

BRIEF OF APPELLANTS
THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[Case no. 2012-213208]

RECEIVED

AUG 15 2013

APPEAL FROM COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS
Maite D. Murphy, Master of Equity/acting as/Special Circuit Court Judge

SC Court of Appeals

Lower Court Case No. 2012-CP-18-0539

ATTACHED -EXHIBITS -25/ Part 1 and Part 2

Roger L. Whaley, Pro Se

Appellant/Plaintiff,

v.

South Carolina Federal Credit Union and
BANK of AMERICA,

Respondents/Defendants.

COVER SHEET - BLUE

[INITIAL] BRIEF OF APPELLANT/Plaintiff-WHALEY
Pursuant with SCRCP RULE 203(d); 207; & 208(a)

Roger L. Whaley
Pro Se Appellant
8673 Laurel Grove Lane
North Charleston, S.C. 29420
la99mont@yahoo.com

TABLE OF CONTENTS

Table of Authorities	i
Statement of Issues on Appeal	1
Statement of the Case	2
Facts & Conclusions	3,4

ARGUMENTS

1. BECAUSE LOWER TRIAL COURT'S SWORN TRANSCRIPTS CONTRADICTS!!OR SHOWS FRAUD/WHEN the LOWER TRIAL COURT APPROVED ITS SENT EMAIL 5/29/2012 "INSTRUCTED" WORDINGS to be DRAFTED in ITS Final ORDER of DISMISSAL FILED "JUNE 27, 2012", AND Only UPHELD ITS SAME RULINGS ON "SEPTEMBER 17, 2012" – WHICH THE TRIAL COURT Trans. SHOWS it BASED ITS ORDERED DISMISSAL WITH PREJUDICE OF APPELLANT/Plaintiff/WHALEY'S COMPLAINT AND ATTACHED DOCUMENTED EVIDENCE, was by INTENTIONALLY MISLEADING!!or WRONGFULLY PROVIDED illegal! MISQUOTATIONS TO A PRO SE ¹ LITIGANT/COMPLAINT /PLEADINGS, FILED AS PRO SE, *(See Trans. 8/29/2012 Pg 11, Lines 4-8) SHOWS the TRIAL COURT UNLAWFULLY CLAIMED "...WHEN YOU REPRESENT!! YOURSELF!! YOU ARE HELD!! TO! THE SAME!! STANDARDS! AS IF YOU ARE AN ATTORNEY. SO I HAVE TO FOLLOW THE SAME!! STANDARDS AS FAR AS THE RULES OF LAW AND THE RULES OF PROCEDURES, AS FAR AS THAT IS CONCERNED." WHEN "HAINES V. KERNER Sct. 594" STATES OTHERWISE, (See Footnote 1, and TRIAL COURT'S TRANSCRIPT 8/29/2012 Pg 5, Lines 3-5- & Lines 12-25; & PG 6, Lines 1-23; & PG 7- Lines 1-25; Shows APPELLANT/ WHALEY/PRO SE filed REASONS FOR HIS REQUESTED "DISQUALIFICATION" of THE SAID TRIAL COURT JUDGE'S..SENT EMAIL DATED MAY 29; 2012, HAD Personal BIASED INTEREST/APPEARANCE! OF SPECIAL FAVORS TO LICENSED ATTORNEY(S), WHEN THE TRIAL COURT JUDGE GAVE ITS REASONS FOR REQUESTING RESPONDENTS/Defendants to DRAFT the LOWER TRIAL COURT'S PROPOSAL WAS ONLY!! BECAUSE "...AS FAR AS HAVING COUNSEL DRAFT A PROPOSED ORDER, THAT IS VERY CUSTOMERY, ESPECIALLY!!! SINCE! I DON'T!! HAVE!! A! LAW!! CLERK! With the VOLUME of CASES that SOMETIMES COME!! IN! IT! REALLY!! JUST! PUTS! EXTRA!! WORK! ON! THEM!" Shows request SPECIAL FAVORS because JUDGE CAN'T AFFORD A LAW CLERK, AND DUE TO TRIAL COURT JUDGE DID NOT HAVE TIME to ACTUALLY READ ANY! OF APPELLANT/WHALEY's COMPLAINT AND DOCUMENTED ISSUES. (CANON 2A, 3E[1][a]) & SCRCP Rule 15[b]) ; & (Trans. 5/8/2012 Pg 11, Lines 16-17; & Pg 13, Lines 15-19; & T. 8/29/12 Pg 6, Lines 11-20)

2. THE TRIAL COURT INTENTIONALLY! MISQUOTED/OR GREATLY ERRED IN ITS DISMISSAL OF APPELLANT/WHALEY'S COMPLAINT, WHEN IT Volunteered AND provided LAWS CONCERNING A PRO SE LITIGANT STANDARDS ARE! TO BE HELD AT THE SAME!! Standards AS AN ATTORNEY, WHEN NEITHER!! RESPONDENTS IN THEIR JOINT! MOTIONS TO DISMISS, NEVER!! DENIED any! APPELLANT/WHALEY'S COMPLAINT CLAIMS!or ANY OF HIS FILED PLEADINGS- (Which a DENIAL IS REQUIRED PURSUANT WITH SCRCP 8[d]), WHEN Records SHOWS RESPONDENTS ONLY! ADDED! their OWN ADDITIONAL Federal CLAIMS Case 3:07-MC-0135-MBS (Trans. 5/8/2012 Pgs 3-12) In ONGOING STATE!! MATTERS - THAT WERE added CLAIMS NEVER! PART OF APPELLANT/Whaley's COMPLAINT CLAIMS, which APPELLANT/WHALEY'S COMPLAINT CAN!! SURVIVE THE LOWER TRIAL COURT ORDER OF DISMISSAL; As "...Rule 12(b)(6) Motion 603*603 May not be Sustained if Facts alleged and Inferences reasonably deducible there from would Entitle the Plaintiff to ANY Relief on any Theory of the Case, Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987)."; & Rooker/Feldman Doctrine; RESPONDENTS Joint /MOTIONs TO DISMISS/MEMO Pgs 2, ADMITS!! UNDER ITS OWN "STANDARD OF REVIEW" STATES "Generally, in CONSIDERING a 12(b)(6) Motion, the TRIAL COURT MUST!!! LIMIT!! ITS REVIEW! TO!! THE ALLEGATIONS! SET! FORTH! IN THE COMPLAINT. Stiles v. Onorato, 318 S.C. 297, 457 S.E. 2d 601 (1995)."; See Trans. 8/29/12 Pg 9, Lines 11-25, & Pg 10)

- i -

¹ Haines v. Kerner, Sct 594 and Justice Black in Conley v. Gibson, 355 U.S. 41 at 48 (1957) – "...IT WAS HELD THAT A PRO-SE PLEADING REQUIRES LESS STRINGENT READING THAN!! ONE DRAFT! BY A LAWYER." – Which Lower Trial Court's ORDER OF DISMISSAL WITH PREJUDICE- is indeed AGAINST Haines v. Kerner's LAW; and supports the JUDGE'S MISCONDUCT & Disqualification pursuant with CANON 2A, 3E(1)(a)

² As According to the LOWER TRIAL COURT'S "MAY 8, 2012" TRANSCRIPT Pgs 3, LINES 10-25; & Full Pgs 4 – 7; & Pg 8, Lines 1 – 24; SHOWS BOTH RESPONDENTS/AGREED to their JOINT MESSAGES PRESENTED TO THE TRIAL COURT, WHEN RESPONDENTS! VOLUNTEERED! THEIR OWN! ADDED! ADDITIONAL! CLAIMS! TO BE ADDED TO APPELLANT/Plaintiff/WHALEY'S CLAIMS THAT WERE NEVER PART OF APPELLANT/WHALEY'S COMPLAINT, *(The ruling on a Rule 12(b)(6) motion to dismiss MUST!! BE! BASED!! SOLELY!! UPON THE ALLEGATIONS SET FORTH ON THE FACE OF THE COMPLAINT. State Board of Medical Examiners v. Fenwick Hall, Inc., 300 S.C. 274, 387 S.E.2d 458 (1990)")

FACTS ARE RESPONDENT/Defendant/BOA's OWN ATTORNEYS- with LAW FIRM NELSON & MULLINS'ATTORNEY "BEDENBAUGH" (AND JOINT by SCFCU) – SHOWS – TRIAL COURT – illegally! RAISED!! A FEDERAL!!! CIVIL/Criminal COURT JURISDICTION!!! CASE MATTERS, TO BE HEARD WITHIN LOWER TRIAL STATE!!! COURT'S ONGOING/or Litigated STATE CASE MATTERS! (which RESPONDENTS' OWN! provided – FEDERAL COURT JUDGE, MARGARET B. SEYMOUR'S RULINGS, who RULED that a FEDERAL!! COURT!! COULD! NOT!! INTERFERE NOR !! REVIEW an ONGOING STATE!! COURT! MATTERS – SHOWN IN CIVIL Case No. C.A. 3:06-0010-MBS-irm (Pursuant under ROOKER/ FELDMAN DOCTRINE- "...PREVENTS this [FEDERAL] COURT FROM ASSUMING JURISDICTION OVER ONGOING STATE LITIGATION or REVIEWING ANY!! DECISION!! MADE! OR SOON! TO BE MADE THEREIN.") – WHICH APPELLANT/WHALEY filed WHY his APPEALS CLAIMS UNDER SCRCP 203(d)(1)(A)(ii) – CONCERNS "...Any Final Judgment involving a Challenge on State or Federal Grounds to the Constitutionality of a State Law..."; written Clearly & Plainly in supports with SCRCP 8(a)- WHEN Trial Court JUDGES' ORALLY ADMITTED!! in Court's Sworn TRANSCRIPT 8/29/2012 Pg 10, & 11,- ALL!! OF APPELLANT/WHALEY'S CLAIMS Heard AND filed IN Court FIRSHELD 5/8/2012 WERE "VERY WELL SPOKEN and ARTICULATE." AND that APPELLANT/WHALEY "...PRESENTED YOUR DOCUMENTS and!! YOUR CASE...VERY CLEARLY, and I CERTAINLY!! DO! RECALL! THAT! YOU! DID."; Shows...(Dismissal Pursuant /w/ Canon 2A, 3E[1][a]; and ROPC 1.7 ATTORNEYS DOING CONFLICT OF INTEREST *(See TRANS. 8/29/2012 Pg 5, Lines 19-25; & Pg 6, Lines 1-17; & see Lines 18 -23);

TABLE OF AUTHORITIES*

CASES

Haines v. Kerner Sct 594 –Footnote 1.....i

Uniform Commercial Code 3.312-Footnote-3,5.....i,1,2

Uniform Commercial Code 4.403-Footnote-3.....1

Case no. 3:2007-MC-00135-MBS.....i,4

CA-3:06-0010-MBS-jrm – footnote 2.....i

Conley v. Gibson, 355 U.S. 41 at 48 (1957)- Footnote 1.....i

Toussaint v. Ham, 292, .S.C. 415, 357, S.E.2d 8 (1987)-Ft Note.....i,1,4

Rooker/Feldman Doctrine.....i,1

Stiles v. Onorato, 318 S.C. 297, 457, S.E. 2d 601 (1995).....i,2

State Board of Medical Examiners v. Fenwick Hall, Inc., 300 S.C. 274, 387 S.E.2d 458 (1990)Ft-nt-1,5...i,1,4

RULES

CANON 2A, 3E(1)(a) Argument & Footnote 1,2.....i,1,2

SCRCP 8(a) – Argument.....1

SCRCP 8(d) – Argument.....i,3

SCRC 15(b) – Argument.....i,1,2

SCRCP 8(a)/under1

CANON 2.11(1) – Argument.....

SCRCP 12(b)(6) – Argument&Ft Note-5i,1,2

SCRCP 12(a&d) – Argumenti

SCRCP 203(d)(1)(A)(ii)- Argument footnote2.....i,1

SCRCP 203(d)-Cover Sheet.....CS

SCRCP 207-Cover Sheet.....CS

SCRCP 208-Cover Sheet.....CS

ROPC 1.7 – Argument-Footnote-2.....i

ROPC 1.7[a][1].....1,2

OTHER AUTHORITIES/or/ TRANSCRIPTS/& EMAIL QUOTE from TRIAL COURT

LOWER TRIAL COURT’S TRANSCRIPT - AUG. 29, 2012,/Argumenti,1,3

LOWER TRIAL COURT’S TRANSCRIPT - MAY 8, 2012/Argumenti,1,2,3,4

LOWER TRIAL COURT’S EMAIL/QUOTE – MAY 29, 2012/Argumenti,2,3

LOWER TRIAL COURT’S TRANSCRIPT – JUNE 27, 2012.....i,1,2,3

LOWER TRIAL COURT’S **EMAIL ORDER** - MAY 29, 2012 -.....i,1,2,3

LOWER TRIAL COURT’S TRANSCRIPT-SEPTEMBER 17, 2012.....i,1,2,3

RESPONDENT/BOA’S ATTORNEY **NELSON & MULLINS** Letter – MAY 31, 2012..3

RESPONDENT/BOA’S MOTION TO DISMISS-MARCH 21, 2012.....3

Respondents/added/RICHLAND COUNTY Case no. 2011-CP-40-08913/.....

STATEMENT OF ISSUES ON APPEAL

1. DID THE LOWER TRIAL COURT ERRED/or DUE TO PERSONAL BIAS INTEREST, PERSONALLY ALLOWED ONLY!! the RESPONDENT/Defendant/BANK OF AMERICA/BOA/OR BOA'S HIRED! PAID! LAW FIRM, NELSON and MULLINS! to PREPARE THE TRIAL COURT'S PROPOSED! ORDERS, DATED "JUNE 27, 2012" and "SEPTEMBER 17, 2012" BY GOING AGAINST!! THE LOWER TRIAL COURT'S OWN! PRIOR! WRITTEN ORDERS/THAT WERE NEVER!! AMENDED!! (Pursuant with CANON 2A, & 3E[1][a]- AND ROPC 1.7[a][1]) WHICH INVOLVES THE LOWER TRIAL COURT'S EMAIL!! WRITTEN WITH DIRECT "INSTRUCTIONS" /ORDERS DATED "MAY 29, 2012" THAT GAVE "INSTRUCTIONS" FOR BOTH! RESPONDENTS/Defendants/BOA and SC FEDERAL CREDIT UNION TO PREPARE EACH!! OF THEIR OWN!! PROPOSED! ORDER...ALTHOUGH! (LATER) the LOWER TRIAL COURT JUDGE SIGNED! ONLY!! RESPONDENT/Defendant/ BANK OF AMERICA/BOA's ATTORNEYS' WITH THE LAW FIRM NELSON & MULLINS PREPARED!! PROPOSED ORDER - WHICH (Illegally!!) ALSO REVISD/AND CHANGED THE TRIAL COURT'S EMAILED!! WRITTEN Instruction ORDERS-due to THE TRIAL COURT EMAILED!! WRITTEN ORDERS! CONFLICTED!! with the RESPONDENT/Defendant/BOA'S FILED MOTION TO DISMISS/MEMORANDUM Pgs 4 & 6 - (Which showed Defendant/BOA's ALWAYS! RELIANCE/AND CLEAR UNDERSTANDING of APPELLANT/Plaintiff/WHALEY's Numbered COMPLAINT CLAIMS 3,5,&6-which ADMITS!! Plaintiff/Whaley's ALWAYS!! WRITTEN "UNDISPUTED" PERSONAL INTEREST/WHO "ESTABLISHED STANDINGS" WITH APPELLANT/WHALEY'S CASHIER'S CHECKS UNDER the Uniform Commercial CODE/OR/UCC LAW(S) SECTIONS "4.403 & 3.312." - "(See attached DOCUMENT Titled "NATIONAL CHECK FRAUD CENTER/under SECTION 3-312 of the UCC-shows/and admits!! - "IF A CUSTOMER REPORTS...CASHIER'S CHECK IS LOST, STOLEN, OR DESTROYED...and the CHECK WAS ISSUED in a STATE which...ADOPTED Revised SECTION 3-312 of the UCC..." SHOWS "WHO IS THE CLAIMANT? IF THE CASHIER'S CHECK HAS NOT!! BEEN! DELIVERED!! TO! THE PAYEE, THE REMITTER!! IS! THE PROPER PARTY!! TO MAKE! A! CLAIM!!)"³ AS Appellant/Plaintiff/WHALEY's COMPLAINT provided UNIFORM Commercial CODE/UCC 3.312 also SHOWS THE APPELLANT'S STATUTE OF LIMITATION *(See Trial Ct Trans 5/8/2012 Pg 9, Lines 11-21) to CLAIMED his MONIES had/nor HAS NOT EXPIRED, not until AFTER!! the CHECK HAS BEEN EACCEPTED!! by the NAMED PAYEE/and "IF the CUSTOMER has MADE A CLAIM alleging THAT THE CHECK(S) WAS/(were) STOLEN, (the BANK) WILL WANT to DETERMINE if the ENDORSEMENT!! HAS!! BEEN!! FORGED!! BY! A THIEF!!".⁴ Which shows NOT ONLY THAT APPELLANT/Plaintiff/WHALEY'S COMPLAINT IS/AND ALWAYS HAS BEEN in COMPLIANTS with SCRCP 8(a); and SCRCP 12(b)(6) -

2. DID THE LOWER TRIAL COURT in ERROR/OR DUE TO BIAS MISCONDUCT OF PERSONAL INTEREST (Canon 2A, 3[E][1][a]), & being filed pursuant with SCRCP Rule 15,[b]) SIGNED! (ILLEGALLY/or UNETHICALLY) for RESPONDENT/Defendant/BOA's ATTORNEYS with NELSON and MULLINS LAW !! FIRM!! to ONLY!! ,PREPARED The Lower Trial Court's (shown in above no. 1; Illegal and Unethical, Filed) PROPOSED ORDER(s) 6/27/2012 & 9/17/2012 - WHEN BOTH THE SAID LOWER TRIAL COURT JUDGE (See Trial Ct Trans 8/29/2012 Pg 6, Lines 11-23), AND RESPONDENT/BOA'S ATTORNEYS' LAW FIRM, NELSON and MULLINS - always know that LAW FIRM OF NELSON and MULLINS was DOING AN !! INTENTIONAL CONFLICT!! of INTEREST!! BY BEING PAID/OR APPOINTED/ OR HIRED TO REPRESENT!! BOTH!! the RESPONDENT/Defendant/BOA and!! APPELLANT/Plaintiff/WHALEY'S PERSONAL INTEREST (AS LAW FIRM NELSON & MULLINS being the RICHLAND COUNTY STATE!! COURT! APPOINTED! RECEIVER! INVOLVING the Lower Trial Court's 6/27/2012 ORDER Pg 4, no. 7 - involvement with RESPONDENT/Defendant/BOA's ADDED. ADDITIONAL FEDERAL CLAIMS⁵ (to be IN APPELLANT/WHALEY'S COMPLAINT, that was REVIEWED AND WAS JUDGED REGARDING AN alleged "FEDERAL" RECEIVER, MR. BEATTIE B. ASHMORE, and the FEDERAL DISTRICT COURT JUDGE MARGARET B. SEYMOUR *(See Trial Ct TRANS. 5/8/2012 Pg 3, Lines 23-25; Pgs 4-8; and APPELLANT/FILED RULES Pursuant with SCRCP 203(d)(1)(A)(ii) - A CONSTITUTIONAL QUESTION INVOLVING A STATE! and FEDERAL LAW/which is against ROOKER/FELDMAN DOCTRINE- which PREVENTS a ONGOING STATE! COURT! CASE MATTER TO BE REVIEWED/OR INTEREVENED WITH AN "ONGOING" OR SOON TO BE SETTLED FEDERAL COURT CASE MATTER)** *(See Trial Ct Trans. Pg 6, Lines 2-23)

Pg - 1 -

³ See Appel/Plt's Compl. no. 2, states "...RESEARCH SHOWS that the...Defendant SC Credit Union has REFUSE to RELEASE Plaintiff WHALEY's said MONEY FUNDS that's been PROPERLY REQUESTED to be RETURNED, since...PLAINTIFF WHALEY'S MONIES...WAS NEVER PAID/nor RELEASED to PLAINTIFF WHALEY'S NAMED PAYEE..."; and the Lower Trial Court's OWN ORDER Dismissal with Prejudice/dated "JUNE 27, 2012" - ADMITS!! In its Pg 2, No. 3 - UNDER "FINDINGS OF FACTS" THAT- "...BASED on the allegations IN THE COMPLAINT and the COPIES of the CHECKS PROVIDED!! it APPEARS the PLAINTIFF!! IS! THE REMITTER!! of the CASHIER'S CHECKS"; THEREFORE SHOWS the named LOWER TRIAL COURT's OWN! said above ORDER(s)!! 6/27/2012 and UPHELD ON 9/17/2012 -ADMITS! Appellant/PLAINTIFF/WHALEY IS THE ONLY!! REMITTER/or PURCHASER on his CASHIER'S CHECKS, which Appellant/Plaintiff/WHALEY'S COMPLAINT Provided RULES- UCC 4.403 & 3.312 -WHICH SUPPORTS /AND SHOWS APPELLANT/WHALEY is the ONLY! PARTY! OF INTEREST...since! he ALWAYS CLAIMED! IN HIS COMPLAINT/Provided with DOCUMENTED!! EVIDENCE! WHICH SUPPORTED THAT THE RESPONDENT/Defendant/BOA!! ADMITTED!! TO MANY! OTHER!! CCG CONSTITUENTS!! AND! to the STATE!! DEPARTMENT OF REVENUE, THAT Appellant/Plaintiff/WHALEY's CASHIER'S CHECKS NAMED PAYEE/CCG NEVER! RECEIVED!! CCG's Constituents!! CASHIER'S CHECKS -whom APPELLANT'S COMPLAINT/and Trial Court's ORDER 6/27/2012 pg 4, ALWAYS CLAIMED CONSPIRACY by both SAID RESPONDENTS/Defendants caused the "THEFT!" of APPELLANT/WHALEY'S MONIES over \$52,000.00 THOUSAND DOLLARS, who IS THE ONLY! PARTY and "HOLDER" who has STANDINGS, With Appellant/Whaley's CASHIER'S CHECKS;

⁴ Which the Lower Trial Court's GRANTED RESPONDENT/Defendant/BOA's, MOTION TO DISMISS/MEMORANDU dated 3/21/2012 always ADMITTED!! on its FIRST PAGE, that APPELLANT/Whaley's "...COMPLAINT CONTAINS...allegations of CIVIL CONSPIRACY, FRAUD, THEFT!!! of MONEY, and BREACH OF CONTRACT with RESPECT to CASHIER'S CHECKS ISSUED!! by SOUTH CAROLINA FEDERAL CREDIT UNION...and...BANK OF AMERICA...See COMPL. and EXS." Shows Trial Court NEVER considered Plt' claims of "THEFT".

⁵ The ruling on a Rule 12(b)(6) Motion to Dismiss MUST BE BASED SOLELY!! UPON the ALLEGATIONS SET FORTH ON THE FACE OF THE COMPLAINT. State Board of Medical Examiners v. Fenwick Hall, Inc., 300 S.C. 274, 387; And "...Rule 12(b)(6) Motion 603*603 MAY NOT be SUSTAINED if FACTS alleged and INFERENCES reasonably deducible there from WOULD ENTITLE THE PLAINTIFF TO ANY!! RELIEF on any theory of the case. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987)." WHICH LOWER TRIAL COURT'S prepared said above Orders & BOTH Respondents ADMITS its "UNDISPUTED" FACTS!! as to the APPELLANT/WHALEY'S numbered COMPLAINT 3,5,&6/showing the UCC SECTION 3.312 confirms! ONLY the Appellant/Whaley is the REMITTER/or Purchaser of his Cashier's Checks who's named PAYEE NEVER COLLECTED/said Check, which SHOWS THE REMITTER or "HOLDER" Appellant/Whaley IS YET AN INTERESTED PARY who has LEGAL STANDING CLAIM the RETURN of his said monies.

STATEMENT OF THE CASE

THE TRIAL COURT ERRED or due to BIASED PERSONAL INTEREST, MADE ITS JUDGMENT DISMISSING APPELLANT/Plaintiff/WHALEY'S COMPLAINT, ALSO WITHOUT NEVER REVIEWING any of APPELLANT/WHALEY'S RESPONSIVE!! PLEADING AND DOCUMENTED EVIDENCE, OTHER THAN! THE TRIAL COURT SPEAKING (VERBALLY IN TRANSCRIPTS) ONLY involving APPELLANT/WHALEY'S CASHIER'S CHECKS, WHEN THE LOWER TRIAL COURT "ORDER OF DISMISSAL WITH PREJUDICE" Pg 4 no. 7, ADMITS THAT APPELLANT/Plaintiff/WHALEY ALSO FILED additional!! CLAIMS in HIS RESPONSIVE PLEADING Pursuant with SCRPC Rule 15(b), RESPONDED TO RESPONDENTS/ Defendants filed (later) Joint filed MOTION(S) TO DISMISS WITH PREJUDICE/MEMORANDUM Pg 2 WHICH RESPONDENTS/AND TRIAL COURT'S GRANTED MOTION TO DISMISS ADMITS!! "...in CONSIDERING A 12(b)(6) MOTION, the TRIAL COURT, MUST!! LIMIT ITS REVIEW to the ALLEGATIONS SET FORTH IN THE COMPLAINT, *Stiles v. Onorato*, 318, S.C. 297, 457, S.E. 2d. 601 (1995); BUT THE Lower TRIAL COURT ALLOWED RESPONDENTS/Defendants to INTERVENE ADDED CLAIMS IN WHICH APPELLANT/WHALEY DID NOT WRITE IN HIS COMPLIANTY, BUT INDEED APPELLANT/WHALEY PROPERLY RESPONDED!! TO RESPONDENTS, ALTHOUGH! THE TRIAL COURT NEVER! ORDERED IN ITS EMAIL INSTRUCTIONS, NOR in ANY of the RECORDED TRANSCRIPTS for the RESPONDENTS/Defendants TO ADDED APPELLANT/Plaintiff/WHALEY'S FILED "...DOCUMENTS ENTITLED NOTICE OF CONTINUANCE or MOTION for JUDGMENT against S.C. FEDERAL CREDIT UNION or Defendants MUST PRODUCE DOCUMENTS; AND PLAINTIFF'S REPLY TO DEFENDANT BANK OF AMERICA'S MOTION TO DISMISS/MEMO and ALTERNATIVE for MORE DEFINITE STATEMENT/and PRODUCE DOCUMENTS": so to have BEEN JUDGED IN THE LOWER TRIAL COURT'S GRANTED ORDERS, DATED "JUNE 27, 2012" AND "SEPTEMBER 17, 2012"; THEREFORE SHOWS THE LOWER TRIAL COURT DID ANOTHER! SPECIAL FAVOR FOR RESPONDENT/BOA'S HIRED/paid LAW FIRM "NELSON and MULLINS" WHO DO NOT DENY!!/AND OR IS "UNDISPUTED" THAT RESPONDENT/BOA'S HIRED ATTORNEYS/ WITH NELSON and MULLINS are ALSO THE STATE!! COURT! APPOINTED ATTORNEYS LAW FIRM who were APPOINTED to ALSO REPRESENT APPELLANT/WHALEY'S CASHIER CHECKS named PAYEE/CCG'S CONSTITUENTS' MONEY INTEREST, in which RESPONDENT/Defendants, has ALSO MADE their ADDED DEFENSE CLAIMS. Which is an ANOTHER ERROR OF LAW/for Rule INTENTIONALLY DENIED to APPELLANT/WHALEY pursuant ROPC 1.7(a)(1) & Canon 2A, 3E(1)(a)

THE LOWER TRIAL COURT ALLOWED BOTH! RESPONDENTS/ Defendants/ATTORNEYS (ADDED) DEFENSE CLAIMS (that were NEVER part of Appellant/Plaintiff/Whaley's COMPLAINT, WHEN THE LOWER TRIAL COURT AGAIN! CONTINUE TO SIGNED RESPONDENT(S)/Defendant(s) ERRED!! PROPOSAL ORDERS making FRAUDULENT CLAIMS that "this DOCUMENT is MOSTLY!! UNINTELLIGIBLE!!" and this COURT FINDS, to the EXTENT is SEEKS a CONTINUANCE, A JUDGMENT, or OTHER RELIEF against! the DEFENDANTS, it SHOULD be DENIED BASED! ON THE REASONS SET FORTH HEREIN." WHICH THE LOWER TRIAL COURT'S OWN! ADMITTANCE!! TO APPELLANT/Plaintiff/WHALEY'S COMPLAINT AND FILED PLEADING ARE - ".VERY WELL SPOKEN and ARTICULATE..." AND stated FURTHER THAT APPELLANT/WHALEY'S "...PRESENTED YOUR DOCUMENTS and YOUR CASE LAST TIME VERY CLEARLY, and I CERTAINLY!! DO RECALL THAT YOU DID." - CONTINUE TO SHOW LOWER TRIAL COURT'S SIGNING OF RESPONDENT/Defendant/BOA ADMITTED WRITTEN PROPOSAL ORDER(S), ARE BEING GRANTED BY THE SAID TRIAL COURT JUDGE TO ONLY HIDE/OR COVER UP THE FACT! THAT THE LOWER TRIAL COURT ADMITS! IT NEVER! REVIEWED APPELLANT/Plaintiff/WHALEY'S COMPLAINT, AND OTHER FILED PLEADINGS, ATTACHED WITH HIS DOCUMENTED EVIDENCE, WHEN THE TRIAL COURT'S EMAIL MAY 29, 2012 INSTRUCTION ORDERS ONLY! REQUESTED that APPELLANT/WHALEY'S COMPLAINT WAS DEFICIENT REGARDING THE CASHIER'S CHECKS' EVIDENCE, AND NONE! OF THE ATTACHED STATE COURT SIGNED ORDERS, OTHER SIGNED DOCUMENTS REGARDING RESPONDENT/BOA'S ALSO PERSONAL APPEARANCE/WHO WAS TO REPRESENT/AND/OR/ WOULD BE A WITNESS FOR THE APPELLANT/WHALEY, which such testimony would CAUSE! GREAT! DAMAGES to BOTH! RESPONDENTS/Defendants BANK OF AMERICA and SOUTH CAROLINA FEDERAL CREDIT UNIONS, WHICH PUBLIC RECORDS SHOWS BOTH SAID RESPONDENTS/Defendants, HAS ALWAYS BEEN JOINT!! ALSO AS BUSINESS SUBSIDIARIES/AFFILIATES, JOINT BY FIRST UNION BANK, AND WACHOVIA BANK...WHICH JOINTS RESPONDENT BANK OF AMERICA WITH RESPONDENT SOUTH CAROLINA FEDERAL CREDIT UNION; WHICH CONFIRMS APPELLANT'S CONSPIRACY, AND THEFT COMPLAINT CLAIMS, WHICH TRIAL COURT ADMITS IT NEVER REVIEWED.

THE LOWER TRIAL COURT'S TRANS. DATED 5/8/2012 Pg 6, Lines 17-ADMITS! THAT IT IS GOVERNED "UNDER THE UNIFORM COMMERCIAL CODE, ARTICLE III..."; AND RESPONDENT/BOA's Mt to Dism. Memo. Pgs 4, Last Parg. & Pg 6, Last Parg.-; ADMITS! BY JOINT! RESPONDENTS/Defendants THAT "...PLAINTIFF'S COMPLAINT CONTAINS ...allegations THAT BANK OF AMERICA CONSPIRED WITH SOUTH CAROLINA FEDERAL CREDIT UNION with RESPECT to the CASHIER'S CHECKS. Compl. ¶¶ 3,6..."; and ADMITS ALSO THAT "...IT IS UNDISPUTED in this CASE THAT PLAINTIFF, WHO WAS THE PURCHASER OF THE CASHIER'S CHECK from SOUTH CAROLINA FEDERAL CREDIT UNION. Compl. ¶ 5"; as WELL IS LOCATED IN LOWER TRIAL COURT "ORDER OF DISMISSAL WITH PREJUDICE" dated "JUNE 27, 2012" Pg 2, No. 3, and UPHELD in LOWER TRIAL COURT'S "SEPT. 17, 2012" "ORDER" ADMITS! that "...BASED ON THE allegations IN THE COMPLAINT, and the COPIES of the CHECKS PROVIDED, it APPEALS the PLAINTIFF IS the REMITTER of the CASHIER'S CHECKS"; SHOWS ALL THE Joint!1 RESPONDENTS/Defendants/and the said LOWER TRIAL COURT ADMITS THAT ALL RELIED UPON APPELLANT/WHALEY'S COMPLAINTS NUMBERED! PLAIN, CLEAR CLAIMS in numbers 3,5,6; AS WELL AS APPELLANT/WHALEY PROVIDED HIS DOCUMENTED EVIDENCE OTHER CCG MEMBERS WHOM RESPONDENT/BOA indeed RETURN THEIR CCG' MONIES AFTER THEY FILED WITH RESPONDENT/BOA THEIR MONIES THAT WERE YETI BEING HELD IN THE BANK OF RESPONDENT/BOA - WHEN THEIR MONIES WERE RETURNED UNDER - UNIFORM COMMERCIAL CODE SECTION 3-312 - WHICH ALWAYS SUPPORTED APPELLANT/WHALEY'S CLAIMS THAT HE YETI WAS THE HOLDER/and OWNER!AND REMITTER OF CASHIER'S CHECKS HAS NOT BEEN DELIVERED TO THE PAYEE, SHOWS THE REMITTER IS!! THE PROPER! PARTY TO MAKE A CLAIM

FACTS

UNDISPUTED FACTS ARE, that on the date "September 17, 2012" the Lower Trial Court signed and entered its "ORDER" located on it page 1, ADMITS that "Plaintiff...seeking Reconsideration of this Court's Order entered on June 27, 2012, which Dismissed Plaintiff's Complaint with Prejudice, CLAIMING that:

A. The Court HELD a HEARING on Plaintiff's Motion *(that Filed for DISQUALIFICATION of Trial Court Judge) which wrote that "...on August 29, 2012... Plaintiff's PRIMARY OBJECTION appears to be that the **Court Provided the GROUNDS for ITS RULING in an EMAIL!! to COUNSEL for BANK OF AMERICA**, with a Copy to Plaintiff and to Counsel for South Carolina Federal CREDIT UNION.

B. In the EMAIL, **the COURT REQUESTED that COUNSEL for BANK OF AMERICA DRAFT a PROPOSED ORDER.** - that was entered on recorded lower court records "June 27, 2012" which indeed CONFLICTS/and/ CONTRADICTS the lower trial court's "Instructions" EMAIL Orders dated "MAY 29, 2012" that actually Requested BOTH!! RESPONDENTS/Defendants Counselors /BOA and SC FEDERAL CREDIT UNION to DRAFT the lower trial court's PROPOSED EMAIL Instructions ORDERS.

C. "The Complaint is deficient in establishing Standing of the Plaintiff as the EXHIBITS Attached to the COMPLAINT **DO NOT ESTABLISH that the Plaintiff is EITHER a PARTY to the CHECKS in QUESTION...**" As! RespondentS/Defendants/ JOINT ORDER(s) dated "June 27, 2012" pages 4 & 6, and "September 17, 2012" on page 1, CONFLICTS and shows the LOWER TRIAL Court's ORDER(s) indeed CONFLICTS/and or shows UNTRUTHFUL statement in lower trial court's EMAIL 5/29/2012.

FACTS ARE UNDISPUTED admitted in lower trial court's transcript dated 5/8/2012, Pg 11, Lines 16-17; and Pg 13, Lines 15-19; shows the lower trial court presiding JUDGE, always ADMITTED that the said trial court NEVER REVIEWED/Nor "...LOOKED AT" Appellant/Plaintiff/Whaley's COMPLAINT nor any of his filed pleading attached with Documented Evidence.

FACTS ARE UNDISPUTED by the lower trial court Judge ALWAYS ADMITTED in Lower Trial Court's sworn Trans. 8/29/2012 Pg 10, Lines 20-25; and Pg 11, Lines 1-3; which shows Appellant/Plaintiff/Whaley's COMPLAINT and filed PLEADINGS along with attached Documentations were "CERTAINLY...VERY WILL Spoken and Articulate." When the Lower Trial Court admitted when Appellant/Plaintiff/Whaley "...PRESENTED your DOCUMENTS and your CASE Last Time (held in Open Court on 5/8/2012) VERY! CLEARLY!, and I CERTAINLY do RECALL that YOU DID." But, yet! the trial court Judge, signed! in its "ORDER to DISMISS with PREJUDICE", dated "JUNE 27, 2012" and UPHELD in the lower trial court's "ORDER" dated "SEPTEMBER 17, 2012" - shown!! CONFLICTING and FRAUDULENT claims WRITTEN In the Lower Trial Court's "EMAIL" "Instructions" ORDERS dated "MAY 29, 2012", which REQUESTED for BOTH!! RESPONDENTS/ Defendants/BANK OF AMERICA and! SC. FEDERAL CREDIT UNION - to PREPARED the lower trial court's PROPOSED EMAILED ORDERS, but! FACTS ARE ONLY the RESPONDENT/Defendant/BANK OF AMERICA, Prepared the said dated ORDERS, 6/27/2012 & 9/17/2012, prepared Only! by the Respondent/Defendant/BANK of AMERICA, and approved by the Respondent/SC Federal Credit Union, and signed! by the Lower Trial Court Judge, whose signed Order(s) dated 6/27/2012, & 9/17/2012 - wrote under its Conclusion of Law that Appellant/Plaintiff/Whaley's "...COMPLAINT is MOSTLY Comprised of INCOMPREHENSIBLE allegations and! EXHIBITS...As a RESULT Dismissal is Proper...GIVEN THE NATURE of the ALLEGATIONS...the Court Findings...to GRANT the MOTIONS! to DISMISS with Perjudice **INSTEAD of GRANTING PLAINTIFF Leave to AMEND the COMPLAINT because!! ANY such AMENDMENT would be FUTILE!!**"; which "...CONTRADICTS and CONFLICTS with the Trial Court ORAL SWORN!! under OATH! Transcript claims, and also! shows FRAUD CLAIMS NEVER written in the Lower trial court's EMAIL! Instructions (See attached LETTER dated May 31, 2012/from the LAW FIRM of NELSON and MULLINS! and the attached EMAIL "Request" Orders dated "MAY 29, 2012"...NEVER! wrote that Appellant/Plaintiff/Whaley's "...Instead of GRANTING LEAVE TO AMEND the Complaint because ANY such AMENDMENT WOULD be FUTILE!!".

FACTS UNDISPUTED ARE that indeed the lower trial court's SWORN UNDER OATH above written Claims indeed ADMITS! Appellant/Plaintiff/Whaley's filed COMPLAINT and Provided Documents were VERY CLEARLY spoken and Articulate, as well as the said lower trial court Transcript and the Trial Court's signed ORDER(S) SUPPORTS AND shows that the lower trial court Granted the JOINT!! (1 Page-& 1 Paragraph) filed MOTION TO DISMISS, filed by Respondent/Defendant/SC FEDERAL CREDIT UNION who NEVER DENIED any of Appellant/Plaintiff/Whaley's CLAIMS written in his COMPLAINT, which does not comply with SCRCP Rule 8(d),⁶ under a who only wrote that "...Counsel...move before who agreed to be JOINT with the Respondent/Defendant/BANK of AMERICA's filed to DISMISS/MEMORANDUM Claims on pages 4 & 6 which shows the RESPONDENT/Defendant/BANK of AMERICA "UNDISPUTED" wrote that "Plaintiff's COMPLAINT Contains several... allegations that BANK OF AMERICA CONSPIRED with SOUTH CAROLINA FEDERAL CREDIT UNION with Respect to the Cashier's Checks. COMPI. ¶¶ 3, 6." See page 4, of Respondent/BOA's Motion to Dismiss/Memo page 4. Shows BOTH RESPONDENTS/Defendants RELIED UPON Appellant/Plaintiff/Whaley's CLEAR filed COMPLAINT, shown also on page 6, of Respondents/Defendants/ JOINT Motion to Dismiss/Memorandum dated "MARCH 21, 2012".

Pg -3-

⁶ SCRCP Rule 8 (d) Effect of Failure to Deny. "...Averments in a PLEADING to which a responsive pleading is required, other than those as to the amount of damage, ARE ADMITTED WHEN NOT!! DENIED! in the responsive pleading..."; AS NEITHER!! named RESPONDENTS/Defendants - NEVER! DENIED!! ABSOLUTELY None of Appellant/Plaintiff/Whaley's CLEAR and WELL SPOKEN Complaint attached DOCUMENTED EVIDENC which the said trial court's SWORN TRANSCRIPT ADMITTED! were very clear! and well spoken...therefore gave ALL PARTIES FAIR NOTICE of the CLAIMS in which neither Respondent/Defendants has NEVER GIVEN A REQUIRED DENIAL.

FACTS continues...

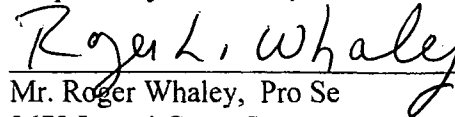
FACTS FURTHER ARE the lower trial court's SWORN TRANSCRIPT dated 5/8/2012 pages 3-8, confirms! that ONLY the Respondents/Defendants ADDED the FEDERAL! CLAIMS Case no. 3:07-MC-00135-MBS involving the FEDERAL RECEIVER-BEATTIE B. ASHMORE and FEDERAL U.S. District Court Judge MARGARET B. SEYMOUR – to be discussed within Appellant/Plaintiff/Whaley's filed COMPLAINT which NEVER made such references. ⁷ And according to Respondents/Appellants both! filed their MOTIONS pursuant with 12(b)(6) – shows in accordance with Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987),...shows the Lower Trial Court's GRANTED DISMISSAL CAN NOT SURVIVE.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

AUGUST, 10, 2013

Respectfully submitted,



Mr. Roger Whaley, Pro Se
8673 Laurel Grove Lane
North Charleston, SC 29420

CERTIFICATE OF SERVICE

I hereby certify that all the proper parties will be or has been served within proper time limited, as to Pro Se Appellant/Plaintiff/ Whaley's Initial Brief by mail, hand-delivered, and or faxed. And if there are any errors, please do not hesitate to inform this said Appellant/Whaley.

cc: Mr. Jody Alan Bedenbauth – c/o Mr. Eric Norton, Esq.
Attorneys NELSON & MULLINS – Respondent/Defendant/BOA
1320 Main Street/ 17th Floor
Columbia, SC 29201
(803) 799-2000 Fax no. 803-256-7500

cc: Mr. E. Caleb Riser, Esquire – c/o Mr. Drew Butler, Esq.
with LAW FIRM Richardson & Plowden
Attorney for South Carolina Federal Credit Union/Respondent/Defendant
1900 Barnwell St.
P.O. Drawer 7788
Columbia, South Carolina 29202
803-771-4400 - Fax no. 803-779-0016

Pg -4-

⁷ The ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint. State Board of Medical Examiners v. Fenwick Hall, Inc., 300 S.C. 274, 387 S.E.2d 458 (1990). A Rule 12(b)(6) motion 603*603 may not be sustained if facts alleged and inferences reasonably deducible there from would entitle the plaintiff to any relief on any theory of the case. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987)