

Verdicts & Settlements

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Insured recovers on counterclaim for malicious prosecution over Wilson fire

Laurie Volpe was the owner of Cully's Motorcross Park, Inc. Cully's was originally the owner of a motorcross park in Florida. When Volpe and her husband, Louis Volpe, moved to North Carolina, Cully's was incorporated in North Carolina and began purchasing, refurbishing and selling/renting homes in the historic district of Wilson. Laurie was the sole shareholder and president of Cully's.

One of the homes owned by Cully's was located at 314 Hill St. in Wilson. On the night of Sept. 5, 2008, this house was burned by arson. The next-door neighbor, the only eye-witness to the fire, saw an African-American man run from the house, get on a bicycle and pedal away from the house as the house began to burn.

Laurie Volpe had purchased a homeowners' insurance policy from N.C. Farm Bureau Mutual Insurance Co. that covered 314 Hill St. and

two other homes owned by Cully's. Both Cully's and Laurie Volpe were named insureds on the policy.

On Sept. 8, 2008, Laurie, on behalf of herself and Cully's, submitted a claim to Farm Bureau for the loss of the house due to fire. On that day, she gave her first recorded statement to Farm Bureau. Farm Bureau immediately involved its special investigations unit to investigate the fire loss.

Farm Bureau denied the claim by letter dated Feb. 23, 2009. Farm Bureau based its denial on its assertion that Louis was an officer of Cully's and had refused to submit to an examination under oath, thereby breaching the insurance contract. In addition, Farm Bureau alleged that Louis Volpe burned the house.

On the very next day, Feb. 24, 2009, Farm Bureau filed a declaratory-judgment action against Cully's, Laurie Volpe and Louis Volpe in Craven

County. Upon motion by Cully's, Laurie and Louis, and eventually consent of Farm Bureau, venue was transferred to Wilson County. Cully's and Laurie Volpe filed counterclaims for breach of contract and unfair and deceptive trade practices.

After the counterclaims were filed, on April 16, 2009, Farm Bureau's lead SIU investigator, Randall Loftin, met with Det. Lucas of the Wilson Police Department. Lucas was handling the arson investigation. At this meeting, Loftin reported to Lucas that he believed Laurie Volpe had committed insurance fraud by attempting to hide a deed of trust on the property from Farm Bureau. Loftin also alleged that Laurie Volpe had sold the property to a third party without notifying the individual of the deed of trust.

As a result of Loftin's alle-



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gations, Lucas obtained an arrest warrant for Laurie Volpe on May 4, 2009. On May 5, Laurie Volpe was arrested on charges of obtaining property by false pretense. Thirteen days later, on May 18, the charges against Laurie Volpe were dismissed.

After her arrest and the dismissal of the charges, Laurie Volpe

amended her counterclaim to add a claim for malicious prosecution. Contrary to what Loftin had told Lucas, Laurie had been completely forthcoming about the purchase of the property and the outstanding payment owed to the seller. During Farm Bureau's investigation, recorded statements were taken of both Laurie and Louis Volpe at the Farm Bureau office in Wilson on

Oct. 3, 2008, at the same time, in separate rooms. In her recorded statement, Laurie informed Farm Bureau that the property at 314 Hill St. was purchased in December 2007 for \$31,500, and that Cully's made a down payment of \$25,000 and owed a \$6,500 balloon payment due one year from the date of purchase or at the time of sale, whichever occurred first.

Verdict Report

Type of action: Declaratory judgment; counterclaims for breach of contract, malicious prosecution and unfair and deceptive trade practices

Injuries alleged: Breach-of-contract damages of \$60,000; malicious-prosecution damages of \$2,075 for costs and attorney's fees incurred to defend criminal complaint filed as a result of malicious prosecution, plus damages for humiliation, embarrassment, inconvenience and mental anguish

Case name: *N.C. Farm Bureau Mut. Ins. Co. v. Cully's Motorcross Park, Inc., and Laurie Volpe*

Case number: 09 CVS 974

Court: Wilson County Superior Court

Judge: Hon. Wayland J. Sermons

Verdict or settlement: Verdict

Date: Judgment signed by Judge Sermons on Feb. 4, 2011; file stamped by clerk on Feb. 7, 2011

Amount: \$88,228 total — \$26,075 for malicious prosecution; \$10,000, trebled to \$30,000, for unfair and deceptive trade

practices, plus attorney's fees of \$29,753 and costs of \$2,400.

Special damages: \$2,075 costs and attorney's fees incurred to defend criminal complaint filed as a result of malicious prosecution

Demand: \$60,000

Offer: \$0

Insurer: N.C. Farm Bureau Mutual Insurance Co.

Were liability and/or damages contested? Both liability and damages were contested.

Was the opposing party represented by legal counsel? Yes

Has the plaintiff been successful in actually collecting the judgment or settlement? Not yet

Insured/Counterclaimant's attorneys: Aaron C. Hemmings and M. Cory Howes, both of Hemmings & Stevens (Raleigh)

Editor's note: *The information in Lawyers Weekly's verdicts and settlements reports was submitted by the counsel for the prevailing party and represents the attorney's characterization of the case.*