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**Jun 06 2024**

**SC Court of Appeals**

Case No. 2024-000801  
THE STATE OF SOUTH CAROLINA  
In the 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Unpublished Opinion No. 2024-UP-023  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.

**PETITION FOR WRIT OF CERTIORARI AND APPENDIX**

**ON WRIT OF CERTIORARI TO THE SOUTH CAROLINA COURT OF APPEALS**  
**PETITION FOR A WRIT OF CERTIORARI**

I, Nelson L. Bruce respectfully petitions this Court to issue a Writ of Certiorari to review the judgment of the South Carolina Court of Appeals in this case.

**QUESTIONS PRESENTED FOR REVIEW**

1. Whether the Court of Appeals violated Petitioner's constitutional right to petition for redress of grievances by limiting his appeal to only the initial complaint, denying access to the full record from the original proceedings containing exhibits and evidence necessary to effectively appeal the judgment?
2. Whether the Court of Appeals violated Petitioner's constitutional right to petition for redress of grievances by ignoring petitioners other remaining form of claims specified in petitioner's amended counterclaims under paragraphs 35, 41, 42, & 49(a) through 49(j) of the petitioners amended complaint?
3. Whether limiting an appeal solely to the complaint, without the comprehensive record containing transcripts, exhibits, evidence and legal reasoning, unconstitutionally obstructs the fundamental purpose of appeals as a mechanism for redress against incorrect decisions that violate rights?
4. Whether the Court of Appeals erred in affirming the Circuit Court's dismissal of Petitioner's counterclaims under the Fair Debt Collection Practices Act by misapplying the definition of a "debt collector" contrary to binding U.S. Supreme Court precedent in *Henson v. Santander*?
5. Whether the Court of Appeals improperly affirmed dismissal of Petitioner's counterclaims by failing to construe his pro se pleadings liberally and afford opportunity to amend any deficiencies, contrary to *Haines v. Kerner* and other binding precedents?
6. Whether the Court of Appeals erred in holding Petitioner failed to preserve his right to amend pleadings, when he explicitly reserved that right in his opposition brief ruled on by the Circuit Court?
7. Whether the Court of Appeals improperly deemed Petitioner's constructive fraud, conspiracy and Truth in Lending Act claims abandoned merely because he did not extensively cite legal authorities as a pro se litigant?
8. Whether the Court of Appeals' opinion conflicts with precedent recognizing a right to jury trial on legal counterclaims like violations of the FDCPA, FCRA, TILA, fraud, Breach of Contract, etc., raised alongside an equitable foreclosure action?

## STATEMENT OF THE CASE

This case arises from a mortgage foreclosure action initiated by Respondent Wilmington Savings Fund Society FSB against Petitioner Nelson L. Bruce. Petitioner filed counterclaims including violations of the Fair Debt Collection Practices Act (FDCPA), Truth in Lending Act (TILA), fraud, and civil conspiracy and other remaining form of claims specified in petitioner's amended counterclaims see...R. pp. 42-43, paragraph 35, 41, 42, & 49(a) to 49(j) of the petitioners amended complaint that were numbered, stated and incorporated by reference as SCRCR Rule 10(b) and (c) required to be considered as a form of claim. The Circuit Court granted Wilmington's motion to dismiss Petitioner's counterclaims. On appeal, the Court of Appeals affirmed in an unpublished opinion. This opinion of the appeals court is unconstitutional and violated the petitioner's right to redress/grievance. Petitioner has a right to a judicial decision that is based on and grounded in facts and law, rather than mere opinion or bias which is why these type of unpublished opinions cannot be used as precedent in any cases to support any facts. The court held Petitioner Bruce failed to adequately plead that Wilmington was a "debt collector" under the FDCPA's definitions. It deemed his fraud, conspiracy and TILA claims abandoned for lack of legal citations. The court found Bruce did not preserve his right to amend pleadings or his jury trial demand. Crucially, the Court of Appeals limited its review solely to the initial complaint, disregarding exhibits and evidence Bruce provided demonstrating Wilmington engaged in debt collection activities covered by the FDCPA. Petitioner filed a Petition for Rehearing, arguing the Court of Appeals failed to review the full record containing exhibits and evidence supporting his claims. Petitioner asserted that, the opinion improperly heightened pleading standards for a pro se litigant and raised constitutional issues regarding access to the courts. The Court of Appeals denied rehearing. Petitioner now seeks a Writ of

Certiorari, seeks this Court's review, contending the Court of Appeals' opinion rendered the appeals process constitutionally deficient by obstructing his ability to fully present grounds for appeal and petition for redress of grievances through the courts.

### **REASONS FOR GRANTING THE PETITION**

#### **I. The Opinion Below Violates Petitioner's Constitutional Right to Petition for Redress**

The Petition Clause of the First Amendment protects "the right of the people...to petition the Government for a redress of grievances." This right is "one of 'the most precious of the liberties safeguarded by the Bill of Rights.'" *BE&K Constr. Co. v. NLRB*, 536 U.S. 516, 524-25 (2002) (quoting *United Mine Workers v. Illinois Bar Assn.*, 389 U.S. 217, 222 (1967)). It extends to "all departments of the Government," including the courts. *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972).

The right to petition allows individuals to seek "redress 'for a redress of grievances which, in good faith, [they] think[] are just and remediable.'" *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 399 (2011) (quoting *United States v. Cruikshank*, 92 U.S. 542, 552 (1876)); *BE&K Constr. Co. v. NLRB*, 536 U.S. 516, 525 (2002). This encompasses the ability to seek judicial relief and remedies through lawsuits and appeals processes. *Id.* at 387; *BE&K*, 536 U.S. at 525. South Carolina precedent likewise recognizes this fundamental right to seek redress against improper judgments through the state's judicial system. See *Williams v. Smalls*, 390 S.C. 375, 701 S.E.2d 772 (Ct. App. 2010).

Here, the Court of Appeals rendered this constitutional protection ineffective by limiting Bruce's appeal solely to the initial complaint filed in the foreclosure action. The opinion expressly states it confined its review to only "the allegations set forth on the face

of the [pleading]" under *Plyler v. Burns*, ignoring the full record containing transcripts, exhibits, evidence, and legal analysis from the lower court proceedings.

This contradicts binding precedent requiring courts to view the entire record in the light most favorable to the non-moving party when reviewing a motion to dismiss. See *Plyler*, 373 S.C. at 645.

By disregarding Bruce's supporting exhibits like correspondence from the banks admitting to being "debt collectors" under the FDCPA, the Court of Appeals precluded meaningful appellate review of whether dismissal was proper. This likely violated Petitioner's constitutional right to petition for redress by obstructing his ability to fully present and have his grievances adjudicated.

## **II. Limiting the Appellate Record Renders the Appeals Process Constitutionally Deficient.**

The right to petition encompasses access not just to initial judicial review, but the "complementary" appellate procedures to challenge adverse decisions. *California ransp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510, 513 (1972). Limiting the record solely to the initial pleading would "render the right [to appeal] a hollow one" and an ineffective mechanism for redress. *Id.*

South Carolina's appellate rules underscore this by mandating the full record from lower court proceedings be included to allow adequate assessment of claims of error. See **Rule 210(h), SCACR.**

Here, the Court of Appeals opinion obstructed Petitioner's ability as the appellant to demonstrate any factual or legal errors warranting reversal or remand of the dismissal order. Critical evidence like the banks' admissions to being "debt collectors" was excluded from the

court's review. This likely rendered the appeals process constitutionally deficient under California Motor and deprived Petitioner of a meaningful avenue to petition for redress through the judiciary.

### **III. The Court of Appeals Erred in Affirming Dismissal of Bruce's FDCPA Claims**

The Court of Appeals erred in affirming dismissal of Petitioner's FDCPA claims against Wilmington Savings Fund Society FSB. The court misapplied the U.S. Supreme Court's decision in *Henson v. Santander* by requiring that a debt collector must be attempting to collect a debt owed to another party. However, *Henson* clarified that the FDCPA covers entities whose "principal purpose" is debt collection, regardless of whether the debt was originated by that entity or purchased from another. *Id.* 137 S.Ct. 1718, 1721 (2017). Petitioner's counterclaims and exhibits alleged Wilmington engaged in abusive and deceptive debt collection practices in violation of multiple FDCPA provisions like 15 U.S.C. §§ 1692d, 1692f(6), etc. The Court of Appeals improperly ignored this evidence by confining its analysis solely to the initial complaint. The opinion also failed to properly apply the liberal pleading standards for pro se litigants under *Haines v. Kerner*, 404 U.S. 519 (1972). Bruce's counterclaims should have been construed as alleging sufficient facts to state plausible FDCPA claims against Bank of America and/or Wilmington as a debt collector under the "principal purpose" definition from *Henson*.

### **IV. The Court Erred in Affirming Dismissal of Bruce's Other Counterclaims**

The Court of Appeals opinion contradicts precedents like *Plyler v. Burns* by not viewing the factual allegations in the light most favorable to Petitioner as the non-moving party on a 12(b)(6) motion to dismiss. The court also improperly rejected Petitioner's argument that the Circuit Court erred by failing to instruct him on deficiencies and allow amendment as a pro se

litigant under *Haines v. Kerner*. Petitioner explicitly reserved the right to amend in his opposition brief ruled on by the Circuit Court. Further, the Court of Appeals erred in deeming Petitioner's fraud, conspiracy and TILA claims abandoned merely because he did not extensively cite legal authorities as a pro se litigant. This improperly heightened pleading standard conflicts with binding precedent. Finally, the opinion failed to address the constitutional issue of whether Petitioner was improperly denied a jury trial on his legal counterclaims like violations of the FDCPA, FCRA, TILA, fraud, Breach of Contract (¶¶'s 35, 41, 42, & 49(a) to 49(j) of petitioners counterclaim), et al., raised alongside the equitable foreclosure action, contrary to *South Carolina Community Bank v. Salon Proz*. By dismissing Bruce's key counterclaims based on improper pleading standards and without affording him rights as a pro se litigant, the Court of Appeals likely obstructed his ability to fully present his claims and evidence, raising constitutional issues regarding access to the courts.

### **CONCLUSION**

For these reasons, this Court should grant the Petition for Writ of Certiorari. The Court of Appeals' unpublished opinion raises issues of fundamental constitutional importance regarding the right to petition for redress and effective access to appellate review. By improperly limiting the record on appeal and heightening pleading standards for a pro se litigant, the Court of Appeals likely obstructed Petitioner's constitutional rights and rendered the appeals process an ineffective mechanism for seeking redress of grievances through the courts.

RESPECTFULLY PRESENTED,

Dated this 6<sup>th</sup> day of June, 2024.

“Without Prejudice”

*Nelson L. Bruce*

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Nelson L. Bruce, Propria Persona, Sui Juris  
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**PROOF OF SERVICE**

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I Nelson L. Bruce, Appellant, hereby certify that on 6-6-2024 I served a copy of the PETITION FOR WRIT OF CERTIORARI AND APPENDIX on opposing counsel of record 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*

RESPECTFULLY PRESENTED,

Dated this 6<sup>th</sup> day of June, 2024.

“Without Prejudice”



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