

Case No. 2024-000801
THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Jun 06 2024

S.C. SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Diane S. Goodstein
South Carolina Circuit Court Judge

Unpublished Opinion No. 2024-UP-023
Filed January 17, 2024
Petition for Rehearing Denied April 17, 2024

Appellate Case No. 2020-001130

Wilmington Savings Fund
Society FSB as Trustee of
Stanwich Mortgage Loan Trust C.....Respondent,

v.

Nelson L. Bruce, et al.....Appellant,

Of whom Nelson L. Bruce is the..... Petitioner.

APPENDIX VOL. II OF II

Wilmington Savings Fund Society FSB as Trustee of Stanwich Mortgage Loan Trust
v. Nelson L. Bruce, et al.
Appellate Case No. 2020-001130

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Record/FILE ON DEMAND

THE REPUBLIC STATE OF South Carolina
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Honorable Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2020-001130
Common Pleas Case No.: 2016-CP-18-01678

Wilmington Savings Fund Society FSB as Trustee of Stanwich Mortgage Loan Trust C, Respondent,

v.

Nelson L. Bruce, Capital Return Investments, LLC, Charleston Area CDC, SC Housing Corp., South Carolina Housing Trust Fund, and Reminisce Homeowners Association, Inc., Defendants,

Of whom Nelson L. Bruce is the Appellant. _____

AMENDED RECORD ON APPEAL VOLUME - 2

The record on appeal coversheet and Index are being amended to correct the sets of
Documents and pages included under this volume.

Nelson L. Bruce, Propria Persona, Sui Juris
c/o 144 Pavilion Street
Summerville, South Carolina [29483]
(843) 437-7901
Appellant

William S. Koehler Esquire
1201 Main Street, Suite 1450
Columbia, South Carolina 29201
(803) 828-0880
Attorney for Respondent

December 21st, 2021

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DEC 22 2021
SC Court of Appeals

AMENDED RECORD ON APPEAL VOLUME

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INDEX

DEC 22 2021

Continued Motions, Responses & Exhibits

SC Court of Appeals

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CERTIFICATION BY APPELLANT

I, the undersigned appellant, does hereby certify that the Amended Record on Appeal Volume – 2 contains all material proposed to be included by any of the parties and not any other material.

RESPECTFULLY PRESENTED this 21st day of December, 2021.

"Without Prejudice"

Nelson L. Bruce

THE BENEFICIAL OWNER OF THE CESTI QUI EQUITABLE TRUST

Nelson L. Bruce, Propria Persona, Sui Juris

All Natural Rights Explicitly Reserved and Retained

U.C.C. 1-207/1-308, 1.103.6

c/o 144 Pavilion Street, Summerville

South Carolina [29483]

Ph. 843-437-7901

Leonbruce81@yahoo.com

Record/FILE ON DEMAND

THE REPUBLIC STATE OF South Carolina
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Honorable Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2020-001130
Common Pleas Case No.: 2016-CP-18-01678

RECEIVED

DEC 20 2021

SC Court of Appeals

Wilmington Savings Fund
Society FSB as Trustee of
Stanwich Mortgage Loan Trust C.....Respondent,

v.

Nelson L. Bruce, et al.....Appellant.

RECORD ON APPEAL VOLUME - 2

Nelson L. Bruce, Propria Persona, Sui Juris
c/o 144 Pavilion Street
Summerville, South Carolina [29483]
(843) 437-7901
Appellant

William S. Koehler Esquire
1201 Main Street, Suite 1450
Columbia, South Carolina 29201
(803) 828-0880
Attorney for Respondent

December 17, 2021

RECORD ON APPEAL VOLUME - 2

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CERTIFICATION BY APPELLANT

I, the undersigned appellant, does hereby certify that the Record on Appeal Volume – 2 contains all material proposed to be included by any of the parties and not any other material.

RESPECTFULLY PRESENTED this 17th day of December, 2021.

“Without Prejudice”

Nelson L. Bruce 12-17-2021

THE BENEFICIAL OWNER OF THE CESTI QUI EQUITABLE TRUST

Nelson L. Bruce, Propria Persona, Sui Juris

All Natural Rights Explicitly Reserved and Retained

U.C.C. 1-207/1-308, 1.103.6

c/o 144 Pavilion Street, Summerville

South Carolina [29483]

Ph. 843-437-7901

Leonbruce81@yahoo.com

NO GUILT OF FAULT IN DISHONOR
(Opportunity to Cure)
SERVED OR PRESENTED via the: UNITED STATES POSTAL SERVICE
by the UNITED STATES POST OFFICE via First Class Postage Prepaid

Exhibits/Evidence - J3

Notice date: February 13, 2019

Claimant(s): Nelson L. Bruce
144 Pavilion Street
Summerville, South Carolina 29483

Respondent(s): South Carolina House of Representatives
South Carolina Legislative Council and/or their assigns
Attention: Mandy W. Kimmons
310A Blatt Building, 1105 Pendleton Street, Columbia, South Carolina 29201

Reference: Agreement/Contract No.: 2019-0108BRUCWSFCM-S12389981-5577899811°
Addendum to Agreement/Contract I.D. #: ADDEN1-2019-0130BRUCWSFCM-S4451°

This communication is to inform you that you are in default of the agreement, and as per the terms of the agreement to which you have not complied with, you have consented and agreed to all the terms and conditions contained therein including but not limited to the **"SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST."**

If you did not receive a copy of the original contract communication and or the original addendum to contract in the form of the original contract communication, and were not aware of its existence, you have three (3) days, (72) hours in which to provide proof of such non-receipt, this is a good faith effort in providing you with an opportunity to cure your default. The contractual agreement includes as an exclusive remedy arbitration, this remedy is only available respecting the issue of default, whereby you prove based on a preponderance of evidence that you had not received a copy of the original contract communication and or the original addendum to contract in the form of the original contract communication which includes the **"SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST."** By the way, you cannot provide proof because included with this notice is proof that it was sent out and delivered. We have not received a response from you, if you do not provide such proof of non-receipt or provide proof that you have indeed responded to each and every point of averment or proof of claim within the 10 day allotted time or within the additional three (3) days, (72) hours specified in the Addendum, within the 3 days as referenced above pertaining to this notice, you will be in "default" and we will do this, we will proceed to get a judgment against you through arbitration.

You may or may not be aware, that all the elements of a contract having been met, that the original contract communication and or the original addendum to contract in the form of the original contract communication which includes the **"SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST,"** supersedes any and all previous contracts between the parties, and is a legally binding contractual obligation upon all parties associated thereto.

This is a legal communication, you are to take legal/judicial/special/exceptional notice as there may be dire and irreparable consequences that may affect you individually, professionally, legally, corporately.

The three (3) day, (72) hour timeframe commences upon receipt of this notification, and is only applicable within the confines of the original contract communication and or the original addendum to contract in the form of the original contract communication which includes the **"SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST,"** terms of agreement.

Thank you for your consideration...

Of this presentment take due Notice and heed, and govern yourself accordingly.

NOTICE TO AGENT IS NOTICE TO PRINCIPLE AND VICE VERSA

Sincerely,

Without Recourse

Nelson L. Bruce 2-13-19
Nelson L. Bruce a Natural Man Date:

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NOTICE OF FAULT IN DISHONOR
(Opportunity to Cure)

SERVED OR PRESENTED via the UNITED STATES POSTAL SERVICE
by the UNITED STATES POST OFFICE via First Class Postage Prepaid

Exhibits/Evidence - J3

Notice date: February 13, 2019

Claimant(s): Nelson L. Bruce
144 Pavilion Street
Summerville, South Carolina 29483

Respondent(s): the South Carolina State Treasurer
OFFICE OF THE STATE TREASURER and or their assigns
Attention: State Treasurer Curtis M. Loftis, Jr.
1200 Senate Street, Suite 214, Wade Hampton Building, Columbia, South Carolina 29201

Reference: Agreement/Contract No.: 2019-0108BRUCWSFCM-S12389981-5577899811°
Addendum to Agreement/Contract LD. #: ADDEN1-2019-0130BRUCWSFCM-84451°

This communication is to inform you that you are in default of the agreement, and as per the terms of the agreement to which you have not complied with, you have consented and agreed to all the terms and conditions contained therein including but not limited to the **"SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST."**

If you did not receive a copy of the original contract communication and or the original addendum to contract in the form of the original contract communication, and were not aware of its existence, you have three (3) days, (72) hours in which to provide proof of such non-receipt, this is a good faith effort in providing you with an opportunity to cure your default. The contractual agreement includes as an exclusive remedy arbitration, this remedy is only available respecting the issue of default, whereby you prove based on a preponderance of evidence that you had not received a copy of the original contract communication and or the original addendum to contract in the form of the original contract communication which includes the **"SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST."** By the way, you cannot provide proof because included with this notice is proof that it was sent out and delivered. We have not received a response from you, if you do not provide such proof of non-receipt or provide proof that you have indeed responded to each and every point of averment or proof of claim within the 10 day allotted time or within the additional three (3) days, (72) hours specified in the Addendum, within the 3 days as referenced above pertaining to this notice, you will be in "default" and we will do this, we will proceed to get a judgment against you through arbitration.

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Thank you for your consideration....

Of this presentment take due Notice and heed, and govern yourself accordingly.

NOTICE TO AGENT IS NOTICE TO PRINCIPLE AND VICE VERSA

Sincerely,

Without Recourse

Nelson L. Bruce 2-13-19
Nelson L. Bruce a Natural Man Date:

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NOTICE OF FAULT IN DISHONOR
(Opportunity to Cure)

SERVED OR PRESENTED via the: UNITED STATES POSTAL SERVICE
by the UNITED STATES POST OFFICE via First Class Postage Prepaid

Exhibits/Evidence - J3

Notice date: February 13, 2019
Claimant(s): Nelson L. Bruce
144 Pavilion Street
Summersville, South Carolina 29483
Respondent(s): United States House of Representatives
Attention: Joe Cunningham
530 Johnnie Dodds Blvd, Suite 201, Mt. Pleasant, SC 29464
Reference: Agreement/Contract No.: 2019-0108BRUCWSFCM-012389981-557789981110
Addendum to Agreement/Contract LD. #: ADDEN1-2019-0136BRUCWSFCM-S44510

This communication is to inform you that you are in default of the agreement, and as per the terms of the agreement to which you have not complied with, you have consented and agreed to all the terms and conditions contained therein including but not limited to the **"SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST."**

If you did not receive a copy of the original contract communication and or the original addendum to contract in the form of the original contract communication, and were not aware of its existence, you have three (3) days, (72) hours in which to provide proof of such non-receipt, this is a good faith effort in providing you with an opportunity to cure your default. The contractual agreement includes as an exclusive remedy arbitration, this remedy is only available respecting the issue of default; whereby you prove based on a preponderance of evidence that you had not received a copy of the original contract communication and or the original addendum to contract in the form of the original contract communication which includes the **"SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST."** By the way, you cannot provide proof because included with this notice is proof that it was sent out and delivered. We have not received a response from you, if you do not provide such proof of non-receipt or provide proof that you have indeed responded to each and every point of averment or proof of claim within the 10 day allotted time or within the additional three (3) days, (72) hours specified in the Addendum, within the 3 days as referenced above pertaining to this notice, you will be in **"default"** and we will do this, we will proceed to get a judgment against you through arbitration.

You may or may not be aware, that all the elements of a contract having been met, that the original contract communication and or the original addendum to contract in the form of the original contract communication which includes the **"SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST,"** supersedes any and all previous contracts between the parties, and is a legally binding contractual obligation upon all parties associated thereto.

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Thank you for your consideration....

Of this presentment take due Notice and heed, and govern yourself accordingly.

NOTICE TO AGENT IS NOTICE TO PRINCIPLE AND VICE VERSA

Sincerely,

Without Recourse.

Nelson L. Bruce 2-13-19
Nelson L. Bruce a Natural Man Date:

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NOTICE OF FAULT IN DISHONOR
(Opportunity to Cure)
SERVED OR PRESENTED via the: UNITED STATES POSTAL SERVICE
by the UNITED STATES POST OFFICE via First Class Postage Prepaid

Exhibits/Evidence - J3

Notice date: February 13, 2019

Claimant(s): Nelson L. Bruce
144 Pavilion Street
Sammerville, South Carolina 29483

Respondent(s): GOVERNOR OF THE STATE OF SOUTH CAROLINA
The Honorable Henry McMaster
State House
1100 Gervais Street, Columbia, South Carolina 29201

Reference: Agreement/Contract No.: 2019-0108BRUCWSFCM-812389981-5577899811°
Addendum to Agreement/Contract L.D. #: ADDEN1-2019-0130BRUCWSFCM-S4451°

This communication is to inform you that you are in default of the agreement, and as per the terms of the agreement to which you have not complied with, you have consented and agreed to all the terms and conditions contained therein including but not limited to the **"SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST."**

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Thank you for your consideration....

Of this presentment take due Notice and heed, and govern yourself accordingly.

NOTICE TO AGENT IS NOTICE TO PRINCIPLE AND VICE VERSA

Sincerely,

Without Recourse

Nelson L. Bruce 2-13-19
Nelson L. Bruce a Natural Man Date:

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NOTICE OF FAULT IN DISHONOR
(Opportunity to Cure)
SERVED OR PRESENTED via the: UNITED STATES POSTAL SERVICE
by the UNITED STATES POST OFFICE via First Class Postage Prepaid

Exhibits/Evidence - J3

Notice date: February 16, 2019
Claimant(s): Nelson L. Bruce
144 Pavilion Street
Summersville, South Carolina [29483]
Respondent(s): the United States Supreme Court
Attention: chief Justice John Glover Roberts Jr.
1 First St NE, Washington, DC 20543
Reference: Agreement/Contract No.: 2019-0106BRUCWSFCM-812389981-5577899811°
Addendum to Agreement/Contract I.D. #: ADDEN1-2019-0130BRUCWSFCM-S4451°

This communication is to inform you that you are in default of the agreement, and as per the terms of the agreement to which you have not complied with, you have consented and agreed to all the terms and conditions contained therein including but not limited to the "SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST."

If you did not receive a copy of the original contract communication and or the original addendum to contract in the form of the original contract communication, and were not aware of its existence, you have three (3) days, (72) hours in which to provide proof of such non-receipt, this is a good faith effort in providing you with an opportunity to cure your default. The contractual agreement includes as an exclusive remedy arbitration, this remedy is only available respecting the issue of default, whereby you prove based on a preponderance of evidence that you had not received a copy of the original contract communication and or the original addendum to contract in the form of the original contract communication which includes the "SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST." By the way, you cannot provide proof because included with this notice is proof that it was sent out and delivered. We have not received a response from you, if you do not provide such proof of non-receipt or provide proof that you have indeed responded to each and every point of averment or proof of claim within the 10 day allotted time or within the additional three (3) days, (72) hours specified in the Addendum, within the 3 days as referenced above pertaining to this notice, you will be in "default" and we will do this, we will proceed to get a judgment against you through arbitration.

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Thank you for your consideration...

Of this presentment take due Notice and heed, and govern yourself accordingly.

NOTICE TO AGENT IS NOTICE TO PRINCIPLE AND VICE VERSA

Sincerely,

Without Recourse

Nelson L. Bruce 2-16-19
Nelson L. Bruce a Natural Man

Date:

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NOTICE OF FAULT IN DISHONOR
(Opportunity to Cure)

SERVED OR PRESENTED via the: UNITED STATES POSTAL SERVICE
by the UNITED STATES POST OFFICE via First Class Postage Prepaid

Exhibits/Evidence - J3

Notice date: February 16, 2019
Claimant(s): Nelson L. Bruce
144 Pavilion Street
Summerville, South Carolina 29483
Respondent(s): The Treasurer of the United States
Office of the Treasurer and or their assigns
1500 Pennsylvania Avenue, NW, Room 2134
Washington, District of Columbia 20220
Reference: Agreement/Contract No.: 2019-0108BRUCWSFCM-812389981-5377899811°
Addendum to Agreement/Contract I.D. #: ADDEN1-2019-0130BRUCWSFCM-S4451°

This communication is to inform you that you are in default of the agreement, and as per the terms of the agreement to which you have not complied with, you have consented and agreed to all the terms and conditions contained therein including but not limited to the **"SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST."**

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Thank you for your consideration....

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NOTICE TO AGENT IS NOTICE TO PRINCIPLE AND VICE VERSA

Sincerely,

Without Recourse

Nelson L. Bruce 2-16-19
Nelson L. Bruce a Natural Man Date:

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

NOTICE OF FAULT IN DISHONOR
(Opportunity to Cure)

SERVED OR PRESENTED via the: UNITED STATES POSTAL SERVICE
by the UNITED STATES POST OFFICE via First Class Postage Prepaid

Exhibits/Evidence - J3

Notice date: February 16, 2019
Claimant(s): Nelson L. Bruce
144 Pavilion Street
Summerville, South Carolina 29483
Respondent(s): the UNITED STATES OF AMERICA
UNITED STATES ATTORNEY GENERAL at U.S. Department of Justice
950 Pennsylvania Avenue, NW Washington, DC 20530-0001
Reference: Agreement/Contract No.: 2019-0108BRUCWSFCM-S12389981- 55778998111°
Addendum to Agreement/Contract I.D. #: ADDEN1-2019-0130BRUCWSFCM-S4451°

This communication is to inform you that you are in default of the agreement, and as per the terms of the agreement to which you have not complied with, you have consented and agreed to all the terms and conditions contained therein including but not limited to the "SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST."

If you did not receive a copy of the original contract communication and or the original addendum to contract in the form of the original contract communication, and were not aware of its existence, you have three (3) days, (72) hours in which to provide proof of such non-receipt, this is a good faith effort in providing you with an opportunity to cure your default. The contractual agreement includes as an exclusive remedy arbitration, this remedy is only available respecting the issue of default, whereby you prove based on a preponderance of evidence that you had not received a copy of the original contract communication and or the original addendum to contract in the form of the original contract communication which includes the "SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST." By the way, you cannot provide proof because included with this notice is proof that it was sent out and delivered. We have not received a response from you, if you do not provide such proof of non-receipt or provide proof that you have indeed responded to each and every point of averment or proof of claim within the 10 day allotted time or within the additional three (3) days, (72) hours specified in the Addendum, within the 3 days as referenced above pertaining to this notice, you will be in "default" and we will do this, we will proceed to get a judgment against you through arbitration.

You may or may not be aware, that all the elements of a contract having been met, that the original contract communication and or the original addendum to contract in the form of the original contract communication which includes the "SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST," supersedes any and all previous contracts between the parties, and is a legally binding contractual obligation upon all parties associated thereto.

This is a legal communication, you are to take legal/judicial/special/exceptional notice as there may be dire and irreparable consequences that may affect you individually, professionally, legally, corporately.

The three (3) day, (72) hour timeframe commences upon receipt of this notification, and is only applicable within the confines of the original contract communication and or the original addendum to contract in the form of the original contract communication which includes the "SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST," terms of agreement.

Thank you for your consideration....

Of this presentment take due Notice and heed, and govern yourself accordingly.

NOTICE TO AGENT IS NOTICE TO PRINCIPLE AND VICE VERSA

Sincerely,

Without Recourse

Nelson L. Bruce 2-16-19
Nelson L. Bruce a Natural Man Date:

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

NOTICE OF FAULT IN DISHONOR

(Opportunity to Cure)

**SERVED OR PRESENTED via the: UNITED STATES POSTAL SERVICE
by the UNITED STATES POST OFFICE via First Class Postage Prepaid
CERTIFIED MAIL NO.: 7018 0360 0001 0340 6409**

Exhibits/Evidence - J3

Notice date: February 25, 2019
Claimant(s): Nelson L. Bruce
144 Pavilion Street
Summerville, South Carolina 29483
Respondent(s): the United States Department of Agriculture
Fiscal Service, Director, Finance Office
1400 Independence Avenue, SW, Washington, DC 20250
Reference: Agreement/Contract No.: 2019-0108BRUCWSFCM-812389981-5577899811°
Addendum to Agreement/Contract I.D. #: ADDEND-2019-01308BRUCWSFCM-S4451°

This communication is to inform you that you are in default of the agreement, and as per the terms of the agreement to which you have not complied with, you have consented and agreed to all the terms and conditions contained therein including but not limited to the **"SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST."**

If you did not receive a copy of the original contract communication and or the original addendum to contract in the form of the original contract communication, and were not aware of its existence, you have three (3) days, (72) hours in which to provide proof of such non-receipt, this is a good faith effort in providing you with an opportunity to cure your default. The contractual agreement includes as an exclusive remedy arbitration, this remedy is only available respecting the issue of default, whereby you prove based on a preponderance of evidence that you had not received a copy of the original contract communication and or the original addendum to contract in the form of the original contract communication which includes the **"SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST."** By the way, you cannot provide proof because included with this notice is proof that it was sent out and delivered. If you do not provide such proof of non-receipt or provide proof that you have indeed responded to each and every point of averment or proof of claim within the 10 day allotted time or within the additional three (3) days, (72) hours specified in the Addendum within the 3 days as referenced above pertaining to this notice, you will be in "default" and we will do this, we will proceed to get a judgment against you through arbitration.

You may or may not be aware, that all the elements of a contract having been met, that the original contract communication and or the original addendum to contract in the form of the original contract communication which includes the **"SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST,"** supersedes any and all previous contracts between the parties, and is a legally binding contractual obligation upon all parties associated thereto.

This is a legal communication, you are to take legal/judicial/special/exceptional notice as there may be dire and irreparable consequences that may affect you individually, professionally, legally, corporately.

The three (3) day, (72) hour timeframe commences upon receipt of this notification, and is only applicable within the confines of the original contract communication and or the original addendum to contract in the form of the original contract communication which includes the **"SELF-EXECUTING IRREVOCABLE DURABLE POWER OF ATTORNEY COUPLED WITH INTEREST,"** terms of agreement.

Thank you for your consideration....

Of this presentment take due Notice and heed, and govern yourself accordingly.

NOTICE TO AGENT IS NOTICE TO PRINCIPLE AND VICE VERSA

Sincerely,

Without Recourse

Nelson L. Bruce 2-25-19
Nelson L. Bruce a Natural Man Date:

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

USPS Tracking®

FAQs > (https://www.usps.com/faqs/uspstracking-faq.htm) Exhibits/Evidence - J3

Track Another Package +

Tracking Number: 9505510545829036517246

Remove X

Expected Delivery on

WEDNESDAY

6 FEBRUARY
2019 ⓘ

between
10:20am and 12:20pm ⓘ

✓ **Delivered**

February 6, 2019 at 11:37 am
Delivered, Front Desk/Reception/Mail Room
SAINT GEORGE, SC 29477

Tracking History

Product Information

Feedback

See Less ^

Tracking Number: 9505510545829037518068

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On Time

Expected Delivery on

THURSDAY

7 FEBRUARY
2019 ⓘ by
8:00pm ⓘ

✓ **Delivered**

February 7, 2019 at 1:44 pm
Delivered, PO Box
CHARLESTON, SC 29401

See More v

Tracking Number: 9505510545829037518051

Exhibits/Evidence - J3

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Your item has been delivered and is available at a PO Box at 11:00 am on February 15, 2019 in WILMINGTON, DE 19801.

✓ **Delivered**

February 15, 2019 at 11:00 am
Delivered, PO Box
WILMINGTON, DE 19801

See More ∨

Tracking Number: 9505510545829037518044

Remove X

Expected Delivery by

FRIDAY

8 FEBRUARY 2019 ① by **8:00pm** ①

✓ **Delivered**

February 8, 2019 at 12:11 pm
Delivered, Individual Picked Up at Postal Facility
CHARLOTTE, NC 28255

See More ∨

Feedback

Tracking Number: 9505510545829037518082

Exhibits/Evidence - J3

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On Time

Expected Delivery on

FRIDAY

8 FEBRUARY 2019 ⓘ by **8:00pm** ⓘ

✓ **Delivered**

February 8, 2019 at 7:40 am
Delivered, Individual Picked Up at Postal Facility
WESTFIELD, IN 46074

See More ✓

Tracking Number: 9505510545849038317569

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Expected Delivery on

FRIDAY

8 FEBRUARY 2019 ⓘ by **8:00pm** ⓘ

✓ **Delivered**

February 8, 2019 at 12:56 pm
Delivered, In/At Mailbox
COLUMBIA, SC 29201

See More ✓

Feedback

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Tracking Number: 9505510545839040439724

Exhibits/Evidence - J3

On Time

Expected Delivery on

MONDAY

11 FEBRUARY 2019 ① by 8:00pm ①

✓ **Delivered**

February 11, 2019 at 12:40 pm
Delivered, Front Desk/Reception/Mail Room
COLUMBIA, SC 29201

Get Updates ▼

See More ▼

Tracking Number: 9505510545839040439748

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On Time

Expected Delivery on

MONDAY

11 FEBRUARY 2019 ① by 8:00pm ①

✓ **Delivered**

February 11, 2019 at 11:17 am
Delivered, Front Desk/Reception/Mail Room
COLUMBIA, SC 29210

Get Updates ▼

See More ▼

Feedback

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Tracking Number: 9505510545839040439755

Exhibits/Evidence - J3

Expected Delivery by

MONDAY

11 FEBRUARY 2019 ① by **8:00pm** ①

✓ **Delivered**

February 11, 2019 at 10:13 am

Delivered
COLUMBIA, SC 29211

Get Updates ▼

See More ▼

Tracking Number: 9505510545849045321139

Remove X

Expected Delivery by

SATURDAY

16 FEBRUARY 2019 ① by **8:00pm** ①

Feedback

✓ **Delivered**

February 16, 2019 at 8:34 am

Delivered, In/At Mailbox
COLUMBIA, SC 29201

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Tracking Number: 9505510545849045321146

Exhibits/Evidence - J3

Expected Delivery on

FRIDAY

15 FEBRUARY 2019 ① by 8:00pm ①

✓ Delivered

February 15, 2018 at 11:25 am
Delivered, Front Desk/Reception/Mail Room
COLUMBIA, SC 29201

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Tracking Number: 9505510545849045321153

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Expected Delivery on

FRIDAY

15 FEBRUARY 2019 ① by 8:00pm ①

Feedback

✓ Delivered

February 15, 2019 at 12:25 pm
Delivered, In/At Mailbox
MOUNT PLEASANT, SC 29464

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Exhibits/Evidence - J3

Expected Delivery on

FRIDAY

15 FEBRUARY 2019 by 8:00pm

✓ **Delivered**

February 15, 2019 at 11:45 am
Delivered, Front Desk/Reception/Mail Room
COLUMBIA, SC 29201

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Your item was delivered at 3:56 am on February 26, 2019 in WASHINGTON, DC 20220.

✓ **Delivered**

February 26, 2019 at 3:56 am
Delivered
WASHINGTON, DC 20220

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Feedback

Tracking Number: 9505510545829054527791

Exhibits/Evidence - J3

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Expected Delivery on

TUESDAY

26 FEBRUARY 2019 ① by 8:00pm ①

✓ **Delivered**

February 26, 2019 at 5:45 am
Delivered
WASHINGTON, DC 20530

Get Updates ✓

See More ✓

Tracking Number: 9505510545829054527807

Remove X

On Time

Expected Delivery on

MONDAY

25 FEBRUARY 2019 ① by 8:00pm ①

✓ **Delivered**

February 25, 2019 at 10:56 am
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WASHINGTON, DC 20543

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Exhibits/Evidence - J3

Expected Delivery on

MONDAY

4 MARCH 2019 ^① by 8:00pm ^①

 **Delivered**

March 4, 2019 at 8:27 am
Delivered, To Agent
WASHINGTON, DC 20250

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FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

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CARRINGTON

MORTGAGE SERVICES, LLC
NMLS ID #2600

P.O. Box 5001
Westfield, IN 46074

FILED-RECORDED
MAR 29 PM 4:34

Exhibits/Evidence - J4

Monthly Mortgage Statement

0019256 01 AS 0.409 **AUTO T2 0 9492 29483-844444 -C01-P192754

NELSON L BRUCE
144 PAVILION ST
SUMMERVILLE SC 29483-8444

Statement Date 02/18/19
Account Number 7000124554

Amount Due \$62,077.58

Due Date: 03/01/19

If payment is received after 03/16/19, a \$41.34 late fee will be charged.

Contact Us:

800-561-4567 800-486-5134

www.CarringtonMS.com



Account Information

Property Address
144 PAVILION STREET
SUMMERVILLE SC 29483

Interest Rate (Until 02/01/43): 3.875%
Prepayment Penalty: No
Modification Date: 02/09/2013
Maturity Date: 02/01/2043

DELINQUENCY NOTICE

You are late on your mortgage payments. Failure to bring your loan current may result in fees and foreclosure – the loss of your home. See additional comments related to the Delinquency Box on page 2.

Explanation of Amount Due

Principal: \$333.58
Interest: \$506.79
Escrow: \$193.28
(Taxes and/or Insurance)*
Reg. Monthly Payment: \$1,033.65
Overdue Payment: \$58,460.09
Total Fees Charged: \$2,583.84
Total Amount Due: \$62,077.58

Current Loan Balances

Principal Balance*: \$170,312.65
Escrow Balance: -\$8,621.10
Past Due Balance: \$58,460.09
Deferred Balance(s): N/A
Buydown Balance: N/A
Negative Amortization: N/A
Unapplied Funds: \$0.00

* Your current Principal Balance is not a payoff quote.
See page 3 for Loan Payoff Information.

Past Payment Breakdown

	Paid Last Month	Paid Year to Date
Principal	\$0.00	\$0.00
Interest	\$0.00	\$0.00
ESCROW (Taxes and/or Insurance)*	\$0.00	\$0.00
Fees and Charges	\$0.00	\$0.00
Unapplied Funds	\$0.00	\$0.00
Total	\$0.00	\$0.00

* Please see page 3 of this statement for additional information.

▲ Please detach and return with your payment ▲

CARRINGTON
MORTGAGE SERVICES, LLC
NMLS ID #2600

Make a payment at CarringtonMS.com. Pay
by Check or AutoPay for free!

Loan Number: 7000124554
NELSON L BRUCE
144 PAVILION ST
SUMMERVILLE SC 29483

Amount Due \$62,077.58
Due Date: 03/01/19

Late charge if received after 03/16/19: \$41.34
Late Payment Amount if received after 03/16/19: \$62,118.92

CARRINGTON MORTGAGE SERVICES LLC
PO BOX 79001
PHOENIX AZ 85062-9001

519

70001245540062077580062118921

Payment Due	\$	
Additional Principal	\$	
Additional Escrow	\$	
Late Charge	\$	
Total Amount Enclosed	\$	

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Wilmington Savings Funds Society, FSB, Trustee

Plaintiff,

vs.

Nelson L. Bruce, et al.

Defendant.

IN THE COURT OF COMMON PLEAS

1st JUDICIAL CIRCUIT

CASE NO.: 16 -CP- 18 - 1678

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: _____, Bar No. _____		Defendant's Attorney: _____, Bar No. _____	
Address: _____		Address: _____	
Phone: _____ Fax _____		Phone: <u>843-437-7901</u> Fax _____	
E-mail: _____ Other: _____		E-mail: <u>leonbruce81@yahoo.com</u> Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)			
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)			
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: <u>EMERGENCY MOTION FOR STAY / NOTICE OF CHANGE OF ADDRESS</u>			
Estimated Time Needed: <u>30 min.</u>		Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type			
☒ Written motion attached			
☐ Form Motion/Order			
I hereby move for relief or action by the court as set forth in the attached proposed order.			
<u>Nelson L. Bruce</u>		<u>2-27-2020</u>	<u>February 27</u> , 20 <u>20</u>
Signature of Attorney for ☒ Plaintiff / ☐ Defendant		Date submitted	
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$ <u>FILING FEE CONTESTED</u>			
☐ EXEMPT: (check reason)			
☐ Rule to Show Cause in Child or Spousal Support			
☐ Domestic Abuse or Abuse and Neglect			
☐ Indigent Status ☐ State Agency v. Indigent Party			
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief			
☐ Motion for Stay in Bankruptcy			
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)			
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions			
Name of Court Reporter: _____			
☐ Other: _____			
JUDGE'S SECTION		JUDGE CODE _____	
☐ Motion Fee to be paid upon filing of the attached order.		Date: _____, 20 _____	
☐ Other: _____			
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____, 20 _____	
☐ MOTION FEE COLLECTED: \$ _____			
☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

FILED-RECORDED

Record/FILE ON DEMAND

2020 FEB 28 PM 12:34
IN THE COURT OF COMMON PLEAS FOR DORCHESTER COUNTY

CHEYL GRAHAM
CLERK OF COURT
IN AND FOR THE REPUBLIC OF SOUTH CAROLINA
DORCHESTER COUNTY

Wilmington Savings Fund Society FSB as Trustee, Plaintiff(s), v. Nelson L. Bruce, Sui Juris, et al., Defendants(s).	Sub contract case No. 16-CP-18-1678 EMERGENCY MOTION FOR STAY OF PROCEEDINGS PENDING CONFIRMATION OF AWARD IN U.S. DISTRICT COURT NOTICE OF CHANGE OF ADDRESS
---	---

Comes now Defendant, Nelson L. Bruce, the natural man, of the age of the majority, with all natural rights explicitly reserved and retained and exercised at all times, hereby presents this Emergency Motion for stay pending confirmation of arbitration award Governed under the FAA in U.S. District Court Case No.: 2:19-cv-02854-BHH-BM filed October 8, 2019. The parties to this case had entered into an agreement whereby certain claims as it pertained to the award were arbitrated where a copy of the award was also filed on the record in this case on June 13, 2019. Defendant has filed a petition in U.S. District Court as required under 9 USC 9 and 13. Because the award issued greatly affects the merits of this case as it pertains to the parties, their contract, the award, and would be considered a breach of the contract where an award was issued. Defendant requests for a stay of the proceedings until that case has been decided by the District Court. Defendant also requests this stay because he would need to request leave of court to amend his motions based off of new evidence and estoppel doctrines and a possible voluntary dismissal of his counterclaims/countersuit depending on the results of that petition in District Court. Initiating the stay would limit any further appeals as the defendant does not wish to breach the

contract between the parties. The District court has the authority to "Confirm" the validity of the award, and therefore a stay of the proceedings is greatly needed here.

NOTICE OF CHANGE OF ADDRESS: All parties to this case are notified that my address has changed. Please send all further communications to "144 Pavilion Street, Summerville, South Carolina [29483].

CONCLUSION

For the reasons specified above, this court should immediately stay the proceedings pending the decision of the U.S. District Court in case no.: 2:19-cv-02854-BHH-BM.

RESPECTFULLY PRESENTED,

"Without Prejudice"

Nelson L. Bruce 2-27-2020

THE BENEFICIAL OWNER OF THE CESTI QUI EQUITABLE TRUST
Nelson L. Bruce, Propria Persona, Sui Juris
All Natural Rights Explicitly Reserved and Retained
U.C.C. 1-207/1-308, 1.103.6
c/o 144 Pavilion Street
Summerville South Carolina [29483]
Ph. 843-437-7901

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this **EMERGENCY MOTION FOR STAY / NOTICE OF CHANGE OF ADDRESS** have been electronically mailed to all parties on the service list via the **UNITED STATES POST OFFICE** via the **UNITED STATES POSTAL SERVICE** via **CERTIFIED Mail**.

RESPECTFULLY PRESENTED,

Addressed to:

ALBERTELI LAW

Attention: William S. Koehler (Attorneys for Plaintiffs)

201 Main Street, Suite 1450

Columbia, South Carolina 29201

Certified Mail No.: 7019 1640 0002 1913 3854

South Carolina Housing Trust Fund

SC Housing Corp

Attention: Tracey C. Easton (Attorney for the referenced Defendant)

300-C Outlet Pointe Boulevard

Columbia, South Carolina 29210

Certified Mail No.: 7018 0360 0001 0343 3832

FILED-RECORDED
2020 FEB 28 PM 12:35
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Nelson L. Bruce 2-27-2020

Nelson L. Bruce, Propria Persona, Sui Juris

All Natural Rights Explicitly Reserved and Retained

U.C.C. 1-207/1-308, 1.1.03.6

C/o 144 Pavilion Street

Summerville, South Carolina [29483]

Ph. 843-437-7901

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Wilmington Savings Funds Society, FSB, Trustee

Plaintiff,

vs.

Nelson L. Bruce, et al.

Defendant.

IN THE COURT OF COMMON PLEAS

1st JUDICIAL CIRCUIT

CASE NO.: 16 -CP- 18 - 1678

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

FILED-RECORDED

5-20-2020

Chant Graham
Clerk of Court
Dorchester County

Plaintiff's Attorney: _____, Bar No. _____		Defendant's Attorney: _____	
Address: _____		Address: _____	
Phone: _____ Fax: _____		Phone: 843-437-7901 Fax: _____	
E-mail: _____ Other: _____		E-mail: leonbruce81@yahoo.com Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)			
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)			
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____		Court Reporter Needed: ☐ YES/ ☐ NO	
Estimated Time Needed: _____			
SECTION II: Motion/Order Type			
☒ Written motion attached			
☒ Form Motion/Order			
I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of <u>Nelson L. Bruce</u> for ☐ Plaintiff / ☒ Defendant		Date submitted: <u>May 20</u> , 20 <u>20</u>	
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$ _____			
☒ EXEMPT: (check reason)			
☐ Rule to Show Cause in Child or Spousal Support			
☐ Domestic Abuse or Abuse and Neglect			
☒ Indigent Status ☐ State Agency v. Indigent Party			
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief			
☐ Motion for Stay in Bankruptcy			
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)			
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions			
Name of Court Reporter: _____			
☒ Other: <u>See Affidavit of Fact</u>			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order.		JUDGE CODE _____	
☐ Other: _____		Date: _____, 20____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____, 20____	
☐ MOTION FEE COLLECTED: \$ _____			
☐ CONTESTED - AMOUNT DUE: \$ _____			

Affidavit of Fact- Financial Statement**Fee Waiver To Be Heard****(Exercise of Constitutional I Treaty -Secured Right)**Date: May 19, 2020

From: Nelson L. Bruce, Propria Persona, Sui Juris
 All Natural Rights Explicitly Reserved and Retained
 U.C.C. 1-207/1-308, 1.103.6
 c/o 144 Pavillion Street
 Summerville South Carolina Republic [29483]

To: DORCHESTER COUNTY COURT HOUSE
 ATTENTION: Cheryl Graham, Clerk, James E. Chellis or Diane S. Goodstein Judges
 5200 E. JIM BILTON BOULEVARD
 SAINT GEORGE, SOUTH CAROLINA 29477-8020

FILED-RECORDED
 5-20-2020
 Cheryl Graham
 Clerk of Court
 Dorchester County

Notice of Judges and Officials' Oath- Bound Obligations and Fiduciary Duties**Article VI**

"All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States."

Article I, Section X

"All debts shall be payable in gold or silver coin"

Amendment V

"No Person shall be deprived of due process of law"

I Affirm, for the Record, that I Nelson L. Bruce, In Propria Persona, Sui Juris, a U.S.C. Title 15 "Natural Person", Authorized Representative, do not have, or possess, any gold or silver coins, as prescribed by United States Constitution Law, which is the lawful money to pay the restricting demands, conditionally commanded by Employees and Contractors of the Court. The said restrictions (unconstitutional) are arbitrarily (hindering Due Process) and imposed for processing these Documents, as stipulated in the United States Constitution noted above. Therefore, I present this Writ "In Forma Pauperis," being an enjoyment and exercise of my unconditional and constitutionally - Secured Rights (and not a feudal - fee - burdened privilege) to timely and speedily enforce Due-Process of Law, as noted above.

(It states nothing about motioning a court to pay a fee- This is a Constitutional Exercise of a "Right" not a "Privilege")

Your demand for a "Fee" to file a "Motion" is used as to deny me due process of law and my right to free access to the courts. I introduce this evidence in the form of an Affidavit of Fact and marked as Evidence. If someone in the courts tamper with that evidence, which is a Federal Violation, and misrepresented it as an assumption that

permission must be requested to exercise my Constitutional Rights and an exercise of a right is a Constitutional Right, not a Request and this office knows that. This is a direct violation of my "Secured Constitutional / Treaty Rights which is the Supreme Law of the Land and "Stare Decisis" and a violation of your "Oath of Office." Furthermore as there is no law as prescribed in the United States Constitution stating a "Financial Statement, Financial Fee (Feudal Law)," or a "Motion" requesting permission must be submitted with a Fee in order to exercise my Constitutional Rights, your demand is a violation of Amendment IX of the United States Constitution and a violation of your fiduciary duties.

Amendment IX

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people"

Where rights secured by the Constitution are involved, there can be no rule-making or legislation, which would abrogate them. Miranda v. Arizona 384 US 436, 125:

As an Officer(s) of the Court, you and your assigns are bound (or have taken) a solemn Oath (See Article VI) to uphold and Support the Constitution for the United States Republic. Refusal of this 'Affidavit of Financial Statement' is construed to deny me timely 'Due Process' and will be a 'Colorable Act' to violate my secured exercise of a Right. Such an act and imposition is a violation of your Official Oath of office. This can result in additional lawful remedy actions filed against those violating Officers of the Court, Under Title 18 and Title 42, in their official and private capacities. The Law always gives a remedy for the people against color of law actions committed by those who violate their Oaths of Office colluding to abridge the Rights secured for the Natural Beings and the citizens. Any denials of my rights, I must hereby challenge this court's jurisdiction. I also bring to this courts attention Form G-SSA-445 which can be obtained online or from the Social Security Administration either locally or otherwise to collect a fee as this form is to be utilized for such fees being requested from this court for their services as a State/Local Government Agency (organizations) such as this court (see...section 3 of this form, a blank copy is provided with this affidavit.)

I respectfully, with 'Good Faith' and with Honor, by right to unhindered Due -Process, present this 'Affidavit of Financial Statement' as Evidence as I do not have nor possess any lawful money as specified above and request for a fee waiver.

RESPECTFULLY PRESENTED,

"Without Prejudice"

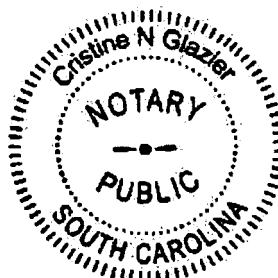
Nelson L. Bruce 5-19-2020
 THE BENEFICIAL OWNER OF THE CESTI QUI EQUITABLE TRUST
 Nelson L. Bruce, Propria Persona, Sui Juris
 All Natural Rights Explicitly Reserved and Retained WAIVING-NONE
 U.C.C. 1-207/1-308, 1.103.6
 c/o 144 Pavilion Street
 Summerville, South Carolina [29483]
 Ph. 843-437-7901

Notary Public Signature:

Date:

Notary Public Print:

My Commission Expires:



(SEAL)

Record/FILE ON DEMAND

IN THE COURT OF COMMON PLEAS FOR DORCHESTER COUNTY
IN AND FOR THE REPUBLIC OF South Carolina

FILED-RECORDED
5-26-2020
Clerk of Court
Dorchester County
RHS

Wilmington Savings Fund Society FSB as Trustee;	Sub contract case No. 16-CP-18-1678
Plaintiff(s).	DEFENDANT'S MOTION FOR RECONSIDERATION, RELIEF FROM APRIL 22, 2020 ORDER AND DIMISSAL OF AMENDED
v.	COUNTERCLAIM/COUNTERSUIT AND REFERRAL TO MASTER IN EQUITY, TO VACATE/SET ASIDE THE APRIL 22, 2020 JUDGMENT/ORDER AND STAY
Nelson L. Bruce, Sui Juris, et al.	PROCEEDINGS, TO STRIKE FILINGS BY PLAINTIFF'S ATTORNEY, TO ENJOIN PARTIES, FOR CONTINUANCE OF HIS MOTION FOR ENTRY OF DEFAULT
Defendants(s).	MOTION FOR SUMMARY JUDGMENT AND EXPEDITED REVIEW OF MOTION

Comes now defendant Nelson L. Bruce, with his DEFENDANT'S MOTION FOR RECONSIDERATION, RELIEF FROM APRIL 22, 2020 ORDER AND DIMISSAL OF AMENDED COUNTERCLAIM/COUNTERSUIT AND REFERRAL TO MASTER IN EQUITY, TO VACATE/SET ASIDE THE APRIL 22, 2020 JUDGMENT/ORDER AND STAY PROCEEDINGS, TO STRIKE FILINGS BY PLAINTIFF'S ATTORNEY, TO ENJOIN PARTIES, FOR CONTINUANCE OF HIS MOTION FOR ENTRY OF DEFAULT MOTION FOR SUMMARY JUDGMENT AND EXPEDITED REVIEW OF MOTION Defendant requests for reconsideration of the April 22, 2020 order dismissing his amended counterclaim/counterclaim which granted an order of transfer to the masters in equity in favor of the Plaintiffs for the reasons specified in this motion. Defendant also requests for a continuance of his Motion for Entry of Default filed on 10-26-2017 where an order was placed on 11-15-

2017 staying the matter but no decision was determined as the judge states a decision from the court would be improper at the moment.

Defendant is only bring forth this motion under threat of duress and/or coercion under fear of this court re-litigating matters and placing judgments/orders on controversies that are arbitrable and as agreed to by the parties to be arbitrated and or have already been decided by an arbitrator (see... **Exhibits/Evidence – K** filed on the record on **6-13-2019** which is hereby incorporated by reference) as agreed to by default of the plaintiffs, the respondents to the unilateral performance contract/agreement (see... **Exhibits/Evidence – J** filed on the record on **3-29-2019** and is hereby incorporated by reference) which is self-executing and irrevocable and supersedes any and all other contracts between the parties, as a final arbitration award was issued in **May of 2019** and not vacated as prescribed under **9 U.S.C. § 10 or 11** within the **3 month (90 day)** statute of limitation timeframe prescribed under **9 U.S.C. § 12** and therefore the award must be confirmed by the court as prescribed under **9 U.S.C. § 9**. Defendant hereby states that he does not consent to any of his responses in this case being a waiver of his right to arbitration, for the defendant to further address new breaches of the performance contract, and to arbitrate any new claims and controversies that are covered under the performance contract against the respondents which include the attorneys to this case by further proceeding, raising arguments, defenses and circumventing the process and the contract as it pertains to the **January 8, 2019** conditional acceptance performance contract/agreement, the proof of claims associated/incorporated within this agreement already admitted to by the respondents as some or all of the controversies presented in in the referenced contract that pertain to this matter has already been address and decided through arbitration evidenced by an arbitration award being issues (see... **Exhibit – K**) which confirmation of that award is currently pending before U.S.

District Court for the District of South Carolina, Charleston Division in Case No. 2:19-cv-02854-BHH-BM where a stay is needed here and is hereby requested in this case until that proceeding has been completed and no appeals have been requested by the Defendant for any unlawful decisions under color of law, failure to provide equal protection of law when affirmative defenses such as the statute of limitations has been raised and failure to follow the **Federal Arbitration Act (FAA)** as written and prescribed which is the law that the performance contract is governed under because it involves commerce in fact evidencing a valid arbitration clause, as that proceeding is material to this case for this matter moving forward. Defendant hereby requests that any claims and controversies as it pertains to the performance contract that have not already been decided by the arbitrator that are arbitrable be compelled to arbitration and any claims presented in the amended counterclaim/countersuit that are not related to any claims presented in the performance contract be decided by the jury to avoid re-litigation of matters that are final and conflicts with the arbitrators findings and decision and therefore request that the order be vacated and set aside with a stay of the proceedings until confirmation of the award in district court has been completed. Arbitrators are judges chosen by the parties to decide the matters submitted to them, finally and without appeal. *See... DMA Int'l, Inc. v. Qwest Commc'ns Int'l, Inc.*, 585 F.3d 1341, 1344 (10th Cir. 2009) ("Once an arbitration award is entered, the finality of arbitration weighs heavily in its favor and can-not be upset except under exceptional circumstances.") (citing *Ormsbee Dev. Co. v. Grace*, 668 F.2d 1140, 1146-47 (10th Cir. 1982)); see also *St. John's Mercy Med. Ctr. v. Delfino*, 414 F.3d 882, 884 (8th Cir. 2005) (noting the "strong federal policy" that favors "certainty and final-ity in arbitration"); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Berry*, 92 F. App'x 243, 246 (6th Cir. 2004).

Defendant hereby brings to this courts attention that All officers of the court for the COURT OF COMMON PLEAS, in the COUNTY OF DORCHESTER, state of South Carolina are hereby placed on notice under authority of the supremacy and equal protection clauses of the United States Constitution and the common law authorities of *Haines v Kerner*, 404 U.S. 519, *Platsky v. C.I.A.* 953 F.2d. 25. and *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000) relying on *Willy v. Coastal Corp.*, 503 U.S. 131, 135 (1992), "*United States v. International Business Machines Corp.*, 517 U.S. 843, 856 (1996), quoting *Payne v. Tennessee*, 501 U.S. 808, 842 (1991) (Souter, J., concurring). *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647, *American Red Cross v. Community Blood Center of the Ozarks*, 257 F.3d 859 (8th Cir. 07/25/2001).

In re *Haines*: pro se litigants (Party Aggrieved is a pro se litigant) are held to less stringent pleading standards than BAR registered attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims. In re *Platsky*: court errs if court dismisses the pro se litigant (Party Aggreived is a pro se litigant) without instruction of how pleadings are deficient and how to repair pleadings. In re *Anastasoff*: litigants' constitutional rights are violated when courts depart from precedent where parties are similarly situated. All litigants have a constitutional right to have their claims adjudicated according the rule of precedent. See...*Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000).

DEFENDANTS OBJECTIONS TO THIS COURTS FINDINGS UNDER DEFENDANT'S MOTIONS THAT WERE DENIED FOR FAILURE TO PAY A FEE

This court erred in stating that the defendants only response for not pay the \$25.00 filing

fee for any of his motions when questioned by the Court on this issue. Defendant stated that he did not believe that he is required to pay motion filing fees and that Defendant further asserted that he would want to know how the County uses the proceeds from the motion. This court failed to also document that defendant defenses was that the court is also prepaid yearly through tax dollars from state citizens and estimated financials every year through the "South Carolina Department of Administration Budget Department" and this is the reason why defendant was challenging the filing fees and asked how the county are using the proceeds from individuals filing motions as this is a double tax issue. The Supreme Court has stated in a response of the Freedom of Information Request from the defendant that the office of **Diane S. Goodstein** is funded by the states appropriated fund. Defendant states that these funds are produced by the amount of taxes obtained from state tax payers every year. For the sake of this motion and to save time, defendant hereby produces an affidavit for a fee waiver with this motion to be used for the motions denied as well instead of refiling and requests. This court should be sending out compliance notices instead of proceeding with hearings only to deny for failure to pay the fee at the hearing. Defendant also states that as presented in his amended counterclaim/countersuit which is in affidavit form, and should be used as a fee waiver as he specifies his position and that there is a form for the court to collect a fee for agency services as they are a state government agency. Defendant requests that this court vacate/set aside the order and proceed with the motions that were denied for failure to pay filing fees if this case is not stayed, as it was stated during the March 12, 2020 hearing that the Defendant was to either pay the \$25 filing fee or file an affidavit of indigency. Vacating/setting aside the order in regards to the motions will not prejudice any parties to this case as the only reason the motions were denied is for a failure to pay a filing fee not for any defenses and controversies raised in any of these motions.

THIS COURT ERRED IN GRANTING THE PLAINTIFFS MOTION TO DISSMISS

This court erred in their decision dismissing defendant's amended counterclaims/countersuit by failing to take into consideration the facts stated in defendants opposition to plaintiff's, by their attorneys motion to dismiss filed on 12-17-2018 which this entire opposition is hereby reiterated and incorporated by reference in its entirety with this motion. This court erred because the amended counterclaim/countersuit was to be decided by a jury trial not the court as this right had been exercised by the defendant. See...*South Carolina Community Bank, Respondent, v. LLC Appellate Case No. 2014-002627 Decided: April 26, 2017*. This court erred by failing to address, review the merits and apply all laws and violations present before the court in defendants amended counterclaim/countersuit (RESPA, Federal Banking Law 12 USC §24 (7), SC Code § 34-3-210, PUBLIC POLICY, THE JUDICIAL AND NONJUDICIAL FORECLOSURE ACT, THE FEDERAL HOUSING ACT, THE FEDERAL MORTGAGE SATISFACTION ACT, THE GOLD REPEAL ACT, THE STATE OF SOUTH CAROLINA CONSUMER PROTECTION ACT CODES AND LAWS, BREACH OF CONTRACT) which defendant claims. This court failed to review the filings, presented to the court by the defendant including his Exhibits "A" through "K", which include Affidavits as Evidence which support his claims that pertain to his amended counterclaim/countersuit when considering the dismissal thereby limiting the supporting factual evidence, defenses and controversies presented in opposition that are authenticated by defendant when considering the motion to dismiss by the Plaintiff's attorney which should have been denied.

This court erred by failing to enjoin the parties that Defendant requested the court to enjoin in this case before any substitutions was requested. Carrington Mortgage Services, LLC and

Wilmington Savings Fund Society, FSB as trustee of Stanwich Mortgage Loan Trust – C (see page 5 Paragraph 9 of Defendants amended Counterclaim/Countersuit filed on 9-23-2017) should have been enjoined and no parties should have been substituted. The failure to enjoin these parties has caused multiple undue prejudice to the defendant and his claims in his amended counterclaim/countersuit by not enjoining all opposing parties. It is not clear rather this was an oversight/mistake of the court as it has not been addressed but these acts has definitely caused undue prejudice to the defendant as it has limited defendants claims against all relevant parties which are futile in this matter for defendant proceeding and establishing all his claims for violations of laws as presented in his amended counterclaim/countersuit against all opposing parties. The defendant's right to remedy and seek redress and justice against the party's has been limited and prejudiced. These acts by the court has limited the following and possibly other defenses of defendants to the motion to dismiss filed by the attorneys on behalf of the Plaintiff:

- (1) It has limited defendants discovery as the original Plaintiffs claim that they do not have to response to discovery as they are no longer parties to the case when they have claims against them by the defendant;
- (2) It has caused more abusive, deceptive, or otherwise unfair debt collection practices (15 U.S.C. § 1692e, 1692e(2)(5)(6)(8)(10) § 1692f, 1692f(7)(8)) as the original plaintiffs have never produced the original instruments (the "Note") which gives them the authority to collect payments from the Defendant and bring forth a foreclosure action as a physical holder in possession of the wet-ink signature note of the defendant for failure to pay as they have produced at least "three" different copies of an alleged "Note" that are not authenticated only in an attempt to collect an alleged debt for the purposes of leading the Defendant to believe they have the purported original "Note" which his actual signature on it when their should only be "one" original, not multiple different versions of a copy of the note. Carrington has also produced slightly different non-authentic but similar alleged copies only;
- (3) It has caused parties to substitute their position in the middle of this action, without fully validating and verifying the debt and their position to bring forth a foreclosure action after claims have been presnted by the defendant against all 3 parties referenced above as the Plaintiffs attorney based their substitution off allegations and unlawful filings of mortgage assignments that have not been verified nor authenticated. Both Carrington and Bank of America's assignment have been challenged by the defendant as they use these

assignments to claim their position when the original Plaintiff was never the real parties in interest and have never validated and verified their position and provided no proof that they were in possession of the Defendants Note and Mortgage at the time of filing the complaint as they are required to have in order to have the authority to bring forth a foreclosure action see ...***Deutsche Bank v. Hendriech COURT OF COMMON PLEAS OF THE NINTH JUDICIAL CIRCUIT July 30, 2013.*** The Plaintiffs attorney have provided nothing but hearsay, allegations conclusions in this case that are not authentic nor validated nor verified.

- (4) It has limited the Defendants claims in this case to only against the current Plaintiff when he requested that all parties referenced above be "enjoined" into the case as the claims are against them as well;

Defendant's amended counterclaim/countersuit is presented to the court in verified form, in Affidavit form as provided as evidenced by that filing to which there are no opposing affidavits filed under oath and sworn to under penalty of perjury by an individual with firsthand knowledge of the fact in this case to rebut the Defendants claims which are now facts before the court. The Plaintiff's attorney have provided nothing but hearsay, allegations and conclusions, no facts supported by evidence and verified. Affidavits stand as truth when not rebutted or properly rebutted (*see...[United States v. Kis, 658 F.2d 526, 536 (7th Cir. 1981); Cert. Denied, 50 U.S. L. W. 2169; S. Ct. March 22, 1982]*). Affidavit uncontested unrebutted unanswered stands as true. "An Affidavit if not contested in a timely manner is considered undisputed facts as a matter of law."). Indeed, no more than affidavits is necessary to make the prima facie case which is the case here. *United States v. Kis, 658 F2d 526 (7 th Cir. 1981); certiorari denied, 50 U.S.L.W. 2169; S.Ct. March 22, 1982 denied, 50 U.S.L.W. 2169; S.Ct. March 22, 1982.* If the complaint is verified, the answer must be verified. There are no verified answers supported by affidavits and personal knowledge filed on the record in this case and sworn to under oath and penalty of perjury rebutting with evidentiary facts to any of the claims presented in Defendant's verified amended counterclaim/countersuit therefore there is no valid answers to Defendants amended counterclaim/countersuit.

**OBJECTIONS TO THE COURTS FINDINGS IN REGARDS DEFENDANTS
CONSTRUCTIVE FRAUD CLAIMS**

Defendant objects to this courts findings that defendant has not specified what false representations the Plaintiff has made and other things and how the Defendant would have relied on the truth of the allegedly false representations to his detriment. Under "Lack of Standing" Paragraphs 6 numbers 9 & 10 which includes Exhibit - C, Under DEBT VALIDATION DEMAND paragraph 13, Under General Allegations number 22, 23, 24, 26, 30, 31, 32, 34, & 35 of defendants counterclaim/countersuit which is in affidavit form therefore are facts before the court and also DEFENDANT'S REPLY/RESPONSE AND OBJECTIONS TO PLAINTIFF'S ANSWER/RESPONSE TO DEFENDANT'S COUNTERCLAIMS filed on 3-27-2018 which are all hereby reiterated and incorporated by reference in their entirety and provides all 9 elements of fraud even intent even though the element of intent is not required for constructive fraud and clearly specifies that the plaintiffs used fraudulent assignment to allege that they are in possession of the defendant's note to try to collect an alleged mortgage debt such as payments from the defendant. The alleged copies they sent were forged/counterfeit/fraudulent copies as there should only be 1 version of the original note baring the defendants wet ink signature and none of their correspondence's not once stated that they are in possession of the wet-ink signature note of defendant. In fact, original plaintiff, Bank of America, N.A. through correspondences to defendant states that they need to retain the original note with defendants signature on it (See...Exhibit - F filed on the record in this case on 9-13-2017 which is hereby incorporated by reference) therefore willfully producing a forgery/counterfeit otherwise fraudulent copy of the note, the negotiable security instrument as they have produced multiple unverified version of the alleged note in their correspondence's to defendant that were never validated and verified. A note

is a security instrument and it is unlawful to duplicate a security. No individual from their organization has signed and sworn to under oath and penalty of perjury that they have firsthand knowledge of the documents sent to defendant being true and correct copy nor that the copy of the note is an original copy bearing defendant's wet-ink signature as it stands today under personal knowledge and without this, the mortgage loan debt and ownership as a holder to receive payments from defendant have never been validated and verified. The Note is a "debt instrument" which needs to be validated and verified of actual physical possession. The assignment of the mortgage, without an assignment of the debt, is a nullity. "The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity." *See...Carpenter v. Longan, 83 U.S. 271 (1872), Van Burkleo v. Southwestern, Tex. Civ. App., 39 S.W. 1085, 1087; Sheldon v. Sill, 49 U.S. 441 (1850) 49 U.S. 441*: The assignment of the mortgage, without an assignment of the debt, is a nullity." *See...Kirby v. Williams, 230 F.2d 330 (United States Court of Appeals Fifth Circuit) February 10, 1956.*

The Plaintiffs and other parties requested to be enjoined have remained silent on several affidavits and requests for information and documentation regarding the mortgage from its inception to present. "Silence can only be equated with fraud where there is a legal or moral duty to speak (the parties hold a legal and moral duty to speak and respond to defendant under U.C.C. 9-207 and SC Code § 36-9-207 pertaining to all inquiries regarding the mortgage) where a duty to speak is imposed which it is imposed here, or where an inquiry left unanswered would be intentionally misleading, which it is in this case as several inquiries have remained unanswered by the Original Plaintiff, Substitute Plaintiff and other parties requested to be enjoined evidenced by the exhibits filed on the record by defendant documenting the parties defaults. . . We cannot

condone this shocking behavior... This sort of deception will not be tolerated and if this is routine it should be corrected immediately." -- *U.S. v. Tweel*, 550 F.2d 297, 299. See also *U.S. v. Prudden*, 424 F.2d 1021, 1032; *Carmin v. Bowen*, 64 A. 932. "

Fraud maybe committed by failure to speak, but a duty to speak must be imposed," *Dunahay v. Struzik*, 393 P.2d 930, 96 Ariz. 246 (1964). "Suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation." *Leigh v. Loyd*, 244 P.2d 356, 74 Ariz. 84- (1952). "

When one conveys a false impression by disclosure of some facts and the concealment of others, such concealment is in effect a false representation that what is disclosed is the whole truth." *State v. Coddington*, 662 P.2d 155, 135 Ariz. 480 (Ariz. App. 1983); *Formento v. Encanto Business Park* (1987); *State v. Carrasco* (2001); *Hill v. Jones* (1986); *Sigmen v. Arizona Dept. of Real Estate* (1991); *Lindsey v. Edgar* (1984); Authorities (4) This opinion cites: *Dennis v. Thomson*, 43 S.W.2d 18 (Ky. Ct. App. 1931); *State v. Hall*, 633 P.2d 398 (Ariz. 1981); *Equitable Life Ins. Co. of Iowa v. Halsey, Stuart & ...Schock v. Jacka*, 460 P.2d 185 (Ariz. 1969); "

Fraud and deceit may arise from silence where there is a duty to speak the truth, as well as from speaking an untruth." *Morrison v. Acton*, 198 P.2d 590, 68 Ariz. 27 (Ariz. 1948); This case has been cited by these opinions: *Fernandi v. Strully* (1961); *Nichols v. City of Phoenix* (1949); *Wilkinson v. Harrington* (1968); *GUST, ROSENFELD v. Prudential Ins.* (1995); *Sato v. Van Denburgh* (1979); Authorities (22) This opinion cites: *Barham v. Widing*, 291 P. 173 (Cal. 1930); *Whetsline v. Moravec*, 291 N.W. 425 (Iowa 1940); *Boyce v. Brown*, 77 P.2d 455 (Ariz. 1938); *In Re McDonnell's Estate*, 179 P.2d 238 (Ariz. 1947); *Burton v. Tribble*, 70 S.W.2d 503 (Ark. 1934).

Concealing a material fact when there is duty to disclose may be actionable fraud." *Universal Inv. Co. v. Sahara Motor Inn, Inc.*, 619 P.2d 485, 127 Ariz. 213- (Ariz. App. 1980). Also cited in the following cases: *Mid Kansas Fed. S. & L. v. Dynamic Dev.* (1991); *S Dev. Co. v. Pima Capital Mgmt. Co.* (2001); *Nordstrom, Inc. v. Maricopa County* (2004); *TruServ Corp. v. Morgan's Tool & Supply Co.* (2012); *Hill v. Jones* (1986) *Authorities* (9) This opinion cites: *Bank of Italy Etc. Assn. v. Bentley*, 20 P.2d 940 (Cal. 1933); *Neal v. Neal*, 570 P.2d 758 (Ariz. 1977); *Nat. Housing Indus. v. El Jones Develop. Co.*, 576 P.2d; *Cohen v. Citizens Nat. Trust Etc. Bank*, 143 Cal. App.; *Sanfran Co. v. Rees Blow Pipe Mfg. Co.*, 168 Cal.

Regardless of the deficiencies in Defendants presentments as a SUI JURIS or "Litigant in Person", I am entitled that opportunity to respectfully present evidence in support of my claims. In regards to the plaintiff claiming that they are the note holders of the Defendants Note and have the legal title owners of the mortgage, these have been challenged in the Defendants counterclaim/countersuit to which not original documents have been produced baring any wet-ink signatures. To the extent that Plaintiffs is referencing the mortgage documents filed in Dorchester county, this is an unlawful filing as the previous assignment has been challenged as there is evidence of rubber-stamping/robo-signing which is evidence of fraud and has MERS attached to it and if this is an unlawful filing as MERS never had possession of the original note baring the Defendants wet-ink signature to be able to assign it through physical delivery, then any assignment filed on the records in Dorchester county register of deed thereafter is also fraudulent, unlawful and invalid and there is a conflict of interest because Carrington is signing as agents in fact under a power of attorney for Bank of America, N.A. and Wilmington. You cannot represent both assignor and assignee in a transfer of interest situation signing for both parties.

In regards to the plaintiff claiming that they are the note holders of the Defendants Note and are the legal title owners of the mortgage, these instruments have been challenged in the Defendants amended counterclaim/countersuit to which no original documents have been produced baring any wet-ink signatures in any hearings which is and has been demanded multiple times. To the extent that Plaintiffs is referencing the mortgage documents filed in Dorchester county register of deeds, this is an unlawful filing utilized to deceive as the previous assignment has been challenged as there is evidence of rubber-stamping/robo-signing, a scheme which is evidence of fraud and has MERS attached to it and if this is an unlawful deceitful filing, as MERS never had possession of the original note baring the Defendants wet-ink signature to be able to assign it through physical delivery, then any assignment filed on the records in Dorchester county register of deed thereafter is also fraudulent, deceitful, unlawful and invalid and there is a conflict of interest because Carrington is signing as agents in fact under a power of attorney for Bank of America, N.A. and Wilmington, both the assignor and assignee. You cannot represent both assignor and assignee in a transfer of interest situation signing for both parties. Even if Carrington could sign, the assignment would still be void and unlawful because there is no power of attorney filled on the record for Carrington to which they are referencing which gives them authority to sign for the alleged Trustee, Wilmington.

By Bank of America, N.A. utilizing this faulty Rubber-stamping/Robo-Signed assignment, which they utilized to defraud the defendant in believing they were in possession of the original note with his wet-ink signature in an effort to collect payments and bring forth a foreclosure action through an alleged assignment is evidence of fraud and fraud before the court. In January 2018, in the case of *"United State of America, ex rel., Bruce Jacobs v. Bank of America Corporation, et al. case # 1:15- cv-24585-UU* brought forth in another whistle blower under the false claims act

against Bank of America, N.A. it was stated that Bank of America was were still utilizing /Rubber Stamping/Robo-Signed assignments that purport to alleged that both mortgage and note was assigned to them in an effort to defraud the government and home owners in violation of the consent order that they signed which included the attorney general back in 2011. This is why they never could produce the note when requested and was only sending multiple alleged copies which all copies were different from the other of which they stated in their correspondence that they would have to obtain the original note and is proof that they were never in possession of the original note baring the defendants wet-ink signature and that the note and mortgage were separated creating in immediate nullity as Bank of America, N.A. have not proven and cannot prove otherwise to these facts to ever being in possession of the original wet-ink signature note which is why they allegedly transferred the alleged mortgage loan debt during the foreclosure action instead of completing the foreclosure proceedings in their name so they can try to avoid this controversy and avoid this concealed fraud being uncovered.

The Court noted in, *Rabin v. Dep't of State, No. 95-4310, 1997 U.S. Dist. Lexis 15718* that Sui Juris plaintiffs should be afforded "special solicitude." (Such special solicitude" is hereby respectfully requested in the instant matter) as there is clearly genuine issue of material fact to be tried, and that the party for whom summary judgment is rendered is entitled thereto as a matter of law."

The original alleged lender "intentionally created fraud in the factum" and withheld from plaintiff..." vital information concerning said debt and all of the matrix involved in making the loan", evidenced by the record and their failure to disclose as they have lent "bookkeeping entry credit" in the form of a loan which was not disclosed to defendant. *Deutsche Bank v. Peabody, 866 N.Y.S.2d 91 (2008)*. This court failed to address the ultra vires contract. "It has been settled

beyond controversy that a national bank, under federal Law being limited in its powers and capacity, cannot lend its credit by guaranteeing the debts of another. All such contracts entered into by its officers are ultra vires . . . *Merchants' Bank v. Baird* 160 F 642 also see..." *Howard & Foster Co. v. Citizens Nat'l Bank of Union*, 133 SC 202, 130 SE 759(1926). "When a contract is once declared ultra vires, the fact that it is executed does not validate it, nor can it be ratified, so as to make it the basis of suitor action, nor does the doctrine of estoppel apply." *F& PR v. Richmond*, 133 SE 898; 151 Va 195. (See...Defendants memorandum of law filed on 9-13-2017 which is hereby reiterated and incorporated by reference. This court failed to address that there was not consideration in this mortgage loan transaction and no consideration has been no consideration given, that because of failure of a lawful consideration the Note(s) and Mortgage(s) alleged in this case are null and void. See...*First national bank of Montgomery vs. Daly* (1969).

THE COURT ERRED IN DISMISSING THE DEFENDANTS CLAIMS FOR VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

This court did not take into consideration any of the Defendants oppositions, memorandums, exhibits, affidavits, filed on the record in support of debt validation disputes and affidavits filed on the record to support the Defendants claims of the violations of the FDCPA and other state consumer protection codes and therefore Defendant objects to this court's finding that defendant has not plead sufficient facts to support his claims under the FDCPA. The amended countersuit/counterclaim filed by the Defendant is presented to the court in verified form, in Affidavit form to which there are no opposing affidavits supported by evidentiary fact to rebut the Defendants claims filed on the record in this case. Plaintiffs' attorney have provided nothing but hearsay, conclusions, allegations, no facts supported by evidence that have been authenticated as required under SC Rule 901. Affidavits stand as truth when not rebutted or properly rebutted

(see...[*United States v. Kis*, 658 F.2d 526, 536 (7th Cir. 1981); *Cert. Denied*, 50 U.S. L. W. 2169; S. Ct. March 22, 1982] Affidavit uncontested un rebutted unanswered stands as true. "An Affidavit if not contested in a timely manner is considered undisputed facts as a matter of law."). Indeed, no more than affidavits is necessary to make the prima facie case. & quot; *United States v. Kis*, 658 F2d 526 (7th Cir. 1981); *certiorari denied*, 50 U.S.L.W. 2169; S.Ct. March 22, 1982 denied, 50 U.S.L.W. 2169; S.Ct. March 22, 1982. "Statements of counsel, in their briefs or their arguments are not sufficient for a motion to dismiss or for summary judgment," and "An attorney for the Plaintiff cannot admit evidence into the Court, He is either an attorney or a witness". *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647.

Defendant also objects to and request reconsideration in regards to the FDCPA claims and the States Consumer Protection Code for violations against the Plaintiff and other parties being debt collectors. The Defendants amended Counterclaim/Countersuit is against Bank of America, N.A. (the original Plaintiff) who should not have been allowed to be substituted when they still had pending claims against them which has caused undue prejudice to the defendant and is futile to the Defendants claims as Carrington Mortgage Services, LLC, and Wilmington Savings Fund Society, FSB were requested to be enjoined into this case before any motions to substitute plaintiff were requested which would have been addressed if this court had not prejudiced the Defendant to a hearing of that motion so he could raise these points and objections as all 3 parties are debt collectors as provided in this motion. These parties must be enjoined as required under Rule 18 and 19 of the SC Rule of Civil to insure a full adjudication of the controversy." *Bancohio National Bank v. Neville*, 310 S.C. 323, 328, 426 S.E.2d 773, 776 (1993).

The U.S. Court of Appeals for the third circuit in the case of *Mary Barbato v. Crown Asset Management LLC, et al.*, No. 18-1042 (3d Cir. Feb. 22, 2019) has correctly interpreted the U.S.

Supreme Court proceedings decided in *Henson v. Santander, Consumer USA Inc.*, 137 S. Ct. 1718 (2018) which they explain that, the Henson v. Santander case only pertain to the “regularly collects” definition. In Crown Asset Management LLC which Crown tried to file a writ of Certiorari in the U.S. Supreme Court to reverse the decision of the third circuit determining that Crown is a debt collector under the “Permissible Purpose” provision of the FDCPA and it was denied. Therefore the referenced U.S. Supreme Court proceedings which the Plaintiffs attorney are referencing to claim that they are not debt collectors does not apply to this matter for this situation and the allegations presented as a defense by the Plaintiffs attorney cannot be utilized to dismiss this action by incorrectly determining if the Plaintiff is a debt collector for violation of the FDCPA for the reasons stated in this entire motion and the following:

1. The original Plaintiff, Substitute Plaintiff and other parties requested to be enjoined permissible purpose when they allegedly obtained the defaulted mortgage loan debt as explained in this motion was to collect payments on the defaulted mortgage debt as they have attempted to do multiple times from 2015 – present. The parties have failed to validate and verify the alleged mortgage debt by not responding and disclosing all the requested documents and information requested to be validated and verified evidenced their defaults and by the defendant, the consumer exhibits, affidavits and default notices against them (see...Exhibits “A” through “K”, filed on the record in this case which is hereby incorporated by reference.) “To prevail on an FDCPA claim as demonstrated and satisfied throughout this motion, in the defendants amended counterclaim/countersuit and other filings to include opposition filings filed on the record along with exhibits and affidavits, a plaintiff must prove that (1) he is a consumer, defendant is a consumer because he is a natural person obligated or allegedly obligated to pay any debt. (2) the plaintiff is a debt collector, as presented and evidenced by this motion, all parties are debt collectors (Carrington, Bank of America, N.A., Wilmington, Albertelli Law and the Previous Attorneys of record) (3) the Plaintiff’s challenged practice involves an attempt to collect a defaulted debt, in this case a defaulted mortgage ‘debt’ as the [FDCPA] defines it as any debt, for the purposes thereof which is further explained throughout this motion and (4) the Plaintiff has violated a provision of the FDCPA in attempting to collect the debt.” *St. Pierre v. Retrieval-Masters Creditors Bureau, Inc.*, 898 F.3d 351, 358 (3d Cir. 2018) (quoting *Douglass v. Convergent Outsourcing*, 765 F.3d 299, 303 (3d Cir. 2014)). The parties have violated several provision of this law. Even though the Defendant has not detailed

all the sections of the FDCPA the Plaintiffs and other parties have violated in his amended counterclaim/counterclaim, it clearly details that the parties have not validated and verified the alleged mortgage debt which is a violation of the FDCPA and have utilized False and Misleading representation in communications such as multiple alleged copies of a note, rubber-stamped/robo-signed assignment, contacts to third parties such as credit reporting agencies. It is clear that defendant has presented facts supported by evidence, affidavits (the exhibits filed on the record in this case as referenced in this motion which are all hereby incorporated by reference in their entirety) in regards to these FDCPA claims and that they have failed to validate and verify the alleged debt in the manner requested in the timeframe required by the FDCPA which is 30 days from receipt of the request. The Defendants Exhibits – H filed on 8-23-2018 specified the damages and the amounts for violations of the law presented in those affidavits of fact (debt validation/verification). The FDCPA states that all collection activities must be stayed until validated and verified which include foreclosure actions, enforcing alleged security interests. Every filing by the third party debt collectors (the attorneys) is a separate violation of the FDCPA as they are considered collection activities that should have been stayed. Bank of America, Wilmington, and Carrington and the Attorneys are operating on behalf of another and are debt collectors which their communications with defendant documents (see...Exhibits – L).

2. The parties referenced in this motion also fall under South Carolinas Consumer protection code as “debt collectors” (See...SC code of law 37-1-301(28) Debt Collector Defined as any person who collects, attempts to collect, directly or indirectly, debts due or asserted to be owed or due another. The term also includes a creditor who collects, attempts to collect, directly or indirectly, his own debts. Also see SC code of law 37-12-20(10)(a)(i)(iii)(iv)(v)(b) for violations by these parties which are hidden from the public for some reason as only the unannotated versions not the annotated versions are showing and the online version skips sections on the South Carolina-Legislator Website). Defendant has raised claims of violations under the Consumer Protection Laws of South Carolina against these parties as presented in his amended counterclaim/counterclaim which this court failed to address and consider and this motion which is another reason why this amended counterclaim/counterclaim should not have been dismissed.
3. That provision of the FDCPA also defines a debt collector as “any person . . . who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” This court in its order only addressed the “who regularly collect debts owed or due to another” and has incorrectly applied the wrong FDCPA definition as it also applies to “debt collectors,” who are defined alternatively as those engaged “in any business the “principal purpose” of which is the collection of any debts and since the plaintiffs both current and previous allegedly acquired this alleged mortgage debt while it was in default the debt clearly falls under any debts as

any payments to the Plaintiff would go to paying down the alleged balance of the mortgage debt, even through a sale of the property after foreclosure is granted and a sale date is determined in a judicial foreclosure action. In contrast to the “regularly collects” definition, where Congress explicitly used the verb “to collect” in describing the actions of those it intended the definition to cover, in the “principal purpose” definition, Congress used the noun “collection” and did not specify who must do the collecting or to whom the debt must be owed. 15 U.S.C. § 1692a(6); see also *Tepper v. Amos Fin., LLC*, 898 F.3d at 370. Thus, by its terms, the “principal purpose” definition sweeps more broadly than the “regularly collects” definition, and we must presume that the “legislature says . . . what it means and means . . . what it says.” *Henson*, 137 S. Ct. at 1725 (quoting *Dodd v. United States*, 545 U.S. 353, 357 (2005)). Plaintiff is a debt collector because they acquired the Defendant’s debt after it was allegedly in default and its “principal purpose” was collecting a payment or payments on that allegedly defaulted debt and or enforcing security interest either directly or indirectly through third parties such as the attorneys and the servicers (Bank of America, N.A. and Carrington Mortgage Services, LLC) which is debt collection activity and also falls under the regularly collects category of the FDCPA for purposes described in this motion, therefore they are “debt collectors” under the FDCPA (See... *Barbato v. Greystone All, LLC*, No. CV 3:13-2748, 2017 WL 5496047, at *1, *9-*10 (M.D. Pa. Nov. 16, 2017)).

4. The FDCPA statute also defines “debt collector,” as any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests.” 15 U.S.C. § 1692a(6). This applies to all parties who claim they are attempting to enforce security interests. Plaintiffs and the other parties referenced in this motion have never proven to be a trustee of which the corporate filings are registered in Delaware since 2017, which would indicate this corporation was created for the purpose of collecting this alleged mortgage debt directly or indirectly which Wilmington Savings Fund Society, FSB is the Registered Agent of which the alleged trust has multiple owners within the trust referred to as bond certificate holders which payments are passed through to the certificate holders and qualifies as collection on behalf of another as Wilmington does not keep the whole amount of payments they receive. The certificate holders own a percentage of the trust to which they receive payments. Excluded from the FDCPA’s definition’s reach of a “debt collector” are, among others, a creditor’s officers and employees who collect debts for the creditor, an entity collecting a debt it originated, and an entity collecting a debt it obtained that was not in default at the time of purchase. Id. §§ 1692a(6)(A), (F) which is not relevant here as the alleged mortgage debt was in default when it was obtained from Ginnie Mae to Bank of America, N.A. and from Bank of America, N.A. to Wilmington Savings Fund Society, FSB as trustees of Stanwich Mortgage Loan Trust C. The FDCPA even covers the enforcement of an interest in real property securing the consumer’s obligation in judicial proceedings in a judicial district or similar legal entity in which such real property is located brought forth by debt collectors. 15 U.S. Code § 1692i(a)(1)&(2). Legal actions by debt collectors.
5. In *Mary Barbato v. Crown Asset Management LLC, et al.*, No. 18-1042 (3d Cir. Feb. 22, 2019), the Third Circuit Court of Appeals issued a precedential ruling which it interpreted the Supreme Court’s recent ruling in *Henson v. Santander, Consumer USA Inc.*, 137 S. Ct. 1718

(2018), and held an entity is a debt collector if its "important aim" and the reason for its existence is obtaining payment on the debts that it acquires which is the case here as the Plaintiffs created an entity as specified above in Delaware in 2017 in the name of the trust when they allegedly obtained the Defendants mortgage debt and as trustee they collect and receive payments for the trust bond certificate holders of this alleged trust.

6. The Fair Debt Collection Practices Act ("FDCPA") protects consumers from abusive, deceptive, or otherwise unfair debt collection practices. 15 U.S.C. § 1692(a). It applies to "debt collectors," defined alternatively as those engaged "in any business the principal purpose of which is the collection of any debts" and those "who regularly collect[s]" debts "owed or due another." Id. § 1692a(6) and includes the enforcement of security interests. In *Henson v. Santander*, it found that an entity that seeks to collect a debt that it owns is not a debt collector under the FDCPA's "regularly collects" definition only. The statute thus provides two separate paths to establishing an entity's status as a "debt collector." See *Henson*, 137 S. Ct. at 1721. The Plaintiffs and other parties requested by defendant to be enjoined fall under the category of debt collectors under the FDCPA's "who regularly collect[s] payments or enforces security interests (Carrington and the Attorneys)" and/or "principal purpose" (Wilmington) definition (See...*Mary Barbato v. Crown Asset Management LLC*). In *Barbato v. Crown*, the Court focused on the meaning of the phrase "principal purpose" in the FDCPA, holding that "an entity that has the 'collection of any debts' as its 'important' 'aim' is a debt collector under [the principal purpose] definition . . . [a]s long as a business's raison d'être is obtaining payment on the debts that it acquires, it is a debt collector." It doesn't matter rather they try to collect on their own or through a third party the payments are being collected in regards to the defaulted mortgage debt, so they are still debt collectors under principal purpose, see...*Mary Barbato v. Crown Asset Management LLC, et al., No. 18-1042 (3d Cir. Feb. 22, 2019)*. Validation requests were sent out to all parties to which they had thirty (30) days under section 15 USC 1692g § 809 (Validation of debts) and (b) Disputed debts, to respond to in full to all portions of the dispute and provide both validation and verification of the alleged mortgage debt and producing the requested information to validate/verify their claims of a valid outstanding debt being owed which they did not and also have never validated/verified how, when and if they had obtained possession of the "original note" baring the defendants "wet-ink signature" which has been verified by an individual with firsthand knowledge in physical possession of the instrument which is also part of the validation/verification, this would include the attorneys of record and previous attorneys of record to which neither parties validated and verified the debts as required under the FDCPA in the manner requested by the Defendant acceptable to the Defendants requests.
7. Plaintiffs have produced no contract with the Defendant to which he has signed baring his wet-ink signature and non can be produced as it has yet to be produced as requested in the throughout this case an in the first hearing on 9-13-2017, only hearsay, alleged counterfeit/alterd copies to which no one has authenticated it under firsthand knowledge at any time since the initiation of the foreclosure action. The Carrington on behalf of the Substitute Plaintiff kept sending offers, new terms in the form of statements, payoffs and other documents. The Defendant Conditionally accepted the offer and claims of the parties upon proof of claim which if produced in full, he agreed to pay what was alleged in the offer by

initiating a conditional acceptance agreement dated **January 8, 2019** baring a contract number of **2019-0108BRUCWSFCM-S12389981- 5577899811**⁶ to which the parties accepted by their conduct and have not provided any evidence to the contrary proving otherwise that they have not accepted the Defendants offer which the claims as it pertained to the above reference contract was arbitrated and is currently pending before District Court for confirmation where instead of litigating the claims as it pertains to the contract through the court, the parties by that contract agreed to arbitration. A copy of the contract and award is already filed in this case as **Exhibits J & K** which is hereby incorporated by reference and is further evidence to support his claims. The Plaintiff's, the Respondents to which an award was issued against had **3 months (90 days)** from the date a copy of the award was delivered to them or filed to raise any objections to the award, the arbitrators findings under one of the FAA's only exceptions for vacating an award but have failed to do so and are now barred from doing so by the FAA statute of limitation and the district court must now confirm the award and enter a judgment on the award which materially affects this case moving forward to include the alleged agreements they claim to have in their possession which allegedly give them standing as the findings of the arbitrator are now facts before the court to be utilized to support defendants claims, motions, and oppositions in this matter. Plaintiffs may argue that there is no agreement or that they did not sign any agreement but a unilateral contract does not require signatures of all parties, it is one parties promise and the other party's performance but that is for an arbitrator to decide and this has already been decided by the arbitrator who has been delegated authority to make such determination. The Respondents, the Plaintiffs in this action agreed to mediate (arbitrate) the claims and controversies as it pertains to the performance contract by failing to properly notify (respond) to the defendant of their lack of acceptance in the 10-20 calendar day rejection period... that the language indicated a change in the terms was an offer... which was accepted by performance/conduct, see..." *Tick-Anen v. Harris & Harris, Ltd.*, 461 F.Supp.2d 863, 867,868 (E.D. Wis. 2006) therefore the unilateral contracts do not require their signatures, are valid and enforceable as the FAA prescribes **9 U.S.C. § 2** and the Plaintiffs are barred from raising these defenses as the statute of limitation has passed to do so. Either way, confirmation is a decision for the district court or a court of original jurisdiction referenced in the agreement agreed to by the parties which have limited jurisdiction to confirm as prescribed under the FAA, not this court which is why a stay of the proceeding is needed.

8. The Plaintiffs and other parties requested to be enjoined are also debt collectors because at the time the Plaintiffs and other parties received the defendants multiple requests to validate and verify the debts in the manner requested by defendant to prove such Ownership/Physical Possession of the original note baring the defendants wet ink signature, the financials pertaining to the account, and other documents that pertain to Mortgage Backed Securities (MBS) and tax issues relating to the alleged mortgage debt, the current Plaintiff was not a party to the foreclosure action and the other parties such as Bank of America, N.A. had not brought forth a foreclosure action seeking to foreclose on an alleged interest that they never provided evidence that they had physical possession of both the mortgage and the Note (a requirement to bring forth a foreclosure action) at the time of filing such action, Carrington were not enforcing a security interest, they were all attempting to collect on a defaulted mortgage debt (directly and/or indirectly) before foreclosure proceedings had been initiated and Carrington had been trying to collect again in January of 2020. Carrington has also harassed me stating

if I don't bring the account current my home would be taken from me. Because they never validated and verified the debt as the FDCPA statute requires, they were to cease all collection activities as prescribed by the FDCPA until they have both validated and verified the debt within 30 days of defendants request for validation and verification which they never did as explained in this motion therefore any foreclosure actions are unlawful and should be dismissed. When the Defendant noticed that there was a foreclosure action filed against him, this triggered another FDCPA violation as the plaintiffs were to cease all collection activities such as foreclosure and is also violations of the South Carolina Consumer Protection Code.

9. In *Mary Barbato v. Crown Asset Management LLC, 2019*), the appeals court for the third circuit recognized that A debt collector may be held vicariously liable for the conduct of its attorney (*quoting Pollice v. National Tax Funding, L.P., 225 F.3d at 404-05 (3d Cir. 2000)*). The mortgage debt that was allegedly purchased was in default at the time either plaintiffs (original and substitute) acquired it and the attorneys principal purpose is collection, the enforcement of alleged security interests as the FDCPA applies to, therefore Defendant need not add the attorneys to his amended counterclaim/countersuit as they are also in default of the validation requests, these claims are held against both Plaintiff's (Original and Substitute). The Attorneys both previous and current have admitted by their correspondence to being debt collectors (see... Exhibit - L attached to this motion) and have sent in offers to pay the alleged un-authenticated remaining default balance and/or full amount to settle the debt. Carrington still sends offers on behalf of the investor/trustee, the Plaintiff in the form of statements and payoff statements to settle the debt. All being done by third parties on behalf of the Plaintiff which is debt collection activity even during the foreclosure action as the mortgage debt was in default at the time it was acquired by the plaintiff's and neither the current plaintiff nor the previous plaintiffs are the originators, the creditors of the mortgage loan. Failure of this court to properly apply the State Consumer Law and the Federal Law, the FDCPA as intended by congress as the statute prescribes and as it applies to this matter as specified above, I must **hereby challenge this court's jurisdiction** in regards to this whole matter and jurisdiction is hereby challenged and I request jurisdiction to be produced on the record by this court moving forward. The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings." *Hagans v Lavine, 415 U. S. 533*. "Once challenged, jurisdiction cannot be assumed, it must be proved to exist." *Stuck v. Medical Examiners 94 Ca 2d 751. 211 P2d 389*. "There is no discretion to ignore that lack of jurisdiction." *Joyce v. US, 474 F2d 215*. "The burden shifts to the court to prove jurisdiction." *Rosemond v. Lambert, 469 F2d 416*. If this court does have jurisdiction and cannot prove jurisdiction, I demand that this matter be transferred or remanded back to U.S. District Court, a court of original jurisdiction for Federal Matters to determine the controversies here.

In regards to the foreclosure action with a waiver of deficiency not being a collection of a debt, Defendant objects and states that the mortgage is an FHA mortgage which incorporates within it "mortgage default insurance" which the Plaintiffs and or insurance certificate holders will apply for payment of any deficiency therefor it is not actually a waiver, they are just seeking

the remaining balance through an insurance claim administered through HUD who pays on behalf of the defendant who has been paying insurance premiums. It may look to be a waiver in court but outside of court, they will file for this insurance to collect the difference in payments of the alleged remaining balance after a foreclosure sale. The FHA mortgage and the note requires that the Plaintiffs seek a letter from the secretary of HUD giving them permission to bring forth a foreclosure action as specified in Defendant's opposition to Plaintiff's motion to dismiss/motion for order of reference filing filed on the record 12-17-2018 which is hereby incorporated by reference in its entirety. The Plaintiffs are also supposed to send the defendant a default notice before proceeding with an acceleration of the mortgage and a foreclosure action. This also did not happen. This is a breach of contract against the current and previous plaintiffs which is part of the defendant's amended counterclaim/countersuit.

As presented in defendants opposition to plaintiffs motion to dismiss filed on 12-17-2018 which is hereby incorporated by reference, I am not required to layout my entire case. I am only required to give a brief description of what my claims and issues are. The law does not require me to explain the entire case at this time therefore I hereby object to any dismissal when it pertains to this issue. *See...Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002); accord Atchison, Topeka & Santa Fe Ry. v. Buell, 480 U.S. 557, 568. n.15 (1987) (under Rule 8, claimant has "no duty to set out all of the relevant facts in his complaint").*

OBJECTIONS TO THE COURTS FINDINGS OF CONSPIRACY CLAIMS

As specified in the judges order, "A civil conspiracy consists of three elements: (1) A combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes the plaintiff special damages" *Hammond v. Butler, Means, Evins & Brown, 300 S.C. 458, 463, 388 S.E.2d 796, 798 (1990)*. Defendant has satisfied this theory as defendant has stated in is

"amended counterclaim/countersuit" that he requests that Wilmington and Carrington be enjoined into this lawsuit, bring the claims against two or more persons. The court has overlooked this request as it has caused undue prejudice against the defendant and his claims in his amended counterclaim/countersuit. The defendant has specified that the plaintiffs and other parties have produced confusing information and that the parties were using multiple alleged copies when trying to validate their position and that they were in possession of the original note bearing the defendant's wet ink signature. This allegation by the original plaintiff and substitute plaintiff during the time of the defendant's requests and first motion to dismiss was incorrect. They could not possibly be the holder in due course with the defendant's wet-ink signature note otherwise there would be no need to send multiple altered versions of a note allegedly signed by the defendant. The defendant was not present during these alterations therefore they should be void as they express an agreement to something defendant has not agreed to. Also because the mortgage assignment with Bank of America, N.A. has been challenged as it contains a fraudulent scheme known as Rubber-stamping/robo-signing which makes any assignments thereafter deceitful, fraudulent and unlawful. Since this was in the course of validation and verification of the mortgage debt to collect payment from defendant, one can only assume even if not mentioned specifically in the defendant's amended counterclaim/countersuit that their actions were for the purpose of injuring the plaintiff by utilizing non-authentic instruments to get the defendant to pay a party who did not legally own and was not in physical possession of the note bearing the defendant's wet-ink signature as required to receive payment from him during these times to enrich themselves and because of this, it has caused the defendant injury and damages, special or otherwise one being the reporting of negative payments to third party reporting agencies when they have not validated and verified the alleged mortgage debt thereby reporting incorrect

information. By allegedly transferring alleged interest, and allegedly signing power of attorneys allowing a party to do something in the other parties name, it is clear that the parties have come together in a sort of bait and switch situation as original plaintiff does not have firsthand knowledge of any facts and the substitute plaintiff has even less firsthand knowledge of any facts as it relates to the alleged mortgage debt since its inception.

**OBJECTIONS TO THE COURTS FINDINGS IN REGARDS TO VIOLATION OF THE
THE TRUTH IN LENDING ACT (TILA)**

Defendant objects to the courts statements that the Defendant has not pleaded any specific facts related to a violation of this act. On the contrary, **page 4 paragraph 7** of defendant's amended counterclaim/countersuit specifies these violations. Defendant has even included the tracking numbers to which his recession was received from by the original plaintiff rescinding whatever interest claimed in the mortgage (see... **Exhibit – E** filed on the record **9-13-2017** in this case which is hereby incorporated by reference). Which is another reason why the Plaintiffs have no valid security interest in defendant's mortgage that they can foreclose on. Their interests are void as they had 20 calendar days from receipt of the rescission request to return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest, which they have failed to do and continues to ignore the fact that the Defendant has exercised his right under TILA and have given notice of rescission to the Original Plaintiff and at this point, they had no authority to assign and or sale any interests over to any other parties. Plaintiffs would have to bring forth a suite in the proper jurisdiction to address the rescission of the mortgage to address their interests. ***See...JESINOSKI ET AL v. COUNTRYWIDE HOME LOANS, INC., ET AL. CERTIORARI***

TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT No. 13-684. Argued November 4, 2014-Decided January 13, 2015.

The Original Plaintiff, Bank of America, N.A. (previous servicer) and current Plaintiff Wilmington Savings Fund Society, FSB as Trustee and current servicer Carrington hold a duty to respond to defendant and have failed to abide by their duty to respond with PROOF OF CLAIMS and evidence, proving that the original lender did not lend "bookkeeping entry credit" in the form of a loan, and failed to provide such notification and clear, unambiguous, conspicuous language/terminology that any reasonable man or woman would understand. By their conduct, they have "intentionally created fraud in the factum" and withheld from defendant... "vital information concerning said debt and all of the matrix involved in making the loan". *Deutsche Bank v. Peabody*, 866 N.Y.S.2d 91 (2008). EquiFirst, when making the loan, violated Regulation Z of the Federal Truth in Lending Act- 15 USC §1601 and the Fair Debt Collections Practices Act 15 USC §1692.

OBJECTIONS AND DEFENSES TO THE COURTS GRANTING PLAINTIFF'S MOTION TO REFER

This court in going off of the Plaintiff's attorney proposed order which are not facts before the court which claims that defendant is not entitled to a jury trial under the grounds that "A mortgage foreclosure is an action in equity" citing *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009). "Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). However this court has failed to also recognize that where legal and equitable issues or rights are raised in the same complaint as they are here, the legal issues are for determination by a jury and

the equitable issues are for determination by the court. See...South Carolina Court of Appeals 3792 - *Bateman v. Rouse* (2004) quoting *Floyd v. Floyd*, 306 S.C. 376, 379, 412 S.E.2d 397, 398-99 (1991). Defendant has raised multiple legal issues in his amended counterclaim/countersuit which is legal and compulsory and therefore defendant is entitled to a jury trial in this matter, see...*South Carolina Community Bank, Respondent, v. LLC Appellate Case No. 2014-002627 Decided: April 26, 2017.*

Plaintiff has raised a legal issue in their complaint in **paragraph 3** which they state, "Plaintiff has a legal right to enforce the negotiable instrument secured by the mortgage," meaning the "note" as the negotiable instrument but they have failed to prove by sufficient fact and firsthand knowledge that they were in possession of this negotiable instrument at the time of the initial filing of the foreclosure proceedings which would give them authority to bring forth a foreclosure action. It is clear that to have standing in this foreclosure, the Original Plaintiff (**Emphasis Added**) must show that they not only were the physical holders and owners of the original Note bearing the defendant's wet-ink signature (no copies), but also the Mortgage as well, see...*Deutsche Bank National Trust Company v. Heinrich* (2013) **IN THE COURT OF COMMON PLEAS OF THE NINTH JUDICIAL CIRCUIT County of Charleston** quoting the Supreme Court's decision in *Carpenter v. Longan*, 83 U.S. 271, 16 Wall. 271, 21 L.Ed. 313 (1872) which the Court found "clearly supports the notion that the Plaintiff must own the Note and the Mortgage to foreclose on the property (**emphasis in the opinion**)... Plaintiff's Complaint in this case fails to meet this criteria as the Original Note bearing the defendant's wet-ink signature was never produced in court during either hearings by the Original Plaintiff as requested to be produced many times validating and verifying when, where, and how they were in physical possession of both the original wet-ink signature note and mortgage at the time of filing this foreclosure case and before any substitutions.

Original Plaintiff Bank of America, N.A. lacked the standing to initiate and prosecute the foreclosure, and substitute plaintiff lacks standing to take over the case in Bank of America, N.A.'s position as Plaintiff to prosecute the foreclosure and dismissal pursuant to **Rule 17(a) and Rule 12(b)(6) SCRPC** is appropriate.

Furthermore, either party may demand a trial by jury of any issue triable by jury. See... **Rule 38 (b), SCRPC**. Therefore a trial defendant has a right to a trial by jury as demanded by defendant. The defendant demanded trial by jury for the legal issues of law raised in his amended counterclaim/countersuit which was for a jury to decide, not the court. This case should not have been referred to the master in equity and there should be no orders granting final summary judgment by the court in regards to the amended counterclaim/countersuit without a jury trial as there are still issues of material facts as presented that must be resolved in this case before a jury present in regards to the legal issues raised by the plaintiff in their complaint and challenged by the Defendant since his special appearance in 2017 as he was never served with the summons and complaint evidenced by the record and as raised in defendants amended counterclaim/countersuit. Any such orders are void judgments.

There is a clear Failure to Join Necessary Parties under **Rule 12(b)(7), SCRPC**. **Rule 12(b)(7)** provides that one defense to an action is the failure to join a party under Rule 19 of the South Carolina Rules of Civil Procedure. This defense is hereby raised by the defendant as presented in this motion.

Rule 19 provides that:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over_ the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be afforded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave

any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

Defendants claims that Bank of America, N.A., and Carrington Mortgage Services, LLC, are necessary parties to this action, and that the court must join them as parties to protect the Defendants and insure a full adjudication of the controversy against all relevant parties presented in this motion and or specified in his amended counterclaim/countersuit. On a **Rule 12(b)(7)** motion, "the proper course for the trial court is to determine the necessity of adding a new party under **Rule 19. *Bancohio National Bank v. Neville, 310 S.C. 323, 328, 426 S.E.2d 773, 776 (1993).***

This case should not have been dismissed and transferred to the Master as there are still genuine issues of material facts present here and controversies that needs to be addressed to which have been presented in this case against the opposing parties to include the parties who have not been enjoined or re-enjoined it this matter.

MOTION TO STRIKE

Defendant requests that any and all motions, proposed orders, memorandums, oppositions, exhibits, answers to amended counterclaims be stricken from the record since the inception of this case if they are not sworn to under oath and penalty of perjury by the Plaintiff, an individual, a natural person with firsthand knowledge of the facts submitted before the court on behalf of the plaintiff. Since the amended countersuit/counterclaim is verified, the answer shall be verified by an individual with firsthand knowledge of the facts presented and therefore any alleged answers should be stricken from the record for want of an answer. Plaintiffs' attorney have provided nothing but hearsay, conclusions, allegation, they produced no facts supported by evidence that have been authenticated as required under **SC Rule 901** and therefore have produced no

evidentiary facts before the court. Statements of counsel, in their briefs or their arguments are not sufficient for a motion to dismiss or for summary judgment," and "an attorney for the Plaintiff cannot admit evidence into the Court, He is either an attorney or a witness". *Trinsey v. Pagliaro, D.C. Pa. 1964, 229 F. Supp. 647*. "Where there are no depositions, admissions, or affidavits the Court has no fact to rely on for a summary determination." The Defendant has filed a verified pleading which is in affidavit form, there are not depositions, admissions, or affidavits filed by the opposing party, the Plaintiff in the form of a verified answer and therefore summary judgment is appropriate in favor of the defendant (*Dawkins v. Fields, 3310 (2001)*). There is a controversy and the court is here to hear controversy.

CONCLUSION

For the reasons specified in this motion, this court should reverse/vacate/set aside their April 20, 2022 order dismissing defendant's amended counterclaim/countersuit under Rule 60 (b) 1, 2, & 4, SCRCP, based on the neglect, fraud, misrepresentation, or other misconduct, and the judgment being void for violating the rights of defendant to a trial by jury in regards to his amended counterclaim/countersuit as presented above. This court should reverse/vacate/set aside the order granting referral to the master in equity for the fact that when placing their order, this court has created undue prejudice towards the defendant and his rights, did not take into consideration all exhibits, affidavits attesting to and authenticating defendants facts, oppositions, memorandums presented by the defendant in support of defendant's claims, opposition to any dismissals of the amended counterclaims/countersuit, defendants reply to answers by plaintiff to counterclaims and other filings by defendant and because there is a manifest error of law applied to dismiss valid claims of fact for violations of law and the court plainly disregarded and did not apply all other laws violations including the state consumer protection laws as specified in this motion. This court should reverse/vacate/set aside their order for failure to enjoin relevant parties

when requested causing undue prejudice to defendant and his claims as this court relied on unsworn affidavits/non-authentic statements, hearsay and other filings from the opposing party counsel/attorney which are not authenticated, is not based off of firsthand knowledge nor are they facts before the court as presented in this motion and this court should strike each of these filings to include any answers to counterclaim/countersuit and enter summary judgment in favor of the defendant supported by his verified filings.

This court should reverse/vacate/set aside their order because there was no jury present as demanded in the amended counterclaim/countersuit. There are no sworn statements/affidavits on record authenticating anything filed from the Substitute and Original Plaintiff. The fact that the defendant's amended counterclaim/countersuit is verified in affidavit form, the defendants affidavits are the only statements of fact sworn to under personal firsthand knowledge and filed on the record as prima facie evidence before the court to which the order should be reversed/vacated/set aside, Carrington should be enjoined and original plaintiff should be re-enjoined back into this case and a stay should be placed in this matter as presented in this motion and other motions to stay filed by the defendant as there is a pending confirmation of an arbitration award that involves all 3 parties which are material to this case to which the award, the claims addressed in arbitration as it pertain to the performance contract/agreement which supersedes and predates as well as replaces any and all prior agreements between the parties covers most of the claims presented in this amended counterclaim/countersuit and the foreclosure proceeding to which this court may have or may be re-litigating the same claims which is a conflict of the arbitrators findings which are also facts before the court especially now that the Statute of limitations has passed to have the award vacated after they have received notice of its existence by delivery and filing the 2 notice requirements of the FAA statute to have an award confirmed.

This court should grant the entry of default requested by the defendant filed on 10-26-2017 for failure to file a verified answer. This court should grant leave of court for defendant to cure any defects if any are present in defendant's amended counterclaim/countersuit and after any stay of proceedings have been lifted, to compel any controversies and new claims that are now present here that pertain to new breaches of the performance contract/agreement to the chosen arbitration association that defendant has chosen and stay the proceedings until arbitration has been completed and a copy of the arbitrators findings have been filed into court. If this court finds that is does not, did not or do not want to produce proof of jurisdiction on the record, defendant requests that this case be remanded back to district court for further proceedings and the state claims stayed until the district court has completed litigation of the amended counterclaim/countersuit. A proposed order is included with this filing.

RESPECTFULLY PRESENTED,

Nelson L. Bruce 5-19-2020

THE BENEFICIAL OWNER OF THE CESTI QUIEQUITABLE TRUST
Nelson L. Bruce, Propria Persona, Sui Juris, Affiant
All Natural Rights Explicitly Reserved and Retained
U.C.C. 1-308, 1.103.6
c/o 144 Pavilion Street Summerville, South Carolina [29483]
Email: leonbruce81@yahoo.com
Ph. 843-437-7901

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above referenced MOTION has been electronically mailed to the parties located below via the UNITED STATES POST OFFICE via the UNITED STATES POSTAL SERVICE via First Class Postage Prepaid under Certified Mail.

RESPECTFULLY PRESENTED,

Addressed to:

ALBERTELI LAW

Attention: William S. Koehler (Attorneys for Plaintiffs)

201 Main Street, Suite 1450

Columbia, South Carolina 29201

Certified Mail No.: 7019 1640 0002 1913 4066

"Without Prejudice"

Nelson L. Bruce 5-19-2020

THE BENEFICIAL OWNER OF THE CESTI QUI EQUITABLE TRUST

Nelson L. Bruce, Propria Persona, Sui Juris

All Natural Rights Explicitly Reserved and Retained

U.C.C. 1-207/1-308, 1.103.6

c/o 144 Pavilion Street, Summerville South Carolina [29483]

Ph. 843-437-7901

FILED-RECORDED

5-20-2020

Cheryl Graham
Clerk of Court
Dorchester County

EXHIBITS - L

Detailed Schedule of Exhibits:

1. DEBT COLLECTION COMMUNICATION FROM ROGERS TOWNSEND ATTORNEYS AT LAW (5 pages); and
2. DEBT COLLECTION COMMUNICATION CARRINGTON MORTGAGE SERVICES (10 pages); and
3. DEBT COLLECTION COMMUNICATION ALBERTELLI LAW (3 pages).

19 pages total including this cover sheet

FILED-RECORDED
5-26-2020
Cheryl Graham
Clerk of Court
Dorchester County, MD



ROGERS TOWNSEND
ATTORNEYS AT LAW

ROGERS TOWNSEND & THOMAS, PC
DEFAULT SERVICES DEPARTMENT

Exhibits - 1.

POST OFFICE BOX 100200
COLUMBIA, SOUTH CAROLINA 29202
P 803.744.4444 F 803.343.7013
WWW.RTT-LAW.COM

October 11, 2016

Nelson L. Bruce
1605 Central Avenue, Ste. 6, #167
Summerville, SC 29483

RE: *Bank of America, N.A. v. Nelson L. Bruce, et al.*
Case No. 2016-CP-18-01678; Dorchester County
Our File No. 015262-02421

Dear Mr. Bruce:

The law firm of Rogers Townsend & Thomas, PC has received your debt dispute related to loan number: 202985786.

After consulting with our client (the creditor), who has re-reviewed its system following its receipt of your dispute, our law firm has been instructed to validate/verify the debt and hereby encloses an updated payoff statement in the event you/your client desire to payoff this loan in full.

Your mortgage was given to Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Bank, FSB, its successors and assigns, and was recorded on April 1, 2009 in Book 7005 at Page 309. This mortgage was assigned to Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP by assignment dated September 2, 2011 and recorded September 16, 2011 in Book 8012 at Page 142. This mortgage is subject to a loan modification agreement dated February 9, 2013. Enclosed are copies of the Mortgage, Assignment of Mortgage and Loan Modification Agreement.

Sincerely yours,

Default Services Department

Rogers Townsend & Thomas, PC

Enclosures

This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you are in bankruptcy or have received a bankruptcy discharge of this debt, this communication is not an attempt to collect the debt but is only notice of possible enforcement of the lien against the collateral property.



ROGERS TOWNSEND
ATTORNEYS AT LAW

ROGERS TOWNSEND & THOMAS, PC
DEFAULT SERVICES DEPARTMENT

Exhibits - L

POST OFFICE BOX 100200
COLUMBIA, SOUTH CAROLINA 29202
P 803.744.4444 F 803.343.7013
WWW.RTT-LAW.COM

October 10, 2016

Nelson Bruce
144 Pavilion Street
Summerville, SC 29483-8444

Re: BAC Home Loans Servicing, LP vs. Bruce, Nelson
Property Address: 144 Pavilion Street, Summerville, SC 29483-8444
Loan No. 202985786
Our File No. 015262-02421

FOR SETTLEMENT PURPOSES ONLY

Dear Sir or Madam:

ROGERS, TOWNSEND & THOMAS, PC IS A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

HOWEVER, IF YOU ARE IN BANKRUPTCY OR HAVE BEEN DISCHARGED IN BANKRUPTCY, THIS LETTER IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED AS AN ATTEMPT TO COLLECT A DEBT OR AS AN ACT TO COLLECT, ASSESS, OR RECOVER ALL OR ANY PORTION OF THE DEBT FROM YOU PERSONALLY.

This letter is in response to your request for a payoff. It is our understanding that you may intend to pay off this loan at a future date. The amount that will be necessary to payoff this loan in full, including legal fees and costs, may increase between the date of this letter and the date that you remit your pay off funds. In order to give you a payoff that is valid through a future date, we have included estimated costs and fees for additional steps that may occur in the foreclosure process between the date of this letter and October 31, 2016. We have also included estimated advances (if any) that may be required to be paid by the Plaintiff on your behalf, and additional interest that will accrue between the date of this letter and October 31, 2016. If you pay this loan off by no later than October 31, 2016, the estimated payoff amount is itemized as follows:

Principal Balance	\$170,312.65
Interest	\$8,799.52
MIP	\$113.98
Other Advances.....	\$1,525.00
Escrow Balance.....	\$1,537.42

Total Estimated Payoff Amount due as of October 31, 2016.....\$182,288.57

Please note that this estimated payoff quote expires on October 31, 2016.

ATTORNEY TRUST OR ATTORNEY ESCROW CHECKS WILL NOT BE ACCEPTED.

P. O. Box 100200 (29202) • 100 Executive Center Drive, Suite 210 • Columbia, South Carolina 29210
Tel: 803-744-4444 • Fax: 803-343-7017 • Web: www.rtt-law.com

The payoff figures listed above include items that have been paid by the Plaintiff or incurred by our law firm and items that are currently due or will become due through October 31, 2016. In constructing this payoff, we may have included anticipated additional fees and costs in order to provide you with an estimated payoff good through October 31, 2016. These anticipated fees and costs merely represent an estimate as to what our actual fees and costs will be if you pay off the loan by no later than October 31, 2016. Please understand that any estimated or anticipated charges contained in this letter will not be binding on this firm or on the Plaintiff, and that the account remains liable for all fees and costs incurred after today even if those items are not included as part of the estimated amounts set forth in this letter. You will be responsible for reimbursing the Plaintiff or its servicer if it pays other taxes, insurance or miscellaneous expenses permitted by law.

Please understand that the above figures are subject to final verification upon receipt by the lender or servicer. All fees and costs incurred after the issuance of this payoff letter will continue to be assessed until the loan is paid in full.

***IMPORTANT:** Along with the payoff funds, please provide us with your new address. In the event we receive legal fees or costs in excess of the amount you actually owe, those excess funds will be promptly returned to you by your lender or servicer to the property address or address provided to us by you in writing.

If you desire to pay off your loan after October 31, 2016, and the property has not yet been sold at a foreclosure sale, you must contact us at (803)744-4444 or email a request to payoffreins@rtt-law.com to obtain an updated payoff amount. Please be sure to provide us with the fax number, e-mail address and/or address where you would like these figures to be sent.

Please forward your certified check made payable to: Bank of America, N.A., and mail to: Rogers, Townsend and Thomas, Attention Reinstatement, 100 Executive Center Drive, Suite 210, Columbia, SC 29210 so that it is received no later than 4:00 PM on or before October 31, 2016. Please include your loan number, your name and our file number on your certified funds. Cash, personal checks, credit/debit cards or attorney Trust or Attorney Escrow Checks will not be accepted. The payoff funds will be returned if any portion are in the form of a personal check. We also recommend that you forward your payoff by certified mail or overnight delivery to insure timely delivery.

If you would prefer to wire the funds directly to our account, wiring instructions are attached for your convenience.

Please be advised that the foreclosure action will continue until the total payoff funds are received in compliance with the terms in this letter.

PLEASE NOTE: If there is a foreclosure sale date scheduled for your property, this letter does not extend or change that foreclosure sale date.

Sincerely,

Reinstatement/Payoff Department

This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you are in bankruptcy or have received a bankruptcy discharge of this debt, this communication is not an attempt to collect the debt but is only notice of possible enforcement of the lien against the collateral property.

Please return this attachment along with your payment.

Homeowner(s) Name: _____

Property Address: _____

Is the homeowner(s) currently living in the property? ☐ Yes ☐ No

If no, current mailing address:

144 Pavilion St
Summerville, SC 29483

Homeowner's Contact #s:*

Home: _____

Work: _____

Work: _____

Other: _____

Email: _____

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

*Please provide a minimum of 2 contacts.
015262-02421

WIRING INSTRUCTIONS ROGERS TOWNSEND & THOMAS, PC

WIRE TO: South State Bank & Trust
201 Columbiana Drive
Columbia, SC 29212
Phone #: (803) 540-3300
Fax #: (803) 407-9347
Routing # 053200983
Account # 1390002366

FOR CREDIT TO: Rogers, Townsend & Thomas, PC - IOLTA
100 Executive Center Drive
Suite 210
Columbia, SC 29212
Phone #: (803) 744-4444
Account # 1390002366

Please include the RT&T file #, your loan # and your name on the wire so we can accurately process your transaction.

P.O. Box 5001
Westfield, IN 46074

Exhibits - L

0000557 02 MB 0.420 **AUTO 5 0 9211 29483-938699 -C04-P005574

NELSON L BRUCE
1605 Central Ave
Suite 6 #187
Summerville SC 29483-9386



Property Address:
144 PAVILION STREET
SUMMERVILLE, SC 29483



Loan Number: 7000124554

05/10/2017

NOTICE OF SERVICING TRANSFER

Re: Carrington Mortgage Services Loan #: 7000124554
Bank of America N.A. Loan #: 202985786

Dear Customer(s):

The servicing of your mortgage loan is being transferred, effective 05/02/2017. This means that after this date, Carrington Mortgage Services, LLC ("CMS") will be collecting your mortgage loan payments from you. Nothing else about your mortgage loan will change.

Bank of America N.A. is now collecting your payments. Bank of America N.A. will stop accepting payments received from you after 05/01/2017.

CMS will collect your payments going forward. CMS will start accepting payments received from you on 05/02/2017.

Send all payments due on or after 05/02/2017 to CMS at this address: Carrington Mortgage Services, LLC, P.O. Box 79001, Phoenix, AZ 85062. Please include your new CMS loan number as specified at the top of this letter on your check and all future correspondence.

If you have any questions for either your present servicer, Bank of America N.A. or your new servicer, CMS, about your mortgage loan or this transfer, please contact them using the information below:

Current Servicer:

Bank of America N.A.
Customer Service Department
800-869-8607
Customer Service Correspondence
P.O. Box 31785
Tampa, FL 33631-3785

New Servicer:

Carrington Mortgage Services, LLC
Attention: Customer Service Department
877-267-1221
P.O. Box 5001
Westfield, IN 46074

The CUSTOMER SERVICE DEPARTMENT for CMS is toll free and you may call from 7am to 5pm PST Monday - Friday. You may also visit our website at <https://carringtonms.com>.

If you have been including premiums for life, disability, accidental death, or any other type of optional insurance, this coverage will be discontinued. You should contact the provider of the optional insurance or other membership product directly regarding continued availability or for alternative options.

Under Federal law, during the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by Bank of America N.A. on or before its due date may not be treated by CMS as late, and a late fee may not be imposed on you.



If your monthly payment is being electronically drawn from your checking or savings account by Bank of America N.A., this process will be discontinued in connection with the servicing transfer. Please visit our website at <https://carringtonms.com>, or contact one of our Customer Service Representatives, toll-free, at 877-267-1221, for available payment options.

Effective as of the servicing transfer date, you will be subject to the enclosed privacy policies of CMS and you may also obtain a copy of the privacy notice by visiting our website at <https://carringtonms.com>.

It is our pleasure to welcome you as one of our mortgage customers. CMS places a high level of importance on quality customer service and we are confident that we will provide the world class service to which you are accustomed.

Sincerely,

Loan Servicing Department
Carrington Mortgage Services, LLC

Note: See Debt Validation Attachment.

NOTICE
Pursuant to Fair Debt Collection Practices Act
15 U.S.C. Section 1692, et seq.

Exhibits - L

CMS Loan #: 7000124554

Current Creditor: Wilmington Savings Fund Society FSB as trustee of Stanwich Mortgage Loan Trust C

Current Servicer: Carrington Mortgage Services, LLC (CMS)

Dear Borrower:

This Notice is to remind you that you owe a debt. As of the date of this Notice, the amount of the debt you owe is \$189,539.88.

In addition, we would like to advise you that you have thirty (30) days after receipt of this Notice to dispute the validity of the above debt, or any portion thereof, and if you do not do so, we will assume the debt is valid. If you notify us in writing within this thirty (30) day period that you dispute the debt, or any portion thereof, we will obtain verification of the debt or a copy of a judgment against you and a copy of such verification or judgment will be mailed to you by us.

Upon your written request within thirty (30) days after receipt of this Notice, we will provide you with the name and address of your original creditor, if different from your current creditor.

If you have any questions concerning this loan, please call our toll free number at 877-267-1221. Our office hours are from Monday through Friday 8:00 a.m. to 8:00 p.m. Eastern Time.

YOU HAVE THE RIGHT TO MAKE A WRITTEN REQUEST TO CMS TO CEASE FURTHER COMMUNICATION WITH YOU. A WRITTEN REQUEST TO CEASE COMMUNICATION WILL NOT PROHIBIT CMS FROM TAKING ANY OTHER ACTION AUTHORIZED BY LAW TO COLLECT THE DEBT.

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IMPORTANT DISCLOSURES

Exhibits - L

-VERBAL INQUIRIES & COMPLAINTS-

For verbal inquiries and complaints about your mortgage loan, please contact the CUSTOMER SERVICE DEPARTMENT for Carrington Mortgage Services, LLC, by calling 1-800-561-4567. The CUSTOMER SERVICE DEPARTMENT for Carrington Mortgage Services, LLC is toll free and you may call from 8:00 a.m. to 8:00 p.m. Eastern Time, Monday through Friday. You may also visit our website at <https://carringtonms.com/>.

-IMPORTANT BANKRUPTCY NOTICE-

If you have been discharged from personal liability on the mortgage because of bankruptcy proceedings and have not reaffirmed the mortgage, or if you are the subject of a pending bankruptcy proceeding, this letter is not an attempt to collect a debt from you but merely provides informational notice regarding the status of the loan. If you are represented by an attorney with respect to your mortgage, please forward this document to your attorney.

-CREDIT REPORTING-

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report. As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

-MINI MIRANDA-

This communication is from a debt collector and it is for the purpose of collecting a debt and any information obtained will be used for that purpose. This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the bankruptcy laws of the United States.

-HUD COUNSELOR INFORMATION-

If you would like counseling or assistance, you may obtain a list of HUD-approved homeownership counselors or counseling organizations in your area by calling the HUD nationwide toll-free telephone number at (800) 568-4287 or toll-free TDD (800) 877-8339, or by going to <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>. You can also contact the CFPB at (855) 411-2372, or by going to www.consumerfinance.gov/find-a-housing-counselor.

-EQUAL CREDIT OPPORTUNITY ACT NOTICE-

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers CMS' compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

-SCRA DISCLOSURE-

MILITARY PERSONNEL/SERVICEMEMBERS: If you or your spouse is a member of the military, please contact us immediately. The federal Servicemembers Civil Relief Act and comparable state laws afford significant protections and benefits to eligible military service personnel, including protections from foreclosure as well as interest rate relief. For additional information and to determine eligibility please contact our Military Assistance Team toll free at (888) 267-5474.

-NOTICES OF ERROR AND INFORMATION REQUESTS, QUALIFIED WRITTEN REQUESTS (QWR)-

Written complaints and inquiries classified as Notices of Error and Information Requests or QWRs must be submitted to Carrington Mortgage Services, LLC by fax to 800-488-5134, or in writing to Carrington Mortgage Services, LLC, and Attention: Customer Service, P.O. Box 5001, Westfield, IN 46074. Please include your loan number on all pages of the correspondence. You have the right to request documents we relied upon in reaching our determination. You may request such documents or receive further assistance by contacting the CUSTOMER SERVICE DEPARTMENT for Carrington Mortgage Services, LLC toll free at (800) 561-4567, Monday through Friday, 8:00 a.m. to 8:00 p.m. Eastern Time. You may also visit our website at <https://carringtonms.com/>.

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Carrington Mortgage Services Loan Number: 7000124554**Important Information:**

Welcome to Carrington Mortgage Services, LLC. We look forward to servicing your mortgage loan with our expert Loan Servicing Specialists.

Steps to Make an Automated Phone Payment – Fee: \$5.00, unless prohibited by applicable law.

1. Dial Toll Free Number: (800) 561-4567.
2. Enter "Option 2" (for assistance with your account).
3. When prompted, enter Loan Number, then enter the last four digits of your Social Security Number.
4. To make a payment by phone press "Option 1".
5. To make an Automated Payment by Phone and incur a \$5.00 fee, press "1".
6. When prompted, enter Loan Number, then enter the last four numbers of the primary borrower's Social Security Number.
7. When prompted, enter Routing Number and Checking Account Number.
8. Confirm payments by following the automated prompt.

Payments submitted after 11:00 PM Eastern Time/8:00 PM Pacific Time or on a Sunday will be processed the next business day.

All payments submitted on a Sunday (even if submitted on the last day of the month) will post the following business day.

Steps to Make a Web Payment - Fee: \$0.00

1. Enter the following web address in your internet browser: <https://carringtonms.com>
2. If you have not created an online account please select "Sign Up" under New User.
 - a. You will be required to agree to the Terms and Conditions of the website.
 - b. Please have your Loan Number and Social Security Number available to establish your online account.
 - c. You will be required to create a user name and password.
3. Once online, click "Make a Payment" to make your monthly mortgage payment via our secured website.
 - a. Payment Options: Checking or Savings Account (No debit/credit cards or money market accounts).
4. You will be prompted to agree to the Terms and Conditions of the Western Union Payment System for Carrington Mortgage Services, LLC.
5. You will need to provide the following information:
 - a. Email Address
 - b. Select Checking or Savings Account Radial Button
 - c. Routing Number
 - d. Banking Account Number
 - e. (Optional) Select whether to conveniently store your account information for your next scheduled payment.
6. Click "Continue".
 - a. Validate Routing and Banking Account Numbers.
 - b. Submit payment.

Payments submitted after 11:00 PM, Eastern Time/ 8:00 PM Pacific Time or on a Sunday will be processed the next business day.

All payments submitted on a Sunday (even if submitted on the last day of the month) will post the following business day.



I DO NOT
ACCEPT OR CONSENT
TO YOUR CONTRACT

Nelson Bruce
5-22-2017

FACTS	WHAT DOES CARRINGTON MORTGAGE SERVICES, LLC DO WITH YOUR PERSONAL INFORMATION		
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.		
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: • Social Security number and income • Payment history and mortgage rates and payments • Credit history and credit scores		
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Carrington Mortgage Services, LLC chooses to share; and whether you can limit this sharing.		
	Reasons we can share your personal information	Does Carrington Mortgage Services, LLC share?	Can you limit this sharing?
	For our everyday business purposes—such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
	For our marketing purposes—to offer our products and services to you	Yes	No
	For joint marketing with other financial companies	Yes	No
	For our affiliates' everyday business purposes—information about your transactions and experiences	Yes	No
	For our affiliates' everyday business purposes—information about your creditworthiness	Yes	Yes
	For our affiliates to market to you	Yes	Yes
	For nonaffiliates to market to you	Yes	Yes
To limit our sharing	• Call toll free (800) 561-4567 or • Mail the form at the bottom of the page to the following address: Carrington Mortgage Services, LLC P.O. Box 5001 Westfield, IN 46074 Please note: If you are a new customer, we can begin sharing your information 30 days from the date we sent this notice. When you are no longer our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.		
Questions?	Call toll free, (800) 561-4567 or go to www.carringtonms.com		

Mail-In Form	
Leave Blank OR If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. ☐ Apply my choices only to me	Mark any/all you want to limit: ☐ Do not share information about my creditworthiness with your affiliates for their everyday business purposes ☐ Do not allow your affiliates to use my personal information to market to me. ☐ Do not share my personal information with nonaffiliates to market their products and services to me Name _____ Address Line 1 _____ Address Line 2 _____ City State Zip _____ Account Number _____

Who is providing this notice?	Carrington Mortgage Services, LLC
How does Carrington Mortgage Services, LLC protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. Our Policies and Procedures and Employee Code of Conduct limit access to customer information for business purposes only and include strict standards for keeping your information confidential and secure.
How does Carrington Mortgage Services, LLC collect my personal information?	We collect your personal information, for example, when you • Apply for a loan or give us your income information • Provide employment information or provide account information • Provide your mortgage information We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit only • Sharing for affiliates' everyday business purposes – information about your creditworthiness • Affiliates from using your information to market to you • Sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. See below for more on your rights under state law.
What happens when I limit sharing for an account I hold jointly with someone else?	Your choices will apply to everyone on your account.
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. • <i>Our affiliates include financial companies with the Carrington name such as Carrington Mortgage Holdings, LLC, Carrington Real Estate Services, LLC, Carrington Escrow, Inc., Carrington Insurance Agency, LLC, Carrington Title Services, LLC (d/b/a Carrington Settlement Services in Pennsylvania), Carrington Document Services, LLC, Carrington Foreclosure Services, LLC, and Carrington Property Services, Inc. (d/b/a Azure Home in California).</i>
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. • <i>Nonaffiliates we share with can include mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations.</i>
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. • <i>Our joint marketing partners include other mortgage companies.</i>



1201 Main Street, Suite 1450, Columbia, SC 29201
Phone: 803.828.0880 | Fax 803.828.0881 | alaw.net

Exhibits - L

April 06, 2017

Nelson L. Bruce
144 Pavilion Street
Summerville, SC 29483

RE: Debt Verification
Property Address: 144 Pavilion Street, Summerville, SC 29483
Loan Number: [REDACTED]
ALAW File Number: 17-004206

Dear Mr. Bruce:

Our office is in receipt of your correspondence dated March 25, 2017 regarding the validity of the debt. Please find enclosed a copy of the March 3, 2017 correspondence advising of the amount owed. You will also find a complete loan history, copies of original Note, Mortgage and Assignment of Mortgage indicating that Bank of America, N.A. is the owner of the loan.

Sincerely,


Aubrey E. Fox
Paralegal

Enclosures

THIS LAW FIRM MAY BE DEEMED A "DEBT COLLECTOR" UNDER THE FAIR DEBT COLLECTION PRACTICES ACT. ANY AND ALL INFORMATION OBTAINED MAY BE USED FOR THE PURPOSE OF COLLECTING A DEBT
IF YOU ARE A DEBTOR IN BANKRUPTCY OR HAVE BEEN DISCHARGED IN BANKRUPTCY THIS IS NOT AN ATTEMPT TO COLLECT A DEBT FROM YOU PERSONALLY BUT AN ATTEMPT TO ENFORCE PLAINTIFF'S LIEN.

March 3, 2017

Principal Balance:	\$170,312.65
Interest:	\$11,549.37
Corporate Advances:	\$6,395.82
Outstanding Attorney's Fees & Costs:	\$0.00
Total Claim:	\$188,257.84

Nelson L. Bruce
144 Pavilion Street
Summerville, SC 29483

RE: Property: 144 Pavilion Street, Summerville, SC 29483
Loan Number: [REDACTED]
Albertelli File Number: 17-004206

Dear Sir/Madam:

Albertelli Law represents Bank of America the creditor and servicer of a loan related to the property at 144 Pavilion Street, Summerville, SC 29483 and this communication is governed by the Fair Debt Collection Practices Act, or FDCPA, 15 USCS §§ 1692 et seq. At this time, no attorney with this firm has personally reviewed the particular circumstances of your account. As of today's date, our records indicate that based upon the terms of the Promissory Note and Mortgage associated with this loan, you owe \$188,257.84. An itemization of the unpaid balance, unliquidated damages and other contractual costs are provided herein. Also, the terms of the Promissory Note and Mortgage also entitle the creditor to recover attorney's fees and costs which is \$0.00. The FDCPA requires us to provide you with the following disclosure:

UNLESS YOU NOTIFY THIS OFFICE WITHIN 30 DAYS AFTER RECEIVING THIS NOTICE THAT YOU DISPUTE THE VALIDITY OF THIS DEBT OR ANY PORTION THEREOF, THIS OFFICE WILL ASSUME THIS DEBT IS VALID. IF YOU NOTIFY THIS OFFICE IN WRITING WITHIN 30 DAYS AFTER RECEIVING THIS NOTICE THAT YOU DISPUTE THE VALIDITY OF THIS DEBT, OR ANY PORTION THEREOF, THIS OFFICE WILL OBTAIN VERIFICATION OF THE DEBT OR OBTAIN A COPY OF A JUDGMENT AND MAIL YOU A COPY OF SUCH JUDGMENT OR VERIFICATION. IF YOU REQUEST THIS OFFICE IN WRITING WITHIN 30 DAYS AFTER RECEIVING THIS NOTICE, THIS OFFICE WILL PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR.

All correspondence with our firm should be directed to the following address:

Albertelli Law, P.O. Box 23028, Tampa, FL 33623

IF YOU ARE A DEBTOR IN BANKRUPTCY OR HAVE BEEN DISCHARGED IN BANKRUPTCY:

Please be advised that if you are a debtor in bankruptcy or have been discharged in bankruptcy, this statement does not represent and is not intended to be a demand for payment. In such cases, this letter is provided for you for information purposes only and is not an attempt to collect a debt. You should consult legal counsel regarding your obligations, if any, to pay the mortgage loan.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

If you previously received a discharge in a bankruptcy case involving this loan and did not sign a reaffirmation agreement, then this letter is not an attempt to collect a debt from you personally. This law firm is seeking solely to foreclose the creditor's lien on real estate and this law firm will not be seeking a personal money judgment against you.

Sincerely,

Albertelli Law

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

94169

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Honorable Diane S. Goodstein, Circuit Court Judge

Case No. 2016CP1801678

Appellate Case No. 2020-001130

Wilmington Savings Fund Society FSB, as Trustee of Stanwich Mortgage Loan Trust C
.....Respondent

v.

Nelson L. Bruce, Capital Return Investments, LLC, Charleston Area CDC, SC Housing Corp.,
South Carolina Housing Trust Fund, and Reminisce Homeowners Association, Inc., Defendants,

Of Whom Nelson L. Bruce is the.....Appellant

MOTION TO DISMISS APPEAL

Albertelli Law

William S. Koehler
1201 Main St, Suite 1450
Columbia, SC 29201
(803) 828-0880
Attorneys for Respondent

May 6, 2021

STATEMENT OF ISSUE

Respondent Wilmington Savings Fund Society FSB, as Trustee of Stanwich Mortgage Loan Trust C moves to dismiss this appeal on the grounds that Appellant has not preserved the issues for appeal.

PROCEDURAL HISTORY OF APPEAL

This is a mortgage foreclosure. Appellant filed an Answer and Counterclaims, which he later amended. Respondent filed a Reply. Appellant filed various motions, of which eight were pending at the time of hearing. Respondent filed a Motion to Dismiss Appellant's Counterclaims and to Refer the case to the Master in Equity ("Motion to Dismiss").

A hearing was held on the Motion to Dismiss, and the pending motions filed by Appellant. The hearing was attended by counsel for Respondent and Appellant. Respondent had paid the motion filing fee for only one of his motions, but he asked that particular motion be stayed until a later time. Judge Goodstein, presiding, granted Respondent's request.

The Court declined to hear Appellant's motions where he had not paid the filing fees. The Court granted Appellant's Motion to Dismiss, and this appeal followed.

MEMORANDUM AND MOTION TO DISMISS

Appellant lists twelve issues on appeal in his initial brief. Eight of the issues raised by Appellant involve the dismissal of his counterclaims. Appellant also seeks to appeal dismissal of his motions for which he failed to file the filing fee; appeal the circuit court's failure to enjoin parties; appeal the circuit court's failure to vacate an order substituting Plaintiff; appeal the circuit court's failure to physically file proof of the circuit court's jurisdiction.

I. With the exception of his FDCPA claim, Appellant refused to address any of his counterclaims at the hearing.

At the hearing before Judge Goodstein, counsel for Respondent argued the Motion to Dismiss. After the conclusion of that presentation, the Court asked Appellant for his response. Appellant declined to argue his position and has waived the right to try to re-litigate it before this Court because the issue is not preserved. The transcript of the motion hearing, attached hereto as an exhibit, shows:

MR. BRUCE: And for me to speak as far as what he's talking about ---

THE COURT: Yes.

MR. BRUCE: --- the motion to dismiss.

THE COURT: Yes.

MR. BRUCE: It would be a breach of that contract for me to continue and start making objections towards the issue that he's claiming.

(Tr., p. 11, ll. 3-10)

When given the opportunity to present his case, Appellant declined. Later he did make some arguments about the FDCPA, which are addressed below. Appellant has not preserved any issues related to his counterclaims.

“ ‘Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.’ *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct.App.2006). At a minimum, issue preservation requires that an issue be raised to and ruled

upon by the trial judge. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). It is 'axiomatic that an issue cannot be raised for the first time on appeal.' *Id.* Imposing such a requirement on the appellant 'is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.' *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)." *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011)

II. FDCPA claims

Appellant argued a different theory for his Fair Debt Collections Practices Act ("FDCPA") claims at hearing than he seeks to argue in his brief to this Court and has not preserved a claim under FDCPA for review.

At the hearing, Appellant argued that he did not receive a verification in the form he wanted. Appellant did not address whether Respondent is a debt collector under the FDCPA. In the argument section of his brief Appellant now argues Respondent is a debt collector under the FDCPA. However, Appellant did not raise or argue this point at the hearing.

Appellant's entire position at hearing was that he should have a verification in the form he requires. He cannot now raise other issues and theories for the first time to in an appeal. *Id.*

III. Appellant did not argue the circuit court's failure to enjoin parties, the circuit court's failure to vacate an order substituting Plaintiff, the circuit court's failure to vacate an order substituting Plaintiff, the circuit court's failure to vacate an order substituting Plaintiff or the circuit court's failure to physically file proof of the circuit court's jurisdiction.

Appellant identifies these issues for appellate review in his brief. He did not raise these issues to Judge Goodstein, and he has not preserved them for this Court's review. *Id.*

IV. Dismissal of motions for failure to pay filing fees

At the hearing Appellant argued that he should not have to pay filing fees until the county provided him proof of where the fees are being allocated. (Tr., p. 4, ll., 14-18). In his brief Appellant abandons this argument and argues instead he should be allowed to proceed without paying filing fees because he has filed sufficient documents to evidence his indigent status. Failure to raise an issue constitutes waiver and is not properly before the Court on appeal. *Carolina Attractions, Inc. v. Courtney*, 287 S.C. 140, 143, 337 S.E.2d 244, 245 (Ct. App. 1985)

Appellant has not preserved his claim to proceed as an indigent. He did not claim that position at hearing instead arguing the county had not proven to him where the funds will go. Judge Goodstein asked about the filing of an affidavit of indigency. Appellant informed the Court he had not filed one. Judge Goodstein then invited Appellant to argue why he had not paid the fee, and Appellant declined to argue indigency. (Tr., p. 3, l. 24 – p. 4, l. 18) Thus, having not raised the issue to the Circuit Court, Appellant cannot raise it now.

Additionally, Appellant cites no authority in his brief for his position that he should not have to pay the filing fee. “ ‘An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory.’ *Potter v. Spartanburg Sch. Dist.* 7, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct.App.2011); *see also S.C. Dep't of Soc. Servs. v. Mother*, 375 S.C. 276, 283, 651 S.E.2d 622, 626 (Ct.App.2007) (finding an issue abandoned because the appellant made ‘a conclusory argument without citation of any authority to support her claim’); *Hunt v. S.C. Forestry Comm'n*, 358 S.C. 564, 573, 595 S.E.2d 846, 851 (Ct.App.2004) (‘Issues raised in

a brief but not supported by authority are deemed abandoned and will not be considered on appeal.')." *Bluffton Towne Ctr., LLC v. Gilleland-Prince*, 412 S.C. 554, 573, 772 S.E.2d 882, 892 (Ct. App. 2015)

Conclusion

Appellant has not preserved any of the issues he now raises in his brief. He cannot raise issues for the first time on appeal, and his brief should be dismissed.

Respectfully submitted,

Albertelli Law

/s/ William S. Koehler
William S. Koehler
1201 Main St, Suite 1450
Columbia, SC 29201
(803) 828-0880
Attorneys for Respondent

May 6, 2021

State of South Carolina)
County. of Dorchester)

In The Court of Common Pleas
First Judicial Circuit
2016-CP-18-1678

Wilmington Savings Fund
Society FSB as Trustee of
Stanwich M, et al.,

Plaintiffs,

vs.

Nelson L. Bruce, et al.,

Defendants.

Transcript of Record

March 12, 2020
St. George, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein, Judge

A P P E A R A N C E S:

William S. Koehler, Esquire
Attorney for the Plaintiffs

Nelson L. Bruce
Self-represented Litigant

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

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I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Certificate Page.	14

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
No exhibits introduced.		

3
1 THE COURT: All right, what's next?

2 CLERK: Next we have 2016-CP-18-1678. We have eight
3 motions on the docket. The defendant, Nelson Bruce, has a
4 amended motion for pretrial discovery; a motion to dismiss;
5 a motion to vacate the March 23, 2018, order; a motion to
6 dismiss the September 25, 2017, order; motion to vacate the
7 September 15, 2017, order; motion for temporary restraining
8 order; motion to stay proceedings. And then we have the
9 plaintiff's motion to dismiss and for order of reference.

10 THE COURT: All right. Thank you.

11 Thank you both. All right and, yes, sir, and your
12 name.

13 MR. KOEHLER: Good morning, Your Honor. William
14 Koehler here on behalf of plaintiff.

15 THE COURT: All right, and you are Mr. Bruce?

16 MR. BRUCE: Yes, ma'am.

17 THE COURT: Very well. All right.

18 (A PAUSE.)

19 THE COURT: All right. Mr. Bruce, there is a note
20 from the clerk's office indicating that for some or all of
21 the motions, that you did not pay a filing fee. Is that --
22 tell me about that.

23 MR. BRUCE: Yes. I contested the filing fee.

24 THE COURT: Okay. Did you happen to file an affidavit
25 of indigency?

1 MR. BRUCE: I did not.
2 THE COURT: Okay, and tell me the reason that you did
3 not pay the filing fee.
4 MR. BRUCE: Well, as far as the filing fee.
5 THE COURT: Yes.
6 MR. BRUCE: The county basically receives -- they do
7 like a -- what do you call it? The county does a estimate,
8 I guess. Not like a estimate but they do -- and I can't
9 think of the term right now, but...
10 THE COURT: Okay.
11 MR. BRUCE: They file a -- it's not a summary but it's
12 like financials every year, and for people who are paying
13 taxes, that -- those financials cover those fees for
14 filing. And I requested that this court provide me proof
15 of what these filing fees are going to, what budget, and I
16 have not received that. So, I'm contesting the filing
17 fees, to see what these are actually going from, if we as
18 taxpayers are paying taxes in regards to these fees.
19 THE COURT: Okay.. All right, and very well. Did you
20 pay filing fees with regards to any of your motions?
21 MR. BRUCE: I've paid filing fees before, but that's
22 before I was informed of what -- the summary as far as, you
23 know.
24 THE COURT: Okay.
25 MR. BRUCE: What I stated before.

5
1 THE COURT: Sure. With regards to the motions that
2 you have filed to be heard today, did you pay your filing
3 fee on any of these motions?

4 MR. BRUCE: I don't believe so.

5 THE COURT: Very well. Okay. All right. Very well,
6 and it's your position, as I understand it, that because
7 the -- you believe and your position is, is that, that the
8 cost to run the court system or any other expenses to which
9 the filing fees may go towards, that those expenses ought
10 be paid by ---

11 MR. BRUCE: Estimated.

12 THE COURT: --- tax dollars.

13 MR. BRUCE: Estimated finances.

14 THE COURT: That there ought not be a requirement for
15 a filing fee and, therefore, that is the basis upon which
16 you did not pay your filing fees. Is that correct?

17 MR. BRUCE: Yes. That's correct.

18 THE COURT: Very well. All right. Now, in order ---
19 Yes?

20 CLERK: Judge, he did pay for number one on the
21 roster.

22 THE COURT: Okay. So, the amended motion pretrial
23 discovery?

24 CLERK: Yes, ma'am.

25 THE COURT: Amended motion pretrial discovery, that

6
1 one the filing fee was paid. Gotcha. Okay, but not with
2 regards to the others?

3 CLERK: No, ma'am.

4 THE COURT: Okay. Very well.

5 Now, Mr. Bruce, so that you -- I have and can preserve
6 your issue, I'm going to determine that based upon state
7 law, you are required to pay your filing fee prior to a
8 motion being heard unless you have complied with the
9 statute that allows for those who are indigent and have
10 filed their affidavit and been deemed to be indigent.
11 Those individuals can go forward without the paying filing
12 fees. You've told me that you have not filed such an
13 affidavit of indigency and that -- and you have put on the
14 record your basis for your belief that you ought be allowed
15 to go forward and argue your motions without the filing
16 fees having been paid.

17 Under these circumstances, Mr. Bruce, with the
18 exception number one where you did pay your filing fee, I
19 am not going to hear those motions because you have failed
20 to comply with the payment of the filing fee which is
21 required. However, that issue is now preserved and if you
22 wish to appeal that issue, you certainly can do that, okay?

23 MR. BRUCE: Okay.

24 THE COURT: That would be with regards to the other
25 motions, not number one because, as I understand it, the

1 motion which is described on the docket as amended motion
2 pretrial discovery, with regards to that motion, that one
3 would be heard because the filing fee was paid. That
4 motion I'm showing was filed on July the 23rd of 2018.

5 The motion which we have also today, the motion to
6 dismiss an order of reference, that is a motion that has
7 been filed by the plaintiff. Correct, Mr. Koehler?

8 MR. KOEHLER: Correct, Your Honor.

9 THE COURT: Did you pay your filing fee?

10 MR. KOEHLER: Yes, Your Honor.

11 THE COURT: All right. No indication from the clerk's
12 office that that filing fee was not paid.

13 Now, the motion to dismiss that has been filed by the
14 plaintiff, it is a motion to dismiss what pleading?

15 MR. KOEHLER: The defendant's counterclaims. It's a
16 motion to dismiss the defendant's counterclaims and to then
17 refer the case.

18 THE COURT: Okay. Gotcha. All right.

19 All right, I think...

20 (A PAUSE.)

21 THE COURT: All right, let me hear from you on your
22 amended motion for pretrial discovery, Mr. Nelson.

23 MR. BRUCE: Well, I want to request a stay on that as
24 well.

25 THE COURT: Okay.

1 MR. BRUCE: Because -- yes.

2 THE COURT: Oh. You don't want to hear that right
3 now?

4 MR. BRUCE: Not right now, no.

5 THE COURT: Okay.

6 MR. BRUCE: And the reason why is because I have
7 another pending case in district court.

8 THE COURT: Okay.

9 MR. BRUCE: Which was what I was supposed to -- I
10 filed the motion to stay for but, like you said, there
11 would be filing fees.

12 THE COURT: Gotcha.

13 MR. BRUCE: So, it's probably going to be appealed.

14 THE COURT: Gotcha. Okay. No problem.

15 MR. BRUCE: But it's, it's based off another contract,
16 so, than this one.

17 THE COURT: No problem. So, we'll stay that one.

18 All right, Mr. Koehler, your motion.

19 MR. KOEHLER: Thank you, Your Honor.

20 THE COURT: Yes.

21 MR. KOEHLER: Plaintiff -- this is a foreclosure
22 action.

23 THE COURT: Yes.

24 MR. KOEHLER: Plaintiff had initiated it with the
25 filing of the summons and complaint. The defendant filed

9
1 an answer and counterclaims which he amended. We filed a
2 reply and in our reply, we pleaded our 12(b)(6) motion to
3 dismiss.

4 THE COURT: Okay.

5 MR. KOEHLER: And that we are renewing here. The
6 defendant's pleading lists several things in captions but
7 does not develop any of those. We ask the court dismiss
8 anything if it could be even construed as a counterclaim
9 simply by listing within a caption. The defendant did go
10 into some depth on three counterclaims of which I was able
11 to discern, and we would ask that those be dismissed.

12 First was liable. The defendant had a counterclaim
13 for liable, but he did not in his pleadings identify any
14 facts that would, could be construed as a libelous
15 statement. In fact, he did not specify any facts or any
16 statements at all. He did reference some of the pleadings,
17 which, as we put in our memo, are privileged.

18 Second, the defendant pleaded a counterclaim for
19 slander, I believe. Again, no statement was identified
20 slanderous or otherwise, and certainly no spoken statements
21 at all.

22 Third, the defendant made some references to the Fair
23 Debt Collection Practices Act, the FDCPA. I assumed he was
24 making a claim under that.

25 As an initial matter, this debt was validated by our

1 law firm. So, he has had that, and plaintiff in this case
2 is not collecting a debt. This is a deficiency waiver.
3 They are simply enforcing a security interest.
4 Additionally, they're not a debt collector under FDCPA as
5 they are not collecting the debt of another. It is their
6 debt. And since there -- those causes of action fail to
7 state facts sufficient to form causes of action, we ask the
8 court to dismiss it, those.

9 If the court does that, the only remaining action will
10 be our foreclosure action, which we believe would be
11 appropriate to be referred to the master in equity, and ask
12 the court to do that as well.

13 THE COURT: All right. Gotcha.

14 All right and, Mr. Nelson, I'll hear from you.

15 MR. BRUCE: Well, in regards to what the plaintiff is
16 stating.

17 THE COURT: Yes.

18 MR. BRUCE: Around January of 2019, I sent out a
19 presentment to them, which was a offer which basically was
20 -- pretty much covers most of what's going on here. They
21 failed to respond to that, thereby agreeing to that
22 contract, and I filed a copy of that on the record showing
23 proof that. They had a ten to twenty-day rejection period
24 to reject that offer.

25 THE COURT: Very well. Okay. All right.

1 MR. BRUCE: They failed to respond to that offer.

2 THE COURT: Okay.

3 MR. BRUCE: And for me to speak as far as what he's
4 talking about ---

5 THE COURT: Yes.

6 MR. BRUCE: --- the motion to dismiss.

7 THE COURT: Yes.

8 MR. BRUCE: It would be a breach of that contract for
9 me to continue and start making objections towards the
10 issue that he's claiming.

11 THE COURT: Okay.

12 MR. BRUCE: And that's why it's in district court
13 right now.

14 THE COURT: Yes.

15 MR. BRUCE: In process of being confirmed, and that
16 would determine basically the full validity of the claims
17 in that contract.

18 THE COURT: Okay.

19 MR. BRUCE: In regards to this matter as well.

20 THE COURT: Okay. Very well. Anything else you want
21 to tell me about the -- in response to the motion to
22 dismiss?

23 MR. BRUCE: In regards to the motion to dismiss, and
24 so that I don't waiver any further arbitration rights, I
25 will present a few things. There are some affidavits filed

1 on the record in regards to the debt validation that they
2 never responded to, including the attorneys. They failed
3 to respond. The FDCPA requires that they respond in thirty
4 days. They failed to respond, failed to produce any
5 validation of the debt.

6 The attorney claims that the attorney validated the
7 debt. They have no firsthand knowledge in regards to that,
8 and so they cannot validate that debt. Only a person with
9 firsthand knowledge can validate that debt, and again they
10 have produced no affidavits in rebuttal to my affidavit.

11 THE COURT: Got it. Very well.

12 All right, gentlemen, thank you so much.

13 I'm going to ask for a proposed order.

14 MR. KOEHLER: Yes, ma'am.

15 THE COURT: Obviously I want you to send it, please,
16 to Mr. Nelson when you send it to me, if not before, and I
17 will let you know of my decision, okay?

18 MR. KOEHLER: Thank you, Your Honor.

19 THE COURT: Thank you. Thank you very much.

20 MR. KOEHLER: Any particular time frame?

21 THE COURT: I would appreciate it in thirty days;
22 however, if you need a longer period, just simply let me
23 know.

24 MR. KOEHLER: That should be no problem, Your Honor.

25 THE COURT: Very well.

1 MR. KOEHLER: Thank you.

2 THE COURT: I appreciate it.

3 And with regards to Mr. Nelson, since he is appearing
4 pro se, I would draft from his perspective. I would take
5 the drafting as an obligation myself in the event that I
6 rule in his -- as he would wish and based on his argument,
7 I will draft that order.

8 Very well. Thank you.

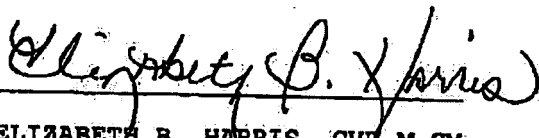
9 MR. BRUCE: Thank you.

10 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
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 HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR DORCHESTER COUNTY, SOUTH CAROLINA,
ON THE 12TH DAY OF MARCH, 2020.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.


ELIZABETH B. HARRIS, CVP-M-CM

COLUMBIA, SOUTH CAROLINA

DECEMBER 22ND, 2020

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Honorable Diane S. Goodstein, Circuit Court Judge

Case No. 2016CP1801678

Appellate Case No. 2020-001130

Wilmington Savings Fund Society FSB, as Trustee of Stanwich Mortgage Loan Trust C
.....Respondent

v.

Nelson L. Bruce, Capital Return Investments, LLC, Charleston Area CDC, SC Housing Corp.,
South Carolina Housing Trust Fund, and Reminisce Homeowners Association, Inc., Defendants,

Of Whom Nelson L. Bruce is the.....Appellant

CERTIFICATE OF MAILING

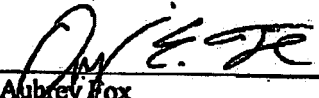
The undersigned hereby certifies that she is an employee of Albertelli Law and is a person of such age and discretion to be competent to serve papers.

That on the 6th day of May 2021 she served copies of Respondent's Motion to Dismiss Appeal by placing said copies in a postage paid envelope addressed to each of the following persons at the address stated below, which is the last known address, and by depositing said envelope and contents in the U.S. Mail.

Pleadings:
Parties Served:

Motion to Dismiss Appeal

Nelson L. Bruce
144 Pavilion Street
Summerville, SC 29483



Aubrey Fox
Paralegal
Albertelli Law

Columbia, South Carolina



1201 Main Street, Suite 1450, Columbia, SC 29201
Phone: 803.828.0880 | Fax 803.828.0881 | alaw.net

May 16, 2021

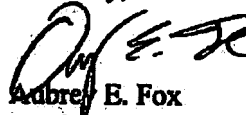
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Wilmington Saving Fund, FSB v. Bruce
Appellate Case No. 2020-001130

To Whom It May Concern:

Please find enclosed an original and copies of the Motion to Dismiss Appeal regarding the above-referenced matter. A check in the amount of \$50.00 is also enclosed. Please do not hesitate to contact our office should you have any questions.

Sincerely,



Aubrey E. Fox
Paralegal

Enclosures

THIS LAW FIRM MAY BE DEEMED A "DEBT COLLECTOR" UNDER THE FAIR DEBT COLLECTION PRACTICES ACT. ANY AND ALL INFORMATION OBTAINED MAY BE USED FOR THE PURPOSE OF COLLECTING A DEBT

IF YOU ARE A DEBTOR IN BANKRUPTCY OR HAVE BEEN DISCHARGED IN BANKRUPTCY THIS IS NOT AN ATTEMPT TO COLLECT A DEBT FROM YOU PERSONALLY BUT AN ATTEMPT TO ENFORCE PLAINTIFF'S LIEN.

Alberici Law
6291 Main Street, Suite 1450
Columbia, SC 29201



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COLUMBIA, SC 29201

The South Carolina Court of
Appeals
P.O. Box 11629
Columbia, SC 29211

Record/FILE ON DEMAND

Acceptance of Offer with full immunity AND WITHOUT RECOURSE: NBLB-20200518NLBWILM0801-COAPP-0802°

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2020-001130
Common Pleas Case No.: 16-CP-18-1678

RECEIVED

MAY 19 2021

SC Court of Appeals

Wilmington Savings Fund
Society FSB as Trustee of
Starwich Mortgage Loan Trust C.....Respondent,

v.

Nelson L. Bruce, et al.....Appellant.

OPPOSITION TO APPELLEE'S MOTION TO DISMISS APPEAL

Nelson L. Bruce, Propria Persona, Sui Juris
c/o 144 Pavilion Street
Summerville, South Carolina 29483
(843) 437-7901
Leonbruce81@yahoo.com
Appellant

May 18, 2021

APPELLANTS RESPONSE TO RESPONDENT STATEMENT OF ISSUE

Appellant, Nelson L. Bruce, hereby responds and objects to respondent Wilmington Savings Fund Society FSB, as Trustee of Stanwich Mortgage Loan Trust C request to dismiss this appeal which appellant received on May 10, 2021 on the grounds that Appellant has not preserved the issues for appeal for the reasons presented throughout this opposition and response.

**APPELLANT'S REPLY AND ADDITION TO PROCEDURAL HISTORY OF
APPEAL**

On or about May 20, 2020, Appellant filed a MOTION FOR RECONSIDERATION, RELIEF FROM APRIL 22, 2020 ORDER AND DIMISSAL OF AMENDED COUNTERCLAIM/COUNTERSUIT AND REFERRAL TO MASTER IN EQUITY, TO VACATE/SET ASIDE THE APRIL 22, 2020 JUDGMENT/ORDER AND STAY PROCEEDINGS, TO STRIKE FILINGS BY PLAINTIFF'S ATTORNEY, TO ENJOIN PARTIES, FOR CONTINUANCE OF HIS MOTION FOR ENTRY OF DEFAULT MOTION FOR SUMMARY JUDGMENT AND EXPEDITED REVIEW OF MOTION on the record after appellant received a copy of the April 22, 2020 signed order dismissing the case which appellant received on May 11, 2020. The court never mailed out the 4-22-2020 judgment/order to the appellant until 5-1-2020 as evidenced and documented by the clerk (see...common pleas 5-1-2020 court record for this case) and the appellant did not receive delivery of the 4-22-2020 judgment/order until 5-11-2020 due to the effects of Covid-19 with U.S.P.S. mailing delays. On 7-8-2020 the court made a ruling denying appellants 5-20-2020 Motion and referred the case to the MIE and this appeal followed for both the 4-22-2020 judgment/order and the 7-8-2020 order.

APPELLANTS REPLY TO MEMORANDUM AND POTION TO DISMISS

- I. APPELLANT REPLY TO SECTION I OF RESPONDENTS MOTION TO DISMISS "WITH THE EXCEPTION OF HIS FDCPA CLAIMS,

**APPELLANT REFUSED TO ADDRESS ANY OF HIS COUNTERCLAIMS
AT THE HEARING.**

Respondent claims that Appellant declined to argue his position therefore has waived the right to try to re-litigate the issues presented to this court because they are not preserved and then starts to reference parts of the transcript. Appellant objects to this allegation. Although appellant made some statements at the hearing in regards to the motion to dismiss, appellant had already presented his case before the court and the issues have already been raised and preserved on the record in appellant's filed opposition to respondent's motion to dismiss (see... Defendants' Opposition to Plaintiff's Motion to Dismiss and Motion for Order of Reference filed and entered on 12-17-2018 which is hereby reiterated and incorporated by reference in its entirety) which is why appellant stated "it would be a breach of that contract for me to continue to start making objections towards the issue that he claiming" (see...page 3 respondents motion to dismiss appeal). Appellant's 12-17-2018 opposition pertains to any arguments in regards to the motion to dismiss before any arbitration agreements were made during the pendency of the case therefore the issues have been preserved for appellate review.

At the hearing, appellant presented to the court to review the record and address all affidavits filed on the record (see...respondents copy of transcript pages 11 – 12 filed with their motion to dismiss this appeal). This would include the appellants 12-17-2018 amended counterclaim which clearly specified as an Affidavit and is in Affidavit form (see...page 1 of appellant 9-25-2017 amended counterclaim). This affidavit is undisputed facts before the court as there are no rebuttal affidavits on file to this affidavit which should have been considered in this matter. The following was stated at the hearing:

THE COURT: Okay. Very well. Anything else you want to tell me about the --
in response to the motion to dismiss?

MR. BRUCE: In regards to the motion to dismiss, and so that I don't waiver any further arbitration rights, I will present a few things. There are some affidavits filed on the record in regards to the debt validation that they never responded to, including the attorneys. They failed to respond. The FDCPA requires that they respond in thirty days. They failed to respond, failed to produce any validation of the debt. The attorney claims that the attorney validated the debt. They have no firsthand knowledge in regards to that, and so they cannot validate that debt. Only a person with firsthand knowledge can validate that debt, and again they have produced no affidavits in rebuttal to my affidavit.

THE COURT: Got it. Very well.

By the attorneys own words, they admit to allegedly attempting to validate an alleged mortgage debt by stating " As an initial matter, this debt was validated by our law firm" (see... Respondents filed copy of transcript pages 9 – 10 filed with their motion to dismiss) which is in line with appellants exhibits (exhibits-L) file on record on 5-20-2020 with appellant's motion which is hereby incorporated by reference in its entirety as proof that respondents are debt collectors trying to collect a debt directly or indirectly and proof that the respondents were trying to collect a debt during the pendency of foreclosure which makes them a debt collector as their communication specifically states "THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION WILL BE USED FOR THAT PURPOSE" which is a statement required by FDCPA for all debt collectors to have with their communications to a consumer when attempting to collect a debt. The 5-20-2020 file motion along with a proposed order (see...5-20-2020 motion filing) which contains issues by the appellant was first raised to the circuit court requesting a ruling on the motion by the court which they ruled on 7-8-2020 therefore are preserved for appellate review *Fettler v. Gentner*, 396 S.C. 461, 722 S.E.2d 26, 30 (S.C. Ct. App. 2012) (holding an appellate court cannot address an issue unless it was first raised to and ruled upon by the lower court).

Also There Appears to be a Controversy which amounts to a lack of jurisdiction, and a void judgment/order under Rule 60 and a violation of appellant's constitutional rights, rights to a

trial by jury as exercised and demanded as prescribed under **SCRCP Rule 38(b)** and therefore is preserved under **SCRCP Rule 38(a)** for a jury to decide on all issues pertaining to the appellants amended counterclaims and preserved for appellate review.

Rule 39(a), SCRCP, provides,

When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the calendar and the clerk's filebook as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or its own initiative finds that a right of trial by jury of some or all of those issues does not exist.

Rule 38(b), SCRCP, states,

Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

The court in determining the appellant's right to a jury trial by jury was solely based on the foreclosure action filed by the respondent being an equitable action (see...4-22-2020 order under section "PLAINTIFF'S MOTION TO REFER"), not the amended counterclaims and therefore the court had only found that appellant did not have a right to a trial by jury on some of the issues as prescribed under **Rule 39(a)**, on the foreclosure action "only", not appellants counterclaims. Therefore the issues whether appellant is required a trial by jury on his amended counterclaims was never addressed and appellant has a right to a trial by jury on all of those issues presented in his amended counterclaim as demanded in his amended counterclaim (see...section "VII" paragraph 47 of 9-25-2017 amended counterclaim) as there are no written stipulations filed with the court nor oral stipulation in open court or entered in the record by the appellant consenting to trial by the court sitting without a jury as the 4-22-2020 order shows the

court decided the issues, not a jury.

In *South Carolina Community Bank v. Salon Proz, LLC* Appellate Case No. 2014-002627, April 26, 2017 it was decided that, a counterclaim is considered a separate action because it can be ordered as a separate trial. Appellant is entitled to a jury trial in this equitable action because his amended counterclaims are legal and compulsory." *Carolina First Bank v. BADD, LLC*, 414 S.C. 289, 295, 778 S.E.2d 106, 109 (2015). "A counterclaim is compulsory if it arises out of the same transaction or occurrence as the party's claim which is the case here as appellants amended counterclaims meet the restrictions enunciated in *Carolina First Bank v. BADD, LLC* because they bear a logical relation to the foreclosure claim and arise out of the origination and administration of the subject alleged mortgage loan.

There has been a demand for a jury trial/trial by jury documented by the clerk and acknowledged on the record (see... the 10-27-2017 record where the clerk documented the following as a "Clerk's error" Changed file type from non-jury to jury, see... appellant's 8-23-2018 exhibit – H filed on the record which is a copy of the record, also see... the lower courts 5-23-2018 record documenting a notice of jury roster) which evidences a jury, not the court was to decide any and all issues presented in appellant's amended counterclaim and therefore the court's judgment/order is void as presented in appellants brief and preserved for appellate review. This was brought to the courts attention before and after the hearing which the court ignored thereby violating appellants rights to a trial by jury on the issues (see... 12-17-2018 filing page 4 paragraph 3, and 5-20-2020 filing pages 3, 6, 26-28, and 30-31). The record regarding a jury trial did not get adjusted until after the 4-22-2020 order dismissing the amended counterclaims therefore the court was already on notice that the amended counterclaims was to be decided by a jury, not the court. Nothing in the record demonstrates appellant voluntarily

relinquished the right to a trial by jury, a jury trial. The right of trial by jury is highly favored, and waivers of the right are always strictly construed and not lightly inferred or extended by implication." *Keels v. Pierce*, 315 S.C. 339, 342, 433 S.E.2d 902, 904 (Ct. App. 1993). "In the absence of an express agreement or consent, a waiver of the right to a jury trial will not be presumed." *Id.* These are matters in controversy for which a jury must decide all the issues pertaining to the amended counterclaim (see... SCRC Rule 38(c)) as a matter of law and are preserved as provided under SCRC Rule 38(a). The Bill of Rights guarantees every party the right to a "trial by jury" in every controversy in every court that has a value of \$20 or more and I have exercised that right with my demand for a jury trial, trial by jury (see... appellants amended counter claim filed on 9-25-2017 section "VII" paragraph 47). This right is not subject to review, and or restriction, as it is a secured and guaranteed right supported by precedent and Appellant has exercised that right and has not consented to waiving that right.

There are no rebuttal affidavits filed and signed under oath, penalty of perjury, and firsthand knowledge that can authenticate the statements that the attorneys has made throughout this case on behalf of their clients the appellees. Affidavits stand as truth when not rebutted or properly rebutted (see...[*United States v. Kis*, 658 F.2d 526, 536 (7th Cir. 1981); *Cert. Denied*, 50 U.S.L.W. 2169; S. Ct. March 22, 1982]). Affidavit uncontested unrebutted unanswered stands as true. "An Affidavit if not contested in a timely manner is considered undisputed facts as a matter of law."). Indeed, no more than affidavits is necessary to make the prima facie case which is the case here. *United States v. Kis*, 658 F.2d 526 (7th Cir. 1981); *certiorari denied*, 50 U.S.L.W. 2169; S.Ct. March 22, 1982 denied, 50 U.S.L.W. 2169; S.Ct. March 22, 1982. Since there are no rebuttal affidavits filed on the record the attorneys have provided nothing but hearsay and allegations on the record, no facts and appellant's affidavits are all undisputed facts.

This court and Common Pleas Court is a court of record and the court is required to review all filings on the record in order to fairly rule on the issues presented before it whether or not stated at a hearing. As long as it is filed on the record, it is before the court for the court to review and consider. If this was not the case then why are all filings required to be filed with the clerk of record in order for the judge to review to make a decision and why is the record required in order for the appellate court to review any errors of the court? In fact, there are no requests filed on the record by the respondent in the form required by the circuit court (see...page 7 of 3-23-2018 filing by respondent for example of the required form/cover sheet) asking for a hearing in order for a hearing to conduct on their motion to dismiss therefore the court was only required to go by the record when addressing the motion to dismiss appellants counterclaims which would include the appellant's opposition to respondents motion to dismiss. The court took it upon itself without consent and request of the parties on the form required by the court to request a hearing on the matter. All responses was already on the record and they were to make their decision based off of the record and the parties responses on the record in opposition to the motion to dismiss and the court is required to consider the record. The lower court failed to do this and because there was no consent to the hearing and nor records of a request for a hearing on the matter, the court had no right to conduct a hearing on any issues especially if it violates a parties right to a trial by jury on all the issues as preserved. These are the reasons why the referenced 5-20-2020 motion was filed giving the court the opportunity to review the full record of appellant's filings on the record for this matter since the filing of the amended counterclaim to correct their errors and fairly make a decision and to inform the court that a jury must be present as a trial by jury was demanded for all the issues.

The respondent had an opportunity to contest the 5-20-2020 motion with the filing of an

opposition but failed to raise any objections and challenges to that motion and therefore have waived their right to raise any objections in this appeal to what was presented and raised before the circuit court in that motion as any responses toward the 5-20-2020 motion would not have been on the record before the appeal and would be raised for the first time on appeal which respondent has already stated would be axiomatic (see... "Section I" page 4 of respondents motion to dismiss) and any such challenges and responses should be stricken from the record in this appeal. In this case, all issues raised in appellant's informal brief has been raised before the lower court and ruled on as evidenced by their 7-8-2020 denial filed on the record of that court therefore the appellant has reached the minimum requirement for issues presented in appellants brief to this court and therefore are not raised for the first time and are preserved for appellate review. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court (E.g., *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)). For these reasons, respondent's motion to dismiss should be denied.

II. APPELLANT REPLY TO SECTION II OF RESPONDENTS MOTION TO DISMISS "FDCPA CLAIMS"

Respondent claims that Appellate has argued a different theory for his Fair Debt Collections Practices Act ("FDCPA") claims in his brief to the appellate court and therefore appellant has not preserved a claim under the FDCPA for review. Respondent claims that appellant argued that he did not receive a verification in the form he requested. That appellant did not address whether respondent is a debt collector under the FDCPA. On the contrary, appellant had already raised these arguments in his position on the record in his 12-17-2018 opposition (see... pages 1, 2, 5, 6, and 11) as this opposition clearly and specifically addresses the motion to dismiss and appellant raised these arguments in his 5-20-2020 motion (see... 5-20-20 motion pages 6 – 8 of 33 and 15 - 23 of 33) which are all hereby reiterated and incorporated by

reference in their entirety therefore the FDCPA claims are preserved for appellate review. In fact, there were additional arguments/theories added to the order that was not presented or raised at the hearing (see...March 12, 2020 hearing transcript filed with respondent's 5-11-2020 motion to dismiss) such as:

- Assuming Plaintiff is collecting a debt, Plaintiff is the holder of the Note and the legal title owner of the Mortgage, so it is not collecting the debt of another. As the U.S. Supreme Court has stated, "you have to attempt to collect debts owed another before you can ever qualify as a debt collector." *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1724, 198 L. Ed. 2d 177 (2017) (Emphasis in original.)
- Further, Plaintiff's foreclosure action with a waiver of deficiency is not collection of a debt. It has waived deficiency and is seeking only to foreclose its security interest in the property. Enforcing a security interest in real estate is not the collection of a debt. The FDCPA is designed.
- Defendant Response purports to assert a counterclaim for Conspiracy. "A civil conspiracy consists of three elements: (1) A combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes the plaintiff special damages" *Hammond v. Butler, Means, Evins & Brown*, 300 S.C. 458, 463, 388 S.E.2d 796, 798 (1990). Defendant has not alleged facts to support any of the elements. In his claim he states "the opposing parties". There are no opposing parties, only the Plaintiff. There is no combination of two or more persons, which is an essential element of the cause of action.
- Defendant has not pleaded facts showing any parties have come together for the purpose of injuring Plaintiff. Additionally, Defendant has not pleaded special damages. Rule 9(g), SCRCP, requires "when items of special damage are claimed, they shall be specifically stated." In *AJG Holdings LLC v. Dunn*, the Court of Appeals stated, "To prove special damages, [claimants] had to show that the acts in furtherance of the conspiracy were separate and independent from other wrongful acts alleged in the complaint. See *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981). Special damages must be properly pled, or the claim for civil conspiracy will be dismissed. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115-16, 682 S.E.2d 871, 875 (Ct.App.2009); see also Rule 9(g), SCRCP (requiring special damages to be specifically stated in the pleadings). *AJG Holdings LLC v. Dunn*, 392 S.C. 160, 167-68, 708 S.E.2d 218, 222-23 (Ct. App. 2011), *aff'd*, 410 S.C. 346, 764 S.E.2d 912 (2014) The AJG Court cited the *Hackworth* case, which makes it clear that dismissal is appropriate when special damages are not properly pleaded. The Defendant's claims for conspiracy should be dismissed.
- Defendant has included a counterclaim for "Violation of TILA" in the caption of his Amended Response. The reference would appear to be to the Truth in Lending Act. However, Defendant has not pleaded any specific facts related to a violation

- of this act. Therefore, the Defendant's Counterclaim must be dismissed.
- In relevant part Rule 53(b) provides: "In an action ... for foreclosure, some or all of the causes of action in a case may be referred to a master." Rule 71 (a) adds: "Actions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53."
 - Defendant has sought a jury trial. "A mortgage foreclosure is an action in equity." U.S. Bank Trust Nat'l Ass'n v. Bell, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009). "Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." Lester v. Dawson, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). This foreclosure action is proper to be referred, and Defendant does not have a right to a jury trial.

However, the above arguments are similar to what was raised on the record in respondents 11-15-2018 Memorandum to their motion to dismiss, and by the court allowing the respondents to utilize the record to add additional allegations/theories outside of the hearing that was not raised at the hearing, the court opened the door for Appellant to address them further and add his own additional allegations/theories and the court should had drafted the appellant's arguments in his opposition that was filed on the record on 12-17-2018 as there should be equal protections and rights amongst the parties by a neutral party, the court otherwise the court is acting in a bias, prejudicial manner against the appellant. Since the court made their decision based off the record in favor of the moving party only, the respondent without the drafting of appellants perspective which would include the opposition filed on the record as they obligated themselves to do (see...hearing transcript page 13) there was clearly a need for the 5-20-2020 motion by the appellant. The court failed to add appellant's arguments and theory filed on the record in his 12-17-2018 opposition as they did with respondents 11-15-2018 memorandum and placed an order dismissing the amended counterclaims. The additional allegations/theories were raised before the lower court first with the filing of appellant's 5-20-2020 motion which stayed the timeframe to file any notice of appeal of which the respondent waived their right to challenge and raise objections to the 5-20-2020 motion as they failed to file an opposition to this motion as

presented above. Therefore the issues are preserved for review of the appellate court and this is not the first time they were presented as respondents were served with a copy of the above 5-20-2020 motion filing and the 12-17-2018 appellant's opposition to plaintiff's motion to dismiss. It is clear that the court's decision was not completely based off of the 3-12-2020 hearing, it was based off of the record, the respondents 11-15-2018 Memorandum, proposed order that had additional allegations/theories which the court adopted and signed. The court never reviewed the record as directed by the appellant as evidenced before the court (see...pages 11-12 of the 3-12-2020 transcript, pages 3-4 of the 12-17-2018 opposition, and page 6 of appellant's 5-20-2020 motion) nor did the court draft from appellants perspective as they obligated themselves to (see...hearing transcript page 13). For these reasons respondent's motion to dismiss appeal should be denied.

III. APPELLANT REPLY TO SECTION III OF RESPONDENTS MOTION TO DISMISS " APPELLANT DID NOT ARGUE THE CIRCUIT COURT'S FAILR TO ENJOIN PARTIES, THE CIRCUIT COURT'S FAILURE TO VACATE AN ORDER SUBSTITUTING PLAINTIFF, OR THE CIRCUIT COURT'S FAILURE TO PHYSICALLY FILE PROOF OF THE CIRCUIT COURT'S JURISDICTION"

Respondent argues that appellant did not argue and raise the issues of the failure to enjoin parties, the failure to vacate an order substituting Plaintiff, the courts failure to physically file proof of the court's jurisdiction as identified for appellate review to Judge Goodstein and therefore they are not preserved for appellate court to review. On the contrary, appellant has raised these issues to the judge and filed them on the record, see...appellants 12-17-2018 opposition to plaintiff's motion to dismiss pages 2 - 5 & 10 - 11 and appellants 5-20-2020 motion pages 1, 6 - 8, 10, 16 - 17, 20 - 22, 24, 29 - 32) therefore appellant objects and has preserved these issues for appellate court review and respondents motion to dismiss should be denied.

IV. APPELLANT REPLY TO SECTION IV OF RESPONDENTS MOTION TO DISMISS "FAILURE TO PAY FILING FEES"

In regards to the challenge to the filing fees addressed at the hearing, appellant states that because the court set a date for the motions to be addressed for his filings, appellant thought that the court accepted the motions and his form for them to collect a filing fee as a state agency and was proceeding forward since the court did not send any notices for failure to file a filing fee and therefore had to appear because he requested the hearings and appeared for motion hearing under threat of duress and/or coercion as specified in appellants 5-20-2020 motion (see...page 2 of appellant's 5-20-2020 motion). Appellant states that because this case has been going on for over 3 years and there has been multiple filings by all parties, that is would be impossible for appellant to memorize all filings for 3 + years and when the court asked if he filed any affidavits regarding indigency and the current filing fees for those motions, at the time he could only address what he could remember unaware at the time that he had already filed an affidavit regarding indigency status which would cover all filings moving forward. Appellant directed the court to view all affidavits filed on the record as referenced above in this opposition therefore if the court had reviewed all affidavits filed on the record, the court would have noticed that an affidavit was filed as it was brought to the circuit court judges attention (see...5-20-2020 motion filing on the record pages 4 - 5).

Respondents makes several arguments in regards to the filing fees that pertain to preserving the issue for appellate review. Respondent addressed the appellant's challenge to the courts filing fees, and claims that appellant argued that he should not have to pay filing fees until the county provided him proof of where the fees are being allocated referencing Tr., p. 4, 11., 14-18 of the 3-12-2020 transcript then goes on to claim that appellant abandons this argument and

argues instead he should be allowed to proceed without paying filing fees because he has filed sufficient documents to evidence his indigent status and states a failure to raise an issue constitutes waiver and is not properly before the Court on appeal and that appellant cites no authority in his brief for his position that he should not have to pay the filing fee. Respondent also claims that appellant has not preserve his claim to proceed as an indigent because he did not claim that position at the hearing when asked by the judge. Appellant objects to the respondents allegations as he has raised the argument about his challenge to the court to paying filing fees to the court by requesting proof of where the fees are being allocated by stating under section "V" of Appellants brief (see...page 23 of appellant's brief), "The filing fee was challenged by appellant which the court never produced on the record, any facts to support their claims in opposition to appellants challenge to the fee which is an undisputed fact" although appellant did raise arguments about indigent status. The court failed to produce any evidence that there office is not prepaid by the taxes of the people nor where the funds they are additionally charging filers are being appropriated to before denying appellant's motions therefore they are preserved for appellate review. Appellant addressed all issues regarding the filing fees before the circuit court in his 5-20-2020 motion (see...pages 4 - 5) before appeal therefore they are not abandoned and they are preserved for appellate review. Appellant's claims of indigency are in affidavit form, Appellant's claims of forms for the court to collect a filing fee as a state agency are filed on the record and there for are facts, not conclusions and therefore are undisputed facts as there are no objections in reference to the affidavit and form to collect a filing fee as a state agency. For these reasons, respondent's motion to dismiss should be denied.

CONCLUSION

Further, appellant has preserved all the issues addressed in his brief, and therefore are not

addressed for the first time on appeal and respondents motion to dismiss should be denied. Even though respondent believes that the issues presented in appellant's brief may not have been preserved for appellate review and doesn't specify exactly what was not presented before the lower court that appellate presented in his brief, it is clear that the issues regarding the right to a trial by jury, the FDCPA, filing fees were definitely preserved for appellate review. All the issues in appellant's brief are preserved for appellate review as specified above, even if they weren't, this court may still consider matters not raised before the circuit court before appeal was filed if any, based upon judicial economy and public policy/fairness. See... *Bell v. Progressive Direct Insurance*, 407 S.C. 565, 582 n. 9 (2014) and *Jeter v. South Carolina Department of Transportation*, 369 S.C. 433, 441 n.6 (2006). It is clear that the court was bias in their decision and acted in a prejudicial manner and unfairness as they based their decision on the record of one parties arguments and theories and not the other parties opposition which include the other parties arguments and theories even though brought to their attention in a motion and that the court violated the appellants rights to a trial by jury as demanded by deciding the issues which all issues are preserved for a jury to decide and should be reversed and re-litigated before a jury as no hearing was consented to nor requested by the respondent in the form required by the circuit court to set a hearing on the matter. For the reasons specified above and throughout this opposition the respondent's motion to dismiss should be denied.

Appellant prays that this honorable court enter an order allowing appellant twenty (20) days from the date of a decision on the motion to dismiss appeal to amend his appeal brief, to remove the duplicate section (section "I" and section "XII" are duplicates), to add issues related to the stay of proceedings, the estoppel, and the information presented in this opposition as it pertains to issues presented in the brief that are part of the lower courts record.

RESPECTFULLY PRESENTED,

"Without Prejudice"

Nelson L. Bruce 5-18-2021

~~THE BENEFICIAL OWNER OF THE CESTI QUI EQUITABLE TRUST~~

Nelson L. Bruce, Propria Persona, Sui Juris

All Natural Rights Explicitly Reserved and Retained

U.C.C. 1-207/1-308, 1.103.6

c/o 144 Pavilion Street, Summerville, South Carolina [29483]

leonbruce81@yahoo.com

Ph. 843-437-7901

Record/FILE ON DEMAND

Acceptance of Offer with full immunity AND WITHOUT RECOURSE: NBLB-20200518NLBWILM0801-COAPP-0002°

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2020-001130
Common Pleas Case No.: 16-CP-18-1678

RECEIVED

MAY 19 2021

SC Court of Appeals

Wilmington Savings Fund
Society FSB as Trustee of
Stanwich Mortgage Loan Trust C.....Respondent,

v.

Nelson L. Bruce, et al.....Appellant.

**PROOF OF SERVICE – OPPOSITION TO APPELLEE’S MOTION TO DISMISS
APPEAL**

I Nelson L. Bruce, Appellant, hereby certify that I served a copy of the foregoing
OPPOSITION TO APPELLEE’S MOTION TO DISMISS APPEAL by depositing a copy of it in
the United States Mail, postage prepaid under Certified Mail Addressed To:

ALBERTELLI LAW
Attention: William S. Koehler
1201 Main Street, Suite 1450
Columbia, South Carolina 29201
(803) 828-0880
Attorney for Respondent
Certified Mail No.: 7020 2450 0000 0106 7130

Dated this 18th day of May, 2021.

RESPECTFULLY PRESENTED,

"Without Prejudice"

Nelson L. Bruce 5-18-2021

THE BENEFICIAL OWNER OF THE CESTI QUI EQUITABLE TRUST

Nelson L. Bruce, Propria Persona, Sui Juris

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In The Court of Appeals

— APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

— Appellate Case No. 2020-001130
Common Pleas Case No.: 16-CP-18-1678

Wilmington Savings Fund Society FSB as Trustee of Stanwich Mortgage Loan Trust C, Respondent,

v.

Nelson L. Bruce, Capital Return Investments, LLC, Charleston Area CDC, SC Housing Corp, South Carolina Housing Trust Fund, and Reminisce Homeowners Association, Inc, Defendants,

Of whom Nelson L. Bruce is the Appellant

— AMENDED FINAL BRIEF OF APPELLANT

This Final Brief is being amended because I combined both my final brief and my final reply brief's together. This amended Brief is being filed to correct that error. Due to the fact that I got sick and I tested positive for Covid-19 during the window to file an amendment to correct this error, I was not able to correct this error and get it filed until now.

Nelson L. Bruce, Propria Persona, Sui Juris
c/o 144 Pavilion Street
Summerville, South Carolina [29483]
(843) 437-7901
Appellant

January 26th, 2022

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INTRODUCTION

Appellant hereby brings forth this brief under threat of duress and/or coercion under fear of this court re-litigating matters and placing judgments/orders upon controversies that are arbitrable and as agreed to by the parties to be arbitrated by default, failure to reject the offer in the timeframe allowed and the parties (the appellees and other respondents/parties requested to be enjoined in this case) conduct which constituted acceptance by performance and assent/consent, tacit acquiescence to the agreement, its terms and provisions which have been agreed to be decided by an arbitrator see...Appellant's MOTION FOR RECONSIDERATION filed and entered on 5-20-2020 (see...R. pp. 528-530) which is hereby reiterated and incorporated by reference in its entirety).

STATEMENT OF RELATED CASES

Similar issues are presented in *Birster v. American Home Mortgage Services, Inc.*, No. 11-13574-G, which was appealed from the Southern District of Florida in August 2011, reversed and remanded in October 2012. This case presented important questions regarding the interpretation of the Fair Debt Collection Practices Act (FDCPA), a statute for which Congress has granted the Consumer Financial Protection Bureau rulemaking and enforcement authority. See...Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §§ 1002(12)(H), 1022(b)(1), 1061(b)(5), 1089 (2010). In particular, the FDCPA prohibits harmful debt collection practices that occur in the context of foreclosure proceedings. In *Barbato v. Greystone Alliance, L.L.C.*, 2019 WL 847920 (3d Cir. Feb. 22, 2019), the Third Circuit held that the debt buyer, Crown Asset Management (Crown), is a debt collector under the “principal purpose” prong, holding that “an entity that otherwise meets the ‘principal purpose’ definition cannot avoid the dictates of the FDCPA merely by hiring a third party to do its collecting.” Both

of these cases are hereby incorporated by reference in their entirety to help assist this court in properly determining and defining the appellees and other parties requested to be enjoined positions as debt collectors under the FDCPA.

STATEMENT OF ISSUES ON APPEAL

1. The Fair Debt Collection Practices Act (FDCPA or Act) prohibits “debt collectors” from using certain means to collect debts and from engaging in certain conduct “in connection with the collection of a debt.” *See* 15 U.S.C. §§ 1692c–1692g. Thus, to state a claim under most provisions of the FDCPA, a plaintiff must show both that the defendant is a “debt collector” and that the challenged conduct is a means of, or otherwise relates to, collecting debts. This appeal presents the following questions concerning the FDCPA’s scope:
 - a. The Act defines “debt collector” as a person whose “**principal purpose**” is debt collection or “who regularly collects or attempts to collect” debts. 15 U.S.C. § 1692a(6). For the purposes of a single provision of the Act, § 1692f(6), the term “debt collector” “**also includes**” a person whose “**principal purpose**” is “**the enforcement of security interests.**” *Id.* Does a person who meets the FDCPA’s general definition of “debt collector” qualify as a debt collector for purposes of the entire Act if (a) he also qualifies as a debt collector under the additional definition applicable to § 1692f(6), and (b) he is enforcing a security interest in the particular case?
 - b. Although the Act does not define “debt collection,” attempting to obtain payment of a consumer debt unquestionably constitutes debt collection under the FDCPA. *Heintz v. Jenkins*, 514 U.S. 291, 294 (1995). Does attempting to obtain payment of a consumer debt cease to qualify as debt collection covered by the Act if the debt collector or a related party simultaneously attempts to enforce a security interest backing the debt?
 - c. Can an entity that otherwise meets the ‘principal purpose’ definition avoid the dictates of the FDCPA merely by hiring a third party to do its collecting?
2. Did the Court err by dismissing appellant’s counterclaims and not instructing appellant on how his pleadings are deficient, how to repair them and allow appellant the opportunity to correct it with leave of court to repair any deficiencies in his counterclaim?
3. Did the court ERR and create abuse of discretion by denying appellant’s right to a trial by jury, a jury trial as demanded by appellant and not waived in violation of his rights, his right

under the 7th Amendment of the U.S. Constitution, the Bill of Rights and Section 14 of the State of South Carolina Constitution?

4. Did the court ERR and create abuse of discretion by dismissing the appellant's numerous motions to vacate, motion to dismiss, motion for stay, motion for TRO for failure to pay filing fee when the filing fee was challenged by appellant which the court never produced on the record, any facts to support their claims in opposition to appellants challenge to the fee as appellant has filed on the record a form for a state agency to collect any alleged filing fee requested by appellant (see... Motion/Vacate 9/15/17 Order filed on 8-23-2018, R. pp. 342-348) and an affidavit that documents appellant is indigent (see...R. pp. 44 paragraph 50 of appellants amended counterclaim/countersuit which is in affidavit form and qualifies as an affidavit) which the court has already stated must be filed for a waiver of the filing fee (see...R. pp. 60 of the 3-12-2020 transcript)?
5. Did the court ERR and create abuse of discretion by failing to take in consideration that the affidavits filed by appellant are facts before the court which stand as true and prima facie evidence to support appellants claims as there are no rebuttal affidavits signed under penalty of perjury supporting any hearsay that the opposing parties attorney has stated which they have filed on the record in opposition to appellants affidavits?
6. Did the court violate the appellant's due process rights and committed an abuse of discretion by failing to enjoin all parties requested to be enjoined in the case by the appellant in his counterclaim as required under SCRCR Rule 13(h) and his opposition filings when clearly notified to the court that it would be futile to appellant's counterclaims that he has brought forth against the original opposing party, BANA, and the new party requested to be enjoined, Carrington Mortgages Services, LLC (Carrington), and substitute plaintiff, Wilmington

Savings Fund Society, FSB as Trustee and the attorneys (Wilmington) all as debt collectors as presented in **paragraph 9** of defendant/appellant amended counterclaim filed on 9-25-2017 (R. pp. 39), defendant/appellants entire opposition to plaintiff/appellees motion to dismiss and order of reference filed on 12-17-2018 (R. pp. 393-405) and motion for reconsideration filed on 5-20-2020 R. pp. 532-534, 536, 542-543, 546-547, 550, 555-557)?

7. Did the court err, commit an abuse of discretion, violate the appellant's due process rights, violate SCRCRCP Rule 10(b) and (c) and create undue prejudice by only going by the opposing parties attorneys' hearsay, by limiting the appellants claims to the caption "only" under SCRCRCP Rule 10(a), by reducing the counter claims to only three (3) counterclaims, by ignoring the appellants other remaining form of claims specified in appellant's amended counterclaims see...R. pp. 42-43, paragraph 35, 41, 42, & 49(a) to 49(j) that were numbered, stated and incorporated by reference as SCRCRCP Rule 10(b) and (c) required to be considered as a form of claim?
8. Did the court Err and commit an abuse of discretion, by not filing physical proof on the record of their jurisdiction when jurisdiction was challenged by the appellant (see...Defendant's Amended Motion/Pre Trial Discovery filed and entered 7-23-2018, R. pp. 255-256 and appellant's motion to reconsider filed 5-20-2020 R. pp. 548), by moving forward and placing any further orders on the record including denying appellant's countersuit/counterclaims, and motions and as a result, their order is void for want of jurisdiction (subject matter or otherwise), their failure to prove jurisdiction on the record in this case when challenged?
9. Did the court err and commit an abuse of discretion by violating SCRCRCP **Rule 25(c)**, SCRCRCP **Rule 5** and the appellant's due process rights by allowing a substitution of plaintiff

in the middle of a pending countersuit/counterclaim against the original plaintiff, Bank of America, N.A. without a hearing allowing the appellant the opportunity to raise objections to the substitution knowing that the appellant countersuit/counterclaim clearly evidences and documents that the claims are against multiple parties (see...R. pp. 39, **paragraph 9** of defendant/appellants amended countersuit/counterclaim filed on 9-25-2017, defendant/appellants entire opposition to plaintiff/appellees motion to dismiss and order of reference filed on 12-17-2018 (R. pp. 393-405) and motion for reconsideration filed on 5-20-2020 R. pp. 532-534, 536, 542-543, 546-547, 550, 555-557) who all should have been enjoined so that the claims could be properly adjudicated against each individual party requested to be enjoined?

10. Did the Court Err and Commit an Abuse of Discretion by Dismissing Appellant's Constructive Fraud, Conspiracy Claims, and Truth in Lending Act (TILA) claims?

STATEMENT OF THE CASE

I Nelson L. Bruce a natural citizen as defined in statute and **article 1 section 8 of the United States of America Constitution**, of the age of the majority, am over the age of 18, hereby present this Appeal Brief as such is based on firsthand knowledge of the facts, as true and wholly accurate in the form of reintroduction of evidence, Affidavits, Motions, Presentments, Declarations, Exhibits originally presented in the Court of Common Pleas for review by this body and are hereby incorporated by reference in its entirety with this Appeal Brief. On 8-18-2016, Original Plaintiff Bank of America, N.A. filed a Summons & Complaint and Lis Pendens which Appellant was never served with (**See...R. pp. 24-34**). On 4-3-2017 Appellant filed a motion to dismiss (**See...R. pp. 69-71**). On 9-13-2017 Appellant filed an Answer and Counterclaim. On 9-18-2017 the court denied appellants motion to dismiss. On 9-25-2017

appellant filed an amended answer and counterclaim (See...R. pp. 35-46). On 10-27-2017 the clerk of court filed a "Clerk's error" Changed file type from non-jury to jury documenting that the case including appellant's counterclaims is a jury trial as demanded by appellant in his counterclaim (See...R. pp. 188). On 3-1-2018 the original appellees by their alleged attorney filed a response to appellant's counter claims (See...R. pp. 192-200). On 3-23-2018 appellees filed a Motion and Order to Substitute Plaintiff which an unknown judge not assigned to the case signed and entered as an order of the court (See...R. pp. 1-7). On 3-27-2018 Appellant filed a Reply/Response and Objections to Original Plaintiff's Answer/Response to Defendant's Counterclaims (See...R. pp. 206-252). On 5-22-2018 and 5-23-2018 the court referenced the case on the jury roster (See...R. pp. 188). On 7-20-2018, Appellant filed a Motion/Pre-Trial Discovery. On 7-23-2018 Appellant filed an Amended Motion/Pre Trial Discovery, Jurisdiction Challenge, and Notice of Judiciary Duty (See...R. pp. 253-262). On 8-23-2018 Appellant filed 2 Motions to Dismiss and 2 Motions to Vacate and contesting the filing fee (See...R. pp. 263-366). On 8-24-2018 Appellant filed a Motion for Temporary Restraining Order and contesting the filing fee (See...R. pp. 367-385). On 10-16-2018 Appellees filed responses to appellants 8-23-2018 and 8-24-2018 motions. On 11-15-2018 Appellees filed a motion to dismiss appellant's counterclaims/order of reference and a Memo/Memo in Support of their motion well after a response to appellant's counterclaims (See...R. pp. 386-392). On 12-17-2018 Appellant filed an Opposition to Plaintiff's Motion to Dismiss and Motion for Order of Reference (See...R. pp. 393-405). On 4-22-2020 the court issued an order dismissing appellant's counterclaims, dismissing appellant's other motions for failing pay filing fees, Continuing appellant's Amended Motion for Pre-Trial Discovery and referring the case to the master in equity (See...R. pp. 8-16). On 5-20-2020 Appellant filed a Motion/Reconsider (See...R. pp. 524-578). On 7-8-2020 the

court Denied appellant's Motion to Reconsider and referred back to the Master in Equity (See...R. pp. 22-23). On 7-21-2020 Appellant filed a Notice of Appeal to Court of Appeals (See...R. pp. 47-48). On 8-27-2020 appellant corrected a deficiency in the Notice of Appeal and filed an Amended Notice of Appeal (See...R. pp. 49-50).

STATEMENT OF FACTS

A. Statutory Background

Congress enacted the FDCPA in 1977 to eliminate “abusive, deceptive, and unfair debt collection practices. Abusive collection practices remain a widespread problem today. The FDCPA is the key federal statute protecting these consumers. Among other things, the Act forbids debt collectors from employing harassing, oppressive, or abusive practices; making misleading or deceptive representations; and using unfair or unconscionable means to collect debts. *See* 15 U.S.C. §§ 1692d–1692f. The Act also limits when debt collectors can contact debtors, guarantees consumers an opportunity to dispute their debts, and generally bars attempts to collect a disputed debt until the debt is verified. *Id.* §§ 1692c, 1692g(a)–(b).

B. Facts

Appellant disputed the alleged mortgage debt numerous times with Appellees, the parties requested to be enjoined and the previous servicer of the appellant's alleged mortgage, the Original Plaintiff, Bank of America, N.A. (BANA) who at the time was collecting on behalf of Ginnie Mae which clearly qualified BANA as a Debt collector under all definitions of the FDCPA, Principal Purpose, Regularly Collects on behalf of another, and enforcement of security interest (see...15 U.S. Code § 1692a) which makes them a Debt collector under the entire act, with the first dispute of the alleged debt sent to BANA in July of 2015 (see... Motion to Dismiss for Lack of Standing/Exhibits A and B R. pp. 74-109 filed and entered on 4-3-2017). As of July

2015, BANA had 30 days to validate and verify the alleged debt they were attempting to collect with proper verification of the debt as required by the FDCPA. The FDCPA prescribes that debt collectors must cease any and all collection activities until they have validate the debt and provide sufficient verification of the alleged debt, in this case mortgage debt that BANA was attempting to collect from the Appellant, the consumer or produce a copy of a judgement to the appellant (see...15 U.S. Code § 1692g).

The Legal Definition of Verification is:

- The legal context refers to a declaration under oath or upon penalty of perjury that a statement or pleading is true (see... Defendants Opposition to Plaintiffs Motion to Dismiss filed 12-17-2018 R. pp. 402 paragraph 11).

As of the date of this initial brief, Appellant has not received any such verification of the alleged mortgage debt from any plaintiff's, both original nor substitute, the attorneys nor Carrington the new alleged servicer and no verification has been filed on the record that can evidence this or otherwise. On 8-19-2016 BANA hired an attorney (see...defendant's motion to reconsider filed 5-20-2020, R. pp. 562-565 Exhibit –L) who filed a foreclosure complaint seeking to enforce an alleged security interest who also attempted to collect the alleged mortgage debt at the same time of the filing both constituting collection activity under the FDCPA as referenced above as they were doing more than enforcing a security interest which BANA was required to cease and desist from as appellant again disputed with the original attorney for BANA who also never validated and verify the alleged debt as specified above. According to the foreclosure complaint, the appellant allegedly defaulted on their alleged mortgage loan on August 1, 2015 (see...complaint filed 8-19-2016 R. pp. 31 paragraph 11). BANA continued to attempt to collect the alleged disputed mortgage debt from August 1, 2015 to May 1, 2017 until they assigned their alleged servicing right over to Carrington Mortgage Services, LLC

(see...appellant's amended counterclaim filed on 9-25-2017 R. pp. 39 paragraph 9) even during foreclosure proceedings. The appellees hired Carrington Mortgage Services, LLC to indirectly attempt to collect payments from the appellant during foreclosure proceedings and they continued to attempt to collect on the alleged disputed mortgage debt on behalf of the substitute plaintiff from May 2, 2017 to present, during foreclosure proceedings (see...motion to reconsider filed 5-20-2020 exhibits – L R. pp. 566-575 and motion to compel filed 3-29-2019 R. pp. 519 exhibits/evidence – J4).

Appellees, BANA and all parties requested to be enjoined have attempted to collect a payment of some sort from the appellant on the alleged mortgage debt as they all have sent appellant letters which state that “THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE” which significantly qualifies them as debt collectors under the FDCPA as the law requires them to include this statement when attempting to collect a debt. These are Statements of Undisputed Material Facts as there are no oppositions, against the motion to reconsider and other filing of appellant including exhibits, affidavits, no sufficient objections filed supported by disputed facts from the appellees objecting to any of these facts filed on the record at any time during these proceedings in verified form with the proper verification attached.

STANDARD OF REVIEW

Pro se litigants (Party Aggrieved is a pro se litigant) are held to less stringent pleading standards than BAR registered attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims and the opportunity to correct any deficiencies. (see...*Haines v Kerner*, 404 U.S. 519 and *Platsky v. C.I.A.* 953 F.2d. 25).

Appellant's evidence came in the form of affidavits which is prima facie evidence (*See ...United States v. Kis, 658 F.2d 526, 536 (7th Cir. 1981)*); An Affidavit if not contested in a timely manner is considered undisputed facts as a matter of law. "Allegations in affidavit in support of filing must be considered as true in absence of counter-affidavit." [**Group v Finletter, 108 F. Supp. 327** Federal case of **Group v Finletter, 108 F. Supp. 327**]. *In re Platsky v. C.I.A. 953 F.2d. 25*: court errs if court dismisses the pro se litigant (Party Aggrieved is a pro se litigant) without instruction of how pleadings are deficient and how to repair pleadings. The court failed to instruct appellant on how his pleadings are deficient, how to repair them and failed to allow appellant leave of court to correct any deficiencies. *In re Anastasoff*: litigants' constitutional rights are violated when courts depart from precedent where parties are similarly situated. All litigants have a constitutional right to have their claims adjudicated according the rule of precedent. *See...Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000)*. Statements of counsel, in their briefs or their arguments are not sufficient for a motion to dismiss or for summary judgment, *Trinsey v. Pagliaro, D.C. Pa. 1964, 229 F. Supp. 647*. Appellant also explicitly reserved his retained rights to amend his amended counterclaim/countersuit with leave of court with the filing of his opposition as he explained there was new evidence, new parties to be enjoined and issues in this matter that have come forth since the filing of his amended countersuit (see...Defendants opposition to Plaintiff's motion to dismiss filed on 12-17-2018 R. pp. 394-396 paragraph 1) which the court has deprived him of in violation of his rights.

A counterclaim is considered a separate action because it can be ordered as a separate trial (see...*South Carolina Community Bank v. Salon Proz, LLC* Appellate Case No. 2014-002627, April 26, 2017). Appellant's FCRA, SCCPC and other claims were filed in this case on 9-25-2017 (see... **Section "VII"** of amended counterclaim R. pp. 43 paragraph's 35, 41, 42, &

49(a) to 49(j), were properly numbered, stated and incorporated by reference as SCRCR Rule 10(b) and (c) required but was dismissed without the court even addressing these claims and without a trial by jury (see... *South Carolina Community Bank v. Salon Proz, LLC*, 2017) as demanded in the amended counterclaim (see... Section "VII" R. pp. 43 paragraph 47) which was negligently ignored by the judge of the court even though pointed out and also docketed by the clerk for a jury trial (see... R. pp. 188 "Clerk's error" Changed file type from non-jury to jury Filed and entered on 10-27-2017). The judge is required to know and abide by the court rules. Appellant did not waive his right to a trial by jury under the 7th Amendment of the U.S. Constitution, the Bill of Rights and Section 14 of the State of South Carolina Constitution and has exercised that right (see... Section "VII" R. pp. 43 paragraph 47).

The court failed to follow their own rules, SCRCR Rule 19 provides that:

- A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if(1) in his absence complete relief cannot be afforded among those already parties. This rule provides that if a party has not been joined, the court shall order that he be made a party.

The court failed to add all requested joiners as parties to the case in violation of their own civil rules. BANA and Carrington, are necessary parties to this action. Bank of America, N.A. had already received service of process by appellant in court on 9-13-2017 and by mail of the amended counterclaim filed on 9-25-2017 therefore the court must join or rejoin them as parties to protect the Appellant, to not prejudice appellant's claims and insure a full adjudication of the controversy against all relevant parties which claims are against as presented in his amended counterclaim/countersuit. On a SCRCR Rule 12(b) motion, "the proper course for the trial court is to determine the necessity of adding a new party under Rule 19. *Bancohio National Bank v. Neville*, 310 S.C. 323, 328, 426 S.E.2d 773, 776 (1993). The court has also failed to follow

SCRCF Rule 12(b)7 as appellant has raised his defense for failure to enjoin relevant parties to the case (see...Appellant's motion to reconsider filed 5-20-2020 R. pp. 532-533 and 554-555).

Appellant has raised multiple objections for failure of the court to enjoin parties.

See...appellant's opposition filed 12-17-2018 R. pp. 394-397.

The court is in violation of their own rules, SCRCF Rule 25 (c) **Transfer of Interest** provides that:

- In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in **Rule 25(a)(1)** which in general provides that, together with the notice of hearing shall be served on the parties as provided in **Rule 5** which was not done.

Appellant never was served with a copy of the motion for substitution of Plaintiff and there is no evidence filed on the record that documents that the appellant ever received a copy of the motion for substitution of plaintiff, together with a notice of hearing through the U.S. Mail (See...R. pp. 1-7 Motion and Order to Substitute Plaintiff filed, entered, and ordered 3-23-2018). These facts was addressed in appellant's motion to vacate (see... R. pp. 354-361 Motion to Vacate the Court's March 23, 2018 Order filed and entered 8-23-2018). Appellant also brings to this courts attention that the order was signed by a judge without jurisdiction, who is not assigned to this case and therefore also makes the 3-23-2018 order a void order (see...R. pp. 2 Motion and Order to Substitute Plaintiff filed, entered, and ordered 3-23-2018 page 2) as that judge lacked jurisdiction in this case and is not the assigned judge assigned to this case for this matter to make such orders. If this was the proper assigned judge, the judge would have or should have known that a substitution of the plaintiff would be futile and would prejudice the appellant and his counterclaims against all parties including the original plaintiff and therefore

the substitute plaintiff should have just been enjoined into the case as requested by the appellant as specified above. Wilmington savings fund society FSB, is the registered agent for Stanwhich Mortgage Loan Trust C which is the alleged trust that appellants mortgage loan has been pooled under. A registered agent acts on behalf of the registered corporation, the Stanwhich Mortgage loan trust C which is registered as a Delaware Corp. Wilmington savings fund society FSB is also acting as trustee who is also collecting payment from a designated servicer on behalf of the trust to and then making payments to the members of the trust therefore operating on behalf of another party which constitutes as debt collection as prescribed under the FDCPA as their principal purpose is to collect payment directly or indirectly from the appellant on behalf the members of the trust under a trustee agreement (see... R. pp. 545 Appellants motion to reconsider filed on 5-20-2020 paragraph 4).

ARGUMENTS

I. THE COURT ERRED AND COMMITTED AN ABUSE OF DISCRETION BY DISMISSING APPELLANT'S FAIR DEBT COLLECTION PRACTICES ACT (FDCPA) CLAIMS

The court has stated that Defendant/Appellant has not pleaded sufficient facts to support his FDCPA claim. That the FDCPA only applies to debt collectors. The court stated that assuming Plaintiff is collecting a debt, Plaintiff is the holder of the Note and the legal title owner of the Mortgage, and so it is not collecting the debt of another citing the U.S. Supreme Court has stated, "you have to attempt to collect debts owed another before you can ever qualify as a debt collector." *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1724, 198 L. Ed. 2d 177 (2017) (Emphasis in original.) The court goes on to say that Plaintiff's foreclosure action with a waiver of deficiency is not collection of a debt because it has waived deficiency and is seeking only to foreclose its security interest in the property. Enforcing a security interest in real

estate is not the collection of a debt (see... R. pp. 12-13 of the 4-22-2020 order dismissing counterclaims). The court has not identified any physical sufficient evidentiary facts signed under penalty of perjury from the plaintiff who is a natural man or woman with firsthand knowledge of the facts filed on the record that can support the court's opinion and therefore is an unsupported opinion of the court. The Plaintiff/Appellees are improperly utilizing *Henson v. Santander Consumer USA Inc.*, which only focuses on the one definition of debt collect, the regularly collects definition.

In *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718 (2017), the Supreme Court held that Santander was not a debt collector under the Fair Debt Collection Practices Act's (FDCPA's) second definition of debt collector under 15 U.S.C. § 1692a(6). This narrow opinion held that a debt buyer is not subject to the FDCPA as an entity regularly collecting debts owed or due another, leaving intact the alternative approach of showing that a debt buyer qualifies as a debt collector under the FDCPA because the principal purpose of its business is the collection of debts.

In *Barbato v. Greystone Alliance, L.L.C.*, 2019 WL 847920 (3d Cir. Feb. 22, 2019), the Third Circuit held that the debt buyer, Crown Asset Management (Crown), is a debt collector under the "principal purpose" prong, holding that "an entity that otherwise meets the 'principal purpose' definition cannot avoid the dictates of the FDCPA merely by hiring a third party to do its collecting." The Third Circuit remanded the case to the district court to determine the debt buyer's liability for the acts of those collecting on its accounts. In doing so, the Third Circuit set out some guidance for the lower court. First, a debt buyer can be liable for the acts of its agents even though the debt buyer did not exert any actual control over the collection agency's FDCPA violation. In addition, while probably not relevant to this case, the Third Circuit also stated that a debt buyer can be liable for the FDCPA violations of its agents even if the agents are not covered

as debt collectors under the FDCPA.

To state a claim under most provisions of the FDCPA, a plaintiff must show both that the defendant is a “debt collector” and that the challenged conduct related to debt collection. The common pleas court concluded that, The FDCPA only applies to debt collectors. Assuming Plaintiff is collecting a debt, Plaintiff is the holder of the Note and the legal title owner of the Mortgage, so it is not collecting the debt of another, claiming that as the U.S. Supreme Court has stated (**Henson v. Santander Consumer USA Inc.**, 137 S. Ct. 1718, 1724, 198 L. Ed. 2d 177 (2017) (**Emphasis in original.**)), “you have to attempt to collect debts owed *another* before you can ever qualify as a debt collector.” The court has also stated that, Plaintiff’s foreclosure action with a waiver of deficiency is not collection of a debt because the plaintiff has waived deficiency and is seeking only to foreclose its security interest in the property that enforcing a security interest in real estate is not the collection of a debt (see... R. pp. 12-13 of the courts 4-22-2020 order dismissing the counterclaims). These conclusions misconstrue the FDCPA.

Debt Collector: The FDCPA generally defines “debt collector” as an entity whose “principal purpose” is debt collection or “who regularly collects or attempts to collect” debts. 15 U.S.C. § 1692a(6). Under an additional definition applicable for purposes of a single provision, § 1692f(6), the term “debt collector” “also includes” any entity whose “principal purpose” is “the enforcement of security interests.” *Id.* Six categories of people are specifically excluded from the definition of “debt collector.” *Id.* § 1692a(6)(A)–(F). Enforcers of security interests do not appear on that list.

Courts that have concluded that enforcers of security interests qualify as “debt collectors” only for purposes of § 1692f(6) have failed to consider that enforcers of security interests may also “regularly collect” debts and thus qualify as “debt collectors” under the general definition, see...**Birster v. American Home Mortgage Services, Inc.**, No. 11-13574-G.

Recognizing that an entity may meet both the general and the additional definition does not render the additional definition superfluous. Some enforcers of security interests, such as repossession agencies that rarely contact debtors, constitute “debt collectors” only under the additional definition, while others—like entities that initiate foreclosure proceedings and then seek payment in lieu of foreclosure—both “regularly” collect debts and “principal[ly]” enforce security interests, *Birster v. American Home Mortgage Services, Inc.*, No.

11-13574-G. The additional definition requires the former category of people to comply with § 1692f(6), even though they are not generally subject to the Act.

By the Act’s plain terms, an entity that meets both definitions of “debt collector” qualifies as a “debt collector” for purposes of the entire Act. The additional definition does not exclude enforcers of security interests from the general definition, but rather “also includes” them for purposes of a particular provision. Notably, unlike other entities, enforcers of security interests are not explicitly excluded from the definition of debt collector. Nearly every court, including every federal appellate court, to have considered this question agrees. This conclusion is also consistent with a prior administrative interpretation of the Act, and furthers the Act’s consumer-protection purposes.

An entity that satisfies both definitions of “debt collector” remains a “debt collector” subject to the entire FDCPA even if it is enforcing a security interest in a particular case. That an entity is enforcing a security interest in a particular case bears on whether its actions constitute debt collection, not on whether the entity is a debt collector. The statute defines “debt collectors” by reference to their “principal purpose” and “regular[]” activities, not their activities in a particular case. Section 1692i(a)(1), which regulates “debt collectors” enforcing security interests in real property, confirms that entities enforcing a security interest in a particular case can qualify

as “debt collectors” under provisions other than § 1692f(6).

Because appellees did not contest that it regularly collects debts nor it’s principal purpose when it allegedly acquired the alleged defaulted debt was collection of payments from the consumer for the alleged debt, it constitutes as a “debt collector” for purposes of the entire FDCPA.

Debt Collection: Attempting to obtain payment of a consumer debt constitutes debt collection covered by the FDCPA. *Heintz v. Jenkins*, 514 U.S. 291, 294 (1995). Nothing in the Act suggests that seeking payment from a debtor ceases to qualify as debt collection if it accompanies proceedings to enforce a security interest, *Birster v. American Home Mortgage Services, Inc.*, No. 11-13574-G. That conclusion would create an enormous loophole, allowing debt collectors to abuse consumers with impunity whenever they happened also to seek to enforce a security interest. Every federal appellate court to have published a decision on this issue, and nearly every other court, agrees.

In *Birster v. American Home Mortgage Services, Inc.*, No. 11-13574-G it was stated that, although the district court suggested that pursuing foreclosure, by itself, cannot constitute debt collection covered by the Act, the Court need not reach that question here. At a minimum, seeking payment from a debtor unquestionably qualifies as debt collection, even if it occurs in the context of foreclosure proceedings, which is the case here. The appellant’s allege that appellees, original plaintiff, and Carrington repeatedly attempted to induce him to pay amounts owed on the alleged mortgage was debt collection even though it occurred in the context of foreclosure proceedings. The Appellees and the parties requested to be enjoined into this case have done more that try to enforce an alleged security interest with a foreclosure proceeding as they have also attempted to collect the alleged debt either directly or indirectly during foreclosure proceedings which constitute debt collection under the entire FDCPA. When doing both Appellant has specified and produced sufficient facts, affidavits and evidence on the

record of which the FDCPA supports proves all parties referenced in this matter to be parties to appellants countersuit/counterclaim even the parties requested to be enjoined are debt collectors under the FDCPA definitions (see... R. pp. 546-549 appellant's motion for reconsideration filed on 5-20-2020).

Wilmington is acting as a trustee's collecting (directly or indirectly) debts on behalf of bond/share/certificate holders who invested into a mortgage backed security (MBS) trust which qualifies as collecting on behalf of another because once the servicer collects (the indirect party) payment from a borrower and pays the trustee, the trustee does not keep the money received from an alleged servicer, the trustee has to pass that payment through to the bond/share/certificate holders who invested into the MBS, the trust (see... R. pp. 546 Appellants motion to reconsider filed on 5-20-2020 paragraph 4). This also qualifies the plaintiff and all parties requested to be enjoined as debt collectors under the "regularly collects" definition and the "principle purpose" definition of the FDCPA even while in foreclosure, even if its principal purpose is the enforcement of security interests as stated in the CFPB's brief in **Birster v. American Home Mortgage Services, Inc. on or about December 21, 2011, Case No. 11-13574-G** and as decided in **Mary Barbato v. Crown Asset Management LLC, et al., No. 18-1042 (3d Cir. Feb. 22, 2019)** which significantly limited the Supreme Court's decision in **Henson** to the interpretation of the "regularly collects" definition of a "debt collector" in the FDCPA.

II. THE COMMON PLEAS COURT ERR BY DISMISSING APPELLANT'S COUNTERCLAIMS AND NOT INSTRUCTING APPELLANT ON HOW HIS PLEADINGS ARE DEFICIENT AND HOW TO REPAIR THEM AND ALLOW APPELLANT THE OPPORTUNITY TO CORRECT IT WITH LEAVE OF COURT TO REPAIR ANY DEFICIENCIES IN HIS COUNTERCLAIM

The Common Pleas court held appellant to the same standards as a BAR registered attorney and dismissed appellant, the aggrieved party who is considered a Pro Se litigant counterclaims/countersuit without instructions on how pleadings are deficient, instructing on how to repair the pleadings and without the opportunity to repair any deficiencies in the

counterclaim. Pro se litigants (Party Aggrieved is a pro se litigant) are held to less stringent pleading standards than BAR registered attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims (see...*Haines v Kerner*, 404 U.S. 519). In re *Platsky v. C.I.A.* 953 F.2d. 25: court errs if court dismisses the pro se litigant (Party Aggrieved is a pro se litigant) without instruction of how pleadings are deficient and how to repair pleadings. In re *Anastasoff*: litigants' constitutional rights are violated when courts depart from precedent where parties are similarly situated. All litigants have a constitutional right to have their claims adjudicated according the rule of precedent. See...*Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000). (See... R. pp. 530 appellant motion to reconsider filed on 5-20-2020 pg. 4 of 33). Appellant also explicitly reserved his retained rights to amend his amended counterclaim/countersuit with leave of court with the filing of his opposition as he explained there was new evidence, new parties to be enjoined and issues in this matter that have come forth since the filing of his amended counterclaim/countersuit (see...R. pp. 395-396 Defendants opposition to Plaintiff's motion to dismiss filed on 12-17-2018 paragraph 1) which the court has deprived him of in violation of his Rights and to seek justice.

III. THE JUDGE ERRED AND COMMITTED AN ABUSE OF DISCRETION AND VIOLATED THE APPELLANTS DUE PROCESS RIGHTS BY VIOLATING SCRCP RULE 10(B) AND (C) "FORM OF PLEADINGS", BY IGNORING THE APPELLANTS OTHER FORM OF CLAIMS

The court err and committed an abuse of discretion, violate the appellant's due process rights by violating SCRCP Rule 10(b) and (c), by ignoring the appellants other remaining form of claims specified in Section "VII" of appellant's amended Counterclaim/Countersuit filed on 9-25-2017 R. pp. 42-43 paragraph's 35, 41, 42, & 49(a) to 49(j) that were numbered and

incorporated by reference as SCRCP Rule 10(b) and (c) required to be considered as a form of claim to be acknowledged by the court.

SCRCP Rule 10(b) and (c) “FORM OF PLEADINGS” state that:

- **(b) Paragraphs; Separate Statements.** All averments of the facts of a cause of action or defense and demands for relief shall be made in consecutive numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each cause of action and each defense shall be stated in a separate cause of action or defense.
- **(c) Adoption by Reference; Exhibits.** Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading.

The court create undue prejudice by only going by the opposing party’s attorneys’ hearsay which are not facts before the court. The court improperly limited the appellant’s claims to the caption “only” form of pleading under SCRCP Rule 10(a), by reducing the counter claims to only three (3) counterclaims (see... R. pp. 63 of the March 12, 2020 transcript) when there are clearly more than three (3) claims as documented in appellees “Memorandum of Law in Support of Motion to Dismiss filed on 11-15-2018 R. pp. 388-392,” and as briefly and clearly stated and detailed in appellants amended countersuit/counterclaim in affidavit form which includes claims and violations of laws that have been incorporated by reference specified in Defendant’s Amended Counterclaim/Countersuit filed on 9-25-2017 R. pp. 42-43 paragraph’s 35, 41, 42, & 49(a) to 49(j) and Defendant’s Reply/Response And Objections To Plaintiff’s Answer/Response To Defendant’s Counterclaims paragraph 47 R. pp. 219-220. The court actual addressed 5 claims by the Appellant but limited his claims. The court briefly and limitedly addressed the libel, slander, constructive fraud, and improperly addressed the violation of the Fair Debt

Collection Practices Act, the violations of TILA presumably the Truth in Lending Act (see... See...R. pp. 10-14 of 4-22-2020 order dismissing the counterclaims/countersuit). Also by limiting the appellant's counterclaims for violations of law, and not allowing appellant leave of court to amend his pleadings, the court has limited the appellant's Libel and Slander claims as they also are directed to appellees reporting to credit bureaus, a third party false information and information they were required to cease and desist from reporting when not verified in violation of the FCRA.

IV. THE COURT ERR AND CREATE ABUSE OF DISCRETION BY DISMISSING THE CASE AND DENYING APPELLANT'S RIGHT TO A TRIAL BY JURY, A JURY TRIAL AS DEMANDED BY APPELLANT AND NOT WAIVED IN VIOLATION OF HIS RIGHTS

A counterclaim is considered a separate action because it can be ordered as a separate trial (see...*South Carolina Community Bank v. Salon Proz, LLC* Appellate Case No. 2014-002627, April 26, 2017). Appellant's FCRA, SCCPC and other claims were filed in this case on 9-25-2017 (see... R. pp. 42-43 Section "VII" of amended counterclaim paragraph's 35, 41, 42, & 49(a) to 49(j), were properly numbered, stated and incorporated by reference as SCRCF Rule 10(b) and (c) required but was dismissed without the court even addressing the remaining claims as claims and without a trial by jury (see... *South Carolina Community Bank v. Salon Proz, LLC, 2017*) as demanded in the amended counterclaim (see... Section "VII" R. pp. 43 paragraph 47) which was negligently ignored by the judge of the court even though pointed out and also docketed by the clerk for a jury trial (see... R. pp. 188 "Clerk's error" Changed file type from non-jury to jury Filed and entered on 10-27-2017). The judge is required to know and abide by the court rules. Appellant did not waive his right to a trial by jury under the 7th Amendment of the U.S. Constitution, the Bill of Rights and Section 14 of the State of South Carolina Constitution and has exercised that right (see... R. pp. 43 Section "VII" pg. 9 of 12 paragraph

47).

As presented in appellant's motion for reconsider filed on 5-20-2020 R. pp. 552-554 which is hereby reiterated and incorporated by reference in its entirety, the court violated the appellant's rights by going off of the Plaintiff's attorney proposed order which are not facts before the court which claims that defendant is not entitled to a jury trial under the grounds that "A mortgage foreclosure is an action in equity" citing *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009). "Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). However the court has failed to also recognize that where legal and equitable issues or rights are raised in the same complaint as they are here, the legal issues are for determination by a jury and the equitable issues are for determination by the court. See...South Carolina Court of Appeals 3792 - *Bateman v. Rouse* (2004) quoting *Floyd v. Floyd*, 306 S.C. 376, 379, 412 S.E.2d 397, 398-99 (1991). Defendant has raised multiple legal issues in his amended counterclaim/countersuit which is legal and compulsory and therefore defendant is entitled to a jury trial in this matter, see...*South Carolina Community Bank, Respondent, v. LLC Appellate Case No. 2014-002627 Decided: April 26, 2017*. The court only addressed that the foreclosure is in equity (see... R. pp. 14 of the courts 4-22-2020 order dismissing appellant's amended counterclaims). The court failed to address that the counterclaim is legal and compulsory therefore the counterclaims are subject to a jury trial because it was demanded by appellant and not waived (see... R. pp. 43 appellant's amended counterclaim filed 9-25-2017 paragraph 47).

Furthermore, either party may demand a trial by jury of any issue triable by jury. See... **Rule 38 (b), SCRPC**. Therefore a trial defendant has a right to a trial by jury as demanded by appellant. The appellant demanded trial by jury for his amended counterclaim/countersuit which

was for a jury to decide, not the court. This case should not have been referred to the master in equity and there should be no orders granting final summary judgment by the court in regards to the amended counterclaim/countersuit without a jury trial as there are still issues of material facts as presented that must be resolved in this case with a jury present in regards to the legal issues raised by the plaintiff in their complaint and challenged by the Defendant. Any such summary orders and judgments not judged in the presence of a jury as demanded are void orders and judgments.

V. THE COURT ERRED AND CREATE ABUSE OF DISCRETION BY DISMISSING THE APPELLANT'S NUMEROUS MOTIONS TO VACATE, MOTION TO DISMISS, MOTION FOR STAY, MOTION FOR TRO FOR FAILURE TO PAY FILING FEE

The filing fee was challenged by appellant which the court never produced on the record, any facts to support their claims in opposition to appellants challenge to the fee which is an undisputed fact. The court has failed to recognize that the appellant has filed on the record a form for a state agency to collect any alleged filing fee requested by the court (see... R. pp. 342-348 Motion/Vacate 9/15/17 Order filed on 8-23-2018) and appellant's affidavit that documents appellant is indigent (see... R. pp. 44 paragraph 50 of appellants amended counterclaim/countersuit and affidavit filed with motion to reconsider filed on 5-20-2020 R. pp. 525-526) which is in affidavit form and qualifies as an affidavit) which the court has already stated an affidavit of documenting a party is indigent must be filed for a waiver of the filing fee (See... R. pp. 60 of the 3-12-2020 transcript also see... R. pp. 530-531, R. pp. 525-526 the affidavit filed with appellant's motion for reconsideration filed 5-20-2020). Because this court has already been moving forward with the case, including appellant's amended counterclaims, they had already been in possession an acceptable affidavits that documents appellant indigent

status which should have been liberally construed by the court as such. The court had the necessary filings before them, even affidavits to construe that the appellant is indigent and entitled to a fee waiver, to have moved forward with the appellant's motions referenced in the 4-22-2020 order R. pp. 8 by the court dismissing appellant's counterclaims.

VI. THE COURT ERRED AND CREATED ABUSE OF DISCRETION BY FAILING TO TAKE IN CONSIDERATION NO MORE THAN AFFIDAVIT'S ARE NEEDED TO MAKE THE PRIMA FACIE CASE, THAT AFFIDAVITS STAND AS TRUTH WHEN NOT REBUTTED, THAT STATEMENTS OF COUNSEL, IN THEIR BRIEFS OR THEIR ARGUMENTS ARE NOT SUFFICIENT FOR A MOTION TO DISMISS

Appellant's disputes with the appellees and counterclaim came in the affidavit form which is prima facie evidence, are considered facts to support his claims (*See ...United States v. Kis, 658 F.2d 526, 536 (7th Cir. 1981); Cert. Denied, 50 U.S. L. W. 2169; S. Ct. March 22, 1982*) "Indeed, no more than affidavits is necessary to make the prima facie case." *See... Morris v National Cash Register, 44 S.W. 2d 433 at point #4 ...an uncontested allegations in affidavit must be accepted as true. An Affidavit if not contested in a timely manner is considered undisputed facts as a matter of law.*"), where there are no rebuttal affidavits evidencing any facts in verified form sign under penalty of perjury by an individual man or woman with firsthand knowledge of any facts verifying on the record facts to rebut appellants verified facts supported by evidence (see... R. pp. 394, 396-397, of appellant's opposition to appellees motion to dismiss and order of reference filed on 12-17-2018 and see... R. pp. 534-536, 541-542, 556 of appellant's motion to reconsider filed 5-20-2020). "Allegations in affidavit in support of filing must be considered as true in absence of counter-affidavit." [*Group v Finletter, 108 F. Supp. 327* Federal case of *Group v Finletter, 108 F. Supp. 327*]. Statements of counsel, in their briefs or their arguments are not sufficient for a motion to dismiss or for summary judgment, *Trinsey v. Pagliaro, D.C. Pa. 1964, 229 F. Supp. 647* (see... R. pp. 399-400 paragraphs 8 of appellant's

opposition to appellees motion to dismiss and order of reference filed on 12-17-2018 and see...R. pp. 530, 542, 556 of appellant's motion to reconsider filed 5-20-2020).

VII. THE COURT VIOLATE THE APPELLANT'S DUE PROCESS RIGHTS, THE COURT RULES AND COMMITTED AN ABUSE OF DISCRETION BY FAILING TO ENJOIN ALL PARTIES REQUESTED TO BE ENJOINED IN THE CASE BY THE APPELLANT IN HIS COUNTERSUIT AND OTHER FILINS AS REQUIRED UNDER SCRCP RULE 13(H)

The court violate the appellant's due process rights and committed an abuse of discretion by failing to follow SCRCP Rule 13(h) and enjoin all parties requested to be enjoined in the case by the appellant in his counterclaim and other filings. SCRCP Rule 13(h) governs the rules for enjoining additional parties to a counterclaim and state that SCRCP Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim. SCRCP Rule 19 provides in general that, A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (A) in his absence complete relief cannot be afforded among those already parties and by B(ii) by the parties absence it would leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest. Section (a)(2) of SCRCP Rule 19 provides that if a party has not been joined, the court shall order that he be made a party. SCRCP Rule 20 provides that, (a) Persons Who May Join or Be Joined as *Defendants* in one action as defendants if (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action. The court completely ignored these rules and therefore have violated them. The appellant filings clearly notified to the court that there is a right to relief asserted against all parties requested to be enjoined which clearly arises out of the same transaction, occurrence,

or series of transactions or occurrences related to the alleged mortgage account, that there are question of law, fact that are common to the parties requested to be enjoined that has arisen in this case and that it would be futile to appellant's counterclaims if not to enjoin BANA who was already the main party to the counterclaims, and the new party requested to be enjoined, Carrington Mortgages Services, LLC (Carrington), and substitute plaintiff, Wilmington Savings Fund Society, FSB as Trustee and the attorneys (Wilmington) all as debt collectors as presented in R. pp. 38-39 **paragraph 8 & 9** of defendant/appellant amended counterclaim filed on 9-25-2017, defendant/appellants entire opposition to plaintiff/appellees motion to dismiss and order of reference filed on 12-17-2018 R. pp. 393-405 and motion for reconsideration filed on 5-20-2020 R. pp. 532-534, 536, 542-543, 546-547, 550, 555-557. There is a clear Failure to Join Necessary Parties under **Rule 12(b)(7), SCRPC. Rule 12(b)(7)** provides that one defense to an action is the failure to join a party under Rule 19 of the South Carolina Rules of Civil Procedure. This defense has already been raised by the appellant as presented in this motion (see... R. pp. 554-555 of appellants Motion for reconsideration filed on 5-20-2020).

VIII. THE COURT ERRED AND COMMITTED AN ABUSE OF DISCRETION BY VIOLATING SCRPC RULE 25(C), SCRPC RULE 5 AND THE APPELLANT'S DUE PROCESS RIGHTS BY ALLOWING A SUBSTITUTION OF PLAINTIFF IN THE MIDDLE OF A PENDING COUNTERSUIT/COUNTERCLAIM

On 9-25-2017 Appellant filed a countersuit/counterclaim against the original plaintiff, Bank of America, N.A. The court allowed the plaintiff to substitute their position in the foreclosure and the pending countersuit/counterclaim without a hearing allowing the appellant the opportunity to raise objections to the substitution knowing that the appellant countersuit/counterclaim clearly evidences and documents that the claims are against multiple parties (see... R. pp. 39 **paragraph 9** of defendant/appellants amended countersuit/counterclaim

filed on 9-25-2017, defendant/appellants entire opposition to plaintiff/appellees motion to dismiss and order of reference filed on 12-17-2018 R. pp. 393-405 and motion for reconsideration filed on 5-20-2020 R. pp. 532-534, 536, 542-543, 546-547, 550, 555-557) who all should have been enjoined so that the claims could be properly adjudicated against each individual party requested to be enjoined. The court not only ignored this fact, but an judge without jurisdiction, assigned to the order the same day the substitution of plaintiff was requested not giving the appellant the opportunity to oppose the substitution (see...order granting substitution of plaintiff filed on 3-3-2018. Because the substitution was signed and ordered by a judge not assigned to the case, this order should have been a void order.

IX. THE COURT ERRED AND COMMITTED AN ABUSE OF DISCRETION BY DISMISSING APPELLANT'S CONSTRUCTIVE FRAUD AND CONSPIRACY CLAIMS

The court alleges that To establish constructive fraud, all elements of actual fraud except the element of intent must be established: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury citing *Pitts v. Jackson Nat. Life Ins. Co.*, 352 S.C. 219, 333 (Ct.App. 1993). A complaint is fatally defective if it fails to allege all nine elements of fraud. Where the Complaint omits allegations on any element of fraud, the trial court should grant a motion to dismiss. *Id.* The court alleged appellant's pleadings fail to specify what false representations the Plaintiff has made and, among other things, how the Defendant would have relied on the truth of these allegedly false representations to his detriment and therefore failed to plead a cause of action for

Constructive Fraud and this counterclaim was dismissed (see... R. pp. 12 of the 4-22-2020 order dismissing counterclaims). The court has stated that Defendant/Appellant has not alleged facts to support any of the elements. In his claim he states “the opposing parties”. There are no opposing parties, only the Plaintiff. There is no combination of two or more persons, which is an essential element of the cause of action. Defendant has not pleaded facts showing any parties have come together for the purpose of injuring Plaintiff. Additionally, Defendant has not pleaded special damages. Rule 9(g), SCRPC, requires “when items of special damage are claimed, they shall be specifically stated.” (see... R. pp. 13-14 of the 4-22-2020 order dismissing counterclaims).

Appellant has satisfied all elements of fraud and conspiracy as specified in his motion for reconsideration filed on 5-20-2020 R. pp. 535-541, 549-551 which is hereby reiterated in its entirety and incorporated by reference with this brief.

X. THE COURT ERRED AND COMMITTED AN ABUSE OF DISCRETION BY DISMISSING APPELLANT’S TRUTH IN LENDING ACT (TILA) CLAIMS

The court claims that Defendant/Appellant has not pleaded any specific facts related to a violation of TILA and therefore, the Defendant’s Counterclaim must be dismissed. On the contrary, Appellant has specified facts to support his claims under TILA (see...motion for reconsideration filed on 5-20-2020 R. pp. 551-552 also see... R. pp. 150-191 Defendant Memorandum of Law in support of brief filed and entered 9-13-2017 plus exhibits E - F).

XI. THE COMMON PLEAS COURT ERRED AND COMMIT AN ABUSE OF DISCRETION, BY NOT PHYSICALLY FILING PROOF OF THEIR JURISDICTION ON THE RECORD WHEN JURISDICTION WAS CHALLENGED BY THE APPELLANT

Appellant has challenged the Common Pleas Courts Jurisdiction which they have failed to produce on the record (see...Defendant’s Amended Motion/Pre Trial Discovery filed and

entered 7-23-2018 R. pp. 256-257, 259 paragraphs 1, 4, 9 and also see...appellant's motion to reconsider filed 5-20-2020 R. pp. 548 paragraph 9). By moving forward and placing any further orders on the record including denying appellant's countersuit/counterclaims, and motions and as a result, their orders are void for want of jurisdiction (subject matter or otherwise), their failure to prove jurisdiction on the record in this case when challenged.

XII. THE COURT ERRED AND COMMITTED AN ABUSE OF DISCRETION BY DISMISSING APPELLANT'S FAIR DEBT COLLECTION PRACTICES ACT (FDCPA) CLAIMS

The court has stated that Defendant/Appellant has not pleaded sufficient facts to support his FDCPA claim. That the FDCPA only applies to debt collectors. The court stated that assuming Plaintiff is collecting a debt, Plaintiff is the holder of the Note and the legal title owner of the Mortgage, and so it is not collecting the debt of another citing the U.S. Supreme Court has stated, "you have to attempt to collect debts owed another before you can ever qualify as a debt collector." *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1724, 198 L. Ed. 2d 177 (2017) (Emphasis in original.) The court goes on to say that Plaintiff's foreclosure action with a waiver of deficiency is not collection of a debt because it has waived deficiency and is seeking only to foreclose its security interest in the property. Enforcing a security interest in real estate is not the collection of a debt (see... R. pp. 12-13 of the 4-22-2020 order dismissing counterclaims). The court has not identified any physical sufficient evidentiary facts signed under penalty of perjury from the plaintiff who is a natural man or woman with firsthand knowledge of the facts filed on the record that can support the court's opinion and therefore is an unsupported opinion of the court. The Plaintiff/Appellees are improperly utilizing *Henson v. Santander Consumer USA Inc.*, which only focuses on the one definition of debt collect, the regularly collects definition.

In *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718 (2017), the Supreme Court held that Santander was not a debt collector under the Fair Debt Collection Practices Act's (FDCPA's) second definition of debt collector under 15 U.S.C. § 1692a(6). This narrow opinion held that a debt buyer is not subject to the FDCPA as an entity regularly collecting debts owed or due another, leaving intact the alternative approach of showing that a debt buyer qualifies as a debt collector under the FDCPA because the principal purpose of its business is the collection of debts.

In *Barbato v. Greystone Alliance, L.L.C.*, 2019 WL 847920 (3d Cir. Feb. 22, 2019), the Third Circuit held that the debt buyer, Crown Asset Management (Crown), is a debt collector under the "principal purpose" prong, holding that "an entity that otherwise meets the 'principal purpose' definition cannot avoid the dictates of the FDCPA merely by hiring a third party to do its collecting." The Third Circuit remanded the case to the district court to determine the debt buyer's liability for the acts of those collecting on its accounts. In doing so, the Third Circuit set out some guidance for the lower court. First, a debt buyer can be liable for the acts of its agents even though the debt buyer did not exert any actual control over the collection agency's FDCPA violation. In addition, while probably not relevant to this case, the Third Circuit also stated that a debt buyer can be liable for the FDCPA violations of its agents even if the agents are not covered as debt collectors under the FDCPA.

To state a claim under most provisions of the FDCPA, a plaintiff must show both that the defendant is a "debt collector" and that the challenged conduct related to debt collection. The common pleas court concluded that, The FDCPA only applies to debt collectors. Assuming Plaintiff is collecting a debt, Plaintiff is the holder of the Note and the legal title owner of the Mortgage, so it is not collecting the debt of another, claiming that as the U.S. Supreme Court has stated (*Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1724, 198 L. Ed. 2d 177 (2017) (Emphasis in original.)), "you have to attempt to collect debts owed *another* before you

can ever qualify as a debt collector.” The court has also stated that, Plaintiff’s foreclosure action with a waiver of deficiency is not collection of a debt because the plaintiff has waived deficiency and is seeking only to foreclose its security interest in the property that enforcing a security interest in real estate is not the collection of a debt (see... R. pp. 12-13 of the courts 4-22-2020 order dismissing the counterclaims). These conclusions misconstrue the FDCPA.

Debt Collector: The FDCPA generally defines “debt collector” as an entity whose “principal purpose” is debt collection or “who regularly collects or attempts to collect” debts. 15 U.S.C. § 1692a(6). Under an additional definition applicable for purposes of a single provision, § 1692f(6), the term “debt collector” “also includes” any entity whose “principal purpose” is “the enforcement of security interests.” *Id.* Six categories of people are specifically excluded from the definition of “debt collector.” *Id.* § 1692a(6)(A)–(F). Enforcers of security interests do not appear on that list.

Courts that have concluded that enforcers of security interests qualify as “debt collectors” only for purposes of § 1692f(6) have failed to consider that enforcers of security interests may also “regularly collect” debts and thus qualify as “debt collectors” under the general definition, see...***Birster v. American Home Mortgage Services, Inc.*, No. 11-13574-G.**

Recognizing that an entity may meet both the general and the additional definition does not render the additional definition superfluous. Some enforcers of security interests, such as repossession agencies that rarely contact debtors, constitute “debt collectors” only under the additional definition, while others—like entities that initiate foreclosure proceedings and then seek payment in lieu of foreclosure—both “regularly” collect debts and “principal[ly]” enforce security interests, ***Birster v. American Home Mortgage Services, Inc.*, No.**

11-13574-G. The additional definition requires the former category of people to comply

with § 1692f(6), even though they are not generally subject to the Act.

By the Act's plain terms, an entity that meets both definitions of "debt collector" qualifies as a "debt collector" for purposes of the entire Act. The additional definition does not exclude enforcers of security interests from the general definition, but rather "also includes" them for purposes of a particular provision. Notably, unlike other entities, enforcers of security interests are not explicitly excluded from the definition of debt collector. Nearly every court, including every federal appellate court, to have considered this question agrees. This conclusion is also consistent with a prior administrative interpretation of the Act, and furthers the Act's consumer-protection purposes.

An entity that satisfies both definitions of "debt collector" remains a "debt collector" subject to the entire FDCPA even if it is enforcing a security interest in a particular case. That an entity is enforcing a security interest in a particular case bears on whether its actions constitute debt collection, not on whether the entity is a debt collector. The statute defines "debt collectors" by reference to their "principal purpose" and "regular[]" activities, not their activities in a particular case. Section 1692i(a)(1), which regulates "debt collectors" enforcing security interests in real property, confirms that entities enforcing a security interest in a particular case can qualify as "debt collectors" under provisions other than § 1692f(6).

Because appellees did not contest that it regularly collects debts nor its principal purpose when it allegedly acquired the alleged defaulted debt was collection of payments from the consumer for the alleged debt, it constitutes as a "debt collector" for purposes of the entire FDCPA.

Debt Collection: Attempting to obtain payment of a consumer debt constitutes debt collection covered by the FDCPA. *Heintz v. Jenkins*, 514 U.S. 291, 294 (1995). Nothing in the

Act suggests that seeking payment from a debtor ceases to qualify as debt collection if it accompanies proceedings to enforce a security interest, *Birster v. American Home Mortgage Services, Inc.*, No. 11-13574-G. That conclusion would create an enormous loophole, allowing debt collectors to abuse consumers with impunity whenever they happened also to seek to enforce a security interest. Every federal appellate court to have published a decision on this issue, and nearly every other court, agrees.

In *Birster v. American Home Mortgage Services, Inc.*, No. 11-13574-G it was stated that, although the district court suggested that pursuing foreclosure, by itself, cannot constitute debt collection covered by the Act, the Court need not reach that question here. At a minimum, seeking payment from a debtor unquestionably qualifies as debt collection, even if it occurs in the context of foreclosure proceedings, which is the case here. The appellant's allege that appellees, original plaintiff, and Carrington repeatedly attempted to induce him to pay amounts owed on the alleged mortgage was debt collection even though it occurred in the context of foreclosure proceedings. The Appellees and the parties requested to be enjoined into this case have done more than try to enforce an alleged security interest with a foreclosure proceeding as they have also attempted to collect the alleged debt either directly or indirectly during foreclosure proceedings which constitute debt collection under the entire FDCPA. When doing both Appellant has specified and produced sufficient facts, affidavits and evidence on the record of which the FDCPA supports proves all parties referenced in this matter to be parties to appellants countersuit/counterclaim even the parties requested to be enjoined are debt collectors under the FDCPA definitions (see... R. pp. 541-549 appellant's motion for reconsideration filed on 5-20-2020).

Wilmington is acting as a trustee's collecting (directly or indirectly) debts on behalf of bond/share/certificate holders who invested into a mortgage backed security (MBS) trust which qualifies as collecting on behalf of another because once the servicer collects (the indirect party) payment from a borrower and pays the trustee, the trustee does not keep the money received from an alleged servicer, the trustee has to pass that payment through to the

bond/share/certificate holders who invested into the MBS, the trust (see...Appellants motion to reconsider filed on 5-20-2020 R. pp. 545 paragraph 4). This also qualifies the plaintiff and all parties requested to be enjoined as debt collectors under the "regularly collects" definition and the "principle purpose" definition of the FDCPA even while in foreclosure, even if its principal purpose is the enforcement of security interests as stated in the CFPB's brief in **Birster v. American Home Mortgage Services, Inc. on or about December 21, 2011, Case No. 11-13574-G** and as decided in **Mary Barbato v. Crown Asset Management LLC, et al., No. 18-1042 (3d Cir. Feb. 22, 2019)** which significantly limited the Supreme Court's decision in *Henson* to the interpretation of the "regularly collects" definition of a "debt collector" in the FDCPA.

CONCLUSION

The Court should reverse the Common Pleas Court orders (see...4-22-2020 and 7-8-2020 R. pp. 8-21 and R. pp. 22-23) and hold that an entity, such as the Appellees, the Original Plaintiff and all parties requested to be enjoined satisfies the FDCPA's general definition of "debt collector" qualifies as a "debt collector" for purposes of the entire Act, even if its principal purpose is enforcing security interests and even if it attempted to enforce a security interest in the particular case. The Court should also hold that, at a minimum, the Appellees, the Original Plaintiff and all parties requested to be enjoined engaged in activity related to debt collection insofar as it attempted to obtain payment of money from the Appellant's/Defendants, even if it also took steps to enforce a security interest at the same time. This Court should reverse the Common Pleas Court orders (see... 4-22-2020 and 7-8-2020 R. pp. 8-21 and R. pp. 22-23), referring the case to the Master in Equity, dismissing the TILA, Conspiracy, Libel & Slander, and Constructive Fraud Claims, direct the Common Pleas Court to allow the appellant leave of court to amend his complaint to correct and repair any deficiencies and to add any new claims he has reserved his rights to that have commenced during the 2-3 years the case has been pending in

the Common Pleas Court. This Court should reverse the Common Pleas Court orders (see... 4-22-2020 and 7-8-2020 court orders R. pp. 8-21 and R. pp. 22-23) denying appellant's motions for failure to pay filing fee, to acknowledge that appellant has filed affidavits of fee waivers on the record documenting he is indigent, appellant has filed forms for the court to collect any alleged fees and direct the court to move forward with appellant's motions. To direct the court to enjoin the parties requested by appellant to be enjoined, to properly apply and follow their rule own civil rules without any further bias and prejudicial acts, to re-docket the case as a jury trial at the very least for appellants counterclaim/countersuit. Done this 26th day of January, 2022.

RESPECTFULLY PRESENTED,

Nelson L. Bruce "Without Prejudice"

THE BENEFICIAL OWNER OF THE CESTI QUI EQUITABLE TRUST

Nelson L. Bruce, Propria Persona, Sui Juris

All Natural Rights Explicitly Reserved and Retained

U.C.C. 1-207/1-308, 1.103.6

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Honorable Diane S. Goodstein, Circuit Court Judge

Case No. 2016CP1801678

Appellate Case No. 2020-001130

Wilmington Savings Fund Society FSB, as Trustee of Stanwich Mortgage Loan Trust C
.....Respondent

v.

Nelson L. Bruce, Capital Return Investments, LLC, Charleston Area CDC, SC Housing Corp.,
South Carolina Housing Trust Fund, and Reminisce Homeowners Association, Inc., Defendants,

Of Whom Nelson L. Bruce is the.....Appellant

FINAL BRIEF OF RESPONDENT

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January 7, 2022

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the Court was correct in denying Appellant's motions for which he refused to pay the filing fees.
- II. Whether the Court should have dismissed Appellant's Counterclaims.
- III. Whether the Court should have instructed the Appellant to correct his Counterclaims.
- IV. Whether the Court should have referred the case or ordered a jury trial.
- V. Whether the Court should have physically filed proof of its Jurisdiction.

STATEMENT OF THE CASE

This case is a foreclosure of a Mortgage given by Appellant Nelson L. Bruce to Respondent's predecessor. The case was initiated by the filing of a Lis Pendens, Summons and Complaint on August 19, 2016. (R. pp. 24-34) Appellant filed a Motion to Dismiss on April 3, 2017. (R. pp. 69-149) A hearing was held on September 13, 2017. By Order dated September 15, 2017, the Court denied Appellant's motion.

Appellant filed an Answer and Counterclaims on September 13, 2017, which he amended and filed on September 25, 2017. (Hereinafter "Answer") (R. pp. 35-46) In response a Reply was timely¹ filed its March 1, 2018. (R. pp. 192-200) The Reply included a Motion to Dismiss Appellant's claims under SCRCP 12(b)(6) for failure to state a claim upon which relief can be granted.

On March 9, 2018, Bank of America, N.A., the Plaintiff at the time, filed a motion to substitute Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust C as Plaintiff since the mortgage had been assigned after the initiation of the case. By order entered March 23, 2018, the motion was granted. (R. pp. 1-5)

On July 20, 2018 Appellant filed a Motion for Pre-trial Discovery and for Proof of Jurisdiction. Appellant amended the Motion on July 23, 2018. (R. pp. 253-262) On August 23, 2018 Appellant filed several motions with the Court, some of which were duplicative. (R. p. 263-385) They were captioned:

Motion to Dismiss, Authorization Form to Collect Filing Fee and Instructions (445 Form)
(Appellant's Motion to Dismiss)

¹ Before Respondent's time to reply had run, Appellant removed the case to the United States District Court for the District of South Carolina. The District Court issued an Order to Remand the case to State Court. The Remand Order was appealed to the United States Court of Appeals for the Fourth Circuit. The Court of Appeals denied the appeal, remanding the case back to the Circuit Court.

Motion to Vacate/Set Aside Judgment/Order Pursuant to SC.R.Civ.P. 60(b), Authorization Form to Collect Filing Fee and Instructions (445 Form) (Appellant's Motion to Set Aside Judgment)

Motion for Temporary Restraining Order, Preliminary and Permanent Injunctions, and Damages, Court Filing Fee Objection/Challenge, Authorization Form to Collect Filing Fee and Instructions (SSA-445 Form) (Appellant's Motion for TRO, etc.)

The Clerk of Court filed them as Motion/Dismiss (Filing Fee Contested), Motion/Vacate 3/23/18 Order (Filing Fee Contested), Motion/Dismiss 9/25/17² Order (Filing Fee Contested), Motion/Vacate 9/15/17 Order (Filing Fee Contested) and Motion/TRO (Filing Fee Contested). Appellant did not pay the motion fee for any of the motions. On October 16, 2018 Respondent filed responses to Appellant's motions.

On October 16, 2018 Respondent also filed a Motion to Dismiss Appellant's Counterclaims and to Refer the case to the Master in Equity. (R. pp. 386-392) On December 17, 2018 Appellant filed a response in opposition to Respondent's Motion to Dismiss and Refer. (R. pp. 393-405)

The Court scheduled Appellant's six motions and Respondent's motion for a hearing on March 12, 2020. Before the hearing, Appellant filed a Motion to Stay Pending Arbitration Award (Filing Fees Contested) on February 28, 2020. (R. pp. 520-523) The eight outstanding motions were heard on March 12, 2020. By Order entered April 22, 2020 the Court issued an order denying Appellant's outstanding motions, continuing Appellant's Amended Motion for Pre-Trial Discovery; granting Respondent's Motion to Dismiss Counterclaims; and granting Respondent's Motion to Refer. (R. pp. 8-16) This April 22, 2020 Order is the order being appealed by Appellant.

Appellant filed a Motion to Reconsider on May 20, 2020. (R. pp. 524-578) The Master in Equity remanded the matter back to the Circuit Court for consideration of the Motion to

² No order was issued on September 25, 2017. This appears to be a typo since the Appellant's motion references the Order signed September 15, 2017.

Reconsider. The Appellant's Motion was denied, and the case was referred back to the Master in Equity by Order entered July 8, 2020. (R. pp. 22-23) Appellant filed a Notice of Appeal on July 21, 2020 and an Amended Notice of Appeal on August 27, 2020. (R. pp. 47-54)

ARGUMENT

I. The Court was correct in denying Appellant's motions for which he refused to pay the filing fees.

a. Standard of Review

The trial Court denied Appellant's motions on the basis that he had not paid the required motion fees as required by statute. (R. p. 8-9) "Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo." *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) (*Internal cite omitted.*)

b. Appellant did not preserve this issue for appeal.

At the hearing Appellant argued that he should not have to pay filing fees until the county provided him proof of where the fees are being allocated. (R. p. 58, lines, 11-18). In his brief Appellant abandons this argument and argues instead he should be allowed to proceed without paying filing fees under the theory he has filed sufficient documents to evidence his indigent status. Failure to raise an issue constitutes waiver and is not properly before the Court on appeal. *Carolina Attractions, Inc. v. Courtney*, 287 S.C. 140, 143, 337 S.E.2d 244, 245 (Ct. App. 1985)

Appellant has not preserved his claim to proceed as an indigent. He did not claim that position at hearing instead arguing the county had not proven to him where the funds will go. Judge Goodstein asked about the filing of an affidavit of indigency. Appellant informed the Court he had not filed one. Judge Goodstein then invited Appellant to argue why he had not paid the fee, and Appellant declined to argue indigency. (R. p. 57, line 24 – p. 58, line 18) Thus, having not raised the issue to the Circuit Court, Appellant cannot raise it now.

c. Appellant has abandoned this issue on appeal.

Appellant cites no authority in his brief for his position that he should not have to pay the filing fee. "An issue is deemed abandoned if the argument in the brief is not supported by

authority or is only conclusory.’ *Potter v. Spartanburg Sch. Dist.* 7, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct.App.2011); *see also S.C. Dep’t of Soc. Servs. v. Mother*, 375 S.C. 276, 283, 651 S.E.2d 622, 626 (Ct.App.2007) (finding an issue abandoned because the appellant made ‘a conclusory argument without citation of any authority to support her claim’); *Hunt v. S.C. Forestry Comm’n*, 358 S.C. 564, 573, 595 S.E.2d 846, 851 (Ct.App.2004) (‘Issues raised in a brief but not supported by authority are deemed abandoned and will not be considered on appeal.’).” *Bluffton Towne Ctr., LLC v. Gilleland-Prince*, 412 S.C. 554, 573, 772 S.E.2d 882, 892 (Ct. App. 2015)

d. Even had Appellant preserved this issue, the trial Court correctly ruled that the Appellant is required to pay the filing fee for his motions to be heard.

Appellant has failed to pay the \$25.00 filing fee for any of the motions subject of this appeal (though he has paid the motion fees for other motions in the case). When questioned by the Court on this issue, Appellant stated that he did not believe that he is required to pay motion filing fees. Appellant further asserted that he would want to know how the County uses the proceeds from the motion filing fees before he would agree to pay the fees. Appellant offered no other explanation for his failure to pay the filing fees. (R. pp. 57-60)

Appellant is clearly incorrect. S.C. CODE § 8-21-320 generally requires that a \$25.00 filing fee be collected for every motion filed in the Court of Common Pleas. Appellant has not demonstrated any reason why he should be exempt from the general requirement imposed by state law. He argued at hearing there should be no requirement for filing fees. Though Appellant is certainly entitled to his philosophical opinion, it has no bearing on the law.

Appellant now wants to argue he is indigent. This issue was not before the trial Court since Appellant did not claim indigency at hearing. The Court directly asked Appellant if he had filed

an affidavit of indigency, and he informed the Court he did not. (R. p. 57, lines 24 - p. 58, line 1) There was no further argument from Appellant or assertion that his failure to pay fees was based on practical considerations. Appellant should not be allowed to file motions, without paying the statutory fee, then argue to the trial Court that there shouldn't be fees and subsequently claim to be unable to pay the fee on appeal.

II. The Court properly dismissed Appellant's Counterclaims.

a. Standard of Review

"In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct.App.2010) "... a ruling on a motion to dismiss under Rule 12(b)(6), SCRCP, must be based solely on the allegations contained in the complaint." *Chewning v. Ford Motor Co.*, 346 S.C. 28, 32, 550 S.E.2d 584, 586 (Ct. App. 2001) *citing Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). "Viewing the evidence in favor of the [non-moving party], the motion must be granted if facts alleged in the complaint and inferences reasonably deductible therefrom do not entitle the plaintiff to relief ..." *Chewning, Id. Citing Jarrell v. Petoseed Co.*, 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998).

Additionally, the well settled rule is that *facts*, and not *legal conclusions*, must be stated in pleadings... *Lowry v. Jackson*, 27 S.C. 318, 323, 3 S.E. 473, 477 (1887). In reviewing the pleadings the Court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Builder Mart of Am., Inc. v. First Union Corp.*, 349 S.C. 500, 512, 563 S.E.2d 352, 358 (Ct. App. 2002) *citing Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 2944, 92 L. Ed. 2d 209 (1986).

b. Appellant has not preserved his FDCPA claims because he is attempting to change his argument and position on appeal.

Appellant argued a different theory for his Fair Debt Collections Practices Act (“FDCPA”) claims at hearing than the theory he seeks to argue in his brief to this Court and has not preserved a claim under FDCPA for review.

At the hearing, Appellant argued that he did not receive a verification in the form he wanted. (R. pp. 65-66) Appellant did not address whether Respondent is a debt collector under the FDCPA, a necessary element of an FDCPA claim. In the argument section of his brief Appellant now argues Respondent is a debt collector under the FDCPA. (Appellant’s Initial Brief, pp. 13-18, 29-34) However, Appellant did not raise or argue this point at the hearing.

Appellant’s entire position at hearing was that he should have a verification in the form he requires. He cannot now raise other issues and theories for the first time to in an appeal. See *Carolina Attractions, Inc.*

c. Even had Appellant preserved the dismissal of his FDCPA claim, the Court was correct in dismissing the claim.

Appellant asserts a violation of the Fair Debt Collection Practices Act (FDCPA). “To establish a violation of the FDCPA, [Appellant] must prove that (1) [s]he has been the object of collection activity arising from consumer debt, (2) the defendant is a debt collector as defined by the FDCPA, and (3) the defendant has engaged in an act or omission prohibited by the FDCPA. *Chatman v. GC Servs., LP*, 57 F. Supp. 3d 560, 565 (D.S.C. 2014)

Appellant cannot maintain a claim against Respondent under the FDCPA because the act only applies to debt collectors, and Respondent is not a Debt Collector under the statute. “[T]he FDCPA purports to regulate only the conduct of debt collectors, not creditors, generally distinguishing between the two based on whether the person acts in an agency relationship with

the person to whom the borrower is indebted.’ The FDCPA defines ‘debt collector’ as ‘(1) a person whose *principal purpose* is to collect debts; (2) a person who *regularly* collects debts owed to another; or (3) a person who collects *its own debts*, using *a name other than its own* as if it were a debt collector.’” *Richardson v. Shapiro & Brown, LLP*, 751 F. App’x 346, 349 (4th Cir. 2018) (*Emphasis in original. Internal Cites omitted.*)

Appellant’s Answer did not assert any facts that Respondent’s principal purpose is the collection of debts. Accordingly, Respondent is not a debt collector under the first prong of the statute. Similarly, Appellant has not alleged Respondent is operating using a name other than its own as would be required to satisfy the third prong. Finally, Respondent is not a debt collector under the second prong of the statute. The U.S. Supreme Court has stated, “you have to attempt to collect debts owed *another* before you can ever qualify as a debt collector.” *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1724, 198 L. Ed. 2d 177 (2017) (*Emphasis in original.*) Appellant is the holder of the Note and the legal title owner of the Mortgage, so it is not collecting the debt of another. Assuming the facts of Appellant’s Answer to be true, there are still no facts alleged from which it could be inferred that Respondent is a debt collector under the statute.

As an additional sustaining ground, Appellant is not seeking to collect a debt; it is seeking to enforce a lien against real estate, so no claim can be maintained under the FDCPA. Appellant has waived its rights to any deficiency against Respondent and is seeking only to foreclose its security interest in the property. “A mortgage and a note are separate securities for the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action.” *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 220–21, 746 S.E.2d 478, 481 (Ct. App. 2013) Citing *U.S. Bank Trust Nat’l Ass’n v. Bell*, 385 S.C.

364, 374, 684 S.E.2d 199, 204 (Ct.App.2009). In making that choice, the mortgagee has the option of seeking to collect from the note maker or seeking to collect from the sale of the real estate. A foreclosure without a deficiency demand is not an attempt to collect a debt from a consumer; it is an attempt to enforce a lien.

d. Appellant has not preserved the dismissal of his other Counterclaims by refusing to argue his position at hearing.

At the hearing before Judge Goodstein, counsel for Respondent argued the Motion to Dismiss. After the conclusion of that presentation, the Court asked Appellant for his response. Appellant declined to argue his position and has waived the right to try to re-litigate it before this Court because the issue is not preserved. The transcript of the motion hearing shows:

MR. BRUCE: And for me to speak as far as what he's talking about ---

THE COURT: Yes.

MR. BRUCE: --- the motion to dismiss.

THE COURT: Yes.

MR. BRUCE: It would be a breach of that contract for me to continue and start making objections towards the issue that he's claiming.

(R. p. 65, lines 3-10)

When given the opportunity to present his case, Appellant declined.³ Appellant has not preserved any issues related to his counterclaims.

³ Later in the hearing Respondent did make some argument about his Fair Debt Collection Practices Act claim, which Appellant has addressed in sections IV.c. and IV.d.

“Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.’ *Queen’s Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct.App.2006). At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). It is ‘axiomatic that an issue cannot be raised for the first time on appeal.’ *Id.* Imposing such a requirement on the appellant ‘is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.’ *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).” *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011)

e. Even had Appellant preserved his claim for Libel, the Court properly dismissed it.

The Appellant lists Libel in the caption. In Paragraph 13, subsection b) of his Answer Appellant states “the state of South Carolina has laws against libel and slander, and I bring forth my claim for such ...” (R. p. 39) Appellant seems to be making a claim for Libel against the Respondent.

Appellant has not pleaded facts sufficient to support this claim. Appellant has not identified any statement which is libelous. He makes reference to “information on this public record”. (R. p. 39) What information the Appellant is referring to is unclear. If it is not possible to tell what facts the Appellant is referring to, then it cannot be reasonably said that the Appellant has pleaded facts sufficient to support a cause of action.

Assuming *arguendo* the Appellant is referring to the filing of the Lis Pendens, Summons and Complaint or other pleadings as being libelous, Appellant's claim should be dismissed. The filing of those pleadings is absolutely privileged:

South Carolina has long recognized that relevant pleadings, even if defamatory, are absolutely privileged. *McKesson & Robbins v. Newsome*, 206 S.C. 269, 33 S.E.2d 585 (1945); *Texas Co. v. C.W. Brewer & Co.*, 180 S.C. 325, 185 S.E. 623 (1936); *Rodgers v. Wise*, 193 S.C. 5, 7 S.E.2d 517 (1940); *Sanders v. Rollinson*, 33 S.C. Law (2 Strob.) 447 (1848) (stating an action for slander based on a defamatory affidavit was a non-suit; the proper attack is under malicious prosecution); *accord Lone v. Brown*, 199 N.J.Super. 420, 489 A.2d 1192, 1195 (App.Div.1985) ("It is well established that statements, written or oral, made by judges, attorneys, witnesses, parties or jurors in the course of judicial proceedings, which have some relation thereto, are absolutely privileged from slander or defamation actions, even if the statements are made with malice."); *Kropp v. Prather*, 526 S.W.2d 283, 286 (Tex.Civ.App.1975) ("Any communication, oral or written, uttered *24 or published in the due course of a judicial proceeding is absolutely privileged and cannot form the basis for a cause of action in libel or slander.").

Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 23–24, 567 S.E.2d 881, 893 (Ct. App. 2002)

f. Even had Appellant preserved his claim for Slander, the Court properly dismissed it.

Appellant appeared to be asserting a claim for Slander. "Slander is a spoken defamation while libel is a written defamation or one accomplished by actions or conduct." *Kunst v. Loree*, 424 S.C. 24, 39, 817 S.E.2d 295, 302 (Ct. App. 2018), *reh'g denied* (Aug. 16, 2018) *Citing Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 133–34 (1999). Appellant has not identified any statement made by Respondent, or any statement at all. Accordingly, appellant has not pleaded facts sufficient to support a claim for Slander.

g. Even had Appellant preserved his claim for Conspiracy, the Court properly dismissed it.

"A civil conspiracy consists of three elements: (1) A combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes the plaintiff special damages".

Hammond v. Butler, Means, Evins & Brown, 300 S.C. 458, 463, 388 S.E.2d 796, 798 (1990). Appellant has not alleged facts to support any of the elements. In his claim he states “the opposing parties”. There are no opposing parties, only the Appellant. There is no combination of two or more persons.

Appellant has not pleaded facts showing any parties have come together for the purpose of injuring Appellant. Additionally, Appellant has not pleaded special damages, which is an essential element. Rule 9(g), SCRCP, requires “when items of special damage are claimed, they shall be specifically stated.” In *AJG Holdings LLC v. Dunn*, the Court of Appeals stated, “To prove special damages, [claimants] had to show that the acts in furtherance of the conspiracy were separate and independent from other wrongful acts alleged in the complaint.” See *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981). Special damages must be properly pled, or the claim for civil conspiracy will be dismissed. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115–16, 682 S.E.2d 871, 875 (Ct.App.2009); see also Rule 9(g), SCRCP (requiring special damages to be specifically stated in the pleadings). *AJG Holdings LLC v. Dunn*, 392 S.C. 160, 167–68, 708 S.E.2d 218, 222–23 (Ct. App. 2011), *aff’d*, 410 S.C. 346, 764 S.E.2d 912 (2014)

The AJG Court cited the *Hackworth* case, which makes it clear that dismissal is appropriate when special damages are not properly pleaded.

Additionally, Appellant’s claim seems to center around an assertion about standing to bring this action. Even assuming this to be true, lack of standing may be a defense to the action, not the basis of a conspiracy claim.

h. Appellant’s Answer and Counterclaim makes reference to other claims, but they are unintelligible and cannot form the basis of a cause of action.

The Appellant's Answer and Counterclaim makes references to other vague claims, statutes and causes of action, but Appellant has not pleaded facts to support any cause of action against Respondent under any of the mentioned statutes. Insofar as the Court is inclined to deem other causes of actions as having been pleaded, they should be dismissed for failure to state a claim upon which relief can be granted.

III. The Court has no duty to instruct Appellant how to plead his Counterclaims, and it was never asked to.

a. There is no ruling to which a standard of review would apply.

At the hearing Appellant made no request of the Court to be given leave to amend his pleadings. Consequently, there is no ruling to be appealed or reviewed.

b. Appellant has not preserved this issue.

Because the appellant did not raise this issue to the trial court it is not preserved for appeal. Failure to raise an issue constitutes waiver and is not properly before the Court on appeal. *See Carolina Attractions, Inc.*

c. Appellant is to be held to the same standard as an attorney.

Appellant claims that he is entitled to special treatment, but the record reflects he is a sophisticated party. Appellant has filed two answers and many motions. He has filed memoranda of law. He has removed the case to the United States District Court, twice. He has appealed to the United States Court of the Appeals for the Fourth Circuit. This is his second appeal in this case to this Court.

He should be held to the same standard as an attorney. "[L]ack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as

an attorney.” *Rouvet v. Rouvet*, 388 S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010) (Citing *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct.App.2001)).

IV. The Court properly referred the case to the Master in Equity.

a. Standard of Review

“Whether a party is entitled to a jury trial is a question of law. Appellate courts may decide questions of law with no particular deference to the circuit court's findings.” *S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 93, 800 S.E.2d 488, 490 (Ct. App. 2017) (*Internal Cites Omitted.*)

b. Appellant has not preserved this issue for appeal.

Appellant has not preserved any objection to the order of reference. At the hearing, Appellant did not offer any argument or objection to an order of reference. Although he was invited by the trial judge to present his position, he did not assert his right to a jury trial. Failure to raise an issue constitutes waiver and is not properly before the Court on appeal. See *Carolina Attractions, Inc.*

c. Even had Appellant preserved this issue, Appellant is not entitled to a jury trial in a foreclosure action.

Appellant contends he is entitled to have this action heard by a jury. (Appellant’s Initial Brief, Pp. 21-23) The trial correctly ruled that the Appellant has no right to a trial by jury and that reference to the Master in Equity was appropriate.

After Appellant’s counterclaims were dismissed, the only cause of action before the Court was Respondent’s foreclosure action. “A mortgage foreclosure is an action in equity.” *U.S. Bank Trust Nat’l Ass’n v. Bell*, 385 S.C. at 373, 684 S.E.2d at 204. “Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions.” *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997).

South Carolina's Rules of Civil Procedure support the Judge's decision. In relevant part Rule 53(b) provides: "In an action ... for foreclosure, some or all of the causes of action in a case may be referred to a master." Rule 53(b), SCRCR Rule 71 (a) adds: "Actions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53." Rule 71, SCRCR It is clear that reference to the Master was the correct ruling.

V. The Court has no duty to physically filed proof of its Jurisdiction.

a. Standard of Review

In his brief, Appellant argues the trial Court should have filed proof of its jurisdiction before proceeding with the case. This was not ruled upon by the trial Court, so there is no ruling to review.

b. Appellant has not preserved this issue for review.

Appellant has not preserved this issue for appellate review. He did not argue or mention it at the hearing. Failure to raise an issue constitutes waiver and is not properly before the Court on appeal. *See Carolina Attractions, Inc.*

c. Appellant has effectively abandoned this issue.

In his brief Appellant abandons this issue because he cites to no authority for his position. "Issues raised in a brief but not supported by authority are deemed abandoned and will not be considered on appeal" *Bluffton Towne Ctr., LLC*, 412 S.C. at 573, 772 S.E.2d at 892

d. Appellant has voluntarily submitted to the Court's jurisdiction.

Even if this issue were before the Court, Appellant cites to no authority which would place the burden of proof on the Circuit Court to prove to the Appellant it has the jurisdiction. Further, Appellant has waived any objection to jurisdiction by voluntarily appearing in this case. Appellant

has filed an Answer and an Amended Answer as well as myriad motions. “Voluntary appearance by defendant is equivalent to personal service.” SCRCP 4 “Although a court commonly obtains personal jurisdiction by the service of the summons and complaint, it may also obtain personal jurisdiction if the defendant makes a voluntary appearance.” *Stearns Bank Nat. Ass’n v. Glenwood Falls, LP*, 373 S.C. 331, 337, 644 S.E.2d 793, 796 (Ct. App. 2007)

CONCLUSION

Appellant has not preserved any issues for appeal, and the appeal should be dismissed for that reason. However, if the Court should construe some issues as being properly before the Court, then the trial court’s order dismissing Appellant’s Counterclaims and referring the matter to the Master should be affirmed.

Respectfully submitted,

Albertelli Law

/s/ William S. Koehler
William S. Koehler
1201 Main St, Suite 1450
Columbia, SC 29201
(803) 828-0880
Attorneys for Respondent

January 7, 2022

RECEIVED

Jan 07 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Honorable Diane S. Goodstein, Circuit Court Judge

Case No. 2016CP1801678

Appellate Case No. 2020-001130

Wilmington Savings Fund Society FSB, as Trustee of Stanwich Mortgage Loan Trust C
.....Respondent

v.

Nelson L. Bruce, Capital Return Investments, LLC, Charleston Area CDC, SC Housing Corp.,
South Carolina Housing Trust Fund, and Reminisce Homeowners Association, Inc., Defendants,

Of Whom Nelson L. Bruce is the.....Appellant

CERTIFICATE OF MAILING

The undersigned hereby certifies that she is an employee of Albertelli Law and is a person
of such age and discretion to be competent to serve papers.

That on the 7th day of January 2022 she served copies of Respondent's Final Brief by
placing said copies in a postage paid envelope addressed to each of the following persons at the
address stated below, which is the last known address, and by depositing said envelope and
contents in the U.S. Mail.

Pleadings:
Parties Served:

Respondent's Final Brief

Nelson L. Bruce
144 Pavilion Street
Summerville, SC 29483



Sierra Hampton
Paralegal
Albertelli Law

Columbia, South Carolina

Record/FILE ON DEMAND

Acceptance of Offer with full immunity AND WITHOUT RECOURSE! NBLB-20210828NLBWILM0801-COAPP-0001^o

THE REPUBLIC STATE OF South Carolina
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2020-001130
Common Pleas Case No.: 16-CP-18-1678

RECEIVED

JAN 27 2022

SC Court of Appeals

Wilmington Savings Fund Society FSB as Trustee of Stanwich Mortgage Loan Trust C, Respondent,

v,

Nelson L, Bruce, Capital Return Investments, LLC, Charleston Area CDC, SC Housing Corp., South Carolina
Housing Trust Fund, and Reminisce Homeowners Association, Inc., Defendants,

Of whom Nelson L, Bruce is the Appellant, _____

APPELLANT'S FINAL RESPONSE TO RESPONDENTS INITIAL BRIEF

Nelson L. Bruce, Propria Persona, Sui Juris
c/o 144 Pavilion Street
Summerville, South Carolina [29483]
(843) 437-7901
Appellant

January 26th, 2022

INTRODUCTION

Comes now appellant with his reply to respondent's initial brief which was served on him through the mail on August 18, 2021 which is the date I received this filing.

APPELLANT'S RESPONSE TO RESPONDENTS ARGUMENT SECTION "I"

Response/Objection to sections "b - c"

Respondent alleged that appellant abandoned his argument that, "he should not have to pay filing fees until the county provided him proof of where the fees are being allocated (Transcript., R. pp. 58, at ll., 14-18) because In his brief Appellant argues instead he should be allowed to proceed without paying filing fees under the theory he has filed sufficient documents to evidence his indigent status. Appellant objects for the reasons specified in his "OPPOSITION TO APPELLEE'S MOTION TO DISMISS APPEAL (section IV "R. pp. 615-616") and appellant's initial brief (section "V"). Appellant also has not abandoned this argument because the first line in his brief, section "V" clearly evidences that the argument raised in the March 12, 2020 hearing has been preserved for appellate review by stating, "The filing fee was challenged by appellant which the court never produced on the record, any facts to support their claims in opposition to appellant's challenge to the fee which is an undisputed fact. The lower court also did not allow appellant the opportunity to produce evidence to support his claims and authority for his argument. Appellant received evidence directly from the South Carolina Supreme Court which stated specifically which fund Diane S. Goodstein office is funded by the states appropriated fund (see...defendants motion to reconsider R. pp. 531) to cover all operations of the court in advance every year which is why appellant challenged where these filing fees are being allocated to since the court is already pre-paid in advance by tax payers dollars (Transcript., R. pp. 58 at 6-25, R. pp. 59 at 1-17) which is estimated and paid out to the court

from state citizens and estimated financials every year through the “South Carolina Department of Administration Budget Department” through the states appropriated fund to Diane’s office by the office and budget department (see...defendants motion to reconsider R. pp. 531). By asking for an additional \$25 is a double tax issue (see...defendants motion to reconsider R. pp. 531). The lower court also documented that this argument is preserved for appellate review (Transcript., R. pp. 616 at 5-22). It also looks like the court reporter did not document word for word what the appellant stated at the hearing as there are incomplete section of the transcript documenting the responses at the hearing labeled as “---“ as the court reported failed to document that Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen’s Compensation Laws of this state. *Right and justice shall be administered without sale, denial, or delay. Ramsbacher v. Jim Palmer Trucking 391 Mont. 298 (Mont. 2018).* Also see...Trankel v. State 282 Mont. 348 (Mont. 1997), State ex Rel. Mont. Citizens v. Waltermire 224 Mont. 273 (Mont. 1986) and *St. ex Rel. Mt. Citizens v. Waltermire 227 Mont. 85 (Mont. 1987).*

APPELLANT’S RESPONSE TO RESPONDENTS ARGUMENT SECTION “II”

Response/Objection to sections “a”

It is unclear what the respondent’s arguments are in this section. It appears that respondent is arguing that ‘Viewing the evidence in favor of the [non-moving party], the motion must be granted if facts alleged in the complaint and inferences reasonably deductible therefrom do not entitle the plaintiff to relief, that “the well settled rule is that facts, and not legal

conclusions, must be stated in pleadings,” and that “in reviewing the pleadings the Court is “not bound to accept as true a legal conclusion couched as a factual allegation.”” Appellant objects for the reasons specified in his motion to reconsider R. pp. 532-534, his opposition to plaintiff’s motion to dismiss and order of reference R. pp. 394-397 paragraphs 1 and 3, Appellants opposition to respondents motion to dismiss appeal R. pp. 605-606, 609, 615-616 and Appellant initial brief section “VI” which are hereby reiterated and incorporated by reference in their entirety as appellant’s amended counterclaim came in the affidavit form which is prima facie evidence, are considered facts before the court to support his claims as there are no rebuttal affidavits filed on the record in this case. “Prima facie evidence of fact is in law sufficient to establish the fact, unless rebutted” *Mack v. Post Exchange* 207 S.C. 258 (S.C. 1945).

The grant of a motion to dismiss for failure to state facts sufficient to constitute a cause of action cannot be upheld if facts alleged in the complaint and inferences reasonably deducible therefrom, if proven, would entitle the plaintiff to relief on any theory of the case. *State v. Adkison* 213 S.E.2d 591 (S.C. 1975) Quoting. *Newton v. South Carolina Public Railways Comm’n*, 319 S.C. 430, 462 S.E.2d 266 (1995); *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987). “The trial court and this [C]ourt on appeal must presume all well pled facts to be true.” *Morrow Crane Co. v. T.R. Tucker Constr. Co.*, 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct.App. 1988). “[A] judgment on the pleadings is considered to be a drastic procedure by our courts.” *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) (citation omitted).

The law requires that an affidavit in attachment, in order to withstand the attack of irregularity, must contain an allegation of facts from which the inference sought may be drawn, and, if made upon information and belief, the source of such information (*Witherspoon Co. v.*

Bell 132 S.C. 303 (S.C. 1925)).

Response/Objection to sections "b"

Respondent believes that appellant is arguing for the first time on appeal the arguments stated in his initial brief (Appellant's Initial Brief, Pp. 13-18, 29-34) and that he is changing his entire position on appeal (Respondent initial brief, pg. 14). Appellant object for the reasons stated in his opposition to respondent's motion to dismiss appeal section II R. pp. 611-614, and appellant's initial brief sections "I" and "XII" which are hereby reiterated and incorporated by reference in their entirety.

Response/Objection to sections "c"

Appellant objects to this section of the Respondents initial brief for the reasons stated in his opposition to respondent's motion to dismiss appeal section II R. pp. 611-614, and appellants initial brief sections "I" and "XII" which are hereby reiterated and incorporated by reference in their entirety.

Response/Objection to sections "d"

Appellant objects to this section of the Respondents initial brief for the reasons stated in his opposition to respondent's motion to dismiss appeal sections "I" and "II" R. pp. 393-404, which are hereby reiterated and incorporated by reference in their entirety.

Response/Objection to sections "e"

Appellant objects to this section of the Respondents initial brief for the reasons stated in appellant's initial brief section "III", which are hereby reiterated and incorporated by reference in their entirety.

Response/Objection to sections "f"

Appellant objects to this section of the Respondents initial brief for the reasons stated in

appellant's initial brief section "III" pgs. 19-21, which are hereby reiterated and incorporated by reference in their entirety.

Response/Objection to sections "g"

Appellant objects to this section of the Respondents initial brief for the reasons stated in appellant's initial brief section "IX" pg. 27, which are hereby reiterated and incorporated by reference in their entirety.

Response/Objection to sections "h"

Appellant objects to this section of the Respondents initial brief for the reasons stated in appellant's initial brief section "VI" and his opposition to respondent's motion to dismiss appeal section I, R. pp. 609-611, which are hereby reiterated and incorporated by reference in their entirety.

APPELLANT'S RESPONSE TO RESPONDENTS ARGUMENT SECTION "III"

Response/Objection to sections "a" and "b"

Appellant objects to this section of the Respondents initial brief for the reasons stated in appellant's motion to reconsider R. pp. 558 and appellant's opposition to plaintiff's motion to dismiss and order of reference paragraph 1, R. pp. 396 which clearly and specifically addresses the respondents motion to dismiss and order of reference which are hereby reiterated and incorporated by reference in their entirety as appellant clearly stated that, "Defendant hereby explicitly reserves and retains the right to amend his amended countersuit with leave of court and hereby exercises that right with the filing of this opposition as there is new evidence, new parties to be enjoined and issues in this matter that have come forth since the filing of his amended countersuit." This is clearly a request of the court for leave to amend his amended counterclaim/countersuit that had been raised before the court in the properly filed motions

referenced above therefore there is a ruling to be appealed that has been preserved for appellate review and not waived by the appellant.

Response/Objection to sections "c"

Appellant objects to this section of the Respondents initial brief for the reasons stated in appellant's motion to reconsider R. pp. 396 and appellants initial brief section "II" which are hereby reiterated and incorporated by reference in their entirety. Even if appellant was to be held to the same standards as an attorney, the record clearly shows appellant requested leave of court to amend his amended counterclaim/countersuit (see...appellant's motion to reconsider R. pp. 558 and appellant's opposition to plaintiff's motion to dismiss and order of reference paragraph 1, R. pp. 396) and therefore the issue is preserved for appellate review.

APPELLANT'S RESPONSE TO RESPONDENTS ARGUMENT SECTION "IV"

Response/Objection to sections "a", "b", and "c"

Appellant objects to this section of the Respondents initial brief for the reasons stated in his opposition to respondent's motion to dismiss appeal sections "I" R. pp. 605-611 which is hereby reiterated and incorporated by reference in its entirety. Appellant also hereby corrects the statement in his opposition to respondent's motion to dismiss appeal which stated that, "This would include the appellants 12-17-2018 amended counterclaim which clearly specified as an Affidavit and is in Affidavit form", the amended counterclaim date to which appellant was referring to was 9-25-2017 R. pp. 35-46 not 12-17-2018. Appellant even directed the court to review the record at the hearing (see...Transcript., R. pp. 65 at 23-25., R. pp. 66 at 1-10) which if the court had properly review the record, the court would have seen that appellant demanded a jury trial/trial by jury and therefore this issue is preserved for appellate review as the record documents a demand from the appellant for a jury trial/trial by jury since the initiation of his

counterclaims/countersuit and therefore are not waived as they have been properly before the court and already acknowledged by the court as evidenced by the clerk changing the status from non-jury to jury as referenced above R. pp. 188 in the opposition of the appellant to the respondent's motion to dismiss appeal R. pp. 608.

APPELLANT'S RESPONSE TO RESPONDENTS ARGUMENT SECTION "V"

Response/Objection to sections "a", "b", "c", and "d"

Appellant objects to this section of the Respondents initial brief for the reasons stated in his opposition to respondent's motion to dismiss appeal sections "III" R. pp. 614, appellant's motion to reconsider paragraph 9 R. pp. 548, and appellant's initial brief section "XI" which are hereby reiterated and incorporated by reference in their entirety and therefore is preserved for appellate review. These issues are not abandoned nor waived. Appellant has not voluntarily submitted to personal jurisdiction by appearing, even if he did, the court still has not proven it had subject matter jurisdiction or otherwise to make a ruling on his amended counterclaim/countersuit. Because the issue has been raised to the trial court as evidenced by the record, they are preserved for appellate review.

CONCLUSION

For the reasons specified above, Appellant has preserved all issues presented for appellate review, and the appeals court should review and grant the appellant the relief requested in his Initial Appeal Brief. The trial court's order dismissing Appellant's Counterclaims and referring the matter to the Master should be denied and reversed. Done this 26th day of January, 2022.

RESPECTFULLY PRESENTED,

"Without Prejudice"

Nelson L. Bruce 1-26-2022

THE BENEFICIAL OWNER OF THE CESTI QUI EQUITABLE TRUST

Nelson L. Bruce, Propria Persona, Sui Juris

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U.C.C. 1-207/1-308, 1.103.6

c/o 144 Pavilion Street, Summerville South Carolina [29483]

Ph. 843-437-7901

Leonbruce81@yahoo.com

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THE REPUBLIC STATE OF South Carolina
In The Court of Appeals

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

SC Court of Appeals

Honorable Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2020-001130
Common Pleas Case No.: 2016-CP-18-01678

Wilmington Savings Fund
Society FSB as Trustee of
Stanwich Mortgage Loan Trust C.....Respondent,

v.

Nelson L. Bruce, et al.....Appellant.

CERTIFICATION BY APPELLANT

I, the undersigned appellant, does hereby certify that the "Final Brief of Appellant" and the "Appellant's Final Reply Brief" complies with Rule 211(b). Dated this 26th day of January, 2022.

RESPECTFULLY PRESENTED

"Without Prejudice"

Nelson L. Bruce

THE BENEFICIAL OWNER OF THE CESTI QUI EQUITABLE TRUST

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Wilmington Savings Fund Society FSB as Trustee of
Stanwich Mortgage Loan Trust C, Respondent,

v.

Nelson L. Bruce, Capital Return Investments, LLC,
Charleston Area CDC, SC Housing Corp., South
Carolina Housing Trust Fund, and Reminisce
Homeowners Association, Inc., Defendants,

Of whom Nelson L. Bruce is the Appellant.

Appellate Case No. 2020-001130

Appeal From Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2024-UP-023
Submitted September 1, 2023 – Filed January 17, 2024

AFFIRMED

Nelson L. Bruce, of Summerville, pro se.

William S. Koehler, of Albertelli Law Firm, of
Columbia, for Respondent.

PER CURIAM: In this foreclosure action, Nelson L. Bruce, pro se, appeals the circuit court's order granting Wilmington Savings Fund Society FSB as Trustee of Stanwich Mortgage Loan Trust C's (Wilmington's) motions to dismiss Bruce's counterclaims and for an order of reference. On appeal, Bruce argues the circuit court erred by (1) dismissing Bruce's counterclaims for violation of the Fair Debt Collection Practices Act¹ (FDCPA) based on its finding Wilmington was not a debt collector within the meaning of the FDCPA; (2) dismissing Bruce's counterclaims without instructing Bruce on how his pleadings were deficient or how to repair them and without allowing him the opportunity to correct any deficiencies; (3) denying his constitutional right to a jury trial; (4) dismissing his motions based on his failure to pay the filing fees; (5) failing to consider his affidavits as facts before the court and prima facie evidence to support his claims; (6) failing to join all parties he requested to be joined under Rule 13(h), SCRCR, in violation of his due process rights; (7) limiting Bruce's counterclaims to only those stated in the caption and ignoring his other remaining counterclaims specified in paragraphs 35, 41, 42, and 49 of his pleadings; (8) failing to file physical proof of its jurisdiction; (9) violating Rules 5 and 25(c), SCRCR, by substituting Wilmington for the original plaintiff, Bank of America, without a hearing that would have given him an opportunity to object; and (10) dismissing his claims for constructive fraud, conspiracy, and violation of the Truth in Lending Act² (TILA). We affirm pursuant to Rule 220(b), SCACR.

1. As to Issue One, we hold Bruce failed to plead sufficient facts to support a claim for violation of the FDCPA. *See* 15 U.S.C. § 1692a(6) ("The term 'debt collector' means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts."); 15 U.S.C. § 1692a(6)(F) ("The term does not include . . . any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such

¹ 15 U.S.C. §§ 1692-1692p.

² 15 U.S.C. §§ 1601-1667f.

person as a secured party in a commercial credit transaction involving the creditor."); *see also Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 83 (2017) ("[T]he [FDCPA] defines debt collectors to include those who regularly seek to collect debts 'owed . . . another.' And by its plain terms this language seems to focus our attention on third party collection agents working for a debt owner—not on a debt owner seeking to collect debts for itself. Neither does this language appear to suggest that we should care how a debt owner came to be a debt owner—whether the owner originated the debt or came by it only through a later purchase. All that matters is whether the target of the lawsuit regularly seeks to collect debts for its own account or does so for 'another.'" (third alteration in original)). As the court in *Henson* concluded, "[Y]ou have to attempt to collect debts owed *another* before you can ever qualify as a debt collector." 582 U.S. at 87. Here, Bruce did not allege that by initiating foreclosure proceedings, Bank of America was attempting to collect the debt of another. Rather, he alleged it was "asked to cease any and all communication attempts via telephone, and ignored that request on more than 20 occasions" and that it "failed to validate the debt." We find these allegations were insufficient to support a conclusion that Bank of America was a "debt collector" within the meaning of the FDCPA. *See Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) ("In deciding a motion to dismiss pursuant to 12(b)(6), SCRPC, the [circuit] court should consider only the allegations set forth on the face of the [pleading]."); *see also Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 424, 559 S.E.2d 362, 364 (Ct. App. 2001) ("The question is whether in the light most favorable to the complainant, and with every doubt resolved on his behalf, the counterclaim states any valid claim for relief."). Accordingly, we affirm the circuit court's dismissal of this counterclaim.

2. As to Issue Two, we hold Bruce failed to preserve his argument the circuit court erred by failing to instruct him as to how to amend his pleadings or give him the opportunity to do so. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("[A]n issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). Rule 15(a) of the South Carolina Rules of Civil Procedure required Bruce to seek the circuit court's permission to amend his pleadings because thirty days had already passed and Wilmington had already filed its response to Bruce's answer and counterclaims. *See* Rule 15(a), SCRPC ("A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse

party; and leave shall be freely given when justice so requires and does not prejudice any other party."). In his memorandum in opposition to Wilmington's motion to dismiss, Bruce stated, "Defendant hereby explicitly reserves and retains the right to amend his amended countersuit with leave of court and hereby exercises that right with the filing of this opposition as there is new evidence, new parties to be enjoined and issues in this matter that have come forth since the filing of his amended countersuit." However, during the hearing on the motion to dismiss, Bruce did not request leave to amend his pleading; rather, he stated he sent Wilmington a "self-executing contract" and it "would be a breach of that contract for [Bruce] to continue and start making objections towards [the motion to dismiss]." Although Bruce filed a 59(e), SCRCF, motion to reconsider, he did not request leave to amend his pleadings in that filing. *See Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 181, 826 S.E.2d 585, 588 (2019) ("Ordinarily, . . . the time for requesting leave to amend to correct a Rule 12(b)(6) pleading defect is after the trial court has determined the original pleading was deficient."). Accordingly, we hold this argument is not preserved for appellate review.

Further, we reject Bruce's argument that the circuit court erred by failing to hold him to a less stringent standard than that required of a licensed attorney. *See State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003) ("A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law."); *see also McNeil v. United States*, 508 U.S. 106, 113 (1993) ("While we have insisted that the pleadings prepared by prisoners who do not have access to counsel be liberally construed, . . . we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel." (emphasis added) (footnotes omitted) (citations omitted)); *Folkes v. Nelsen*, 34 F.4th 258, 272 (4th Cir. 2022) (holding that even though pro se pleadings were held to a less stringent standard, this "d[id] not give a court license to look beyond the claim presented"), *cert. denied sub nom., Folkes v. Williams*, 143 S. Ct. 736 (2023); *Bing v. Brivo Sys., LLC*, 959 F.3d 605, 618 (4th Cir. 2020) ("[L]iberal construction does not mean overlooking the pleading requirements . . .").

3. As to Issue Three, we hold the circuit court did not err by referring the case to the master-in-equity. *See Verenes v. Alvanos*, 387 S.C. 11, 15-16, 690 S.E.2d 771, 773 (2010) ("Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." (quoting *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240,

242 (1997)); *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997) ("A mortgage foreclosure is an action in equity."). After the dismissal of Bruce's counterclaims, the only claim remaining in this case was for a mortgage foreclosure, which is an equitable action. Accordingly, the circuit court did not err in referring this case to the master. *See Verenes*, 387 S.C. at 16, 690 S.E.2d at 773 ("[T]here is no right to trial by jury for equitable actions." (quoting *Lester*, 327 S.C. at 267, 491 S.E.2d at 242)).

4. As to Issue Four, we affirm the circuit court's dismissal of Bruce's motions. We hold the circuit court did not err by refusing to consider his motions on the ground he refused to pay the filing fee. *See* S.C. Code Ann. § 8-21-320 (2019) (requiring a party filing any motion to pay a twenty-five dollar filing fee with each motion filed in the court of common pleas); *see also Martin v. State*, 321 S.C. 533, 535, 471 S.E.2d 134, 134-35 (1995) ("In the absence of a statutory provision allowing the general waiver of filing fees, we conclude motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions."); Rule 3(b), SCRPC ("[A] plaintiff who desires to file an action in forma pauperis shall file in the court a motion for leave to proceed in forma pauperis, together with the complaint proposed to be filed and an affidavit showing the plaintiff's inability to pay the fee required to file the action. If the motion is granted, the plaintiff may proceed without further application and file the complaint in the court without payment of filing fees."). As to Bruce's argument he was entitled to proceed in forma pauperis, we hold this argument is not preserved for appellate review. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("[F]or an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal."); *see also Johnson v. Sonoco Prod. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider."). During the hearing before the circuit court, Bruce challenged the court's authority to require a filing fee. He did not argue he was unable to pay the fee and stated he had not filed an affidavit of indigency. The circuit court dismissed the motions without prejudice, providing Bruce the opportunity to pay the fees and refile the motions. However, Bruce did not do so. Instead, he filed a motion to reconsider the circuit court's order dismissing his motions and counterclaims, with which he included a document titled, "Affidavit of Fact – Financial Statement." In this document, he stated he "d[id] not have, or possess, any gold or silver coins, as prescribed by United States Constitutional Law" and therefore "d[id] not have []or possess any lawful money . . . and request[ed] a fee waiver." He did not attach or reference the motions that the circuit court had dismissed. The circuit court summarily denied

the motion to reconsider by Form 4 Order. Because Bruce failed to timely request leave to file his motions in forma pauperis, we hold this argument is unpreserved for appellate review. Based on the foregoing, we hold the circuit court did not err by dismissing Bruce's motions on the ground he refused to pay the filing fee for each motion.

5. As to Issue Five, we hold the circuit court properly confined its considerations to the allegations set forth on the face of Bruce's pleadings in deciding the motion to dismiss his counterclaims. *See Plyler*, 373 S.C. at 645, 647 S.E.2d at 192 ("In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, the [circuit] court should consider only the allegations set forth on the face of the [pleading]."); *see also Laidlaw Transit, Inc.*, 348 S.C. at 424, 559 S.E.2d at 364 ("The question is whether in the light most favorable to the complainant, and with every doubt resolved on his behalf, the counterclaim states any valid claim for relief.").

6. As to Issues Six and Seven, we hold Bruce failed to preserve these issues for appellate review because they were never raised to or ruled upon by the circuit court. *See Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733 ("[A]n issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

7. As to Issue Eight, we hold Bruce abandoned this issue because he failed to cite to any authority in support of his arguments on appeal. *See State v. Howard*, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009) (holding the appellant abandoned an issue on appeal and declining to consider the appellant's argument where the appellant failed to cite any authority in support of the argument).

8. As to Issue Nine, we hold Bruce failed to preserve this issue for appellate review. *See Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733 ("[A]n issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). The motion for substitution contained a certificate of service indicating Bruce was served with a copy of the motion by mail. Bruce raised no objection to the motion. Further, he did not challenge the substitution during the hearing on the motion to dismiss. Although he challenged the substitution in one of the motions for which he failed to pay the filing fee, this motion was dismissed without prejudice and Bruce never refiled the motion. Because this issue was neither raised to nor ruled upon by the circuit court, we find it is not preserved for appellate review.

9. As to Issue Ten, we hold the circuit court did not err by dismissing Bruce's counterclaims. *See Plyler*, 373 S.C. at 645, 647 S.E.2d at 192 ("In deciding a motion to dismiss pursuant to 12(b)(6), SCRPC, the [circuit] court should consider only the allegations set forth on the face of the [pleading]."); *see also Laidlaw Transit, Inc.*, 348 S.C. at 424, 559 S.E.2d at 364 ("The question is whether in the light most favorable to the complainant, and with every doubt resolved on his behalf, the counterclaim states any valid claim for relief."). First, we hold the circuit court did not err by dismissing Bruce's claim for constructive fraud. *See Pitts v. Jackson Nat'l Life Ins. Co.*, 352 S.C. 319, 333, 574 S.E.2d 502, 509 (Ct. App. 2002) ("To establish constructive fraud, all elements of actual fraud except the element of intent must be established." (quoting *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993)); *id.* at 334, 574 S.E.2d at 509 ("To prove [actual] fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." (quoting *Ardis*, 314 S.C. at 515, 431 S.E.2d at 269)); *see also Ardis*, 314 S.C. at 515, 431 S.E.2d at 269 ("A complaint is fatally defective if it fails to allege all nine elements of fraud."); *id.* ("Where the complaint omits allegations on any element of fraud, the trial court should grant the defendant's motion to dismiss the claim."). Here, Bruce's pleading contains no factual allegations concerning the elements of constructive fraud; it merely includes "constructive fraud" in the caption. Bruce failed to allege any facts pertaining to any representations Wilmington allegedly made or his reliance on the truth of any such representations to his detriment. Accordingly, we hold the circuit court did not err by dismissing this claim.

Next, we hold the circuit court did not err by dismissing Bruce's claim for civil conspiracy. *See Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021) ("[A claimant] asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff."). Here, Bruce failed to plead facts to support this claim. Bruce alleged: "As listed above the opposing parties have come together in a joint venture to deprive consumer[s] such as myself of what is lawful due [and] right." However, the only opposing party in the case was the plaintiff. Therefore, Bruce failed to plead any facts alleging two or more persons combined

or agreed to injure him. Accordingly, we hold the circuit court did not err by dismissing this claim.

Finally, as to Bruce's argument that the circuit court erred in dismissing his claims for violation of TILA, we hold Bruce has abandoned this issue on appeal. *See Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review."). Bruce has failed to cite any authority in support of his argument and does not direct this court to any facts contained in his pleading that were alleged in support of this claim. Accordingly, we affirm the circuit court's dismissal of this claim.

For the foregoing reasons, the circuit court's order is

AFFIRMED.³

MCDONALD and VINSON, JJ., and LOCKEMY, A.J., concur.

³ We decide this case without oral argument pursuant to Rule 215, SCACR.

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Apr 03 2024

SC Court of Appeals

Record/FILE ON DEMAND

IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2020-001130
Common Pleas Case No.: 16-CP-18-1678

Wilmington Savings Fund
Society FSB as Trustee of
Stanwich Mortgage Loan Trust C.....Respondent,

v.

Nelson L. Bruce, et al.....Appellant.

APPELLANT'S PETITION FOR REHEARING

Nelson L. Bruce, Propria Persona, Sui Juris
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Leonbruce81@yahoo.com
Appellant

April 3, 2024

Comes now Appellant with his petition for rehearing. This Petition is filed pursuant to Rules 221 and 240 governs motions and petitions for rehearing generally. Appellant hereby respectfully petitions this court for rehearing of this courts January 17, 2024 opinions in this matter based on facts, exhibit evidence, arguments produced on the record on appeal which may have been overlooked or misapprehended by the court which are set forth herein. This court issued the decision in this matter on January 17, 2024, this petition was extended by this court to April 3, 2024 therefore this petition is timely. By this petition for rehearing, Appellant wishes to reiterate and incorporate by reference all the arguments and records made before the Court as the record on appeal and contained in his briefs. Appellant respectfully disagrees with the findings and decision to affirm the lower court's decision as presented in this petition. Appellant reiterates and incorporates all sections of this petition addressing the courts opinions to apply to all sections of appellant's objections where applicable.

APPELLANT'S OBJECTIONS TO THIS COURTS SECTION "1" OPINIONS

Plaintiff objects to the judge's findings that "Bruce did not allege that by initiating foreclosure proceedings, Bank of America was attempting to collect the debt of another. Rather, he alleged it was asked to cease any and all communication attempts via telephone, and ignored that request on more than 20 occasions" and that it failed to validate the debt. That, "We find these allegations were insufficient to support a conclusion that Bank of America was a "debt collector" within the meaning of the FDCPA." Referencing *Plyer v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188 (2007) Plaintiff objects because it appears that the judge only considered the pleading, not the entire record on appeal including the exhibits filed on the records in the light most favorable to the complainant. The Court of Appeals is required to consider the entire record on appeal, including exhibits filed on the record with the pleadings", not just the allegations set forth on the face of the pleadings as a party has a due process right to be heard otherwise what is the purpose for filing the entire record on appeal. The appellant's exhibits are

part of his complaint and are incorporated by reference as part of his complaint which this court refers to as the “pleadings” therefore are part of the record of on appeal, the face of the complaint/pleadings and should have been considered when making a decision. Appellants **Exhibit E** clearly evidences that Bank of America by their correspondence dated December 2, 2016 by Bank of America’s own words, they admit to being acting as a debt collector evident by their statement, “Bank of America, N.A. is required by law to inform you that this communication is from a debt collector” (**See...Record on Appeal Doc. No. 169-170 also see...record on appeal pg. 232**). Which was after filing the foreclosure action on 8-19-2016 but is clear evidence that they admit to being debt collectors at the time of and during the foreclosure. Bank of America’s 12-2-2016 notice is in compliance with **12 CFR Section 1006.18(e)(2)** which “requires a debt collector to disclose in each subsequent communication that the communication is from a debt collector” therefore this is clear undisputable, undeniable evidence of fact before the court that defendants were acting as debt collectors at the time of the foreclosure and therefore are debt collectors as a matter of law. **Exhibit F** filed as part of the record on appeal which is part of appellant’s complaint with documents dated August 27, 2015 clearly supports the fact that Bank of America, N.A. was acting as the servicer, they were collecting on a debt on behalf of someone else, in this case, it was “Government National Mortgage Association” the alleged note holder (**See...Record on appeal doc. 178-181**). Appellants **Exhibit H** filed as part of the record on appeal evidencing a document from Bank of America dated July 20, 2015 also evidences that Bank of America is operating on behalf of someone else well after the alleged mortgage assignment and or any alleged modifications which clearly supports that Bank of America is not the holder of the note collecting their own debts (**See...Record on Appeal Doc. No. 289-290**). Appellant’s complaint section “17” and “19”

even states that “The Plaintiff is not the true party of interest therefore did not have nor do they currently have standing to bring a foreclosure action”, that “The Plaintiff nor their Attorneys have subject matter jurisdiction neither are they the true parties of interest for which no affidavit has been filed validating and verifying under firsthand knowledge to any facts that they are the true holders in due course of the original note(s) or that this is a valid debt” (Record on Appeal Doc. No. 40). Further indicating that they are not collecting their own debts which could be liberally construed by the court as required to be done for a party who is not an attorney. The record on appeal clearly evidences and therefore can liberally be construed that Bank of America attempted to collect debts owed to another and therefore qualifies as a debt collector, even at the time of filing the foreclosure and during the foreclosure therefore appellant objects to this courts unpublished opinions related to the FDCPA claims and requests for a rehearing.

Further, appellant objects to this court’s opinion because this court has failed to address the other definition of debt collector which is the “principal purpose” which was before the lower court and ruled on as a result of the court ruling on the motion to dismiss as an opposition was filed and as a result of ruling on the motion to reconsider which addressed the opposition to plaintiff’s motion to dismiss and therefore is preserved for appeal and appellant requests for a rehearing. This court only is addressing the “regularly collects definition” only. Under the FDCPA, the term “debt collector” also means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts. The above Exhibits clearly demonstrate that Bank of America, amongst the others who appellant requested be included on the case that was not included, have used interstate commerce including the mails for the principle purpose of collecting a debt a payment from the appellant. The court is required to follow and apply the act,

that statute as it is written when considering and making a determination on whether a party is a debt collector as defined by law under one of the FDCPA total definition which in this case clearly provides that “any” person such as the parties to this case, previous parties to this case, and parties requested to be added to this case are included in the definition of debt collectors when their principle purpose was the collection of any debts if they used interstate commerce including the mails to try to collect on that debt at any point. The record on appeal supports that the parties referenced above have used one or more of the method provided under the FDCPA to be considered a debt collector even when allegedly collecting their own debts. Based on the facts presented above, Bank of America and the other referenced parties do not fall under the term Creditor. The term “creditor” means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another. The record evidences that neither parties extended appellant any credits creating a debt, the parties are not the parties in interest to whom a debt is owed or was owed as the record evidences they are collection on behalf of someone else such as the investor and the investors who make up the pool of pool of mortgages which are multiple investors. The record evidences that the debt was assigned and or transferred while in default solely for the purpose of facilitation collection of such debt for another person evidenced by their being a servicer who is put in place for the principle purpose of collecting a payment i.e. collecting a debt well before there was a foreclosure action. The law does not allow a debt collector to change its possession just because it wants to allegedly enforce a security interest. Once you are a debt collector, you will continue to be a debt collector. This court cannot just ignore that the FDCPA has two definitions of the term “debt collector” and therefore must

address both when considering the record on appeal and providing their opinion therefore appellant objects and reiterates and incorporates by reference his entire appeal brief and response brief for issue one and requests for a rehearing supported by the entire record produced on appeal.

APPELLANT’S OBJECTIONS TO THIS COURTS SECTION “2” OPINIONS

The issue that “Bruce failed to preserve his argument to the circuit court erred by failing to instruct him as to how to amend his pleadings or give him the opportunity do so”, is an inaccurate statement because this issue was brought up to the circuit court evidenced by the appellants motion for reconsideration and ruled on by the trial judge evidenced by the judges denial of appellant’s motion for reconsideration (**see...Record on Appeal Doc. No. 22-23, 530**) therefore, it was not raised for the first time on appeal and therefore appellant objects to this court’s inaccurate opinion that it is being raised for the first time on appeal and requests for a rehearing. The circuit judge did not make a decision to dismiss appellant’s counterclaims until later after the hearing, not during the hearing and therefore such claim could not and would not have been brought at the time of the hearing, it would have had to be brought after the hearing which is what appellant did. If this court believes that the court should have provided a specific response to each claim presented before the circuit court in appellants’ motion for reconsideration, which is ground to remand back to the circuit court to address with complete detail. It appears that based on the record on appeal that the above issue was not raised for the first time on appeal as the record clearly show that it was raised to the circuit court before the appeal and then appealed after the court denied the motion to reconsider. This court appears to base its decision on the fact that after appellant’s counter claims was dismissed, appellant did not have a right to a trial by jury. However, the issue on appeal is whether plaintiff exercised his right to a trial by jury on his counterclaims, whether the counterclaim was for a jury to decide not for the court to decide as a result of a hearing that was not requested by the party filing a motion to dismiss and whether or not the court had already docketed the counterclaim as to be before a jury. The record clearly shows that the counterclaims was docketed to be before a jury

but was not (**see...record on appeal no. 188**). Based on the record, there should not have been any hearings as the party filing the motion to dismiss did not request for a hearing. The court was only to review what was on the record which was the motion to dismiss and the appellant's opposition to the motion to dismiss. The judge cannot not consider the opposition to the motion to dismiss especially since it directly addresses the motion to dismiss by calling for a hearing that was not requested in the first instance (**see...record on appeal no. 7**) and use only the hearing to make a decision without considering the opposition as appellant has a right to be heard. The **Rule 12, SCRC**P even require that an opposition/response be filed therefore it cannot, not be considered otherwise it is clearly a denial of due process, the right to be heard. Filing an opposition is the standard way for a party to respond to a motion to dismiss and present their arguments. Not considering the opposition is a denial of due process which is before this court. This court has failed to address these issues and therefore appellant objects to this courts unpublished opinion and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue two and requests and requests for a rehearing.

This court alleges that, Although Bruce filed a 59(e), SCRC, motion to reconsider, he did not request leave to amend his pleadings in that filing. On the contrary, Appellants motion to reconsider that was filed within 30 days from the court's decision to dismiss appellants counterclaims/countersuit clearly incorporate within it a request for leave as it states that, "This court should grant leave of court for defendant to cure any defects if any are present in defendant's amended counterclaim/countersuit," which can clearly be liberally construed as appellant requesting leave of court to amend his counterclaims/countersuit (**see...Record on Appeal no. 558**) which this court appears to claim is required. Therefore, appellant objects to this court's entire opinion under this section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue two and requests and requests for a

rehearing supported by the entire record produced on appeal.

APPELLANT'S OBJECTIONS TO THIS COURTS SECTION "3" OPINIONS

Appellant objects to this opinion of the court because as presented in objection #2, the issue on appeal is whether there is a right to a trial by jury on appellant's counterclaims which is a legal action and is what appellant is referring to, not the claims after the counterclaims was dismissed and therefore appellant objects to this court's entire opinion under this section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue three and requests for a rehearing supported by the entire record produced on appeal.

APPELLANT'S OBJECTIONS TO THIS COURTS SECTION "4" OPINIONS

During the hearing before the circuit court, the judge asked appellant did he file an affidavit (**see...record on appeal no. 57-58**). After going back and reviewing the amended complaint, which clearly on the face of the complaint evidences that it is an affidavit as it is attested to and declared by the appellant (**see...record on appeal pages 35 and 44 at par. 50**). It clearly provides that the appellant is indigent which was not addressed by the court as presented in appellant's motion to reconsider (**see...Record on Appeal no. 531**). The court never mentioned that leave of court was required at the hearing, the court only asked whether there was an affidavit filed and in this case, there clearly was if the judge of the circuit simply reviewed the entire record which was presented to the court again to address before the appeal and therefore is preserved for appellate review and appellant objects to this court's entire opinion under this section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue four and requests and requests for a rehearing and appellant requests for a rehearing.

APPELLANT'S OBJECTIONS TO THIS COURTS SECTION "5" OPINIONS

Appellant objects to this entire section of this court's opinion because this court is also required to view the entire record on appeal including the exhibits which it appears that this court is ignoring the record when considering this appeal. Based on the record, appellants amended complaint incorporates within it an affidavit identifying him as being indigent plus the other affidavits filed on the record which was referenced in appellant's appeal brief which was brought to the courts attention with a motion for reconsideration as the judge of the court was required to have reviewed the record before the hearing to have knowledge of what was already filed. By not reviewing and considering the entire record which include the exhibits filed on the record by the appellant which are incorporated in the amended complaint and in the opposition to the motion to dismiss and therefore, this court could not be the complaint in the light most favorable to the complainant and with every doubt resolved on his behalf on whether the counterclaim states any valid claim for relief and therefore appellant objects to this court's entire opinion under this section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue five and requests and requests for a rehearing.

APPELLANT'S OBJECTIONS TO THIS COURTS SECTION "6" OPINIONS

As presented in appellants' final appeal brief and final response brief, appellant addressed these issues before the court in his opposition to the motion to dismiss and his motion for reconsideration. The opposition to the motion to dismiss is a required filing in response to a motion to dismiss and therefore must be considered otherwise it is a denial of appellant's due process rights to be heard. By the circuit court placing an order and or judgment, they have ruled on the issue whether specifically addressed or not. Because the issues were raised and there was an order specifically denying the claims, it must be construed as being raised before the circuit court and ruled upon otherwise there would be no ruling at all which the record evidences that it

is. Therefore, these issues are preserved for appellate review and appellant objects to this court's entire opinion under this section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue six and seven and requests and requests for a rehearing.

APPELLANT'S OBJECTIONS TO THIS COURTS SECTION "7" OPINIONS

Appellant has challenged the circuit court's jurisdiction which includes jurisdiction of the judges. This issues cannot be abandoned because it falls within the jurisdictional challenges which was brought before the court before appeal. It cannot be abandoned because all issues presented in this section were raised before the court before filing an appeal. Further, the rules of the court is the supporting authority as these are the required procedures for substitution and are not abandoned because they were raised before the circuit court. Therefore, these issues are preserved for appellate review and appellant objects to this court's entire opinion under this section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue Eight and requests and requests for a rehearing.

APPELLANT'S OBJECTIONS TO THIS COURTS SECTION "8" OPINIONS

As presented in appellant's brief, the issue related to substitution was addressed in appellant's opposition to plaintiff motion to dismiss and therefore preserved for appeal. The certification does indicate that appellant was served with a motion to substitute only that it may have been mailed out. It does not evidence that appellant actually received the motion for substitution nor does it provide a date appellant received it and therefore, no evidence of appellant actually being served with the notice. Which is another reason why appellant file a motion to vacate this order to address this. Because appellant has produced sufficient evidence on the record that affidavits of indigency has been filed, this is preserved for appellate review to

consider because this was before the court before appeal and the circuit ruled upon it by denying the appellants motion for reconsideration which references that this was presented in the opposition to the plaintiff's motion to dismiss. Therefore, these issues are preserved for appellate review and appellant objects to this court's entire opinion under this section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue Nine and requests and requests for a rehearing.

APPELLANT'S OBJECTIONS TO THIS COURTS SECTION "9" OPINIONS

Appellants objects to this court's entire opinion under this section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue ten and requests and requests for a rehearing. Appellant has shown that all elements of constructive fraud exists. As presented in appellant's opposition to plaintiff's motion to dismiss, there should have been multiple parties enjoined into the case which the court failed to do or even notify the appellant of any defects preventing the parties from being enjoined. Based on the record on appeal, because there should have been multiple parties as defendants to appellant's counterclaims, his civil conspiracy claims do apply.

Further plaintiff's motion to reconsider clearly evidences supporting authority for his claims under TILA according to law and the sections of his amended complaint which address these issues. The law is the supporting authority evidenced by the action of the opposing party or parties which caused the violations. There is also a referenced case that supports the law and the actions presented which has caused a violation of TILA. Therefore, these issues are preserved for appellate review and appellant objects to this court's entire opinion under this

section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue ten and requests and requests for a rehearing.

CONCLUSION

For these reasons, appellant respectfully objects to this courts opinions. Should this court after reconsidering the record on appeal still believes that certain matters were not specifically ruled upon by the circuit court that those matters be remanded back to the circuit court directing them to specifically be addressed point by point. For all other remaining issues, this court should grant the appellant the relief requested in his briefs. Dated this 3rd day of April, 2024.

RESPECTFULLY PRESENTED,

“Without Prejudice”

Nelson L. Bruce

THE BENEFICIAL OWNER OF THE CESTI QUIEQUITABLE TRUST

Nelson L. Bruce, Propria Persona, Sui Juris

All Natural Rights Explicitly Reserved and Retained

U.C.C. 1-207/1-308, 1.103.6

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Apr 03 2024

SC Court of Appeals

Record/FILE ON DEMAND

PROOF OF SERVICE OF APPELLANT'S PETITION FOR REHEARING

IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2020-001130
Common Pleas Case No.: 16-CP-18-1678

Wilmington Savings Fund
Society FSB as Trustee of
Stanwich Mortgage Loan Trust C.....Respondent,

v.

Nelson L. Bruce, et al.....Appellant.

PROOF OF SERVICE

Nelson L. Bruce, Propria Persona, Sui Juris
c/o 144 Pavilion Street
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(843) 437-7901
Appellant

April 3, 2024

I Nelson L. Bruce, Appellant, hereby certify that I served a copy of the foregoing,
APPELLANT'S PETITION FOR REHEARING, by depositing a copy of it in an envelope
mailed via the UNITED STATES POST OFFICE via the UNITED STATES POSTAL
SERVICE via First Class Mail Addressed To:

ALBERTELLI LAW
Attention: William S. Koehler
1201 Main Street, Suite 1450
Columbia, South Carolina 29201
Attorney for Respondent

Dated this 3rd day of April, 2024.

RESPECTFULLY PRESENTED,

“Without Prejudice”

Nelson L. Bruce

THE BENEFICIAL OWNER OF THE CESTI QUI EQUITABLE TRUST

Nelson L. Bruce, Propria Persona, Sui Juris
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The South Carolina Court of Appeals

Wilmington Savings Fund Society FSB as Trustee of
Stanwich Mortgage Loan Trust C, Respondent,

v.

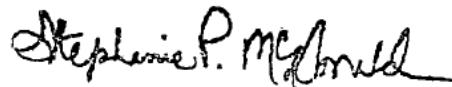
Nelson L. Bruce, Capital Return Investments, LLC,
Charleston Area CDC, SC Housing Corp., South
Carolina Housing Trust Fund, and Reminisce
Homeowners Association, Inc., Defendants,

Of whom Nelson L. Bruce is the Appellant.

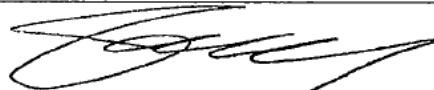
Appellate Case No. 2020-001130

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



A.J.

Columbia, South Carolina

FILED
Apr 17 2024

cc:

Nelson L. Bruce

William S. Koehler, Esquire