-CP-04-02908. At trial, the jury returned a defense verdict for Blair. Plaintiff's Amended Complaint relates to this underlying lawsuit, and states one

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cause of action for tortious interference with contract. The plaintiff alleges that Blair tortuously interfered with his contractual relationship with his attorney, Donald Smith.

STANDARD OF REVIEW

A motion to dismiss must be based solely upon the allegations set forth in the Amended Complaint. Rule 12(b)(6), SCRCP; Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 209, 500 S.E.2d 793, 794, (Ct. App. 1998). The Court should view the evidence in the light most favorable of the Plaintiff, and, if facts alleged in the Amended Complaint and inferences reasonably deduced therefrom do not entitle Plaintiff to relief, then the motion to dismiss must be granted. Jarrell, 331 S.C. at 209, 500 S.E.2d at 794. See also Douglass ex rel. Louthian v. Boyce, 336 S.C. 318, 519 S.E.2d 802 (Ct.App. 1999), aff'd, 344 S.C. 5, 542 S.E.2d 715 (2001) (holding the trial court promptly dismissed action under 12(b)(6), SCRCP); Stiles v. Onorato, 318 S.C. 297, 457 S.E. 2d 601 (1995) (affirming trial court's dismissal of action under 12(b)(6), SCRCP).

ARGUMENT

The elements of a cause of action for tortious interference with a contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. Camp v. Springs Mortgage Corp., 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993). An essential element to the cause of action for tortious interference with contractual relations requires the intentional procurement of the contract's breach. Kinard v. Crosby, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993). Where there is no breach of the contract, there can be no recovery. First Union Mortg. Corp. v. Thomas, 317 S.C. 63, 73, 451 S.E.2d 907, 913 (Ct. App. 1994).

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In the instant case, Plaintiff has failed to plead any facts or circumstances evidencing a breach of the contract between Plaintiff and his attorney, Donald Smith. In pertinent part, Plaintiff's Amended Complaint alleges the following:

> 70. Plaintiff entered into a contract with his attorney to pursue litigation against Blair and Dunn.
>
> 71. Defendants were aware that a contract existed based on the fact that they were all participants in the litigation in some capacity.
>
> 75. Blair utilized the charge against Dunn, and his subsequent incarceration, to convince him to testify that not only did he mean to shoot Harbin, but also Blair had nothing to do with the shooting.
>
> 80. As a result of the intentional interference with Plaintiff's contract, all named Defendants prevented Harbin from getting the damages for which he was entitled due to the shooting.

These allegations, even if taken as true, fail to establish that the contract between Plaintiff and his attorney was breached. The Plaintiff has failed to include any allegations of any acts or omissions by Blair warranting the inference that her alleged intentional actions procured the breach of the contract. The Amended Complaint here contains no independent allegations of any acts or omissions by Defendant Blair warranting the inference that she intentionally procured plaintiff's attorney's discharge. In fact, it does not appear that the attorney-client relationship between the Plaintiff and his attorney was interfered with in any way. See Amended Complaint. The Plaintiff fails to allege any actions taken by Defendant Blair directly against the Plaintiff and/or his attorney that in any way had anything to do with their attorney-client relationship. Moreover, the Plaintiff has failed to allege any breach of the attorney-client relationship/contract, any actions of Defendant Blair that contributed to any alleged breach of that contract, and/or any damages resulting from

the alleged breach. As a result, this case is dismissed with prejudice in favor of Blair pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

Therefore, for all of these reasons, defendant Blair's Motion to Dismiss is hereby granted and Plaintiff's Amended Complaint against Blair is dismissed with prejudice.

_____

Honorable J. Cordell Maddox, Jr.

April 6, 2020

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Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Order/Dismissal

So Ordered

s/ J. Cordell Maddox Jr.

ORDER, DATED FEBRUARY 3, 2020

(Denying Plaintiff's Motion for Reconsideration of October 9, 2019 Sanctions Order)

ELECTRONICALLY FILED - 2020 Feb 03 2:00 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS CASE NO.: 2017-CP-04-02099
John E. Harbin, *Plaintiff,*	)	**ORDER**
vs.	)	
April Blair, Tracy Dunn HUB Enterprises, Inc., Shawn Conway Gallivan White & Boyd, Sam Nikopoulos, and John Doe *Defendants.*	)	

The Plaintiff filed this Motion for Reconsideration on October 21, 2019. After careful review and consideration of the record and arguments, the Court finds that the Motion should be denied.

IT IS SO ORDERED.

_____
The Honorable J. Cordell Maddox, Jr.

ELECTRONICALLY FILED - 2020 Feb 03 2:00 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

ORDER, DATED OCTOBER 9, 2019

(Granting GWB's Motion For Sanctions

ELECTRONICALLY FILED - 2019 Oct 09 4:48 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin, Plaintiff, vs. April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe, Defendants.	)	Civil Action No. 2017-CP-04-02099 **ORDER**

Gallivan White & Boyd's and Sam Nikopoulos' (collectively "GWB") Motion for Sanctions came before the Court for hearing on July 11, 2019. Donald L. Smith appeared on behalf of Plaintiff. Samuel W. Outten appeared on behalf of GWB. Having heard the arguments and reviewed the submissions of the parties, GWB's Motion for Sanctions is hereby granted for the reasons stated below.

BACKGROUND

I. The Prior Lawsuit

John E. Harbin ("Harbin" or "Plaintiff") had a dispute with April Blair and Tracy Dunn, resulting in Harbin being shot by Dunn in the leg while he was at Blair's house. Harbin sued Blair and Dunn for negligence, assault and battery, defamation, slander, and premises liability. *See John E. Harbin v. April Black and Tracy Dunn,* C.A. No. 2014-CP-04-02908 (the "Prior Lawsuit"). GWB represented Blair, who had homeowners coverage through State Farm Insurance Company. The case went to trial, and the jury returned a verdict for Blair. Harbin appealed the jury verdict and made various post-trial motions, all of which were denied.

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II. The Current Lawsuit

Plaintiff filed this lawsuit on October 9, 2017 (the "Current Lawsuit"). The allegations of the Complaint were nearly identical to those in the Prior Lawsuit. Plaintiff's Amended Complaint stated only one cause of action against GWB for tortious interference with contract, alleging that GWB interfered with the attorney-client contract between Plaintiff and his attorney, Donald L. Smith ("Smith"). GWB made a Motion to Dismiss the Amended Complaint on November 22, 2017. This Motion, as well as similar motions filed by the other Defendants, was granted by this Court. This Court held that a lawyer cannot be liable to non-client third parties for actions taken in the representation of a client. Furthermore, this Court found that a law firm is not responsible pursuant to *respondeat superior* for actions taken by an investigative firm that it hires. Following the Court's Order, Plaintiff filed a Motion to Reconsider on February 15, 2019. This Motion was denied by the Court.

RULING

Pursuant to the Frivolous Civil Proceedings Sanctions Act ("FCPSA"), an attorney may be sanctioned for filing a frivolous pleading, motion or document, or making frivolous arguments that are not reasonably supported by the facts or existing law. S.C. CODE ANN. § 15-36-10(A)(4)(a)-(c). Sanctions may include an order that the party pay the reasonable costs and attorneys' fees of the prevailing party resulting from the frivolous proceeding. *Id*. at § 15-36-10(G)(1).

The initiation of this Current Lawsuit was an improper attempt to relitigate the Prior Lawsuit. The Current Lawsuit is based upon the same facts that were raised in the prior lawsuit. After reviewing post-trial motions for a new trial, the trial judge found no reason to disturb the jury's verdict. A party's dissatisfaction with the outcome of a trial cannot be the basis for a retrial of those issues.

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The Court finds that any reasonable attorney would believe that the filing of the Current Lawsuit was frivolous. When Plaintiff's efforts to overturn the jury verdict failed, Plaintiff and Smith decided to bring this action to relitigate these issues. Thus, Smith's filing of the Complaint constitutes a sanctionable action under the FCPSA.

Furthermore, as this Court previously held in its Order granting GWB's Motion to Dismiss, case law from the South Carolina Court of Appeals and Supreme Court squarely addresses the question of whether a lawyer can be held liable to a non-client third party for actions taken in the representation of a client. Based upon the legal principle announced in *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 399 S.E.2d 887 (Ct. App. 1986), and then affirmed in the cases of *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995) and *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010), a lawyer has no liability to a non-client third party for actions taken in the representation of a client. A review of the allegations of Plaintiff's Amended Complaint confirms that GWB is named as a defendant in this action solely by virtue of their representation of Blair in the underlying lawsuit. Through the exercise of minimal diligence, Smith could have located these cases. Instead, it is apparent that Smith failed to assess whether case law supported his theories of liability against GWB.

The Court is particularly concerned with the filing of this action given that Smith was previously sanctioned by this Court in 2016 for similar conduct. *See* Feb. 6, 2016 Order, *Gregg Battersby v. J. Kirkman Moorhead, Krause, Moorhead & Draisen, P.A., Allstate Insurance Company, and Allstate Northbrook Indemnity Company*, C.A. No. 2015-CP-04-00667. In that case, Smith brought a complaint alleging that attorneys were liable to the plaintiff for damages arising out of the attorneys' representation of their client. The Honorable R. Lawton McIntosh found that no reasonable attorney would have brought the plaintiff's claims against the attorneys

given the well-established case law on attorney immunity, and awarded attorneys' fees and costs for defending the lawsuit and bringing the motion for sanctions.

In light of the fact that Smith was previously sanctioned for this same conduct, and the clear rulings from our state's appellate courts, a reasonable attorney would not have filed and pursued this action against GWB because it was clearly not warranted under existing law. Thus, Smith violated the limitations established by the FCPSA, and this Court finds that he should be required to reimburse GWB for the attorneys' fees and costs incurred in bringing this Motion for Sanctions.

Therefore, GWB's Motion for Sanctions is hereby granted, and Plaintiff's attorney, Donald L. Smith, is ordered to pay GWB $13,081.74 as reimbursement for the attorneys' fees and costs incurred in bringing this Motion for Sanctions.

IT IS SO ORDERED.

_____
J. Cordell Maddox, Jr.
Presiding Judge, Tenth Judicial Circuit

Anderson, South Carolina
_____, 2019

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Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Order/Sanctions

So Ordered

s/ J. Cordell Maddox Jr.

ORDER, DATED OCTOBER 2, 2019

(Denying Plaintiff's Motion to Reconsider Order Granting GWB's Motion to Dismiss)

ELECTRONICALLY FILED - 2019 Oct 02 3:00 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin, Plaintiff, vs. April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe, Defendants.	)	Civil Action No. 2017-CP-04-02099 **ORDER**

Plaintiff John E. Harbin's Motion to Reconsider came before the Court for hearing on July 11, 2019. Donald L. Smith appeared on behalf of Plaintiff. Samuel W. Outten appeared on behalf of Gallivan White & Boyd and Sam Nikopoulos (collectively, "GWB"). Having heard the arguments and reviewed the submissions of the parties, Plaintiff's Motion to Reconsider is hereby denied for the reasons stated below.

BACKGROUND

In a prior lawsuit brought by Plaintiff, GWB represented one of the defendants, April Blair. After a trial before the Honorable J. Cordell Maddox, Jr., the jury returned a defense verdict in favor of GWB's client. Plaintiff appealed the jury verdict and made various post-trial motions, all of which were denied.

Plaintiff then filed the instant lawsuit on October 9, 2017. The allegations of the Complaint were nearly identical to those in the prior lawsuit. Plaintiff's Amended Complaint stated only one cause of action against GWB for tortious interference with contract, alleging that GWB interfered with the attorney-client contract between Plaintiff and his attorney, Donald L. Smith. GWB made

ELECTRONICALLY FILED - 2019 Oct 02 3:00 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

a Motion to Dismiss the Amended Complaint on November 22, 2017. This Motion, as well as similar motions filed by the other Defendants, was granted by this Court. This Court held that a lawyer cannot be liable to non-client third parties for actions taken in the representation of a client. Furthermore, this Court found that a law firm is not responsible pursuant to *respondeat superior* for actions taken by an investigative firm that it hires. Following the Court's Order, Plaintiff filed a Motion to Reconsider on February 15, 2019.

RULING

Rule 59(e) of the South Carolina Rules of Civil Procedure allows a court to alter or amend a judgment upon a party's timely motion. A motion under Rule 59(e) has long been viewed as a "motion for reconsideration." *Elam v. S.C. Dep't of Transp.*, 361 SC. 9, 21, 602 S.E.2d 772, 778 (2004). Under South Carolina law, a motion to reconsider pursuant to Rule 59(e), SCRCP, is appropriate in two basic situations. First, "[a] party *may* wish to file such a motion when [he] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id*. at 24, 602 S.E.2d at 780. Second, "[a] party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id*. However, "[a] party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not." *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014).

Plaintiff's Motion to Reconsider does not identify any point of law or fact that the Court misunderstood, did not fully consider, or failed to rule upon. Plaintiff's dissatisfaction with the outcome of the underlying litigation and the instant action is not grounds for relief under Rule 59. *See Elam*, 361 S.C. at 24, 602 S.E.2d at 780.

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Furthermore, the Court granted GWB's Motion to Dismiss based upon the clear legal principle that a lawyer has no liability to a non-client third party for actions taken in the representation of a client. See *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 399 S.E.2d 887 (Ct. App. 1986); *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010). A review of the allegations of Plaintiff's Amended Complaint confirms that GWB is named as a defendant in this action solely by virtue of their representation of Blair in the underlying lawsuit. Thus, the Court dismissed Plaintiff's Complaint against GWB with prejudice based on the above-cited case law.

Furthermore, the Court granted GWB's Motion to Dismiss because GWB was not vicariously liable for the alleged torts of Defendant HUB Enterprises, Inc., an independent contractor that GWB hired to provide surveillance of Plaintiff during the underlying lawsuit. As a general rule, an employer is not vicariously liable for the torts of an independent contractor committed in the performance of contracted work. *See Rock Hill Tel. Co., Inc. v. Globe Commc'ns, Inc.*, 363 S.C. 385, 390, 611 S.E.2d 235, 238 (2005); *Duane v. Presley Constr. Co., Inc.*, 270 S.C. 682, 683, 244 S.E.2d 509, 510 (1978).

For these reasons, Plaintiff's Motion to Reconsider is hereby denied.

IT IS SO ORDERED.

_____

J. Cordell Maddox, Jr.
Presiding Judge, Tenth Judicial Circuit

Anderson, South Carolina
_____, 2019

ELECTRONICALLY FILED - 2019 Oct 02 3:00 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

ORDER, DATED OCTOBER 2, 2020

(Denying Plaintiff's Motion to Reconsider Order Granting HUB's Motion to Dismiss)

ELECTRONICALLY FILED - 2019 Oct 09 4:47 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
John E. Harbin,	)	Civil Action No. 2017-CP-04-02099
Plaintiffs,	)	
v.	)	**ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION**
April Blair, Tracy Dunn, Shawn Conway, HUB Enterprises, Inc., Gallivan, White & Boyd, Sam Nikopoulos and John Doe,	)	
Defendants.	)	

This matter comes before the Court upon Plaintiff John Harbin's Motion for Reconsideration of the Court's February 6, 2019 Order Granting Defendants HUB Enterprises, Inc. and Shawn Conway's Motion to Dismiss the Plaintiff's Amended Complaint.

The Court has carefully reviewed Plaintiff's Motion for Reconsideration. However, the Motion does not raise any issue or point of law that was previously argued or raised to the Court, nor does it call the Court's attention to a possible misapprehension of Plaintiff's previous arguments.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

_____

The Honorable J. Cordell Maddox
Tenth Judicial Circuit

Anderson, South Carolina
September 27, 2019

ELECTRONICALLY FILED - 2019 Oct 09 4:47 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

ORDER, DATED FEBRUARY 5, 2019

(Granting GWB's Motion to Dismiss)

ELECTRONICALLY FILED - 2019 Feb 05 4:07 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin, Plaintiff, vs. April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe, Defendants.	)	Civil Action No. 2017-CP-04-02099 **ORDER**

Gallivan White & Boyd's and Sam Nikopoulos' (collectively "GWB") Motion to Dismiss came before the Court for hearing on February 8, 2018. Donald L. Smith appeared on behalf of Plaintiff. Samuel W. Outten appeared on behalf of GWB. Having heard the arguments and reviewed the submissions of the parties, GWB's Motion to Dismiss Plaintiff's Amended Complaint is hereby granted for the following reasons.

FACTUAL ALLEGATIONS OF THE COMPLAINT

The allegations of Plaintiff's Amended Complaint arise from an underlying dispute that Plaintiff had with April Blair and Tracy Dunn. Plaintiff was shot by Dunn in the leg while he was at Blair's house. GWB represented Blair, who had homeowners coverage through State Farm Insurance Company ("State Farm"), in a suit brought by Plaintiff. Sam Nikopoulos served as an operations assistant and provided courier services at Gallivan White & Boyd at the time of this dispute. At trial, the jury returned a defense verdict for Blair. Plaintiff's Amended Complaint relates to this underlying lawsuit, and states one cause of action for tortious interference with contract.

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RULING

GWB was at all times acting as counsel for Blair. Based upon the legal principle announced in *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 399 S.E.2d 887 (Ct. App. 1986), and then affirmed in the cases of *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995) and *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010), a lawyer has no liability to a non-client third party for actions taken in the representation of a client. A review of the allegations of Plaintiff's Amended Complaint confirms that GWB is named as a defendant in this action solely by virtue of their representation of Blair in the underlying lawsuit.

The allegations in Plaintiff's Amended Complaint also fail because a law firm is not responsible pursuant to *respondeat superior* for actions taken by an investigative firm that it hires. The Amended Complaint's only specific allegation against GWB is that Defendant HUB Enterprises, Inc. was retained by the law firm to provide surveillance of Plaintiff and, therefore, it is responsible for the conduct of the investigator pursuant to *respondeat superior*. This allegation is conclusory and Plaintiff did not allege facts sufficient to support this claim. As a general rule, an employer is not vicariously liable for the torts of an independent contractor committed in the performance of contracted work. *See Rock Hill Tel. Co., Inc. v. Globe Commc'ns, Inc.*, 363 S.C. 385, 390, 611 S.E.2d 235, 238 (2005); *Duane v. Presley Constr. Co., Inc.*, 270 S.C. 682, 683, 244 S.E.2d 509, 510 (1978). GWB cannot be held vicariously liable for HUB Enterprises, Inc.'s alleged tortious interference with contract.

Therefore, GWB's Motion to Dismiss is hereby granted, and Plaintiff's Amended Complaint against them is dismissed with prejudice.

IT IS SO ORDERED.

_____

J. Cordell Maddox, Jr.
Presiding Judge, Tenth Judicial Circuit

Anderson, South Carolina
_____, 2019

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Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

ORDER, DATED FEBRUARY 5, 2019

(Granting HUB's Motion to Dismiss)

ELECTRONICALLY FILED - 2019 Feb 05 4:02 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin, Plaintiffs, v. April Blair, Tracy Dunn, Shawn Conway, HUB Enterprises, Inc., Gallivan, White & Boyd, Sam Nikopoulos and John Doe, Defendants.	)	Civil Action No. 2017-CP-04-02099 **ORDER GRANTING DEFENDANT HUB ENTERPRISES, INC.'S AND DEFENDANT SHAWN CONWAY'S MOTION TO DISMISS**

This matter comes before the Court on Defendants HUB Enterprises, Inc. ("HUB") and Shawn Conway ("Conway") (collectively "Defendants") Motion to Dismiss the Plaintiff's Amended Complaint. For the reasons set forth below, Defendants' Motion is GRANTED.

FACTS

The Plaintiff's Amended Complaint alleges a claim of tortious interference with contractual relations. Plaintiff alleges that, on June 21, 2014, he was shot in the lower right extremity by Defendant Tracy Dunn ("Dunn") while on the property of Defendant April Blair ("Blair"). Am. Compl., ¶¶ 22-30. After that shooting occurred, several related legal proceedings followed. First, Dunn was charged with a criminal offense; he would later plead guilty to Assault and Battery of a High and Aggravated Nature and receive a probationary sentence. Am. Compl. ¶ 34. Second, Plaintiff filed a complaint naming Blair and Dunn as defendants. Am. Compl., ¶ 31. Dunn failed to answer that complaint or otherwise file a responsive pleading. Am. Compl., ¶ 32. Blair had homeowners insurance coverage through State Farm Insurance Company and was represented

during that litigation by counsel from the law firm of Defendant Gallivan, White & Boyd ("GWB"). Prior to trial of the case, GWB made a settlement offer on behalf of Blair to Plaintiff. That offer was rejected. At trial, the jury returned a defense verdict for Blair. Am. Compl., ¶ 44. Thereafter, GWB moved for an order granting costs for all expenses incurred from the date the settlement offer was made. Attached to the motion was an affidavit in support, including Exhibit I, an invoice from HUB for three (3) days of attempted surveillance on Plaintiff by its employee Conway. The trial court granted that motion. Plaintiff moved for a new trial, arguing that GWB's failure to disclose Conway's attempted surveillance on Plaintiff was newly discovered evidence that entitled him to a new trial. The trial court denied that motion. Plaintiff now alleges that HUB and Conway tortuously interfered with his contractual relationship with his attorney, Donald Smith. Am. Compl., ¶¶ 70-81.

STANDARD OF REVIEW

A motion to dismiss must be based solely upon the allegations set forth in the Amended Complaint. Rule 12(b)(6), SCRCP; Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 209, 500 S.E.2d 793, 794, (Ct.App.1998). The Court should view the evidence in the light most favorable of the Plaintiff, and, if facts alleged in the Amended Complaint and inferences reasonably deduced therefrom do not entitle Plaintiff to relief, then the motion to dismiss must be granted. Jarrell, 331 S.C. at 209, 500 S.E.2d at 794. See also Douglass ex rel. Louthian v. Boyce, 336 S.C. 318, 519 S.E.2d 802 (Ct. App. 1999), aff'd, 344 S.C. 5, 542 S.E.2d 715 (2001) (holding the trial court properly dismissed action under 12(b)(6), SCRCP); Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995) (affirming trial court's dismissal of action under 12(b)(6), SCRCP).

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ARGUMENT

The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. Camp v. Springs Mortgage Corp., 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993). An essential element to the cause of action for tortious interference with contractual relations requires the intentional procurement of the contract's breach. Kinard v. Crosby, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993). Where there is no breach of the contract, there can be no recovery. First Union Mortg. Corp. v. Thomas, 317 S.C. 63, 73, 451 S.E.2d 907, 913 (Ct. App. 1994).

In the instant case, Plaintiff has failed to plead any facts or circumstances evincing a breach of the contract between Plaintiff and his attorney, Donald Smith. In pertinent part, Plaintiff's Amended Complaint alleges the following:

> 70. Plaintiff entered into a contract with his attorney to pursue litigation against Blair and Dunn.
>
> 71. Defendants were aware that a contract existed based on the fact that they were all participants in the litigation in some capacity.
>
> 77. Conway signed an affidavit which attested to the fact that he had provided surveillance on Harbin, on behalf of Blair, but had *never seen him*, and, therefore, he is responsible as an individual for interfering with Plaintiff's contract. (emphasis in original).

78. HUB Enterprises, Inc. was retained by Gallivan, White & Boyd to provide surveillance on John Harbin for the underlying tort action brought by Harbin and, therefore, it is responsible for the conduct of Conway pursuant to *respondeat superior*, and, therefore, it is responsible for interfering with Plaintiff's contract.

80. As a result of the intentional interference with Plaintiff's contract, all named Defendants prevented Harbin from getting the damages for which he was entitled due to the shooting.

These allegations, even if taken as true, fail to establish that the contract between Plaintiff and his attorney was breached. The Plaintiff has failed to include any allegations of any acts or omissions by HUB or Conway warranting the inference that either of their intentional actions procured the breach of the contract.

IT IS THEREFORE ORDERED that Defendant HUB Enterprise, Inc.'s and Defendant Shawn Conway's Motion to Dismiss is GRANTED.

IT IS SO ORDERED.

_____

The Honorable R. Lawton McIntosh
Tenth Judicial Circuit

Anderson, South Carolina
November _____, 2018

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Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Order/Dismissal

So Ordered

s/ J. Cordell Maddox Jr.

SUMMONS AND COMPLAINT

(October 9, 2017)

ELECTRONICALLY FILED - 2017 Oct 09 12:45 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
John E. Harbin and Donald L. Smith,)	
Plaintiff,)	
)	**SUMMONS**
vs.)	
)	
April Blair, Tracy Dunn, HUB Enterprises, Inc.)	
Shawn Conway, Gallivan, White & Boyd,)	
Sam Nikopoulos and John Doe,)	
)	C.A. No.: 2017-CP-04-_____
Defendants.)	
_____)	

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your ANSWER to the said Complaint on the Plaintiff's attorney at 122 N. Main Street, Anderson, South Carolina, 29621, within thirty (30) days after the service hereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

s/Donald L. Smith
Donald L. Smith, (SC Bar#6699)
Attorney for Plaintiff
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
October 8, 2017.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	

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ELECTRONICALLY FILED - 2017 Oct 09 12:45 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

John E. Harbin and Donald L. Smith, Plaintiff, vs. April Blair, Tracy Dunn, HUB Enterprises, Inc.) Shawn Conway, Gallivan, White & Boyd, Sam Nikopoulos and John Doe, Defendants.	**COMPLAINT** C.A. No.: 2017-CP-04-_____

The Plaintiff, John Harbin, seeking: Judgment pursuant to S.C. Code Ann.§ 15-53-10, et. seq., respectfully states as follows:

PARTIES

1. Plaintiff Donald L. Smith ("Smith") is resident of Anderson County and an attorney who performed services for Plaintiff John Harbin ("Harbin") under a contract dated July 13, 2014 (the "Fee Contract").

2. Plaintiff, John E. Harbin, is a citizen and resident of the County of Anderson, State of South Carolina.

3. Defendant April Blair ("Blair") is a citizen and resident of the County of Abbeville, State of South Carolina, where she owns a home located at Lake Secession Drive in Iva, South Carolina. She is/was the long-time girlfriend of Dunn, who shot Harbin and is currently in the Department of Corrections for domestic violence in the first degree, which he perpetrated against Blair.

4. Defendant Tracy Dunn is a citizen and resident of the County of Abbeville, State of South Carolina, though he is currently housed in the South Carolina Department of Corrections. He is/was the long-time boyfriend of Blair, and shot Harbin which formed the basis of the prior litigation.

5. Defendant HUB Enterprises, Inc., ("HUB") is a company providing investigatory services, with its corporate headquarters located in Lafayette, Louisiana. HUB was hired by

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Defendant Gallivan White & Boyd to investigate Harbin.

6. Defendant Shawn Conway ("Conway") is/was a private investigator working for HUB. His job was to conduct surveillance on Harbin.

7. Defendant Gallivan, White & Boyd ("GWB") was retained to the represent the interests of State Farm Insurance Company, by providing a defense for Blair.

8. Defendant Sam Nikopoulos is an investigator for GWB who was working in that capacity in June of 2016. He was working on GWB's case against Harbin, and traveled to the Abbeville Detention Center to interview Dunn.

FACTUAL BACKGROUND

9. Plaintiffs adopt and reallege each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

10. Dunn and Blair maintained a romantic relationship and resided together in home, owned by Blair and insured by State Farm, beginning in 2012

11. Harbin was hired by Blair's mother to do some projects involving general labor.

12. Upon completion, Defendants Blair and Dunn invited Harbin to take residence with them in exchange for the performance of general labor similar to that which he had completed at Blair's mother's house.

13. Blair had concerns about Dunn's fidelity which were allegedly confirmed in a discussion with Harbin.

14. Blair sent Dunn packing as she often did upon learning of Dunn's wayward actions.

15. In his absence, Harbin and Blair shared a short-lived escapade.

16. Blair was remorseful following a night of unbridled pleasure with Harbin.

17. Blair was the host of several people that Saturday morning, who were aware of the previous evening's activities with Harbin, including Dunn's cousin and several friends.

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18. Upon information and belief, Blair called Dunn indicating that Harbin had raped her that Saturday morning.

19. Dunn proceeded to come to Blair's house on his moped, with a gun.

20. Dunn initiated an altercation with Harbin in the back yard, upon his arrival.

21. Harbin recognized that Dunn's arrival meant that it was time for him to move out of the home.

22. While awaiting his transportation away from the engaged couple's home, Harbin was shot by Dunn in the calf.

23. Harbin was airlifted to AnMed following a visit to Abbeville County Medical Center.

24. Harbin suffered great pain, permanent scarring, RSD and post-traumatic stress disorder, as a result of the shooting.

25. Dunn ran from the police, while Blair ended up in jail for methamphetamine possession.

26. In an effort to diminish, Dunn's likely, significant penalty, Blair brought it to law enforcement's attention that Harbin had raped her.

27. Law enforcement disregarded what Blair had said to justify Dunn's actions.

28. Eventually, Dunn was captured at Blair's home.

29. Upon being interviewed, Dunn said that Harbin had apparently shot himself.

30. Dunn's next interview indicated that he had been acting in self-defense, though Harbin was not armed.

31. As a result of the shooting, Harbin brought an action, 2014-CP-04-02908, for damages against Blair and Dunn.

32. Dunn, who was not represented, failed to answer the complaint.

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33. Blair retained counsel and alleged that she had done nothing to cause Harbin's injuries.

34. Dunn pled guilty to assault and battery of a high and aggravated nature for the shooting of Harbin, and was sentenced to time served and probation.

35. Upon his release from jail, Dunn resumed his romantic relationship with his fiancée, though it had never ended, according to Blair's mother.

36. Blair had Dunn charged with Criminal Domestic Violence of a high and aggravated nature.

37. Based on the fact Dunn was on probation for his shooting of Harbin, he did not get out of jail.

38. Blair's house was subject to addressing the damages related to her involvement with Harbin's shooting.

39. Based on Dunn's suspended sentence for shooting Harbin, Blair's charge resulted in Dunn being incarcerated until her case was tried, or he plead.

40. Blair's lawyer sent his investigator, Defendant Nikopoulos, to the Abbeville County Detention Center to visit with Dunn immediately prior to Dunn's deposition for his involvement in the Harbin shooting.

41. It is the understanding and belief of Plaintiffs that while visiting with Dunn, Nikopoulos told him that Blair would be helpful with regard to her pending charge against him when it came time for him to resolve the charge.

42. Nikopoulo's superior, counsel for Blair, took Dunn's deposition within a week of the meeting of Dunn and Nikopoulos.

43. Dunn testified that he had meant to shoot Harbin, for the first time since the event took place.

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44. Dunn also testified that his fiancée, and the reason he was incarcerated, was not in any way responsible.

45. Dunn testified in the same manner at the trial for damages caused by the shooting.

46. Blair was absolved of liability by the jury, based on Dunn's testimony.

47. Blair later sought damages for Plaintiff's failure to accept a prior settlement offer that was greater than a previously filed Offer of Judgment.

48. Harbin learned at that time that Blair had employed a private investigator that had been hired by Nikopoulos's superior to observe any permanent damages that may have resulted to him following the accident.

49. Defendant Shawn Conway, a private investigator working on behalf of Defendant HUB Enterprises, Inc., was allegedly responsible for investigating Harbin.

50. Blair sought over $2300.00 in costs as a result of Conway's investigation.

51. Harbin was not provided discovery of the work done by Conway.

52. Harbin had his deposition taken prior to this investigation.

53. Harbin was entitled to the discovery of Conway's involvement and investigative report from Blair.

54. Blair claimed that Conway had never seen Harbin in the three (3) full days of attempting to find him.

55. Conway attested to the fact that he never saw Harbin, despite the fact that Harbin and his girlfriend had not been away from home overnight in the prior year.

56. Harbin and his girlfriend signed affidavits indicating that they were at the home, all three (3) days.

57. Conway never offered anything to substantiate his claim that he did not see Harbin other than an affidavit provided at a Motion to Vacate hearing, following Harbin's trial defeat.

58. Plaintiffs' private investigator spoke to Conway.

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59. Conway admitted to the P.I., Michal Moske, that he could not recall that particular job.

60. Harbin's Motion to Reconsider/Vacate was denied in part because of Blair's private investigator stating that since he had *never* seen Harbin, he never discovered anything.

61. Following the resolution of the trial and all post-trial motions, Blair began her campaign to free her fiancé from the incarceration that she had provided.

62. Blair spoke to Dunn's Public Defender in an attempt to get the criminal domestic violence charges dismissed. "She preferred that they had been dismissed."

63. Blair attended court on the day Dunn was sentenced.

64. Dunn's counsel stated that Dunn viewed Blair's two-year-old son as his own.

65. Dunn and Blair conspired to defeat Harbin's claim, as well as denying Smith's claim for attorney fees.

66. Harbin would have received $100,000.00 if he had settled the underlying action.

67. Harbin's recent diagnosis of RSD was going to cost him roughly $15-20, 000.00 in annual prescription costs.

68. Harbin could not accept the settlement offered.

69. Harbin believed Blair was the reason that Dunn came to her house and shot him.

70. Dunn would not have shot Harbin if Blair hadn't called him to come to the property.

FORA FIRST CAUSE OF ACTION
(Tortious Interference with Contract as to Defendants
April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway,
Gallivan, White & Boyd, Sam Nikopoulos and John Doe)

71. All allegations found in 1-70 above are incorporated herein where relevant.

72. Blair utilized the charge against Dunn, and his subsequent incarceration, to convince him to testify that not only did he mean to shoot Harbin, but also Blair had nothing to do with the shooting.

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73. Dunn used his testimony as a bargaining chip to have Blair dismiss the charges that were brought by her; or, at the very least, testify on his behalf to mitigate his sentencing.

74. Conway signed an affidavit which attested to the fact that he had provided surveillance on behalf of Blair to illustrate Harbin's recovery from the injuries sustained as a result of the shooting, but had *never seen him.*

75. HUB Enterprises, Inc. was retained by Gallivan, White & Boyd to provide surveillance on John Harbin for the underlying tort action brought by Harbin and, therefore, it is responsible for the conduct of Conway pursuant to *respondeat superior*.

76. Nikopoulos related to Dunn that if he testified on Blair's behalf, he would benefit in the charges that existed against him, pursuant to Blair's accusations.

77. Gallivan, White & Boyd employed Nikopoulos at the time of his tortious interference with Plaintiffs' contract, and directed him to urge Dunn to change his prior recollection of the shooting and, therefore, it is responsible for the conduct of Nikopoulos pursuant to *respondeat superior*.

78. As a result of the intentional interference with Plaintiffs' contract, all named Defendants prevented Harbin from getting the damages for which he was entitled due to the shooting; and, they prevented Smith from recovering the associated attorney fees therewith.

79. By their actions in attempting to contravene the contract of Plaintiffs, April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan, White & Boyd, Sam Nikopoulos and John Doe have, through the use of what amounts to deceit on the Court, interfered with Plaintiffs' contract, and they are entitled to actual and punitive damages against Defendants.

WHEREFORE, the Plaintiffs pray for a judgment in their favor for actual, future and punitive damages, costs of this action, trial by jury, and any further relief deemed necessary and proper by this Court.

s/Donald L. Smith
Donald L. Smith, (SC Bar#6699)
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Anderson, South Carolina
October 8, 2017.

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GWB's MOTION TO DISMISS

(November 8, 2017)

ELECTRONICALLY FILED - 2017 Nov 08 10:01 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA)) COUNTY OF ANDERSON)	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin and Donald L. Smith,)) Plaintiffs,) vs.)) April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe,)) Defendants.))	C.A. No.: 2017-CP-04-02099 **GALLIVAN WHITE & BOYD'S AND SAM NIKOPOULOS' MOTION TO DISMISS**

Gallivan White & Boyd and Sam Nikopoulos (collectively "GWB") move the Court, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, for an Order dismissing the Complaint with prejudice because (1) a lawyer is not liable to non-client third parties for actions taken in the representation of his or her client, and (2) Plaintiffs failed to state the elements necessary to constitute a cause of action for tortious interference with contract.

ARGUMENT

1. The Complaint should be dismissed with prejudice because a lawyer is not liable to non-client third parties for actions taken in the representation of his or her client.

This lawsuit arises from a dispute that John E. Harbin ("Harbin") had with April Blair and Tracy Dunn. In short, Harbin was shot by Dunn in the leg while he was at Blair's house. GWB represented Blair, who had homeowners coverage through State Farm Insurance Company ("State Farm"), in a suit brought by Harbin. GWB made a settlement offer prior to trial on behalf of Blair/State Farm to Harbin and his attorney, Donald L. Smith ("Smith"), which offer was rejected. The jury returned a defense verdict for Blair.

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The Complaint states one cause of action for tortious interference with contract. The allegations relate to the dispute between Harbin, Blair, and Dunn, which was resolved by a jury trial. There are no allegations that GWB acted outside the scope of its representation of Blair, or that it breached an independent duty it owed to Plaintiffs. The only reasonable inference to draw from the allegations of the Complaint is that GWB was at all times acting as counsel for Blair, who received a jury verdict in her favor. Thus, the Complaint should be dismissed against GWB based upon the legal principle announced in *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 399 S.E.2d 887 (Ct. App. 1986), and then affirmed in the cases of *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995) and *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010). These cases stand for the proposition that a lawyer has no liability to a non-client third party for actions taken in the representation of a client. A review of the allegations of the Complaint confirms that GWB is named as a defendant in this action solely by virtue of its representation of Blair in the lawsuit described above.

The three primary decisions in this line of cases may be helpful to the Court in deciding these issues. In *Gaar v. North Myrtle Beach Realty Co., Inc.*, John Gaar and Karen Gaar brought an action for malicious prosecution against two attorneys because they represented North Myrtle Beach Realty Company in a case against the Gaars, which was dismissed pursuant to an involuntary non-suit. *Gaar*, 287 S.C. at 527, 399 S.E.2d at 888. The Court of Appeals rejected their claim because "the better rule is that an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. Accordingly, an attorney who acts in good faith with the authority of his client is not liable to a third party in an action for malicious prosecution." *Id.* at 528–29, 399 S.E.2d at 889. The Court went on to state that "[t]he attorney normally conducts the litigation

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solely in his professional capacity. He has no personal interest in the suit. In his professional capacity the attorney is not liable, except to his client and those in privity with his client, for injury allegedly arising out of the performance of his professional activities." *Id*. at 529, 399 S.E.2d at 889.

In *Stiles v. Onorato*, Beverly Stiles brought a defamation claim against Robert Onorato, who then counterclaimed against her and filed a third party claim against her attorney alleging civil conspiracy and initiation of a frivolous lawsuit. *Stiles*, 318 S.C. at 298, 457 S.E.2d at 601. The trial court dismissed the third party complaint on a motion to dismiss, finding that it failed to state a cause of action under *Gaar*. *Id*. at 298, 457 S.E.2d at 601–602. Onorato conceded that under *Gaar*, he could not maintain an action against Bowen for actions taken in his professional capacity, but alleged that he was not precluded from suing Bowen for actions taken outside the scope of his professional relationship. *Id*. at 299, 457 S.E.2d at 602.

The Supreme Court agreed, and found that "an attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client." *Id*. at 300, 457 S.E.2d at 602. The Court noted that *Gaar* does not provide absolute immunity under any and all circumstances, but affirmed the dismissal. *Id*. After analyzing the allegations of the third party complaint against Bowen, the Court found that Onorato failed to allege in what manner Bowen acted outside his role as Stiles' attorney, and noted that Onorato did not allege any breach of an independent duty to him. *Id*. at 300, 457 S.E.2d at 603. The Court then found that "[t]herefore, on the face of this complaint, the only reasonable inference is that Bowen was acting at all times in his capacity as Stiles' attorney. Under *Gaar*, Bowen is immune for any activities

taken in his professional capacity. Accordingly, under *Gaar*, Onorato's complaint was fatally deficient and Bowen's Rule 12(b)(6) motion was properly granted." *Id.*

In 2010, former Chief Justice Toal wrote the opinion of the South Carolina Supreme Court in the case of *Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions.* The Court affirmed the rule established in *Gaar* and *Stiles* and wrote that "[g]enerally, an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client." *Argoe*, 388 S.C. at 400, 697 S.E.2d at 554 (internal citations omitted). The court reasoned that "an attorney owes no duty to a non-client unless he 'breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client.'" *Id.* (quoting *Stiles*, 318 S.C. at 300, 457 S.E.2d at 602).

GWB was at all times acting within the scope of its representation of Blair, and therefore the Complaint against GWB should be dismissed with prejudice.

2. The Complaint should also be dismissed for failure to state the elements necessary to constitute a claim for tortious interference with contract.

The Complaint purports to state a claim for tortious interference with the attorney-client contract between Harbin and Smith. The elements of tortious interference with contract are: (1) the existence of a valid contract; (2) the wrongdoer's knowledge of the contract; (3) the wrongdoer's intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. *See Broach v. Carter*, 399 S.C. 434, 441, 732 S.E.2d 185, 188 (Ct. App. 2012); *Camp v. Springs Mortg. Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993).

The Complaint contains vague and conclusory allegations that GWB "attempt[ed] to contravene the contract of Plaintiffs," the contract being the attorney-client fee contract that Harbin and Smith entered into for purposes of Smith representing Harbin in his action against Blair and

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Dunn. Plaintiffs argue that GWB prevented Harbin from getting the damages he was entitled to, and Smith from getting the associated attorney fees. However, Harbin and Smith fail to state that GWB procured any breach of their contract, or that GWB acted intentionally in doing so. In essence, Plaintiffs' claim is an attempt to overturn the jury verdict that absolved GWB's client of liability in the underlying action, and to accept the settlement offer made prior to trial.

Plaintiffs failed to state the elements necessary to constitute a claim for tortious interference with contract, and therefore the Complaint should be dismissed with prejudice on that ground as well.

Conclusion

The Complaint against GWB should be dismissed because (1) a lawyer is not liable to non-client third parties for actions taken in the representation of his or her client, and (2) Plaintiffs failed to state the elements necessary to constitute a cause of action for tortious interference with contract.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

s/Samuel W. Outten
Samuel W. Outten
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Attorneys for Gallivan White & Boyd and Sam Nikopoulos

Greenville, South Carolina
November 8, 2017

AMENDED SUMMONS AND COMPLAINT

(November 13, 2017)

ELECTRONICALLY FILED - 2017 Nov 13 9:50 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
John E. Harbin,)	
)	
Plaintiff,)	
)	**AMENDED SUMMONS**
vs.)	
)	
April Blair, Tracy Dunn, HUB Enterprises, Inc.) Shawn Conway, Gallivan, White & Boyd,) Sam Nikopoulos and John Doe,)	
)	C.A. No.: 2017-CP-04-02099
Defendants.)	
)	

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your ANSWER to the said Amended Complaint on the Plaintiff's attorney at 122 N. Main Street, Anderson, South Carolina, 29621, within thirty (30) days after the service hereof, exclusive of the day of service, and if you fail to answer the Amended Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Amended Complaint and judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

s/Donald L. Smith
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Attorney for Plaintiff
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Anderson, South Carolina
November 12, 2017.

ELECTRONICALLY FILED - 2017 Nov 13 9:50 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	
John E. Harbin,	)	
	)	
Plaintiff,	)	
	)	**COMPLAINT**
vs.	)	
	)	
April Blair, Tracy Dunn, HUB Enterprises, Inc.) Shawn Conway, Gallivan, White & Boyd, Sam Nikopoulos and John Doe,	)	
	)	C.A. No.: 2017-CP-04-02099
Defendants.	)	
_____	)	

The Plaintiff, John Harbin, seeking: Judgment pursuant to S.C. Code Ann.§ 15-53-10, et. seq., respectfully states as follows:

PARTIES

1. Plaintiff John Harbin ("Harbin") is a citizen and resident of Anderson County who brought an action in tort for a personal injury that he suffered on Defendant Blair's property. Harbin was forced to retain the services of an attorney to pursue the significant damages that he incurred as a result and, thusly, entered into a contract for the retention.

2. Defendant April Blair ("Blair") is a citizen and resident of the County of Abbeville, State of South Carolina, where she owns a home located at Lake Secession Drive in Iva, South Carolina. She is/was the long-time girlfriend of Dunn, who shot Harbin and is currently in the Department of Corrections for domestic violence in the first degree, which he perpetrated against Blair.

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3. Defendant Tracy Dunn is a citizen and resident of the County of Abbeville, State of South Carolina, though he is currently housed in the South Carolina Department of Corrections. He is/was the long-time boyfriend of Blair, and shot Harbin which formed the basis of the prior litigation.

4. Defendant HUB Enterprises, Inc., ("HUB") is a company providing investigatory services, with its corporate headquarters located in Lafayette, Louisiana. HUB was hired by Defendant Gallivan White & Boyd to investigate Harbin.

5. Defendant Shawn Conway ("Conway") is/was a private investigator working for HUB. His job was to conduct surveillance on Harbin.

6. Defendant Sam Nikopoulos is an investigator for GWB who was working in that capacity in June of 2016. He was working on GWB's case against Harbin, and traveled to the Abbeville Detention Center to interview Dunn.

FACTUAL BACKGROUND

7. Plaintiff adopts and realleges each and every allegation set forth above, and not inconsistent herewith, as if fully repeated herein.

8. Dunn and Blair maintained a romantic relationship and resided together in home, owned by Blair and insured by State Farm, beginning in 2012

9. Harbin was hired by Blair's mother to do some projects involving general labor.

10. Upon completion, Defendants Blair and Dunn invited Harbin to take residence with them in exchange for the performance of general labor similar to that which he had completed at Blair's mother's house.

11. Blair had concerns about Dunn's fidelity which were allegedly confirmed in a discussion with Harbin.

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12. Blair sent Dunn packing as she often did upon learning of Dunn's wayward actions.

13. In his absence, Harbin and Blair shared a "night of passion".

14. Blair was remorseful following a night of unbridled pleasure with Harbin.

15. Blair was the host of several people that Saturday morning, who were aware of the previous evening's activities with Harbin, including Dunn's cousin and several friends.

16. Upon information and belief, Blair called Dunn indicating that Harbin had raped her that Saturday morning.

17. Dunn proceeded to come to Blair's house on his moped, with a gun.

18. Dunn initiated an altercation with Harbin in the back yard, upon his arrival.

19. Harbin recognized that Dunn's arrival meant that it was time for him to move out of the home.

20. While awaiting his transportation away from the engaged couple's home, Harbin was shot by Dunn in the calf.

21. Harbin was airlifted to AnMed following a visit to Abbeville County Medical Center.

22. Harbin suffered great pain, permanent scarring, RSD and post-traumatic stress disorder, as a result of the shooting.

23. Dunn ran from the police, while Blair ended up in jail for methamphetamine possession.

24. In an effort to diminish, Dunn's likely, significant penalty, Blair brought it to law enforcement's attention that Harbin had raped her.

25. Law enforcement disregarded what Blair had said to justify Dunn's actions.

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26. Eventually, Dunn was captured at Blair's home.

27. Upon being interviewed, Dunn said that Harbin had apparently shot himself.

28. Dunn's next interview indicated that he had been acting in self-defense, though Harbin was not armed.

29. As a result of the shooting, Harbin brought an action, 2014-CP-04-02908, for damages against Blair and Dunn.

30. Dunn, who was not represented, failed to answer the complaint.

31. Blair retained counsel and alleged that she had done nothing to cause Harbin's injuries.

32. Dunn pled guilty to assault and battery of a high and aggravated nature for the shooting of Harbin, and was sentenced to time served and probation.

33. Upon his release from jail, Dunn resumed his romantic relationship with his fiancée, though it had never ended, according to Blair's mother.

34. Blair had Dunn charged with Criminal Domestic Violence of a high and aggravated nature.

35. Based on the fact Dunn was on probation for his shooting of Harbin, he did not get out of jail.

36. Blair's house was subject to addressing the damages related to her involvement with Harbin's shooting.

37. Based on Dunn's suspended sentence for shooting Harbin, Blair's charge resulted in Dunn being incarcerated until her case was tried, or he plead.

38. Blair's lawyer sent his investigator, Defendant Nikopoulos, to the Abbeville

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County Detention Center to visit with Dunn immediately prior to Dunn's deposition for his involvement in the Harbin shooting.

39. It is the understanding and belief of Plaintiff that while visiting with Dunn, Nikopoulos told him that Blair would be helpful with regard to her pending charge against him when it came time for him to resolve the charge.

40. Nikopoulo's superior, counsel for Blair, took Dunn's deposition within a week of the meeting of Dunn and Nikopoulos.

41. Dunn testified that he had meant to shoot Harbin, for the first time since the event took place.

42. Dunn also testified that Blair, who was responsible for him being incarcerated, was not in any way responsible.

43. Dunn testified in the same manner at the trial for damages caused by the shooting.

44. Blair was absolved of liability by the jury, based on Dunn's testimony.

45. Blair later sought damages for Plaintiff's failure to accept a prior settlement offer that was greater than a previously filed Offer of Judgment.

46. Harbin learned at that time that Blair had employed a private investigator that had been hired by Nikopoulos's superior to observe any permanent damages that may have resulted to him following the accident.

47. Defendant Shawn Conway, a private investigator working on behalf of Defendant HUB Enterprises, Inc., was allegedly responsible for investigating Harbin.

48. Blair sought over $2300.00 in costs as a result of Conway's investigation.

49. Harbin was not provided discovery of the work done by Conway.

50. Harbin had his deposition taken prior to this investigation.

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51. Harbin was entitled to the discovery of Conway's involvement and investigative report from Blair.

52. Blair claimed that Conway had never seen Harbin in the three (3) full days of "investigation".

53. Conway attested to the fact that he never saw Harbin, despite the fact that Harbin and his girlfriend had not been away from home overnight in the prior year.

54. Harbin and his girlfriend signed affidavits indicating that they were at the home, the same residence that he offered in the aforementioned deposition, all three (3) days.

55. Conway never offered anything to substantiate that he did any work on the Harbin case, other than his conclusory statement that he didn't see him.

56. Plaintiff's counsel retained a private investigator, who spoke to Conway.

57. Conway admitted to the P.I., Michal Moske, that he could not recall that particular job.

58. Harbin's Motion to Reconsider/Vacate was denied in part because of Blair's private investigator stating that since he had *never* seen Harbin, Harbin was not entitled to his materials.

59. Following the resolution of the trial and all post-trial motions, Blair began her campaign to free her fiancé from the incarceration that she had triggered.

60. Blair spoke to Dunn's Public Defender in an attempt to get the criminal domestic violence charges dismissed. "She preferred that they had been dismissed."

61. Blair attended court on the day Dunn was sentenced.

62. Dunn's counsel stated that Dunn viewed Blair's two-year-old son as his own.

63. Dunn and Blair conspired to defeat Harbin's claim.

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64. Harbin would have received $100,000.00 if he had settled the underlying action.

65. Harbin's recent diagnosis of RSD is going to cost him roughly $15-20, 000.00 in annual prescription costs.

66. Harbin could not accept the settlement offered.

67. Harbin believed Blair was the reason that Dunn came to her house and shot him.

68. Dunn would not have shot Harbin if Blair hadn't called him to come to the property.

FORA FIRST CAUSE OF ACTION
(Tortious Interference with Contract as to Defendants
April Blair, Tracy Dunn, HUB Enterprises, Inc.,
Shawn Conway, Sam Nikopoulos and John Doe)

69. All allegations found in 1-68 above are incorporated herein where relevant.

70. Plaintiff entered into a contract with his attorney to pursue litigation against Blair and Dunn.

71. Defendants were aware that a contract existed based on the fact that they were all participants in the litigation in some capacity.

72. Defendants' improper conduct was intentional, willful and wanton, and procured the breach of Plaintiff's contract with his attorney, in that the execution of the contract failed as a result of said conduct.

73. Defendants' improper conduct was not justified.

74. Significant damages resulted therefrom.

75. Blair utilized the charge against Dunn, and his subsequent incarceration, to convince him to testify that not only did he mean to shoot Harbin, but also Blair had nothing to do with the shooting.

76. Dunn used his testimony as a bargaining chip to have Blair dismiss the charges that were brought by her; or, at the very least, testify on his behalf to mitigate his sentencing.

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77. Conway signed an affidavit which attested to the fact that he had provided surveillance on Harbin, on behalf of Blair, but had *never seen him,* and, therefore, he is responsible as an individual for interfering with Plaintiff's contract.

78. HUB Enterprises, Inc. was retained by Gallivan, White & Boyd to provide surveillance on John Harbin for the underlying tort action brought by Harbin and, therefore, it is responsible for the conduct of Conway pursuant to *respondeat superior,* and, therefore, it is responsible for interfering with Plaintiff's contract.

79. Nikopoulos related to Dunn that if he testified on Blair's behalf, he would benefit in the charges that existed against him, pursuant to Blair's accusations and, therefore, he personally interfered with Plaintiff's contract.

80. As a result of the intentional interference with Plaintiff's contract, all named Defendants prevented Harbin from getting the damages for which he was entitled due to the shooting.

81. By their actions in attempting to contravene the contract of Plaintiff, April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan, White & Boyd, Sam Nikopoulos and John Doe have, through the use of what amounts to deceit on the Court, interfered with Plaintiff's contract, and he is entitled to actual and punitive damages against Defendants.

PUNITIVE DAMAGES

82. That Plaintiff re-alleges the preceding paragraphs as if set forth fully herein.

83. As a direct and proximate result of Defendants' recklessness, willfulness and wantonness, Plaintiff has incurred the following:

a. Actual damages;

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b. Mental, emotional, and psychological distress;

c. Severe damage to their reputation and social life; and,

d. Punitive damages.

84. That the acts and/or omissions of Defendants, as stated above, were willful, wanton, and in reckless disregard for the financial wellbeing of Plaintiff.

85. That as a direct and proximate result of the willful, wanton, and reckless acts and/or omissions of Defendants, Plaintiff suffered, and continues to suffer.

86. That the conduct of Defendants, individually and jointly, as set forth above, justify an award of punitive damages for the claim of Plaintiff against them as set forth herein, in an amount sufficient to deter these Defendants or others from committing similar acts in the future.

87. Plaintiff is entitled to recover actual and punitive damages from Defendant in an amount to be determined by this Court.

PRAYER

WHEREFORE, Plaintiffs demand a trial by jury pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure, and pray for judgment against Defendants for actual, future and punitive damages in an amount to be determined by the jury.

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Anderson, South Carolina
November 13, 2017.

ELECTRONICALLY FILED - 2017 Nov 15 4:08 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
John E. Harbin,)	
)	
Plaintiff,)	
)	**CERTIFICATE OF SERVICE**
vs.)	
April Blair, Tracy Dunn, HUB Enterprises,)	
Inc ,Shawn Conway, Gallivan, White &)	
Boyd, Sam Nikopoulos and John Doe,)	
)	C.A. No.: 2017-CP-04-02099
Defendants.)	
_____)	

THE UNDERSIGNED person deposes and says that he served an Amended Summons and Complaint, upon all Defendants, by placing copies thereof in envelopes addressed to the parties at the addresses shown below, which envelopes were sealed and postage thereon fully prepaid, and deposited in the United States Mail at Anderson, South Carolina, and that there is a regular communication by the United States mail between the place of mailing and the places addressed as follows:

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Attorneys for Defendant Gallivan, White & Boyd and Sam Nikopoulos

Mr. Tracy Dunn
Inmate Number 00279454
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, SC 29221-1787

Ms. April Blair
2760 Lake Secession Road
Iva SC 29655

Mr. Shawn J. Holloway
4331 Willow St.
Loris, SC 29569-2543

HUB Enterprises, Inc.
PO Box 3162
Lafayette, LA 70502

HUB Enterprises, Inc.
by and through registered agent
Corporation Service Company
1703 Laurel St., Columbia, SC 29201

November 15, 2017

s/Donald L. Smith
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GWB's MOTION TO DISMISS AMENDED COMPLAINT

(November 22, 2017)

ELECTRONICALLY FILED - 2017 Nov 22 11:59 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA)) COUNTY OF ANDERSON)	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin,)) Plaintiff,) vs.)) April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe,)) Defendants.)	C.A. No.: 2017-CP-04-02099 **GALLIVAN WHITE & BOYD'S AND SAM NIKOPOULOS' MOTION TO DISMISS**

Gallivan White & Boyd and Sam Nikopoulos (collectively "GWB") move the Court, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, for an Order dismissing the Amended Complaint with prejudice because (1) a lawyer is not liable to non-client third parties for actions taken in the representation of his or her client, and (2) a law firm is not responsible pursuant to *respondeat superior* for actions taken by an investigative firm that it hires.

ARGUMENT

1. The Amended Complaint should be dismissed with prejudice because a lawyer is not liable to non-client third parties for actions taken in the representation of his or her client.

This lawsuit arises from a dispute that John E. Harbin ("Harbin") had with April Blair and Tracy Dunn. In short, Harbin was shot by Dunn in the leg while he was at Blair's house. GWB represented Blair, who had homeowners coverage through State Farm Insurance Company ("State Farm"), in a suit brought by Harbin. Sam Nikopoulos served as an operations assistant and provided courier services at Gallivan White & Boyd at the time of this dispute. GWB made a settlement offer prior to trial on behalf of Blair/State Farm to Harbin and his attorney, Donald L. Smith, which offer was rejected. The jury returned a defense verdict for Blair.

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The Amended Complaint states one cause of action for tortious interference with contract. Harbin did not include Gallivan White & Boyd as to this cause of action. Nevertheless, the allegations relate to the dispute between Harbin, Blair, and Dunn, which was resolved by a jury trial. There are no allegations that GWB acted outside the scope of its representation of Blair, or that it breached an independent duty it owed to Harbin. The only reasonable inference to draw from the allegations of the Complaint is that GWB was at all times acting as counsel for Blair, who received a jury verdict in her favor. Thus, the Amended Complaint should be dismissed against GWB based upon the legal principle announced in *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 399 S.E.2d 887 (Ct. App. 1986), and then affirmed in the cases of *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995) and *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010). These cases stand for the proposition that a lawyer has no liability to a non-client third party for actions taken in the representation of a client. A review of the allegations of the Amended Complaint confirms that GWB is named as a defendant in this action solely by virtue of its representation of Blair in the lawsuit described above.

The three primary decisions in this line of cases may be helpful to the Court in deciding these issues. In *Gaar v. North Myrtle Beach Realty Co., Inc.*, John Gaar and Karen Gaar brought an action for malicious prosecution against two attorneys because they represented North Myrtle Beach Realty Company in a case against the Gaars, which was dismissed pursuant to an involuntary non-suit. *Gaar*, 287 S.C. at 527, 399 S.E.2d at 888. The Court of Appeals rejected their claim because "the better rule is that an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. Accordingly, an attorney who acts in good faith with the authority of his client is not liable to a third party in an action for malicious prosecution." *Id.* at 528–29, 399

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S.E.2d at 889. The Court went on to state that "[t]he attorney normally conducts the litigation solely in his professional capacity. He has no personal interest in the suit. In his professional capacity the attorney is not liable, except to his client and those in privity with his client, for injury allegedly arising out of the performance of his professional activities." *Id.* at 529, 399 S.E.2d at 889.

In *Stiles v. Onorato*, Beverly Stiles brought a defamation claim against Robert Onorato, who then counterclaimed against her and filed a third party claim against her attorney alleging civil conspiracy and initiation of a frivolous lawsuit. *Stiles*, 318 S.C. at 298, 457 S.E.2d at 601. The trial court dismissed the third party complaint on a motion to dismiss, finding that it failed to state a cause of action under *Gaar*. *Id.* at 298, 457 S.E.2d at 601–602. Onorato conceded that under *Gaar*, he could not maintain an action against Bowen for actions taken in his professional capacity, but alleged that he was not precluded from suing Bowen for actions taken outside the scope of his professional relationship. *Id.* at 299, 457 S.E.2d at 602.

The Supreme Court agreed, and found that "an attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client." *Id.* at 300, 457 S.E.2d at 602. The Court noted that *Gaar* does not provide absolute immunity under any and all circumstances, but affirmed the dismissal. *Id.* After analyzing the allegations of the third party complaint against Bowen, the Court found that Onorato failed to allege in what manner Bowen acted outside his role as Stiles' attorney, and noted that Onorato did not allege any breach of an independent duty to him. *Id.* at 300, 457 S.E.2d at 603. The Court then found that "[t]herefore, on the face of this complaint, the only reasonable inference is that Bowen was acting at all times in his capacity as Stiles' attorney. Under *Gaar*, Bowen is immune for any activities

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taken in his professional capacity. Accordingly, under *Gaar*, Onorato's complaint was fatally deficient and Bowen's Rule 12(b)(6) motion was properly granted." *Id.*

In 2010, former Chief Justice Toal wrote the opinion of the South Carolina Supreme Court in the case of *Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions.* The Court affirmed the rule established in *Gaar* and *Stiles* and wrote that "[g]enerally, an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client." *Argoe*, 388 S.C. at 400, 697 S.E.2d at 554 (internal citations omitted). The court reasoned that "an attorney owes no duty to a non-client unless he 'breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client.'" *Id.* (quoting *Stiles*, 318 S.C. at 300, 457 S.E.2d at 602).

GWB was at all times acting within the scope of its representation of Blair, and therefore the Amended Complaint against GWB should be dismissed with prejudice.

2. The Amended Complaint should also be dismissed with prejudice because a law firm is not responsible pursuant to *respondeat superior* for actions taken by an investigative firm that it hires.

The Amended Complaint's only specific allegation against GWB is that Defendant HUB Enterprises, Inc. ("HUB") was retained by the law firm to provide surveillance of Harbin and, therefore, it is responsible for the conduct of the investigator pursuant to *respondeat superior*. (Compl. ¶ 78.) This allegation is conclusory and Harbin did not allege facts sufficient to support this claim. "[O]n a 12(b)(6) motion, the court is required to presume all well pled *facts*, not propositions of law, to be true." *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 635, 699 S.E.2d 699, 705 (Ct. App. 2010). Conclusory allegations in a complaint are insufficient to survive a judgment on the pleadings. *See Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct.

App. 1986). Harbin's allegation that GWB is responsible for the conduct of the investigator that it hired pursuant to *respondeat superior* is merely a conclusory legal statement, and therefore the Amended Complaint against GWB should be dismissed.

Furthermore, there is no basis for alleging that a law firm is responsible for the actions of an investigative firm that it hires. GWB retained HUB as an independent contractor to provide investigative services. As a general rule, an employer is not vicariously liable for the torts of an independent contractor committed in the performance of contracted work. *See Rock Hill Tel. Co., Inc. v. Globe Commc'ns, Inc.*, 363 S.C. 385, 390, 611 S.E.2d 235, 238 (2005); *Duane v. Presley Constr. Co., Inc.*, 270 S.C. 682, 683, 244 S.E.2d 509, 510 (1978). Harbin's allegations against HUB relate exclusively to the performance of the investigative work that GWB delegated to HUB. Therefore, GWB cannot be held vicariously liable for HUB's alleged tortious interference with contract.

Conclusion

The Amended Complaint against GWB should be dismissed because (1) a lawyer is not liable to non-client third parties for actions taken in the representation of his or her client, and (2) a law firm is not responsible pursuant to *respondeat superior* for actions taken by an investigative firm that it hires.

[SIGNATURE PAGE FOLLOWS]

ELECTRONICALLY FILED - 2017 Nov 22 11:59 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Greenville, South Carolina
November 22, 2017

ELECTRONICALLY FILED - 2017 Nov 22 11:59 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

HUB's MOTION TO DISMISS

(December 6, 2017)

ELECTRONICALLY FILED - 2017 Dec 06 4:17 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin, Plaintiffs, v. April Blair, Tracy Dunn, Shawn Conway, HUB Enterprises, Inc., Gallivan, White & Boyd, Sam Nikopoulos and John Doe, Defendants.	)	Civil Action No. 2017-CP-04-02099 **NOTICE OF MOTION AND MOTION TO DISMISS OF DEFENDANTS HUB ENTERPRISES, INC. AND SHAWN CONWAY IN LIEU OF ANSWER**

PLEASE TAKE NOTICE that the undersigned, as counsel for Defendants HUB Enterprises, Inc. ("HUB") and Shawn Conway ("Conway") (collectively "Defendants"), will move before the Presiding Judge of the Court of Common Pleas, for an Order dismissing the Complaint in this case pursuant to Rules 12(b)(6) of the South Carolina Rules of Civil Procedure.

In support of this Motion, Defendants respectfully submit the following:

1) The Plaintiff's claim does not state sufficient facts to constitute a cause of action for tortious interference with contract against Defendants. There is no justiciable controversy to be determined by this Court.

2) Defendants were not involved with the alleged shooting of Plaintiff John Harbin by Defendant Tracy Dunn ("Dunn"), allegedly provoked by Defendant April Blair ("Blair").

3) Defendants did not in any way interfere, prevent or communicate with Plaintiff Harbin, or his counsel, Donald L. Smith, with regard to whether they should

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have settled Plaintiff Harbin's prior civil action against Dunn and Blair, as mentioned in the Complaint. Therefore, these Defendants had nothing to do with Plaintiff Harbin's failure to receive damages in his previous civil action.

In support of this Motion, Defendants rely upon the pleadings in this case, such other materials as may be submitted in connection with the hearing on this matter and, to the extent permitted by the Court, oral argument.

Defendants HUB Enterprises, Inc., and Shawn Conway pray that this Motion be granted and for such other and further relief, both general and special, legal and equitable to which it may be justly entitled.

RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street (29201)
Post Office Box 7788
Columbia, South Carolina 29202
803-771-4400

/s/ R. Wilder Harte
Steven J. Pugh
R. Wilder Harte

ATTORNEYS FOR DEFENDANTS HUB ENTERPRISES, INC., AND SHAWN CONWAY

December 6, 2017

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STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin, Plaintiffs, v. April Blair, Tracy Dunn, Shawn Conway, HUB Enterprises, Inc., Gallivan, White & Boyd, Sam Nikopoulos and John Doe, Defendants.	Civil Action No. 2017-CP-04-02099 **MEMORANDUM IN SUPPORT OF DEFENDANTS HUB ENTERPRISES, INC. AND SHAWN CONWAY'S MOTION TO DISMISS IN LIEU OF ANSWER**

This matter comes before the Court on Defendants HUB Enterprises, Inc. ("HUB") and Shawn Conway ("Conway") (collectively "Defendants") Motion to Dismiss the Plaintiff's Complaint. For the reasons set forth below, Defendants' Motion should be granted.

FACTS

The present case involves a claim of tortious interference with contractual relations. Plaintiff alleges the following facts in his Amended Complaint: on June 21, 2014, he was shot in the lower right extremity by Defendant Tracy Dunn ("Dunn") while on the property of Defendant April Blair ("Blair"). Complaint, ¶¶ 22-30. After that shooting occurred, several related legal proceedings followed. First, Dunn was charged with a criminal offense; he would later plead guilty to Assault and Battery of a High and Aggravated Nature and receive a probationary sentence. Complaint, ¶ 34. Second, Plaintiff filed a complaint naming Blair and Dunn as defendants. Complaint, ¶ 31. Dunn failed to answer that complaint. Complaint, ¶ 32. Blair had homeowners coverage

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through State Farm Insurance Company and was represented during that litigation by counsel from the law firm of Defendant Gallivan, White & Boyd ("GWB"). Prior to trial of the case, GWB made a settlement offer on behalf of Blair to Plaintiff. That offer was rejected. At trial, the jury returned a defense verdict for Blair. Complaint, ¶ 44. Thereafter, GWB moved for an order granting costs for all expenses incurred from the date the settlement offer was made. Attached to the motion was an affidavit in support, including Exhibit I, an invoice from HUB for three (3) days of attempted surveillance on Plaintiff by its employee Conway. The trial court granted that motion. Plaintiff moved for a new trial, arguing that GWB's failure to disclose Conway's attempted surveillance on Plaintiff was newly discovered evidence that entitled him to a new trial. The trial court denied that motion. Plaintiff now alleges that HUB and Conway tortuously interfered with his contractual relationship with his attorney, Donald Smith. Complaint, ¶¶ 70-81.

STANDARD OF REVIEW

A motion to dismiss must be based solely upon the allegations set forth in the Amended Complaint. Rule 12(b)(6), SCRCP; Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 209, 500 S.E.2d 793, 794, (Ct.App.1998). The Court should view the evidence in the light most favorable of the Plaintiff, and, if facts alleged in the Amended Complaint and inferences reasonably deduced therefrom do not entitle Plaintiff to relief, then the motion to dismiss must be granted. Jarrell, 331 S.C. at 209, 500 S.E.2d at 794. See also Douglass ex rel. Louthian v. Boyce, 336 S.C. 318, 519 S.E.2d 802 (Ct. App. 1999), aff'd, 344 S.C. 5, 542 S.E.2d 715 (2001) (holding the trial court properly dismissed

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action under 12(b)(6), SCRCP); Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995) (affirming trial court's dismissal of action under 12(b)(6), SCRCP).

ARGUMENT

PLAINTIFF HAS FAILED TO PLEAD FACTS SHOWING A BREACH OF THE ALLEGED CONTRACT BETWEEN HIM AND HIS ATTORNEY.

The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. Camp v. Springs Mortgage Corp., 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993). An essential element to the cause of action for tortious interference with contractual relations requires the intentional procurement of the contract's breach. Kinard v. Crosby, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993). Where there is no breach of the contract, there can be no recovery. First Union Mortg. Corp. v. Thomas, 317 S.C. 63, 73, 451 S.E.2d 907, 913 (Ct. App. 1994).

In the instant case, Plaintiff has failed to plead any facts or circumstances evincing a breach of the contract between Plaintiff and his attorney, Donald Smith. In pertinent part, Plaintiff's Amended Complaint alleges the following:

> 70. Plaintiff entered into a contract with his attorney to pursue litigation against Blair and Dunn.
>
> 71. Defendants were aware that a contract existed based on the fact that they were all participants in the litigation in some capacity.
>
> 77. Conway signed an affidavit which attested to the fact that he had provided surveillance on Harbin, on behalf of Blair, but had *never seen*

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him, and, therefore, he is responsible as an individual for interfering with Plaintiff's contract. (emphasis in original).

78. HUB Enterprises, Inc. was retained by Gallivan, White & Boyd to provide surveillance on John Harbin for the underlying tort action brought by Harbin and, therefore, it is responsible for the conduct of Conway pursuant to *respondeat superior*, and, therefore, it is responsible for interfering with Plaintiff's contract.

80. As a result of the intentional interference with Plaintiff's contract, all named Defendants prevented Harbin from getting the damages for which he was entitled due to the shooting.

These allegations, even if taken as true, fail to establish that the contract between Plaintiff and his attorney was breached. The Plaintiff has failed to include any allegations of any acts or omissions by HUB or Conway warranting the inference that either of their intentional actions procured the breach of the contract.

CONCLUSION

Defendants HUB Enterprises, Inc., and Shawn Conway request that this Motion be granted, that this Court render judgment in their favor and that they recover its costs incurred herein. Defendants pray for such other relief, both general and special, legal and equitable to which it may be justly entitled.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.
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803-771-4400

/s/ R. Wilder Harte
Steven J. Pugh
R. Wilder Harte

ATTORNEYS FOR DEFENDANTS HUB ENTERPRISES, INC., AND SHAWN CONWAY

December 6, 2017

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STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin, Plaintiffs, v. April Blair, Tracy Dunn, Shawn Conway, HUB Enterprises, Inc., Gallivan, White & Boyd, Sam Nikopoulos and John Doe, Defendants.	Civil Action No. 2017-CP-04-02099 **CERTIFICATE OF SERVICE**

I, Mary Jane Wilson, an employee of Richardson Plowden & Robinson, P.A., do hereby certify that I served the foregoing **NOTICE OF MOTION AND MOTION TO DISMISS OF DEFENDANTS HUB ENTERPRISES, INC. AND SHAWN CONWAY, AND MEMORANDUM IN SUPPORT OF MOTION TO DISMISS** on the undersigned counsel by causing a copy of same to be e-mailed and/or mailed in the United States Mail, Postage Prepaid, First Class, addressed as follows:

Donald L. Smith, Esquire
Attorney Office of Donald Smith
122 North Main Street
Anderson, South Carolina 29621
attorneydonaldsmith@gmail.com

Mary Jane Wilson

December 6, 2017

APRIL BLAIR'S MOTION TO DISMISS

(December 8, 2017)

ELECTRONICALLY FILED - 2017 Dec 08 11:05 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	C.A. No.: 2017-CP-04-02099
John E. Harbin,	)	
	)	
Plaintiffs,	)	
	)	**APRIL BLAIR'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**
vs.	)	
	)	
April Blair, Tracy Dunn HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe,	)	
	)	
Defendant.	)	
	)	

TO: The plaintiff, John E. Harbin, and his attorney, Donald L. Smith, Esquire

YOU WILL PLEASE TAKE NOTICE, that the undersigned, as attorney for the defendant April Blair, will move the Court, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, for an Order dismissing the Amended Complaint with prejudice for failure to state a claim. Additionally, Defendant Blair seeks dismissal of the above-captioned lawsuit due to the fact that the allegations raised in the Amended Complaint against defendant Blair are barred by the legal and equitable doctrines of res judicata, collateral estoppel, laches and waiver.

Plaintiff John E. Harbin filed a prior action in which Defendant April Blair was a defendant seeking monetary damages arising out of a gunshot wound inflicted by a third party. That case, Case No. 2014-CP-04-02908, was resolved in a jury verdict in favor of defendant Blair as acknowledged in the Plaintiff's Amended Complaint filed in the above-captioned action. See Amended Complaint. Further, it appears Plaintiff's counsel (who is the same in both cases) filed post-trial motions and an appeal in Case No. 2014-CP-04-02908 raising the exact issues

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raised in the Amended Complaint, which is acknowledged by the allegations made in the Amended Complaint. Id.

Plaintiff now files the above-captioned action, claiming that Defendant Blair allegedly tortuously interfered with the Plaintiff's contract with his attorney due to alleged conversations between Defendant Blair's attorney's private investigator and Defendant Blair's boyfriend, Tracy Dunn, that allegedly impacted his testimony in Case No. 2014-CP-04-02908. Id. The Plaintiff is apparently alleging that, somehow, this alleged conversation prevented him from accepting an Offer of Judgment in Case No. 2014-CP-04-02908 and/or resulted in the defense verdict returned in Case No. 2014-CP-04-02908. Id. The allegations in the Plaintiff's Amended Complaint, even if assumed to be true, fail to establish the requisite elements of a breach of contract action against Defendant Blair.

An action for wrongful interference with an attorney-client relationship has been recognized in this state. DeBerry v. McCain, 275 S.C. 569, 574, 274 S.E.2d 293, 296 (1981); citing Keels v. Powell, 207 S.C. 97, 34 S.E.2d 482 (1945). The elements required to establish such a claim are:

(1) the contract;

(2) the wrongdoer's knowledge thereof;

(3) his intentional procurement of its breach;

(4) the absence of justification; and

(5) damages resulting therefrom.

Id.

If the complaint lacks any one of these elements, it must be dismissed. Id. In DeBerry, the circuit judge ruled on (1) motions to strike from the complaint, (2) motion to make more definite

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and certain, and (3) a demurrer. Id. The Supreme Court's disposition of the demurrer issue made all other questions moot. Id. The Supreme Court held that the demurrer, which was overruled, should have been sustained. Id.

The Plaintiff's Amended Complaint does not allege that Defendant Blair took any actions which are at issue in this case. See Amended Complaint. Reading the Amended Complaint, it appears that the Plaintiff regrets turning down attempts to settle Case No. 2014-CP-04-02908 and regrets rejecting the Offer of Judgment which was made in that case and/or claims he was financially unable to accept the Offer of Judgment or some apparent settlement offer due to the alleged amount of his damages. Id. After making a conscious decision to reject the Offer of Judgment and to try his luck with the jury, the jury returned a defense verdict. Id. Since the Plaintiff did not like that outcome, he is now trying to impermissibly have a second bite at the proverbial apple by filing the subject lawsuit.

As the Court found in DeBerry, the amended complaint here contains no independent allegations of any acts or omissions by Defendant Blair warranting the inference that she intentionally procured plaintiff's attorney's discharge. See DeBerry, 275 S.C. at 574–75, 274 S.E.2d at 296. In fact, it does not appear that the attorney-client relationship between the Plaintiff and his attorney was interfered with in any way. See Amended Complaint. The Plaintiff fails to allege and, on information and belief cannot allege, any actions taken by Defendant Blair directly against the Plaintiff and/or his attorney that in any way had anything to do with their attorney-client relationship. The Plaintiff has failed to allege any breach of the attorney-client relationship/contract, any actions of Defendant Blair that contributed to any alleged breach of that contract, and/or any damages resulting from the alleged breach. As a result, this case should

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be dismissed with prejudice pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

Further, since Plaintiff and Defendant Blair were both parties to Case No. 2014-CP-04-02908, any claims arising out of the alleged shooting and the dispute over the alleged shooting between these parties must have necessarily been litigated in that case as compulsory counterclaims. N. Carolina Fed. Sav. & Loan Ass'n v. DAV Corp., 298 S.C. 514, 381 S.E.2d 903 (1989). Additionally, the specific issues raised in the above-captioned case were raised in Case No. 2014-CP-04-02908 and were ruled upon by the Court. As set forth above, this case should be dismissed pursuant to the legal and equitable doctrines of res judicata, collateral estoppel, laches and waiver. See generally Judy v. Judy, 383 S.C. 1, 677 S.E.2d 213 (Ct. App. 2009),

This Motion shall be based upon common and statutory laws of the State of South Carolina, the pleadings filed in this action and such other evidence as is properly before the Trial Judge at the time of said Motion hearing. If materials outside of the Pleadings are considered, and this motion is converted into a Motion for Summary Judgment, Defendant Blair plans to present the Court with filings and records from Case No. 2014-CP-04-02908, in addition to potential Affidavits and other Memoranda of Law to support her motion.

Respectfully submitted,

By: *s/ James P. Walsh*

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P. Christopher Smith, Jr. (74086)
Clarkson, Walsh & Coulter, P.A.
P.O. Box 6728
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Attorneys for the defendant April Blair

Greenville, South Carolina
December 8, 2017

MOTION FOR DEFAULT

(January 29, 2018)

ELECTRONICALLY FILED - 2018 Jan 29 10:07 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	
John E. Harbin,	)	
Plaintiff,	)	C.A. No.: 2017-CP-04-02099
vs.	)	
	)	**MOTION FOR ENTRY OF DEFAULT**
April Blair, et al.,	)	
Defendants.	)	
_____	)	

NOW COMES Plaintiff, by and through his undersigned counsel, and moves for an order granting an Entry of Default against the Defendant HUB Enterprises, Inc. The grounds for such Motion are as follows:

As evidenced by the Affidavit of Service for Defendant HUB Enterprises, Inc., served October 27, 2017; and, the Affidavit of Default, filed January 29, 2018, Plaintiff hereby requests for an entry of default against Defendant, HUB Enterprises, Inc.

s/Donald Smith
Donald L. Smith (SC Bar #6699)
Attorney for Plaintiff
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
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attorneydonaldsmith@gmail.com

January 29, 2018

AFFIDAVIT OF DEFAULT

(January 29, 2018)

ELECTRONICALLY FILED - 2018 Jan 29 10:07 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
John E. Harbin,)	
Plaintiff,)	C.A. No.: 2017-CP-04-02099
vs.)	
)	AFFIDAVIT OF DEFAULT
April Blair, et al.,)	
Defendants.)	
_____)	

PERSONALLY appeared before me, Donald L. Smith, who after first being duly sworn, states that he is the attorney for the Plaintiff in the above entitled action; that although the Defendant, HUB Enterprises, Inc.**,** was duly served with a true copy of the Summons and Complaint in the above captioned matter on October 27, 2017, (see United States Postal Service Certified/Return Receipt Green Card and Cover letter, annexed hereto as Exhibit "A"), and thirty (30) days have passed, and no answer or any other type pleading has been served by or on behalf of the Defendant, HUB Enterprises, Inc.**,** and it is in default.

*s/Donald L. Smith*_____
Donald L. Smith (SC Bar #6699)
Attorney for Plaintiff
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attorneydonaldsmith@gmail.com

January 29, 2018

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Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Affidavit/Default

So Ordered

s/Richard A. Shirley, Anderson County Clerk of Court

PLAINTIFF'S REPLY IN OPPOSITION TO BLAIR'S MOTION TO DISMISS

(February 5, 2018)

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
John E. Harbin,)	
)	
Plaintiff,)	
)	**REPLY IN OPPOSITION TO DEFENDANT APRIL BLAIR'S MOTION TO DISMISS**
vs.)	
)	
April Blair, Tracy Dunn, HUB Enterprises,. Inc Shawn Conway, Gallivan, White & Boyd, Sam Nikopoulos and John Doe,)	
)	C.A. No.: 2017-CP-04-02099
Defendants.)	
)	

Plaintiff respectfully submit this Memorandum in Opposition to Defendant April Blair's Motion to Dismiss. In support of which, Plaintiff present the following:

STATEMENT OF FACTS

In 2014, Plaintiff Harbin brought a case for damages against Defendants Blair and Dunn for the latter's act of shooting and injuring the former.

Sometime in 2012, Defendants Blair and Dunn, who were in a relationship, invited Plaintiff Harbin to stay with them in exchange for his performance of general labor, similar to which the latter rendered at Defendant Blair's mother's house. At some point, Defendants Blair and Dunn had a misunderstanding, which led her to send him off her house.

Defendant Blair and Plaintiff Harbin had a brief sexual relation, which the former immediately regretted. To assuage her conscience, Defendant Blair called Defendant Dunn on the day of the incident, and made it appear that Plaintiff Harbin raped her. Defendant Dunn, armed with a gun, dashed to her, and confronted Plaintiff Harbin. Defendant Dunn thereafter shot Plaintiff Harbin, when the latter was in the process of leaving Defendant Blair's house.

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Plaintiff Harbin sustained physical injuries and had to be airlifted to Anmed, where he had to be confined.

Defendant Blair continued to lie as she attempted to pin Plaintiff Harbin for rape, which the law enforcement disregarded. Defendant Dunn was eventually captured. He made several conflicting statements about his involvement in the shooting. He first claimed that Plaintiff Harbin shot himself, then changed it into self-defense despite Plaintiff Harbin was not armed.

Plaintiff Harbin employed the legal services of the undersigned counsel to bring a tort case against them. Defendant Dunn pleaded guilty to assault and battery of a high and aggravated nature for the shooting of Harbin. He was sentenced to time served and probation. Defendant Blair denied involvement in the shooting incident.

Defendant Dunn resumed his romantic relations with Defendant Blair. At some point, Defendant Blair charged him with Criminal Domestic Violence of a high and aggravated assault. Because of his probation, Defendant Dunn was sent back to jail, until the CDV case was tried.

While Plaintiff's tort case was ongoing, Defendant Law firm sent its agents (including Defendant Nikopoulus and/or Blair's counsel, Robert Corney, Esquire, to Abbeville Detention Center) to visit Defendant Dunn. It is the understanding and belief of Plaintiff that it was during this visit(s) that an agreement was reached between Defendants Blair and Dunn. It is the understanding and belief of Plaintiff that Defendant Nikoupolos or Corney informed Defendant Dunn that Defendant Blair would help him with her CDV case against him, if he would proclaim her innocence.

On the day of the deposition, Defendant Dunn admitted, for the first time, that he intended to shoot Harbin, and denied Defendant Blair's responsibility. When trial came, Defendant Dunn stuck to his admission. Defendant Blair was absolved any liability based on

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Defendant Dunn's testimony. Following the trial, Defendant Blair informed the Public Defender's Office of her preference to dismiss the CDV case she filed against Defendant Dunn. Plaintiff Harbin believed that Defendants Blair and Dunn conspired to defeat his claim.

It was also towards the conclusion of the tort case that Plaintiff Harbin discovered that Defendant Blair and Defendant Law firm hired a private investigator to surveil the former. Defendants goal was to disprove any permanent damages to the Plaintiff. Defendant Conway, a private investigator, working for Defendant HUB Enterprises, Inc., was responsible for the surveillance.

Defendant Blair sought to be reimbursed for her expenses in hiring Defendants HUB and Conway. This despite the following facts: (1) Defendant Investigators were hired after Plaintiff Harbin's deposition; (2) Plaintiff was not informed of the fact that Defendants hired private investigators and only learned of such when Plaintiff Harbin received Defendant's Affidavits and Exhibits for the Purpose of Collecting Costs as a Result of Offer of Judgment.; (3) Plaintiff Harbin was not provided a copy of the investigator's report/s, note/s or other proof of investigative work.

Defendants' acts taken together show that they all conspired to deny Plaintiff's claim, thereby interfering in Plaintiff's attorney-client relation/contract. Plaintiff filed this instant action on October 9, 2017. On December 13, 2017, Defendant Blair moved to dismiss the case, thus this Reply.

STANDARD OF REVIEW ON A MOTION TO DISMISS

A motion to dismiss can only be granted if there is no set of facts that would entitle Plaintiff to a verdict on the claims in issue. Applicable standards state that the facts alleged in the complaint are accepted as true. *Scheuer v. Rhoades*, 416 U.S. 232, 236 (1974); *Franks v. Ross*,

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313 F.3d 184,192 (4th Cir. 2002). In addition, all reasonable inferences must be made in favor of plaintiffs. *Johnson v. Mueller*, 415 F.2d 354 (4th Cir. 1969); *MacKethan v. Peat. Marwick. Mitchell & Co.*, 439 F. Supp. 1090 (E.D. Va. 1977).

In ruling on a motion to dismiss for failure to state a claim, it must be recalled that the purpose of a 12(b) (6) motion is to test the sufficiency of the complaint, not to decide the merits of the action. *Schatz v. Rosenberg*, 943 F.2d 485, 489 (4th Cir. 1991). At this stage of the litigation, Plaintiff well-pleaded allegations are taken as true and the complaint, including all reasonable inferences therefrom, are liberally construed in the plaintiff's favor. *McNair v. Lend Lease Trucks, Inc.*, 95 F.3d 325, 327 (4th Cir. 1996).

ARGUMENTS

I.

PLAINTIFF'S CLAIM OF TORTIOUS INTERFERENCE WITH CONTRACT IS SUFFICIENTLY PRESENTED.

Under South Carolina law, the elements of a cause of action for tortious interference with contract are: (1) the existence of a valid contract; (2) the other party's knowledge of the contract; (3) the other party's intentional procurement of a breach of the contract; (4) the absence of justification; and (5) resulting damage. Webb v. Elrod, 418 S.E.2d 559, 561 (S.C. Ct. App. 1992). Plaintiff submits that all these elements are present in the instant case.

There is no dispute that a valid contract of services existed and still exists between Plaintiff and his counsel. Defendant Blair herself admitted and recognized the existence of such contract between the Plaintiff, in her Answer/Motion to Dismiss, dated December 8, 2017. Defendant Blair knowingly, willfully, and deliberately, through the help of Defendants Law Firm, Nikoupolus, Hub Enterprise, and Conway, devised a plan and/or entered into a *quid pro quo* agreement with Defendant Dunn, whereby the latter would confess sole culpability in the tort case, in exchange

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for terminating/dismissing her CDV case against him. (Amended Complaint, p. 5, l. 41, p. 8, l. 73). There is no valid justification for Defendants' conduct. As a result of the intentional interference by Defendants, Plaintiff was deprived of the prospective economic advantage entailed from his attorney-client contract.

As evidence of this elaborate scheme by Defendant Blair and the rest of the Defendants, Plaintiff submits an Affidavit executed by Willie Clarence Tillman, cousin of Defendant Dunn. (Exhibit A). Tillman, who was in Defendant Blair's house at the time of the incident, stated that the latter instigated the fight between Defendant Dunn and Plaintiff, by telling Dunn that the latter raped her. (Exhibit A, p.1). He also stated that while in the county jail with his cousin, Defendant Dunn, the latter confided in him about the plan for the latter to testify in court, claim sole responsibility for the shooting of Plaintiff and clear co-Defendant Blair of culpability, in exchange for the her dropping her previous CDV charge against Dunn. (Exhibit A, p. 1). Mr. Tillman's also stated that Defendant Blair's counsel, Attorney Kami D. Granade, who also represented him, acted as intermediary between the two Defendants. (Exhibit A, p. 2).

A careful reading of Mr. Tillman's sworn statement confirms Plaintiff's allegations that Defendant Blair's counsel presented the *quid pro quo* agreement to Defendant Dunn when the counsel visited the latter in jail in June of 2016. (Exhibit B). Prior to his counsel's visit, Defendant Dunn denied shooting Plaintiff. He later admitted shooting the latter while attempting to shoot the ground in front of him. (Exhibit C). It was only on July 14, 2016, that Defendant Dunn remembered that he intentionally shot the Plaintiff. (Exhibit D). Because of his testimony on November 30, 2016, the case against Defendant Blair was dismissed. (Exhibit E). Thereafter, Plaintiff learned that Defendant Blair, in a plea agreement hearing for her CDV case against

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Dunn, expressed her intention to dismiss her case against him. (Exhibit F). Defendants Dunn and Blair continue their relationship, today. (Exhibit A, p. 1).

Clearly, something made Defendant Tracy change his story and statements. The circumstances, preceding and subsequent to his admission of sole culpability for the tort case, showed a deliberately planned and carefully executed scheme to defeat Plaintiff's cause.

Plaintiff believes that the deal between Defendants Dunn and Blair, to alter the former's statement regarding the shooting incident, facilitated by defense counsel, is tantamount to a subornation of perjury. Plaintiff also asserts that the submission of altered videos, by Defendants Conway and HUB Enterprises, constitute fabrication of evidence.

II.

RES JUDICATA DOES NOT APPLY IN THE INSTANT CASE.

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Judy v. Judy,* Op. No. 26987 (S.C. Sup. Ct. filed June 20, 2011) (Shearouse Adv. Sh. No. 20 at 14, 24) (quoting Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999)). If res judicata applies, a litigant is barred from raising any issues which were or might have been adjudicated in the former suit. Id.

For res judicata to apply, the following elements must exist: "(1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." Id. At 19 (citing *Riedman Corp. v. Greenville Steel Structures, Inc.,* 308 S.C. 467, 419 S.E.2d 217 (1992)). Plaintiff submits that while some of the parties in the previous tort case, Case No. 2014-CP-04-02908, who were involved in the instant case, other parties were included in the present case. Furthermore, there is no identity in the subject matter or issues in the two cases. The 2014 case is an action for damages for physical injuries sustained by Plaintiff in the hands of

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Defendants Dunn and Blair. The instant action is a claim for damages for Defendants' act of subverting justice by conspiring with one another to withhold evidence, change testimonies, all to deprive Plaintiff of the damages he was entitled to.

III.

THIS CASE IS NOT BARRED BY COLLATERAL ESTOPPEL.

The case of *Nelson v. Coker* discussed the doctrine of collateral estoppel. *Nelson v. Coker*, Op. No. 3626, (SC: CA, 2003). Under the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the re-litigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim." Ibid, citing *Richburg v. Baughman*, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986); *see also State v. Bacote*, 331 S.C. 328, 330, 503 S.E.2d 161, 162 (1998).

The issue in this case is the acts of collusion between Defendants Blair and Dunn to mitigate the liability of Defendant Blair, by entering in a quid pro quo agreement whereby Defendant Dunn will accept sole responsibility for the shooting of Plaintiff, in exchange for Defendant Blair withdrawing her CDV case against Defendant Dunn. This agreement was facilitated and made possible by Defendants' Law Firm, Sam Nikopoulos, HUB Entreprise, and Shawn Conway. These acts taken together, intentionally caused damages to the contractual relations of Plaintiff and his counsel. This is different from the previous tort case, where the issue was whether Defendants Dunn and Blair were liable for the shooting of, and the resulting injuries sustained by, Plaintiff. There is no identity of issue in the two cases, and as such, this case is not barred by collateral estoppel.

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IV.

THIS CASE IS NOT BARRED BY LACHES.

Laches is an equitable doctrine, which "arises upon the failure to assert a known right." *Ex parte Stokes*, 256 S.C. 260, 182 S.E.2d 306 (1971). Laches is defined as:

> *Neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute laches.*

Hallums v. Hallums, 296 S.C. 195, 198-199, 371 S.E.2d 525, 527 (1988) as cited in Whitehead v. State, Op No. 25567, (SC: Supreme Court, 2002).

Plaintiff submits that this case falls under S.C. Code Ann. § 15-3-530(5), with the limitation period being three (3) years. This case is therefore far from being barred by laches.

V.

THIS CASE IS NOT BARRED BY WAIVER.

Plaintiff submits that doctrine of waiver, which is the "voluntary and intentional relinquishment or abandonment of a known right does not apply in this case. (*Strickland v. Strickland* 375 S.C. 76 (2007)650 S.E.2d 465 citing *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994)). Plaintiff has not abandon his rights nor any claims he has against the Defendants, as evidenced by his fervent pursuit of justice, and to hold all the Defendants accountable for their tortious conduct of interfering with Plaintiff's contract with his counsel.

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CONCLUSION

For the above and foregoing reasons, Plaintiff submits that Defendant Blair's Motion to Dismiss should be denied.

Respectfully submitted by:

s/Donald L. Smith
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Anderson, South Carolina
Date: February 5, 2018

PLAINTIFF'S REPLY IN OPPOSITION TO GWB's MOTION TO DISMISS

(February 5, 2018)

ELECTRONICALLY FILED - 2018 Feb 05 11:01 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
John E. Harbin,)	
)	
Plaintiff,)	
)	**REPLY IN OPPOSITION TO DEFENDANTS GALLIVAN, WHITE & BOYD AND SAM NIKOPOULOS' MOTION TO DISMISS**
vs.)	
)	
)	
April Blair, Tracy Dunn, HUB Enterprises,.)	
Inc Shawn Conway, Gallivan, White)	
& Boyd, Sam Nikopoulos and John Doe,)	
)	C.A. No.: 2017-CP-04-02099
Defendants.)	
_____)	

Plaintiff respectfully submit this Reply in Opposition to Defendants Gallivan, White & Boyd and Sam Nikopoulos' Motion to Dismiss. In support of which, Plaintiff presents the following:

STATEMENT OF FACTS

In 2014, Plaintiff Harbin brought a case for damages against Defendants Blair and Dunn for the latter's act of shooting and injuring the former.

Sometime in 2012, Defendants Blair and Dunn, who were in a relationship, invited Plaintiff Harbin to stay with them in exchange for his performance of general labor, similar to which the latter rendered at Defendant Blair's mother's house. At some point, Defendants Blair and Dunn had a misunderstanding, which led her to send him away.

Defendant Blair and Plaintiff Harbin had a brief sexual relation, which the former immediately regretted. To assuage her conscience, Defendant Blair called Defendant Dunn on the day of the incident, and made it appear that Plaintiff Harbin raped her. Defendant Dunn, armed with a gun, dashed to her, and confronted Plaintiff Harbin. Defendant Dunn thereafter

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shot Plaintiff Harbin, when the latter was in the process of leaving Defendant Blair's house. Plaintiff Harbin sustained physical injuries and had to be airlifted to Anmed, where he had to be confined.

Defendant Blair, in an attempt to justify her boyfriend's actions, claimed Plaintiff had raped her that morning, following an evening of love making with him. She also maintained that he had molested her when she was much younger. Despite this fact, she had made love to him and allowed him to reside in her home with her, Defendant Dunn and her son.

Following the shooting, Defendant Dunn was picked up from the house by a passing motorist. He was eventually found at Ms. Blair's home. After he was picked up, he made several conflicting statements about his involvement in the shooting. He first claimed that Plaintiff Harbin shot himself, then stated that he attempted to shoot the ground in front of Harbin.

Plaintiff Harbin employed the legal services of the undersigned counsel to bring a tort action against them. Defendant Dunn pleaded guilty to assault and battery of a high and aggravated nature for the shooting of Harbin. He was sentenced to time served and probation. Defendant Blair denied involvement in the shooting incident.

Defendant Dunn resumed his romantic relations with Defendant Blair, upon her release from jail. At some point, Defendant Blair charged him with Criminal Domestic Violence of a high and aggravated nature. Because of his probation, Defendant Dunn was sent back to jail, until the matter was heard in regard to the CDV charge.

While Plaintiff's tort case was ongoing, Defendant Law firm sent its agents (including Defendant Nikopoulus and/or Blair's counsel, Robert Corney, Esquire, to Abbeville Detention Center) to visit Defendant Dunn. It is the understanding and belief of Plaintiff that it was during this visit(s) that an agreement was reached between Defendants Blair and Dunn. It is the

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understanding and belief of Plaintiff that Defendant Nikoupolos or Corney informed Defendant Dunn that Defendant Blair would help him with her CDV case against him, if he would proclaim her innocence.

On the day of the deposition, Defendant Dunn admitted, for the first time, that he intended to shoot Harbin, and denied Defendant Blair's responsibility. When trial came, Defendant Dunn stuck to his admission. Defendant Blair was absolved of any liability based on Defendant Dunn's testimony. Following the trial, Defendant Blair informed the Public Defender's Office of her preference to dismiss the CDV case she filed against Defendant Dunn. Plaintiff Harbin believed that Defendants Blair and Dunn conspired to defeat his claims.

Following the conclusion of the tort case, Defendant Blair and Defendant Law firm announced that a private investigator had been hired to provide surveillance on Plaintiff. This witness was not provided in discovery, yet his bill was offered for payment by Plaintiff for his failure to accept Defendant Blair's Offer of Judgment. Defendant Conway, a private investigator, working for Defendant HUB Enterprises, Inc., was responsible for the surveillance.

Defendant Blair sought to be reimbursed for her expenses in hiring Defendants HUB and Conway. This despite the following facts: (1) Defendant Investigators were hired after Plaintiff Harbin's deposition; (2) Plaintiff was not informed of the fact that Defendants hired private investigators and only learned of such when Plaintiff Harbin received Defendant's Affidavits and Exhibits for the Purpose of Collecting Costs as a Result of Offer of Judgment.; (3) Plaintiff Harbin was not provided a copy of the investigator's report(s), notes or other proof of investigative work.

Defendants' acts taken together show that they all conspired to deny Plaintiff's claim, thereby interfering in Plaintiff's attorney-client relation/contract. Plaintiff filed this instant

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action on October 9, 2017. On December 13, 2017, Defendant Blair moved to dismiss the case, thus this Reply.

STANDARD OF REVIEW ON A MOTION TO DISMISS

A motion to dismiss can only be granted if there is no set of facts that would entitle Plaintiff to a verdict on the claims in issue. Applicable standards state that the facts alleged in the complaint are accepted as true. *Scheuer v. Rhoades*, 416 U.S. 232, 236 (1974); *Franks v. Ross, 313 F.3d 184,192 (4th Cir. 2002).* In addition, all reasonable inferences must be made in favor of plaintiffs. *Johnson v. Mueller*, 415 F.2d 354 (4th Cir. 1969); *MacKethan v. Peat. Marwick. Mitchell & Co.*, 439 F. Supp. 1090 (E.D. Va. 1977).

In ruling on a motion to dismiss for failure to state a claim, it must be recalled that the purpose of a 12(b) (6) motion is to test the sufficiency of the complaint, not to decide the merits of the action. *Schatz v. Rosenberg*, 943 F.2d 485, 489 (4th Cir. 1991). At this stage of the litigation, Plaintiff well-pleaded allegations are taken as true and the complaint, including all reasonable inferences therefrom, are liberally construed in the plaintiff's favor. *McNair v. Lend Lease Trucks, Inc.*, 95 F.3d 325, 327 (4th Cir. 1996).

ARGUMENT

A LAWYER IS LIABLE FOR INTENTIONAL TORT TO A NON-CLIENT.

Plaintiff agrees with the Defendant Law Firm that as a general rule, a lawyer is not liable to a non-client or third person, as there is absence of privity between the third person and the lawyer. *Gaar v. North Myrtle Beach Realty, Co, Inc.*, 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986). But the Supreme Court in *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995), held that "an attorney may be held liable for conspiracy where, in addition to representing his client,

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he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client."

Plaintiff submits that the obligation of a lawyer to act truthfully at all times and to avoid assisting in fraudulent conduct is reflected throughout the Rules of Professional Conduct. The Preamble to the Rules describes a lawyer's duty as negotiator to seek "a result advantageous to the client but consistent with requirements of honest dealing with others."

South Carolina Rule 4.4 (a) provides that "in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person." In allowing Defendant Blair's counsel, to act as a conduit between Defendants Blair and Dunn, facilitating the *quid pro quo* agreement between the latter, whereby Defendant Dunn took sole responsibility of the shooting incident, in exchange for Defendant Blair terminating her pursuit of a case against him.

As evidence of this elaborate scheme by Defendant Blair and the rest of the Defendants, Plaintiff submits an Affidavit executed by Willie Clarence Tillman, cousin of Defendant Dunn. (Exhibit A). Tillman, who was in Defendant Blair's house at the time of the incident, stated that the latter instigated the fight between Defendant Dunn and Plaintiff, by telling Dunn that the latter raped her. (Exhibit A, p.1). He also stated that while in the county jail with his cousin, Defendant Dunn, the latter confided in him about the plan for the latter to testify in court, claim sole responsibility for the shooting of Plaintiff and clear co-Defendant Blair of culpability, in exchange for the her dropping her previous CDV charge against Dunn. (Exhibit A, p. 1). Mr. Tillman's also stated that Defendant Blair's counsel, Attorney Kami D. Granade, who also represented him, acted as intermediary between the two Defendants. (Exhibit A, p. 2).

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A careful reading of Mr. Tillman's sworn statement confirms Plaintiff's allegations that Defendant Blair's counsel presented the *quid pro quo* agreement to Defendant Dunn when the counsel visited the latter in jail in June of 2016. (Exhibit B). Prior to his counsel's visit, Defendant Dunn denied shooting Plaintiff. He later admitted shooting the latter while attempting to shoot the ground in front of him. (Exhibit C). It was only on July 14, 2016, that Defendant Dunn remembered that he intentionally shot the Plaintiff. (Exhibit D). Because of his testimony on November 30, 2016, the case against Defendant Blair was dismissed. (Exhibit E). Thereafter, Plaintiff learned that Defendant Blair, in a plea agreement hearing for her CDV case against Dunn, expressed her intention to dismiss her case against him. (Exhibit F). Defendants Dunn and Blair continue their relationship, today. (Exhibit A, p. 1).

Clearly, something made Defendant Tracy change his story and statements. The circumstances, preceding and subsequent to his admission of sole culpability for the tort case, showed a deliberately planned and carefully executed scheme to defeat Plaintiff's cause.

Plaintiff believes that the deal between Defendants Dunn and Blair, to alter the former's statement regarding the shooting incident, facilitated by defense counsel, is tantamount to a subornation of perjury.

Furthermore, Defendant Law Firm failed to disclose that it obtained the services of Defendants HUB Enterprise and Shawn Conway to do investigative surveillance upon Plaintiff and failed to present the report it obtained from the latter. In concealing its retention of the Defendant investigators, it employed a method that violated Plaintiff's rights. The Plaintiff is entitled to a vital piece of evidence that was concealed by Defendant Law Firm.

Michael Moske, an independent private detective, who reviewed the videos and report written by Defendant Shawn Conway and HUB Enterprise stated that, in his professional capacity, that he believed that the videos have been altered as the creation date cannot be found

through the use of metadata retrieval application. (Exhibit G, Affidavit-Mike Moskie). These videos and report were used by Defendant law firm for reimbursement of their client's expenses.

Plaintiff asserts that the submission of altered videos, by Defendants Conway and HUB Enterprises, constitute fabrication of evidence, and Defendant law firm allowing the production and introduction of such is an intentional tort.

These acts were clearly in violation of the sworn duty of the lawyer to engage in the steadfast search for truth.

CONCLUSION

For the above and foregoing reasons, Plaintiff submits that Defendants Gallivan, White & Boyd and Sam Nikopoulos' Motion to Dismiss should be denied.

Respectfully submitted by:

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Anderson, South Carolina
Date: February 5, 2018

ELECTRONICALLY FILED - 2018 Feb 05 11:01 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

PLAINTIFF'S REPLY IN OPPOSITION TO HUB'S MOTION TO DISMISS

(February 5, 2018)

ELECTRONICALLY FILED - 2018 Feb 05 10:57 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
John E. Harbin,)	
)	
Plaintiff,)	
)	**REPLY IN OPPOSITION TO DEFENDANTS HUB ENTERPRISES, INC. AND SHAWN CONWAY'S MOTION TO DISMISS**
vs.)	
)	
)	
April Blair, Tracy Dunn, HUB Enterprises,.)	
Inc Shawn Conway, Gallivan, White)	
& Boyd, Sam Nikopoulos and John Doe,)	
)	C.A. No.: 2017-CP-04-02099
Defendants.)	
_____)	

Plaintiff respectfully submit this Reply in Opposition to Defendants HUB Enterprises and Shawn Conway's Motion to Dismiss. In support of which, Plaintiff present the following:

STATEMENT OF FACTS

In 2014, Plaintiff Harbin brought a case for damages against Defendants Blair and Dunn for the latter's act of shooting and injuring the former.

Sometime in 2012, Defendants Blair and Dunn, who were in a relationship, invited Plaintiff Harbin to stay with them in exchange for his performance of general labor, similar to which the latter rendered at Defendant Blair's mother's house. At some point, Defendants Blair and Dunn had a misunderstanding, which led her to send him off her house.

Defendant Blair and Plaintiff Harbin had a brief sexual relation, which the former immediately regretted. To assuage her conscience, Defendant Blair called Defendant Dunn on the day of the incident, and made it appear that Plaintiff Harbin raped her. Defendant Dunn, armed with a gun, dashed to her, and confronted Plaintiff Harbin. Defendant Dunn thereafter shot Plaintiff Harbin, when the latter was in the process of leaving Defendant Blair's house.

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Plaintiff Harbin sustained physical injuries and had to be airlifted to Anmed, where he had to be confined.

Defendant Blair, in an attempt to justify her boyfriend's actions, claimed Plaintiff had raped her that morning, following an evening of love making with him. She also maintained that he had molested her when she was much younger. Despite this fact, she had made love to him and allowed him to reside in her home with her, Defendant Dunn and her son.

Following the shooting, Defendant Dunn was picked up from the house by a passing motorist. He was eventually found at Ms. Blair's home. After he was picked up, he made several conflicting statements about his involvement in the shooting. He first claimed that Plaintiff Harbin shot himself, then stated that he attempted to shoot the ground in front of Harbin.

Plaintiff Harbin employed the legal services of the undersigned counsel to bring a tort action against them. Defendant Dunn pleaded guilty to assault and battery of a high and aggravated nature for the shooting of Harbin. He was sentenced to time served and probation. Defendant Blair denied involvement in the shooting incident.

Defendant Dunn resumed his romantic relations with Defendant Blair, upon her release from jail. At some point, Defendant Blair charged him with Criminal Domestic Violence of a high and aggravated nature. Because of his probation, Defendant Dunn was sent back to jail, until the matter was heard in regard to the CDV charge.

While Plaintiff's tort case was ongoing, Defendant Law firm sent its agents (including Defendant Nikopoulus and/or Blair's counsel, Robert Corney, Esquire, to Abbeville Detention Center) to visit Defendant Dunn. It is the understanding and belief of Plaintiff that it was during this visit(s) that an agreement was reached between Defendants Blair and Dunn. It is the understanding and belief of Plaintiff that Defendant Nikoupolos or Corney informed Defendant

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Dunn that Defendant Blair would help him with her CDV case against him, if he would proclaim her innocence.

On the day of the deposition, Defendant Dunn admitted, for the first time, that he intended to shoot Harbin, and denied Defendant Blair's responsibility. When trial came, Defendant Dunn stuck to his admission. Defendant Blair was absolved of any liability based on Defendant Dunn's testimony. Following the trial, Defendant Blair informed the Public Defender's Office of her preference to dismiss the CDV case she filed against Defendant Dunn. Plaintiff Harbin believed that Defendants Blair and Dunn conspired to defeat his claims.

Following the conclusion of the tort case, Defendant Blair and Defendant Law firm announced that a private investigator had been hired to provide surveillance on Plaintiff. This witness was not provided in discovery, yet his bill was offered for payment by Plaintiff for his failure to accept Defendant Blair's Offer of Judgment. Defendant Conway, a private investigator, working for Defendant HUB Enterprises, Inc., was responsible for the surveillance.

Defendant Blair sought to be reimbursed for her expenses in hiring Defendants HUB and Conway. This despite the following facts: (1) Defendant Investigators were hired after Plaintiff Harbin's deposition; (2) Plaintiff was not informed of the fact that Defendants hired private investigators and only learned of such when Plaintiff Harbin received Defendant's Affidavits and Exhibits for the Purpose of Collecting Costs as a Result of Offer of Judgment.; (3) Plaintiff Harbin was not provided a copy of the investigator's report(s), notes or other proof of investigative work.

Defendants' acts taken together show that they all conspired to deny Plaintiff's claim, thereby interfering in Plaintiff's attorney-client relation/contract. Plaintiff filed this instant

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action on October 9, 2017. On December 13, 2017, Defendant Blair moved to dismiss the case, thus this Reply.

STANDARD OF REVIEW ON A MOTION TO DISMISS

A motion to dismiss can only be granted if there is no set of facts that would entitle Plaintiff to a verdict on the claims in issue. Applicable standards state that the facts alleged in the complaint are accepted as true. *Scheuer v. Rhoades*, 416 U.S. 232, 236 (1974); *Franks v. Ross, 313 F.3d 184,192 (4th Cir. 2002).* In addition, all reasonable inferences must be made in favor of plaintiffs. *Johnson v. Mueller*, 415 F.2d 354 (4th Cir. 1969); *MacKethan v. Peat. Marwick. Mitchell & Co.*, 439 F. Supp. 1090 (E.D. Va. 1977).

In ruling on a motion to dismiss for failure to state a claim, it must be recalled that the purpose of a 12(b) (6) motion is to test the sufficiency of the complaint, not to decide the merits of the action. *Schatz v. Rosenberg*, 943 F.2d 485, 489 (4th Cir. 1991). At this stage of the litigation, Plaintiff well-pleaded allegations are taken as true and the complaint, including all reasonable inferences therefrom, are liberally construed in the plaintiff's favor. *McNair v. Lend Lease Trucks, Inc.*, 95 F.3d 325, 327 (4th Cir. 1996).

ARGUMENT

I.

PLAINTIFF'S CLAIM OF TORTIOUS INTERFERENCE WITH CONTRACT IS SUFFICIENTLY PRESENTED.

Under South Carolina law, the elements of a cause of action for tortious interference with contract are: (1) the existence of a valid contract; (2) the other party's knowledge of the contract; (3) the other party's intentional procurement of a breach of the contract; (4) the absence of justification; and (5) resulting damage. *Webb v. Elrod*, 418 S.E.2d 559, 561 (S.C. Ct. App. 1992). Plaintiff submits that all these elements are present in the instant case.

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It is undisputable that Plaintiff employed the legal services of the undersigned counsel to bring a tort action against Blair and Dunn. Defendants. There is no dispute that a valid contract of services existed and still exists between Plaintiffs. HUB Enterprise and Conway admitted and recognized the existence of such contract between the Plaintiff in their Memorandum in Support of their motion to dismiss, dated December 6, 2017

Defendants HUB Enterprises and Conway knowingly, willfully, and deliberately, submitted questionable videos and written report, to facilitate Defendant Blair's demand to collect costs, as a result of an Offer of Judgment, which had been declined.

In his Affidavit, Conway stated that he never saw anyone in the home where Plaintiff and his girlfriend resided. (Exhibit "B" Affidavit of John Harbin and Exhibit "C" Affidavit of Patricia Elrod). Conway's report contained an alleged witness, who has since signed an affidavit that she had never talked to Conway. (Exhibit "D", Affidavit of Sherry Hayes).

Michael Moske, an independent private detective, who reviewed the videos and report written by Defendant Shawn Conway and HUB Enterprise stated that, in his professional capacity, that he believed that the videos had been altered as the creation date cannot be found through the use of metadata retrieval application. (Exhibit "A" Affidavit of Mike Moskie). These videos and report were allegedly created during the week of July 4th, 2016. Defendant Blair later stated that Plaintiff owed her for reimbursement of her expenses with her private investigator and his employer. Plaintiff asserts this fact is significant because it was used to corroborate Corney's claim that the failure to provide discovery related to the involvement of Conway was irrelevant because he *never* saw him.

Taken together with the acts of other Defendants in this case, Defendants HUB and Conway's actions, breached Plaintiff's contract with his counsel as it deprived him of the prospective economic advantage entailed from their attorney-client contract.

CONCLUSION

For the above and foregoing reasons, Plaintiff submits that Defendants HUB Enterprise's and Shawn Conway's Motion to Dismiss should be denied.

Respectfully submitted by:

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Anderson, South Carolina
Date: February 5, 2018

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GWB's MOTION FOR SANCTIONS

(February 13, 2019)

ELECTRONICALLY FILED - 2019 Feb 13 12:09 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
John E. Harbin,	)	Civil Action No. 2017-CP-04-02099
Plaintiff,	)	
vs.	)	**MOTION FOR SANCTIONS**
April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe,	)	
Defendants.	)	

Gallivan White & Boyd and Sam Nikopoulos (collectively "GWB") hereby move the Court, pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act ("FCPSA"), S.C. CODE ANN. § 15-36-10, for sanctions against Plaintiff's attorney, Donald L. Smith ("Smith"). The basis for this motion is that Smith filed an action against GWB which was unsupported by applicable case law, and was an improper attempt to relitigate a previous action. GWB seeks attorneys' fees and costs for defending this action, and for pursuing this Motion for Sanctions, as well as any other relief the Court may deem just and proper.

SUMMARY OF ARGUMENT

In a prior lawsuit brought by Plaintiff, GWB represented one of the defendants, April Blair. Prior to trial, GWB made a settlement offer on behalf of its client to Plaintiff, which he declined. After a trial before the Honorable J. Cordell Maddox, Jr., the jury returned a defense verdict in favor of GWB's client. Plaintiff then filed this lawsuit in an attempt to relitigate the same issues that were raised in the prior litigation.

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Smith's filing of this action was frivolous, wasted valuable judicial resources, and forced GWB to defend an action totally lacking in merit. Plaintiff's allegations against GWB were unwarranted under existing law, as legal precedent in South Carolina states that a lawyer cannot be held liable to a non-client third party for actions taken in the representation of a client.

GWB spent a significant amount of time, effort, and resources defending this lawsuit. Due to the frivolous nature of this lawsuit, driven by Plaintiff's unwarranted attempt to relitigate the lawsuit he previously brought and lost, GWB requests that the Court grant this motion and award sanctions against Smith.

FACTUAL BACKGROUND

I. The Prior Lawsuit

John E. Harbin ("Harbin" or "Plaintiff") had a previous dispute with April Blair and Tracy Dunn, resulting in Harbin being shot by Dunn in the leg while he was at Blair's house. Harbin sued Blair and Dunn for negligence, assault and battery, defamation, slander, and premises liability. *See John E. Harbin v. April Black and Tracy Dunn,* C.A. No. 2014-CP-04-02908 (the "Prior Lawsuit"). GWB represented Blair, who had homeowners coverage through State Farm Insurance Company. Sam Nikopoulos, a named defendant in the instant action, served as an operations assistant and provided courier services at Gallivan White & Boyd at the time of this underlying dispute. Prior to trial, GWB made a settlement offer on behalf of Blair/State Farm to Harbin, which offer Harbin through Smith rejected. The case went to trial, and the jury returned a defense verdict for Blair. Harbin appealed the jury verdict and made various post-trial motions, all of which were denied.

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II. The Current Lawsuit

Plaintiff filed this lawsuit on October 9, 2017 (the "Current Lawsuit"). The allegations of the Complaint were nearly identical to those in the Prior Lawsuit. Plaintiff's Amended Complaint stated only one cause of action against GWB for tortious interference with contract, apparently alleging that GWB interfered with the attorney-client contract between Plaintiff and Smith that was entered into to pursue the Prior Lawsuit. (Complaint at ¶¶ 70-71.) GWB made a Motion to Dismiss the Amended Complaint on November 22, 2017. This Motion, as well as similar motions filed by the other Defendants, was granted by the Court. The Court held that a lawyer cannot be liable to non-client third parties for actions taken in the representation of a client. Furthermore, the Court found that a law firm is not responsible pursuant to *respondeat superior* for actions taken by an investigative firm that it hires.

LEGAL STANDARD

The Frivolous Civil Proceedings Sanctions Act provides in pertinent part that an attorney may be sanctioned for "filing a frivolous pleading, motion or document if: … (ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law…; (iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or (iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery … or adjudication of a claim or defense upon which the proceedings are based." S.C. CODE ANN. § 15-36-10(A)(4)(a). An attorney may also be sanctioned for "making frivolous

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arguments that a reasonable attorney would believe were not reasonably supported by the facts" or "were not warranted under the existing law." *Id*. at §§ 15-36-10(A)(4)(b)-(c).

Sanctions may include "an order for the party … to pay the reasonable costs and attorney's fees of the prevailing party … [which] shall include, but not be limited to, … the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding." *Id*. at § 15-36-10(G)(1). The Court may also issue "an order for the attorney to pay a reasonable fine to the court." *Id*. at § 15-36-10(G)(2).

The decision of whether or not to impose sanctions under the FCPSA is a decision for the judge, not the jury, as it sounds in equity rather than at law. *See Holmes v. East Cooper Community Hosp., Inc.*, 408 S.C. 138, 758 S.E.2d 483 (2014).

ARGUMENT

I. The Initiation of this Lawsuit was Frivolous and an Improper Attempt to Relitigate the Prior Lawsuit.

According to the allegations in the Complaint, "Harbin would have received $100,000.00 if he had settled the underlying action." (Complaint at ¶ 64.) Without providing any explanation, Plaintiff alleges that he "could not accept the settlement offer" that GWB made on behalf of Blair/State Farm. (*Id*. at ¶ 66.) Following the defense verdict, Plaintiff regretted not accepting the prior settlement offer, and then filed this Complaint in an attempt to get another bite at the apple.

The Current Lawsuit is based upon the exact same facts that were raised in the prior action. As demonstrated by the following list, the allegations made by Plaintiff in the Prior and Current Lawsuits are identical:

1) Dunn and Blair were involved in a romantic relationship and resided together in a home owned by Blair. (Prior Complaint at ¶ 9; Complaint at ¶ 8.)

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2) Blair offered to allow Harbin to stay at her house in exchange for his performing work on the house. (Prior Complaint at ¶ 8; Complaint at ¶ 10.)

3) Harbin and Blair were romantically involved and spent the night together. (Prior Complaint at ¶ 7; Complaint at ¶ 13.)

4) Blair called or messaged Dunn to tell him that Harbin had spent the night. (Prior Complaint at ¶ 16; Complaint at ¶ 16 (additionally alleges that Blair told Dunn that Harbin had raped her).)

5) Dunn showed up with a gun at Blair's house, and proceeded to confront Harbin. (Prior Complaint at ¶ 17; Complaint at ¶¶ 17-18.)

6) Dunn shot Harbin in the calf. (Prior Complaint at ¶ 19; Complaint at ¶ 20.)

7) Blair told law enforcement that Harbin had raped her. (Prior Complaint at ¶ 25; Complaint at ¶ 24.)

8) Law enforcement did not pursue Blair's sexual assault allegations. (Prior Complaint at ¶ 26; Complaint at ¶ 25.)

9) Blair was responsible for Dunn shooting Harbin. (Prior Complaint at ¶¶ 20-24; Complaint at ¶ 68.)

All of these factual issues were submitted to the jury in the Prior Lawsuit. After reviewing post-trial motions for a new trial, the trial court found no reason to disturb the jury's verdict. A party's dissatisfaction with the outcome of a trial cannot be the basis for a retrial of those issues. Doctrines such as res judicata and collateral estoppel were established to prevent this type of unwarranted relitigation. These doctrines promote judicial efficiency and foster reliance on adjudications by putting an end to a cause of action once litigated. *See, e.g.*, *Liberty Mut. Ins. Co. v. Employers Ins. of Wausau*, 284 S.C. 234, 325 S.E.2d 566 (Ct. App. 1985) ("'res judicata' bars relitigation of the same cause of action while 'collateral estoppel' bars relitigation of the same facts or issues necessarily determined in the former proceeding.").

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Any reasonable attorney would believe that the filing of the Current Lawsuit was frivolous. When Plaintiff's efforts to overturn the jury verdict failed, Plaintiff and Smith decided to bring this action to relitigate these issues. Smith's filing of the Complaint constitutes a sanctionable action under the FCPSA, and therefore GWB should be awarded damages for defending this lawsuit.

II. This Action was Clearly Not Warranted Under Existing Law.

GWB was named as a defendant in the Current Lawsuit solely by virtue of its representation of Blair in the Prior Lawsuit. However, case law from the South Carolina Court of Appeals and Supreme Court squarely addresses the question of whether a lawyer can be held liable to a non-client third party for actions taken in the representation of a client.

The legal principle announced in *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 399 S.E.2d 887 (Ct. App. 1986), and then affirmed in the cases of *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995) and *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010), is directly on point with the issue presented in this action. These cases stand for the proposition that "an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client." *Gaar*, 287 S.C. at 528-29, 399 S.E.2d at 889. As the former Chief Justice Toal wrote, "an attorney owes no duty to a non-client unless he 'breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client.'" *Argoe*, 388 S.C. at 400, 697 S.E.2d at 554 (quoting *Stiles*, 318 S.C. at 300, 457 S.E.2d at 602).

The only specific allegation against GWB in the Current Lawsuit was that Defendant HUB Enterprises, Inc. was retained by the law firm to provide surveillance of Harbin and, therefore, it

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was responsible for the conduct of the investigator pursuant to *respondeat superior*. (Complaint at ¶ 78.) However, Plaintiff had absolutely no basis for alleging that a law firm is responsible for the actions of an investigative firm that it hires. GWB retrained HUB as an independent contractor to provide investigative services. As a general rule, an employer is not vicariously liable for the torts of an independent contractor committed in the performance of contracted work. *See Rock Hill Tel. Co., Inc. v. Globe Commc'ns, Inc.*, 363 S.C. 385, 390, 611 S.E.2d 235, 238 (2005); *Duane v. Presley Constr. Co., Inc.*, 270 S.C. 682, 683, 244 S.E.2d 509, 510 (1978).

Through the exercise of minimal diligence, Smith could have located these cases. Instead, it is apparent that Smith failed to assess whether case law supported his theories of liability against GWB. In fact, Smith was previously sanctioned by this Court in 2016 for the exact same conduct. (Feb. 6, 2016 Order, C.A. No. 2015-CP-04-00667, attached as **Exhibit A**.) In the case captioned *Gregg Battersby v. J. Kirkman Moorhead, Krause, Moorhead & Draisen, P.A., Allstate Insurance Company, and Allstate Northbrook Indemnity Company*, Smith brought a complaint alleging that the attorneys were liable to the plaintiff for damages arising out of the attorneys' representation of their client. (*See* Ex. A at 3.) The Honorable Lawton R. McIntosh found as follows:

> The Plaintiff conceded that the law in this state is that an attorney is generally immune from liability to third person arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. *See Pye v. Estate of Fox*, 369 S.C. 55, 56, 633 S.E.2d 505, 509 (2006). It is apparent to this Court that Plaintiff's counsel filed the claims without researching the law on attorney immunity to determine whether the claims were viable and supported by law. Plaintiff's counsel made no argument to the contrary. This Court finds that no reasonable attorney would have brought the Plaintiff's claims against Attorneys given the well-established case law on attorney immunity and the facts of the case.

(Ex. A at 3-4.) Judge McIntosh awarded attorneys' fees and costs for defending the lawsuit and bringing the motion for sanctions. (Ex. A at 6.)

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In light of the fact that Smith was previously sanctioned for this same conduct, and the clear rulings from our state's appellate courts, a reasonable attorney would not have filed and pursued this action against GWB because it was clearly not warranted under existing law. Thus, Smith violated the limitations established by the FCPSA, and should be required to reimburse GWB for the attorneys' fees and costs expended in defending against this frivolous action.

CONCLUSION

This Court should grant GWB's Motion for Sanctions against Plaintiff's attorney, Donald L. Smith, for filing and pursuing a frivolous proceeding. GWB respectfully requests that it be awarded costs and attorneys' fees incurred in defending against this action and in pursuing this Motion for Sanctions.

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Greenville, South Carolina
February 13, 2019

PLAINTIFF's MOTION FOR RECONSIDERATION OF ORDER GRANTING HUB's MOTION TO DISMISS

(February 15, 2019)

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
John E. Harbin,)	
Plaintiff,)	C.A. No.: 2017-CP-04-02099
vs.)	
)	**MOTION FOR RECONSIDERATION OF ORDER GRANTING DEFENDANT HUB ENTERPRISE AND SHAWN CONWAY'S MOTION TO DISMISS**
April Blair, et al.,)	
)	
Defendants.)	
_____)	

Plaintiff, by and through his counsel, respectfully moves to reconsider this Court's Order, filed on February 5, 2019, and allege as follows:

STATEMENT OF FACTS

In 2014, Plaintiff Harbin brought a case for damages against Defendants Blair and Dunn for the latter's act of shooting and injuring the former.

Sometime in 2012, Defendants Blair and Dunn, who were in a relationship, invited Plaintiff Harbin to stay with them in exchange for his performance of general labor, similar to which the latter rendered at Defendant Blair's mother's house. At some point, Defendants Blair and Dunn had a misunderstanding, which led her to throw him out of her house.

After Defendant Dunn had left the home, Defendant Blair and Plaintiff engaged in a consensual sexual encounter. Immediately following this encounter, Defendant Blair regretted her decision to be romantically involved with Plaintiff. To assuage her conscience, Defendant Blair called Defendant Dunn, and made it appear that Plaintiff raped her. Defendant Dunn, armed with a gun, dashed to her, and confronted Plaintiff. Defendant Dunn thereafter shot Plaintiff, when the latter was in the process of leaving Defendant Blair's house. Plaintiff sustained physical injuries and had to be airlifted to Anmed, where he underwent a surgical procedure which required him to stay in the hospital for a number of days.

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Defendant Blair, in an attempt to justify her boyfriend's actions, claimed Plaintiff had raped her that morning, following an evening of love making with him. She also maintained that he had molested her when she was much younger. Despite this fact, she had made love to him and allowed him to reside in her home with her, Defendant Dunn and her young son.

Following the shooting, Defendant Dunn was picked up from the house by a passing motorist. He was eventually found at Ms. Blair's home. After he was picked up, he made several conflicting statements about his involvement in the shooting. He first claimed that Plaintiff Harbin shot himself, then stated that he attempted to shoot the ground in front of Harbin.

Plaintiff Harbin employed the legal services of the undersigned counsel to bring a tort action against them. Defendant Dunn pleaded guilty to assault and battery of a high and aggravated nature for the shooting of Harbin. He was sentenced to time served and probation. Defendant Blair denied involvement in the shooting incident.

Defendant Dunn resumed his romantic relations with Defendant Blair, upon his release from jail. At some point, Defendant Blair charged him with Criminal Domestic Violence of a high and aggravated nature. Because of his probation, Defendant Dunn was sent back to jail, until the matter was heard in regard to the CDV charge.

While Plaintiff's tort case was ongoing, Defendant Law firm sent its agents (including Defendant Nikopoulus to Abbeville Detention Center) to visit Defendant Dunn. It is the understanding and belief of Plaintiff that it was during this visit(s) that an agreement was reached between Defendants Blair and Dunn. It is the understanding and belief of Plaintiff that Defendant Nikoupolos informed Defendant Dunn that Defendant Blair would help him with her CDV case against him, if he would proclaim her innocence.

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On the day of the deposition, Defendant Dunn admitted, for the first time, that he intended to shoot Harbin, and denied Defendant Blair's responsibility. When trial came, Defendant Dunn stuck to his admission. Defendant Blair was absolved of any liability based on Defendant Dunn's testimony. Following the trial, Defendant Blair informed the Public Defender's Office of her preference to dismiss the CDV case she filed against Defendant Dunn. Plaintiff Harbin believed that Defendants Blair and Dunn conspired to defeat his claims.

Following the conclusion of the tort case, Defendant Blair and Defendant Law firm provided a billing statement as an exhibit associated with the costs incurred by Defendant Law Firm. The billing statement showed that a private investigator had been hired to provide surveillance on Plaintiff. This witness was not provided in discovery, yet his bill was offered for payment by Plaintiff for his failure to accept Defendant Blair's Offer of Judgment. Defendant Conway, a private investigator, working for Defendant HUB Enterprises, Inc., was responsible for the surveillance.

Defendant Blair sought to be reimbursed for her expenses in hiring Defendants HUB and Conway. This, despite the following facts,: (1) Defendant Investigators were hired after Plaintiff Harbin's deposition; (2) Plaintiff was not informed of the fact that Defendants hired private investigators and only learned of such when Plaintiff Harbin received Defendant's Affidavits and Exhibits for the Purpose of Collecting Costs as a Result of Offer of Judgment.; (3) Plaintiff Harbin was not provided a copy of the investigator's report(s), notes or other proof of investigative work.

Defendants' acts taken together show that they all conspired to deny Plaintiff's claim, thereby interfering in Plaintiff's attorney-client relation/contract. Plaintiff filed this instant action on October 9, 2017 alleging among other tortious interference with contract. On

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November 8, 2017, GWB moved to dismiss the Complaint against it, alleging that as the lawyer of Blair, it cannot be held liable for actions it took in representation of Blair. On November 13, 2017, Plaintiff amended his Complaint. On December 6, Defendant HUB moved to dismiss the case against him, while Blair moved to dismiss the case against her on December 13, 2017.

On January 29, 2018, Plaintiff filed an Affidavit and Motion for Default against HUB Enterprise, which the Court denied on April 24, 2018. On February 5, 2019, the Court granting HUB Enterprise and Shawn Conway's Motion to Dismiss and dismissed Plaintiff's Amended Complaint.

STANDARD OF REVIEW

A motion under Rule 59(e) has long been viewed as a "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party is usually allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992) as cited in Elam v. South Carolina Department of Transportation, 361 S.C. 9 (2004), 602 S.E.2d 772 (SC: Ct. App.).* A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. *Id.* A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. *Id.*

ARGUMENT

PLAINTIFF'S CLAIM OF TORTIOUS INTERFERENCE WITH CONTRACT IS SUFFICIENTLY PRESENTED.

Under South Carolina law, the elements of a cause of action for tortious interference with contract are: (1) the existence of a valid contract; (2) the other party's knowledge of the contract; (3) the other party's intentional procurement of a breach of the contract; (4) the absence of

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justification; and (5) resulting damage. *Webb v. Elrod*, 418 S.E.2d 559, 561 (S.C. Ct. App. 1992). Plaintiff submits that all these elements are present in the instant case.

There is no dispute that a valid contract of services existed and still exists between Plaintiff and his counsel. Blair herself admitted and recognized the existence of such contract between the Plaintiff, in her Answer/Motion to Dismiss, dated December 8, 2017.

Blair's counsel employed the services of HUB Enterprise and Shawn Conway to surveil on Plaintiff. Neither HUB Enterprise, Conway or GWB explained the need to conduct the surveillance, and how it relates to the previous complaint by Plaintiff against Blair and Dunn. In the three (3) days that Conway allegedly observed Plaintiff, he attested that he had not seen Plaintiff at 2917 Chambers Road, Anderson. (Exhibit 1- Affidavit of Shawn Conway, February 1, 2017). Neither did Conway take any photographs, videos nor notes on Plaintiff's. (Ibid). However, HUB presented a Surveillance Report to Counsel for Blair, Rob Corney on June 30, 2016. (Exhibit 2- Surveillance Report). These documents were later submitted by Blair and her counsel to demand payment for costs incurred the surveillance.

This surveillance was conducted discretely. GWB, HUB and Conway's employer, did not inform Plaintiff of this covert act, which deprived Plaintiff of his right to depose HUB and Shawn. Also, it was found that Conway misrepresented some of his claims in his Affidavit. He stated that he had talked with Sherry Hayes during his surveillance of Plaintiff. Hayes denied this in her Affidavit. (Exhibit 3- Affidavit of Sherry Hayes, January 12, 2018).

Shawn and HUB also presented videos of the alleged surveillance on Plaintiff. Plaintiff's counsel showed aforesaid videos for Michael Moske, an independent private detective. Moske reviewed the videos and report written by Conway and HUB. He stated that, in his professional capacity, he believed that the videos have been altered as the creation date cannot be found through

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the use of metadata retrieval application. (Annex "4" Affidavit-Mike Moskie). These videos and report were used by Defendant Blair for reimbursement of her expenses. Plaintiff asserts that submitting a manufactured evidence is an intentional act that breached the attorney- client contract between Plaintiff and his counsel. Plaintiff submits that by presenting fabricated evidence (videos, report and Affidavit), HUB and Conway created a gap in the contract between Plaintiff and his counsel because it made it difficult for the latter to present his case, HUB and Conway's intentional acts deprived Plaintiff of the economic advantage that may be derived from the attorney-client contract.

CONCLUSION

For the above and foregoing reasons, Plaintiff prays that this Court reconsider its Order, dated February 5, 2019, and reinstate this case against HUB enterprise and Shawn Conway.

Respectfully submitted by:

s/Donald L. Smith
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Anderson, South Carolina
Date: February 15, 2019.

PLAINTIFF's MOTION FOR RECONSIDERATION OF ORDER GRANTING GWB'S MOTION TO DISMISS

(February 15, 2019)

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
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ARGUMENTS

I.

THE COURT MISAPPRECIATED THE EXCEPTION PROVIDED BY THE CASE OF STILES VS. ONORATO.

In its Order, dated February 5, 2019, the Court dismissed Plaintiff's complaint for tortious interference with contract against GWB, affirming the doctrine laid down in Gaar v. North Mrytle Realty Co., Inc. 287 S.C. 525, 399 S.E.2d 887 (Ct. App. 1996). Plaintiffs submit that this Court failed to appreciate that the aforesaid doctrine of immunity is not absolute.

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The case of Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995) and Douglass ex rel. Louthian v. Boyce, 344 S.C. 5, 542 S.E.2d 715 (S.C., 2001) discussed an exception to the general rule that a lawyer is not liable to a non-client or third person from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions, 388 S.C. 394, 697 S.E.2d 551 (S.C., 2010). The Court in *Stiles* and *Douglas* held that an "attorney may be held liable where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client." This exception to the doctrine of immunity was not applied in Douglas, because the attorney representing the personal representative in a wrongful death action has no independent duty to the statutory beneficiaries. Douglass ex rel. Louthian v. Boyce, 344 S.C. 5, 542 S.E.2d 715 (S.C., 2001).

The exception does not apply as well in the Argoe case cited by this Court. In Argoe, the Appellant took out a loan against a condominium she owned in Beaufort County, South Carolina. She allowed the same to go in default. Prior to this, Appellant appointed her Son as Attorney-in-Fact. The Son procured the Respondent lawyer's services. Respondent assisted Son in the transfer of title to the Beaufort Property to a trust for the benefit of Appellant. *Ibid* Appellant filed a case against Respondent for breach of fiduciary duty, breach of trust, invasion of privacy, intentional infliction of emotional distress, violation of civil rights, conspiracy, conversion, and abuse of process. *Ibid.* The Court held that since Appellant was not respondent's client, he had owed her no duty of care. The case did not fall under the exception to the rule.

In the instant case however, Plaintiff submits that GWB has acted outside the scope of its representation of its client.

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Plaintiff believed in good faith that based on affidavits of Michael Moske and Lewis Tillman that Rob Corney, the attorney representing Defendant Blair and an associate of GWB, facilitated and conspired with Defendant Blair and her co-defendant Tracy Dunn to manufacture testimony in a prior case to lessen Dunn's sentence.

Corney did not disclose that GWB and Blair hired HUB Enterprise and Shawn Conway as private investigators, until the prior case was over. Plaintiff was unable to depose the private investigators. GWB submitted videos and reports written by Conway and HUB Enterprise that were found to have been altered. (Exhibit 1- Affidavit of Michael Moske). To aggravate the situation, GWB and Defendant Blair claimed fees paid to the investigator as reimbursement for their client's expenses. Plaintiff believes that it is inequitable to require him to pay for something that had not been previously provided in discovery. GWB and Blair acted in an unethical manner.

Plaintiff insists that GWB's non-disclosure of the services of private investigator deprived him of his right to confront, and present his case, against Defendants Blair and Dunn. Furthermore, allowing the introduction of, and submitting altered videos by GWB's agent, HUB Enterprise and Conway, constitute fabrication of evidence. GWB's acts take this case outside the scope of its representation of Blair.

Tillman in his Affidavit stated that his cousin, Defendant Dunn, confided in him about the plan for Dunn to testify in court, claiming sole responsibility over the shooting of Plaintiff. (Exhibit 2 - Affidavit of Lewis Tillman). This would clear Blair from any culpability. In turn, Blair will withdraw her previous CDV charges against Dunn.

This belief was boosted by Corney's visit in the jail where Dunn was incarcerated. (Exhibit 3- GWB Counsel visit to Dunn). This visit was in June 2016. Prior to this visit, Dunn

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denied shooting Plaintiff. (Exhibit 4-Dunn's Incident Report). On July 14, 2016, Defendant Dunn changed his tune and admitted to intentionally shooting Plaintiff. (Exhibit 5- Deposition Transcript, Tracy Dunn). On November 30, 2016, Plaintiff's case against Blair was dismissed due to Dunn's admission, and thereafter, Blair dismissed her CDV case against Dunn. (Exhibit 6- Trial Transcript, Tracy Dunn, June 21, 2017). There can be no other conclusion than that something made Dunn change his statements. The circumstances preceding and subsequent to his admission of sole culpability showed a deliberately planned and carefully executed scheme to defeat Plaintiff's cause.

Plaintiff believes that Dunn and Blair engaged in a *quid pro quo* agreement, which was facilitated by Blair's counsel. This is a subornation of perjury and is outside of the scope of GWB's representation of Blair.

Plaintiff asserts that GWB has a duty towards the Plaintiff. Under Rule 3.4 of the Rules of Professional Conduct, a lawyer has a duty to observe fairness to opposing party and conduct. In particular it states:

> A lawyer shall not:
>
> (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
>
> (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
>
> (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;
>
> (d) in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
>
> (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

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> (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
>
> (1) the person is a relative or an employee or other agent of a client; and
>
> (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Plaintiff avers that the act of subornation of perjury is in violation of Rule 3.4 (a). And while the court ruled that GWB is not responsible for the conduct of its investigator, it is responsible for its own. GWB knowingly, or at least it should have known that it, submitted a manufactured evidence. GWB knew or should have known that this act is in violation of Rule 3.4(b). As such, GWB's acts fall under the exception to the doctrine of immunity of lawyer.

II.

PLAINTIFF'S CLAIM OF TORTIOUS INTERFERENCE WITH CONTRACT IS SUFFICIENTLY PRESENTED.

There is no dispute that a valid contract of services existed and still exists between Plaintiff and his counsel. Blair herself admitted and recognized the existence of such contract between the Plaintiff, in her Answer/Motion to Dismiss, dated December 8, 2017. Blair knowingly, willfully, and deliberately, through the help of GWB, devised a plan and/or entered into a *quid pro quo* agreement with Defendant Dunn, whereby the latter would confess sole culpability in the tort case, in exchange for terminating/dismissing her CDV case against him. (Amended Complaint, p. 5, l. 41, p. 8, l. 73). By facilitating this quid pro quo agreement between Blair and Dunn, GWB infringed in the attorney-client contract between Plaintiff and his counsel as it limited the prospective economic advantage for the Plaintiff. There was no valid justification for Defendants' conduct.

Since all the elements of tortious interference with contract are present in this case, the Court should have allowed Plaintiff to flesh out his claims against GWB and its agents.

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CONCLUSION

For the above and foregoing reasons, Plaintiff prays that this Court reconsider its Order, dated February 5, 2019, and reinstate Plaintiff's claim against GWB.

Respectfully submitted by:

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Anderson, South Carolina
Date: February 15, 2019.

GWB's RESPONSE
IN OPPOSITION TO PLAINTIFF's
MOTION FOR RECONSIDERATION

(February 25, 2019)

ELECTRONICALLY FILED - 2019 Feb 25 10:36 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
John E. Harbin,	)	Civil Action No. 2017-CP-04-02099
	)	
Plaintiff,	)	
	)	
vs.	)	**GALLIVAN WHITE & BOYD AND SAM NIKOPOULOS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER**
	)	
April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe,	)	
	)	
Defendants.	)	
	)	

Gallivan White & Boyd and Sam Nikopoulos (collectively "GWB") hereby submit this Response in Opposition to Plaintiff's Motion to Reconsider. Plaintiff has not, and cannot, show that the Court erred in granting GWB's Motion to Dismiss. Instead, Plaintiff merely re-hashes the same arguments that this Court has already carefully considered and rejected. The filing of this Motion to Reconsider is a continuation of the frivolous pattern exhibited by Plaintiff's lawyer, and is a desperate attempt by him to avoid the sanctions requested in GWB's Motion for Sanctions. GWB incorporates the arguments made in its Motion for Sanctions, and respectfully requests that Plaintiff's Motion to Reconsider be denied.

BACKGROUND AND SUMMARY OF ARGUMENT

In a prior lawsuit brought by Plaintiff, GWB represented one of the defendants, April Blair. Prior to trial, GWB made a settlement offer on behalf of its client to Plaintiff, which he declined. After a trial before the Honorable J. Cordell Maddox, Jr., the jury returned a defense verdict in favor of GWB's client. Plaintiff then filed this lawsuit in an attempt to relitigate the same issues that were raised in the prior litigation.

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This Court granted GWB's Motion to Dismiss on February 5, 2019. GWB filed a Motion for Sanctions on February 13, 2019 based on the grounds that the lawsuit was frivolous and an improper attempt to relitigate the prior lawsuit, and the action was clearly not warranted under existing law.

Plaintiff filed a Motion to Reconsider the Court's granting of GWB's Motion to Dismiss on February 15, 2019. Plaintiff's Motion to Reconsider is his latest attempt to re-litigate issues that have already been addressed and ruled upon. Plaintiff was given a fair opportunity to present his claims in the underlying lawsuit. His disagreement with previous rulings does not entitle him to continue re-litigating the exact same underlying facts, and to cause GWB to spend significant time, effort, and resources defending this lawsuit.

LEGAL STANDARD

Rule 59(e) allows a court to alter or amend a judgment upon a party's timely motion. A motion under Rule 59(e) has long been viewed as a "motion for reconsideration." *Elam v. S.C. Dep't of Transp.*, 361 SC. 9, 21, 602 S.E.2d 772, 778 (2004). Under South Carolina law, a motion to reconsider pursuant to Rule 59(e), SCRCP, is appropriate in two basic situations. First, "[a] party *may* wish to file such a motion when [he] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id*. at 24, 602 S.E.2d at 780. Second, "[a] party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id*. However, "[a] party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not." *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014).

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ARGUMENT

I. Plaintiff Has Not Established Grounds for Relief Under Rule 59.

Plaintiff's Motion to Reconsider does not identify any point of law or fact that the Court misunderstood, did not fully consider, or failed to rule upon. Rather, Plaintiff's Motion merely asks the Court to reconsider its analysis because he disagrees with its conclusions. The allegations in Plaintiff's Complaint have now been litigated not once, but twice. Plaintiff's dissatisfaction with the outcome of the underlying litigation and the instant action is not grounds for relief under Rule 59. *See Elam*, 361 S.C. at 24, 602 S.E.2d at 780. Thus, Plaintiff's Motion should be denied.

II. The Court Properly Granted GWB's Motion to Dismiss.

The Court properly granted GWB's Motion to Dismiss based on the clear legal principle that a lawyer has no liability to a non-client third party for actions taken in the representation of a client. *See Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 399 S.E.2d 887 (Ct. App. 1986); *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010). A review of the allegations of Plaintiff's Complaint clearly confirms that GWB was named in this action solely by virtue of its representation of April Blair/State Farm in the underlying lawsuit. GWB was at all times acting within the scope of its representation of Blair, and thus the Court properly dismissed Plaintiff's Complaint against GWB with prejudice based on the above-cited case law.

Furthermore, the Court properly granted GWB's Motion to Dismiss because GWB was not vicariously liable for the alleged torts of Defendant HUB Enterprises, Inc., an independent contractor that GWB hired to provide surveillance of Plaintiff during the underlying lawsuit. Plaintiff had absolutely no basis for alleging that a law firm is responsible for the actions of an investigative firm that it hires because, as a general rule, an employer is not vicariously liable for

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the torts of an independent contractor committed in the performance of contracted work. *See Rock Hill Tel. Co., Inc. v. Globe Commc'ns, Inc.*, 363 S.C. 385, 390, 611 S.E.2d 235, 238 (2005); *Duane v. Presley Constr. Co., Inc.*, 270 S.C. 682, 683, 244 S.E.2d 509, 510 (1978).

CONCLUSION

Plaintiff has not shown that the Court erred in granting GWB's Motion to Dismiss. Furthermore, Plaintiff failed to meet the standard for altering or amending a judgment under Rule 59(e) of the South Carolina Rules of Civil Procedure. Therefore, GWB respectfully requests that Plaintiff's Motion to Reconsider be denied.

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February 25, 2019

PLAINTIFF'S REPLY IN OPPOSITION TO GWB's MOTION FOR SANCTIONS

(March 7, 2019)

ELECTRONICALLY FILED - 2019 Mar 07 3:35 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
John E. Harbin,)	
Plaintiff,)	C.A. No.: 2017-CP-04-02099
vs.)	
)	**REPLY IN OPPOSITION TO DEFENDANT GWB'S MOTIONS FOR SANCTIONS**
April Blair, et al.,)	
Defendants.)	
)	

Plaintiff respectfully submits this Reply in Opposition to Defendants' Motion for Sanctions. In support of which, Plaintiff present the following:

STATEMENT OF FACTS

In 2014, Plaintiff John Harbin (Hereinafter referred as "Plaintiff") brought a case for damages against Defendants April Blair (hereinafter referred as "Blair") and Tracy Dunn (hereinafter referred as "Dunn") for the latter's act of shooting and injuring the former.

Sometime in 2012, Blair and Dunn, who were in a relationship, invited Plaintiff to stay with them in exchange for his performance of general labor, similar to which the latter rendered at Blair's mother's house. At some point, Blair and Dunn had a misunderstanding, which led her to throw him out of her house.

After Dunn had left the home, Blair and Plaintiff engaged in a consensual sexual encounter. Immediately following this encounter, Blair regretted her decision to be romantically involved with Plaintiff. To assuage her conscience, Blair called Dunn, and made it appear that Plaintiff raped her. Dunn, armed with a gun, dashed to her, and confronted Plaintiff. Dunn thereafter shot Plaintiff, when the latter was in the process of leaving Blair's house. Plaintiff sustained physical injuries and had to be airlifted to Anmed, where he underwent a surgical procedure which required him to stay in the hospital for a number of days.

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Blair, in an attempt to justify her boyfriend's actions, claimed Plaintiff had raped her that morning, following an evening of love making with him. She also maintained that he had molested her when she was much younger. Despite this fact, she had made love to him and allowed him to reside in her home with her, Dunn and her young son.

Following the shooting, Dunn was picked up from the house by a passing motorist. He was eventually found at Ms. Blair's home. After he was picked up, he made several conflicting statements about his involvement in the shooting. He first claimed that Plaintiff shot himself, then stated that he attempted to shoot the ground in front of Harbin.

Plaintiff employed the legal services of the undersigned counsel to bring a tort action against them. Dunn pleaded guilty to assault and battery of a high and aggravated nature for the shooting of Harbin. He was sentenced to time served and probation. Blair denied involvement in the shooting incident.

Dunn resumed his romantic relations with Blair, upon his release from jail. At some point, Blair charged him with Criminal Domestic Violence of a high and aggravated nature. Because of his probation, Dunn was sent back to jail, until the matter was heard in regard to the CDV charge.

While Plaintiff's tort case was ongoing, GWB sent its agents, Defendant Sam Nikopoulus (hereinafter referred as "Sam") and defense counsel, Rob Corney, who was originally referred to as John Doe in the Complaint, to Abbeville Detention Center to visit Dunn. It is the understanding and belief of Plaintiff that it was during this visit(s) that an agreement was reached between Blair and Dunn. It is the understanding and belief of Plaintiff that Defendant Corney (hereinafter referred as "Corney") informed Dunn that Blair would help him with her CDV case against him, if he would proclaim her innocence.

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Corney knew that (1) Dunn owning up responsibility over the shooting would help Blair; (2) double jeopardy would allow Dunn to take ownership without concern; and, (3) Blair had a significant charge against Dunn (with him on probation). It is very telling how vigorous Corney objected when defense counsel asked Dunn during the trial how many times Corney came to see him. Corney did not want the conspiracy to come out at that stage.

On the day of the deposition, Dunn admitted, for the first time, that he intended to shoot Harbin, and denied Blair's responsibility. When trial came, Dunn stuck to his admission. Blair was absolved of any liability based on Dunn's testimony. Following the trial, Blair informed the Public Defender's Office of her preference to dismiss the CDV case she filed against Dunn. Plaintiff believed that Blair and Dunn conspired to defeat his claims.

Following the conclusion of the tort case, Blair and Defendant GWB provided a billing statement as an exhibit associated with the costs incurred by GWB. The billing statement showed that a private investigator had been hired to provide surveillance on Plaintiff. This witness was not provided in discovery, yet his bill was offered for payment by Plaintiff for his failure to accept Blair's Offer of Judgment. Defendant Conway, a private investigator, working for Defendant HUB Enterprises, Inc., (hereinafter referred "HUB) was responsible for the surveillance.

Defendant Blair sought to be reimbursed for her expenses in hiring HUB and Shawn Conway (collectively referred as Investigators). This, despite the following facts,: (1) Investigators were hired after Plaintiff's deposition; (2) Plaintiff was not informed of the fact that Defendants hired private investigators and only learned of such when Plaintiff received Defendant's Affidavits and Exhibits for the Purpose of Collecting Costs as a Result of Offer of

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Judgment.; (3) Plaintiff was not provided a copy of the investigator's report(s), notes or other proof of investigative work.

Defendants' acts taken together show that they all conspired to deny Plaintiff's claim, thereby interfering in Plaintiff's attorney-client relation/contract. Plaintiff filed this instant action on October 9, 2017 alleging among other tortious interference with contract. On November 8, 2017, GWB moved to dismiss the Complaint against it, alleging that as the lawyer of Blair, it cannot be held liable for actions it took in representation of Blair. On November 13, 2017, Plaintiff amended his Complaint. On December 6, Defendant HUB moved to dismiss the case against him, while Blair moved to dismiss the case against her on December 13, 2017. On February 5, 2019, the Court granted GWB's Motion to Dismiss and dismissed Plaintiff's Amended Complaint.

On February 13, 2019, Defendant GWB moved for sanctions against Plaintiff's counsel. Thus, this Reply in Opposition.

ARGUMENTS

I.

THE INITIATION OF THE PRESENT CASE WAS BASED ON FACTUAL CONSIDERATIONS AND NOT FRIVOLOUS.

GWB contends that this case was brought facetiously or whimsically. GWB asserts that Plaintiff brought the case in an attempt to re-litigate the previous lawsuit. Plaintiff insists that the present lawsuit on tortious interference of contract was based on set of facts that came to light only after the trial of the prior case and is therefore not a frivolous claim.

Plaintiff believed in good faith that based on the affidavits of Michael Moske and Willie Clarence Tillman that Rob Corney, the attorney representing Defendant Blair and an associate of

GWB, facilitated and conspired with Blair and her co-defendant Tracy Dunn to manufacture testimony in a prior case to lessen Dunn's sentence.

On June 24, 2014, days after the shooting of herein Plaintiff, Dunn gave statements to Officer Nicholas Phillip Marshall. Dunn initially denied having shot Plaintiff. Dunn eventually admitted that he shot at the ground where Plaintiff stood, but accidentally shot Plaintiff's leg instead. (Exhibit 1-Dunn's Incident Report). Dunn pled to assault and battery first degree on an attempted murder charge. Dunn was sentenced to seven (7) years, with probation for 48 months. Dunn went on to live with Blair. Sometime in July 2016, Blair filed a CDV charges against Dunn. Dunn also violated his probation. He was again sent to jail.

The shooting case went to trial against Blair. Blair procured the services of GWB, and Corney represented her. On separate days in June 2016, Sam and Corney visited Dunn in jail. Defendant itself presented the said exhibit as part of its expenses. (Exhibit 2- GWB Counsel visit to Dunn). Sam visited on June 15, 2016, while Corney visited on June 21, 2016.

While Dunn was in jail, his cousin Tillman was in jail pursuant to a bench warrant. The two had the opportunity to interact on a regular basis. Dunn confided with Tillman about the plan for Dunn to testify in court and claim sole responsibility over the shooting of Plaintiff. (Exhibit 3- Affidavit of Willie Clarence Tillman). This would clear Blair from any culpability, who in turn, would withdraw her previous CDV charge against Dunn. This is exactly what happened.

After the visits of the GWB employees, Dunn changed his tune. In his deposition for the prior case against him and Blair, he stated that he intentionally shot Plaintiff, and cleared Blair of any wrongdoing. (Exhibit 4- Deposition Transcript, Tracy Dunn, P. 42). He repeated his

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statements in trial on November 30, 2016. On the same date, Plaintiff's case against Blair was dismissed on the strength of Dunn's admission.

In preparation for post-trial motion, counsel for Plaintiff sought Kami Granade, Dunn's defense counsel. Counsel for Plaintiff prepared an Affidavit for Granade on February 23, 2017. (Exhibit 5- Draft Affidavit of Kami Granade). Michael Moske (hereinafter referred as "Moske") served this draft Affidavit upon Granade. (Exhibit 6-Affidavit of Michael Moske). The draft affidavit prepared for Ms. Granade stated among others: that she was Defendant Dunn's attorney, and that Blair communicated her desire to dismiss the CDV charge against Dunn. (Exhibit 5). This was information provided by Tillman in his Affidavit.

Ms. Granade did not sign the draft affidavit. Granade however signed an Affidavit prepared, and presented to the court, by Corney. (Exhibit 7-Executed Affidavit of Kami Granade). In her Sworn Affidavit, Ms. Granade stated that Defendant Blair contacted her about her wish not to pursue the charge of criminal domestic violence of a high and aggravated nature, which she had brought against Dunn. Kami stated that Blair began this quest to dismiss the charge in December of 2016, upon the completion of the trial for Plaintiffs shooting.

Granade also admitted meeting Dunn, after her interaction with Blair to discuss Dunn's pending charges. (Exhibit 7). She also confirmed that Moske, approached her to sign an affidavit prepared by counsel for Plaintiff, but refused to sign the same due to a number of errors in the draft affidavit.

Contrary to Granade's assertions, a careful comparison of the two affidavits shows that the draft affidavit contains the exact same declarations as those in the Sworn Affidavit created by Corney. The undersigned counsel herein presents the two marked affidavits for comparison. The sentences of the draft are numbered and referenced on the Sworn Affidavit. (Exhibit 7). The

fact that the draft affidavit was prepared one year in advance of the affidavit that Ms. Granade endorsed illustrated the credibility of the offerings of Dunn's cousin, Tillman, without any help from her.

On June 21, 2017, during the hearing for Dunn's CDV case, Granade submitted to the court Blair's desire to dismiss her case against Dunn. (Exhibit 8- Trial Transcript, Tracy Dunn, June 21, 2017).

Plaintiff asserts that the circumstances preceding and subsequent to Dunn's admission of sole culpability showed a deliberately planned and carefully executed scheme to defeat Plaintiff's cause. There can be no other conclusion than that something made Dunn change his statements.

Plaintiff believes that Dunn and Blair engaged in a *quid pro quo* agreement, which was facilitated by Blair's counsel. In his Affidavit, Tillman unequivocally stated that Dunn told him that Blair's lawyer acted as go-between prior to and during the trial. (Exhibit 3, P. 2).

Plaintiff asserts that Granade's Sworn Affidavits confirmed and lent credence to Tillman's statements. At the time that he prepared his Affidavit in February 2017, Tillman could not have known that Blair would seek the dismissal of Dunn's CDV charges in June 2017. There is no logical inference other than Dunn communicated such details to Tillman. As such, Tillman's affidavit was credible, and supported by the very same evidence presented by Blair.

Plaintiff also avers that GWB procured the services of HUB Enterprise and Conway) to investigate Plaintiff. To date, the reason for the procurement of private investigators have not been succinctly explained, considering that it was done subsequent to the trial. Plaintiff was never informed of the private investigators, nor the need for them, and yet GWB and Blair presented the same as expenses incurred by GWB.

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Since the Plaintiff learned of the private investigators subsequent to the trial, he also discovered the anomalies belatedly.

In the HUB Surveillance Report, dated July 12, 2016, Conway, reported his findings, which include but are not limited to the following:

(1) That on July 4, 2016, Conway conducted a surveillance of a residence located at 2917 Chambers Road, Anderson, South Carolina;

(2) After several hours of drive-by, Conway has not seen any activity in the residence, he canvassed the surrounding area for Plaintiff, but did not see the latter;

(3) That Conway went to a different address, 3519 Chipwood Drive, Anderson, South Carolina, and spoke with Sherry Hayes, who confirmed Plaintiff resided at her house for the past month;

(4) That on July 7, 2016, he returned to the Chipwood Drive address, and saw a light blue Honda CRV and a gray Nissan SUV. He reported no claimant (Plaintiff) activity in this address;

(5) That on the same date, Conway conducted spot check on the 2917 Chambers Road property. He reported seeing a dark green Saturn and Plaintiff's bike, but no Plaintiff activity observed.

(6) That he alternated driving by the Chipwood Dr. and Chambers Road addresses, only observing that the gray Nissan SUV and green Saturn left their respective spots at one point in time, and eventually returned.

(7) That he did the same thing on July 8, 2016, with the same results.

(8) In the three (3) days that Conway surveilled, he reported having obtained an area video.

(Exhibit 9- HUB Surveillance Report).

In his Affidavit, Conway stated that he never took video nor photographs of Plaintiff or any other person in the Chambers Road residence. (Exhibit 10- Affidavit of Shawn Conway). He also did not mention about meeting a Sherry Hayes. (Exhibit 10).

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Plaintiff obtained a statement from Ms. Sherry Hayes (hereinafter referred "Hayes"), whom Conway reportedly conversed with on his first day of surveillance. Hayes stated she has never met nor talked to Conway. (Exhibit 11- Affidavit of Sherry Hayes).

Plaintiff also submitted an Affidavit stating that he lived at the Chambers Road address shortly after he was shot; that said residence belongs to his girlfriend Patricia Elrod; and that due to his limited mobility, he had not been anywhere except the Chambers Road residence. (Exhibit 12- Affidavit of John Harbin). This statement refuted Conway's Surveillance Report.

Through Michael Moske, a private detective, Plaintiff discovered that the videos had been altered and/or manufactured. (Exhibit 6- Affidavit of Michael Moske). Moske, who conducted an ocular inspection of the areas appearing in the video, offered his professional opinion that the private investigators could not have seen Harbin or anyone from the surveilled property based on the positioning and/or angle of the video. (Exhibit 13- Affidavit of Michael Moske).

Plaintiff submits that these facts brought him to file the instant case against GWB, which as a law firm, is responsible for the unethical actions of its agents. The filing of this case is based on evidence that points to GWB and/or its agents engaged in violating the Rules of Discovery as well as submitting altered materials in an effort negate what has been alleged by Plaintiff.

II.

THIS ACTION IS AN EXCEPTION TO THE DOCTRINE OF IMMUNITY OF LAWYERS FROM LIABILITY TO THIRD PERSONS.

The defense counsels relied on the doctrine of immunity of lawyers from liability to third persons arising out of the attorney's representation of their client. This doctrine is however not absolute and allows for exceptions.

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The case of Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995) and Douglass ex rel. Louthian v. Boyce, 344 S.C. 5, 542 S.E.2d 715 (S.C., 2001) discussed an exception to the general rule that a lawyer is not liable to a non-client or third person from the performance of his professional activities as an attorney on behalf of, and with the knowledge of his client. Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions, 388 S.C. 394, 697 S.E.2d 551 (S.C., 2010). The Court in *Stiles* and *Douglas* held that an "attorney may be held liable where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client." This exception to the doctrine of immunity was not applied in *Douglas*, because the attorney representing the personal representative in a wrongful death action has no independent duty to the statutory beneficiaries. Douglass ex rel. Louthian v. Boyce, 344 S.C. 5, 542 S.E.2d 715 (S.C., 2001).

Plaintiff submits that in the present case, the exception to the immunity doctrine applies. Firstly, GWB and/or its agents acted outside the scope of its representation of its client. GWB's lawyers facilitating a quid pro quo agreement, whereby Dunn was to admit sole culpability to shooting, was a subornation of perjury. This act takes it outside of the scope of GWB's representation of Blair. Under of the Rules of Professional Ethics, while a lawyer has an obligation to present his client's cause with persuasive force, he has a duty to maintain candor with the court. Paragraph Rule 3.3(a)(3) requires, that the lawyer refuse to offer evidence that the lawyer knows to be false.

> (a) A lawyer shall not knowingly:
> xxx
> (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may

> refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

Allowing Dunn to testify and admit sole responsibility to the shooting knowing that it was done falsely and submitting a manufactured and/or altered videos and documents for purposes of reimbursement of expenses, are acts that are beyond the scope of GWB, and/or its agents' representation of Blair.

Secondly, GWB has a duty to Plaintiff under Rule 3.4 of the Rules of Professional Conduct, a lawyer has a duty to observe fairness to opposing party and counsel. In particular it states:

> A lawyer shall not:
>
> (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
>
> (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
>
> (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;
>
> (d) in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
>
> (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
>
> (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
>
> (1) the person is a relative or an employee or other agent of a client; and
>
> (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

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GWB knew or should have known that its acts, or that of its agents, was in violation of Rule 3.4(b). As such, GWB's acts fall under the exception to the doctrine of immunity of lawyer.

III.
THE COMPLAINT HAS NOT BEEN INITIATED IN BAD FAITH NOR FOR PURPOSES OF DELAY.

Plaintiff reiterates that he filed this Complaint in good faith and did not seek to perpetrate fraud nor delay on this Court. Defendants have not alleged nor proved that Plaintiff's filing of this complaint is a reprehensible act, going beyond mere negligence and evincing intent. Plaintiff believes that he has valid cause of action against the Defendants, based on evidence such as affidavits of witnesses, statements of Dunn as well as actions of the other Defendants in this case. Defendants' motion for sanction is based on a limited reading (or misreading) of the case of Gaar v. North Myrtle Beach Realty Co., Inc., 287 S.C. 525, 399 S.E.2d 887 (Ct. App. 1986). Plaintiff reasonably believes that under the facts and evidence he submitted, his claim is a valid exception to the doctrine of immunity of lawyers.

CONCLUSION

For the above and foregoing reasons, Plaintiff submits that GWB's Motion for Sanctions should be denied.

Respectfully submitted,

s/Donald L. Smith

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March 7, 2019

PLAINTIFF'S RESPONSE TO GWB's OPPOSITION TO MOTION FOR RECONSIDERATION

(March 7, 2019)

ELECTRONICALLY FILED - 2019 Mar 07 3:40 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
John E. Harbin,)	
Plaintiff,)	C.A. No.: 2017-CP-04-02099
vs.)	
)	**RESPONSE TO DEFENDANT GWB'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION**
April Blair, et al.,)	
Defendants.)	
_____)	

Plaintiff respectfully submits this Response to Defendant GWB's Opposition to Plaintiff's Motion for Reconsideration. In support of which, Plaintiffs present the following:

In their Response in Opposition Plaintiff's Motion for Reconsideration, Defendants GWB and Sam Nikopoulos (hereinafter referred as "Sam") contend that Plaintiff failed to establish the grounds for relief under Rule 59.

Contrary to their claim, Plaintiff specifically stated that he is requesting herein court to reconsider its ruling based on its misappreciation of the doctrine of immunity of lawyers. Plaintiff applied the proper standard of review for his motion to reconsider.

> As cited in *Elam v. South Carolina Department of Transportation, 361 S.C. 9 (2004), 602 S.E.2d 772 (SC: Ct. App.),* a motion under Rule 59(e) has long been viewed as a "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992)* as cited in *Elam*. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. *Id.* A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Plaintiff reiterates his belief that herein Court failed to recognize that the doctrine of immunity of lawyers, relied on by the defense counsel, is not absolute and allows for exceptions.

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The case of Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995) and Douglass ex rel. Louthian v. Boyce, 344 S.C. 5, 542 S.E.2d 715 (S.C., 2001) discussed an exception to the general rule that a lawyer is not liable to a non-client or third person from the performance of his professional activities as an attorney on behalf of, and with the knowledge of his client. Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions, 388 S.C. 394, 697 S.E.2d 551 (S.C., 2010). The Court in *Stiles* and *Douglas* held that an "attorney may be held liable where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client." *Stiles* and *Douglas* did not apply such exception because of the facts of each case. In this particular case, Plaintiff believes that Defendants breached its duty to maintain fairness and candor to the court and to opposing party and counsel, which takes Defendants' actions out of the scope of their representation of Defendant April Blair.

GWB's lawyers facilitating a quid pro quo agreement, whereby Dunn was to admit sole culpability to shooting, was a subornation of perjury. This act takes it outside of the scope of GWB's representation of Blair. Under of the Rules of Professional Ethics, while a lawyer has an obligation to present his client's cause with persuasive force, he has a duty to maintain candor with the court. Paragraph Rule 3.3(a)(3) requires, that the lawyer refuse to offer evidence that the lawyer knows to be false.

> (a) A lawyer shall not knowingly:
>
> xxx
>
> (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

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Allowing Dunn to testify and admit sole responsibility to the shooting knowing that it was done falsely and submitting a manufactured and/or altered videos and documents for purposes of reimbursement of expenses, are acts that are beyond the scope of GWB, and/or its agents' representation of Blair.

Secondly, GWB has a duty to Plaintiff under Rule 3.4 of the Rules of Professional Conduct, a lawyer has a duty to observe fairness to opposing party and counsel. In particular it states:

> A lawyer shall not:
>
> (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
>
> (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
>
> (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;
>
> (d) in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
>
> (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
>
> (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
>
> (1) the person is a relative or an employee or other agent of a client; and
>
> (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

GWB knew or should have known that its acts, or that of its agents, was in violation of Rule 3.4(b). As such, GWB's acts fall under the exception to the doctrine of immunity of lawyer.

CONCLUSION

For the above and foregoing reasons, Plaintiff prays that this Court reconsider its Order, dated February 5, 2019, and reinstate Plaintiff's claim against GWB.

March 7, 2019

Respectfully submitted,

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HUB's OPPOSITION TO PLAINTIFF's MOTION FOR RECONSIDERATION

(March 13, 2019)

ELECTRONICALLY FILED - 2019 Mar 13 9:53 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin, Plaintiffs, v. April Blair, Tracy Dunn, Shawn Conway, HUB Enterprises, Inc., Gallivan, White & Boyd, Sam Nikopoulos and John Doe, Defendants.	)	Civil Action No. 2017-CP-04-02099 **MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER**

Defendants HUB Enterprises, Inc. ("HUB") and Shawn Conway ("Conway") (collectively "Defendants") submit this Memorandum in Opposition to Plaintiff's Motion to Reconsider. For the reasons set forth below, Plaintiff's Motion should be denied.

BACKGROUND

The present case involves an alleged tortious interference with contractual relations. Plaintiff alleged the following facts in his Amended Complaint: on June 21, 2014, he was shot in the lower right extremity by Defendant Tracy Dunn ("Dunn") while on the property of Defendant April Blair ("Blair"). Complaint, ¶¶ 22-30. After that shooting occurred, several related legal proceedings followed. First, Dunn was charged with a criminal offense; he later pleaded guilty to Assault and Battery of a High and Aggravated Nature and received a probationary sentence. Complaint, ¶ 34. Second, Plaintiff filed a Complaint naming Blair and Dunn as defendants. Complaint, ¶ 31. Dunn failed to answer that Complaint. Complaint, ¶ 32. Blair had homeowners coverage through State Farm Insurance Company and was represented during that

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litigation by counsel from the law firm of Defendant Gallivan, White & Boyd ("GWB"). Prior to the trial of that action, GWB made a settlement offer on behalf of Blair to Plaintiff. That offer was rejected. At trial, the jury returned a defense verdict for Blair. Complaint, ¶ 44. Thereafter, GWB moved for an order granting costs for all expenses incurred from the date the settlement offer was made. Attached to the motion was an affidavit in support, including Exhibit I, an invoice from HUB for three (3) days of attempted surveillance on Plaintiff by its employee Conway. The trial court granted that motion. Plaintiff moved for a new trial, arguing that GWB's failure to disclose Conway's attempted surveillance on Plaintiff was newly discovered evidence that entitled him to a new trial. The trial court denied that motion.

Now, in the instant case, Plaintiff alleges HUB and Conway tortuously interfered with his contractual relationship with his attorney, Donald Smith. Complaint, ¶¶ 70-81. This Court granted Defendants' Motion to Dismiss on February 5, 2019. Plaintiff then filed a Motion to Reconsider the Court's Order Granting Defendants' Motion to Dismiss on February 15, 2019. Plaintiff's Motion to Reconsider does not raise any new issue or point of law that was not previously argued or raised to this Court, nor does Plaintiff's Motion call the Court's attention to a possible misapprehension of Plaintiff's previous argument. Instead, Plaintiff's Motion is his latest attempt to re-litigate issues that have already been briefed, fully argued, addressed, and ruled upon.

STANDARD OF REVIEW

Rule 59(e) allows a court to alter or amend a judgment upon a party's timely motion. A motion under Rule 59(e) has long been viewed as a "motion for reconsideration." Elam v. S.C. Dep't of Transp., 361 SC. 9, 21, 602 S.E.2d 772, 778

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(2004). Under South Carolina law, a motion to reconsider pursuant to Rule 59(e), SCRCP, is appropriate in two basic situations. First, "[a] party may wish to file such a motion when [he] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Id. at 24, 602 S.E.2d at 780. Second, "[a] party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Id. However, "[a] party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not." Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014).

ARGUMENT

Plaintiff's Motion to Reconsider does not identify any point of law or fact that the Court misunderstood, did not fully consider, or failed to rule upon. Rather, Plaintiff's Motion merely asks the Court to reconsider its analysis because he disagrees with its conclusions. Plaintiff's dissatisfaction with the outcome of the underlying litigation and the instant action is not grounds for relief under Rule 59. See Elam, 361 S.C. at 24, 602 S.E.2d at 780.

Further, the Court properly granted Defendants' Motion to Dismiss based upon Plaintiff's failure to plead any fact or circumstance evincing a breach of the contract between Plaintiff and his attorney. The allegations in Plaintiff's Complaint, even if taken as true, failed to establish that the contract between Plaintiff and his attorney was breached. The Plaintiff failed to include any allegations of any acts or omissions by

HUB or Conway warranting the inference that either of their alleged intentional actions procured the breach of the purported contract.

CONCLUSION

Plaintiff has not shown that the Court erred in granting Defendants' Motion to Dismiss. Furthermore, Plaintiff failed to meet the standard for altering or amending a judgment under Rule 59(e) of the South Carolina Rules of Civil Procedure. Therefore, Defendants respectfully requests that Plaintiff's Motion to Reconsider be denied.

Respectfully submitted,

s/ R. Wilder Harte
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ATTORNEYS FOR DEFENDANTS HUB ENTERPRISES, INC., AND SHAWN CONWAY

March 13, 2019

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PLAINTIFF's RESPONSE TO HUB's OPPOSITION TO THE MOTION FOR RECONSIDERATION

(March 19, 2019)

ELECTRONICALLY FILED - 2019 Mar 19 12:08 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
John E. Harbin,)	
Plaintiff,)	C.A. No.: 2017-CP-04-02099
vs.)	
)	**RESPONSE TO DEFENDANTS HUB ENTERPRISE AND SHAWN CONWAY'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION**
)	
April Blair, et al.,)	
Defendants.)	
)	

Plaintiff respectfully submits this Response to Defendants Hub Enterprise and Shawn Conway's Opposition to Plaintiff's Motion for Reconsideration. In support of which, Plaintiffs present the following:

In their Response in Opposition to Plaintiff's Motion for Reconsideration, Defendants HUB Enterprise (hereinafter referred as "HUB") and Shawn Conway (hereinafter referred as Conway) contend that Plaintiff "failed to identify any point of law or fact that the Court misunderstood, did not fully consider or failed to ruled upon". (Defendants HUB and Conway Shawn's Memorandum in Opposition to Plaintiff's Motion to Reconsider, Match 13, 2019).

Contrary to their claims, Plaintiff asserts that they submitted documents and reports that were fabricated. Conway and HUB presented these videos and reports to co-Defendant GWB, which the latter used for their demand for additional expenses.

In support of his claim, Plaintiff submitted an Affidavit from Michael Moske, an independent private detective. Moske reviewed the videos and report written by Conway and HUB. He stated that, in his professional capacity, he believed that the videos have been altered as the creation date cannot be found through the use of metadata retrieval application. (Exhibit 1 Affidavit-Michael Moske).

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Plaintiff also submitted an Affidavit from Sherry Hayes, the person who resides in Chipwood Drive, whom Conway referred to in his report as having spoken to during his investigation. (Exhibit 2- HUB Surveillance Report). Ms. Hayes belied having met, much less talked to Conway. (Exhibit 3- Affidavit-Sherry Hayes).

Plaintiff correctly applied the standard of review for motion to reconsider:

> As cited in *Elam v. South Carolina Department of Transportation, 361 S.C. 9 (2004), 602 S.E.2d 772 (SC: Ct. App.),* a motion under Rule 59(e) has long been viewed as a "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992)* as cited in *Elam*. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. *Id.* A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Thus, Plaintiff reiterates that its request for the court's reconsideration of its Order was based on the its misappreciation of the facts and evidence presented, and not merely on Plaintiff's dissatisfaction of the ruling.

HUB and Conway also contended that Plaintiff failed to plead any fact or circumstance evincing a breach of the contract between Plaintiff and his attorney. This is not the case.

Plaintiff seeks this Court to look beyond the narrow concept of breach and to focus on the result effected by the acts of the Defendants. Plaintiff advances that submitting a manufactured evidence was an intentional act that breached the attorney- client contract between Plaintiff and his counsel. By presenting falsified evidence (videos, report and Affidavit), HUB and Conway assisted Defendant April Blair in not only claiming a baseless reimbursement, but also deprived Plaintiff of the economic advantage that may be derived from the attorney-client contract. Defendants'

intentional act created a gap in the contract between Plaintiff and his counsel because it made it difficult for the latter to present his case.

CONCLUSION

For the above and foregoing reasons, Plaintiff prays that this Court deny Defendants HUB and Conway Shawn's Opposition to Plaintiff's Motion for Reconsideration and reinstate Plaintiff's claim against GWB.

March 19, 2019

Respectfully submitted,

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PLAINTIFF's MOTION FOR RECONSIDERATION OF OCTOBER 9, 2019 ORDER, GRANTING SANCTIONS

(October 21, 2019)

ELECTRONICALLY FILED - 2019 Oct 21 11:50 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA)) COUNTY OF ANDERSON))	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin,)) Plaintiff,)) vs.)) April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe,)) Defendants.)	**MOTION FOR RECONSIDERATION** Civil Action No. 2017-CP-04-02099

Plaintiff, by and through his counsel, respectfully submits this Motion for Reconsideration of the Order, dated October 9, 2019, granting Defendant Gallivan White & Boyd's Motion for Sanctions against counsel for Plaintiff. In support of which, Plaintiff presents the following:

STATEMENT OF FACTS

This case arose from a damages suit brought by Plaintiff against Defendant Gallivan White and Boyd's (hereinafter referred to as "GWB") client April Blair (hereinafter referred to as "Blair"), among others. Having obtained information that Blair engaged in a quid pro quo agreement with co-defendant Tracy Dunn (hereinafter referred to as "Dunn"), which was facilitated by Blair's counsel, Plaintiff filed this case for tortious interference with Plaintiff's attorney-client contractual relationship.

The Initial Damages Suit vs. Defendants Blair and Dunn

In 2014, Plaintiff brought a case for damages against Blair and Dunn for the latter's act of shooting and injuring him in defense of the former (who alleged she had been raped by Plaintiff).

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Sometime in 2012, Blair and Dunn, who were in a relationship, invited Plaintiff to stay with them in Blair's house, in exchange for Plaintiff performing general labor, similar to which the latter rendered at Blair's mother's house. At some point, Blair and Dunn had a misunderstanding, which led her to throw him out of her house.

After Dunn had left the home, Blair and Plaintiff engaged in a consensual sexual encounter. Immediately following this encounter, Blair regretted her decision to be physically involved with Plaintiff.

Q. What happened with your relationship?
A. With what relationship?
Q. Yours and John's.
A. On the 20th?
Q. Yeah.
A. We made love.
Q. Did you start having second thoughts about kicking Tracy out?
A. I always have second thoughts about kicking Tracy out.

(Deposition of April Blair, p. 19, 11.16; 20, 5.8).

To assuage her conscience, Blair called Dunn, and made it appear that Plaintiff raped her. Dunn, armed with a gun, dashed to her house, and confronted Plaintiff. Dunn thereafter shot Plaintiff, when the latter was in the process of leaving Blair's house.

Q. Okay. Third sentence down on that last paragraph says "He then stated that after the incident, he had discovered that John allegedly raped April the night before the incident," correct?
A. Yes, sir.
Q. And you say "He stated had he known that at the time of the incident occurred -- at the time the incident occurred, he would have definitely shot John," correct?
A. Yes.

(Deposition of Sgt. Nick Marshall, p. 33, 7.15).

No one made any statements regarding the physical relationship between Blair and

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Plaintiff, other than Blair and Dunn. Plaintiff did not speak to Dunn regarding his interaction with Dunn's girlfriend. Dunn told Sergeant Marshall she had been raped "the night before the incident". Certainly, Blair did not tell Dunn that she had made love to Plaintiff n the night before the incident. Blair had told Dunn of the rape and he traveled four or five miles on a moped to exact revenge. She knew of his volatile temper and his habitual carrying of a weapon. Dunn said, "had he known that at the time of the incident, he would have definitely shot John". That is exactly what he did!

Dunn attempted to engage Plaintiff in the backyard upon arrival; and, continued his quest to the front to shoot him as he waited near the road for someone to pick him up. Dunn testified Plaintiff had hit him with something which caused him to pull a gun out and shoot him.

8 He had something in his hand. I
9 don't know what it was, but when he hit me, he kind
10 of like ran back, you know, like real fast. And I
11 just pulled it out, and I shot him.

(Dunn Depo., p. 39, 8.11).

This statement underscores the fact that all of the testimony was manufactured. Plaintiff already knew he had a gun, so he wouldn't have gone up to him and struck him with his phone, especially when he was waiting on his ride to leave.

8 I
9 pulled the pistol out and showed it to him. I said,
10 hey, look, I will shoot your ass, man.

(Dunn Depo., p. 35, 8.10).

Following the shooting, Dunn was picked up from the house by a passing motorist; and, he was able to avoid identification and subsequent arrest by law enforcement. A couple of days later, Dunn was located at Blair's house, as he and Blair had resumed their romantic relationship. Upon being picked up, he made several conflicting statements about his involvement in the

shooting. He first claimed that Plaintiff shot himself. He then changed his statement that he attempted to shoot the ground in front of Plaintiff. He did not admit to intentionally shooting him.

Plaintiff employed the legal services of the undersigned counsel to bring a tort action against Dunn and Blair. Dunn pleaded guilty to assault and battery of a high and aggravated nature for the shooting of Plaintiff. He was sentenced to time served and probation. Blair denied involvement in the shooting incident.

As previously mentioned, Dunn resumed his romantic relations with Blair, after he had shot Plaintiff. The only way that could have happened is if April had conjured up the rape story. Tracy's cousin, Clarence Tillman, lived with his girlfriend, Angela, in a building on Blair's property and adjacent to her home. It was only a matter of time before it got back to Dunn that his fiancée spent the night with John Harbin. At some point after the restoration of their relationship, Blair lodged a complaint with the Sheriff's Office which led to Dunn being charged with Criminal Domestic Violence of a high and aggravated nature for allegedly brandishing a gun in a threatening manner during an argument between the two. Because of the probationary sentence from the shooting, and the fact the CDV also involved a weapon, Dunn's bond was set high enough where he could not secure a bond for his release. The CDV charge, and the probation violation stemming from it, would have to be addressed to bring closure to Dunn's stay at the Abbeville County Detention Center.

On June 20, 2016, defense counsel, Rob Corney, (hereinafter referred as "Corney") "interviewed" Dunn at the detention center. Immediately following the interview, Corney took Dunn's discovery deposition. During the deposition, Corney elicited testimony from Dunn which indicated that he had intentionally shot Plaintiff. This was the first time that this

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explanation had been offered.

> Q. Okay. And as we sit here today, do you take 100 percent responsibility for shooting John Harbin?
> A. Yeah, I shot him.
> Q. Okay.

(Deposition of Tracy Dunn, p. 43, 6.10).

It is Plaintiff's contention that Corney instructed Dunn that Blair would do everything in her power to eliminate the charge for which she was responsible; and, in doing so, prevent him from doing any additional jail-time for either the domestic violence charge or the subsequent probation violation. She would do that if he took sole responsibility for the shooting. Corney made this an easy decision for Dunn by explaining to him that double jeopardy prevented the State from acting on his new-found recollection. This analysis is substantiated by Dunn's unmatched arrogance in making the following statement:

> And then he was bleeding -- he was bleeding pretty bad. And she went out there at the top of the road 'cause that's where he was at. That's where he hopped to, screaming like a little girl.

(Dunn Depo., p.43, 24.25; 44, 1.3).

Dunn stated unequivocally that Blair had nothing to do with him riding 4 or 5 miles on his moped to shoot Plaintiff.

> Q. And in your mind, is April Blair at all responsible for you actually pulling the trigger and shooting John Harbin that day?
> A. No. I mean how is she going to be -- I mean she didn't even know I had a pistol.

(Dunn Depo., p. 43, 13.17).

April Blair substantiated this claim in her deposition. When questioned by Corney, she offered

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the following:

> Q. Do you know if Tracy had already warned him about the gun or let him know that he had a gun?
> A. Tracy didn't let nobody know he had a gun. I didn't even know he had a gun.

(Depo. Blair, p. 32, 8.11).

However, she had already expressed that he always carried a gun during her direct examination.

> Q. How often did he carry a gun?
> A. Did who?
> Q. Tracy.
> A. Every day.

(Depo. Blair, p. 21, 17.20).

> A. He had his gun on him all the time.

(Depo. Blair, p. 22, 13).

Corney came to Abbeville Detention Center to visit Dunn. It is the understanding and belief of Plaintiff that it was during this visit(s) that an agreement was reached between Blair and Dunn. It is the understanding and belief of Plaintiff Corney informed Dunn that Blair would help him with her CDV case against him, if he would proclaim her innocence.

Dunn admitted for the first time, that he intended to shoot Plaintiff, and denied Blair's responsibility. Corney's involvement created an intentional act which might release the homeowner's insurance policy from having to pay for the incident. His involvement created Blair's lack of awareness regarding Dunn carrying a gun, thereby releasing the homeowner's policy for failing to warn Plaintiff about possible pending violence. When trial came, the jury issued a defense verdict for Blair based on Dunn's absolution of her liability for the shooting. The following week, Blair began her campaign to drop the CDV charge in which Dunn had allegedly held a gun to her head.

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Tortious Interference of Contract Case

Following the trial, Blair informed the Public Defender's Office of her preference to dismiss the CDV case she filed against Defendant Dunn.

Plaintiff believed that Defendants Blair and Dunn conspired to defeat his claims. Following the conclusion of the tort case, Blair and GWB provided a billing statement as an exhibit associated with the costs incurred by the firm. The billing statement showed that a private investigator had been hired to provide surveillance on Plaintiff. This witness was not provided in discovery, yet his bill was offered for payment by Plaintiff for his failure to accept Blair's Offer of Judgment. Defendant Conway, a private investigator, working for Defendant HUB Enterprises, Inc., was responsible for the surveillance.

Blair sought to be reimbursed for her expenses in hiring Defendants HUB and Conway. She sought reimbursement despite failing to provide the existence of the Private Investigator in discovery, or any of the materials produced as a result of the surveillance. The explanation was that the P.I. *never* saw either Plaintiff or his girlfriend during his surveillance of their home. They both offered affidavits indicating that they had not gone out of the county during the previous year-let alone when they were being watched.

They did not provide the production related to their surveillance, even though they had already taken Plaintiff's deposition. Defendants relented and provided the materials created. They offered an alleged statement from a woman who, upon locating, provided an affidavit in which she stated that she *never* met with the P.I. or signed an affidavit. Moreover, in the surveillance videos that were provided, it appeared that the metadata on the videos had been altered, as the creation date for these videos cannot be found through the use of several different metadata retrieval applications.

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Clarence Willie Tillman, who is Dunn's cousin, was incarcerated during the time that Dunn was there in the time leading up to the underlying trial. Tillman executed an affidavit on February 23, 2017, which explained the relationship between Dunn, Blair and Corney. He stated what each's role was in their agreement. His affidavit provided the evidence which justified the suit being brought.

On June 21, 2017, Carson Penney, the Assistant Solicitor for the First Circuit, who was prosecuting Mr. Dunn, brought the matter in front of the Honorable Michael G. Nettles for the purpose of a plea. Penney gave the following description of the facts relating to the CDV involving Blair:

> After he held the gun to her head –- he let her go briefly and then got her back in a headlock and held the gun to her head again. They struggled and he released her. She told law enforcement she thought everyone in the house was going to die. There were other children in the house and other adults as well.

(Transcript of Dunn CDV plea on 6/21/2017, p. 4, 18.23).

On that same day Kami D. Granade, Esquire, appeared as counsel for Dunn. She had already submitted an affidavit which detailed what Ms. Blair had done in the December of 2016- the week after the trial for damages.

> 5. In December 2016, my office was contacted by April Blair about the CDV charge pending against Dunn, at which time Blair voiced her desire to not pursue the charge against Dunn. Upon information and belief Blair had made attempts to contact the solicitor's office prosecuting the CDV charge prior to that date in an attempt to execute a non-prosecution affidavit noting her desire to not pursue the charge, but she noted encountering difficulty doing so.

(Affidavit of Kami D. Granade, February 8, 2018, Paragraph 5).

At the courthouse that day in Abbeville, Ms. Granade had the opportunity to see Blair. Blair reiterated her wish that Dunn not be prosecuted. For whatever reason, Blair was unable to

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stay to speak to the Court. Thus, Granade was left with the burden of translating what Blair had told her to the Court. She characterized Blair's statement in this manner:

> 24 Mr. Dunn's long-time girlfriend and the
> 25 victim in this case her name is April Blaire. She was
> 1 actually here earlier, but she had to leave. I can tell the
> 2 court that Ms. Blaire did not want to pursue these charges.
> 3 She preferred that they had been dismissed, but of course
> 4 that is not within her power.
> 5 Your Honor, Mr. Dunn does not have any children of his
> 6 own, but it is my understanding after talking to my client
> 7 and to Ms. Blaire that she has a two-year-old son named
> 8 Jackson and that Mr. Dunn has cared for him since his birth.
> 9 I believe that Mr. Dunn views Jackson as his own child, Your
> 10 Honor, and he desperately wants to be out of course in order
> 11 to see Jackson grow up.

(Trans. of Dunn plea, p. 9, 24.25; 10. 11).

The evidence that Blair and Dunn communicated an agreement by way of Corney is overwhelming. Tillman detailed in February of 2017 what Granade communicated for Blair at the June of 2017 plea hearing. He also said what Granade offered in her February of 2018 affidavit regarding Blair's immediate contact with her and the solicitor's office following the trial for the purpose of dismissing the charge-or, performing her end of the contract.

GWB moved to dismiss the Amended Complaint, which the Court granted. The Court held that a lawyer cannot be held liable to non-client parties for actions taken in representation of a client. The Court also granted t GWB sanctions due to the fact the filing was frivolous.

ARGUMENTS

I.

THE SANCTIONS IMPOSED AGAINST PLAINTIFF'S COUNSEL ARE NOT APPROPRIATE SINCE THE COMPLAINT WAS BASED ON FACT.

The Case was Not Frivolous

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GWB asserts that it was entitled to attorney's fees because Plaintiff's counsel filed the instant case as an improper attempt to relitigate the previous shooting case against Blair and Dunn. On the contrary, there is not a single cause of action that is common to both suits. Additionally, Plaintiff's counsel objects to the term relitigate for that term implies there was already a fair and just adjudication of the case. The behind the scenes negotiation regarding testimony in the trial is tantamount to fraud on the court.

The 2013 University of Louisville Cardinals were forced to give up its 2013 national championship in men's basketball. The Cardinals had beaten Michigan for the championship but the NCAA vacated the championship as a penalty to the program for "arranging striptease dances and sex acts for prospects, student-athletes and others." It had nothing to do with the game itself.

In filing the Complaint for Tortious Interference, Plaintiff did not seek to relitigate the previous suit for damages. Plaintiff brought this suit because the actions taken by the defendants were tantamount to "fixing" the game, or trial in this case. The suits did not contain a single duplicative cause of action. This action was brought due to the agreement between Blair and Dunn, with the indispensable assistance of Corney, stealing Plaintiff's opportunity to truly have his day in Court. The previous litigation was marred by the negotiated testimony of Dunn.

Clearly, it would be impossible to avoid naming some of the parties involved in the prior case. They are the individuals who made sure that Plaintiff didn't get a fair adjudication in the trial for damages in the shooting case. While there are similar parties and similar facts involved, there is a difference in the cause of action, which unfortunately arose from the fraudulent conduct in the aforementioned trial.

Under South Carolina law, the elements of a cause of action for tortious interference with contract are: (1) the existence of the contract; (2) the other party's knowledge of the contract; (3)

the other party's intentional procurement of a breach of the contract; (4) the absence of justification; and (5) resulting damage. Webb v. Elrod, 418 S.E.2d 559, 561 (S.C. Ct. App. 1992). A tortious interference claim, thus "presupposes the existence of a valid, enforceable contract." Jackson v. Bi-Lo Stores, Inc., 437 S.E.2d 168, 171 (S.C. Ct. App. 1993).

The Defendants were very much aware of the attorney-client contract between Plaintiff and his counsel. The intentional act of breach of contract was Corney being the messenger for his client to broker a deal with his client's co-defendant. He also closed the deal by instructing Dunn that double jeopardy prevented the State from going back on his plea agreement for shooting Plaintiff. The explanation cleared the way for Dunn to say without reservation that he meant to shoot Plaintiff, though he had never stated it previously.

The agreement was for Dunn to admit sole responsibility over the shooting of Plaintiff, in exchange for the dismissal of the Blair's CDV charges against him. There is no justification in Defendants' agent's actions, other than to ensure a positive result for their side. The agreement entered into outside the confines of the courtroom played a significant role in the outcome of the trial. Plaintiff was not privy to the agreement; and, therefore, could not put it before the jury to illustrate the conduct of the defendants. As a result, he was deprived of due process and the opportunity to be awarded for the damages he sustained.

Prior to filing the suit, Plaintiff conducted investigation of the facts he would be required to prove to substantiate his claim. Plaintiff was able to procure, and has in fact submitted the following material evidence: (1) Affidavit of Clarence Tillman (Dunn's cousin), who swore that Dunn confided in him about the arranged testimony; (2) Incident Report showing Dunn's statements to the investigating officers which did not contain any verbiage describing an intentional shooting of Plaintiff; (3) document denoting Corney's visit to Dunn immediately

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prior to Dunn announcing he purposefully shot Plaintiff in his deposition; 4) excerpts of Dunn's trial transcript, in which he admitted deliberately shooting Plaintiff ; and, (5) Affidavit of Dunn's defense counsel, Kami Granade, stating that Blair communicated her desire to dismiss the CDV charge against Dunn immediately following completion of the trial for Plaintiff's shooting. Plaintiff presented concrete evidence that a reasonable attorney would find justifiable for the initiation of the present case.

Plaintiff asserts that the complaint was well-grounded in fact. Plaintiff provided evidence from different sources which was essentially the same. Based on the facts and circumstances regarding the conspiracy that were presented, a reasonable attorney would logically deduce that the actions of the defendants were improper and tainted the litigation. Based on that attorney's obligation to his client, he would have no alternative than to seek the damages rightfully due Plaintiff from those who fixed the game. The willful and wanton conduct of Defendants stripped Plaintiff and his counsel of the ability to get due process.

II.

THIS ACTION FALLS UNDER THE EXCEPTION TO THE GENERAL RULE OF IMMUNITY OF LAWYERS TO THIRD-PARTY SUIT

The Restatement of Torts, cited by many courts, describes the litigation privilege as follows:

> An attorney at law is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as a part of, a judicial proceeding in which he participates as counsel, if it has some relation to the proceeding.

Restatement (Second) of Torts § 586 (1977) (emphasis added).

GWB contends that this case is frivolously filed as it runs in counter with the principle of non-liability of an attorney to third party doctrine. Plaintiff posits that the issue in this case falls

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under the exception to the general rule of immunity for lawyers. Plaintiff cited the cases of Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1996) and Douglas ex rel. Louthian v. Boyce, 344 S.C. 5, 542 S.E.2d 715 (SC, 2001), which ruled **that an attorney may be held liable where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside of the scope of his representation of its client.** (Emphasis supplied).

Plaintiff reiterates that Corney facilitated the agreement between Blair and Dunn. His legal acumen helped finalize the deal because Dunn would not have been willing to participate if he was not aware that his "admission" could not cause any further penalty. Plaintiff believes that participating in a conspiracy to direct the testimony of a witness is beyond a defamatory action for which the doctrine arose. This was an act used to manipulate the evidence to be introduced into the jury setting. It wasn't an act of name calling. More importantly, the conduct fell outside of his employment contract and the attorney/client relationship he shared with Blair. He simply manufactured testimony in order to fix the outcome. Defendants' conduct was in breach of the Rules of Professional Ethics, specifically Rule 3.3(a)(3) which forbids a lawyer to offer evidence that the lawyer knows to be false.

> (a) A lawyer shall not knowingly:
>
> xxx
>
> (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

This Rule emphasizes that while a lawyer has an obligation to present his client's cause with persuasive force, he has a duty to maintain candor with the court. In this case, GWB's

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agents violated the aforesaid provision by directing Dunn's false testimony. As such, the immunity does not apply in this case.

Plaintiff believes that the mere loss of a case does not subject a party to a suit by the prevailing party for sanctions, without evidence of bad faith. Contrary to Defendant's assertion that Plaintiff failed to exert due diligence before filing the present case, Plaintiff conducted a thorough investigation on the facts and issues in this case that took in excess of six (6) months. Plaintiff supported his theory with numerous sworn affidavits, as opposed to blind assertions.

While the Court has not defined a "frivolous" action, it has laid down standards/guidelines as to how to deal with one:

> The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by good faith argument for an extension, modification or reversal of existing laws.

Rule 3.1 Comment #2.

While not decided in this jurisdiction, the case of Kraemer v. Grant may shed light on this issue. Kraemer v. Grant County, 892 F.2d 686 (7th Cir, 1990). In Kraemer, the lawyer filed a conspiracy claim for his client Kraemer who alleged that the Bakers, parents of her deceased fiancé, conspired with the County Sheriff to evict her from the place she and her fiancé were renting. Kraemer's lawyer hired (out of his own expense) a private investigator to look into Kraemer's allegations. The investigator was unable to confirm or discredit Kraemer's story

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except for a witness who admitted being present when the Bakers took all the properties in the house Kraemer and her fiancé was renting. Through discovery, it was learned that at the time of the events charged in the Complaint, there had been lengthy and frequent telephone conversation between the Bakers and the County Sheriff. *Id.*

The Bakers moved for summary judgment and requested for the court to require Kraemer and her lawyer to pay legal fees in defending a frivolous case. The lower court ruled in favor the Bakers and granted the request for legal fees against the lawyer (but not against Kraemer, due to her poverty).

On appeal, the Court took note of the nature of the claim/complaint as well as the lawyer's efforts to perform research before filing the complaint. The Court held:

> Because conspiracies are carried out in secret, direct proof of agreement is rare. United States v. Koenig, 856 F.2d 843, 854 (7th Cir., 1988). We cannot require an attorney to procure a confession of participation in a conspiracy from one of the prospective defendants before filing suit—if there were such a confession, no lawsuit would be necessary. Lawton did all the (sic) reasonably could have done to investigate his client's account of events before the complaint was filed. He hired a private investigator to interview the prospective defendants and to determine what had actually happened. The defendants refused to cooperate with the investigator. We cannot insist that a lawyer abandon his client's cause simply because the investigator was unable to obtain the cooperation of the prospective defendants.

Kraemer, supra.

The Court's assessment of sanctions is illustrative of insisting a lawyer abandon his client's cause because a lawyer is a prospective defendant. The chilling effect on lawyers attempting to zealously advocate not only for their clients but for equity and fairness in front of a tribunal would be suffocation. Lawyers will be fearful of suing lawyers because of the potential steep penalties

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arising not from the lack of merit in the case, but the immunity afforded opposing counsel. In addition, the Supreme Court and the Bar itself are always looking for ways to improve society's view of the system and, to a lesser extent, attorneys. Penalizing the lawyer who chooses not to look the other way, while insulating an attorney from civil damages' exposure, would seemingly be counterintuitive to fostering the view that is sought from society.

The instant case has similarities with that of *Kraemer*. Direct proof for a claim of tortious interference of contracts based on a quid pro quo scheme is very difficult to obtain. Plaintiff asserts that his counsel's pre-filing efforts constitute reasonable investigation. This case was not filed to relitigate the issues in the previous damages suit but to seek damages for preventing Plaintiff from having his day in court. On his "day in court", the deck had been stacked in the opposition's favor by means of swapping liability for freedom.

Plaintiff filed this Complaint in good faith and did not seek to perpetrate fraud nor cause unnecessary delay on this Court. Defendants have not alleged nor proved that Plaintiff's filing of this complaint is a reprehensible act, going beyond mere negligence and evincing intent. Plaintiff believes that he has a valid cause of action against the Defendants, based on evidence such as affidavits of witnesses, statements of Dunn as well as actions of the other Defendants in this case. Defendants' motion for sanctions is based on a limited reading (or misreading) of the case of Gaar v. North Myrtle Beach Realty Co., Inc., 287 S.C. 525, 399 S.E.2d 887 (Ct. App. 1986). Plaintiff reasonably believes that under the facts and evidence he submitted, his claim is a valid exception to the doctrine of immunity of lawyers.

On the Battersby case

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In an attempt to strengthen their motion for sanctions against Plaintiff's counsel, GWB cited the case of Battersby v. J. Kirkman Moorhead, Krause, Moorhead & Draisen, P.A., All State Insurance Company, and Allstate Northbrook Indemnity Company, C.A. No 2015-CP-04-00667, where Defendant alleged that Plaintiff's counsel was sanctioned for similar conduct.

First, GWB has repeatedly alleged that Plaintiff's counsel failed to exercise due diligence in filing the instant case. Had GWB exercised due diligence, it would have discovered that no order was issued following Plaintiff's Motion to Reconsider the sanctions that had been levied. While the Court issued a sanctions order, it did not issue an order upon hearing counsel's motion for reconsideration of the sanctions order.

Second, under the Rules of Evidence, past prior acts cannot be used as evidence of character of a person.

While the undersigned does not believe that the introduction of the prior order of sanctions is appropriate, it is absolutely essential to provide this Court with a thorough explanation. The fact that an order has never been issued has left the only order stemming from the matter to be that which ordered the sanctions. Ironically, this is defamatory in nature.

The following is the Motion to Reconsider Supplement that was filed in wake of the sanctions imposed:

> **TO: THE HONORABLE R. LAWTON MCINTOSH. AND PETITIONERS J. KIRKMAN MOORHEAD, STEVE KRAUSE, AND DANIEL DRAISDEN, ATTORNEYS AT LAW:**
>
> The basis for all of the litigation that surrounds Plaintiff in the above-referenced litigation was his treatment of a woman involved in a motor vehicle accident. He treated an injured party represented by Thomas Dunaway, Esquire. He treated her 87 times to the tune of $12,100.00. Mr. Dunaway recognized that he would have a great deal of difficulty settling a soft-tissue case with over $17,000.00 in specials. About that time, he sent his client, Ms. Neal, to get a copy of the billing statement. He did this despite the fact that Dr. Battersby had faxed him the billing statement to prepare his demand. Ms. Neal's unnecessary visit turned into an

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alleged indecent exposure.

The idea of Dr. Battersby exposing himself after 87 visits didn't sound credible. A corroborating witness was necessary to solidify the allegation. Ms. Morton started attending Dr. Battersby's office for manipulations at this time. She was going 30 minutes out of her way to get adjustments when she had not suffered any new injury. Coincidentally, she was also allegedly exposed to by Dr. Battersby.

Jan Morton had apparently been referred to Kirk Moorhead, upon her sudden exposure, by his cousin, Tommy Dunaway, or someone in his office. Mr. Moorhead, like Mr. Dunaway, had the ability to use legal search engines such as Westlaw and LexisNexis. These services put court records from across the country at your fingertips. Thus, Dr. Battersby's foibles were available to them.

They learned that Dr. Battersby had pled guilty to what amounts to an indecent exposure charge in Ohio. (Exhibit 1). They learned that he had been sued for sexual harassment; wherein, the Plaintiff received a verdict in excess of $2,000.000.00. These facts and circumstances were behind Dr. Battersby. However, they would soon rear their ugly head again.

In the maid incident in Ohio, Dr. Battersby had answered his door wearing only swim trunks. He then took said trunks off unannounced; and, exclaimed that he was a nudist. (Id.). The reports given by both Neal and Morton were eerily similar. They had both reported that Dr. Battersby was not fully clothed when he answered the door. The verdict in that case was $700,000.00.

Dr. Battersby had exposed himself to Ms. Neal after she had come to him for 87 visits. Ms. Neal's friend decided to take up chiropractic care about this time and, on the 4th visit, he exposes himself to her. He exposes himself to 2 friends, one of whom has an outstanding bill of $12,100.00. She hasn't paid him to this day.

When Mr. Dunaway answered Dr. Battersby's complaint when he sued him, he said that Dr. Battersby's license had been suspended in Ohio. He said that his license had been suspended in Arizona. And, he thought that his license was suspended in South Carolina. When Mr. Dunaway responded to WYFF regarding Dr. Batterby's Complaint, he said the following: "The Defendant is informed and believes that the Plaintiff's license has been suspended in South Carolina and as such the Plaintiff is unable to bring a civil action for collection for fees if he is not a licensed chiropractor under the laws of the State of South Carolina." The cousins' clients had both been exposed to and that was apparently enough for Mr. Dunaway and his client to justify withholding any and all of the $12,100.00 in services that he had billed.

Dr. Battersby was suspended in large part because of the work of Mr. Moorhead. Ms. Morton was unaware of the LLR, and the associated ability to augment their claim for damages through the State agency. Mr. Moorhead helped that cause.

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Mr. Moorhead was already representing Ms. Morton for the tortious conduct of Dr. Battersby, before she spoke to the detectives investigating the case. He created a complaint to file with the LLR.

Q. Who filled out the online complaint to the LLR?
A. I was that with my attorney.

Morton Depo p. 47, 11-12

Q. Did you review this complaint before it was sent to the LLR?
A. No.
Q. So who did this for you then?
A. My attorney typed it while I told him the story.

LLR Hearing Transcript, p. 118, 9-13

Q. In this complaint it says that you've been treating with Dr. Battersby one a week for about 20 weeks.
A. Where is it?
Q. It's in the LLR complaint, first paragraph, third sentence, I think.
Mr. Matthews: Are you talking about Exhibit 3?
Mr. Smith: Yes, sir.
The Deponent: No, it wasn't 20 weeks. I didn't see him until May 2nd, I believe.
EXAMINATION RESUMED
By Mr. Smith:
Q. So who made that mistake?
A. That must have been a typo, an error.

Morton Depo p. 47, 21-25 & p. 48, 1-9

Q. You reviewed the 20 weeks statement in the LLR claim before it was sent?
A. Do what?
Q. You reviewed your complaint that you sent in before it was sent, right?
A. Yes.
Q. And do you agree that 20 weeks is clear?
A. Huh?
Q. The 20 weeks there, there is no mistaking that?
A. Well, I didn't type this.
Q. You reviewed it before it was sent?
A. I did, but I was listening to the meat of the

07. story, not so much as typing errors.

This incident did not end with the withholding of the fees for services rendered. The victims, and their respective counsel, were aware of the large verdicts that had been awarded by juries in Ohio for sexual harassment. They intended to bring an action for damages against Dr. Battersby utilizing the criminal cases as the base of each of their claims. However, upon the solicitor summarily dismissing the charges after the State had provided an audio cd that they had previously withheld, the action for damages was put on hold. The State said that the circumstances were such that they didn't feel they could move forward with the prosecution. The only facts that the State had were provided by the attorneys' clients.

Ms. Morton said that there was no question that her attorney filled out the Complaint to the LLR. She admitted that she went 4 times, as opposed to 20 weeks. Mr. Moorhead couldn't afford for it to look like that Ms. Morton's purpose was merely to bolster Ms. Neal. Thus, Mr. Moorhead took it upon himself to give her an injection of credibility by answering the question on the LLR Complaint with the fact that Ms. Morton had been treating with Dr. Battersby for 20 weeks prior to the alleged exposure.

Mr. Moorhead never distanced himself from the 20-week answer to the question. He continued as if nothing had happened. He took ownership of the statement by doing so. He didn't attempt to amend the Complaint.

> "Intimately connected with admissions that are implied by the acts or conduct of the party are admissions by silence or acquiescence. If a statement is made in the hearing of another in regard to facts affecting his rights and he makes no reply, it may be a tacit admission of the facts stated."

Keen v. Army Cycle Mfg. Co., 124 S.C. 342117 S.E. 531.

Mr. Moorhead had an obligation to ensure that Ms. Morton's Complaint was valid.

> (B)(1) If a document is not signed or does not otherwise comply with this section, it must be stricken unless it is signed promptly or amended to comply with this section after the omission is called to the attention of the attorney or the party.

Once he knew that the statement was incorrect, he had a duty to correct it.

> (a) A lawyer shall not knowingly:

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> (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
>
> (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
>
> (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

Sanctions relate to equitable principals. I would not have filed suit if he would have said that Ms. Morton had made up the nonsense. I was obligated to represent my client. I did nothing prior to fully investigating the facts as they were presented to me. I pray that the sanctions will be vacated based on the fact that I had a basis for my complaint.

April 21, 2016

The above-referenced supplement briefly touched on the fact that Ms. Morton had learned of the Battersby civil suits in Ohio. She learned of the damages awarded to the women who claimed sexual harassment/exposure. When she was examined relating to her knowledge, she was a little cagey. Initially, she feigned her lack of a grasp on her attorney's name as she explained how Morehead encouraged her to talk to the other woman into going to the police.

15.	Morton:	I will. I had talked to Mr. – I can't
16.		think of his name. More – Moorhead, Mr.
17.		Moorhead. He had told me to talk with her and
18.		I just –

(Morton Depo, p. 53, 15-18).

When Ms. Morton was interviewed by Detective Ashley, she made reference to other incidents in Dr. Battersby's past. She read "court documents" in her attorney's office, though he

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didn't show them to her. She just happened to see the Ohio legal documents sitting on magazine rack in a South Carolina attorney's office.

19. Q. You also said on there that you read in the
20. court documents.
21. What court documents are you talking about?
22. A. Some things that I had seen at my lawyer's
23. office.
24. Q. So your lawyer provided you with that?
01. A. He didn't provide me with anything. I
02. just saw it.

(Morton Depo p. 70, 19.24; 71, 1.2).

When she was pressed on Ohio (the place where there had been verdicts of $2,000,000.00 and $700,000.000 against Dr. Battersby), and what happened there, she had absolutely no knowledge of what she occurred.

02. Q. Did you read anything about Ohio?
03. A. Well, yes, I have. I have read – there is not
04. much on there.
05. Q. What happened in Ohio?
06. A. I really don't know.
07. Q. What did you read about Ohio?
08. A. I don't know. I don't recall.
09. Q. Was what happened in Ohio similar to what
10. happened here?
13. A. I don't know. I don't really know
14. what happened in Ohio. I just know something
15. happened. I don't know what.

(Morton Depo, p. 22, 2.15).

The two women, with visions of the large verdicts in their heads, attacked Dr. Battersby maliciously. The attorneys were there before they spoke to police. Of course, when the charges were dropped, there was never a peep spoken about them suing Dr. Battersby. In fact, their attorneys didn't pursue a counterclaim to their respective complaints. It was clear that there was no exposure involving Dr. Battersby. The statement given by Ms. Neal (the other woman) when

she was served with notice of a deposition was telling. When she was served, she told the server, "I'm not the only one in this." There were more participants in the ruse that cost a man dearly.

Dr. Battersby and his counsel parted ways prior to reaching trial. Dr. Battersby continued with the litigation, however. The Court dismissed everything and everyone other than the two women. Dr. Battersby proceeded against the women for the defamation and the failure to pay the bill. An Anderson jury saw the fabricated claims for what they were-a vile, contemptible attempt to make easy money as had been done previously in Ohio. The jury awarded him $112,100.00 in damages. Each woman was responsible for $50,000.00; and, Ms. Neal was responsible for the $12,100.00 in chiropractic bills that had been disregarded by Neal and her counsel after the claims of exposure.

CONCLUSION

Sanctions were issued against Plaintiff's counsel allegedly because, "a reasonable attorney would not have filed and pursued this action against GWB because it was clearly not warranted under existing law". There was no defamation claim made in this suit and, in fact, the trial was tainted by execution of a transaction between defendants by counsel for Blair. Corney had the only opportunity to bridge the gap between Blair and Dunn; and, he had the requisite knowledge to convince Dunn that bragging about shooting Plaintiff purposefully would not affect him, adversely.

Plaintiff maintains that his counsel's pursuit of action against GWB's agent is not only warranted by law, but also a duty he has sworn to uphold. Plaintiff believes that the requirement of zealous advocacy for one's clients is the base obligation of an attorney. The idea that a lawyer should allow his client to be cheated out of his day in court is contradictory to the term zealous advocacy. The Court in this case is taking the position it is better to protect an attorney

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from suit than it is to protect the system in which he works. The Court's sanctions do nothing but promote the continued use of fraudulent methods with which to decide cases. If a jury was aware that the two defendants, with the attorney acting as negotiator, arrived at a pre-arranged agreement as to Dunn's testimony, the participants would be labeled as cheaters. If the same jury were to understand the Court was sanctioning the conduct by issuing sanctions in the amount of greater than $13,000.00 against the individual who attempted to expose the actions found in this case, there would be disgust.

The NCAA revoked the Cardinals championship for something that did not relate to the game. The Court fined counsel for attempting to bring to light the fact that the winner of the trial was the side who manufactured evidence. If Plaintiff was allowed to try this case, and the jury was made aware of the negotiated testimony, there would be no defense verdict.

The filing of sanctions against lawyers will definitely chill vigorous advocacy. Litigants seeking to show a lawyer's misconduct already face significant challenges. To have them respond to a threat of sanctions will discourage them from reporting any misconduct. As the Advisory Committee stated, "Rule 11 cannot be allowed to thoroughly undermine zealous advocacy. The rule is not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories."

For the above and foregoing reasons, Plaintiff submits that this Court reconsider its Order granting GWB's Motion for Sanctions and vacate the monetary aspect of the sanctions.

(SIGNATURE PAGE TO FOLLOW)

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Respectfully submitted,

***s/Donald L. Smith*_____**

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October 20, 2019

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GWB's OPPOSITION TO PLAINTIFF's MOTION FOR RECONSIDERATION

(November 12, 2019)

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STATE OF SOUTH CAROLINA)) COUNTY OF ANDERSON)	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin,)) Plaintiff,)) vs.)) April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe,)) Defendants.)	Civil Action No. 2017-CP-04-02099 **GALLIVAN WHITE & BOYD'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER** **AND** **REQUEST FOR INCREASE IN IMPOSITION OF SANCTIONS**

Gallivan White & Boyd and Sam Nikopoulos (collectively "GWB") hereby submit this Memorandum in Opposition to Plaintiff's Motion to Reconsider the Court's Order granting GWB's Motion for Sanctions against Plaintiff's attorney, Donald L. Smith ("Mr. Smith").[1] Plaintiff has not, and cannot, show that the Court erred in granting GWB's Motion for Sanctions. Instead, Plaintiff merely re-hashes the same arguments that this Court has already carefully considered and rejected.

No matter how many times the Court rules against Plaintiff and finds that this action has no merit, Mr. Smith persists. The filing of this Motion to Reconsider is a continuation of the frivolous conduct of Plaintiff's counsel, and is a desperate attempt to avoid the sanctions awarded against him. Mr. Smith refuses to act on the clear directives of this Court. Therefore, GWB requests that Plaintiff's Motion to Reconsider be denied, and further requests that the Court increase the imposition of sanctions previously awarded against Plaintiff's counsel in the amount of $5,000.00.

[1] GWB incorporates the arguments made in its Motion for Sanctions and Response in Opposition to Plaintiff's prior Motion to Reconsider.

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BACKGROUND AND SUMMARY OF ARGUMENT

In a prior lawsuit brought by Plaintiff, GWB represented one of the defendants, April Blair. Prior to trial, GWB made a settlement offer on behalf of its client to Plaintiff, which he declined. After a trial before the Honorable R. Scott Sprouse, the jury returned a defense verdict in favor of GWB's client. Plaintiff then filed this lawsuit in an attempt to relitigate the same issues that were raised in the prior litigation.

This Court granted GWB's Motion to Dismiss on February 5, 2019. GWB filed a Motion for Sanctions on February 13, 2019 based on the grounds that the lawsuit was frivolous and an improper attempt to relitigate the prior lawsuit, and the action was clearly not warranted under existing law.

Plaintiff filed a Motion to Reconsider the Court's Order granting GWB's Motion to Dismiss on February 15, 2019. Plaintiff's Motion to Reconsider was denied on October 2, 2019. On October 9, 2019, GWB's Motion for Sanctions against Smith was granted, and Smith was ordered to pay GWB $13,081.74 as reimbursement for the attorneys' fees and costs incurred in bringing the Motion for Sanctions.

Plaintiff filed this Motion to Reconsider the Court's Order granting GWB's Motion for Sanctions on October 22, 2019. This Motion is Mr. Smith's latest attempt to re-litigate issues that have already been addressed and ruled upon. His disagreement with previous rulings does not entitle him to continue litigating the same underlying facts, and to cause GWB to spend significant time, effort, and resources defending this lawsuit. Mr. Smith's blatant disregard for the Court's prior orders and sanctions against him warrants an increase in the sanctions previously imposed, as well as such further relief as the Court deems necessary to prevent Mr. Smith from continuing to file frivolous and unwarranted motions.

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LEGAL STANDARD

Rule 59(e), SCRCP allows a court to alter or amend a judgment upon a party's timely motion. Under South Carolina law, a motion to reconsider is appropriate in two basic situations. First, "[a] party *may* wish to file such a motion when [he] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Second, "[a] party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.* A party's dissatisfaction with the outcome of the underlying litigation and the instant action is not grounds for relief under Rule 59. *Id.*

ARGUMENT

I. Plaintiff's Motion to Reconsider is Improper Under Rule 59.

Plaintiff's Motion to Reconsider does not identify any point of law or fact that the Court misunderstood, did not fully consider, or failed to rule upon in granting GWB's Motion for Sanctions. Rather, Plaintiff's Motion merely asks the Court to reconsider its prior rulings in this case because he disagrees with the conclusions reached by the Court. Plaintiff does not cite Rule 59 of the South Carolina Rules of Civil Procedure, or any other rule or case law, to support the filing of this Motion to Reconsider. Plaintiff's dissatisfaction with the outcome of the underlying litigation and his discontent with the imposition of sanctions against him is not grounds for relief under Rule 59. *See Elam*, 361 S.C. at 24, 602 S.E.2d at 780. Thus, Plaintiff's Motion must be denied.

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II. The Court Properly Granted GWB's Motion for Sanctions.

The Court properly granted GWB's Motion for Sanctions based upon the standards prescribed by the Frivolous Civil Proceedings Sanctions Act ("FCPSA"). *See* S.C. CODE ANN. §§ 15-36-10(A)(4)(a)-(c) and 15-36-10(G)(1). The initiation of this lawsuit was an improper attempt for Plaintiff to relitigate the prior lawsuit. No reasonable attorney would believe that the filing of the current lawsuit was warranted. Thus, Mr. Smith's filing of the Complaint constitutes a sanctionable action under the FCPSA.

As this Court has held on numerous instances in this case, the South Carolina Court of Appeals and Supreme Court have directly addressed the question of whether a lawyer can be held liable to a non-client third party for actions taken in the representation of a client. Based upon the legal principle announced in *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 399 S.E.2d 887 (Ct. App. 1986), and then affirmed in the cases of *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995) and *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010), a lawyer has no liability to a non-client third party for actions taken in the representation of a client. GWB was named as a defendant in this action solely by virtue of their representation of Blair in the underlying lawsuit. Through the exercise of minimal diligence, Mr. Smith could have and should have located these cases. Instead, it is apparent that he failed to assess whether case law supported his theories of liability against GWB.

In light of the clear rulings from South Carolina appellate courts, a reasonable attorney would not have filed and pursued this action against GWB because it was clearly not warranted under existing law. Thus, the Court properly found that Smith violated the limitations established by the FCPSA, and he was rightfully sanctioned as a result. Mr. Smith has not identified any point of law or fact that the Court failed to fully consider in sanctioning him and ordering that he pay

GWB's attorneys' fees and costs incurred in bringing the Motion for Sanctions. Therefore, Plaintiff's Motion to Reconsider should be denied.

CONCLUSION

Plaintiff has not shown that the Court erred in granting GWB's Motion for Sanctions. Plaintiff's filing of this Motion to Reconsider evidences his refusal to heed this Court's directives. Therefore, GWB respectfully requests that Plaintiff's Motion to Reconsider be denied, and that the sanctions awarded against Mr. Smith be increased to account for GWB's attorneys' fees and costs in continuing to defend against these frivolous claims. GWB further requests that the Court impose any further sanctions against Mr. Smith that it deems warranted under these extreme circumstances.

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November 12, 2019

ELECTRONICALLY FILED - 2019 Nov 12 9:16 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

PLAINTIFF's REPLY TO GWB's OPPOSITION TO THE MOTION FOR RECONSIDERATION

(November 19, 2019)

ELECTRONICALLY FILED - 2019 Nov 19 10:44 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
	)	
John E. Harbin,	)	Civil Action No. 2017-CP-04-02099
	)	
Plaintiff,	)	
	)	**REPLY TO GALLIVAN WHITE & BOYD'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION AND REQUEST FOR INCREASE IN IMPOSITION OF SANCTIONS**
vs.	)	
	)	
April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe,	)	
	)	
Defendants.		

Plaintiff, by and through his counsel, respectfully submits this Reply to Defendant Gallivan White & Boyd's (hereinafter referred as GWB) Opposition to Plaintiff's Motion for Reconsideration and request for Increase in the Imposition of Sanctions. In support of which, Plaintiff presents the following:

FILING A MOTION FOR RECONSIDERATION IS NOT FRIVOLOUS CONDUCT.

Defendant GWB contends that in filing the Motion for Reconsideration, dated October 22, 2019, Counsel for Plaintiff was re-litigating the issues raised in the underlying case. Plaintiff insists otherwise.

Plaintiff believed that a party sanctioned should receive a proper opportunity to oppose the motion for sanctions. There is nothing in Rule 59 SCRCP that prevents a sanctioned party from filing a motion to reconsider the Order of Imposition of Sanctions. Contrary to GWB's claims that filing of the Motion for Reconsideration is a frivolous case, Plaintiffs believes that it is an exercise of his rights and/or prerogatives under the law.

GWB itself cited that a Motion for Reconsideration under Rule 59 is appropriate when:

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> "a party may wish to file such a motion when [he] believes that the court misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it."

Elam vs. S.C. Department of transportation, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

In his Motion for Reconsideration, Plaintiff challenged this Court's application of the general rule on immunity of lawyers from third-party suit. Plaintiff cited the cases of Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1996) and Douglas ex rel. Louthian v. Boyce, 344 S.C. 5, 542 S.E.2d 715 (SC, 2001), as laying the exceptions to the general rule. In both instances, the Court of Appeals ruled **that an attorney may be held liable where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside of the scope of his representation of its client.**

Plaintiff submitted evidentiary documents to prove that GWB's agent acted in his own personal interest and outside of his representation of his client April Blair. To show that Corney facilitated the agreement between his client Blair and Tracy Dunn, Plaintiff submitted (a) the Incident Report to show Dunn's initial denial of his culpability in Plaintiff's shooting; (b) a document that showed Corney visited Dunn at his detention center, where he was incarcerated, prior to the discovery deposition that took place (seemingly to prep Dunn for his testimony in the deposition and the subsequent trial); (c) Affidavit of Clarence Tillman (Dunn's cousin who was incarcerated with him) who swore that Dunn confided in him about the arranged testimony; (d) Dunn's trial transcript showing a change in his position, and admitting that deliberately shot Plaintiff; (e) an Affidavit of Dunn's defense counsel, Kami Granade, stating that Blair communicated her desire to dismiss the CDV charge against Dunn, immediately following completion of the trial for Plaintiff's shooting; and, (f) Transcript testimony from Dunn's plea in the CDV high and aggravated which Blair had levied against him, wherein she, through the aforementioned Ms. Granade, spoke of how Dunn was like a father to her son and that she wanted the charge to be

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dismissed (a charge that was allegedly based on Dunn holding a gun to Blair's head, an event in which she questioned whether she would live beyond that incident).

Plaintiff maintains that participating in a conspiracy to direct the testimony of a witness is beyond a defamatory action for which the doctrine arose. This was an act used to manipulate the evidence to be introduced into the jury setting. It wasn't an act of name calling. More importantly, the conduct fell outside of his employment contract and the attorney/client relationship he shared with Blair. He simply manufactured testimony in order to fix the outcome. Defendants' conduct was in breach of the Rules of Professional Ethics, specifically Rule 3.3(a)(3) which forbids a lawyer to offer evidence that the lawyer knows to be false.

> (a) A lawyer shall not knowingly:
> xxx
> (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

The judge however failed to rule on Plaintiff's assertions in his Order, dated October 9, 2019. Plaintiff's Motion for Reconsideration was filed purposely to address this matter.

THE REQUEST FOR INCREASE IN THE IMPOSITION OF SANCTIONS HAS NO BASIS.

GWB contends that the filing of the Motion for Reconsideration is an attempt by Plaintiff's counsel to avoid the sanctions imposed against him. As previously discussed, Plaintiff filing of his Motion for Reconsideration was proper and has basis under the law. Plaintiff has every right to challenge the substantive basis for the imposition of sanctions against him.

On the other hand, GWB fails to justify its request for the court to increase the sanctions imposed upon Plaintiff. GWB has not cited any legal jurisprudence, nor statute to support its

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claims. This recent motion to increase sanctions against Plaintiff's counsel is GWB's attempt to intimidate and bully Plaintiff.

In fact, Plaintiff believes that GWB has, at several instances in this case, revealed its agents' unethical practices of: (a) facilitating a quid pro quo agreement between its client Blair and Dunn to procure false testimony to benefit its client; (b) allowing its agent/s (HUB and Shawn Conway) to submit manufactured surveillance report; and (c) utilizing what could only be deemed a "prior bad act" wherein Counsel was order to pay sanctions, but his Motion to Reconsider was never finalized with a written Order. Plaintiff believes that GWB has taken a vindictive stance against his counsel for exposing its agents' malpractice. Penalizing Counsel for utilizing the procedure necessary to ensure the Court has not overlooked a fact or facts which led to the issuance of sanctions has a chilling effect on those who attempt to follow the Rules of Civil Procedure.

SANCTION WAS IMPROPER.

Plaintiff asserts that the sanction imposed against Plaintiff's counsel was improper for the following reasons: (a) the complaint filed was not frivolous and was based on facts and documentary evidence; (b) there was no finding of bad faith on the part of Plaintiff and/or his counsel that would warrant the imposition of the sanctions; (c) sanction was not appropriately tailored to achieve a fair result; (d) GWB specifically targeted Plaintiff's counsel, which shows that the same was meant as a retaliatory measure against the latter. Sanctions are meant to restore the balance to the matter, not to harass or injure the other party.

CONCLUSION

For the above and foregoing reasons, Plaintiff submits that this Court reconsider its Order granting GWB's Motion for Sanctions and vacate the monetary aspect of the sanctions and deny

GWB's request for additional and/or increase in imposition of sanctions. The issuance of sanctions against an attorney who is zealously advocating for a client whose trial was "fixed" with the aid of an attorney, sends a message that the Court is not interested with fair and equitable results emanating from litigated cases, but rather penalizing the zealous advocate for bringing light to how the system has failed his client.

Respectfully submitted,

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Anderson, South Carolina
November 19, 2019.

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PLAINTIFF'S MOTION TO RECONSIDER APRIL 7, 2020 ORDER

(April 17, 2020)

ELECTRONICALLY FILED - 2020 Apr 17 10:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
John E. Harbin,)	
)	
Plaintiff,)	
)	**MOTION TO RECONSIDER THE ORDER GRANTING DEFENDANT BLAIR'S MOTION TO DISMISS**
vs.)	
)	
April Blair, Tracy Dunn, HUB Enterprises, Inc Shawn Conway, Gallivan, White & Boyd, Sam Nikopoulos and John Doe,)	
)	C.A. No.: 2017-CP-04-02099
Defendants.)	
)	

The Court and defense counsel are well aware of the facts which provide the basis for the litigation. Plaintiff wishes to simply explain the elements of the intentional interference with a contract cause of action; and how said elements are met with the facts found herein. Plaintiff, by and through his counsel, respectfully moves this Court to reconsider its Order, filed on April 7, 2020, alleging as follows:

STANDARD OF REVIEW

A motion under Rule 59(e) has long been viewed as a "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party is usually allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992) as cited in Elam v. South Carolina Department of Transportation, 361 S.C. 9 (2004), 602 S.E.2d 772 (SC: Ct. App.). A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. Id. A party must file such a motion when an issue or argument has been raised, but not ruled on, to preserve it for appellate review. Id.

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ARGUMENT

DEFENDANT BLAIR INTENTIONALLY INTERFERED WITH PLAINTIFF'S CONTRACT WITH HIS ATTORNEY

The Restatement (Third) of Torts, §§ 16-17, address liability for economic harm. Specifically, Section 16 sets out the elements of the intentional interference with a contract. It defines what conduct creates liability:

> (1) A defendant is subject to liability for interference with contract if:
>
> > (a) a valid contract existed between the plaintiff and a third party;
> >
> > (b) the defendant engaged in wrongful conduct as defined in Subsection (2);
> >
> > (c) the defendant intended to cause a breach of the plaintiff's contract or disruption of its performance; and
> >
> > (d) the defendant's wrongful conduct caused a breach of the contract or disruption of performance.
>
> (2) Conduct is wrongful for purposes of this Section if:
>
> > (a) the defendant acted for the purpose of appropriating the benefits of the plaintiff's contract; or
> >
> > (b) the defendant's conduct constituted an independent and intentional legal wrong; or
> >
> > (c) the defendant engaged in the conduct for the sole purpose of injuring the plaintiff.

(Restatement (Third) of Torts: Liability for Economic Harm § 16).

(a) Plaintiff had a valid and enforceable contract with his counsel.

Plaintiff has entered into a valid contract with his counsel shortly after being shot in 2014. Counsel for Plaintiff is required to have a contract in order to represent his interests to others. The act of commencing litigation illustrated to Defendants that a contract existed between Plaintiff and his attorney of record.

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(b) Defendants had knowledge of Plaintiff's contract with his counsel.

Blair knew of the contract existing between Plaintiff and his counsel. Blair was served with the Summons and Complaint seeking damages for Plaintiff's injuries. Plaintiff's counsel set out the actions by Blair obligating her to pay damages to Plaintiff.

(c) The interference of Defendants caused damage to Plaintiff.

Clarence Willie Tillman signed an affidavit which detailed how Defendants' wrongful conduct was an "independent and legal wrong" which caused damage to Plaintiff. Tillman, who is Dunn's cousin; was present on the day of the shooting; impeded Dunn's progress toward shooting Harbin on said day; was incarcerated with Dunn while he awaited disposition for the CDV high and aggravated of which Blair was the victim; was on the receiving end of admissions made by Dunn.

Tillman stated before a notary that Dunn was working with Blair's lawyer to eliminate the CDV high and aggravated charge that was pending against him. Tillman stated Dunn's part was to deflect any liability for the shooting away from Blair, in order to protect her house. At the urging of Blair's counsel, Dunn admitted to intentionally shooting Plaintiff for the first time in his deposition, two (2) years following said shooting. Blair addressed her part of the agreement the week following the jury verdict absolving her of liability for Plaintiff's injuries, by contacting the Solicitor and Public Defender's Office, pleading for them to drop the charge against Dunn (which included holding a gun to Blair's head). Public Defender Kami Granade offered Blair's prayers at Dunn's CDV disposition on June 21, 2017:

> Mr. Dunn's long-time girlfriend and the victim in this case her name is April Blair. She was actually here earlier, but she had to leave. I can tell the court that Ms. Blaire did not want to pursue these charges. She preferred that they had been dismissed, but of course that is not within her power…

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Plaintiff contends that the Defendants conspired to fix the trial. It was an act of *quid pro quo.* Blair and Dunn could not communicate pursuant to the bond conditions given to Dunn. Despite the fact Dunn could not make bond, he was prohibited from interacting with Blair, whether directly or indirectly. Blair's defense counsel circumvented the Order of the Court. He broached the topic of Dunn admitting intent to shoot Plaintiff. He used the admission and the statement regarding Blair's lack of liability to ultimately influence the jury in reaching the verdict depriving Plaintiff of a fair trial.

(d) Defendant's unethical conduct was not justified.

Plaintiff recognizes the Defendants as adversaries in the litigation process. As such, they had a duty to refute his contentions. However, using extrinsic fraud to accomplish their objectives is unacceptable. It is the wrongful conduct that interfered with his contract with his counsel.

Extrinsic fraud is a "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." *Hilton Head Ctr. of South Carolina v. Public Serv. Commission*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). Extrinsic fraud is "collateral or external to the matter tried such as misleading acts which prevent the movant from presenting all of his case." *Evans v. Gunter*, 294 S.C. 201 525, 529, 366 S.E.2d 44, 46 (Ct.App.1988).

(e) Plaintiff suffered significant damages as result of the unethical interference.

Plaintiff opines Defendants' pre-trial offer of $100,000.00 constitutes the floor of the damages resulting from their conduct. Plaintiff was confident a jury would see the conduct of

Blair, fabricating rape scenarios involving Plaintiff and offering them to her violently jealous boyfriend, to be outrageous. Clearly, Defendants recognized the potential for a significant verdict given the value of the offer-an offer made with knowledge of the *quid pro quo* agreement.

CONCLUSION

For the above and foregoing reasons, Plaintiff prays that this Court reconsider its Order, dated April 7, 2020, and allow the Plaintiff to litigate this case in earnest. He has already been shot once. He does not deserve to be shot again.

Respectfully submitted by:

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Anderson, South Carolina
April 17, 2020.

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
John E. Harbin,)	
)	
Plaintiff,)	
)	**CERTIFICATE OF SERVICE**
vs.)	
)	
April Blair, Tracy Dunn, HUB Enterprises,.)	
Inc Shawn Conway, Gallivan, White)	
& Boyd, Sam Nikopoulos and John Doe,)	
)	C.A. No.: 2017-CP-04-02099
Defendants.)	
)	

THE UNDERSIGNED person deposes and says that he served Plaintiff's Motion for Reconsideration, upon all Defendants, by and through their respective counsels of record via South Carolina electronic filing system at the follow addresses:

robert.wilder.harte@gmail.com
jwalsh@clarksonwalsh.com
sam.outten@nelsonmullins.com
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Anderson, South Carolina
Date: April 17, 2020.

BLAIR'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION

(April 24, 2020)

ELECTRONICALLY FILED - 2020 Apr 24 2:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	C.A. No.: 2017-CP-04-02099
John E. Harbin,	)	
	)	
Plaintiffs,	)	
	)	**DEFENDANT, APRIL BLAIR'S, MEMORANDUM IN OPPOSITION TO THE PLAINTIFF'S RULE 59(e), SCRCP, MOTION TO RECONSIDER THE COURT'S ORDER OF APRIL 7, 2020 GRANTING THE DEFENDANT, APRIL BLAIR'S, MOTION TO DISMISS**
vs.	)	
	)	
April Blair, Tracy Dunn HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe,	)	
	)	
Defendant.	)	
	)	

TO: The plaintiff, John E. Harbin, and his attorney, Donald L. Smith, Esquire

INTRODUCTION

This matter is before the Court on the plaintiff's Motion to Reconsider the Court's Order of April 7, 2020 Granting Defendant Blair's Motion to Dismiss ("Motion to Reconsider") pursuant to Rule 59(e) of the *South Carolina Rules of Civil Procedure*. The defendant, April Blair, ("defendant"), by and through her undersigned counsel, hereby submits the following memorandum in opposition to plaintiff's Motion to Reconsider. The defendant also incorporated by reference her original Motion to Dismiss papers that have previously filed with the Court. Based upon the arguments set forth below, the defendant is respectfully requesting the Court to deny the plaintiff's Motion to Reconsider.

A. The plaintiff's Motion to Reconsider fails to set forth or identify any point of law or fact that the Court misunderstood, did not fully consider, or failed to rule upon when it decided the defendant's Motion to Dismiss.

Rule 59(e) of the South Carolina Rules of Civil Procedure allows a court to alter or amend a judgment upon a party's timely motion. A motion under Rule 59(e) has long been viewed as a "motion for reconsideration." Elam v. S.C Dep't of Transp., 361 S.C. 9, 21, 602 S.E.d2 772, 778

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(2004). A motion to reconsider pursuant to Rule 59(e), SRCRP, is appropriate in two (2) basic situations. First, "a party may wish to file such a motion when [the party] believes that the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Id. at 24, 602 S.E.2d at 780. Secondly, "a party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Id. However, a "party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not." Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014).

In the case at bar, the plaintiff's Motion to Reconsider does not set forth or identify any point of law or fact that the Court misunderstood, did not fully consider, or failed to rule upon as per Elam. Rather, the plaintiff makes the same arguments that plaintiff set forth in his opposition to the defendant's Motion to Dismiss. The plaintiff's dissatisfaction with the outcome of the underlying litigation filed under C.A. No: 2014-CP-04-2908 and the instant action does not constitute grounds or otherwise warrant relief under Rule 59 or pursuant to Elam.

B. The arguments raised by the plaintiff in plaintiff's opposition to the defendant's Motion to Dismiss and in this Motion to Reconsider were previously raised by the plaintiff in the underlying litigation filed under C.A. No. 2014-CP-04-2908. The Court ruled against the plaintiff in the underlying litigation and the plaintiff failed to timely appeal the prior decision of the Court. Therefore, the plaintiff should be barred and estopped from asserting this action and/or pending motion based upon the doctrines of res judicata and/or collateral estoppel.

On January 4, 2018, in the underlying action filed under C.A. No. 2014-CP-04-2908, the plaintiff filed a Notice of Motion to Vacate the underlying judgment. See **Exhibit A**. In support of this Motion, on January 30, 2018, the plaintiff filed a Memorandum in Support of Plaintiff's Motion to Vacate ("Memorandum"). See **Exhibit B**. As set forth in his Memorandum, plaintiff

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submitted the Affidavit of Willie Clarence Tillman which he advised the Court constituted "newly discovered evidence" to support his argument vacate the underlying judgment. See **Exhibit B**, Pages 5-6. See also **Exhibit C**, which is the Affidavit of Willie Clarence Tillman. This is the same argument that the plaintiff is presenting in support of its Motion to Reconsider in this pending action.

In his Motion to Reconsider, plaintiff relies on a statement from the defendant, Tracy Dunn's, Public Defender Kami Granade, in which she advises the Court on June 21, 2017 that the defendant, April Blair, preferred that the domestic violence charges against the defendant, Tracy Dunn, be dismissed, but of course acknowledged that this was not within her power. The plaintiff alleged that the defendants conspired to fix the trial. What is fascinating to note is that the Affidavit of Kami D. Granade, Esq. that was filed with the Court clearly indicates she never came into any information or knowledge of any kind during her interactions and/or conversations with the defendant, April Blair, prior to Dunn's June 2017 plea hearing which led her to believe Blair's desire not to pursue the CDV charges against Dunn was motivated by a *quid pro quo* agreement or arrangement with Dunn. See **Exhibit D**, Paragraph 10-12. She indicated that she never discussed, participated in, facilitated, or was otherwise aware of any alleged *quid pro quo* agreement or understanding reached between Dunn and Blair to resolve Dunn's CDV charge in 2017. See **Exhibit D**, Paragraph 13.

On March 30, 2018, the Court in the underlying action (C.A. No.: 2014-CP-04-2908) filed an Order relative to plaintiff's Motion to Vacate. See **Exhibit E**. According to this March 30, 2018 Order, the Court denied and dismissed the plaintiff's Motion to Vacate. See **Exhibit E**. The Court found that the hearsay statements contained in the Willie Clarence Tillman Affidavit to be wholly incredible in light of the totality of the facts, evidence and testimony presented to the jury during the trial in this case. See **Exhibit E**, Section B., found on Pages 12-21 and **Exhibit C**. The

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Court did not find the Willie Clarence Tillman Affidavit to be competent or credible. See **Exhibit E**, Pages 12-21. The Court found that the allegations of the affidavit do not satisfy the requirements for vacating judgment on the basis of newly-discovered evidence even if those claims were accepted at truth for the sake of argument. See **Exhibit E**, Pages 20-21. For those reasons, the Court denied and dismissed the plaintiff's Motion to Vacate. See **Exhibit E**, Page 21.

On or about April 8, 2018, the plaintiff filed a Motion for Reconsideration. See **Exhibit F**. This motion was served upon the defendant, April Blair's, Attorney, Robert D. Corney. See **Exhibit G**. On April 12, 2018, the Court denied the plaintiff's Motion for Reconsideration. See **Exhibit H**.

The plaintiff did not appeal the Court's Order of March 30, 2018 or April 12, 2018. The arguments, positions and/or claims set forth in the plaintiff's Motion to Vacate and Motion for Reconsideration are the same arguments, positions and/or claims set forth in this pending action filed under C.A. No.: 2017-CP-04-02099. Therefore, the defendant, April Blair, contends that the plaintiff should be barred and estopped from asserting this pending motion before the Court pursuant to the doctrines of res judicata and/or collateral estoppel as this case, plaintiff's claims and these issues have already been decided by the Court. See generally, Judy v. Judy, 383 S.C. 1, 677 S.E.2d 213 (Ct. App. 2009).

C. The plaintiff's argument that the defendant utilized extrinsic fraud to accomplish their objectives is meritless.

In his Motion to Reconsider, the plaintiff alludes to the fact that defendant's somehow used "extrinsic fraud to accomplish their objective" This argument lacks any merit. First of all, fraud, of any kind, was not alleged in the plaintiff's Complaint. Pursuant to Rule 9(b), SCRCP, in all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred

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generally. This was not done. This "extrinsic fraud" argument also does not appear to have been asserted, presented and/or set forth in the plaintiff's opposition to the defendant's Motion to Dismiss. Therefore, as per Steven & Wilkinson of S.C., Inc., the plaintiff should be barred from presenting or asserting it at this time.

Additionally, the plaintiff fails to set forth any facts in support of this alleged use of extrinsic fraud. In paragraph (d) of his argument, plaintiff simply indicates that defendant's unethical conduct was not justified. If it is the plaintiff's position that the unethical conduct alleged committed by the defendants was the conduct set forth in Mr. Tillman's Affidavit (See **Exhibit C**), then for the reasons set forth in B. above, this argument has no merit, the court has previously decided this issue, the plaintiff's prior motions were denied and dismissed, and the plaintiff failed to otherwise file an appeal on the prior Court orders.

D. The plaintiff's Complaint against the defendant fails to establish the requisite elements for an action for wrongful interference with an attorney-client relationship.

An action for wrongful interference with an attorney-client relationship has been recognized in this state. DeBerry v. McCain, 275 S.C. 569, 574, 274 S.E.2d 293, 296 (1981); citing Keels v. Powell, 207 S.C. 97, 34 S.E.2d 482 (1945). The elements required to establish such a claim are:

(1) the contract;

(2) the wrongdoer's knowledge thereof;

(3) his intentional procurement of its breach;

(4) the absence of justification; and

(5) damages resulting therefrom.

Id.

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If the complaint lacks any one of these elements, it must be dismissed. Id. In DeBerry, the circuit judge ruled on (1) motions to strike from the complaint, (2) motion to make more definite and certain, and (3) a demurrer. Id. The Supreme Court's disposition of the demurrer issue made all other questions moot. Id. The Supreme Court held that the demurrer, which was overruled, should have been sustained. Id.

The Plaintiff's Amended Complaint does not allege that Defendant Blair took any actions which are at issue in this case. See Amended Complaint, which is attached hereto as **Exhibit I**. Reading the Amended Complaint, it appears that the Plaintiff regrets turning down attempts to settle Case No. 2014-CP-04-02908 and regrets rejecting the Offer of Judgment which was made in that case and/or claims he was financially unable to accept the Offer of Judgment or some apparent settlement offer due to the alleged amount of his damages. Id. After making a conscious decision to reject the Offer of Judgment and to try his luck with the jury, the jury returned a defense verdict. Id. Since the Plaintiff did not like that outcome, he is now trying to impermissibly have a second bite at the proverbial apple by filing the subject lawsuit.

As the Court found in DeBerry, the amended complaint here contains no independent allegations of any acts or omissions by Defendant Blair warranting the inference that she intentionally procured plaintiff's attorney's discharge. See DeBerry, 275 S.C. at 574–75, 274 S.E.2d at 296. In fact, it does not appear that the attorney-client relationship between the Plaintiff and his attorney was interfered with in any way. See **Exhibit I**, Amended Complaint. The Plaintiff fails to allege and, on information and belief cannot allege, any actions taken by Defendant Blair directly against the Plaintiff and/or his attorney that in any way had anything to do with their attorney-client relationship. The Plaintiff has failed to allege any breach of the attorney-client relationship/contract, any actions of Defendant Blair that contributed to any alleged breach of that

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contract, and/or any damages resulting from the alleged breach. As a result, this case should be dismissed with prejudice pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*.

Further, since Plaintiff and Defendant Blair were both parties to Case No. 2014-CP-04-02908, any claims arising out of the alleged shooting and the dispute over the alleged shooting between these parties must have necessarily been litigated in that case as compulsory counterclaims. N. Carolina Fed. Sav. & Loan Ass'n v. DAV Corp., 298 S.C. 514, 381 S.E.2d 903 (1989). Additionally, the specific issues raised in the above-captioned case were raised in Case No. 2014-CP-04-02908 and were ruled upon by the Court. As set forth above, this case should be dismissed pursuant to the legal and equitable doctrines of res judicata, collateral estoppel, laches and waiver. See generally Judy v. Judy, 383 S.C. 1, 677 S.E.2d 213 (Ct. App. 2009).

E. The Complaint filed by the plaintiff in this action is frivolous, as all claims and/or issues raised in this action were heard or could have been heard in the underlying action filed under C.A. No.: 2014-CP-04-02908.

As set forth above, all claims and/or issues that are being raised by the plaintiff in the action were heard or could have been heard in the underlying action filed by the plaintiff under C.A. No.: 2014-CP-04-02908. The plaintiff failed to file an appeal of the prior Court's Order in order to preserve plaintiff's rights. Alternatively, the plaintiff has exhausted all of its rights and/or remedies to any further relief from the Court's by failing to file the appropriate paperwork with the Court. The plaintiff attempted to circumvent proper court policy and procedure by filing this instant lawsuit. The parties, facts and claims for relief are the same in this action as they were in the underlying action. Therefore, the defendant asserts that this Complaint is baseless and meritless and as such, the defendant is entitled to sanctions and/or an award of counsel fees, filing fees and/or costs for defending this frivolous lawsuit.

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CONCLUSION

As set forth above, the defendant, April Blair, asserts that plaintiff has failed to set forth or identify any point of law or fact that the Court misunderstood, did not fully consider, or failed to rule upon when it decided the defendant's Motion to Dismiss. The arguments raised by the plaintiff in plaintiff's opposition to the defendant's Motion to Dismiss and in this pending Motion to Reconsider were previously raised by the plaintiff in the underlying litigation filed under C.A. No. 2014-CP-04-2908. The Court ruled against the plaintiff in the underlying litigation and the plaintiff failed to timely appeal the prior decision of the Court. Therefore, the plaintiff should be barred and estopped from asserting this action and/or pending motion based upon the doctrines of res judicata and/or collateral estoppel. Additionally, the plaintiff's reference that the defendant utilized extrinsic fraud is meritless. Moreover, the plaintiff Complaint fails to state a cause of action for which relief can be granted. Therefore, based upon the foregoing, the defendant respectfully requests the Court to deny the plaintiff's Motion to Reconsider. The defendant is also requesting the Court to sanction the plaintiff for filing this frivolous lawsuit and to award the defendant counsel fees, filing fees and costs.

Respectfully submitted,

By: *s/ James P. Walsh*

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Attorneys for the defendant April Blair

Greenville, South Carolina
April 24, 2020

TRANCRIPT OF HEARING ON MOTION FOR RECONSIDERATION

(July11, 2019)

State of South Carolina
County of Anderson

In the Court of Common Pleas

John E. Harbin, Plaintiff, -vs- April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan, White & Boyd, Sam Nikopoulos, and John Doe, Defendant.	)	2017-CP-04-02099 July 11, 2019 Transcript of Record

B E F O R E:

The Honorable J. Cordell Maddox, Judge

A P P E A R A N C E S:

Donald L. Smith, Esquire
Attorney for Plaintiff

Samuel W. Outten, Esquire
Attorney for Defendant Gallivan, White & Boyd

Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

(WHEREUPON, court convened with all parties present and the following proceedings were had commencing at 4:27 p.m.)

THE COURT: Is this Harbin?

MR. OUTTEN: Yes, sir.

THE COURT: Motions to reconsider on both of these and a motion for -- who filed the motion for sanctions, y'all did?

MR. OUTTEN: Yes, sir, your Honor, I did.

THE COURT: Okay. Is this the one I heard where I dismissed it? It was -- had the couple that got divorced after the wreck, and there were allegations that the defense -- or is that another case?

MR. OUTTEN: I think that was a different case, your Honor.

THE COURT: Tell me what happened here.

MR. OUTTEN: In the underlying case or the basis for the motion?

THE COURT: Basis for the motion.

MR. OUTTEN: Well, the basis for the motion is that there was a tort case, and just before the case, my understanding is a settlement offer was made by the defendant to plaintiff's counsel. Plaintiff refused. The case was tried, and then there was a defense verdict.

And very soon after there was a defense verdict, Mr. Smith filed this lawsuit against Gallivan, White & Boyd, who was the law firm who tried the underlying case. And there is, of course, no basis for doing that. And --

THE COURT: What were the allegations?

MR. OUTTEN: Well, the allegations were --

THE COURT: I'm just trying to place this, to be honest with you.

MR. OUTTEN: The allegations were that we, Gallivan, White & Boyd, somehow interfered with the relationship between Mr. Smith and his client, and I think that the specific factual allegations were that we had a detective investigator go to the jail and meet with the codefendant, who agreed to change his testimony to help Ms. Blair -- she was the one who had the insurance -- and that somehow we influenced that testimony, suborn perjury, and that's what resulted in the defense verdict.

That was the allegations. Certainly, I'm not conceding that anything like that --

THE COURT: No, I understand.

MR. OUTTEN: -- happened.

And the reason why we're here, your Honor, and I don't like being here. This is the second motion for

sanctions I've made in about 34 years of practicing law. But the reason why we're here is because it's clear that this kind of case has no legal or factual basis. And the Gaar against North Myrtle Beach and Stiles against Onorato and Argoe against North Rivers Behavioral Center make it clear that you can't do exactly what Mr. Smith did.

But what distinguishes this case, this situation, from others is that this very situation presented itself to Judge McIntosh, and it was a different case that Mr. Smith brought, and sanctions were issued by Judge McIntosh for the very same thing.

May I approach, your Honor?

THE COURT: Sure.

MR. OUTTEN: Here is a copy of the order of February of this year that Judge McIntosh issued. And I'm not going to go through it all. I know you want me to be brief because there are other motions for you to hear, but motion for sanctions was made pursuant to Rule 11, the frivolous proceedings sanctions act, and Judge McIntosh goes through the case.

He says that summary judgment -- all of the claims were dismissed except for the claim for civil conspiracy. There was some effort to try to say -- to argue that somehow the lawyers were outside the scope

of the representation, which is, as we know, an exception to the general rule.

But here are some findings of Judge McIntosh.

"This court finds that no reasonable attorney would have brought the plaintiff's claims against attorneys given the well-established case law on attorney immunity and the facts of this case."

He says in the next -- and I'm reading from the bottom of page three and top of page four.

Then he says in the next paragraph, "This court finds that counsel alleged conspiracy as to throw it against the wall and see if it sticks. The plaintiff made several arguments in an attempt to get some adnisable facts as basis for his conspiracy claim, none of which this court finds are supported by law or fact."

And then if you turn over a couple of pages, Judge McIntosh says, "Given the facts and circumstances of this case, I'm imposing as a monetary sanction, which I calculate based upon attorneys' fees and costs for defending the underlying lawsuit and bringing this sanctions motion. Attorneys are forced to notify their malpractice carrier and retain outside counsel."

Again, I'm not going to go through the whole order, but what we have here is the filing of the

lawsuit against Gallivan, White & Boyd which never should have been filed. As a result of that, they, like the lawyers in this case, had to notify their carrier. They had to hire my law firm. We came here and argued a motion before you.

In the interim, we have this order. But even with this order, your Honor, a motion to reconsider was filed. There is pending before you a motion to reconsider your order, which was correct, dismissing the complaint.

And so because of the attorneys' fees that have been incurred -- and, as you know, your Honor, when a legal malpractice case is filed, it takes up the time of the lawyers in the firm. I deal with their general counsel, their managing partner. It's on their radar. They have discussions with their carrier, and it doesn't go away.

As you know, your Honor, when these malpractice cases are filed, the carrier has a record of it. The carrier has a record of the fact that a claim, a lawsuit was filed, that money was spent in defense of it even if you win it.

So all these things are by way of saying this is a very serious matter. It never should have been filed in the beginning. But certainly after Judge McIntosh,

on what are very similar facts, told Mr. Smith, "I'm going to sanction you $11,000 for doing this," it never -- he never should have filed it, he's persisting. And he's persisting by filing the motion to reconsider.

Never contacted me about trying to resolve the motion for sanctions, which I would have been happy to talk with him about. And, again, your Honor, I don't like being in front of you arguing this.

THE COURT: I gotcha.

MR. OUTTEN: But this has to stop. This lawsuit has no merit. Mr. Smith knows that or he should know it.

The same situation presented in this court before Judge McIntosh, who wrote a six-page order explaining why there was no merit to the lawsuit.

So we filed an affidavit of attorneys' fees on Monday of this week, and we're asking that the court award us those attorneys' fees for having to defend this lawsuit.

Again, your Honor, this has to stop, and the only way we know to stop it is to come before you and ask for sanctions and ask you to award attorneys' fees for us for having to defend it. Thank you.

THE COURT: Let me make sure I've got the timing

right. If I rule in your favor, it would make a difference.

I heard this case, this motion, and dismissed this case, and then Judge McIntosh dismissed this case, right?

MR. OUTTEN: Yes, sir. That's correct.

MR. SMITH: That's wrong.

THE COURT: If I agreed with you totally, the sanctions would have to be limited, if I was going along with Judge McIntosh, to preparation for the motion to reconsider.

I know you don't agree with that, but his notice that sanctions might be imposed would not have predated -- don't predate this order.

In other words -- I'm not making myself clear, but I think you understand what I'm saying.

MR. OUTTEN: I do, your Honor. But here is the thing. There is nothing in the frivolous proceeding sanctions act that says you have to have a predicate. There's nothing in there that says, you know, before you can get sanctions under this act, you have to have notice. In other words, you have to have the exact same case presented to a judge to give you notice that you shouldn't be filing these type of actions.

And so that's an additional reason why sanctions

are appropriate in this case because of Judge McIntosh's order. And then let's don't forget about the motion to reconsider, because -- I think we can check the dates, but I believe that the motion to reconsider was filed after Judge McIntosh's order.

So, again, the only way that I know procedurally that we can stop the recurring filing of frivolous actions is for sanctions to be imposed. I know of no other procedural tool available to me.

So, again, we have this order. We don't need a predicate, but we have one, and then we have the motion to reconsider in the face of Judge McIntosh's order, the analysis of which is very similar to what you'll see in our motion for sanctions in this case.

THE COURT: Okay.

MR. SMITH: May it please the Court. I appreciate Mr. Outten's rendition of the facts. I have never paid any sanctions in that case that he brings up because my motion to reconsider was never addressed, meaning there was never an order issued. I think it's been two or three years now.

The reason it wasn't addressed is, and this is my belief, I don't go around filing frivolous lawsuits. I don't have time for that. But the lawyer who got sued had lied to a tribunal, according to his own client,

and that was the --

THE COURT: That's in this case or the one --

MR. SMITH: No, that was in that case.

THE COURT: Okay.

MR. SMITH: And, like I said, the sanctions, I have never paid the sanctions because we have never had a ruling on the motion to reconsider.

But this case, this case, it's an improper attempt the relitigate. Well, that doesn't look at the fact that the lawyer in that case went to the codefendants. One is in jail and one is outside. And I have an independent affidavit, a witness affidavit, who's a family member of the one defendant, talking about how the lawyer got together and arranged a quid pro quo wherein the CDV that Blair had against Dunn would be dropped provided --

THE COURT: That's what I was thinking.

MR. SMITH: -- provided that he accepted responsibility for shooting the guy. My client. Right? And that's an independent affidavit. I didn't make that up. So -- and it was done. He offered me this affidavit in February. The guy pleads to the CDV in which he was dropping it in July. So I already knew in February what was going on.

So, obviously, he knew what he was talking about.

And when I looked into it, Blair, the week after that trial, Blair is calling the public defender's office trying to help him and get the case that she has against him for having a gun pointed at her or something to that effect dropped. But it was good all the way up until that trial and then the week after.

So we're talking about a frivolous action. How is that frivolous when there's things there that are cognizable, you can see them. And I have a witness here, the cousin of Dunn, and then I have a witness of a private investigator that looked at the videos that the attorney, defense attorney, didn't provide to me in discovery but then came after me for the money as a cost, which is just remarkable. I'm not going to give you discovery, but you're going to pay for it anyway.

That's what happened. So he hid that away from me. And then the private investigator that I hired looked at the video, and the video was altered. It was manufactured. That's his affidavit.

And then another affidavit that the lady that allegedly spoke to the investigator for them, she said, "I never talked to him before." So these are all different facts that most certainly -- that is not frivolous. I mean, that's stuff I'm basing my decisions on.

I didn't file a suit until I had all this information in front of me that showed that they subverted justice. My guy didn't even get a trial because he's got people in there manufacturing their answers pursuant to their agreement. And that's my understanding, and that's in the affidavit, and those are the facts that play out.

You know, right after the trial, everyone is trying to get him off, and then the affidavit comes before it even goes to court. I don't bring any action frivolously.

MR. OUTTEN: Let's think about what he just said. If that's what you have, you try a case and you lose it, and then you get another lawsuit and you allege that the reason why you lost it was because the defense firm suborned perjury and interfered with the testimony, and so litigation never ends.

What he described is exactly the reason for the rule in Gaar and Stiles and Argoe. That's the reason for the rule, is so you don't gather affidavits from the person who was in jail with Mr. Dunn, that there might have been some deal struck, and then he's talking about a private investigator. Of course, you can hire a private investigator. If you're not going to use him or her as a witness, you don't have to put them on your

answers to interrogatories. If you're not going to use the surveillance tape, it doesn't matter. There's no discovery offense by not listing that person.

But what he's saying is, again, exactly the reason for the rule. You lose a case, and I didn't lose because the jury decided against me. I lost because of the misconduct of the defense firm, and they're suborning perjury and not giving my clients a fair trial. That's why we have the rule. The case never should have been brought.

The only way that I know that this court can prevent this from happening again and again and again is to issue an order for sanctions and make him pay the attorneys' fees.

And I don't know whether Mr. Smith ever paid any sanctions as a result of Judge McIntosh's order, but I do know this: I know Judge McIntosh wrote this order, I know it was filed, and I know the analysis is exactly the analysis we went through in asking your Honor to award attorneys' fees as sanctions in this case for bringing a frivolous action. Thank you.

MR. SMITH: Your Honor, in Stiles versus Onorato, an attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own

personal interest, outside of the scope of the representation of his client.

The idea of going to the person that doesn't represent and telling him that if he should help her in her civil action, then she's going to help him in the criminal action, that's not -- that's outside his scope.

THE COURT: Wouldn't that be more -- I mean, assuming those facts are true, wouldn't that be something for the office of disciplinary counsel to deal with?

MR. SMITH: My guy doesn't work for the disciplinary counsel. He got shot in the leg. He got cheated out of a trial.

THE COURT: I mean the lawyer. If you really thought a lawyer was suborning perjury -- I would never say that -- I represented lawyers -- in front of them. But seems to me a civil case, it's something that should be reported to them and let them deal with it.

I would never -- I had a nine-day hearing one time on behalf of a lawyer, but I don't think there is a civil case here.

MR. SMITH: Your Honor --

THE COURT: Pardon?

MR. SMITH: What is my guy's alternative if he

can't file suit for this? I mean, he had a case, and then because of what someone else has told him, that it was not right, it was -- the case was manufactured, witness testimony, so how is he getting his day in court?

Basically, what Mr. Outten is saying, "Hey, you lost. Too bad for you. We don't care about the rules, but you lost, so you shouldn't be able to do anything about it."

THE COURT: Well, I mean, just hypothetically, I would assume your guy could file a lawsuit against the person for any number of things against the person. Not the law firm, but the person who you have alleged perjured themselves. You could also go and ask the solicitor's office to file perjury charges and investigate it.

There is a long list of things you can do against the person. I just don't see how the law firm can be sued at this point.

MR. SMITH: See, that was the -- initially that was the deal. I didn't name the officer -- I mean the attorney because I wasn't sure who went to the jail and relayed this information. Because the investigator for him and he had been to that jail prior to the deposition wherein the guy said, "Oh, yeah, I meant to

shoot him." He never said that before, but he did that day. So I didn't know who it was. So I named the group.

MR. OUTTEN: Again, Judge, you have this rule. Remember before you were on the bench and you were trying cases and you would try a case that was of some note, you would hear all kinds of things after the jury verdict about what might have caused the verdict and who testified to what.

I remember I had one in Columbia a long time ago, and after the verdict, I had telephone calls about, "Did this happen?" and, "Did you hear that?" So, yes, there might have been a lot of talk after this jury verdict, but the case was tried. His client had his day in court, and we just can't allow and don't allow in this state subsequent lawsuits against a law firm for alleged misconduct. We just don't allow it.

And what they're saying here is not that a member of the firm even went and arranged this supposed suborning of perjury. It was an investigator. And you have already ruled that we're not vicariously liable for an investigator working for us. So even if that were true, the law firm has no liability.

So, again, Judge, we think that this is an appropriate case where we should be reimbursed by

Mr. Smith for the attorneys' fees that we spent defending this case.

THE COURT: Okay. All right. I won't make you wait around while I read this. I haven't read a thing. I've just seen this.

I'm going to deny the motion to reconsider. I'm going to look at the sanctions.

What do you allege you're owed?

MR. OUTTEN: Sir?

THE COURT: What do you allege you're owed in here? I don't have anything. I haven't seen anything. So what's the amount of your attorneys' fees?

MR. OUTTEN: I think 24,000.

And what we did in the affidavit, your Honor, was we itemized the time we spent, and the time entries are fairly descriptive so you can see -- it's pretty easy to see, if you look at it, what we did and how we did it and how much time we spent and all that.

THE COURT: Okay. I'll look at it. I'll let y'all know. I mean, I'm just -- I'm not -- I understand. I understand your argument, and I'm just not a big fan of -- I mean, we have been told over and over and over that we should enforce that rule. And I'm not saying you're doing this. I mean, you and I have known each other for a while, and I have always

known you to be completely -- I'm not a big fan of kicking somebody when they're down. I get it, but I'm ruling for you, and I'll look at this and see.

I think you have every right to file it, and I think you should, and it will be on me, one way or the other.

MR. OUTTEN: Well, your Honor, I appreciate it. Let me say this. I'm not a big fan either of lawyers filing motions against other lawyers. I spend a lot of my time defending lawyers in ODC matters, so I'm not entirely comfortable and not a big fan of this either. I just think this is one of those very few cases where this is appropriate.

MR. SMITH: I didn't do this on my own. The gentleman said, this is what happened, and then it's proven out by the pleadings and the arguments in court for sentencing. The public defender gives an affidavit stating it.

If I get sanctioned, the guy not only ruined the trial, according to the affidavit, being the go-between, but then he's getting paid to do that, and that's just -- frivolous means that there's nothing to it and you're just doing it to harass, harangue. I'm not harassing anyone. That's what the independent person said. I didn't say it just out of the blue and

so forth. That's a family member of this guy gave that affidavit.

THE COURT: Okay. All right. Give me time to look through it. I mean, today has been one of those days.

(WHEREUPON, proceedings concluded at 4:49 p.m.)

END OF REQUESTED TRANSCRIPT OF RECORD

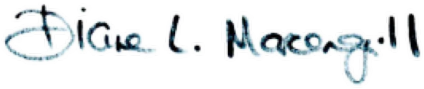
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 11th day of July 2019.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 23, 2020



Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

TRANSCRIPT OF HEARING ON MOTION TO DISMISS

(February 28, 2020)

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
John E. Harbin,	)	
	)	
Plaintiff,	)	
v.	)	Case No(s).
	)	2017-CP-04-02099
April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe,	)	
	)	
Defendants.	)	

ORIGINAL
TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on February 8, 2018, before The Honorable J. Cordell Maddox in the Anderson County Courthouse, 100 South Main Street, Anderson, SC 29622; attended by counsel as follows:

APPEARANCES:

Donald Loren Smith, Esq.
Appearing for Plaintiff.

Samuel W. Outten, Esq.,
James P. Walsh, Esq.,
Robert Wilder Harte, Esq.,
Appearing for Defendants.

Vivian H Cross
Circuit Court Reporter –10th Judicial Circuit (Retired)
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I-N-D-E-X

JOHN E. HARBIN
-v-
APRIL BLAIR, ET AL.
(MOTIONS HEARING)
(2017-CP-04-02099)
FEBRUARY 8, 2018

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E-X-H-I-B-I-T-S

	IDENTIFICATION	ENTERED

********NO EXHIBITS PRESENTED****

PROCEEDINGS

(2:30 P.M.)

THE COURT: What are all you-all doing here?

MR. WALSH: We're here for the uh, the uh, *Harbin versus Blair* final hearing. (After pause) And we all filed Motions to Dismiss.

THE COURT: Motions to Dismiss. Now, let me ask you something; did Judge Sprouse do something on this case last week? Vacate a Judgement or something?

MR. OUTTEN: I think that was a different---

THE COURT: That's what was---

MR. OUTTEN: ---I think that was a different case, Your Honor.

THE COURT: Oh.

MR. OUTTEN: I think that was a Motion to Vacate the -- in the original Tort action.

THE COURT: Okay.

MR. WALSH: Yeah, I think that was 2014-2908; I think was that -- that was the...

THE COURT: His Clerk called and said that he had seen this on the roster and thought that he had resolved it. So, I mean, I'm -- I -- we -- we didn't know what it was. I mean, I -- so, you know...

Well, somebody tell me what's going on and then I'll figure it out.

MR. OUTTEN: Well, Your Honor, I'll do my best. I -- it -- uh, there was a Tort action and it, as I understand the basic facts, uh, they were that Mr. Harbin came on property owned by April Blair. Uh, Tracy Dunn -- Mr. Dunn was there. There was some altercation. Mr. Dunn shot Mr. Harbin. Subsequently, a lawsuit

was brought by Mr. Harbin against Ms. Blair and Mr. Dunn for injuries as a result of that incident. I further understand that the case was tried here in Anderson; I don't know who the president Judge was. Do you guys know who was the (sic) Judge?

In any event, it resulted in a Defense verdict. Um, the reason why I'm here is, Your Honor, I represent Gallivan White & Boyd and Gallivan White & Boyd defended the lawsuit. Um, and -- and this appears to be an effort by Plaintiff's counsel and his client to -- to -- to reopen or retry that case.

There was a settlement offer made, uh, before the case went to, uh, trial; before it went to verdict. And, it appears that what is going on is that, uh, the -- the Plaintiff's lawyer -- the Plaintiff's counsel, wish they had accepted the -- the settlement offer made by Gallivan White & Boyd on behalf of Ms. Blair before the case was tried. And so now, uh, this is a -- a second lawsuit alleging some sort of malfeasance, negligence, intentional acts, uh, against Gallivan White & Boyd, against Ms. Blair, against Mr. Dunn and the...

Essentially, the -- the -- the basis of, uh, of the Motions is that this case has already been tried; you don't get -- you don't get a second chance.

Now, um -- uh, now I'll ask my colleagues if they want to fill in the gaps of anything that I left out. But that's essentially the posture of the case, Your Honor, as I understand it.

MR. WALSH: Yes, Your Honor; Jim Walsh here for Ms. Blair. That -- I think that is the -- as far as...

We are -- none of us were involved in that Tort case, so if there's something that we're missing, Plaintiff's counsel may know that. But that -- there's another case that's still pending. Apparently, that Tort case, there's a --

there was a -- a -- some sort of Motion to reopen that case. I think that's what Judge Sprouse was hearing last week. Um, there -- there was some argument on that with Ms. Blair's Tort counsel in that case with the same Plaintiff's attorney and -- and I don't know if there's been a ruling on that Motion, but I think there was some allegation of fraud made to reopen that -- that Judgement. But none of us are involved on that case, so---

THE COURT: Yeah, and I don't know anything about it.

MR. WALSH: Right.

THE COURT: I mean, I -- it happened---

MR. WALSH: So---

THE COURT: ---last week; I was out of town, so...

MR. WALSH: ---right. So we're here because we -- we all got retained for this next -- next case which is an allegation of tortious interference of contract with all of our Defendants. And, it does appear as if it's a second bite at the apple and, uh, and they or I can make an argument. But no, Your Honor, we're at---

THE COURT: Okay.

MR. WALSH: ---that's kind of where we are procedurally.

THE COURT: All right.

MR. HARTE: Sorry, Judge, uh, my name is Wilder Harte, I think it's -- it's my two Defendants that you haven't heard about as yet. Um, Defendant Shawn Conway is a private investigator who is employed by HUB Enterprises, also a Defendant in this case. Gallivan White & Boyd retained them to attempt to surveille the Plaintiff in the original case, who is also the Plaintiff in this case, for possible purposes of impeachment, uh, as to any damages that he might allege at trial.

When Gallivan White & Boyd filed an offer of Judgement and -- and that was later not accepted, at the conclusion of the trial when the jury returned the Defense verdict, Gallivan White & Boyd filed a Motion for Costs and Attorneys' Fees and included in that the expense that they incurred for retaining my clients to attempt surveillance of the Plaintiff.

Now the Plaintiff is alleging tortious interference of contract, alleging that my clients interfered with the attorney client retainer agreement that we had with the Plaintiff.

THE COURT: Okay. Well, and again, you know, with our e-filing I'm -- I'm -- I believe you. Uh, Mr. Smith, would you agree with that, or...

Obviously not.

MR. SMITH: May it please---

THE COURT: Tell me -- tell me your position on this.

MR. SMITH: ---may it please -- may it please The Court.

THE COURT: Can we -- can we deal with all of them at once? I mean, they're all Motions to Dismiss based upon, I assume -- well, I -- well, we'll see. I'll -- I'll let you individually.

Yes, sir; go ahead.

MR. SMITH: In this particular matter, Mr. Harbin was invited to the Blair property by Blair and Dunn who, uh, were en- -- uh, were engaged and may be engaged at this point; I'm not sure.

Um, prior to the trial, Ms. Blair had Mr. Dunn arrested for CDV High and Aggravated. Apparently he had a gun to her face. And so, he was in jail up to the trial and, uh, you know, the, uh, testimony of course, what was offered to the -- to the jury was that, uh, these people were against each other, didn't like each

other, and so forth.

Um, the trial ended up in a -- in a Defense verdict as stated, and, um, the offer of judgement was supplemented by, um -- uh -- actually, the Motion to Reconsider, Motion for new trial. Shawn Conway, the private investigator, his affidavit was submitted saying that he had done this and that, and he had never seen my client, who I've got two affidavits from him and his girlfriend saying they weren't anyplace but that house from the time that they were, uh -- uh, surveil- -- he was surveying him or providing surveillance. And, the Conway affidavit says that he never saw them. And the problem is, Mr. Corney did not provide the discovery. Did not provide the witness, uh, in discovery so we didn't even know about him until after the trial.

Well, based on my belief that there was something faulty here, I ended up talking to Willie Clarence Tillman, who is a cousin of Dunn. February 23rd he told me that, in fact, Blair and Dunn had been communicating to Mr. Corney. And, that Mr. Tillman and Mr. Dunn were being represented by the Public Defender, a Ms. Granade (phonetic). And, he had talked to Ms. Granade and obviously he had talked to his cousin, Mr. Dunn, and they both talked about how Blair was pushing to get the charges dismissed. Of course, that was in conjunction with the statement by Mr. Dunn that, in fact, he meant to shot Mr. Harbin and that Ms. Blair had nothing to do with the shooting.

Now, the issue with that is, when Mr. Dunn was first spoken to by the police he said that he had -- he didn't want to shot him; he -- he shot at the ground in front of him. That was his statement, and that's the -- that's -- that was the knowledge of certainly myself up until we had a deposition in the jail in the -- Abbeville and Mr. Corney had been there a day or two before the

deposition. At the deposition, Mr., uh, Mr. Dunn offers to -- to us that, in fact, he meant to shot Mr. Harbin and that, uh, in addition to that -- I don't know how he knew Ms. Blair's mental situation, but he said that she had nothing to do with any of it and he followed that up with the same, uh, testimony in trial.

Well, Mr. Tillman told me that that was the deal, and Ms. -- Ms. Blair was working to get him out of -- out of the charges. And, in fact, in June, which is five months after, uh -- or, four months after his affidavit that he submitted to me, she -- Ms. Granade, on behalf of Ms. Blair, told us -- or, told The Court how, uh, he was a great man and he was basically like a father to her child, and that, uh -- um, she -- he -- she -- he should not get the charges -- or, should not be convicted, or, um, should not get a sentence for CDV High and Aggravated.

So, that was a plan, and Mr. Tillman told me exactly the way it was gonna go in February and that's exactly what happened in June. And, unfortunately, because of this plan, the jury didn't get to hear different things.

THE COURT: All right, do you-all -- do you -- who tried---

MR. SMITH: Judge Sprouse.

THE COURT: Okay. I mean, why wouldn't this be -- and I'm just asking -- but why wouldn't this be in the nature of a Motion before Judge Sprouse for after discovered evidence, or...

I mean, I'm not trying to get out of it, I'm just trying to figure out...

MR. SMITH: As mentioned, the Motion to Vacate was -- was brought based on the -- the things that I've talked about. The, uh, the -- Mr. Conway and HUB Enterprises providing something which I've had an investigator of my own look at the video that they provided and there's no metadata. They have a date and time on the bottom of the video but the metadata is blank, which indicates

you can't tell when it was created. And that -- that supports my theory that they weren't doing that or, what they had for video surveillance is not what they gave to me. And -- and I've got a Motion to Compel that's gonna be, uh, filed soon based on the fact that they -- they provided in -- in their responses to discovery requests that it was prepared in anticipation of litigation, what is just ridiculous. They -- they most certainly were not prepared for my litigation in these cases. They -- they were working on the -- the Harbin shooting back in the 2014 case. So the idea of using it in anticipation of litigation, when it's not related to that litigation, is disingenuous

MR. OUTTEN: Your Honor, it -- respectfully, I think you pointed out the fact that if he has an evidentiary basis upon which to set aside the jury verdict and get a new trial, then that Motion is properly before Judge Sprouse.

Now, to be clear on the record, we emphatically deny any impropriety associated with the trial. But, Your Honor, litigants can't be allowed to simply file a second action because they're disappointed with the result of the -- of the first lawsuit, which is exactly what happened here.

And -- and I need to add something, Your Honor, on -- on behalf of Gallivan White & Boyd. Uh, I know Your Honor's familiar with *Gaar against North Myrtle Beach* and *Stiles against Onorato*. Our -- our -- our Supreme Court has been very clear that you can't sue -- a non-client third party can't sue a lawyer for acts taken in the representation of his or her client. And they've been very clear about that. *Stiles against Onorato* was decided on a Motion to Dismiss, same procedural stage we're in, uh, this afternoon.

So, Your Honor, I want to say, on behalf of Gallivan White & Boyd, uh, there's certainly no basis to bring this action and our Courts have -- have made it

clear. And in order for there to be such a lawsuit, you have to have some credible allegation of self-interest or breach of some independent duty. That doesn't exist here. Quite obviously what's happening, and -- and the -- and The Court can see this, is that Plaintiff's counsel and the Plaintiff are disappointed with the Defense verdict and so they filed the second lawsuit even -- even though these issues have all been determined, and tried to join Gallivan White & Boyd.

Your Honor, we should be dismissed based upon the legal principal in *Gaar against North Myrtle Beach*, *Stiles against Onorato* and *Argoe against Three Rivers Behavioral Center*.

Thank you.

MR. SMITH: I -- I -- I've played sports all my life; no one likes losing. But, no one likes losing where they cheat -- the other side cheats -- even more.

Um -- the -- the -- I think we're missing the point. Mr. Tillman said that Tracy Dunn and April Blair were connecting through their attorney; through the, uh, Mr. Corney. He was relaying, and our -- it's our belief it was quid pro quo. Hey, if you help me in this civil case and save my house, then I'll get rid of those charges or do my best to get the charges dismissed against you in the criminal court. He said that in February -- February 23rd. And what happened in June? She -- she gave -- the -- the Public Defender said, oh yes, she -- he's the greatest guy ever; he's like a father to her child. These charges need to be dismissed. Well---

THE COURT: Were they, or did he just plead guilty and get a better deal because she did that?

MR. SMITH: Well---

THE COURT: I mean, were they dismissed?

MR. SMITH: ---I -- I think what happened was, since the -- this was a Probation Violation for the shooting of my client, uh, the Judge gave him five years. But, I don't know if that was for the CDV or the Probation Violation. And, he had already served three-hundred-and-ninety-three days. But, I mean, it -- it -- it's -- it -- it looks that way anyway. So at the very least, it's worthy of, uh, discovery.

MR. OUTTEN: Your Honor, the fact that Mr. Smith lost the prior case is not a basis upon him appearing in Court and suggesting that my clients cheated in the trial.

MR. SMITH: I'm not suggesting a thing.

MR. OUTTEN: There's no -- there's -- there's no evidence of that at -- at -- at---

THE COURT: I'm going to -- you-all keep it -- you-all keep it calm. I -- I don't -- I mean, this -- this is one in six pages I've got to do.

Well, any of you-all -- anybody else on the Defense have anything in addition? I mean, I -- obviously, with e-filing, I'm going to have to read through this stuff and I haven't because I didn't know what was coming until this morning. But...

MR. WALSH: Your Honor, just I think that the -- the argument for Ms. Blair is similar but just a little different than -- from the law firm's argument because we're not an attorney. But, uh, I guess I would just point out that the pleadings allege tortious interference with contract and there's no evidence that, uh, at first blush that we were -- did anything ourselves to interfere with a contract that the---

THE COURT: What contract?

MR. WALSH: Well, the Plaintiff's contract with his attorney seems to be the allegation.

THE COURT: What -- which contract are you alleging?

MR. SMITH: The contract between my client and myself---

THE COURT: Okay.

MR. SMITH: ---that I would provide him with legal services and -- and clearly---

THE COURT: Okay. I just wanted -- I -- there's no other contract other than that?

MR. WALSH: That -- that -- I mean, that's -- that's what we assumed, and so -- I mean, there's nothing in any of the documentation -- if everything is true about all these actors and Ms. Blair did some kind of deal with Mr. Dunn, I mean that's -- that seems all to have -- should have come out in the tort case. You know, I mean that -- that all is gone. We're not involved in this issue of surveillance or whatever. I mean, I don't know what's wrong with -- with an attorney talking to somebody and -- and trying to figure out the evidence. I mean, that seems very normal in a case. From Ms. -- from Ms. Blair's standpoint, um, I don't hear anything that says that she was an actor in this. She -- you know, she was just a party and she got sued and she won. And so, it seems like there's no evidence of any interference with an attorney relationship, she's just a party. And, uh, based on what's plead, I just don't see anything that's been discussed today that would implicate her in that.

And then -- then we get to the sort of one bite of the apple, res judicata, collateral estoppel---

THE COURT: Right.

MR. WALSH: ---all those other things. But I think, just fundamentally from a legal standpoint, uh -- all these things can be true that, uh, the Plaintiff's counsel alleges, but I don't see how it raises, uh, any inference of a -- of an interference with their relationship between the Plaintiff and the attorney.

So -- so I would just submit, Your Honor, this is a matter of law. Uh, the -- the -- the case that Judge Sprouse is handling, that's the remedy, it seems to me, for Ms. Blair. Um, there's an allegation, I think, of fraud in that case. So if that's where that goes, then that's where that goes. But -- but here, uh, we just don't see on the legal theory alleged that she's in any way -- could be in any way liable for that. And then, whatever she may have done wrong, if that's true, which we would deny of course, um, that could by handled in that other case. So that's---

THE COURT: And that---

MR. WALSH: ---that's our position.

THE COURT: ---and that action is pending now, right?

MR. SMITH: Yes, sir; that -- that cause of action.

THE COURT: In front of Judge Sprouse.

MR. SMITH: Right; premises liability, sort of tort. And -- and then this, of course, is intentional interference with a contract. And these things that he's speaking of, they arose after the trial. June of last year was when it was, uh, when -- when -- when the -- Mr. Dunn was in front of the Judge for pleading out and so forth and Ms. Blair's prayer for relief was -- was heard. It wasn't before the trial.

THE COURT: But it didn't work; he still got revoked.

MR. SMITH: Yes, sir---

THE COURT: Okay.

MR. SMITH: ---but that wasn't -- that wasn't her intent and that wasn't part of the plan -- according to us.

THE COURT: Okay. And I assume, since your guy was working for Gallivan and Boyd it -- it would come under same protections?

MR. HARTE: Yes, Your Honor.

THE COURT: That's it?

MR. HARTE: We stand by everything in our Motion in Limine.

THE COURT: Was he an independent contractor for them or is he employed by them?

MR. HARTE: I have not had enough time to fully explore his professional relationship with them so I don't want to speak on that point, Your Honor.

THE COURT: Do you know anything, I mean, Mr. Outten?

MR. OUTTEN: There's no, uh, there was no written contract. We hired him to -- to conduct some surveillance; yes, sir.

MR. SMITH: It -- it's my understanding, Your Honor, that he works for HUB Enterprises, which is located in Louisiana and that he works for them, not for Gibbs Gow (phonetic/sic) -- Gimms White (sic).

THE COURT: Okay.

MR. SMITH: Gallivan White.

THE COURT: All right; well, let me -- I mean, obviously, I -- I understand you-all's Motions and I will look at it. I'd -- I -- I have to tell you that I think this is probably best taken care of in the other one, but I'm not going to rule before I read it. I mean, I'll save you some time unless you want to watch me read it. I hear it's a fairly -- rather large file.

When was the trial so I -- if I need to go back.

MR. SMITH: November 28th through the 30th---

THE COURT: Of this year?

MR. SMITH: ---of 2016.

THE COURT: '16?

MR. SMITH: Yes, sir.

MR. WALSH: Your Honor, this -- since we're keep talking about it (sic), I understand the case number of that case was 2014-CP-04-2908.

THE COURT: Okay.

MR. WALSH: It's what I understand it is; the last number for that.

THE COURT: Okay. All right, I'll let you-all know something. Don't -- uh, I'm out -- I'm holding Court out of town, um, next week and I'm dealing with my -- both my parents being sick. So, don't hold your breath for this, but it'll -- I'll take it with me to my Dad's tomorrow.

COUNSELS IN UNISON: Thank you, Your Honor.

THE COURT: Okay. And, any of you-all have a problem with me talking to Mr. Outten about something totally separate?

COUNSELS IN UNISON: No, Your Honor.

THE COURT: If you do, I won't. Any problem?

(NEGATIVE NODS.)

(WHEREUPON, HEARING ENDED AT 2:57 P.M.)

*******END OF REQUESTED TRANSCRIPT*******

STATE OF SOUTH CAROLINA)

) CERTIFICATE OF REPORTER

COUNTY OF ANDERSON)

I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA (RETIRED), DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE PROCEEDINGS REQUESTED AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS FOR ANDERSON COUNTY, SOUTH CAROLINA, ON THE 8TH DAY OF FEBRUARY 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

Vivian H. Cross

VIVIAN H. CROSS, COURT REPORTER (RETIRED)

TENTH CIRCUIT AT LARGE

AUGUST 20, 2020

NOTICE OF APPEAL

(March 3, 2020)

ELECTRONICALLY FILED - 2020 Mar 10 2:10 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

FORM 8
LETTER TO THE COURT OF APPEALS CLERK OF COURT
FILING NOTICE OF APPEAL

March 3, 2020

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

RE: John Harbin v. April Blair, et al.
C.A. No. 2017-CP-04-02099

Dear Honorable Kitchings:

Please find enclosed the following documents for filing:

1. Notice of Appeal;
2. A check amounting to Two Hundred and Fifty Dollars ($250.00) as filing fee;
3. Copies of Judge J. Cordell Maddox challenged Orders in the case of John Harbin v. April Blair, et al., C.A. No. 2017-CP-04-02099:

    a. Order, dated February 5, 2019, granting Gallivan White & Boyd's (hereinafter referred as GWB) Motion to Dismiss;
    b. Order, dated February 5, 2019, granting HUB and Shawn Conway's Motion to Dismiss;
    c. Order, dated October 2, 2019, denying Plaintiff's Motion for Reconsideration (vs. GWB);
    d. Order, dated October 2, 2019, denying Plaintiff's Motion for Reconsideration (vs. HUB and Shawn Conway);
    e. Order, dated October 9, 2019, granting GWB's Motion for Sanctions; and,
    f. Order, dated February 3, 2020, denying Motion for Reconsideration on the grant for Motion for Sanctions.

and copies of Transcript Request Forms submitted to Court Reporters Vivian Cross and Dianne Marcengill, and the Office of Court Administration. Enclosed as well is Proof of Service of the same.

RECEIVED
MAR 06 2020
SC Court of Appeals

Sincerely,

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CC: Honorable Richard A. Shirley, Clerk of Court Anderson County Common Pleas Court
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Mr. James Walsh, Esquire
Mr. Tracy Dunn
Office of Court Administration

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FORM 1
NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr, Judge

Case No. 2017-CP-04-02099

RECEIVED
MAR 06 2020
SC Court of Appeals

John Harbin, Appellant,

v.

April Blair, Tracy Dunn, HUB Enterprises, Inc.
Shawn Conway, Gallivan White & Boyd,
Sam Nikopoulos, and John Doe, Respondents.

NOTICE OF APPEAL

The undersigned counsel respectfully appeals Judge J. Cordell Maddox, Jr.'s challenged Orders, including the following:

(1) Order, dated February 5, 2019, granting Gallivan White & Boyd's (hereinafter referred as GWB) Motion to Dismiss;
(2) Order, dated February 5, 2019, granting HUB and Shawn Conway's Motion to Dismiss;
(3) Order, dated October 2, 2019, denying Plaintiff's Motion for Reconsideration (vs. GWB);
(4) Order, dated October 2, 2019, denying Plaintiff's Motion for Reconsideration (vs. HUB and Shawn Conway);
(5) Order, dated October 9, 2019, granting GWB's Motion for Sanctions; and,
(6) Order, dated February 3, 2020, denying Motion for Reconsideration on the grant of GWB's Motion for Sanctions.

The undersigned counsel respectfully reserves the right to pursue the case against Defendants April Blair and Tracy Dunn, to whom no judgment and/or order has been issued in the lower court. For purposes of consistency and to avoid confusion, Appellant is appealing the challenged Orders under its original caption: *John Harbin v. April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos, and John Doe, C.A. No. 2017-CP-04-02099.*

Submitted by:

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Office of Court Administration
1220 Senate Street, Suite 200,
Columbia, SC 29201

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ELECTRONICALLY FILED - 2019 Feb 05 4:02 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON John E. Harbin, Plaintiffs, v. April Blair, Tracy Dunn, Shawn Conway, HUB Enterprises, Inc., Gallivan, White & Boyd, Sam Nikopoulos and John Doe, Defendants.	)	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT Civil Action No. 2017-CP-04-02099 **ORDER GRANTING DEFENDANT HUB ENTERPRISES, INC.'S AND DEFENDANT SHAWN CONWAY'S MOTION TO DISMISS**

RECEIVED
MAR 06 2020
SC Court of Appeals

This matter comes before the Court on Defendants HUB Enterprises, Inc. ("HUB") and Shawn Conway ("Conway") (collectively "Defendants") Motion to Dismiss the Plaintiff's Amended Complaint. For the reasons set forth below, Defendants' Motion is GRANTED.

FACTS

The Plaintiff's Amended Complaint alleges a claim of tortious interference with contractual relations. Plaintiff alleges that, on June 21, 2014, he was shot in the lower right extremity by Defendant Tracy Dunn ("Dunn") while on the property of Defendant April Blair ("Blair"). Am. Compl., ¶¶ 22-30. After that shooting occurred, several related legal proceedings followed. First, Dunn was charged with a criminal offense; he would later plead guilty to Assault and Battery of a High and Aggravated Nature and receive a probationary sentence. Am. Compl. ¶ 34. Second, Plaintiff filed a complaint naming Blair and Dunn as defendants. Am. Compl., ¶ 31. Dunn failed to answer that complaint or otherwise file a responsive pleading. Am. Compl., ¶ 32. Blair had homeowners insurance coverage through State Farm Insurance Company and was represented

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during that litigation by counsel from the law firm of Defendant Gallivan, White & Boyd ("GWB"). Prior to trial of the case, GWB made a settlement offer on behalf of Blair to Plaintiff. That offer was rejected. At trial, the jury returned a defense verdict for Blair. Am. Compl., ¶ 44. Thereafter, GWB moved for an order granting costs for all expenses incurred from the date the settlement offer was made. Attached to the motion was an affidavit in support, including Exhibit I, an invoice from HUB for three (3) days of attempted surveillance on Plaintiff by its employee Conway. The trial court granted that motion. Plaintiff moved for a new trial, arguing that GWB's failure to disclose Conway's attempted surveillance on Plaintiff was newly discovered evidence that entitled him to a new trial. The trial court denied that motion. Plaintiff now alleges that HUB and Conway tortuously interfered with his contractual relationship with his attorney, Donald Smith. Am. Compl., ¶¶ 70-81.

STANDARD OF REVIEW

A motion to dismiss must be based solely upon the allegations set forth in the Amended Complaint. Rule 12(b)(6), SCRCP; Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 209, 500 S.E.2d 793, 794, (Ct.App.1998). The Court should view the evidence in the light most favorable of the Plaintiff, and, if facts alleged in the Amended Complaint and inferences reasonably deduced therefrom do not entitle Plaintiff to relief, then the motion to dismiss must be granted. Jarrell, 331 S.C. at 209, 500 S.E.2d at 794. See also Douglass ex rel. Louthian v. Boyce, 336 S.C. 318, 519 S.E.2d 802 (Ct. App. 1999), aff'd, 344 S.C. 5, 542 S.E.2d 715 (2001) (holding the trial court properly dismissed action under 12(b)(6), SCRCP); Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995) (affirming trial court's dismissal of action under 12(b)(6), SCRCP).

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ARGUMENT

The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. Camp v. Springs Mortgage Corp., 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993). An essential element to the cause of action for tortious interference with contractual relations requires the intentional procurement of the contract's breach. Kinard v. Crosby, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993). Where there is no breach of the contract, there can be no recovery. First Union Mortg. Corp. v. Thomas, 317 S.C. 63, 73, 451 S.E.2d 907, 913 (Ct. App. 1994).

In the instant case, Plaintiff has failed to plead any facts or circumstances evincing a breach of the contract between Plaintiff and his attorney, Donald Smith. In pertinent part, Plaintiff's Amended Complaint alleges the following:

> 70. Plaintiff entered into a contract with his attorney to pursue litigation against Blair and Dunn.
>
> 71. Defendants were aware that a contract existed based on the fact that they were all participants in the litigation in some capacity.
>
> 77. Conway signed an affidavit which attested to the fact that he had provided surveillance on Harbin, on behalf of Blair, but had *never seen him*, and, therefore, he is responsible as an individual for interfering with Plaintiff's contract. (emphasis in original).

78. HUB Enterprises, Inc. was retained by Gallivan, White & Boyd to provide surveillance on John Harbin for the underlying tort action brought by Harbin and, therefore, it is responsible for the conduct of Conway pursuant to *respondeat superior*, and, therefore, it is responsible for interfering with Plaintiff's contract.

80. As a result of the intentional interference with Plaintiff's contract, all named Defendants prevented Harbin from getting the damages for which he was entitled due to the shooting.

These allegations, even if taken as true, fail to establish that the contract between Plaintiff and his attorney was breached. The Plaintiff has failed to include any allegations of any acts or omissions by HUB or Conway warranting the inference that either of their intentional actions procured the breach of the contract.

IT IS THEREFORE ORDERED that Defendant HUB Enterprise, Inc.'s and Defendant Shawn Conway's Motion to Dismiss is GRANTED.

IT IS SO ORDERED.

The Honorable R. Lawton McIntosh
Tenth Judicial Circuit

Anderson, South Carolina
November _____, 2018

ELECTRONICALLY FILED - 2019 Feb 06 4:02 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

ELECTRONICALLY FILED - 2019 Mar 05 4:02 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Order/Dismissal

So Ordered

s/ J. Cordell Maddox Jr.

ELECTRONICALLY FILED - 2020 Mar 10 2:01 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin, Plaintiff, vs. April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe, Defendants.	)	Civil Action No. 2017-CP-04-02099 **ORDER**

RECEIVED
MAR 06 2020
SC Court of Appeals

Gallivan White & Boyd's and Sam Nikopoulos' (collectively "GWB") Motion to Dismiss came before the Court for hearing on February 8, 2018. Donald L. Smith appeared on behalf of Plaintiff. Samuel W. Outten appeared on behalf of GWB. Having heard the arguments and reviewed the submissions of the parties, GWB's Motion to Dismiss Plaintiff's Amended Complaint is hereby granted for the following reasons.

FACTUAL ALLEGATIONS OF THE COMPLAINT

The allegations of Plaintiff's Amended Complaint arise from an underlying dispute that Plaintiff had with April Blair and Tracy Dunn. Plaintiff was shot by Dunn in the leg while he was at Blair's house. GWB represented Blair, who had homeowners coverage through State Farm Insurance Company ("State Farm"), in a suit brought by Plaintiff. Sam Nikopoulos served as an operations assistant and provided courier services at Gallivan White & Boyd at the time of this dispute. At trial, the jury returned a defense verdict for Blair. Plaintiff's Amended Complaint relates to this underlying lawsuit, and states one cause of action for tortious interference with contract.

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RULING

GWB was at all times acting as counsel for Blair. Based upon the legal principle announced in *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 399 S.E.2d 887 (Ct. App. 1986), and then affirmed in the cases of *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995) and *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010), a lawyer has no liability to a non-client third party for actions taken in the representation of a client. A review of the allegations of Plaintiff's Amended Complaint confirms that GWB is named as a defendant in this action solely by virtue of their representation of Blair in the underlying lawsuit.

The allegations in Plaintiff's Amended Complaint also fail because a law firm is not responsible pursuant to *respondeat superior* for actions taken by an investigative firm that it hires. The Amended Complaint's only specific allegation against GWB is that Defendant HUB Enterprises, Inc. was retained by the law firm to provide surveillance of Plaintiff and, therefore, it is responsible for the conduct of the investigator pursuant to *respondeat superior*. This allegation is conclusory and Plaintiff did not allege facts sufficient to support this claim. As a general rule, an employer is not vicariously liable for the torts of an independent contractor committed in the performance of contracted work. *See Rock Hill Tel. Co., Inc. v. Globe Commc'ns, Inc.*, 363 S.C. 385, 390, 611 S.E.2d 235, 238 (2005); *Duane v. Presley Constr. Co., Inc.*, 270 S.C. 682, 683, 244 S.E.2d 509, 510 (1978). GWB cannot be held vicariously liable for HUB Enterprises, Inc.'s alleged tortious interference with contract.

Therefore, GWB's Motion to Dismiss is hereby granted, and Plaintiff's Amended Complaint against them is dismissed with prejudice.

IT IS SO ORDERED.

J. Cordell Maddox, Jr.
Presiding Judge, Tenth Judicial Circuit

Anderson, South Carolina
_____, 2019

ELECTRONICALLY FILED - 2019 Feb 19 04:07 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2019-02-05 15:42:41 page 4 of 4

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ELECTRONICALLY FILED - 2020 Mar 06 2:19 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin, Plaintiff, vs. April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe, Defendants.	)	Civil Action No. 2017-CP-04-02099 **ORDER**

RECEIVED
MAR 06 2020
SC Court of Appeals

Plaintiff John E. Harbin's Motion to Reconsider came before the Court for hearing on July 11, 2019. Donald L. Smith appeared on behalf of Plaintiff. Samuel W. Outten appeared on behalf of Gallivan White & Boyd and Sam Nikopoulos (collectively, "GWB"). Having heard the arguments and reviewed the submissions of the parties, Plaintiff's Motion to Reconsider is hereby denied for the reasons stated below.

BACKGROUND

In a prior lawsuit brought by Plaintiff, GWB represented one of the defendants, April Blair. After a trial before the Honorable J. Cordell Maddox, Jr., the jury returned a defense verdict in favor of GWB's client. Plaintiff appealed the jury verdict and made various post-trial motions, all of which were denied.

Plaintiff then filed the instant lawsuit on October 9, 2017. The allegations of the Complaint were nearly identical to those in the prior lawsuit. Plaintiff's Amended Complaint stated only one cause of action against GWB for tortious interference with contract, alleging that GWB interfered with the attorney-client contract between Plaintiff and his attorney, Donald L. Smith. GWB made

a Motion to Dismiss the Amended Complaint on November 22, 2017. This Motion, as well as similar motions filed by the other Defendants, was granted by this Court. This Court held that a lawyer cannot be liable to non-client third parties for actions taken in the representation of a client. Furthermore, this Court found that a law firm is not responsible pursuant to *respondeat superior* for actions taken by an investigative firm that it hires. Following the Court's Order, Plaintiff filed a Motion to Reconsider on February 15, 2019.

RULING

Rule 59(e) of the South Carolina Rules of Civil Procedure allows a court to alter or amend a judgment upon a party's timely motion. A motion under Rule 59(e) has long been viewed as a "motion for reconsideration." *Elam v. S.C. Dep't of Transp.*, 361 SC. 9, 21, 602 S.E.2d 772, 778 (2004). Under South Carolina law, a motion to reconsider pursuant to Rule 59(e), SCRCP, is appropriate in two basic situations. First, "[a] party *may* wish to file such a motion when [he] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id.* at 24, 602 S.E.2d at 780. Second, "[a] party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.* However, "[a] party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not." *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014).

Plaintiff's Motion to Reconsider does not identify any point of law or fact that the Court misunderstood, did not fully consider, or failed to rule upon. Plaintiff's dissatisfaction with the outcome of the underlying litigation and the instant action is not grounds for relief under Rule 59. *See Elam*, 361 S.C. at 24, 602 S.E.2d at 780.

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ELECTRONICALLY FILED - 2019 Oct 02 2:30 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

Furthermore, the Court granted GWB's Motion to Dismiss based upon the clear legal principle that a lawyer has no liability to a non-client third party for actions taken in the representation of a client. See *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 399 S.E.2d 887 (Ct. App. 1986); *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010). A review of the allegations of Plaintiff's Amended Complaint confirms that GWB is named as a defendant in this action solely by virtue of their representation of Blair in the underlying lawsuit. Thus, the Court dismissed Plaintiff's Complaint against GWB with prejudice based on the above-cited case law.

Furthermore, the Court granted GWB's Motion to Dismiss because GWB was not vicariously liable for the alleged torts of Defendant HUB Enterprises, Inc., an independent contractor that GWB hired to provide surveillance of Plaintiff during the underlying lawsuit. As a general rule, an employer is not vicariously liable for the torts of an independent contractor committed in the performance of contracted work. *See Rock Hill Tel. Co., Inc. v. Globe Commc'ns, Inc.*, 363 S.C. 385, 390, 611 S.E.2d 235, 238 (2005); *Duane v. Presley Constr. Co., Inc.*, 270 S.C. 682, 683, 244 S.E.2d 509, 510 (1978).

For these reasons, Plaintiff's Motion to Reconsider is hereby denied.

IT IS SO ORDERED.

_____

J. Cordell Maddox, Jr.
Presiding Judge, Tenth Judicial Circuit

Anderson, South Carolina
_____, 2019

Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

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ELECTRONICALLY FILED - 2020 Mar 06 2:14 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin, Plaintiffs, v. April Blair, Tracy Dunn, Shawn Conway, HUB Enterprises, Inc., Gallivan, White & Boyd, Sam Nikopoulos and John Doe, Defendants.	)	Civil Action No. 2017-CP-04-02099 **ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION**

RECEIVED
MAR 06 2020
SC Court of Appeals

This matter comes before the Court upon Plaintiff John Harbin's Motion for Reconsideration of the Court's February 6, 2019 Order Granting Defendants HUB Enterprises, Inc. and Shawn Conway's Motion to Dismiss the Plaintiff's Amended Complaint.

The Court has carefully reviewed Plaintiff's Motion for Reconsideration. However, the Motion does not raise any issue or point of law that was previously argued or raised to the Court, nor does it call the Court's attention to a possible misapprehension of Plaintiff's previous arguments.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

The Honorable J. Cordell Maddox
Tenth Judicial Circuit

Anderson, South Carolina
September 27, 2019

Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

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ELECTRONICALLY FILED - 2020 Mar 06 2:14 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin, Plaintiff, vs. April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe, Defendants.	)	Civil Action No. 2017-CP-04-02099 **ORDER**

RECEIVED
MAR 06 2020
SC Court of Appeals

Gallivan White & Boyd's and Sam Nikopoulos' (collectively "GWB") Motion for Sanctions came before the Court for hearing on July 11, 2019. Donald L. Smith appeared on behalf of Plaintiff. Samuel W. Outten appeared on behalf of GWB. Having heard the arguments and reviewed the submissions of the parties, GWB's Motion for Sanctions is hereby granted for the reasons stated below.

BACKGROUND

I. The Prior Lawsuit

John E. Harbin ("Harbin" or "Plaintiff") had a dispute with April Blair and Tracy Dunn, resulting in Harbin being shot by Dunn in the leg while he was at Blair's house. Harbin sued Blair and Dunn for negligence, assault and battery, defamation, slander, and premises liability. *See John E. Harbin v. April Black and Tracy Dunn,* C.A. No. 2014-CP-04-02908 (the "Prior Lawsuit"). GWB represented Blair, who had homeowners coverage through State Farm Insurance Company. The case went to trial, and the jury returned a verdict for Blair. Harbin appealed the jury verdict and made various post-trial motions, all of which were denied.

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II. The Current Lawsuit

Plaintiff filed this lawsuit on October 9, 2017 (the "Current Lawsuit"). The allegations of the Complaint were nearly identical to those in the Prior Lawsuit. Plaintiff's Amended Complaint stated only one cause of action against GWB for tortious interference with contract, alleging that GWB interfered with the attorney-client contract between Plaintiff and his attorney, Donald L. Smith ("Smith"). GWB made a Motion to Dismiss the Amended Complaint on November 22, 2017. This Motion, as well as similar motions filed by the other Defendants, was granted by this Court. This Court held that a lawyer cannot be liable to non-client third parties for actions taken in the representation of a client. Furthermore, this Court found that a law firm is not responsible pursuant to *respondeat superior* for actions taken by an investigative firm that it hires. Following the Court's Order, Plaintiff filed a Motion to Reconsider on February 15, 2019. This Motion was denied by the Court.

RULING

Pursuant to the Frivolous Civil Proceedings Sanctions Act ("FCPSA"), an attorney may be sanctioned for filing a frivolous pleading, motion or document, or making frivolous arguments that are not reasonably supported by the facts or existing law. S.C. CODE ANN. § 15-36-10(A)(4)(a)-(c). Sanctions may include an order that the party pay the reasonable costs and attorneys' fees of the prevailing party resulting from the frivolous proceeding. *Id.* at § 15-36-10(G)(1).

The initiation of this Current Lawsuit was an improper attempt to relitigate the Prior Lawsuit. The Current Lawsuit is based upon the same facts that were raised in the prior lawsuit. After reviewing post-trial motions for a new trial, the trial judge found no reason to disturb the jury's verdict. A party's dissatisfaction with the outcome of a trial cannot be the basis for a retrial of those issues.

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The Court finds that any reasonable attorney would believe that the filing of the Current Lawsuit was frivolous. When Plaintiff's efforts to overturn the jury verdict failed, Plaintiff and Smith decided to bring this action to relitigate these issues. Thus, Smith's filing of the Complaint constitutes a sanctionable action under the FCPSA.

Furthermore, as this Court previously held in its Order granting GWB's Motion to Dismiss, case law from the South Carolina Court of Appeals and Supreme Court squarely addresses the question of whether a lawyer can be held liable to a non-client third party for actions taken in the representation of a client. Based upon the legal principle announced in *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 399 S.E.2d 887 (Ct. App. 1986), and then affirmed in the cases of *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995) and *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010), a lawyer has no liability to a non-client third party for actions taken in the representation of a client. A review of the allegations of Plaintiff's Amended Complaint confirms that GWB is named as a defendant in this action solely by virtue of their representation of Blair in the underlying lawsuit. Through the exercise of minimal diligence, Smith could have located these cases. Instead, it is apparent that Smith failed to assess whether case law supported his theories of liability against GWB.

The Court is particularly concerned with the filing of this action given that Smith was previously sanctioned by this Court in 2016 for similar conduct. *See* Feb. 6, 2016 Order, *Gregg Battersby v. J. Kirkman Moorhead, Krause, Moorhead & Draisen, P.A., Allstate Insurance Company, and Allstate Northbrook Indemnity Company*, C.A. No. 2015-CP-04-00667. In that case, Smith brought a complaint alleging that attorneys were liable to the plaintiff for damages arising out of the attorneys' representation of their client. The Honorable R. Lawton McIntosh found that no reasonable attorney would have brought the plaintiff's claims against the attorneys

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Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Order/Sanctions

So Ordered

s/ J. Cordell Maddox Jr.

given the well-established case law on attorney immunity, and awarded attorneys' fees and costs for defending the lawsuit and bringing the motion for sanctions.

In light of the fact that Smith was previously sanctioned for this same conduct, and the clear rulings from our state's appellate courts, a reasonable attorney would not have filed and pursued this action against GWB because it was clearly not warranted under existing law. Thus, Smith violated the limitations established by the FCPSA, and this Court finds that he should be required to reimburse GWB for the attorneys' fees and costs incurred in bringing this Motion for Sanctions.

Therefore, GWB's Motion for Sanctions is hereby granted, and Plaintiff's attorney, Donald L. Smith, is ordered to pay GWB $13,081.74 as reimbursement for the attorneys' fees and costs incurred in bringing this Motion for Sanctions.

IT IS SO ORDERED.

_____
J. Cordell Maddox, Jr.
Presiding Judge, Tenth Judicial Circuit

Anderson, South Carolina
_____, 2019

ELECTRONICALLY FILED - 2019 Oct 01 04:48 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS CASE NO.: 2017-CP-04-02099
John E. Harbin, *Plaintiff,* vs. April Blair, Tracy Dunn HUB Enterprises, Inc., Shawn Conway Gallivan White & Boyd, Sam Nikopoulos, and John Doe *Defendants.*	)	**ORDER**

The Plaintiff filed this Motion for Reconsideration on October 21, 2019. After careful review and consideration of the record and arguments, the Court finds that the Motion should be denied.

IT IS SO ORDERED.

The Honorable J. Cordell Maddox, Jr.

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SC Court of Appeals

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ELECTRONICALLY FILED 2020 Feb 03 1:07 PM ANDERSON COMMON PLEAS - CASE#2017CP0402099

Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

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Transcript Request Form

Pursuant to Rule 207 and 607 of the South Carolina Appellate Court Rules, the transcribed paper copy is the official record of court proceedings. You may request a transcript by completing this form and emailing it to the Court Reporter and to South Carolina Court Administration at transcripts@sccourts.org. Click here for instructions on how to find the court reporter's email and mailing addresses. Once the court reporter receives your request, it will be processed pursuant to Rule 207 and 607 of the SCACR. Rule 607(h) governs the fees for transcripts, which are not provided for free or at reduced rates to **any** party. Please send by mail a money order or certified bank check to the court reporter in order to obtain the transcript. Some court reporters may accept personal checks. Please check with the court reporter to see if this option is available. Once your request is received, you will receive a copy of this form with the bottom portion completed. Please promptly submit your payment in order for the transcript to be provided. If you need to cancel the transcript request for any reason, you are responsible for paying for the pages of the transcript that have already been completed at the time of the cancellation.

Requestor's Information			
Full Name Donald L. Smith	**Phone Number** (864) 642-9284	**Email Address** (864) 642-9285	
Mailing Address 122 North Main St.,	**City** Anderson	**State** SC	**Zip Code** 29621

Transcript Information			
Docket Number 2017-CP-04-02099	**Case Caption** (i.e. State v. John Doe or Smith v. Smith) John Harbin v. April Blair, et al.		
Date(s) of Proceeding February 8, 2018	**Circuit** ☒ **Family** ☐	**County** Anderson	
Presiding Judge Hon. Judge J. Cordell Maddox, Jr.	**Expedited**	**Yes** ☐ **No** ☒	
Court Reporter(s) Viviam Cross _____	**Opposing Counsel** Mr. Samuel W. Outten, Esq., Steven J. Pugh, Esq., R Wilder Harte, Esq., James P. Walsh, Esq. _____		

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MAR 06 2020
SC Court of Appeals

Requestor's Signature: *s/Donald L. Smith* **Date:** 03/03/2020
(Typed name will serve as signature)

Note: If you are ordering a transcript pursuant to Rule 207(a)(1), SCACR, you must contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.

For Court Reporter Use Only			
Full Name _____	**Date Received** _____	**Email Address** _____	
Notice of Estimate to Requestor Party Date: _____ Number of Pages: _____ Estimated Amount _____			
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Pursuant to Rule 207 and 607 of the South Carolina Appellate Court Rules, the transcribed paper copy is the official record of court proceedings. You may request a transcript by completing this form and emailing it to the Court Reporter and to South Carolina Court Administration at transcripts@sccourts.org. Click here for instructions on how to find the court reporter's email and mailing addresses. Once the court reporter receives your request, it will be processed pursuant to Rule 207 and 607 of the SCACR. Rule 607(h) governs the fees for transcripts, which are not provided for free or at reduced rates to **any** party. Please send by mail a money order or certified bank check to the court reporter in order to obtain the transcript. Some court reporters may accept personal checks. Please check with the court reporter to see if this option is available. Once your request is received, you will receive a copy of this form with the bottom portion completed. Please promptly submit your payment in order for the transcript to be provided. If you need to cancel the transcript request for any reason, you are responsible for paying for the pages of the transcript that have already been completed at the time of the cancellation.

Requestor's Information			
Full Name Donald L. Smith	**Phone Number** (864) 642-9284	**Email Address** attorneydonaldsmith@gmail.com	
Mailing Address 122 North Main St.,	**City** Anderson County	**State** SC	**Zip Code** 29621

Transcript Information			
Docket Number 2017-CP-04-02099	**Case Caption** (i.e. State v. John Doe or Smith v. Smith) John Harbin v. April Blair, et. al.		
Date(s) of Proceeding July 11, 2019	**Circuit** ☒ **Family** ☐	**County** Anderson	
Presiding Judge Hon. Judge J. Cordell Maddox, Jr.	**Expedited** **Yes** ☐ **No** ☒		
Court Reporter(s) Dianne Marcengill _____	**Opposing Counsel** Samuel W. Outten, Esq., Steven J. Pugh, Esq., R Wilder Harte, Esq., James P. Walsh, Esq. _____		

RECEIVED
MAR 06 2020
SC Court of Appeals

Requestor's Signature: ***s/Donald L. Smith*** **Date:** 03/03/202
(Typed name will serve as signature)

Note: If you are ordering a transcript pursuant to Rule 207(a)(1), SCACR, you must contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.

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Full Name _____	**Date Received** _____	**Email Address** _____	
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FORM 9
LETTER TO CLERK OF LOWER COURT

March 3, 2020

The Honorable Richard A. Shirley
Clerk of Court for Anderson County
Post Office Box 8002
Anderson, South Carolina 29622

RECEIVED
MAR 06 2020
SC Court of Appeals

RE: John Harbin v. April Blair, et. al.
C.A. No: 2017-CP-04-02099

Dear Honorable Shirley:

Please find enclosed a copy of Appellant's Notice of Appeal, which I have filed in the above-captioned case. Attached are copies of Judge J. Cordell Maddox, Jr.'s challenged Orders:

a. Order, dated February 5, 2019, granting Gallivan White & Boyd's (hereinafter referred as GWB) Motion to Dismiss;
b. Order, dated February 5, 2019, granting HUB and Shawn Conway's Motion to Dismiss;
c. Order, dated October 2, 2019, denying Plaintiff's Motion for Reconsideration (vs. GWB);
d. Order, dated October 2, 2019, denying Plaintiff's Motion for Reconsideration (vs. HUB and Shawn Conway);
e. Order, dated October 9, 2019, granting GWB's Motion for Sanctions; and,
f. Order, dated February 3, 2020, denying Motion for Reconsideration on the grant for Motion for Sanctions.

and copies of Transcript Request Forms submitted to Court Reporters Vivian Cross and Dianne Marcengill and the Office of Court Administration. Enclosed as well is Proof of Service of the same.

The undersigned counsel respectfully reserves the right to pursue the case against Defendants April Blair and Tracy Dunn, to whom no judgment and/or order has been issued in the lower court.

If you have any questions or concerns regarding the enclosed materials, please do not hesitate to contact my office to discuss.

Sincerely,

Donald L. Smith, (Bar#6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

Cc: Hon. Jenny Abbott Kitchings, Clerk of South Carolina Court of Appeals
Mr. Samuel Outten, Esquire
Mr. Steven J. Pugh, Esquire
Mr. Wilder Harte, Esquire
James P. Walsh, Esquire
Tracy Dunn
Office of Court Administration

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FORM 7
PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAR 06 2020
SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr, Judge

Case No. 2017-CP-04-02099

John Harbin,

Appellant,

v.

April Blair, Tracy Dunn, HUB Enterprises, Inc.
Shawn Conway, Gallivan White & Boyd,
Sam Nikopoulos, and John Doe,

Respondents,

PROOF OF SERVICE

I certify that I have served a copy of the Notice of Appeal, Challenged Orders, Transcript Requests for Court Reporters, and Proof of Service of same, upon The Honorable Jenny Abbott Kitchings, Clerk of South Carolina Court of Appeals, located at Post Office Box 11629, Columbia, SC 29211; The Honorable Richard A. Shirley, Clerk of Court for Anderson County, located at Post Office Box 8002, Anderson, South Carolina 29622; the Respondents Gallivan White & Boyd and Sam Nikopoulos, by and through their counsel of record, Mr. Samuel W. Otten, Esquire, at 2 W. Washington St. Suite 400, Post Office Box 10084 (29603-0084), Greenville, South Carolina 29601; Respondents Shawn Conway and HUB Enterprises, by and through their counsel of record, Mr. Steven J. Pugh, Esquire and R. Wilder Harte, Esquire at Richardson Plowden and Robinson, P.A. located at Post Office Drawer 7788 (29202), 1900 Barnwell St., Columbia, SC 29201; Respondent April Blair, by and through her counsel of record, Mr. James P. Walsh, at P.O. Box 6728, Greenville, SC 29606; Respondent Tracy Dunn, at Office of General Counsel, South Carolina Department of Corrections, Post Office Box 21787, Columbia, SC 29221-1787; and, the Office of Court Administration, at 1220 Senate Street, Suite 200, Columbia, SC 29201, by depositing copies of it in the United States Mail, postage prepaid, on March 3, 2020.

Donald L. Smith (Bar No.: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

Anderson, South Carolina
March 3, 2020.

ELECTRONICALLY FILED - 2020 Mar 10 2:10 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

SECOND NOTICE OF APPEAL

(August 5, 2020)

FORM 1
NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

_____

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr, Judge

_____

Case No. 2017-CP-04-02099

_____

RECEIVED
Aug 11 2020
SC Court of Appeals

John Harbin,

Appellant,

v.

April Blair, Tracy Dunn, HUB Enterprises, Inc.
Shawn Conway, Gallivan White & Boyd,
Sam Nikopoulos, and John Doe,

Respondents.

_____

SECOND NOTICE OF APPEAL

_____

The undersigned counsel respectfully appeals Judge J. Cordell Maddox, Jr.'s challenged Orders, dated April 7, 2020 and July 20, 2020, respectively.

Submitted by:

s/Donald L. Smith
Donald L. Smith (Bar No.:6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

Anderson, South Carolina
August 5, 2020.

Other Counsel of Record

Mr. Samuel W. Otten, Esquire
2 W. Washington St. Suite 400,
Nelson Mullins
Post Office Box 10084 (29603-0084),
Greenville, South Carolina 29601

Attorney for Respondents Gallivan White & Boyd and Sam Nikopoulos

Mr. Steven J. Pugh, Esquire
Mr. R. Wilder Harte, Esquire
Richardson Plowden & Robinson, P.A.
Post Office Drawer 7788 (29202)
1900 Barnwell St.
Columbia, SC 29201

Attorney for Respondents HUB Enterprises, Inc & Shawn Conway

Mr. James Walsh, Esquire
Clarkson Walsh & Coulter, P.A.
P.O Box 6728
Greenville, SC 29606

Attorney for Respondent April Blair

Mr. Tracy Dunn
Inmate No. 00279454
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787,
Columbia, SC 29221-1787
Respondent

FORM 7
PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

_____

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr, Judge

_____

Case No. 2017-CP-04-02099

_____

RECEIVED
Aug 11 2020
SC Court of Appeals

John Harbin, Appellant,

v.

April Blair, Tracy Dunn, HUB Enterprises, Inc.,
Shawn Conway, Gallivan White & Boyd,
Sam Nikopoulos, and John Doe, Respondents,

_____

PROOF OF SERVICE

_____

Pursuant to Supreme Court of South Carolina's Amended Order 2020-05-29-02, I certify that I have served a copy of Appellant's Second Notice of Appeal, Challenged Orders, and Proof of Service, upon The Honorable Jenny Abbott Kitchings, Clerk of South Carolina Court of Appeals, The Honorable Richard Shirley, Anderson County Clerk of Court and the Respondents, by and through their respective counsel of record, via the Attorney Information System in the addresses as follows:

Ms. Jenny Abbott-Kitchings	ctappfilings@sccourts.org
Mr. Richard Shirley	rshirley@andersoncountysc.org

Attorneys for Defendants Gallivan White & Boyd, PA and Sam Nikopoulos:

Mr. Alfred Johnston Cox, Esquire	jcox@gwblawfirm.com
Ms. Jessica W. Laffitte, Esquire	jlaffitte@gwblawfirm.com
Mr. Samuel W. Outten, Esquire	sam.outten@nelsonmullins.com
Ms. Katie Elizabeth Towery, Esquire	katie.towery@nelsonmullins.com

Attorneys for Defendants Shawn Conway and HUB Enterprise, Inc.

Mr. Robert Wilder Hart — wharte@richardsonplowden.com
Mr. Steven James Pugh — spugh@richardsonplowden.com

Attorney for Defendant April Blair

Mr. James P. Walsh — jwalsh@clarksonwalsh.com

For Defendant Tracy Dunn
Office of General Counsel — legalmailservice@doc.sc.gov

A copy of this Notice and Motion are served upon Defendant Tracy Dunn, by and through the Office of General Counsel, at his last known address at the South Carolina Department of Corrections, Post Office Box 21787, Columbia, SC 29221-1787, by depositing a copy of it in the United States Mail, postage prepaid, on August 5, 2020.

The above-mentioned documents have been served on August 5, 2020.

s/Donald L. Smith
Donald L. Smith, (Bar No.: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

Anderson, South Carolina
August 5, 2020

FORM 9
LETTER TO CLERK OF LOWER COURT

August 5, 2020

RECEIVED
Aug 11 2020
SC Court of Appeals

The Honorable Richard A. Shirley
Clerk of Court for Anderson County
Post Office Box 8002
Anderson, South Carolina 29622

RE: John Harbin v. April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopolous, and John Doe
C.A. No. 2017-CP-04-02099

Dear Mr. Shirley:

Please find enclosed a copy of Appellant's Second Notice of Appeal, which I have filed in the above-captioned case. Attached are copies of Judge J. Cordell Maddox, Jr.'s challenged Orders:

a. Order, dated April 7, 2020, granting April Blair's Motion to Dismiss.
b. Order, dated July 20, 2020, denying Plaintiff's Motion for Reconsideration.

Enclosed as well is Proof of Service of the same.

If you have any questions or concerns regarding the enclosed materials, please do not hesitate to contact my office to discuss.

Sincerely,

_____

Donald L. Smith, (Bar#6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

Cc: Hon. Jenny Abbott Kitchings, Clerk of South Carolina Court of Appeals
Mr. Samuel W. Otten, Esquire
Mr. Steven J. Pugh, Esquire
Mr. R. Wilder Harte, Esquire
Mr. James Walsh, Esquire
Mr. Tracy Dunn
Office of Court Administration

92359

FORM 1
NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr, Judge

Case No. 2017-CP-04-02099

RECEIVED
MAR 06 2020
SC Court of Appeals

John Harbin, Appellant,

v.

April Blair, Tracy Dunn, HUB Enterprises, Inc.
Shawn Conway, Gallivan White & Boyd,
Sam Nikopoulos, and John Doe, Respondents.

NOTICE OF APPEAL

The undersigned counsel respectfully appeals Judge J. Cordell Maddox, Jr.'s challenged Orders, including the following:

(1) Order, dated February 5, 2019, granting Gallivan White & Boyd's (hereinafter referred as GWB) Motion to Dismiss;
(2) Order, dated February 5, 2019, granting HUB and Shawn Conway's Motion to Dismiss;
(3) Order, dated October 2, 2019, denying Plaintiff's Motion for Reconsideration (vs. GWB);
(4) Order, dated October 2, 2019, denying Plaintiff's Motion for Reconsideration (vs. HUB and Shawn Conway);
(5) Order, dated October 9, 2019, granting GWB's Motion for Sanctions; and,
(6) Order, dated February 3, 2020, denying Motion for Reconsideration on the grant of GWB's Motion for Sanctions.

The undersigned counsel respectfully reserves the right to pursue the case against Defendants April Blair and Tracy Dunn, to whom no judgment and/or order has been issued in the lower court. For purposes of consistency and to avoid confusion, Appellant is appealing the challenged Orders under its original caption: *John Harbin v. April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos, and John Doe, C.A. No. 2017-CP-04-02099.*

Submitted by:

Donald L. Smith (Bar No.:6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

Anderson, South Carolina
March 3, 2020.

Other Counsel of Record

Mr. Samuel W. Otten, Esquire
2 W. Washington St. Suite 400,
Nelson Mullins
Post Office Box 10084 (29603-0084),
Greenville, South Carolina 29601

Attorney for Respondents Gallivan White & Boyd and Sam Nikopoulos

Mr. Steven J. Pugh, Esquire
Mr. R. Wilder Harte, Esquire
Richardson Plowden & Robinson, P.A.
Post Office Drawer 7788 (29202)
1900 Barnwell St.
Columbia, SC 29201

Attorney for Respondents HUB Enterprises, Inc & Shawn Conway

Mr. James Walsh, Esquire
Clarkson Walsh & Coulter, P.A.
P.O Box 6728
Greenville, SC 29606

Attorney for Respondent April Blair

Mr. Tracy Dunn
Inmate No. 00279454
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787,
Columbia, SC 29221-1787
Respondent

Office of Court Administration
1220 Senate Street, Suite 200,
Columbia, SC 29201

FORM 7
PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr, Judge

RECEIVED
MAR 06 2020
SC Court of Appeals

Case No. 2017-CP-04-02099

John Harbin, Appellant,

v.

April Blair, Tracy Dunn, HUB Enterprises, Inc.
Shawn Conway, Gallivan White & Boyd,
Sam Nikopoulos, and John Doe, Respondents,

PROOF OF SERVICE

I certify that I have served a copy of the Notice of Appeal, Challenged Orders, Transcript Requests for Court Reporters, and Proof of Service of same, upon The Honorable Jenny Abbott Kitchings, Clerk of South Carolina Court of Appeals, located at Post Office Box 11629, Columbia, SC 29211; The Honorable Richard A. Shirley, Clerk of Court for Anderson County, located at Post Office Box 8002, Anderson, South Carolina 29622; the Respondents Gallivan White & Boyd and Sam Nikopoulos, by and through their counsel of record, Mr. Samuel W. Otten, Esquire, at 2 W. Washington St. Suite 400, Post Office Box 10084 (29603-0084), Greenville, South Carolina 29601; Respondents Shawn Conway and HUB Enterprises, by and through their counsel of record, Mr. Steven J. Pugh, Esquire and R. Wilder Harte, Esquire at Richardson Plowden and Robinson, P.A. located at Post Office Drawer 7788 (29202), 1900 Barnwell St., Columbia, SC 29201; Respondent April Blair, by and through her counsel of record, Mr. James P. Walsh, at P.O. Box 6728, Greenville, SC 29606; Respondent Tracy Dunn, at Office of General Counsel, South Carolina Department of Corrections, Post Office Box 21787, Columbia, SC 29221-1787; and, the Office of Court Administration, at 1220 Senate Street, Suite 200, Columbia, SC 29201, by depositing copies of it in the United States Mail, postage prepaid, on March 3, 2020.

Donald L. Smith (Bar No.: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

Anderson, South Carolina
March 3, 2020.

FORM 8
LETTER TO THE COURT OF APPEALS CLERK OF COURT
FILING NOTICE OF APPEAL

March 3, 2020

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

RECEIVED
MAR 06 2020
SC Court of Appeals

RE: John Harbin v. April Blair, et al.
C.A. No. 2017-CP-04-02099

Dear Honorable Kitchings:

Please find enclosed the following documents for filing:

1. Notice of Appeal;
2. A check amounting to Two Hundred and Fifty Dollars ($250.00) as filing fee;
3. Copies of Judge J. Cordell Maddox challenged Orders in the case of John Harbin v. April Blair, et al., C.A. No. 2017-CP-04-02099:

    a. Order, dated February 5, 2019, granting Gallivan White & Boyd's (hereinafter referred as GWB) Motion to Dismiss;
    b. Order, dated February 5, 2019, granting HUB and Shawn Conway's Motion to Dismiss;
    c. Order, dated October 2, 2019, denying Plaintiff's Motion for Reconsideration (vs. GWB);
    d. Order, dated October 2, 2019, denying Plaintiff's Motion for Reconsideration (vs. HUB and Shawn Conway);
    e. Order, dated October 9, 2019, granting GWB's Motion for Sanctions; and,
    f. Order, dated February 3, 2020, denying Motion for Reconsideration on the grant for Motion for Sanctions.

and copies of Transcript Request Forms submitted to Court Reporters Vivian Cross and Dianne Marcengill, and the Office of Court Administration. Enclosed as well is Proof of Service of the same.

Sincerely,

Donald L. Smith (Bar No.: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

CC: Honorable Richard A. Shirley, Clerk of Court Anderson County Common Pleas Court
Mr. Samuel W. Otten, Esquire
Mr. Steven J. Pugh, Esquire
Mr. R. Wilder Harte, Esquire
Mr. James Walsh, Esquire
Mr. Tracy Dunn
Office of Court Administration

RECEIVED
MAR 06 2020
SC Court of Appeals

Attorney Office of Donald Smith
122 N. Main Street,
Anderson, SC 29621

UNITED STATES POSTAGE
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The Honorable Jenny Abbott Kitchings
Clerk of Court South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

FORM 8
LETTER TO THE COURT OF APPEALS CLERK OF COURT
FILING SECOND NOTICE OF APPEAL

August 5, 2020

RECEIVED
Aug 11 2020
SC Court of Appeals

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

RE: John Harbin v. April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopolous, and John Doe
C.A. No. 2017-CP-04-02099

Dear Ms. Kitchings:

On March 3, 2020, Appellant filed a Notice of Appeal, challenging Judge Maddox's Orders, dated February 5, 2019, October 2, 2019, October 9, 2019 and February 3, 2020 in the above-captioned case. On the aforesaid Notice of Appeal, Appellant reserved his right to pursue the case against Defendants April Blair and Tracy Dunn, to whom no judgment and/or order has been issued in the lower court. The appeal was perfected and docketed as *John Harbin v. April Blair, et. al., Appellate Case No. 2020-000421*. (A copy of which is attached with this Letter).

On April 7, 2020, Judge Maddox issued an Order granting April Blair's Motion to Dismiss, the reconsideration of which was denied in an Order, dated July 20, 2020. Appellant hereby files this Second Notice of Appeal to bring these challenged Orders to this Honorable Court's jurisdiction.

In this regard, please find enclosed the following documents for filing:

1. Second Notice of Appeal,
2. Copies of Judge J. Cordell Maddox challenged Orders:
    a. Order, dated April 7, 2020, granting April Blair's Motion to Dismiss,
    b. Order, dated July 20, 2020, denying Plaintiff's Motion for Reconsideration; and,
3. Proof of Service of the same.

Appellant believes that the transcript for this proceeding has been included in the Transcript Request for the pending appealed case entitled, *John v. Harbin v. April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopolous, and John Doe, Appellate Case No. 2020-00042*, and therefore, there will not be any need to request the same for this Appeal.

Sincerely,

s/Donald L. Smith_____
Donald L. Smith (Bar No.: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

CC: Hon. Richard A. Shirley, Clerk of Court Anderson County
Mr. Samuel W. Otten, Esquire
Mr. Steven J. Pugh, Esquire
Mr. R. Wilder Harte, Esquire
Mr. James Walsh, Esquire
Mr. Tracy Dunn

ELECTRONICALLY FILED - 2020 Apr 07 12:34 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	C.A. No.: 2017-CP-04-02099
John E. Harbin,	)	
	)	
Plaintiff,	)	ORDER
	)	
v.	)	
	)	
April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe,	)	
	)	
Defendants.	)	

RECEIVED
Aug 11 2020
SC Court of Appeals

Defendant April Blair's ("Blair") Motion to Dismiss came before the Court for a hearing on February 28, 2018. Donald L. Smith appeared on behalf of the Plaintiff. James P. Walsh appeared on behalf of Defendant Blair. Having heard the arguments and reviewed the submissions of the parties, Blair's Motion to Dismiss Plaintiff's Amended Complaint is hereby granted for the following reasons. The Court notes that it granted defendant Blair's motion to dismiss from the bench at the hearing. However, due to a scrivener error a written order was not submitted regarding the order to dismiss the case against Blair.

FACTUAL ALLEGATIONS OF THE COMPLAINT

The allegations of Plaintiff's Amended Complaint arise from an underlying dispute that Plaintiff had with Blair and Defendant Tracy Dunn. Plaintiff was shot by Dunn in the leg while he was at Blair's house. Defendant Gallivan White & Boyd represented Blair who had homeowners coverage through State Farm Insurance Company ("State Farm"), in a suit brought by Plaintiff and bearing Civil Action No. 2014-CP-04-02908. At trial, the jury returned a defense verdict for Blair. Plaintiff's Amended Complaint relates to this underlying lawsuit, and states one

ELECTRONICALLY FILED - 2020 Apr 07 12:34 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

cause of action for tortious interference with contract. The plaintiff alleges that Blair tortuously interfered with his contractual relationship with his attorney, Donald Smith.

STANDARD OF REVIEW

A motion to dismiss must be based solely upon the allegations set forth in the Amended Complaint. Rule 12(b)(6), SCRCP; Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 209, 500 S.E.2d 793, 794, (Ct. App. 1998). The Court should view the evidence in the light most favorable of the Plaintiff, and, if facts alleged in the Amended Complaint and inferences reasonably deduced therefrom do not entitle Plaintiff to relief, then the motion to dismiss must be granted. Jarrell, 331 S.C. at 209, 500 S.E.2d at 794. See also Douglass ex rel. Louthian v. Boyce, 336 S.C. 318, 519 S.E.2d 802 (Ct.App. 1999), aff'd, 344 S.C. 5, 542 S.E.2d 715 (2001) (holding the trial court promptly dismissed action under 12(b)(6), SCRCP); Stiles v. Onorato, 318 S.C. 297, 457 S.E. 2d 601 (1995) (affirming trial court's dismissal of action under 12(b)(6), SCRCP).

ARGUMENT

The elements of a cause of action for tortious interference with a contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. Camp v. Springs Mortgage Corp., 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993). An essential element to the cause of action for tortious interference with contractual relations requires the intentional procurement of the contract's breach. Kinard v. Crosby, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993). Where there is no breach of the contract, there can be no recovery. First Union Mortg. Corp. v. Thomas, 317 S.C. 63, 73, 451 S.E.2d 907, 913 (Ct. App. 1994).

ELECTRONICALLY FILED - 2020 Apr 07 12:34 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

In the instant case, Plaintiff has failed to plead any facts or circumstances evidencing a breach of the contract between Plaintiff and his attorney, Donald Smith. In pertinent part, Plaintiff's Amended Complaint alleges the following:

> 70. Plaintiff entered into a contract with his attorney to pursue litigation against Blair and Dunn.
>
> 71. Defendants were aware that a contract existed based on the fact that they were all participants in the litigation in some capacity.
>
> 75. Blair utilized the charge against Dunn, and his subsequent incarceration, to convince him to testify that not only did he mean to shoot Harbin, but also Blair had nothing to do with the shooting.
>
> 80. As a result of the intentional interference with Plaintiff's contract, all named Defendants prevented Harbin from getting the damages for which he was entitled due to the shooting.

These allegations, even if taken as true, fail to establish that the contract between Plaintiff and his attorney was breached. The Plaintiff has failed to include any allegations of any acts or omissions by Blair warranting the inference that her alleged intentional actions procured the breach of the contract. The Amended Complaint here contains no independent allegations of any acts or omissions by Defendant Blair warranting the inference that she intentionally procured plaintiff's attorney's discharge. In fact, it does not appear that the attorney-client relationship between the Plaintiff and his attorney was interfered with in any way. See Amended Complaint. The Plaintiff fails to allege any actions taken by Defendant Blair directly against the Plaintiff and/or his attorney that in any way had anything to do with their attorney-client relationship. Moreover, the Plaintiff has failed to allege any breach of the attorney-client relationship/contract, any actions of Defendant Blair that contributed to any alleged breach of that contract, and/or any damages resulting from

the alleged breach. As a result, this case is dismissed with prejudice in favor of Blair pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

Therefore, for all of these reasons, defendant Blair's Motion to Dismiss is hereby granted and Plaintiff's Amended Complaint against Blair is dismissed with prejudice.

_____
Honorable J. Cordell Maddox, Jr.

April 6, 2020

ELECTRONICALLY FILED - 2020 Apr 07 12:34 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

ELECTRONICALLY FILED - 2020 Apr 07 12:34 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Order/Dismissal

So Ordered

s/ J. Cordell Maddox Jr.

ELECTRONICALLY FILED - 2020 Jul 20 3:42 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	C.A. No.: 2017-CP-04-02099
John E. Harbin,	)	
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION
	)	
v.	)	
	)	
April Blair, Tracy Dunn, HUB Enterprises, Inc., Shawn Conway, Gallivan White & Boyd, Sam Nikopoulos and John Doe,	)	
	)	
Defendants.	)	

RECEIVED
Aug 11 2020
SC Court of Appeals

This matter comes before the Court upon Plaintiff John E. Harbin's Motion for Reconsideration of the Court's April 7, 2020 Order Granting Defendant April Blair's Motion to Dismiss Plaintiff's Amended Complaint. Having heard the arguments and reviewed the submissions of the parties, Plaintiff's Motion for Reconsideration is hereby denied for the reasons below.

The Court has carefully reviewed Plaintiff's Motion for Reconsideration. The Motion does not raise any issue or point of law that was previously argued or raised to the Court that it misunderstood, did not fully consider or that it failed to rule upon, nor does it call the Court's attention to a possible misapprehension of Plaintiff's previous arguments.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Reconsideration is Denied.

IT IS SO ORDERED.

_____
Honorable J. Cordell Maddox, Jr.

July 10, 2020

ELECTRONICALLY FILED - 2020 Jul 20 3:42 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

PLAINTIFF'S EXHIBITS

AFFIDAVIT OF
WILLIE CLARENCE TILLMAN

(February 23, 2017)

ELECTRONICALLY FILED - 2018 Feb 05 10:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON John Harbin, Plaintiff, vs. April Blair and Tracy Dunn, Defendants.	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT **AFFIDAVIT OF WILLIE CLARENCE TILLMAN** **C.A.No.: 2014-CP-04-02908**

PERSONALLY, APPEARED BEFORE ME, Willie Clarence Tillman, who being duly sworn, deposes and says that my name is, Willie Clarence Tillman and I am the cousin of Tracy Douglas Dunn. I was at 2760 Lake Secession Drive, April Blair's house, on June 21, 2014, when Tracy shot John Harbin.

On that day, I texted Tracy to bring dog food at the direction of April Blair. When Tracy got there, he immediately approached John Harbin in an aggressive manner. John Harbin picked up a bamboo stick as if he was going to hit him. Tracy pulled his gun on John Boy and when I stepped in between the two to stop Tracy from shooting John. As a result, the gun was pointed at me for an instant.

It is my understanding that April Blair claimed to have been raped by John Harbin. This was not the case. April had instigated the confrontation between Tracy and John Boy by telling Tracy that John Boy had raped her. April knew what Tracy would do given his temper and the fact that he always carried a gun.

I understand that the case went to trial in November because Tracy is in jail with me. He is in jail for a probation violation which arose from a CDV charge brought by April. I also know that Tracy and April resumed their relationship following the shooting.

It is my understanding and belief from Tracy that he testified to free April of any liability from the shooting. In return, April is to drop the CDV charge against him.

I am represented by Kami D. Granade, Esquire for the charges for which I am currently incarcerated. Ms. Granade also represents Tracy Dunn. I have spoken to Tracy and Tracy indicated to me that April's attorney acted as a go between, between Tracy and April during trial.

Since the trial ended, April has sent two letters with pictures drawn by her boys, C.B and J.B. She also forwarded her contact information to him for when he gets out, though there is currently a no contact order in place. Both Tracy and Ms. Grenade have stated April is pushing to get Tracy's charge dropped.

Willie Clarence Tillman
2-23-17

Abbeville, South Carolina
Dated: February 23, 2017.

SWORN to me this 23rd day
of February, 2017.

Notary Public South Carolina
My Commission Expires: 11/18/24

ELECTRONICALLY FILED - 2018 Feb 05 10:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

LOG FOR GWB EMPLOYEE's
VISIT TO TRACY DUNN AT ABBEVILLE COUNTY DETENTION CENTER

ELECTRONICALLY FILED - 2018 Feb 05 10:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099
ELECTRONICALLY FILED - 2016 Dec 02 11:41 AM - ANDERSON - COMMON PLEAS - CASE#2014CP0402908

Annex "B"

NAME: Sam Nikopoulos

DATE: 6/17/16 3:58 PM

* IRS rules require you to record the date, business purpose, place of travel & amount.
* IRS rules require you to submit all receipts (or copies) for $25 or more for reimbursement.
* In the "Mileage" column, put # of miles driven. Mileage is reimbursed at current IRS rate.

Client	Matter #	Date	Business Purpose	Destination	Mileage	Meals	Lodging	Other	Total $
		6/13/2016	Evening Mail	Mauldin	14				$ -
		6/15/2016	Evening Mail	Mauldin	14				$ -
4607	69		Abbeville Sheriffs Office	Abbeville	120				$ 64.80
		6/16/2016	Evening Mail	Mauldin	14				$ -
		6/17/2016	Evening Mail	Mauldin	14				$ -
9197	2		Mauldin City Hall	Mauldin	20				$ 10.80
									$ -
									$ -
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									$ -
									$ -
									$ -
									$ -
					Mileage Expense (miles*54¢)				$ 105.84
				TOTALS	196	$ -	$ -	$ -	$ 105.84

Entered

OK BLC

GVL- Firm mileage- 56 @ .54 = 30.24

Client mileage- 140 @ .54 = 75.60

105.84

ELECTRONICALLY FILED - 2018 Feb 05 10:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099
ELECTRONICALLY FILED - 2016 Dec 02 11:41 AM - ANDERSON - COMMON PLEAS - CASE#2014CP0402908

NAME: Rob Corney, Insurance Practice Section

DATE: 6/21/16 11:59 AM

* IRS rules require you to record the date, business purpose, place of travel & amount.
* IRS rules require you to submit all receipts (or copies) for $25 or more for reimbursement.
* In the "Mileage" column, put # of miles driven. Mileage is reimbursed at current IRS rate.

Client	Matter #	Date	Business Purpose	Destination	Mileage	Meals	Lodging	Other	Total $
State Farm Fire & Casualty	4607-69	6/14/2016	Attending Trial Preparation Meeting with Client April Blair (Logan, Jolly and Smith Law Office)	Travel to/from Logan, Jolly and Smith in Anderson, SC (29 miles each way)	58				$31.32
State Farm Fire & Casualty	4607-69	6/20/2016	Attending Pre-Trial Roster Meeting with Judge McIntosh	Travel to/from Anderson County Courthouse (41 miles each way)	82				$44.28
State Farm Fire & Casualty	4607-69	6/20/2016	Attending Initial Visit and Interview of Co-Defendant Tracy Dunn	Travel to and from Abbeville County Detention Center (56 miles each way)	112				$60.48
				TOTALS					

Entered

330

SUPPLEMENTAL REPORT

(Nicholas Marshall, Case No. 2014-14363 June 24, 2014)

ELECTRONICALLY FILED - 2018 Feb 05 10:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

ENCY I.D.
010000

INCIDENT SELECTED SUPPLEMENTAL REPORT

CASE NUMBER	NCIC INQ.	NCIC ENTD.
2014-14363		X

SUPPLEMENTAL REPORT MODIFIES ORIGINAL	☒ CASE STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL STOLEN PROPERTY	☐ ADDITIONAL RECOVERED PROPERTY	PAGE 8 of 10 PAGES

THESE BULLET STAMPS MATCHED THE PREVIOUSLY MENTIONED SPENT SHELL CASING STAMP FOUND ON SCENE THE DAY OF THE INCIDENT IN THE YARD. A FURTHER SEARCH OF THE BAG YEILDED A BOX OF ' FEDERAL 9MM LUGER, 115 GRAIN JACKETED HOLLOW POINT' BULLETS. ONCE I OPENED THE BOX AND EXAMINED IT'S CONTENTS I FOUND 15 UNSPENT HOLLOW POINT 9MM FEDERAL ROUNDS. THESE ROUNDS STAMPS ALSO MATCHED THE BULLET STAMP FROM THE SPENT SHELL CASING FOUND THE DAY OF THE INCIDENT. I THEN FOUND A SINGLE 9MM HOLLOW POINT UNSPENT BULLET IN A ZIP UP COMPARTMENT INSIDE OF THE BACK PACK. THIS ROUND ALSO MATCHED THE OTHERS IN THE BOX AS WELL AS THE SPENT SHELL CASING FOUND ON SCENE THE DAY OF THE INCIDENT TO INCLUDE THE SHELL STAMP "9MM LUGER FC".

AT THAT POINT I DID PHOTOGRAPH THE ITEMS FOUND IN THE BACK PACK AND RAN THE SERIAL NUMBER FROM THE PISTOL THROUGH NCIC VIA ABBEVILLE DISPATCH. DISPATCH ADVISED ME THAT THE PISTOL WAS IN FACT STOLEN FROM ANDERSON COUNTY. I DID PLACE ALL FOUND AMMUNTION INTO THE BOX I HAD JUST FOUND MAKING THE TOTAL COUNT OF ROUNDS IN THE BOX 18. WITH THESE UNSPENT ROUNDS IN THE BOX THERE WERE ONLY TWO SLOTS LEFT FOR ROUNDS TO GO INTO, ONE FOR THE BULLET THAT SHOT JOHN HARBIN AND ANOTHER BULLET. A FEW MOMENTS LATER A MARKED COUNTY UNIT DID RESPOND TO OUR LOCATION AND TRANSPORTED MR. DUNN TO THE SHERIFF'S OFFICE. ALL EVIDENCE WAS PHOTOGRAPHED, BAGGED AND TAGGED, ALL UNITS THEN CLEARED THE SCENE.

ONCE I ARRIVED AT THE SHERIFF'S OFFICE I BROUGHT TRACY DUNN INTO THE INTERVIEW ROOM TO SPEAK WITH HIM ALONG WITH DETECTIVE CROSBY. I ADVISED HIM OF HIS MIRANDA RIGHTS AT WHICH TIME HE WAIVED THOSE RIGHTS TO SPEAK WITH ME ALSO SIGNING A MIRANDA WAIVER FORM.

TRACY STARTED OUT BY TELLING ME THAT HE AND APRIL ARE ENGAGED TO BE MARRIED. HE ALSO STATED THAT HE HAS KNOWN JOHN HARBIN HIS WHOLE LIFE. HE THEN STATED THAT ON A DAY RECENTLY HE HAD BEEN AT HOME AND APRIL AND JOHN LEFT THE HOME TOGETHER. HE STATES THAT HE HAD HEARD THAT JOHN WAS TELLING LIES ABOUT HIM TO APRIL TRYING TO DAMAGE THEIR RELATIONSHIP (HE'S SEEING ANOTHER GIRL AND HE'S FAKING BEING SICK FROM HIS TICK BITE). HE STATES THAT ON 6/21/2014 HE RECIEVED A CALL FROM APRIL TELLING HIM THAT SHE WANTED HIM TO COME OVER TO THE HOUSE AND BRING SOME DOG FOOD.

	JURISDICTION OF THEFT	JURISDICTION OF RECOVERY

SUBJECT IDENTIFIED	SUBJECT LOCATED			
☒ YES ☐ NO	☒ YES ☐ NO	☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE-NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
MARSHALL, NICHOLAS PHILLIP	6/24/2014	114			
			FOLLOW-UP OFFICER INVESTIGATION ☐ YES ☒ NO		

Def. EXHIBIT 9 7-14-16 T. Dunn

ENCY I.D.
010000

INCIDENT SELECTED SUPPLEMENTAL REPORT

CASE NUMBER 2014-14363 | INC. | ENTD X

SUPPLEMENTAL REPORT MODIFIES ORIGINAL | ☒ CASE STATUS CHANGE | ☐ ADDITIONAL VICTIMS | ☐ ADDITIONAL OFFENDERS | ☐ ADDITIONAL STOLEN PROPERTY | ☐ ADDITIONAL RECOVERED PROPERTY

GOTTEN THE TAURUS 9MM APPROXIMATELY A WEEK PRIOR TO THE INCIDENT. HE STATED THAT THE TWO HAD GOTTEN INTO A VERBAL ALTERCATION AND JOHN PULLED A STICK ON HIM. HE STATES THAT AFTER THAT JOHN WENT INTO THE HOME AND PEOPLE OUTSIDE AROUND HIM STARTED TELLING HIM THAT JOHN WAS ABOUT TO LEAVE. HE THEN STATES HE WALKED BACK TO THE FRONT YARD WHERE HE CONFRONTED JOHN AGAIN. TRACY THEN STATED AGAIN THAT JOHN HAD HIT HIM IN THE FACE WITH AN UNKNOWN OBJECT IN HIS HAND (POSSIBLY A CELL PHONE). TRACY THEN ADVISED ME THAT AFTER HE WAS HIT HE PULLED THE PISTOL OUT FROM HIS CARGO SHORTS POCKET, AIMED AT JOHN'S LEG AND SHOT HIM.

HE CLARIFIED THAT AFTER HE WAS STRUCK IN THE FACE BY JOHN BEFORE HE PULLED HIS PISTOL OUT, JOHN HAD STARTED BACKING AWAY FROM HIM AND WAS APPROXIMATELY 10' AWAY FROM HIM (TRACY GAVE A ROUGH VISUAL ESTIMATE TO ME). HE THEN STATED THAT HE HONESTLY WASN'T TRYING TO SHOOT JOHN RATHER HE WANTED TO SHOOT THE GROUND IN FRONT OF HIM. HE STATED ONCE HE PULLED THE TRIGGER HE REALIZED THAT HE HAD SHOT JOHN IN THE LEG STATING JOHN "SCREAMED LIKE A BITCH".

AT THAT TIME I ASKED HIM IF HE HAD REALLY RUN OFF INTO THE WOODS AFTER HE SHOT JOHN. HE FIRST STATED YES THEN FINALLY ADMITTED THAT SOMEONE HAD STOPPED BY THE HOME AND PICKED HIM UP FROM THE SCENE. AT THIS POINT I ASKED HIM IF HE WOULD WRITE A VOLUNTARY STATEMENT WHICH HE DECLINED TO DO. AFTER HEARING THE FACTS OF THE CASE I DID SERVE HIM HIS WARRANTS AND HE WAS BROUGHT BACK TO THE ABBEVILLE COUNTY DETENTION CENTER WHERE HE WAS BOOKED WITHOUT INCIDENT.

	JURISDICTION OF THEFT	JURISDICTION OF RECOVERY

SUBJECT IDENTIFIED	SUBJECT LOCATED			
☒ YES ☐ NO	☒ YES ☐ NO	☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 16 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE-NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
MARSHALL, NICHOLAS PHILLIP	6/24/2014	114			
			FOLLOW-UP OFFICER INVESTIGATION ☐ YES ☒ NO		

ELECTRONICALLY FILED - 2018 Feb 05 10:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

EXCERPTS OF DEPOSITION TRANSCRIPT OF TRACY DUNN

(July 14, 2016)

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2014-CP-04-02908

John E. Harbin,

Plaintiff,

vs.

April Blair and Tracy Dunn,

Defendants.

COPY

DEPOSITION OF

TRACY D. DUNN

DATE TAKEN:	July 14, 2016
TIME BEGAN:	3:17 p.m.
TIME ENDED:	4:44 p.m.
LOCATION:	Abbeville County Detention Center 21 Old Calhoun Falls Road Abbeville, South Carolina
REPORTED BY:	Rusti Davis, Court Reporter DEPOSITIONS AND..., INC. P.O. Box 10268 Greenville, South Carolina 29603 864-235-3518

ELECTRONICALLY FILED - 2018 Feb 05 10:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

A. Yeah. Yeah.

Q. Prior to that time, do you know if he -- prior to you actually showing it to him in the back yard, do you know if John Harbin or anybody else knew you had a gun on you?

A. No, nobody knew I had a gun until that time.

Q. Is that including April Blair?

A. Yeah. I -- huh-uh, she didn't know.

Q. All right. And when you pulled that gun out of your back pocket and you shot John Harbin, did it fire by accident?

A. No.

Q. Did you pull the trigger on purpose?

A. I pulled the trigger on purpose.

Q. Did you shoot John Harbin on purpose?

A. Yes.

Q. Okay.

A. If I wanted him dead, I could have shot him between the eyes just as easy as I shot him in the leg. I mean I'm very good with a rifle, a pistol, or whatever.

Q. I understand. Okay. And it's my understanding that ultimately you were charged with attempted murder, ended up --

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A. Yeah.

Q. -- pleading guilty to a lesser charge --

A. Uh-huh.

Q. -- as a result of this shooting?

A. Yeah.

Q. Okay. And as we sit here today, do you take 100 percent responsibility for shooting John Harbin?

A. Yeah, I shot him.

Q. Okay.

A. I should have killed him is what I should have did.

Q. And in your mind, is April Blair at all responsible for you actually pulling the trigger and shooting John Harbin that day?

A. No. I mean how is she going to be -- I mean she didn't even know I had a pistol. I mean I shot him because he hit me, I mean, and I thought he had a weapon. I mean that's why I shot him.

Q. All right. And after this shooting happened, you said April ran outside and went to help John?

A. Yeah. After she found out, you know, that he had done been shot. And then he was bleeding -- he was bleeding pretty bad. And she went out there

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CERTIFICATE

I, the undersigned, Rusti Davis, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing deposition of **TRACY D. DUNN** was taken on the 14th day of July, 2016

That the within named deponent was sworn to tell the truth and that the foregoing is an accurate transcription of the testimony taken under oath;

That all exhibits entered herein are attached hereto and made a part of the deposition.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In Witness Whereof, I have hereunto set my hand and seal this 25th day of July, 2016.

Rusti Davis
Notary Public for South Carolina
My Commission Expires 9/17/2017

ELECTRONICALLY FILED - 2018 Feb 05 10:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

EXCERPTS OF TRIAL TRANSCRIPT

(November 30, 2016)

ELECTRONICALLY FILED - 2018 Feb 05 10:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF ANDERSON)

JOHN E. HARBIN,

PLAINTIFF,

vs.

APRIL BLACK AND TRACY DUNN,

DEFENDANTS.

TRANSCRIPT OF RECORD
2014-CP-04-02908

NOVEMBER 30, 2016
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. SCOTT SPROUSE, JUDGE.

A P P E A R A N C E S:

DONALD L. SMITH, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

ROBERT DANIEL CORNEY, ESQUIRE
ATTORNEY FOR THE DEFENDANT, APRIL BLACK

Vivian Cross
Official Court Reporter

me.

Q Where was your gun at this point?

A In my back pocket. And when he swung the stick, I pulled my gun out.

I said, "What are you doing, man?"

Q What broke you apart at that point?

A April hollering my name and my cousin came and got between us.

Q Clarence Tillman?

A Yes.

Q So that ended the confrontation between the two of you?

A Yes, sir.

Q All right. Take us from there.

A And I went over the back of the front yard, and was talking to her mom and all those. Then I seen him coming in the front yard. Then I said, "I'm going to go ask why he told her all them lies."

And I asked him again and then I started getting close to him. And then somebody said something to me. I turned around and looked, see what they said. And I turned around again, he had something in his hand. And then he backed up real fast. I seen something in his hand. I didn't know what it was. So I pulled out my gun. I shot him in the leg.

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A One shot.
Q And you aimed it right at his leg, right?
A Yes.
Q Did you shoot John Harbin right where you intended to shoot him?
A Yes.
Q And you accept 100 percent responsibility for John Harbin being shot on June 21 of 2014, right?
A Yes, sir.
Q Do you think John Harbin would have been shot that day if he hadn't took a swing at you in the front yard?
A No, he would not have.
Q And do you believe that April Blair holds any kind of responsibility of any kind for the shooting that happened on that day?
A No.
Q Because she didn't even know you had a gun on you that day, right?
A No.
Q And she never told you to confront or shoot John Harbin, right?
A No.
Q That was something that happened in the heat of the moment after John took a swing at you?
A Yes.

ELECTRONICALLY FILED - 2018 Feb 05 10:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

EXCERPTS OF TRANSCRIPT OF PLEA BARGAINING OF TRACY DUNN

(June 21, 2017)

ELECTRONICALLY FILED - 2018 Feb 05 10:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
)
-VS-)
TRACY DOUGLAS DUNN,)
DEFENDANT.)
)

2016-GS-01-0382

TRANSCRIPT OF RECORD

JUNE 21, 2017
ABBEVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, JUDGE

A P P E A R A N C E S:

ATTORNEY FOR PLAINTIFF:
CARSON PENNEY, ASSISTANT SOLICITOR

SCDPPPS AGENT: AGENT PHILLIP SEARS

ATTORNEY FOR DEFENDANT:
KAMI D. GRANADE, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

Q Based on your testimony I find there is a substantial factual basis for your plea which has been freely and voluntarily entered into, knowingly and intelligently, and with consent of competent counsel with whom you say you are satisfied. I will accept your plea and will be glad to hear from probation at this time, then we will hear mitigation concerning probation and the incident.

AGENT SEARS: Thank you, Your Honor. Mr. Dunn was placed on probation February 26, 2015. He pled guilty to assault and battery first degree, which was related to -- it was actually originally charged with attempted murder where he shot a man in the leg during a verbal altercation. At that time he received seven years suspended to probation for 48 months. He had been in jail for 8 months and given credit for that time. The case was also set up to PTUP after 24 months if he could stay out of trouble and get all his money paid.

Actually, he was doing decent on probation until this offense occurred. I did a warrant on him May 27, 2016 because he -- and I guess that's really the main beef I've got with the probation was that -- he was in contact with me and I actually called him after this happened and talked to him. We talked about what happened and tried to get him turn himself in instead of making things worse, but he kind of decided to hit the road and stayed gone for a while until

ELECTRONICALLY FILED - 2018 Feb 05 10:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

they finally got the warrant served.

But, anyway, the warrant he was charged with failing to report as instructed with his last report being made on September 8, 2015. But, again, up until that point until these charges he had reported fairly decently. So, therefore, he changed his address without letting me know, absconded supervision, and failed to pay his supervision fee, was in arrears $400. He had a Public Defender Fund surcharge. There is a balance of $418.90. Then, of course, he was charged with picking up these new charges. We served our warrant on May 27, 2016.

THE COURT: Mr. Dunn, do you agree that you haven't done what you were supposed to on probation?

DEFENDANT: Yes, sir.

THE COURT: Based on that I do indeed find that there is a substantial and willful violation. I'm going to terminate probation in all respects. Any financial obligation that has not been met will be reduced to a civil judgement. No administrative monitoring. Terminate him fully.

MS. GRANADE: Thank you, Your Honor. Mr. Dunn is 44 years old. He attended high school until the ninth grade, but does have his GED. He previously worked as a welder at Durham Industrial Maintenance at Frigidaire in Anderson County, Your Honor. Mr. Dunn's long-time girlfriend and the victim in this case her name is April Blaire. She was

ELECTRONICALLY FILED - 2018 Feb 05 10:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

actually here earlier, but she had to leave. I can tell the court that Ms. Blaire did not want to pursue these charges. She preferred that they had been dismissed, but of course that is not within her power.

Your Honor, Mr. Dunn does not have any children of his own, but it is my understanding after talking to my client and to Ms. Blaire that she has a two-year-old son named Jackson and that Mr. Dunn has cared for him since his birth. I believe that Mr. Dunn views Jackson as his own child, Your Honor, and he desperately wants to be out of course in order to see Jackson grow up.

Your Honor, as you've already heard Mr. Dunn is on probation. His agent did tell me that he was cooperative and had done quite well up until this incident. Your Honor, Mr. Dunn is standing here before you. He is accepting responsibility both for this offense as well as the violation of probation. I can tell you that my experience with Mr. Dunn has been very pleasant. He is cooperative. As a Public Defender I don't always get that from my clients and I can tell you that it's been a pleasure representing him.

That being said, Your Honor, we would ask for a time served sentence. He has actually been in the County Detention Center for 393 days and we would ask, of course, that he be given credit for that time.

ELECTRONICALLY FILED - 2018 Feb 05 10:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the guilty plea hearing of the captioned case, relative to appeal, in the Circuit Court for Abbeville County, South Carolina, on the 21st day of June, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Tara T. Scott

Circuit Court Reporter

August 13, 2017

ELECTRONICALLY FILED - 2018 Feb 05 10:49 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

AFFIDAVIT OF MICHAEL MOSKE

(January 29, 2018)

Annex "A"

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

John Harbin,

Plaintiff,

vs.

April Blair and Tracy Dunn,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. FILE NO.: 2014-CP-04-02908

AFFIDAVIT OF MICHAEL J. MOSKE

PERSONALLY, APPEARED BEFORE ME, Michael J Moske, Private Detective, swear and affirm that I have reviewed the three videos and the report written by Shawn Conway, Hub Enterprises, in connection to an investigation on John Harbin. This investigation was said to have been done on Monday, July 4, 2016; Thursday, July 7, 2016; and Friday, July 8, 2016.

During my review, it appeared that the metadata on the videos have been altered, as the creation date for these videos cannot be found through the use of several different metadata retrieval applications. Furthermore, I have visited the areas in the video, and noticed that the positioning of the investigator during the surveillance on the dates above did not allow the investigator to see Mr. Harbin's residence either from the front or the rear. Some video shots were totally black, and others were pictures of wooded areas. These video shots could have been taken anywhere.

Michael J. Moske, P.I.
On The Watch, LLC
GA License Number: PDC002618
SC License Number: PDC3105

Anderson, South Carolina
SWORN to me this 29th day
of January 2018.

Donald L. Smith
Notary Public South Carolina
My Commission Expires: 11/18/2024

ELECTRONICALLY FILED - 2018 Feb 05 10:57 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

AFFIDAVIT OF JOHN E. HARBIN

(December 29, 2016)

ELECTRONICALLY FILED - 2018 Feb 05 10:57 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin, Plaintiff, v. April Blair and Tracy Dunn, Defendant.	**AFFIDAVIT OF JOHN E. HARBIN** **C.A. No.: 2014-CP-04-02908**

PERSONALLY, APPEARED BEFORE ME, John E. Harbin, who being duly sworn, deposes and says that my name is John E. Harbin and I live with my girlfriend, Patricia Elrod. Patricia's home is located at 2917 Chambers Rd., Anderson, South Carolina 29621. I have lived there since shortly after I was shot on June 21, 2014. I don't have any family in Anderson; and, Patricia has been my saving grace.

I have not found employment since I was shot. I keep busy by doing odd jobs around the house and in the neighborhood. I do not have a motor vehicle, nor have I had one since I was shot. The only way that I had to get around from 2014 to November of 2016, was a bicycle. In addition, my lack of work and Patricia's insignificant work hours have left us struggling to simply exist.

I do not stay anywhere but at Patricia's home. Based on my lack of mobility, I normally around the house all day. The week of July 4th would have been no different than every other week. I know that we were at our home on Chambers Rd. through that week. We did not take any trips or stay anywhere but the house.

John E. Harbin

Sworn to before me this
29th day of December, 2016.

Donald L. Smith
Notary Public for South Carolina
My Commission Expires: 11/18/2024

AFFIDAVIT OF PATRICIA ELROD

(December 29, 2016)

ELECTRONICALLY FILED - 2018 Feb 05 10:57 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John E. Harbin, Plaintiff, v. April Blair and Tracy Dunn, Defendant.	**AFFIDAVIT OF PATRICIA ELROD** **C.A. No.: 2014-CP-04-02908**

PERSONALLY, APPEARED BEFORE ME, Patricia Elrod, who being duly sworn, deposes and says that my name is Patricia Elrod and I am the girlfriend of John Harbin, the Plaintiff in this action. John has been a resident of my home located at 2917 Chambers Rd., Anderson, South Carolina 29626, since around September 2014. He has not been able to work due to the gunshot that he suffered to his leg on June 21, 2014.

John has not traveled anywhere, other than the City of Anderson. During this time, his only mode of transportation has been a bicycle, or my car when I am not working. He mainly stays at home while I am at work.

I work part-time as a housekeeper at the Bleckley Inn, located in Anderson. This past year, July 4th was on a Monday. Thus, since it was a long weekend, Monday was a big day for me as a housekeeper. With my modest income, and John's unemployment, we have not left Anderson county, other than to visit John's daughter in Abbeville County, since September of 2014. I know for a fact that we were home from July 3rd through July 10th. We spent every night at that location.

Patricia Elrod
Patricia Elriod

Sworn to before me this
29th day of December 2016.

Donald L. Smith
Notary Public for South Carolina
My Commission Expires: 11/18/2024

AFFIAVIT OF SHERRY HAYES

(January 12, 2018)

ELECTRONICALLY FILED - 2018 Feb 05 10:57 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John Harbin, Plaintiff, vs. April Blair and Tracy Dunn, Defendants.	C.A. FILE NO.: 2014-CP-04-02908 **AFFIDAVIT OF SHERRY HAYES**

PERSONALLY, APPEARED BEFORE ME, Sherry Hayes, who being duly sworn, deposes and says that my name is, Sherry Hayes and I am friends with John Harbin. I live at 3519 Chipwood Drive, Anderson, South Carolina, where I have lived for many years.

I have had the opportunity to review the investigative report of Shawn Conway, who was allegedly investigating the aforementioned John Harbin in the above-captioned matter. In his report, Mr. Conway indicates that he spoke to me at 10:45 a.m. on July 4, 2016. It is also his contention that I spoke to him about John Harbin, and his relationship to me. I have never spoken to Shawn Conway. More importantly, if I had, I would not be discussing anything about myself with a total stranger. While I recognize my telephone number in his statement, since I did not speak to him, I did not "confirm" my telephone number for him.

Sherry Hayes

Anderson, South Carolina
SWORN to me this 12th day
of January 2018.

Donald L. Smith
Notary Public South Carolina
My Commission Expires: 11/18/2024

PROOF OF SERVICE OF AMENDED SUMMONS AND COMPLAINT TO DEFENDANTS HUB AND SHAWN CONWAY

(January 27, 2017)

ELECTRONICALLY FILED - 2018 Jan 29 10:07 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

ATTORNEY OFFICE OF DONALD SMITH

122 N. Main St.
Anderson SC 29621
attorneydonaldsmith@gmail.com

Donald L. Smith, Esquire

Telephone: (864) 642-9284
Facsimile: (864) 642-9285

October 21, 2017

HUB Enterprises, Inc.
PO Box 3162
Lafayette, LA 70502

RE: John Harbin, et al. v. April Blair, et al.
Case Number:2017-CP-04-02099

To Whom It May Concern:

Please find enclosed a copy of Plaintiffs' Summons and Complaint. You will note that you are a named party in this action. For this reason, Plaintiffs also serve upon you the Plaintiffs' First Set of Interrogatories and Plaintiffs' First Request for Production. Shawn Conway, your field agent, was sued as well.

Please note that while the Answer is due within **thirty (30) days,** the other responses are due within **forty-five (45)** days. Clearly, it is in your bests interests to seek legal counsel for this matter. I look forward to your responses.

PLEASE ACCEPT THIS LETTER AS A RESPECTIFUL REQUEST FOR YOU TO PRESERVE ALL MATERIALS RELATING TO JOHN HARBIN V. APRIL BLAIR AND TRACY DUNN; 2014-CP-04-02908. This action was defended by Rob Corney, Esquire of Gallivan White & Boyd, in Greenville, SC, if you need that to decipher on which case I speak. Please note that the firm and the investigator in the employ of the firm are also defendants.

The materials that I have requested include your employment contract, describing in detail the services to be provided, fees to be charged, and an understanding by both parties concerning delivery of the written report to conclude the investigation. The final written report that you produced should report accurately, detailing hours worked, activities accounting for time charged, and results of the investigation. Any pre-investigation comments or assertions made by your client(s), all (unedited) video footage taken in connection with this case, all (unedited) audio footage taken, all reports or recommendations, etc., are requested as well.

With highest regards, I am
Very truly yours,

Donald L. Smith
DLS/ds
Enclosures

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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

HUB Enterprises, Inc.
PO Box 3162
Lafayette, LA 70502

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Haley Hebert | C. Date of Delivery 10/27/17

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7014 2870 0001 7928 4932

PS Form 3811, July 2013 Domestic Return Receipt

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Attorney Office of Donald Smith
122 N. Main Street
Anderson SC 29621

Harbin

AFFIDAVIT OF SHAWN CONWAY
(February 1, 2017)

ELECTRONICALLY FILED - 2019 Feb 15 11:28 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	FOR THE TENTH JUDICIAL CIRCUIT
John E. Harbin,	)	C.A. No. 2014-CP-04-02908
Plaintiff,	)	**AFFIDAVIT OF SHAWN CONWAY**
v.	)	
April Blair and Tracy Dunn,	)	
Defendants.	)	

Personally appeared before me, Shawn Conway, who being duly sworn, deposes and states that:

1. He is employed full-time with HUB Enterprises as a private investigator and resides in Horry County, South Carolina;

2. HUB Enterprises was retained by Gallivan, White & Boyd to perform surveillance on the plaintiff, John E. Harbin, on July 4, 2016,-July 7, 2016 and July 8, 2016;

3. During his surveillance and/or investigation, he never observed, saw or otherwise interacted with the plaintiff, John E. Harbin;

4. During his surveillance and/or investigation, he never took any video of the plaintiff, John E. Harbin;

5. During his surveillance and/or investigation, be never took any photographs of the plaintiff, John E. Harbin;

6. During his surveillance and/or investigation, he never took any video or photographs of any persons who resided at 2917 Chambers Road in Anderson, South

Carolina.

[SIGNATURE ON FOLLOWING PAGE]

FURTHER AFFIANT SAYETII NOT.

Shawn Conway

Sworn to and subscribed before
me this 01 day of February, 2017.

Vernon McDaniel

Notary Public
My Commission Expires: 10/03/22

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HUB SURVEILLANCE REPORT

ELECTRONICALLY FILED - 2019 Feb 15 11:28 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

July 12, 2016

GALLIVAN, WHITE, BOYD
55 BEATTIE PLACE, Suite 1200
GREENVILLE SC 29601

SIU:	Robert Corney
Insured:	Blair
Claim Number:	Harbin v. Blair

John Edwin Harbin
3519 Chipwood Drive
Anderson, South Carolina

Date of Loss:	June 30, 2016
Injury:	Right Lower Calf
Authorization:	24 Hours
Status:	Final
Received:	June 30, 2016
Investigator:	Shawn Conway
HUB Case:	1607000050
HUB Contact:	Ali Elner

Confidentiality Notice

The content within this file contains confidential information belonging to the sender and is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified th0any use or disclosure of the contents of this information is strictly prohibited. If you have received this in error, please immediately notify us by telephone to arrange for the return of the documents.

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NATURE OF ASSIGNMENT:

On June 30, 2016, HUB Enterprises received an assignment requesting 24 hours of surveillance to be conducted on the above-mentioned claimant. Information provided indicates the claimant can be described as a 51-year-old homeless male.

SUMMARY OF INVESTIGATION:

Surveillance was conducted on Monday, July 4, 2016, Thursday, July 7, 2016, and Friday, July 8, 2016. Multiple addresses were checked. Video was not obtained of the claimant as he was not observed during the course of this investigation. The Investigator contacted local and parish law enforcement agencies; however, no current records were found for the claimant and no current pending warrants in the area. The Investigator conducted a neighborhood canvass at the provided address and spoke to neighbors and learned that the claimant no longer resides at the provided address and now resides at 3519 Chipwood Drive, in Anderson, SC. A neighborhood canvass was attempted at the Chipwood address; however, no answers were received at any of the nearest residences. The Investigator approached the residence and spoke with an unknown older female who identified herself as Mrs. Sherry Hayes. She confirmed that the claimant has been residing at her residence for the past month or so. She also stated that he does not pay rent and helps out with odd jobs around the house. At this time, surveillance has been completed.

Investigative efforts were conducted on Monday, July 4, 2016, Thursday, July 7, 2016 and Friday, July 8, 2016.

Monday, July 4, 2016

- No claimant video was obtained.
- Area video was obtained depicting our surveillance position and/or the claimant's residence.

Thursday, July 7, 2016

- No claimant video was obtained.
- Area video was obtained depicting our surveillance position and/or the claimant's residence.

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Monday, July 4, 2016

- No claimant video was obtained.
- Area video was obtained depicting our surveillance position and/or the claimant's residence.

Friday, July 8, 2016

- No claimant video was obtained.
- Area video was obtained depicting our surveillance position and/or the claimant's residence.

REPORT OF INVESTIGATION:

DESCRIPTION OF CLAIMANT

The claimant was not observed during this phase of the investigation; however, information provided by the Client indicated the claimant can be described as a 51-year-old male.

DESCRIPTION OF THE RESIDENCE

The residence can be described as a small, white single family residence in a crowded neighborhood.

DIRECTIONS TO THE RESIDENCE

- From Columbia, South Carolina, travel toward Lady St on Huger St (US-21/US-176/US-321).
- Take left ramp onto I-126 W (Lester Bates Fwy) toward US-76 W/Greenville/Spartanburg.
- Keep left onto I-26.
- Take left exit 51 toward Laurens/Greenville onto I-385 (Veterans Memorial Hwy).
- Take exit 30 toward Atlanta onto I-185-TOLL (Southern Conn).
- Keep left toward Southern Conn/I-185-TOLL.
- Keep left onto I-185-TOLL (Southern Conn).
- Continue on I-185.
- Take exit 14B toward Atlanta onto I-85 S.

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- Take left exit 34 toward Williamston/Anderson onto US-29.
- Keep left onto US-29.
- Turn right onto E River St (US-29/US-76/US-178).
- Turn left onto E Shockley Ferry Rd (US-29).
- Turn left onto Murray St (US-29).
- Continue on S Murray Ave (SC-81).
- Turn right onto Masters Drive.
- Turn right onto Chambers Road.
- The residence is located on the right side of the road.

Monday, July 4, 2016

Sunny and Hot- 90

03:37AM Investigator Shawn Conway departed the Columbia, South Carolina area, en route to the provided address located 2917 Chambers Road in Anderson, South Carolina 29626.

05.52AM Upon arrival, no claimant activity was observed, and area video was obtained. A late 1980's Ford Thunderbird was reversed on the grass near the residence. Direct surveillance was established a short distance from the residence, with unobstructed views of both possible routes of departure. Dark area video was obtained.

07:07AM The Investigator conducted a drive-by of the residence and observed no changes. Area video was obtained, and surveillance was reestablished. The residence can be described as a small, white single family residence in a crowded neighborhood. Area video was obtained.

07:59AM Surveillance was maintained; however, no claimant activity was observed. Area video was obtained.

09:03AM The Investigator conducted a drive-by of the residence and observed no changes. Area video was obtained, and surveillance was reestablished. A small, white truck,

ELECTRONICALLY FILED - 2019 Feb 15 11:28 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

no registration plate attached, was parked in the driveway behind the residence. Area video was obtained.

09:10AM The Investigator contacted numerous law enforcement agencies via telephone, in the areas of the claimant's last known addresses in an attempt to locate a recent address and/or location of the claimant, with negative results. Each agency also informed the Investigator that they had no outstanding warrants for the claimant.

10:05AM The Investigator conducted a neighborhood canvass in an effort to confirm the residential address of the claimant. After speaking with residents in the area, the Investigator determined the claimant no longer resided at the reported address, and for the past month or so had been residing 3519 Chipwood Drive, Anderson, South Carolina 29626. The Investigator departed, en route to the address.

10:45AM The Investigator arrived at 3519 Chipwood Drive, Anderson, South Carolina, approached the residence and spoke with Ms. Sherry Hayes. She confirmed the claimant had been residing at her address for the past month or so, did not pay rent and helped out with odd jobs around the house. Ms. Hayes also confirmed her telephone number as 864-314-4573. The Investigator was unable to confirm if the claimant was present within the residence.

10:55AM The Investigator canvassed the surrounding area in an attempt to locate the claimant, as he was known to ride a bicycle; however, he was not observed. Indirect surveillance was established with a view of a possible route of departure.

12:01PM Surveillance was maintained; however, no claimant activity was observed. Area video was obtained.

01:03PM Surveillance was maintained; however, no claimant activity was observed. Area video was obtained.

02:02PM Investigator Shawn Conway discontinued surveillance and departed, en route to the Columbia, South Carolina area. Area video was obtained.

04:47PM Upon arrival and completion of this report, this phase of the investigation was discontinued.

Provided are license numbers as mandated by State Regulations: Arizona (D/B/A HUB Detectives, Inc.) 1003020; California PI 23439; District of Columbia 3003; Florida A9400128; Georgia PDC001580; Illinois 117.001297; Indiana PI20700031; Missouri 2010016560; Montana 7576; Nevada 1269; New York 11000118203; Texas C05635; Utah P106085; Virginia 11-3838

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Thursday, July 7, 2016

Sunny and Hot- 96

02:15AM Investigator Shawn Conway departed the Columbia, South Carolina area, en route to the residence located at 3519 Chipwood Drive in Anderson, South Carolina, 29624.

07:02AM Upon arrival, no claimant activity was observed. Area video was obtained. Indirect surveillance was established a short distance from the residence, with an unobstructed view of a possible route of egress.

07:29AM Surveillance was maintained; however, no claimant activity was observed. Area video was obtained.

08:12AM The Investigator conducted a drive-by of the residence and observed a light blue Honda CRV parked on the grass and a gray Nissan SUV parked in the driveway. No claimant activity was observed. Area video was obtained, and surveillance was reestablished.

08:16AM A spot check of the residence located 2917 Chambers Road, Anderson, South Carolina, was conducted, and a dark green Saturn was parked in the driveway near the rear entrance door. The claimant's bicycle was parked near the residence, in the same area. No claimant activity was observed. Area video was obtained. Indirect surveillance was established.

09:15AM Surveillance was maintained; however, no claimant activity was observed. Area video was obtained.

10:12AM A spot check of the 3519 Chipwood Road address was conducted, and the light blue Honda was still parked on the grass. The gray Nissan was absent from the driveway. No claimant activity was observed. Area video was obtained, and surveillance was reestablished.

11:25AM Surveillance was maintained; however, no claimant activity was observed. Area video was obtained.

12:11PM A spot check of the residence located at 2917 Chambers Road, Anderson, South Carolina, was conducted. The dark green Pontiac Grand Am, was absent from the

Provided are license numbers as mandated by State Regulations: Arizona (D/B/A HUB Detectives, Inc.) 1003020; California PI 23439; District of Columbia 3003; Florida A9400128; Georgia PDC001580; Illinois 117.001297; Indiana PI20700031; Missouri 2010016560; Montana 7576; Nevada 1269; New York 11000118203; Texas C05635; Utah P106085; Virginia 11-3838

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driveway. The claimant's bicycle was parked near the residence, near the rear door. No claimant activity was observed. Area video was obtained, and indirect stationary surveillance was established.

01:21PM The Investigator conducted a canvass in the area of Berry Lane, Anderson, South Carolina. There were two sections of Berry Lane, and each was checked thoroughly. No claimant activity was observed. Area video was obtained. Indirect surveillance was reestablished.

01:58PM Surveillance was maintained; however, no claimant activity was observed. Area video was obtained.

02:56PM A canvass was conducted in the area of Berry Lane, Anderson, South Carolina. No claimant activity was observed.

03:03PM A spot check of the residence located 2917 Chambers Road, Anderson, South Carolina, was conducted. No claimant activity was observed. The dark green Saturn was parked in the driveway. The claimant's bicycle was still parked near the rear door of the residence. Investigator Shawn Conway discontinued surveillance and departed, en route to the Columbia, South Carolina area. Area video was obtained.

05:57PM Upon arrival and completion of this report, this phase of the investigation was discontinued.

Friday, July 8, 2016

Sunny and Hot- 102

09:15AM Investigator Shawn Conway departed the Columbia, South Carolina area, en route to the provided address located 03519 Chipwood Drive, Anderson, South Carolina, 29624.

01:59PM The Investigator arrived in the area of the reported address and observed an unidentified male operating a riding lawn mower at unknown residence. Area video was obtained. Indirect surveillance was established a short distance from the residence, with an unobstructed view of the residence. A short while later, the

Investigator determined that this male was not the claimant and departed, en route to the Chipwood Drive location.

02:16PM A spot check of the Chipwood Drive residence was conducted. No claimant activity was observed, and area video was obtained. The gray Nissan SUV was parked in the driveway. The Investigator departed the area and traveled to the Chambers Road residence.

02:23PM A spot check of the residence, located at 02917 Chambers Road, Anderson, South Carolina, was conducted. No claimant activity was observed. Area video was obtained. The Investigator departed and traveled to the Berry Lane location.

02:45PM A spot check of the Berry Lane area was conducted. No claimant activity was observed. Area video was obtained. Indirect surveillance was established with a view of the most likely route of departure.

03:01PM Surveillance was maintained; however, no claimant activity was observed. Area video was obtained.

04:00PM Surveillance was maintained; however, no claimant activity was observed. Area video was obtained.

04:27PM A spot check of the 3519 Chipwood Road address was conducted. The light blue Honda was still parked on the grass. The gray Nissan was absent from the driveway. No claimant activity was observed, and no other changes were observed. Area video was obtained. Indirect surveillance was reestablished.

04:30PM A spot check of the residence located at 2917 Chambers Road, Anderson, South Carolina, was conducted. The dark green Pontiac Grand Am was parked on the grass next to the driveway. No claimant activity was observed, and no other changes were observed. Area video was obtained. Indirect surveillance was established with a view of a possible route of departure.

05:11PM Surveillance was maintained; however, no claimant activity was observed. Area video was obtained. Indirect surveillance was maintained with a direct view of another possible route of departure.

Provided are license numbers as mandated by State Regulations: Arizona (D/B/A HUB Detectives, Inc.) 1003020; California PI 23439; District of Columbia 3003; Florida A9400128; Georgia PDC001580; Illinois 117.001297; Indiana PI20700031; Missouri 2010016560; Montana 7576; Nevada 1269; New York 11000118203; Texas C05635; Utah P106085; Virginia 11-3838

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05:33PM Surveillance was maintained; however, no claimant activity was observed. Area video was obtained.

06:11PM The Investigator conducted a spot check in the Chambers Road area. No claimant activity was observed. Area video was obtained.

06:14PM The Investigator conducted a spot check in the Chipwood Drive area. No claimant activity was observed. Area video was obtained.

06:16PM The Investigator conducted a spot check in the in the Berry Lane area. No claimant activity was observed. Area video was obtained. Indirect surveillance position was established with view of a possible route of departure.

06:47PM Surveillance was maintained; however, no claimant activity was observed. Area video was obtained.

07:15PM Surveillance was maintained; however, no claimant activity was observed. Area video was obtained.

08:01PM Surveillance was maintained; however, no claimant activity was observed. Area video was obtained.

08:32PM Mobile surveillance was initiated in the Berry Lane area. No claimant activity was observed. Area video was obtained.

08:35PM The Investigator conducted a spot check in the Chipwood Drive area. No claimant activity was observed. Area video was obtained.

08:42PM The Investigator conducted a spot check in the Chambers Road area. No claimant activity was observed. Dark area video was obtained. Indirect surveillance was established with a view of a possible route of departure.

09:03PM Surveillance was maintained; however, no claimant activity was observed. Dark area video was obtained.

10:00PM Surveillance was maintained; however, no claimant activity was observed. Dark area video was obtained.

10:15PM Investigator Shawn Conway discontinued surveillance and departed, en route to the Columbia, South Carolina area.

01:00PM Upon arrival and completion of this report, this phase of the investigation was discontinued.

COMMENTS:

All investigative efforts have been discontinued, pending further instructions from the Client.

Should you have any questions, or wish to further discuss this matter, please feel free to contact me. HUB Enterprises appreciates this opportunity to be of service to you.

Ali Elner
Client Relations

Jason Broussard
Case Manager

AE/JB: btc
Enclosures:

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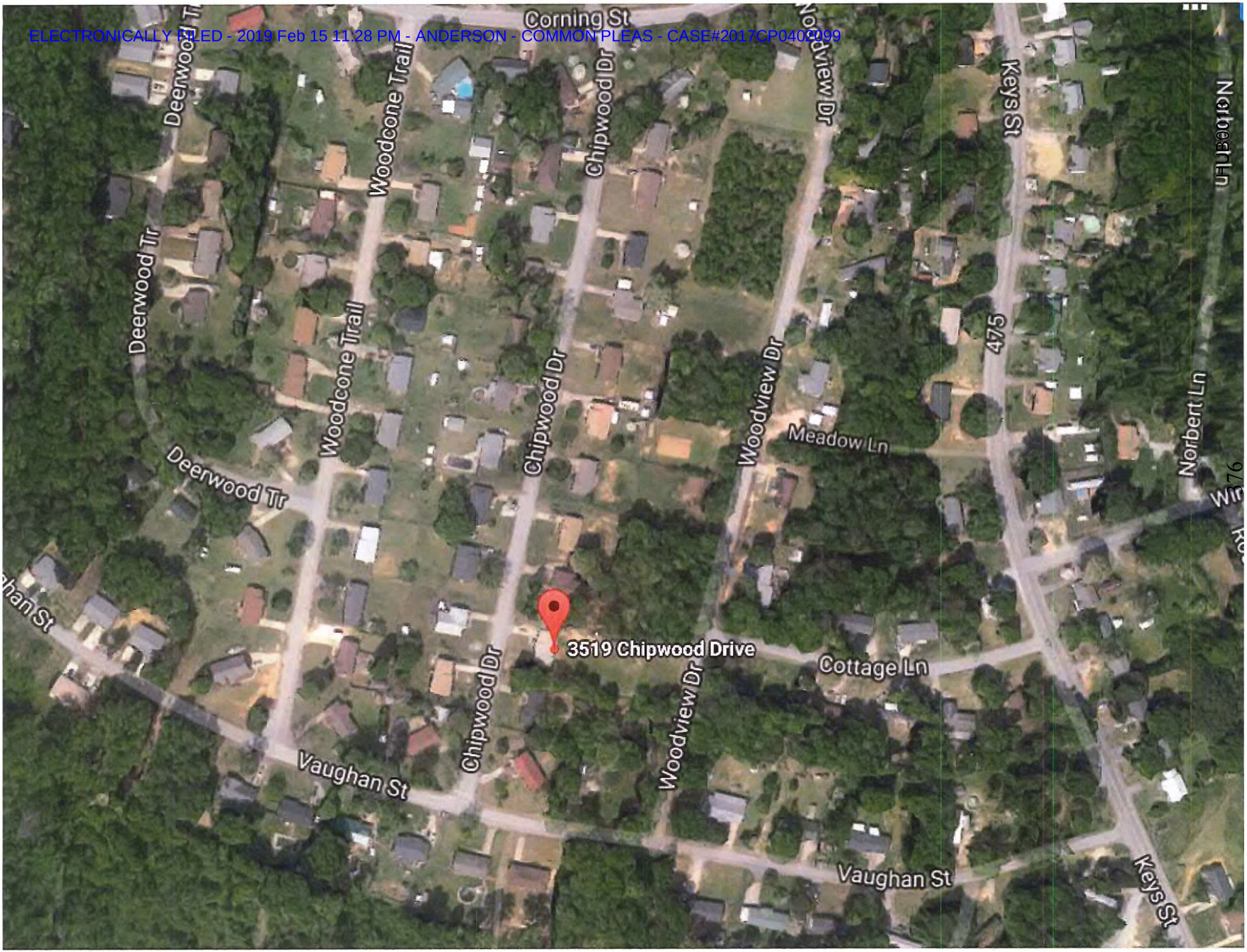

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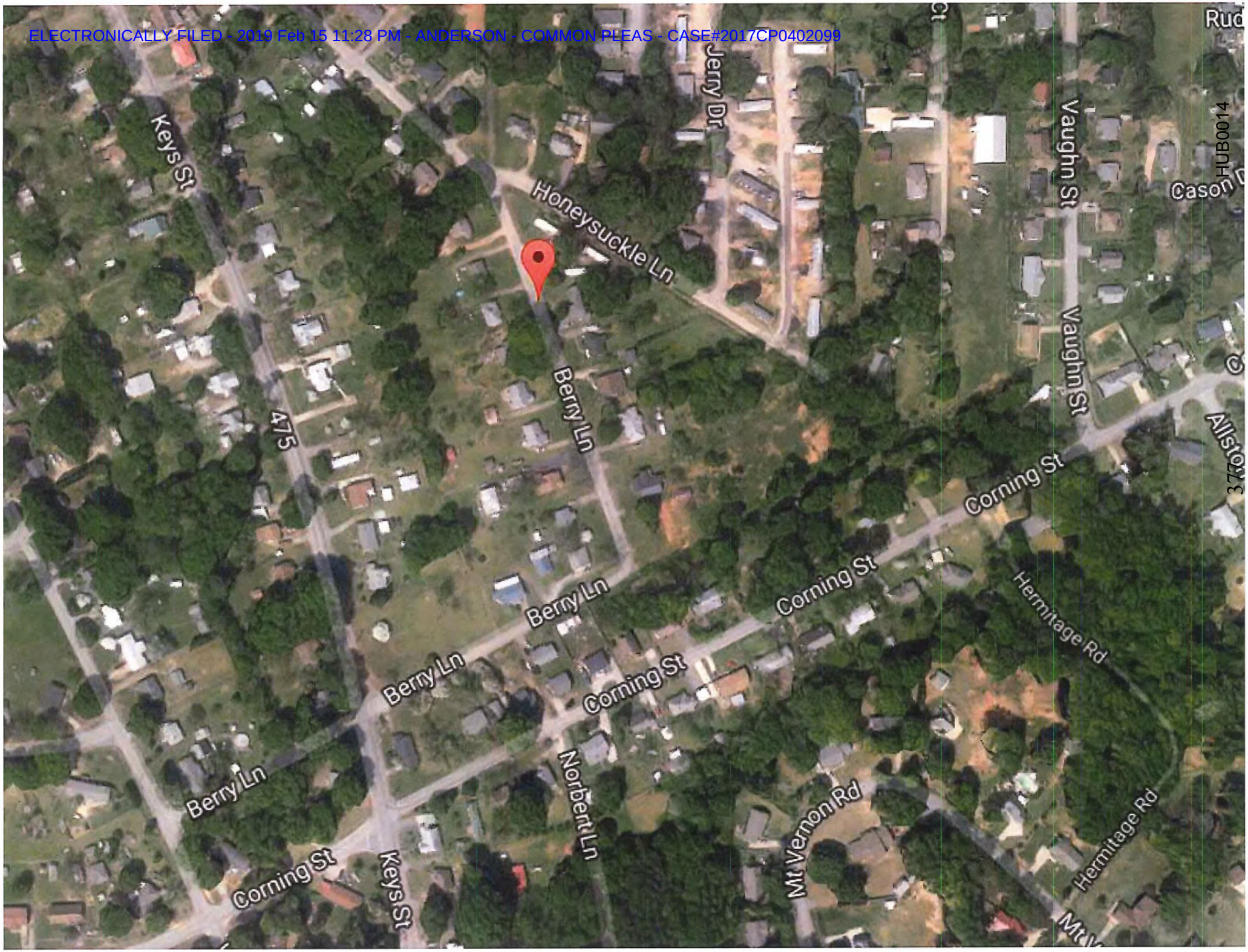

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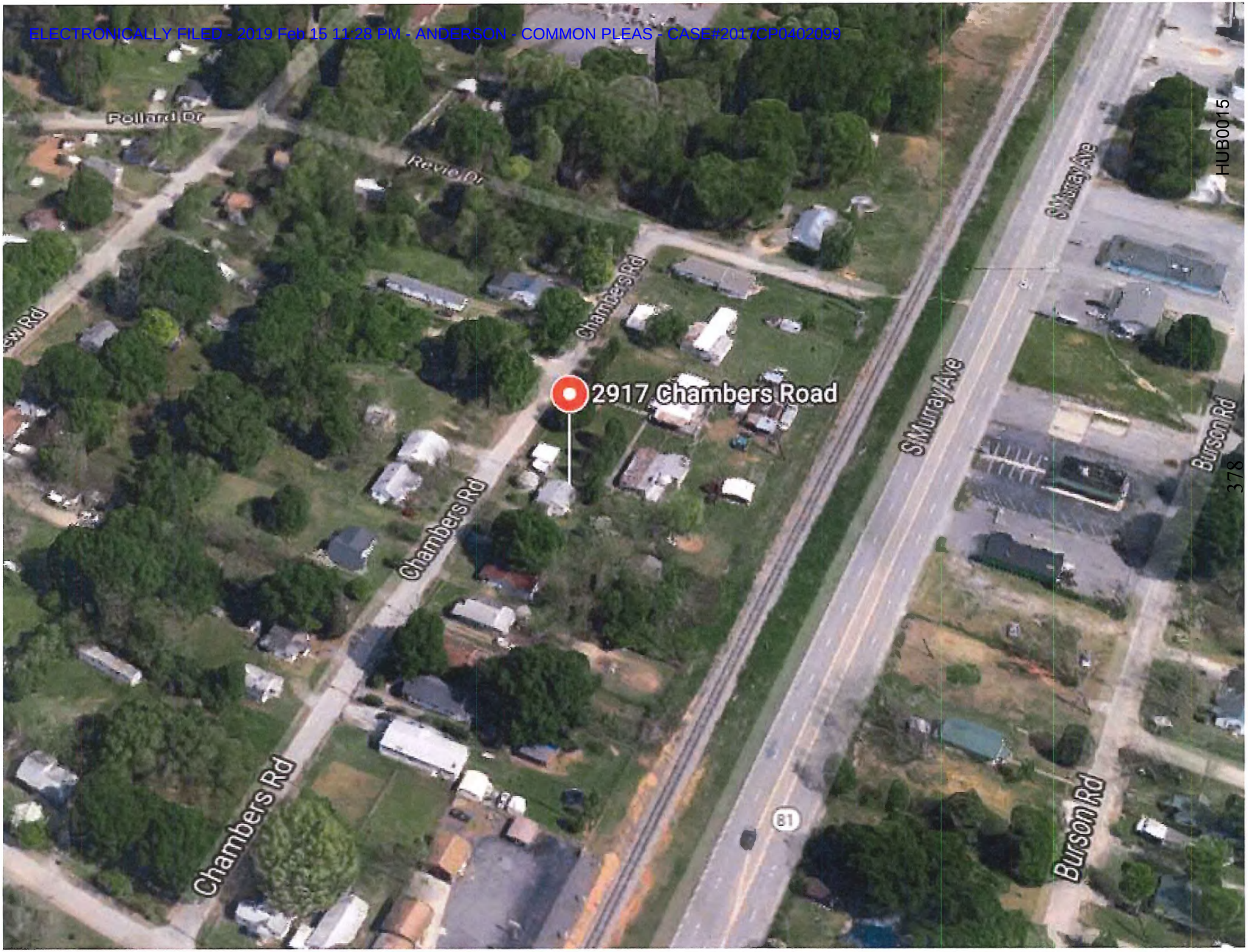

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HUB0016

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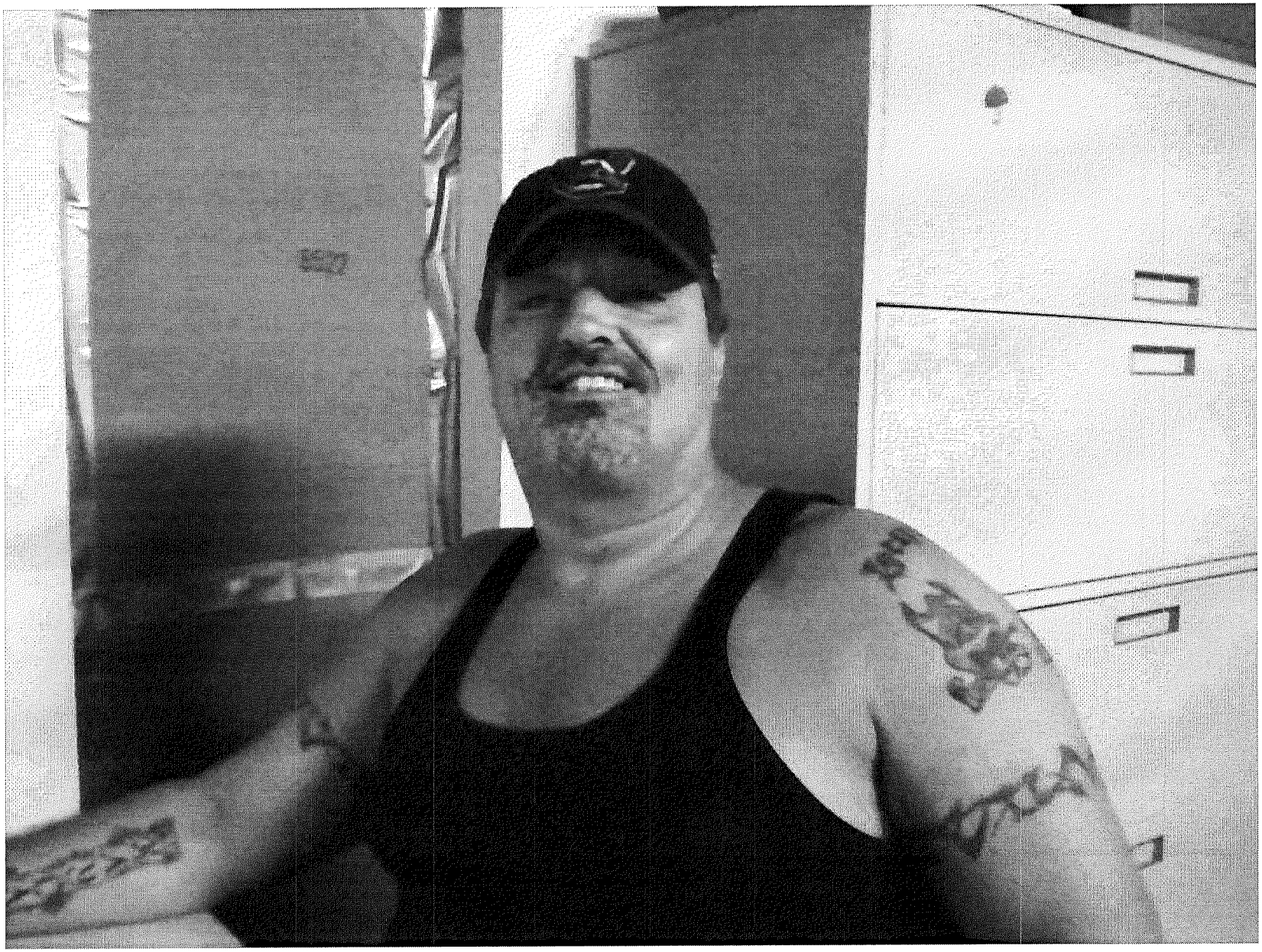


DRAFT AFFIDAVIT OF KAMI GRANADE 02/23/2017

ELECTRONICALLY FILED - 2018 Mar 09 3:39 PM - ANDERSON - COMMON PLEAS - CASE#2014CP0402908

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
John Harbin,
Plaintiff,
vs.
April Blair and Tracy Dunn,
Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

AFFIDAVIT OF
KAMI D. GRANADE, ESQUIRE

C.A. No.: 2014-CP-04-02908

PERSONALLY, APPEARED BEFORE ME, Kami D. Granade, Esquire, who being duly sworn, deposes and says that my name is, Kami D. Granade, Esquire and I am an Assistant Public Defender for the Eighth Judicial Circuit. I have been assigned to represent the interests of Tracy Douglas Dunn and Willie Clarence Tillman. It is my understanding that Mr. Dunn and Mr. Tillman are cousins.

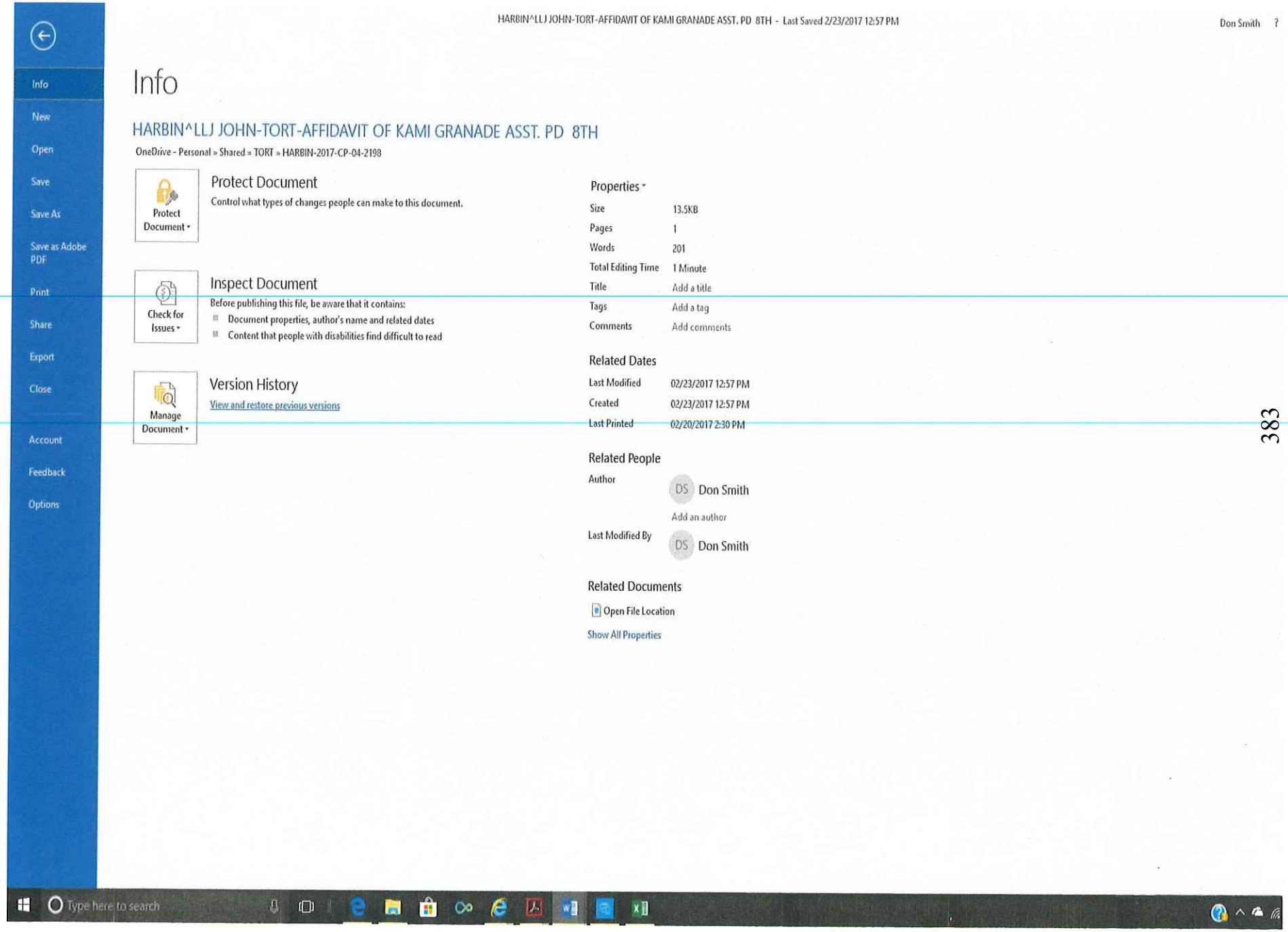
I am currently handling the representation of Tracy Douglas Dunn. Mr. Dunn has been charged with Criminal Domestic Violence of a High and Aggravated Nature. The alleged victim is April Blair. Ms. Blair has contacted my office on multiple occasions regarding the charge against Mr. Dunn. She has indicated that she is attempting to have the charge dismissed. The charge has yet to be dismissed.

_____
Kami D. Granade, Esquire
Assistant Public Defender for the
Eighth Judicial Circuit

Abbeville, South Carolina
Dated: February ____, 2017.

SWORN to me this _____ day
of February, 2017.

_____
Notary Public South Carolina
My Commission Expires: _____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Don Smith
Info
New
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Before publishing this file, be aware that it contains:
Document properties, author's name and related dates
Content that people with disabilities find difficult to read
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Size 13.5KB
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Words 201
Total Editing Time 1 Minute
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Tags Add a tag
Comments Add comments
Related Dates
Last Modified 02/23/2017 12:57 PM
Created 02/23/2017 12:57 PM
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Related People
Author DS Don Smith
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AFFIDAVIT OF SERVICE OF MICHAEL MOSKE 03/05/2018

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

John Harbin,

Plaintiff,

vs.

April Blair and Tracy Dunn,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. FILE NO.: 2014-CP-04-02908

AFFIDAVIT OF MICHAEL J. MOSKE

PERSONALLY, APPEARED BEFORE ME, Michael J Moske, Private Detective, swear and affirm that I was hired by Donald L. Esquire, to get an affidavit signed. Mr. Smith sent me to see Kami D. Granade, Esquire, the attorney for Clarence Willie Tillman. Mr. Smith had prepared an affidavit for Ms. Granade to sign based on a discussion that he had with Mr. Tillman. I have attached the affidavit that I presented to her, to this affidavit.

The affidavit stated that she was representing Mr. Tillman. The affidavit stated that she was representing Tracy Dunn. The affidavit stated that April Blair, the alleged victim of a CDV in which Dunn was the actor, had contacted her to notify her that she wanted to, and would do anything necessary, to have the CDV charge dropped. She refused to sign the affidavit.

I did not lie to, or in any way, attempt to mislead Ms. Granade about my purpose. The document was titled, "Affidavit of Kami D. Granade". I am licensed as a private investigator in Georgia and South Carolina. I am not going to tell an attorney that the document in which her name is displayed next to affidavit, that it is a "certificate of service".

Michael J. Moske, P.I.
On The Watch, LLC
GA License Number: PDC002618
SC License Number: PDC3105

Anderson, South Carolina
SWORN to me this 5th day
of March 2018.

Donald L. Smith
Notary Public South Carolina
My Commission Expires: 11/18/2024

ELECTRONICALLY FILED - 2018 Mar 09 5:39 PM - ANDERSON - COMMON PLEAS - CASE#2014CP0402908

EXECUTED AFFIDAVIT OF KAMI GRANADE (submitted by Atty. Corney) 02/08/2018

ELECTRONICALLY FILED - 2018 Mar 09 5:39 PM - ANDERSON - COMMON PLEAS - CASE#2014CP0402908

ELECTRONICALLY FILED - 2018 Feb 16 4:26 PM - ANDERSON - COMMON PLEAS - CASE#2014CP0402908

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	C.A. NO.: 2014-CP-04-2908
John E. Harbin,	)	
Plaintiff.	)	**AFFIDAVIT OF KAMI D. GRANADE, ESQUIRE**
vs.	)	
April Blair and Tracy Dunn,	)	
Defendants.	)	

Personally appeared before me, Kami Daws Granade, Esquire, who after being duly sworn, deposes and states as follows:

1. I, Kami Daws Granade, am an individual over the age of eighteen (18) years who is competent to testify to the matters set forth herein.

2. I am a current resident and citizen of Greenville County, South Carolina.

3. I am a member in good standing with the South Carolina Bar and have been licensed to practice law in the State of South Carolina since November of 2014 (S.C. Bar No. 101713).

4. I currently am, and at all times relevant hereto was, employed as an Assistant Public Defender with the Eighth Circuit Public Defender's Office in Greenwood, South Carolina.

4. In my role as an Assistant Public Defender, I began representing Tracy Douglas Dunn on a charge of Criminal Domestic Violence of a High and Aggravated Nature ("CDV") (*C.A. No.2015A01102000059*) in approximately July of 2016. That charge stemmed from an alleged altercation with April Blair which occurred at her home on Lake Secession Boulevard in Iva, South Carolina.

ELECTRONICALLY FILED - 2018 Mar 09 5:39 PM - ANDERSON - COMMON PLEAS - CASE#2014CP0402908
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5. In December 2016, my office was contacted by April Blair about the CDV charge pending against Dunn, at which time Blair voiced her desire to not pursue the charge against Dunn. Upon information and belief, Blair had made attempts to contact the solicitor's office prosecuting the CDV charge prior to that date in an attempt to execute a non-prosecution affidavit noting her desire to not pursue the charge, but she noted encountering difficulty doing so.

6. Shortly after that interaction with Ms. Blair, I had a client meeting with Tracy Dunn at the Abbeville County Detention Center to discuss his pending charges.

7. In addition to my representation of Tracy Dunn, I also began representing Willie Clarence Tillman, Jr. in October 2016 relating to a number of criminal charges he received in Abbeville County *(Assault and Battery of a High and Aggravated Nature: 2016A0110100296 and 2016A0110100297; Failure to Stop for a Blue Light: 2016A0110100298; Receiving Stolen Goods: 2016A011010299 and 2016A0110100300; and Driving Under Suspension: 31809FV)*. During late 2016 and early 2017, Tillman was in custody with the Abbeville County Detention Center where Dunn was also housed. It is my understanding the two are cousins, and that they regularly interacted during their concurrent incarceration at the Abbeville County Detention Center in late 2016 and early 2017.

8. In approximately February of 2017, I was approached by a private investigator working for attorney Donald L. Smith named Michael Moske. At that time, Moske handed me a piece of paper which he represented to be Certificate of Service and encouraged me to sign it. After inquiring further into the nature of his request and the details of that document, Moske acknowledged the document was in fact an affidavit attesting to a number of facts about my

representation of Tracy Dunn which were not accurate. As such, I declined to execute the affidavit.

9. As a result of that contact with Moske and after coming into knowledge of the affidavit executed by Tillman at the request of attorney Donald Smith, I sought to be relieved as Tillman's counsel out of an abundance of caution to avoid encountering any potential conflict of interest. It is my understanding that after I was relieved as counsel for Tillman, his representation was transferred to a contract public defender very briefly (*Aaron Taylor, Esq.*) before attorney Donald Smith took over as Tillman's new attorney on the pending criminal charges in the Spring of 2017.

10. In June 2017, I appeared with Tracy Dunn at the Abbeville County Courthouse for his entry of a guilty plea on the pending CDV charge. April Blair was at the courthouse that day, but she left before the hearing began and never spoke on the record to the Court. I advised the Court during the plea hearing of Blair's desire not to pursue the charge against Dunn, while also acknowledging Blair did not control the solicitor's decision to prosecute the charge.

11. I never came into any information or knowledge of any kind during my representation of Tracy Dunn or Willie Clarence Tillman, Jr. which led me to believe there was any type of *quid pro quo* agreement or arrangement between Blair and Dunn to assist in the resolution of Dunn's pending CDV charge.

12. Likewise, I never came into any information or knowledge of any kind during my interactions and/or conversations with April Blair prior to Dunn's June 2017 plea hearing which led me to believe Blair's desire not to pursue the CDV charge against Dunn was motivated by a *quid pro quo* agreement or arrangement with Dunn.

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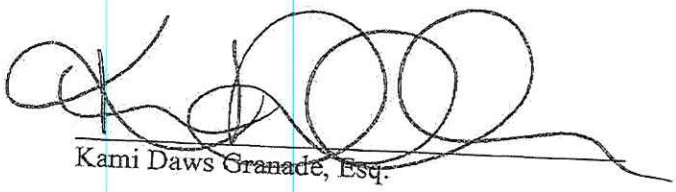
13. I never discussed, participated in, facilitated, or was otherwise aware of any alleged *quid pro quo* agreement or understanding reached between Dunn and Blair to resolve Dunn's CDV charge in 2017.

Further the Affiant sayeth not.



Kami Daws Granade, Esq.

Sworn to and subscribed before me this 8 day of February, 2018.

Heidi Riverman

Notary Public

My Commission Expires: My Commission Expires January 3, 2027

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APRIL BLAIR's EXHIBITS

NOTICE OF MOTION AND MOTION TO VACATE

(January 4, 2018)

ELECTRONICALLY FILED - 2018 Jan 04 2:49 PM - ANDERSON - COMMON PLEAS - CASE#2014CP0402908
ELECTRONICALLY FILED - 2020 Apr 24 2:15 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0402099

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John Harbin, Plaintiff, vs. April Blair and Tracy Dunn, Defendants.	C.A. FILE NO.: 2014-CP-04-02908 **NOTICE OF MOTION AND MOTION TO VACATE**

TO: THIS HONORABLE COURT AND DEFENDANT APRIL BLAIR, BY AND THROUGH HER COUNSEL OF RECORD, ROBERT D. CORNEY, ESQUIRE AND DEFENDANT TRACY BLAIR:

YOU WILL PLEASE TAKE NOTICE that on the_____day of _____, 2017, at____:____ __.m. or as soon thereafter as this matter may be heard, Claimant will move this Honorable Court for an Order vacating the judgment pursuant to Rule 60(b)(2) and (3) of the South Carolina Rules of Civil Procedure in the above-referenced matter on the grounds that conspiracy existed between Defendants' Blair and Dunn could not be ascertained until newly discovered evidence was provided. In addition, this newly discovered evidence illustrates fraud, misrepresentation and misconduct. It is the contention of Plaintiff that the misconduct and fraud upon the Court are such that it is no longer equitable that the judgment should have prospective application. If the Order is not vacated, it will result in manifest injustice, both literally and figuratively.

This motion is made pursuant to *South Carolina Rules of Civil Procedure* 60(b)(2) and (3) ("Rule 60") and shall be based upon this Notice, a Memorandum of Law and Authorities, related Exhibits, the complete files and records of this action, and such other and further oral and documentary evidence as may be presented at the hearing on this Motion.

CONCLUSION

For the above and foregoing reasons, Plaintiff looks forward to the hearing wherein he shall move for this Court to vacate the underlying judgment so that justice may be served. Plaintiff suffered prejudice due to Defendants' fraud, misrepresentation and misconduct. Plaintiff deserves to have the opportunity to have all of the discovery, as well as the ability to cross-examine witnesses (based on all of the discoverable evidence) pursuant to the South Carolina Rules of Civil Procedure, before a jury of his peers so that the decision is not based on Defendants' improper conduct.

Respectfully submitted,

_s/ Donald L. Smith_____
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Attorney for Plaintiff
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Anderson, South Carolina
Date: January 4, 2018.

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MEMORANDUM IN SUPPORT OF PLAINTIFF's MOTION TO VACATE

(January 30, 2018)

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
John E. Harbin,)	
)	
Plaintiff,)	
)	**MEMORANDUM IN SUPPORT OF**
vs.)	**PLAINTIFF'S MOTION TO VACATE**
)	
April Blair, Tracy Dunn, HUB Enterprises,.)	
Inc Shawn Conway, Gallivan, White)	
& Boyd, Sam Nikopoulos and John Doe,)	
)	C.A. No.: 2014-CP-04-02099
Defendants.)	
)	

Plaintiff respectfully submits this Memorandum in support of his Motion to Vacate the verdict rendered by an Anderson County jury on November 30, 2016. In doing so, Plaintiff presents the following:

STATEMENT OF FACTS

In 2014, Plaintiff Harbin brought a case for damages against Defendants Blair and Dunn for the latter's act of shooting and injuring the former.

Sometime in 2012, Defendants Blair and Dunn, who were in a relationship, invited Plaintiff Harbin to stay with them in exchange for his performance of general labor, similar to which the latter rendered at Defendant Blair's mother's house. At some point, Defendants Blair and Dunn had a misunderstanding, which caused her to tell him to leave the property.

Defendant Blair and Plaintiff Harbin had a brief sexual relation, which the former immediately regretted. To assuage her conscience, Defendant Blair called Defendant Dunn on the day of the incident, and made it appear that Plaintiff Harbin raped her. Defendant Dunn, armed with a gun, came to her defense on his moped, and confronted Plaintiff Harbin. Defendant Dunn thereafter shot Plaintiff Harbin, when the latter was in the process of leaving Defendant

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Blair's house. Plaintiff Harbin sustained significant physical injuries and had to be airlifted to Anmed, where he had to be confined.

Defendant Blair, in an attempt to justify her boyfriend's actions, claimed Plaintiff had raped her that morning, following an evening of love making with him. She also maintained that he had molested her when she was much younger. Despite this fact, she had made love to him and allowed him to reside in her home with her, Defendant Dunn and her son.

Following the shooting, Defendant Dunn was picked up from the front yard by a passing motorist. He was eventually found at Ms. Blair's home, sometime after she was released from jail for possession of methamphetamine. After he was apprehended, he made several conflicting statements about his involvement in the shooting. He first claimed that Plaintiff Harbin shot himself, then stated that he attempted to shoot the ground in front of Harbin.

Plaintiff employed the legal services of the undersigned counsel to bring a tort action against Blair and Dunn. Defendant Dunn pleaded guilty to assault and battery of a high and aggravated nature for the shooting of Harbin. He was sentenced to time served and probation. Defendant Blair denied involvement in the shooting incident.

Defendant Dunn resumed his romantic relations with Defendant Blair, upon her release from jail. Prior to trial, Blair had Dunn charged with Criminal Domestic Violence of a high and aggravated nature. Because of his probation, Defendant Dunn was sent back to jail, to await trial or adjudication of his alleged probation violation.

While Plaintiff's tort case was ongoing, Defendant Law firm sent its agents (including Defendant Nikopoulus and Robert Corney, Esquire to Abbeville Detention Center) to visit Defendant Dunn. It is the understanding and belief of Plaintiff that it was during this visit(s) that an agreement was reached between Defendants Blair and Dunn. It is the understanding and

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belief of Plaintiff that Defendant Nikoupolos and/or Corney informed Defendant Dunn that Defendant Blair would help him with her CDV case against him, if he would proclaim her innocence.

On the day of the deposition, Defendant Dunn admitted, for the first time, that he intended to shoot Harbin, and denied Defendant Blair's responsibility. When trial came, Defendant Dunn stuck to his admission. Defendant Blair was absolved of any liability based on Defendant Dunn's testimony. Following the trial, Defendant Blair informed the Public Defender's Office of her preference to dismiss the CDV case she filed against Defendant Dunn. Plaintiff Harbin believed that Defendants Blair and Dunn conspired to defeat his claims.

Following the conclusion of the tort case, Defendant Blair and Defendant Law firm announced that a private investigator had been hired to provide surveillance on Plaintiff. This witness was not provided in discovery, yet his bill was offered for payment by Plaintiff for his failure to accept Defendant Blair's Offer of Judgment. Defendant Conway, a private investigator, working for Defendant HUB Enterprises, Inc., was responsible for the surveillance.

Defendant Blair sought to be reimbursed for her expenses in hiring Defendants HUB and Conway. This despite the following facts: (1) Defendant Investigators were hired after Plaintiff Harbin's deposition; (2) Plaintiff was not informed of the fact that Defendants hired private investigators and only learned of such when Plaintiff Harbin received Defendant's Affidavits and Exhibits submitted for the purpose of collecting costs as a result of an Offer of Judgment, which had been declined; and, (3) Plaintiff Harbin was not provided a copy of the investigator's report(s), notes or other proof of investigative work.

Defendants' acts taken together show that they conspired to deny Plaintiff's claim, thereby interfering in Plaintiff's attorney-client relation/contract. Plaintiff filed this instant

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Motion to Vacate on November 30, 2017. This filing satisfied the one-year window in which to file.. Defendant Blair moved to dismiss the case, thus this Reply.

STANDARD OF REVIEW

The Court has the power to set aside the judgment that was entered against the defendant. Rule 60 states in pertinent part that "(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud, misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

This Rule retains the one year limitation for Rule 60(b)(1)-(3) for mistake, inadvertence, excusable neglect, newly-discovered evidence, and fraud; but permits relief under Rule 60(b)(4) and (5) after one year, but within a "reasonable time" when the judgment is void or the judgment has been satisfied, avoiding the necessity of bringing a new action to set aside the judgment in such cases after one year.

ARGUMENT

I.

PLAINTIFF'S NEWLY DISCOVERED EVIDENCE IS SUFFICIENT ENOUGH TO WARRANT A NEW TRIAL

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> "To obtain a new trial based on newly discovered evidence, a movant must establish that the newly discovered evidence: '(l) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and, (5) is not merely cumulative or impeaching.'" (quoting James F. Flanagan, *South Carolina Civil Procedure* 484 (2nd ed.1996)

Sometime after the trial of this case, Plaintiff came into possession of two documents that proved the elaborate agreement entered by the Defendants to deprive the Plaintiff of the opportunity to be heard of his case.

Mr Willie Clarence Tillman, cousin of Defendant Dunn, executed an Affidavit, stating that Defendant Dunn confided in him about the plan for the former to testify in court, claim sole responsibility for the shooting of Plaintiff and clear co-Defendant Blair of culpability, in exchange for the latter dropping her previous CDV charge against Dunn. (Exhibit 1-Tillman Affidavit). Mr. Tillman's also stated that Defendant Blair's counsel, Attorney Kami D. Granade, who also represented him, acted as intermediary between the two Defendants. *Id.* This Affidavit was executed in February 23, 2017, nearly three months after the trial.

On June 21, 2017, Dunn had a plea hearing to resolve the outstanding charge brought by Blair. The hearing provided the opportunity for Blair to pursue the dismissal of the charge that she brought; or, at the very least, a reduction in any sentence he was to receive.

> Mr. Dunn's long-time girlfriend and the victim in this case her name is April Blaire. She was actually here earlier, but she had to leave. I can tell the court that Ms. Blaire did not want to pursue these charges. She preferred that they had been dismissed, but of course that is not within her power.
>
> Your Honor, Mr. Dunn does not have any children of his own, but it is my understanding after talking to my client and to Ms. Blaire that she has a two-year-old son named Jackson and that Mr. Dunn has cared for him since his birth. I believe that Mr. Dunn views Jackson as his own child, Your Honor, and he desperately wants to be out of course in order to see Jackson grow up.

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> Your Honor, as you've already heard Mr. Dunn is on probation. His agent did tell me that he was cooperative and had done quite well up until this incident. Your Honor, Mr. Dunn is standing here before you. He is accepting responsibility both for this offense as well as the violation of probation. I can tell you that my experience with Mr. Dunn has been very pleasant. He is cooperative. As a Public Defender I don't always get that from my clients and I can tell you that it's been a pleasure representing him.
>
> That being said, Your Honor, we would ask for a time-served sentence. He has actually been in the County Detention Center for 393 days and we would ask, of course, that he be given credit for that time.

(Exhibit 2, Dunn Plea-Blair CDV).

The colloquy of Defender Granade confirms the information offered by Mr. Tillman in his affidavit. The affidavit and the offering of Dunn's counsel can be considered a newly discovered evidence because it satisfies the requirements the above-mentioned requirement: (l) it has been discovered after the trial; (2) it could not have been discovered before the trial because Dunn did not plead until June of 2017; (3) the open and obvious collusion of Dunn and Blair will most likely change the result if a new trial is granted; (4) this newly discovered evidence is material to the issue; and, (5) it is not merely cumulative or impeaching, but goes directly toward the guilt or innocence of Defendant Blair.

The second newly discovered evidence is the Affidavit of Michael Moske, an independent private detective, who reviewed the videos and report written by Defendant Shawn Conway and HUB Enterprise. (Exhibit 3-Affidavit-Mike Moskie). He stated that in his professional capacity, that he believed that the videos have been altered as the creation date cannot be found through the use of metadata retrieval application. *Id*. These videos and report were used by Defendant Blair for reimbursement of her expenses. Plaintiff asserts that it is significant because it was used to corroborate Corney's claim that the failure to provide discovery related to the involvement of Conway was irrelevant because he *never* saw him.

Corney submitted the Affidavit of Shawn Conway on the day of the hearing, There was

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no way to review its validity. This was similar to the withholding of discovery that was discoverable unless expressly ruled on by the Court. Conway stated that he never saw anyone in the home where Plaintiff and his girlfriend resided. (Exhibits John Harbin and Patricia Elrod). Conway's report contained an alleged witness, who has since signed an affidavit that she had never talked to Conway. (Exhibit 6-Affidavit-Sherry Hayes). It is Plaintiff's contention that the questionable evidence indicates that Plaintiff did not get a fair trial.

I1.

DEFENDANTS' FRAUD SHOULD NOT PREVENT PLAINTIFF FROM GETTING HIS DAY IN COURT

Plaintiff believe that Defendants perpetrated fraud on the court by colluding and conspiring with one another to deprive Plaintiff of his day in court.

A careful reading of Mr. Tillman's sworn statement confirms Plaintiff's allegations that Defendant Dunn's counsel presented the *quid pro quo* agreement to Defendant Tracy when the former visited the latter in jail in June of 2016. (Exhibit 7-Defense trips to Abbeville). Prior to his counsel's visit, Defendant Dunn denied shooting Plaintiff. He later admitted shooting the latter while attempting to shoot the ground in front of him. (Exhibit 8-Dunn incident report, 6/24/2014). It was only on July 14, 2016, that Defendant Tracy remembered that he intentionally shot the Plaintiff. (Exhibit 9-Dunn Depo, 7/14/2016). Because of his testimony on November 30, 2016, the case against Defendant Blair was dismissed. (Exhibit 10, Dunn Trial Testimony, 11/30/2016). Thereafter, Plaintiff learned that Defendant Blair, in a plea agreement hearing for her CDV case against Dunn, expressed her intention to dismiss her case against him. (Exhibit 2, 6/21/2017). Defendants Dunn and Blair continue their relationship, today.

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Clearly, something made Defendant Tracy change his story and statements. The circumstances, preceding and subsequent to his admission of sole culpability for the tort case, showed a deliberately planned and carefully executed scheme to defeat Plaintiff's cause.

Plaintiff believes that the deal between Defendants Dunn and Blair, to alter the former's statement regarding the shooting incident, facilitated by defense counsel, is tantamount to a subornation of perjury. Plaintiff also asserts that the submission of altered videos, by Defendants Conway and HUB Enterprises, constitute fabrication of evidence.

South Carolina court ruled in the case of *In the Matter of Goodwin*, that subornation of perjury by an attorney and the submission of fabricated evidence are actions which constitute fraud on court, otherwise called, extrinsic fraud. *In the Matter of Goodwin*, 279 S.C. 274, 305 S.E.2d 578 (1983) as cited in *Chewning v Ford Motor Company, et a*l., 354 S.C. 72 (2003) 579 S.E.2d 605.

Extrinsic fraud is a "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." *Hilton Head Ctr. of South Carolina v. Public Serv. Commission*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). Extrinsic fraud is "collateral or external to the matter tried such as misleading acts which prevent the movant from presenting all of his case." *Evans v. Gunter*, 294 S.C. 201 525, 529, 366 S.E.2d 44, 46 (Ct.App.1988).

Plaintiff believes that because of the deal between Defendants Dunn and Blair, which was brokered by the latter's counsel, Plaintiff was prevented from establishing the involvement of

Defendant Blair in the incident. Plaintiff was deprived of the opportunity to prove Defendant Blair's culpability, because of the counsel presentation Defendant Dunn's false testimony.

CONCLUSION

For the above and foregoing reasons, Plaintiff moves this court to set aside the verdict offered by the jury on November 30, 2016, and to grant a new trial on the following grounds: (1) that the verdict was based on extrinsic fraud; and, (2) discovery of new evidence that could not have been uncovered until the trial had completed, and which would have changed the outcome of the case.

Respectfully submitted by:

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Date: January 30, 2018

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ORDER, DENYING PLAINTIFF's RULE 60(b) SCRCP MOTION TO VACATE (March 30, 2018)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	FOR THE TENTH JUDICIAL CIRCUIT
	)	
John E. Harbin,	)	**ORDER DENYING PLAINTIFF'S RULE 60(b), SCRCP MOTION TO VACATE JUDGMENT**
	)	
Plaintiff,	)	
	)	
vs.	)	C.A. No.: 2014-CP-04-2908
	)	
April Blair and Tracy Dunn	)	
	)	
Defendants.	)	
	)	

INTRODUCTION

This matter comes before this Court on the plaintiff's motion to vacate judgment filed pursuant to Rule 60(b) of the *South Carolina Rules of Civil Procedure*. For the reasons set forth herein below, this Court hereby denies that motion on all grounds and dismisses this action.

FACTUAL BACKGROUND

On June 21, 2014, John E. Harbin ("Plaintiff") was shot in the lower right extremity by co-defendant Tracy Dunn ("Dunn") while in the front yard of Defendant's home located at 2760 Lake Secession Road in Iva, South Carolina, following a verbal and physical altercation between the two men. At the time the shot was fired, Defendant was sitting on the back porch of the home smoking a cigarette. Defendant neither saw the shooting, nor was she an active participant in the shooting. As a result of the gunshot wound suffered, Plaintiff was airlifted to AnMed Health ER where he received treatment and remained for several days before being discharged on June 27, 2014. Plaintiff did not receive any medical treatment related to that injury after being discharged from AnMed Health.

During the course of discovery and the trial of this case, the evidence showed that Defendant and Dunn were engaged to be married prior to the date of this shooting, and lived

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together at Defendant's home on Lake Secession Road. In early June 2014, Dunn and Defendant agreed to allow Plaintiff to move into a guest room in the home in exchange for his performing odd-jobs around the property. Plaintiff moved into Defendant's Lake Secession Road home with Defendant, Dunn, and Defendant's eight (8) year old son in mid-June of 2014. During his stay at the home, Plaintiff and Dunn had a close relationship "almost like brothers," according to Plaintiff's trial testimony, in part because the two men had known each other since they were young boys. During the time the two men lived in Defendant's house together, Plaintiff saw Dunn with a firearm in his possession and knew Dunn routinely carried such a weapon on his person.

On June 18, 2014, Defendant decided to drive into Anderson to obtain a title loan on her car to pay for medical care needed by Dunn. Plaintiff asked to ride into town with Defendant, while Dunn remained at home. During the course of their drive into Anderson that afternoon, Plaintiff advised Defendant that Dunn had been boasting about having romantic relationships with other women behind Defendant's back. He further alleged Dunn was lying about being sick and, rather, Dunn was really suffering from the effects of a sexually-transmitted disease he had received from one of his mistresses. Defendant, believing Plaintiff's claims, called Dunn on the phone and instructed him to pack his belongings and leave her house. According to Dunn's trial testimony, because Plaintiff was the only person in the car with Defendant when that phone call occurred, he knew Plaintiff had lied to Defendant about Dunn cheating on her. In accordance with Defendant's request, Dunn packed several bags and left Defendant's home to stay with his friends across town. However, because his friends' home did not have a fenced backyard, he left his two (2) pit bull terriers at Defendant's house.

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Over the course of the next several days, Plaintiff continued to stay at Defendant's home on Lake Secession Road with Defendant and Defendant's eight (8) year old son. On the evening of June 20, 2014, Plaintiff and Defendant engaged in consensual sex. Afterwards, Defendant asked that Plaintiff leave her room and sleep elsewhere for the remainder of the evening. According to the uncontested testimony and evidence presented at trial, the following morning Defendant awoke to Plaintiff raping her. Defendant told Plaintiff to pack his belongings and leave her house immediately; however, Plaintiff refused to leave the property telling Defendant he wasn't finished with the work he was performing there.

At some point that morning, Defendant contacted Dunn by text message to ask that he purchase dog food and bring it to Defendant's house to feed the two pit bulls Dunn left when he moved out several days earlier. Defendant testified she asked Dunn to bring food over for the dogs that morning because she refused to incur the cost of feeding dogs that belonged to Dunn while Dunn was no longer living in the home. According to Plaintiff, roughly forty-five minutes to one hour before Dunn arrived at Defendant's house that morning, Defendant told Plaintiff that he "probably ought to leave" because Dunn was on his way over to the property. Plaintiff refused to leave the property despite those explicit instructions from Defendant.

A short time later, Dunn arrived at Defendant's home on Lake Secession Road on a moped with a bag of dog food. He threw the bag of dog food over the chain link fence to the backyard, at which time he saw Plaintiff standing in the backyard. Dunn entered the backyard and immediately confronted Plaintiff about the lies he told Defendant in the car several days prior. Plaintiff picked up a piece of lumber from a nearby fire pit and swung it at Dunn several times. Dunn, in turn, retrieved a 9 mm handgun he had concealed in the back pocket of his shorts and showed it to Plaintiff. Defendant yelled at Dunn to try to de-escalate the altercation and the

men separated. Plaintiff went into Defendant's house to pack his belongings, while Dunn walked to the front of the house.

Sometime later, Plaintiff entered the front yard of Defendant's house carrying his belongings packed in black garbage bags. He made a phone call from his cell phone and when he finished, he made several remarks to Dunn from a distance. Dunn once again approached Plaintiff and the two men began to fight again. Dunn turned to look over his shoulder as the men argued, at which time Plaintiff punched Dunn in the mouth while holding a cell phone in his hand. Dunn, believing Plaintiff's cell phone was a weapon of some kind, retrieved his 9 mm handgun from his back pocket, aimed it at Plaintiff's lower right leg, and pulled the trigger. Dunn explicitly testified he intentionally fired the weapon at Plaintiff, shooting Plaintiff. Plaintiff was struck in the right leg and fell to the ground. Dunn fled the scene of the shooting in a car that stopped nearby, while Defendant tended to Plaintiff by holding a cloth on the gunshot wound to stop the bleeding until emergency responders arrived.

During the course of the three (3) day trial before this Court in Anderson County, Plaintiff's counsel argued and attempted to prove Defendant had "cheater's remorse" for her romantic interactions with Plaintiff prior to the date of this shooting and, as a result, used Plaintiff as a pawn to further her relationship with Dunn, which resulted in this shooting. However, neither the testimony, nor the tangible evidence, introduced during the course of the trial provided *any* proof of such a far-fetched conspiracy theory. Rather, the unchallenged testimony and evidence provided to the jury plainly indicated Defendant did not ask, instruct, request or otherwise insinuate to Dunn to bring a firearm with him to the Lake Secession Road house on the date of this shooting or to engage Plaintiff in a fight. Nor did Defendant have any control over Dunn when he confronted and began the altercation with Plaintiff. In fact, Dunn

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plainly testified he undertook to confront, fight with, and shoot Plaintiff on June 21, 2014 on his own volition and Defendant was in no way involved in his actions. He further acknowledged Defendant could not have known he was going to shoot or harm Plaintiff prior to the actual shooting taking place. The evidence presented to the jury plainly established Defendant had no actual or constructive knowledge Dunn was going to shoot Plaintiff prior to that incident occurring, and Defendant did not violate any standard of care owed to Plaintiff regardless of Plaintiff's classification as an invitee, licensee, or trespasser on Defendant's property at that time. On the afternoon of the third day of trial, the jury returned a verdict confirming Plaintiff failed to meet his burden of proving that Defendant had failed to exercise reasonable care in keeping her premises in a reasonably safe condition on the date of this shooting.

Plaintiff thereafter filed a Rule 59(a), SCRP motion for new trial with this Court on December 13, 2016 alleging he had come into the possession of newly-discovered evidence relating to Defendant's retention of a private investigator to conduct surveillance on Plaintiff during the litigation of the case. Plaintiff further alleged several trial court errors which he alleged warranted the grant of relief in the form of a new trial. On February 23, 2017, this Court filed an order denying Plaintiff's motion on all grounds raised finding the motion was not timely filed and failed on the merits. Plaintiff's subsequent Motion to Reconsider the Motion for New Trial was likewise denied by this Court on March 20, 2017. Plaintiff thereafter filed a Notice of Appeal to the South Carolina Court of Appeals which was dismissed as untimely filed on June 16, 2017. The current motion was filed with the Anderson County Clerk of Court's Office on January 4, 2018.

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APPLICABLE LAW

Under Rule 60(b), SCRCP, "the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly-discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; or (5) the judgment has been satisfied , released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." When a Rule 60(b), SCRP Motion for Relief from Judgment is based on subsections (1), (2) or (3), the "motion shall be made…not more than one year after the judgment, order or proceeding was entered or taken." "The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle her to relief." Bowers v. Bowers, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991). "Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge." BB&T v Taylor, 369 S.C. 548, 551, 663 S.E.2d 501, 502 (2006). "When considering whether to grant relief from final judgments, a court must balance the interest of finality against the need to provide a just resolution of the dispute." Raby Constr., L.L.P. v. Orr, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004).

"In order to warrant the granting of a new trial on the ground of newly discovered evidence, it must appear, (1) that the evidence is such as will probably change the result, if a new trial is granted; (2) that is has been discovered since the trial; (3) that it could not have been discovered before the trial by the exercise of due diligence; (4) that it is material to the issue; and (5) that it is not merely cumulative or impeaching." Johnston v. Belk-McKnight Co., 188 S.C.

149, 153, 198 S.E. 395, 397 (S.C. 1938), *citing* McCabe v. Sloan, 184 S.C. 158, 191 S.E.905 (S.C. 1937); *see also* Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (Ct. App. 2005). "Cumulative evidence…supplements that which has already been testified," while impeaching evidence is "that which is outside the evidence already given, and impeaches that evidence" such as "attacking the character, the motives, the integrity, or veracity of those who gave the testimony." Johnston, *supra* at 158, 198 S.E.2d at 399.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Plaintiffs' Rule 60(b), SCRP Motion to Vacate

A. New-Discovered Evidence: Affidavit of Michael Moske

In the current motion, Plaintiff sets forth two alleged areas of newly-discovered evidence which he contends warrant this Court's vacation of the judgment entered by the jury as to Defendant April Blair on November 30, 2016. The first is an affidavit executed by Michael Moske, a private investigator hired by Plaintiff's counsel to review copies of videotapes and reports purportedly created by Shawn Conway, the private investigator from HUB Enterprises, Inc. who was asked to conduct brief surveillance on Plaintiff during the litigation of the underlying case by Defendant. In his affidavit, Moske contends his review of the metadata on the videos allegedly produced by Conway "ha[s] been altered as the creation date for [the] videos cannot be found through the use of several different metadata retrieval applications." Further, Moske alleges it is his belief the "positioning of the investigator during the surveillance" Conway attempted on Plaintiff "did not allow [Conway] to see [Plaintiff's] residence either from the front or the rear." Plaintiff contends those conclusory hearsay statements made by Moske through the affidavit amount to newly-discovered evidence proving "Plaintiff did not get a fair trial" in this case.

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As a preliminary matter, the affidavit executed by Moske and submitted by Plaintiff in support of the current motion is incompetent evidence as it is comprised entirely of inadmissible hearsay. *See* Rule 801, SCRE. The claims made in Moske's affidavit have been offered by Plaintiff as evidence to prove the truth of the matters asserted therein. Moske has not been presented to the Court to testify to the allegations in an open forum where he can be subjected to cross-examination by Defendant. For that reason, Moske's affidavit is not competent evidence to support Plaintiff's motion to vacate judgment. Accordingly, the motion is without merit and must be **denied**. Furthermore, the claimed made through Moske's affidavit are entirely without merit. Not only does this Court question the validity and accuracy of the contentions made by Moske therein, but the allegations set forth in the affidavit, even if considered by this Court, do not meet the requirements for vacating judgment on the basis of newly-discovered evidence. As such, the plaintiff's motion must be **denied** and dismissed on these grounds.

This Court would take a brief moment to note Plaintiff previously filed a Motion for New Trial pursuant to Rule 59(a), SCRCP with this Court following the trial of this case alleging newly-discovered evidence relating to surveillance allegedly attempted on Plaintiff by Defendant's retained, non-testifying investigator Sean Conway ("Conway"). This Court denied Plaintiff's motion on those grounds finding the alleged newly-discovered information and/or evidence did not satisfy the requirements of the law sufficient to warrant the grant of a new trial because the surveillance conducted by Conway was not material to any issue in the case, could only have resulted in the discovery of cumulative/impeaching evidence, and did not create any probability of changing the outcome of the case if a new trial were granted. In the order, this Court took special note of the fact that since there was no evidence presented indicating that Conway was ever able to locate, identify or observe Plaintiff at any point in time while carrying

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out the surveillance, it was uncontested that Conway did not observe, photograph, videotape or otherwise interact with Plaintiff in any way prior to the trial of this case. As such, this Court found the "newly-discovered evidence" was completely absent of any useful or relevant information which would have helped the jury resolve any fact in dispute in this case, and there was no probability the evidence that Defendant retained a non-testifying private investigator to conduct unsuccessful surveillance on Plaintiff could have ever realistically changed the outcome of this case in light of the extensive evidence and testimony presented to the jury during the trial.

In the current motion, Plaintiff alleges to have recently come into possession of videotapes created by Conway during the course of his surveillance work for Defendant. However, Plaintiff has not produced copies of the videotapes to this Court for consideration as part of this motion, nor has Plaintiff alleged through the motion that the videotapes show *anything* of substance relating to any issue in dispute at the trial of this case. Nor does the affidavit submitted by Moske do anything to disprove or credibly challenge Conway's affidavit submitted in response to Plaintiff's prior Motion for New Trial in which Conway confirmed he was never able to locate, identify, observe or videotape Plaintiff during his surveillance work for Defendant. Therefore, this Court believes it is more than reasonable to assume the purported surveillance videotapes which Plaintiff alleges to have in his possession only serve to *confirm* Conway was never able to observe, locate, or otherwise surveil Plaintiff in any fashion. If the videotapes did show something to the contrary, Plaintiff should have (*and undoubtedly would have)* submitted those tapes to the Court for consideration as part of the current motion. It stands to reason the alleged videotapes in Plaintiff's possession have not been produced for consideration by this Court because they are of no useful purpose to the analysis of the case or

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this post-trial motion. If the contents of the videos were of any useful purpose in the current motion, including the allegedly altered metadata, Plaintiff has failed to provide the evidence or information to this Court for its consideration as part of the motion despite Plaintiff having the full opportunity to do so. This Court doubts Plaintiff's claims that the videos contain any information which would have an effect on the outcome of this case, especially in light of the credible evidence and testimony provided to the jury during the trial of this case.

Rather, the only things the affidavit submitted from Moske attempts to do is call into question whether the creation dates on the videotapes which are purportedly in Plaintiff's possession were altered or edited in some fashion, and whether Conway would have likely been able to see the entrance/exit of the residence where Plaintiff was purportedly staying at that time from the location(s) where Moske believes Conway was conducting his surveillance. As to the creation dates on the videotapes, Moske contends he is unable to find them "through the use of several different metadata retrieval applications," and thus believes they must have been altered or edited in some fashion. Moske further alleges he believes there are inconsistencies between the locale the surveillance videotapes show and the vantage point from which Moske believes Conway shot those videos. Once again, the purported videotapes at issue were never produced to this Court for review or analysis to confirm the accuracy and legitimacy of those claims made by Moske. As such, this Court questions the validity, accuracy and basis for the hearsay statements made in the affidavit by Moske.

Further, even assuming *arguendo* that Moske's contentions are based in some level of fact or truth, those contentions are of no relevance to the issues that were in dispute at the trial of this case. Likewise, there has been no tangible evidence of any kind introduced by Plaintiff which would be material to any issue presented to the jury during the trial of this case. Neither

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Conway, nor his futile attempts to locate and surveil Plaintiff, were introduced into evidence by Defendant during the trial of this case. Therefore, the work undertaken by Conway and his absence of surveillance on Plaintiff were never considered by the jury in reaching their favorable verdict for defendant and that information could not have played any role in returning the verdict in Defendant's favor at trial. Therefore, it is unreasonable and illogical to conclude evidence impeaching Conway's purported testimony would have been relevant at trial or otherwise changed the outcome. Further, it was never disputed at trial that Plaintiff suffered some degree of injury to his lower extremity when he was shot on the date of this incident. Plaintiff seemingly seeks to argue the surveillance videotapes were altered or edited in some fashion to remove video which would have shown Plaintiff acting or otherwise appearing to be injured as a result of the shooting. While this Court would note that speculative argument is wholly unsupported by any credible evidence in the record, even if true that, that surveillance videotape would do nothing more than show Plaintiff was in fact injured in some way during the shooting and had some lasting impairment as a result – a contention which was largely conceded by Defendant during trial. For that reason, the claims set forth about the purported altered date/time stamps are without merit and do not justify this Court's vacation of the judgment entered by the jury at trial.

In addition, even if this Court takes Moske's claims as true, which once again is unsupported by the totality of the record before this Court, that evidence could do nothing more than serve to impeach the substance of the alleged videotapes and/or the testimony of Conway about the surveillance he attempted on Plaintiff (*had Conway been called as a witness at trial by Defendant, which he was not).* In light of the extensive evidence in the record before this Court and the credible evidence/testimony presented to the jury during the trial of this case, this Court finds there is absolutely **no** probability the hearsay statements set forth in Moske's affidavit

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would probably change the outcome of this case if a new trial were granted. This was a case in which the jury determined Defendant did not hold legal liability for Plaintiff's shooting under the applicable premises liability laws of South Carolina after hearing the extensive testimony and facts presented by the parties and witnesses during trial. This Court can find no reasonable probability Moske's purported opinions on the unintroduced surveillance videotapes, which seemingly never captured a single image of Plaintiff, and his opinions seeking to impeach the work conducted by Conway (*which was never presented to the jury at trial*), would have likely changed the outcome of this case at trial when considered in light of the totality of evidence and testimony presented to the jury. For all of those reasons, this Court hereby **denies** Plaintiff's motion as to this alleged newly-discovered evidence as it is wholly without merit.

B. Newly-Discovered Evidence: Affidavit of Willie Clarence Tillman, Jr.

In addition to Moske's affidavit, Plaintiff further contends he has also come into possession of a second piece of newly-discovered evidence since the trial of this case which warrants vacation of the judgment in the form of an affidavit executed by Willie Clarence Tillman, Jr. ("Tillman") in February 2017. In that affidavit, Tillman provides a lengthy rendition of facts as to how and why he believes the shooting involving Plaintiff occurred before alleging it is his "understanding and belief" from discussions with Tracy Dunn that Dunn testified to free Defendant of liability from the shooting at the November 2016 trial of this case in return for Defendant's agreement to drop a pending Criminal Domestic Violence charge against Dunn. Tillman's affidavit goes on to allege Dunn also indicated Defendant's attorney in this matter "acted as a go between" with Dunn and Defendant during the trial of the case. Plaintiff contends the information contained in Tillman's affidavit is newly-discovered evidence sufficient to warrant the vacation of judgment as it proves "open and obvious collusion" between Dunn and

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Defendant which "will most likely change the result if a new trial is granted" since it is "not merely cumulative or impeaching, but rather goes directly toward the guilt or innocence of Defendant."

This Court finds the hearsay statements contained in the affidavit executed by Tillman to be wholly incredible in light of the totality of the facts, evidence and testimony presented to the jury during the trial of this case, as well as the detailed information and documentation submitted in response to Plaintiff's motion by Defendant. Further, this Court finds the allegations contained in Tillman's affidavit do not satisfy the requirements for newly-discovered evidence sufficient to warrant the drastic remedy of vacating the judgment entered in this case. Accordingly, this Court hereby **denies** and dismissed Plaintiff's motion as to this alleged newly-discovered evidence as it is likewise wholly without merit.

As a preliminary matter, this Court would note the affidavit purportedly executed by Tillman and submitted by Plaintiff in support of the current motion is incompetent evidence to serve as the exclusive basis of this motion because it is comprised entirely of inadmissible hearsay. *See* Rule 801, SCRE. The statements in Tillman's affidavit have been offered by Plaintiff as evidence to prove the truth of the matters asserted therein. Further, Tillman has not been presented to the Court to provide the allegations in an open forum where he can be subjected to cross-examination by Defendant. For that reason, Tillman's affidavit is not competent evidence to support Plaintiff's motion to vacate judgment. Accordingly, the motion is without merit and must be **denied**.

Notwithstanding the competency of the affidavit, however, this Court would also note the vast majority of information contained in Tillman's affidavit unquestionably falls outside of the standard for newly-discovered evidence. Therefore, those portions of the affidavit cannot be

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considered by this Court in analyzing the current motion. In particular, Tillman was identified as a potential witness with firsthand knowledge of this shooting during the initial exchange of written discovery in this case, including by Plaintiff in his own discovery responses. Throughout the litigation of the case, Tillman was known by both sides to have been present during at least a portion of the altercation between Plaintiff and Dunn on June 21, 2014. The same was testified to by both parties and several other fact witnesses during their depositions, and information pertaining to Tillman's presence during the shooting at issue is contained in the investigative reports/written statements produced by the Abbeville County Sheriff's Department to the parties in discovery. As such, the extensive recitation of alleged facts leading to the shooting which have been set forth in Tillman's affidavit attempting to set forth his purported understanding of how or why the shooting occurred are clearly *not* newly-discovered evidence to be considered as part of this motion. Plaintiff has failed to provide this Court with any explanation as to why he could not have discovered Tillman's rendition of facts prior to the trial of this case. *See* Lanier v. Lanier, *supra ("In order to warrant the granting of a new trial on the ground of newly-discovered evidence, it must appear:…(3)" that it could not have been discovered before the trial by the exercise of due diligence.")*. For that reason, this Court finds the vast majority of information contained in Tillman's affidavit clearly falls well outside of the recognized standard for alleging newly-discovered evidence and has no place in the current motion.

The one limited portion of Tillman's affidavit which Plaintiff alleges could not have been discovered prior to the trial of this case as it arose after the trial of this case relates to information Tillman purportedly came into possession of during his discussions with Dunn after November of 2016. Specifically, Tillman's affidavit alleges he came into information from Tracy Dunn while incarcerated at the Abbeville County Detention Center in early 2017 which has lead

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Tillman to "understand and believe" there was a *quid pro quo* agreement brokered between Defendant and Dunn prior to the trial of this case, under which each defendant would provide perjured testimony under oath to ensure the favorable resolution the other's on-going legal actions. Plaintiff now argues that but-for that supposed collusion amongst the codefendants, the result of the trial of this case in November 2016 would have been different. This Court finds that argument to be wholly without merit and entirely unsupported by any credible evidence in the record. Further, as noted above, this Court finds the allegations of Tillman's affidavit to be entirely incredible in light of the extensive evidence presented during the trial of this case and submitted to this Court as part of the current motion. Accordingly, Plaintiff's motion on these grounds must be **denied** and dismissed.

The plain and credible evidence in the record leaves this Court firmly convinced there was no such "collusion" or "conspiracy" amongst the defendants prior to the trial of this case to ensure Dunn would provide perjured testimony in favor of Defendant to free her from liability for Plaintiff's shooting as alleged by Plaintiff. Rather, it is abundantly clear from the record that Dunn's testimony at the trial of this case in November 2016 was largely a simple reiteration of the facts and statements he previously provided to law enforcement during its investigation into the shooting and which Dunn conceded under oath during his guilty plea hearing more than twenty-two (22) months before the trial of this case. The contentions made by Plaintiff in the current motion are not supported by credible facts or evidence. Rather, they appear to be nothing more than unfounded conspiracy theories based upon speculation, misrepresentations of the known facts, and the untrustworthy hearsay statements made through the affidavit executed by Tillman.

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At the hearing before this Court on February 1, 2018, Plaintiff's counsel alleged it was readily apparent Dunn's testimony during the November 2016 trial of this case was altered, or otherwise perjured, in an effort to assist Defendant in escaping liability for Plaintiff's shooting because "the first time" Dunn ever acknowledged responsibility for shooting Plaintiff was during his deposition on July 14, 2016, shortly after counsel for Defendant met with Dunn, who was not represented by counsel in this matter, at the Abbeville County Detention Center to interview him on the facts of this case. Plaintiff's counsel contends "[p]rior to [Defendant's] counsel's visit" to interview Dunn at the Abbeville County Detention Center, "Defendant Dunn denied shooting Plaintiff." That argument serves as the very *foundation* of the current motion: but-for Dunn's meeting with counsel for Defendant, he never would have admitted responsibility for shooting Plaintiff to the jury during the trial of this case. Plaintiff's counsel contends that because Dunn conceded responsibility for shooting Plaintiff for the "first time" ever during his deposition in July 2016, there must have been collusion or an improper agreement reached between Dunn and Defendant prior to the deposition which caused Dunn to alter his testimony and perjure himself. This argument is a simple distortion of the facts and evidence available in this case.

In fact, quite to the contrary, the record before this Court clearly shows Dunn's deposition and trial testimonies about how and why the shooting occurred were largely *consistent* with his previous statements to law enforcement shortly after the incident occurred and the statements he made during his guilty plea hearing over a year before being deposed by counsel for Defendant. It is clear from this Court's detailed review of the relevant portions of the record that Plaintiff's underlying contention that Dunn only admitted to shooting Plaintiff for "the first time" during his deposition in July 2016 *after* meeting with counsel for Defendant is a flagrant misrepresentation of the available facts and evidence.

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In fact, in direct contradiction to Plaintiff's version of the evidence which has been outlined in the current motion, the information provided by Dunn to officers with the Abbeville County Sheriff's Department during his initial interrogation on June 23, 2014 about the facts of the shooting is nearly identical to the testimony Dunn provided during his deposition and to the jury during the trial of this case, including amongst other things: (1) Dunn was upset with Plaintiff prior to the shooting because Dunn was aware Plaintiff was telling lies to Defendant in an effort to damage their relationship; (2) Dunn was contacted on the date of the shooting to bring dog food over to Defendant's house for his dogs; (3) Dunn decided on his own volition to confront Plaintiff when he arrived at Defendant's house about the lies Plaintiff had been telling Defendant; (4) a verbal and physical altercation ensued between the two men during which Plaintiff swung a piece of wood at Dunn; (5) Plaintiff had been asked to leave Defendant's house prior to Dunn arriving; (6) Dunn was not aware Plaintiff had raped Defendant until after the shooting occurred when investigators first advised him of that claim; (7) Plaintiff "sucker-punched" Dunn during the altercation in the front yard immediately before the shooting; (8) Dunn admitted to aiming the gun at Plaintiff's leg and shooting him; and (9) Dunn fled the scene of the shooting in a friend's vehicle afterwards. At no point in time during Dunn's interrogation by law enforcement officers just days after the shooting, or during his guilty plea hearing before Judge Griffith more than two years before the November 2016 trial of this civil matter, did Dunn ever provide any information which implicated Defendant as a participant in Plaintiff's shooting. As such, Plaintiff's underlying contention that Dunn "altered" his testimony at his deposition to provide a false rendition of facts based upon a meeting with counsel for Defendant is not only wholly unsupported by the record before this Court, but more accurately appears to be a perversion of the facts and evidence readily available to both parties in this case. The evidence

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unequivocally shows Dunn's testimony remained largely consistent between the date of the shooting and his deposition in July of 2016. To the extent there may have been any inconsistencies in Dunn's trial testimony, those discrepancies created areas that were ripe for cross-examination by Plaintiff at the trial of this case to call Dunn's credibility into question before the jury. Plaintiff's failure to take advantage of any such opportunities to impeach Dunn before the jury with alleged prior inconsistent statements is not an appropriate grounds for seeking the vacation of the judgment returned by the jury.

Notwithstanding the Court's above-referenced finding on the competency of Tillman's affidavit, this Court finds the affidavit of Willie Clarence Tillman, Jr. does not satisfy the requirements warranting the grant of relief on the basis of newly-discovered evidence. "In order to warrant the granting of a new trial on the ground of newly discovered evidence, it must appear, (1) that the evidence is such as will probably change the result, if a new trial is granted; (2) that is has been discovery since the trial; (3) that it could not have been discovered before the trial by the exercise of due diligence; (4) that it is material to the issue; and (5) that it is not merely cumulative or impeaching." Johnston v. Belk-McKnight Co., 188 S.C. 149, 153, 198 S.E. 395, 397 (S.C. 1938), *citing* McCabe v. Sloan, 184 S.C. 158, 191 S.E.905 (S.C. 1937); *see also* Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (Ct. App. 2005). As noted above, the totality of evidence in the record before this Court, including the extensive facts and materials provided by Defendant in response to the current motion, as well as the evidence and testimony presented during the trial of this case, firmly convince this Court the allegations contained in Tillman's affidavit are wholly unbelievable. The circumstances and environment through which Tillman came to execute the affidavit that serves as the very basis of this motion are troubling to this Court. Those concerns are furthered by the sworn statement of an officer of the Court which was

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produced by Defendant as an exhibit with her response to the motion in which that attorney detailed Plaintiff's attempt to secure another affidavit in support of the current claim through questionable methods. Even absent those disconcerting facts, the evidence in the record before this Court and which was presented during the trial plainly discredit the claims set forth by Tillman. Therefore, this Court can say without questions there is **no** probability the hearsay contentions contained in Tillman's affidavit would probably change the result of this case if a new trial was granted. Accordingly, even if this Court were to accept Tillman's affidavit as competent evidence in support of Plaintiff's motion, the motion would be **denied** and dismissed as the incredible statements set forth therein do not satisfy the requirements for vacating judgment on the basis of newly-discovered evidence.

Furthermore, even if the affidavit was accepted as competent evidence in support of the motion **and** it were assumed *arguendo* that some alleged testifying agreement did occur amongst the defendants as alleged in Tillman's affidavit, the truth of which this Court rejects entirely, Plaintiff has failed to produce any evidence to this Court which suggests Dunn would have testified any differently during his deposition or at the trial of this case than he did had that alleged agreement been known to Plaintiff. Rather, Dunn's testimony at both his discovery deposition and the trial of this case was consistent with the rendition of facts he had previously provided to law enforcement within just a few days of the shooting, long before this civil action was filed and before counsel for Defendant ever met Dunn. Therefore, it would seem that if Defendant *had* attempted to provide different testimony during his deposition or at trial to that which he did, he would have only been subjecting himself to extensive impeachment before the jury based upon his prior statements to law enforcement officials and the guilty plea hearing where he readily acknowledged complete and sole responsibility for Plaintiff's shooting. There

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has been **no** evidence submitted to this Court which even tends to suggest Dunn provided information to law enforcement officials, or anyone else, which inculpated Defendant in Plaintiff's shooting. Rather, the record shows within just days of the shooting, Dunn accepted complete and sole responsibility for shooting Plaintiff to law enforcement officials as he admitted to aiming and intentionally shooting his firearm at Plaintiff's leg in response to Plaintiff "sucker punching" him in Defendant's front yard. Dunn's statements to law enforcement contending he shot Plaintiff in response to Plaintiff sucker-punching him are *directly* supported by the handwritten statement provided to police immediately after the shooting by the "newly-identified" affiant himself, Willie Clarence Tillman, Jr. Dunn reiterated his acceptance of sole liability for Plaintiff's shooting at his subsequent plea hearing in February of 2015.

For those reasons, even assuming *arguendo* the affidavit submitted by Tillman is competent evidence which can be appropriately considered by this Court in analyzing the current motion and that the allegations contained in Tillman's affidavit relating to an alleged testifying agreement are truthful, this Court can find no reasonable probability the outcome of this case would have been any different at trial had that purported testifying agreement been known to Plaintiff. The record clearly shows Dunn would not have, and could not have truthfully, testified to any other rendition of facts leading to the shooting than he did. Rather, any information obtained relating to a purported testifying agreement amongst the codefendants could have *only* been used for impeachment purposes to call into question the validity and veracity of Dunn and Defendant's testimonies before the jury. For those reasons, notwithstanding the above-referenced findings as to the competency and credibility of Tillman's affidavit, this Court finds the allegations of the affidavit do not satisfy the requirements for vacating judgment on the basis of

newly-discovered evidence *even if* those claims were accepted at truth for the sake of argument. For all of those reasons, this Court must **deny** and dismiss this motion.

CONCLUSION

For all of the foregoing reasons, and based upon this Court's review of the record, the arguments of the parties presented during the previously convened motion hearing, the materials submitted by the parties relating to this motion, and the applicable law, this Court hereby denies Plaintiff's Motion to Vacate Judgment.

ACCORDINGLY IT IS HEREBY ORDERED that Plaintiff's Motion to Vacate Judgment pursuant to Rule 60(b) of the *South Carolina Rules of Civil Procedure* be **DENIED** and **DISMISSED.**

IT IS SO ORDERED THIS _____ DAY OF _____, 2018.

_____
The Honorable R. Scott Sprouse
Presiding Judge, Tenth Judicial Circuit

Anderson, South Carolina.

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Anderson Common Pleas

Case Caption: John E Harbin VS April Black , defendant, et al

Case Number: 2014CP0402908

Type: Order/Other

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

MOTION FOR RECONSIDERATION

(April 9, 2018)

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STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
John Harbin, Plaintiff, vs. April Blair and Tracy Dunn, Defendants.	C.A. FILE NO.: 2014-CP-04-02908 **MOTION FOR RECONSIDERATION**

Appellant, by and through his counsel, respectfully moves to reconsider this Court's Order, filed on March 30, 2018, and alleges as follows:

STATEMENT OF FACTS

In 2014, Plaintiff Harbin brought a case for damages against Defendants Blair and Dunn for the latter's act of shooting and injuring the former.

Defendants Blair and Dunn, who had been in a relationship since 2012, invited Plaintiff Harbin to stay with them in exchange for his performance of general labor, similar to that which he rendered at Defendant Blair's mother's house. At some point, Defendants Blair and Dunn had a misunderstanding, which caused her to tell him to leave the property.

Defendant Blair and Plaintiff Harbin had a brief sexual relation, which she immediately regretted. To assuage her conscience, Defendant Blair called Defendant Dunn on the day of the incident, and said his dogs needed food. Plaintiff contends she told Dunn that Plaintiff had raped her. Defendant Dunn, armed with a gun, came to her defense on his moped, and confronted Plaintiff Harbin. Defendant Dunn thereafter shot Plaintiff Harbin, when he was in the process of leaving Defendant Blair's house. Plaintiff Harbin sustained significant physical injuries and had to be airlifted to Anmed, where he had to be admitted.

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Defendant Blair, in an attempt to justify her boyfriend's actions, claimed Plaintiff had raped her that morning, following an evening of love making with him. She also maintained that he had molested her when she was much younger. Despite this fact, she had made love to him and allowed him to reside in her home with her, Defendant Dunn and her son.

Following the shooting, Defendant Dunn was picked up from the front yard by a passing motorist. He was eventually found at Ms. Blair's home, sometime after she was released from jail for possession of methamphetamine. After he was apprehended, he made several conflicting statements about his involvement in the shooting. He first claimed that Plaintiff Harbin shot himself, then stated that he attempted to shoot the ground in front of Harbin.

Plaintiff employed the legal services of the undersigned counsel to bring a tort action against Blair and Dunn. Defendant Dunn pleaded guilty to assault and battery of a high and aggravated nature for the shooting of Harbin. He was sentenced to time served and probation. Defendant Blair denied involvement in the shooting incident.

Defendant Dunn resumed his romantic relations with Defendant Blair, upon her release from jail. Prior to trial, Blair had Dunn charged with Criminal Domestic Violence of a high and aggravated nature. Because of his probation, Defendant Dunn was sent back to jail, to await trial or adjudication of his alleged probation violation/CDV High Aggravated.

While Plaintiff's tort case was ongoing, Defendant Law firm sent its agents (including Defendant Nikopoulus and Robert Corney, Esquire to Abbeville Detention Center) to visit Defendant Dunn. It is the understanding and belief of Plaintiff that it was during this visit(s) that an agreement was reached between Defendants Blair and Dunn. It is the understanding and belief of Plaintiff that Defendant Nikoupolos and/or Corney informed Defendant Dunn that

Defendant Blair would help him with her CDV case against him, if he would proclaim her innocence.

On the day of the deposition, Defendant Dunn admitted, for the first time, that he intended to shoot Harbin, and denied Defendant Blair's responsibility. When trial came, Defendant Dunn stuck to his admission. Defendant Blair was absolved of any liability based on Defendant Dunn's testimony. Immediately following the trial, Defendant Blair informed the Public Defender's Office of her preference to dismiss the CDV case she filed against Defendant Dunn (despite the fact he had threatened her life with the gun). Plaintiff Harbin believed that Defendants Blair and Dunn conspired to defeat his claims.

Following the conclusion of the tort case, Defendant Blair and Defendant Law firm announced that a private investigator had been hired to provide surveillance on Plaintiff. This witness was not provided in discovery, yet his bill was offered for payment by Plaintiff for his failure to accept Defendant Blair's Offer of Judgment. Shawn Conway, a private investigator, working for HUB Enterprises, Inc., was responsible for the surveillance.

Defendant Blair sought to be reimbursed for her expenses in hiring Defendants HUB and Conway. This despite the following facts: (1) Defendant Investigators were hired after Plaintiff Harbin's deposition; (2) Plaintiff was not informed of the fact that Defendants hired private investigators and only learned of such when Plaintiff Harbin received Defendant's Affidavits and Exhibits submitted for the purpose of collecting costs as a result of an Offer of Judgment, which had been declined; and, (3) Plaintiff Harbin was not provided a copy of the investigator's report(s), notes or other proof of investigative work.

Defendants' acts taken together show that they conspired to deny Plaintiff's claim, thereby interfering in Plaintiff's attorney-client relation/contract. Plaintiff filed this instant

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Motion to Vacate on November 30, 2017. This filing satisfied the one-year window in which to file. Defendant Blair successfully moved to dismiss the case, thus this Motion to Reconsider.

STANDARD OF REVIEW

The Court has the power to set aside the judgment that was entered against the defendant. Rule 60 states in pertinent part that "(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud, misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

This Rule retains the one year limitation for Rule 60(b)(1)-(3) for mistake, inadvertence, excusable neglect, newly-discovered evidence, and fraud; but permits relief under Rule 60(b)(4) and (5) after one year, but within a "reasonable time" when the judgment is void or the judgment has been satisfied, avoiding the necessity of bringing a new action to set aside the judgment in such cases after one year.

ARGUMENT

THE AFFIDAVITS OF MOSKE AND TILLMAN ARE NEWLY DISCOVERED EVIDENCE THAT WILL CHANGE THE RESULT.

On the Affidavit of Moske

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Defendant Blair contests that the Affidavit of Moske could not have changed the outcome of this case at the trial. (Defendant April Blair, Memorandum in Opposition to Plaintiff's Motion to Vacate Judgment and Request for Evidentiary Hearing, p. 10, February 16, 2018). Plaintiff believes otherwise.

Plaintiff asserts that Moske's Affidavit is material to the case as it casts doubt into the credibility of a material used as evidence by Defendant Blair. Defendant Blair submitted the videos and report in question for reimbursement of her expenses, for no stated reason other than to put a surveillance on the Plaintiff.

He stated that in his professional capacity, that he believed that the videos have been altered as the creation date cannot be found through the use of metadata retrieval application. *Id*. These videos and report were used by Defendant Blair for reimbursement of her expenses. Plaintiff asserts that it is significant because it was used to corroborate Corney's claim that the failure to provide discovery related to the involvement of Conway was irrelevant because he *never* saw him.

On Willie Tillman's Affidavit

In its Order, dated March 30, 2018, the Court denied Plaintiff's Motion to Vacate based on newly discovered evidence. The court ruled that Tillman's Affidavit was an "incompetent evidence", primarily because it was not presented in court, nor was Tillman called in court as a witness, nor was he subjected to cross-examination. Because of such, his affidavit may not be the basis for a new trial.

For the judge to require that the Affidavit be submitted to the court, or Tillman be introduced as a witness, undermines the nature of a newly discovered evidence. By definition, a newly discovered evidence to warrant a new trial must be one that is discovered AFTER trial.

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The Court also made issue of Tillman having been identified as possible witness, and therefore his Affidavit should not be considered newly discovered. Plaintiff contends that, even if he exercised extraordinary diligence (the law only requires due diligence), he would not have been able to discover the evidence prior to, nor during the trial, as the conversation between Tillman and Dunn occurred after the trial (at the same time Defendant Blair began her quest to have the CDV charges dropped).

The court further ruled that Tillman's assertions were not supported by credible evidence in the record. Plaintiff avers otherwise.

Based on the affidavit of Tillman, counsel for plaintiff prepared an affidavit for Kami Granade, Dunn's defense counsel, to sign. (Exhibit 1). This was served by Michael Moske upon Granade. (Affidavit of Michael Moske, dated March 5, 2018, Exhibit 2). This affidavit was prepared on February 23, 2017 as seen by the metadata presented herein. (Exhibit 3). The affidavit prepared for Ms. Granade stated among others: that she was Defendant Dunn's attorney, and that Defendant Blair communicated her desire to dismiss the CDV charge against Dunn. (Exhibit 1). Ms. Granade did not sign such affidavit, but she signed an affidavit prepared, and presented to the court, by Blair's counsel. (Exhibit 4).

In her sworn Affidavit, Ms. Granade stated that Defendant Blair contacted her about her wish not to pursue the charge of criminal domestic violence of a high and aggravated nature, which she had brought against him. Blair began this quest to dismiss the charge in December of 2016, ***upon the completion of the trial*** for which the subject motion to vacate was brought. (Exhibit 4, par. 5, p. 2).

Granade also admitted meeting her client, Defendant Dunn, after her interaction with Defendant Blair to discuss Dunn's pending charges. (Exhibit 4, par. 6, p. 2). Granade stated that

she began representing Tillman in October 2016, and, that he was incarcerated in Abbeville County Detention Center. She understood them to be cousins. (Exhibit 4, par. 7, p.2).

Furthermore, Granade attested to the fact that Michael Moske, approached her to sign an affidavit prepared by counsel for Plaintiff. (Exhibit 4, p. 2, par. 8). She tried to impugn Moske's credibility by claiming that he misrepresented the nature of the document being served on her. [1] She stated that that due to a number errors in the affidavit presented by Mr. Moske, she refused to sign the same. (Exhibit 4, Id.).

Contrary to Granade's assertions, a careful comparison of the two affidavits shows that the unsigned affidavit contains ***the exact same*** declarations as those in the sworn affidavit created by Corney. The undersigned counsel herein presents the two marked affidavits for comparison. The sentences of the unsigned are numbered and referenced on the signed affidavit. (Exhibit 5).

Plaintiff asserts that Granade, having recognized that Tillman's affidavit exposed the collusion between the defendants, sought to be relieved as his counsel. She fired him because she obviously concurred with what he stated, since her recitation of the facts in her affidavit, matched his.

Plaintiff opines that the Affidavit of Granade supports Tillman's assertions in his Affidavit. At the time that he prepared his Affidavit in February 2017, Tillman could not have known that Defendant April Blair would seek the dismissal of Dunn's CDV charges in June 2017. There is no logical inference other than Defendant Dunn and/or Kami Granade communicated such details to him. As such, Tillman's affidavit was credible, and supported by the very same evidence presented by Defendant Blair.

[1] Granade claimed that Moske informed her that he was serving a Certificate of Service, despite the fact that the tile of the document clearly shows "Affidavit of Kami Granade". (Affidavit of Kami Granade, p. 2, par. 8).

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Plaintiff reiterates that Tillman's affidavit, would probably change the outcome of this case if a new trial were granted. He would be able to clearly and convincingly establish that there was collusion between the defendants. Defendants would be jointly and severally liable for plaintiff's damages.

THIS COURT HAS FAILED TO PROVIDE DUE PROCESS AS IT RELATES TO PLAINTIFF'S CLAIM

On establishing motive for the Quid pro quo agreement

John Harbin was accidentally shot by April Blair's fiancée Tracy Dunn on June 21, 2014 due to the nonsensical assertion by Blair that Harbin had raped her that morning. Of course, the allegation of rape did not surface until Ms. Blair needed to justify her fiancée shooting a defenseless man who was awaiting a ride from the premises. In a furtherance of her plot to justify the shooting, Blair created a scenario wherein she alleged that Harbin had raped her when she was a child.

When she raised the issue of the rape on June 21, 2014, law enforcement did not even respond to her claim. They did not question her. They did not question John. They did not question anyone. Her story was exactly that, especially given the fact they had made love just hours prior.

Tracy Dunn's friends and his cousin, Willie Tillman, were at April Blair's house on the night she made love to John Harbin. When she woke after a long night of sex, drugs and rock & roll, she realized the picture that she had painted that would most assuredly get back to her fiancée. Therefore, she made an excuse to call Dunn.

She said she called him to bring dog food over for his dogs. She did this despite her recognition that he only had a moped; she had just gotten a loan for several thousand dollars;

and, she could have easily gotten food for the dogs in either one of her motor vehicles. During the conversation(s), Mr. Dunn clearly learned of Mr. Harbin's activity with Ms. Blair. He came right over on his moped, and with his loaded handgun. The instant he got there he engaged Mr. Harbin, which resulted in Dunn pointing and presenting the firearm. The likelihood that Ms. Blair offered to Dunn that she had made love to Mr. Harbin, rather than alleging that he had raped her, is nothing short of ridiculous. This fact could not be more obvious based on the fact that Dunn would have been accosting her with the handgun for cheating on him. (At the time of trial, Dunn was incarcerated due to threatening Blair with a handgun.).

Blair knew Dunn had a probationary sentence for shooting Harbin. She had him charged with CDV High and Aggravated in the spring of the 2016. She knew that her house was potentially at risk in relation to the damages sought by plaintiff for being shot. Therefore, Defendant Blair, by and through her counsel, reached out to Dunn in an effort to shield herself from the ramifications of the shooting.

Blair conducted a ***discovery*** deposition of Dunn on June 20, 2016. Blair's attorney had met with Dunn on June 14, 2016 in anticipation of said deposition. The very nature of the deposition was to learn what the co-defendant knew. Clearly, Blair's counsel was ***preparing him for the discovery deposition.*** Attorneys may meet with their client prior to his or her deposition to prepare said individual for the deposition. Corney was not Dunn's counsel, and as such, he has no business meeting with the latter several times prior to the scheduled deposition.

It was during the discovery deposition that Dunn admitted his intent to shoot Harbin. He did so with the legal knowledge that double jeopardy would protect him from further persecution (since he had already plead guilty to Assault and Battery of a High and Aggravated Nature). He had nothing to lose and everything to gain by saying that he not only meant to shoot Harbin, but

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also that Blair had nothing to do with it. That statement is conclusory at best. He could not possibly understand Blair's reason for calling him to feed the dogs (when she had a motor vehicle and money to pay for dog food), Blair's reason for manufacturing the rape allegation, Blair lying to the police about Dunn's presence in the home after the shooting, etc. Blair, through Corney, prepared Dunn to offer testimony that would be mutually beneficial.

Based on the shocking announcement at the deposition of Mr. Dunn's intent on June 21, 2014, it was understood that the parties were working together to defeat Harbin's claim. Plaintiff believed that the jury should be made aware of the ongoing communication between Blair and Dunn; and, that communication was for the purpose of helping Dunn with his pending criminal charge(s) and Blair with saving her house. The Court, however, prevented Plaintiff from even inquiring about Corney's visits to Defendant Dunn.

> *"Q. Mr. Corney's, come to see you three times?*
> *MR. CORNEY: Objection, Your Honor, as to relevance.*
> *MR. SMITH: Is that right?*
> *THE COURT: Sustained. Sustained."*

(Dunn Trial Transcript, 19, 19.22, Exhibit 6).

The Court prevented Plaintiff from bringing to light the collusion of the defendants. The Court protected the defendants to the detriment of Plaintiff. As a result, Plaintiff was denied due process.

On the credibility of Blair's testimony.

The Court refused to allow the Plaintiff to establish Blair's questionable credibility. The court allowed Blair to discuss her character as a mom and how she did what was best for her children. But when it was time for the Plaintiff to inquire on her use of drugs at home, while her child was with her, the court prevented Plaintiff to even touch the subject.

> *"THE WITNESS: I try my best to keep my house as safe*

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as possible with my child.
Q: Did you tell the police that you had used meth that day?
MR. CORNEY: Objection, Your Honor. I would ask to strike that.
THE COURT: Strike that.
MR. SMITH: May I approach, Your Honor?"

(Blair Trial Transcript, 93, 17.24, Exhibit 7).

The issue of Defendant Blair's use of drug is not new. Defendant Blair herself admitted the same in her response to Plaintiff's interrogatories:

> *"Q: Did Defendant Blair take any drugs (including prescription drugs, or consume any alcoholic beverage within 24 hours prior to the accident? If so, specify the type of each drug or beverage, the quantity of each drug or beverage consumed or taken and the name of each person known to.be present when the drug or beverage was consumed or taken.*
>
> *"A: On the morning of June 21,2014, Defendant consumed roughly .20 grams of methamphetamine, as well as Celexa, Adipex, and Valium. The day prior, she consumed about 1 gram of methamphetamine, as well as Lortab, Celexa and Adipex. Defendant expressly reserves the right to alter, amend or supplement this answer at a later date where necessary.*

(Defendant Blair's Answer to Plaintiff's Interrogatory #11, September 21, 2015, Exhibit 8).

The drug question related to her perception of the day's events, as well as whether someone under the influence of methamphetamine is truly keeping her house safe for her child. It should be noted that she testified that she got up at noon. Thus, her .20 grams of methamphetamine must have been used immediately prior to the shooting.

A young woman recently ripped her eyes from their sockets while using methamphetamine. Blair claimed Harbin raped her within hours after they "made love". The Court prevented Plaintiff from showing that her mind was under the influence of a mind-

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altering drug. The Court prevented Plaintiff from impeaching Blair with her admissions and her disingenuous concern for her child. The Court protected the defendants to the detriment of Plaintiff. As a result, Plaintiff was denied due process.

Plaintiff's claim against Blair stemmed in part from her knowledge of Dunn's violent attributes. It was the intent of Plaintiff to show that she was aware of his tendencies and that she was counting on them when she asked that he feed the dogs on June 21, 2014. The best way to illustrate would have been to show that she was aware of his rage and his willingness to dispense it, while possessing a firearm. However, the Court would not allow the jury to understand that Blair was calculated in her actions.

> *"Q: Did Tracy -- did he threaten you with a gun over the course of the two years leading up to that?*
> *MR. CORNEY: Objection, Your Honor.*
> *THE COURT: Sustained."*

(Id., 96-7, 23.25, 1, Exhibit 9).

The Court refused to allow Plaintiff to show that Blair was well aware that Dunn was prone to violence. Specifically, he always had a weapon on him and he would even use it in disagreements with her. The Court protected the defendants to the detriment of Plaintiff.

On the application of the statute/rule

The Court further illustrated its bias in support of defendants by expanding Rule 68 of the South Carolina Rules of Civil Procedure, which pertains to an offer of judgment. Rule 68 is essentially codified by statute.

> SECTION 15-35-400. Offer of judgment; acceptance; consequences of nonacceptance; attorney's fees.
> (B) Consequences of Non Acceptance. If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment; …"

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Defense counsel offered a list of costs, in support of a motion for costs, which were expended after Plaintiff rejected an offer of judgment. The Court granted Defendant's motion for costs in the amount of $4,290.46. The Court found that, "Defendant is entitled to recover costs and expenses as further outlined in S.C. Code §15-35-400, Rule 68, SCRPC, and the applicable common law from the plaintiff."

As stated above, the costs recoverable by §15-35-400 and Rule 68, SCRPC are "any administrative, filing, or other court costs from the date of the offer until judgment". The costs allotted by this Court, included private investigator costs, lunch costs, deposition transcript costs, etc. Private investigator fees are not administrative, filing or court costs. Therefore, unless there is a statutory provision, they are not recoverable: "[c]osts and expenses of actions and proceedings are allowed to be taxed against the losing party only by statute." *Oliver v. S.C. Dep't of Highways & Public Transp.*, 309 S.C. 313, 422 S.E.2d 128, 131 (1992).

Most of the monies requested for reimbursement by defense counsel were not administrative or filing. As such, they ***must have been*** provided by statute or a rule of court. In *Black v. Roche Biomedical Laboratories*, 315 SC 223, 433 S.E.2d 21 (1993), the Court ruled that to be reimbursed for claims for costs, fees, and disbursements, a claimant must point to a specific statute or rule of court to support each claim. In this case, Defense counsel and the Court made general references to Rule 68. Neither made reference to statutes or rules of court.

The Court applied Rule 68, blindly. The plain language of the rule/statute allows the offeror to recoup administrative fees and costs. Anything beyond those costs can only be salvaged via statute or rules of court. This Court made absolutely no reference to either of them yet ordered Plaintiff to pay $4,290.46. The Court awarded the defendants to the detriment of Plaintiff.

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Ironically, this Court did not require the defendants to respond to the Plaintiff's discovery requests either. Defendants were able to withhold the existence of a witness (a private investigator hired after Plaintiff's deposition). Defendants were able to withhold discovery acquired by private investigator. Despite these violations of the rules, this Court awarded the defendants every penny that they requested including those monies related to a private investigator that was unknown ***until after the trial.***

CONCLUSION

The Plaintiff was shot due to his unwitting participation in a "love" triangle. The shooter received a probationary sentence. The defendants resumed their relationship the minute they were out of jail. They worked in concert to permanently injure a man that got in the way of their love/hate relationship. This Court's refusal to provide Plaintiff with the due process of law that he so desperately needed as he attempts to survive.

Plaintiff was not allowed to show that Defendant Blair was under the influence of methamphetamine when the call to Dunn, and the subsequent shooting, took place. The Court disregarded the fact that defendants did not adhere to the rules of civil procedure relating to discovery. The Court shot Plaintiff again by assessing excessive costs that were not based on the law. The Court has refused to see that Blair began doing her quid pro quo immediately following the trial in December.

Plaintiff was deserving of a fair opportunity to prosecute his case. The Court quashed any notion of fairness by allowing Blair to tout her parenting skills, while preventing evidence of her excessive drug use. The Court looked the other way as the defense counsel conspired with Dunn six days prior to a discovery deposition. Plaintiff simply wanted a fair trial-not a defense trial.

Submitted by:

*s/Donald L. Smith*_____
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Anderson, South Carolina
April 9, 2018

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	
John E. Harbin,	)	
	)	
Plaintiff,	)	
	)	**CERTIFICATE OF SERVICE**
vs.	)	
April Blair and Tracy Dunn,	)	C.A. No.: 2014-CP-04-02908
	)	
Defendants.	)	
_____	)	

THE UNDERSIGNED person deposes and says that he served a copy of Plaintiff's Motion for Reconsideration, upon Defendant April Blair, by and through her counsel of record, Robert Corney, Esquire, by using the South Carolina E-Filing System, which will send notification of such filing to the following:

Robert D. Corney (S.C. Bar No. 80167)
Post Office Box 1589 (29603)
55 Beattie Place, Suite 1200
Greenville, South Carolina 29601
TEL: (864) 271-9580/FAX: (864) 271-7502
Email: rcorney@gwblawfirm.com

Additionally, a copy of Plaintiff's Motion for Reconsideration has been sent via U.S. Mail to Defendant Tracy Dunn at his last known address:

Mr. Tracy Dunn
Inmate Number 00279454
Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335-9308

April 9, 2018

s/Donald L. Smith
Donald L. Smith, (SC Bar#6699)
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Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Plaintiff

ORDER, DENYING PLAINTIFF's MOTION FOR RECONSIDERATION

(April 12, 2018)

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STATE OF SOUTH CAROLINA COUNTY OF ANDERSON John Harbin, Plaintiff, v. April Blair and Tracy Dunn, Defendants.	IN THE COURT OF COMMON PLEASE TENTH JUDICIAL CIRCUIT CASE NO.: 2014-CP-04-2908 ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

After careful consideration of the filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Plaintiff's Motion, pursuant to Rule 59, SCRCP, [1] is DENIED.

AND, IT IS SO ORDERED.

R. SCOTT SPROUSE
Judge, Tenth Judicial Circuit

Walhalla, South Carolina
April ____, 2018

[1] The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.

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Anderson Common Pleas

Case Caption: John E Harbin VS April Black , defendant, et al

Case Number: 2014CP0402908

Type: Order/Other

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

GWB's EXHIBIT
ORDER GRANTING KIRKMAN MOORHEAD & KRAUSE, MOORHEAD, & DRAISEN, P.A.'s MOTION TO DISMISS
(February 3, 2016)

FILED-CLERK'S OFFICE
ANDERSON

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Gregg Battersby,

Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead & Draisen, P.A., Allstate Insurance Company, and Allstate Northbrook Indemnity Company,

Defendants.

CIVIL ACTION NO.: 2015-CP-04-00667

ORDER GRANTING J. KIRKMAN MOORHEAD AND KRAUSE, MOORHEAD, & DRAISEN, P.A.'S MOTION FOR SANCTIONS

THIS MATTER comes before the Court on Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, P.A., (hereinafter referred to collectively as "Attorneys") motion for sanctions pursuant to Rule 11, SCRCP, and The South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 (the "Frivolous Proceedings Act"). Attorneys bring this Motion subsequent to a July 10, 2015 order (hereinafter "Order") of this Court granting summary judgment in Attorneys favor as to all of Plaintiff's claims. After due notice, a hearing was held in this matter on October 2, 2015. Plaintiff was represented by Donald L. Smith, Esq., and Attorneys were represented by Steven M. Krause, Esq., of Krause, Moorhead, and Draisen, P.A. Having carefully considered the Order, arguments and evidence submitted by counsel, the Court grants Attorneys' Motion and sanctions the attorney for the Plaintiff under Rule 11, SCRCP. The Court does not sanction the Plaintiff as a party or find any violation of the Frivolous Proceedings Act.

As an initial matter, Plaintiff objected to the Court's jurisdiction over the sanctions motion. Plaintiff's objection came only after this Court rendered its initial decision on January 8, 2016 communicated via email to all parties, and instructed Attorneys to prepare an order

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granting the motion for sanctions. In a memorandum filed on January 27, 2016, Plaintiff argued that the Attorney's post-trial motion for sanctions was filed more than ten days after the filing of the Order and therefore this Court is divested of jurisdiction. Plaintiff misunderstands the law governing the timely filing of post-trial motions. In accordance with Rule 59(e), SCRCP, "[a] motion to alter or amend the judgment shall be served not later than 10 days ***after receipt of written notice of the entry of the order***." *In re Beard*, 359 S.C. 351, 357, 597 S.E.2d 835, 838 (Ct. App. 2004). A motion for sanctions must be filed within ten days of the ***notice*** of entry of judgment. *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006), *Pitman v. Republic Leasing Co., Inc.*, 351 S.C. 429, 432, 570 S.E.2d 187, 189 (Ct. App. 2002).

On January 29, 2016, Attorneys filed with the court a verified memorandum attesting that they received the Order on July 23, 2015. A true copy of the Order filed July 10, 2015 from the clerk of court stamped July 23, 2015 was included with the verified memorandum. The Motion for Sanctions was filed with the clerk of court the next day, July 24, 2015. Based upon the Attorney's representations, this Court finds that the Motion was timely filed and therefore this Court has retained jurisdiction. *See USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008)(upholding trial court's finding that a motion to reconsider was timely filed after counsel, an officer of the court bound by the ethical and professional rules of this state, informed the court that she did not receive written notice of the order until more than a month after final judgment was entered).

Turning to the merits of the Motion, under Rule 11(a), SCRCP, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. *Runyon v. Ex parte Gregory*, 378 S.C. 430, 437-38, 663 S.E.2d 46, 50-51 (2008) citing *Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996). The party and/or attorney may also be

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sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it. *Id.* It is irrefutable that a lawyer owes their client zealous advocacy, but that zeal must be constrained within the bounds placed upon them as an officer of the court and under the court's rules. Specifically, Rule 11, SCRCP, expressly sets forth the outer boundaries of acceptable attorney conduct by requiring that there be good ground to support any pleading filed before the court. Thus, that rule prohibits a lawyer from asserting claims or legal positions that are not supported by fact, well-founded under existing law, or through the modification, extension, or expansion of existing law.

Plaintiff brought a complaint alleging that Attorneys are liable to Plaintiff for damages arising out of Attorneys' performance of professional activities as attorneys for a client. Plaintiff asserted seven causes of action against Attorneys. The seven causes of action are: (1) false imprisonment; (2) defamation; (3) intentional infliction of emotional distress ("IIED"); (4) malicious prosecution; (5) conspiracy; (6) fraud; and (7) abuse of process.

At the outset of the hearing on the summary judgment motion, Plaintiff stipulated that Attorneys were entitled to summary judgment on all causes of action except civil conspiracy. (Order p. 2; Hr'g Tr. p. 16 ll. 9-19). The Plaintiff conceded that the law in this state is that an attorney is generally immune from liability to third person arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. *See Pye v. Estate of Fox*, 369 S.C. 55, 564, 633 S.E.2d 505, 509 (2006). It is apparent to this Court that Plaintiff's counsel filed the claims without researching the law on attorney immunity to determine whether the claims were viable and supported by law. Plaintiff's counsel made no argument to the contrary. This Court finds that no reasonable attorney would have brought the

Plaintiff's claims against Attorneys given the well-established case law on attorney immunity and the facts of the case.

Regarding Plaintiff's conspiracy cause of action, this Court finds that Plaintiff's claim was based upon mere suspicion without any supporting evidence. Moreover, after reviewing Plaintiff's counsel arguments in support of the conspiracy cause of action, this Court finds that counsel alleged conspiracy to "throw it against the wall and see if it sticks". The Plaintiff made several arguments in an attempt to give some cognizable basis for his conspiracy claim, none of which this court finds are supported by law or fact.

First, the Plaintiff argued to the Court at the summary judgment hearing that the Attorneys stepped out of the scope of the representation of their client when they advised their client to report possible criminal acts to the police and further advised their client to recommend to another alleged victim that she also report her own, similar encounters with the Plaintiff. More troubling, is that plaintiff's counsel also argued that an attorney is not acting in his capacity as an attorney when assisting a client filing a complaint before a state administrative agency. The Plaintiff argued that Attorneys stepped outside their role as attorneys when they assisted their client with an online complaint against Plaintiff filed with the South Carolina Department of Labor, Licensing, and Regulation because the client did not need an attorney to file the complaint nor were the Attorneys representing the client when they completed the complaint form. (Order p. 2; Summ. J. Hr'g Tr. pp. 19-20, ll. 10-2). The Court found that "there is simply no cognizable basis in law or fact to conclude these acts fall outside the scope of Attorneys' representation of Client." (Order p. 2).

Second, the Court rejected the Plaintiff's argument that Attorneys created, embellished or made up better facts to strengthen their client's claims, and therefore conspired with their client

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because Attorney's would share in any judgment obtained as a result of the suit because such an allegation is contrary to well-established law. (Order p. 5). The Court found that Plaintiff presented no evidence to support its bald assertions that Attorneys made up or embellished facts to strengthen their client's case. (Order p. 6). The Court also found, that in accordance with case law, an attorney does not act outside of the scope their representation simply by collecting a fee. (Order p. 5 citing *Gaar v. Myrtle Beach Realty Co., Inc.*, 287 S.C 525, 529, 339 S.E. 2d 888 (holding that an attorney normally conducts the litigation solely in his professional capacity and he has no personal interest in the suit)). The Court then found that there is no evidence here that Attorneys had any personal interest in their representation of their client. (Order p. 5).

Third, Plaintiff argued that Attorneys violated Rule 3.3 Candor Toward the Tribunal of the South Carolina Rules of Professional Conduct and that the rule also imposed a duty on Attorney to Plaintiff. The Court dismissed Plaintiffs argument that Rule 3.3 imposed Attorneys a duty to the Plaintiff, finding that the plain language of the rule creates no such duty. (Order p. 6). The Court also found that even if a duty was owed, the Plaintiffs breached no such duty. Plaintiff alleged that Attorneys should have recognized their client was lying when she informed them that Plaintiff was wearing a robe during the incident, but then later reported to law enforcement that Plaintiff was wearing a towel. The Court found that "these are subtle difference of no material distinction, both figuratively and literally, to put Attorneys on notice that Client may be lying." *Id.* Second, the Court found that the police report which contained the allegedly different descriptions of Plaintiff's attire was not created until after Attorney's advised their client to report to the police. Therefore, the Court found that Attorneys "would not have had the benefit of the very report Plaintiff claims should have put them on notice."

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Plaintiff's argument is not reasonably supported by the facts. Plaintiff counsel's theory is on its face factually implausible.

Based upon the foregoing, this Court finds that sanctions are warranted against Plaintiff's counsel under Rule 11, SCRCP. A sanction under Rule 11, SCRCP, may include an order to pay the reasonable costs and attorney's fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith. Rule 11(a), SCRCP.

Given the facts and circumstances of this case, I am imposing as a monetary sanction which I calculate based upon the Attorneys' fees and costs for defending the underlying lawsuit and bringing this sanctions motion. Attorneys were forced to notify their malpractice carrier and retain outside counsel. Attorneys also contributed considerably to the defense of the professional association.[1] I find that counsel is responsible for the reasonable expenses, including attorney's fees. Based upon the Affidavits of Attorneys' counsel, I find that the total costs of defending this action of $11,206.20 are reasonable. Plaintiff's counsel is required to pay to Attorneys $11,206.20 as a monetary sanction.

[1] Attorneys did not submit and this Court did not consider any time expended by Mr. Moorhead as he is a party to this action. However, this Court notes that it could have ordered Plaintiff's counsel reimburse Attorneys for Mr. Moorhead's time because I decided to impose a monetary sanction.

Plaintiff's counsel is ordered to pay to Attorneys $11,206.20 for violating Rule 11, SCRCP. This amount shall be paid within thirty days of the filing date of this order.

AND IT IS SO ORDERED.

~~THE HONORABLE~~ JUDGE LAWTON R. MCINTOSH

Anderson, South Carolina

2-3, 2016

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CERTIFICATE OF COUNSEL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr, Judge

Case No. 2017-CP-04-02099
Appellate Case No. 2020-000421.

RECEIVED
Dec 31 2020
SC Court of Appeals

John Harbin, Appellant,

v.

April Blair, Tracy Dunn, HUB Enterprises, Inc.,
Shawn Conway, Gallivan White & Boyd,
Sam Nikopoulos, and John Doe, Respondents,

CERTIFICATE OF COUNSEL

The undersigned counsel hereby certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material, as provided under Rule 210(g) of SCACR. Exhibits that have been duplicated in motions filed by any of the parties were eliminated for conciseness.

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December 31, 2020