

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

[In The Supreme Court]

APPEAL FROM ADMINISTRATIVE LAW COURT

Phillip Lenski, Administrative Law Judge

Appellate Case No. 2024-000251

South Carolina Department of Employment and Workforce and Wells Fargo &
Company, Inc. Respondents,

v.

Bridgette Chabot, Appellant.

**MOTION TO STRIKE AND DISMISS RESPONDENT SC DEPARTMENT OF
EMPLOYMENT AND WELLS FARGO'S INITIAL BRIEFS**

The Appellant moves to strike both Respondents' SC Department of Employment & Workforce and Wells Fargo & Co. Initial Briefs in conjunction with SC Court Rule 3.3; Candor Toward the Tribunal: "(a) A Lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal. ... (3) offer evidence that the lawyer knows to be false. ... (c) duties stated in paragraphs (a) .. apply when the lawyer is representing a client before a tribunal... these duties continue to the conclusion of the proceedings and apply even if compliance requires disclosure of information protected by Rule 1.6. (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known

to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.”

1. Respondents’ state the “Approver Not Present Policy” is found in Wells Fargo’s Employee Handbook. Although Tracy McCarthy, Wells Fargo’s witness, testified that the “Approver Not Present Policy” is found in the Employee Handbook: McCarthy: “[Approver Not Present Policy] is written in the employee handbook, which I have sent over.” (*ROA pg55 lines 20-25*), the Employee Handbook was not entered in to evidence. Wells Fargo’s Employee Handbook, in fact, does not contain the “Approver Not Present Policy.” The “Procedures: Branch Banking” policy printed and submitted by McCarthy (*ROA, pg100-109*) is not found in the Employee Handbook (and the Appellant had never seen this particular outline of procedures before.) The Hearing Officer did not corroborate where the “Approver Not Present Policy” is available to employees during trial. Again, this is a false claim as the “Approver Not Present Policy” which is the policy the Appellant is accused of violating, is not found in the Employee Handbook. (Please also note that the signed acknowledgment was not entered in to evidence and not found in the Record.) As the Hearing Officer did not corroborate where the policy is found, it can not therefore be used as a basis used to justify a termination, based on the Appellant’s or any employee’s understanding of the policy. The Respondent Attorney for Wells Fargo should be expected to know if the “Approver Not Present Policy” is actually found in the Employee Handbook and should not be allowed to mis-represent “facts” in this case as they are falsies and misleads the Court to the Appellant’s knowledge and understanding of the policy which she was terminated for.

Furthermore, the Respondent SC Department of Employment is also responsible for misleading the court as they represent the Hearing Officer who erred and acted erroneously in not corroborating where the “Approver Not Present Policy” is found during trial. Only until the Record was compiled do we see that the Hearing Officer did not do her due diligence in collecting the Employee Handbook nor the signed acknowledgment of the handbook. Neither of which are found in the Record.

2. Wells Fargo Attorneys are not forthcoming with the integrity of their sole witness, Tracy McCarthy in which the full decision of the Appellant’s denial of unemployment benefits is founded. Tracy McCarthy, Wells Fargo Branch Manager was under multiple investigations for fraud, dishonesty and misconduct from 2023-2024 resulting in Wells Fargo’s proposal of forced resignation on April 2, 2024. Witnesses can testify that McCarthy stated she was “caught on video and would be fired.” Wells Fargo Attorneys are obligated to represent the integrity and credibility of their witness as set forth within Court Rule 3.3 and withholding this information that she in fact is not a credible witness and therefore, the basis of the trial, the record and decision cannot rest solely on McCarthy’s hearsay testimony. The hearsay testimony cannot be considered as substantial evidence as the source of testimony is dishonest and non-credible.

Respondent Wells Fargo writes on page10 of their brief: “The Hearing Officer’s decision to receive testimony from McCarthy was appropriate because McCarthy was under oath, served as Appellant’s supervisor, and was the one who initially contacted human resources..” Although McCarthy did not witness the transaction the Appellant was terminated for, McCarthy was an unchallenged supervisor that was allowed to exercise her bias and dishonesty while disclosing events that she had not herself witnessed. The Appellant demonstrates here exactly why

McCarthy's testimony cannot be considered "substantial evidence." And in accordance with SC Court Rule 802: "Hearsay is not admissible."

Respondent SC Department of Employment falsely states on page 12 of their brief: "Appellant made no contemporary objections to any alleged hearsay testimony." The Appellant tries to object to McCarthy's testimony before being interrupted by the Hearing Officer who blatantly ignores the objection: Appellant: "I just want to state that is false-" [Interrupted by Hearing Officer] (*ROA, pg 57 lines 19-21*). This is a further example of the Hearing Officer acting clearly erroneous as the Appellant tries to bring light to the false testimony made by McCarthy during trial.

"This Court has previously held that hearsay testimony may be admissible in matters of this nature if corroborated by facts, circumstance, or other evidence." *Com. & Indus. Inc. Co. v. Second Inj. Found of S.C., No 2015-UP-103 (S.C. Ct. App. Mar. 4, 2015)* Tracy McCarthy's testimony is not admissible because there are no facts, circumstance or any other evidence to corroborate her testimony including the missing Surveillance Footage. The summary judgement made by the Admin. Law Court erred in their decision because "One of the principal purposes of the summary judgement rule is to isolate and dispose of factually unsupported claims." *Riggs v. AirTran Airways, Inc, 2007 (Court of Appeals for the Tenth Circuit)*.

3. EEOC Representative concluded after their interview and document collecting from Wells Fargo & Co. on May 13, 2024: "Yes he [Tyler Faizo] did indeed complete the transaction." Wells Fargo Attorneys are withholding the information that Wells Fargo does admit that Tyler Faizo, not the Appellant was the one who completed the transaction. This information was not only withheld but held in contempt of court when the Wells Fargo attorneys still perpetuate an

argument based on the Appellant's action to act "unilaterally" in regards to the transaction she was terminated for.

Respondent Wells Fargo writes on page5 of their brief: "Wells Fargo surveillance footage that corroborated Wells Fargo's findings that the Appellant had violated the Approver Not Present Policy." (R at 54 lines8-11) "Wells Fargo discharged Appellant for using Nadi's credentials without her permission.. to override a customer transaction," (R @ 58 lines11-17).

Respondent Wells Fargo writes on page8 of their brief: "There is no question that Appellant's unilateral decision to use Nadi's credentials without permission for a transaction..."

Respondent SC Department of Employment & Workforce writes on page3 of their brief:

"Appellant retrieved Ariana Nadi's employee ID from McCarthy's desk, entered that ID into the system, and used it to complete the transaction." Appellant thoroughly states consistently that she did not complete Tyler Faizo's transaction as he, at the computer, reviewed and printed that cashier's check. Both Respondents' arguments contained within their briefs that the Appellant acted unilaterally has no merit. Hearing Officer: "who was the teller that actually completed the transaction?" McCarthy: "Tyler Faizo. It was done on his computer." (*ROA pg53 lines20-22*)

Again, in accordance with Rule 3.3, withholding knowledge of who actually completed the transaction the Appellant was terminated for is unlawful and misleading. Respondents are obligated to exercise truth within the proceedings and litigation. If they are to stick with the evidence from the record, they might consider that their sole witness McCarthy contradicts herself during trial and testifies that Tyler Faizo did complete the transaction. Wells Fargos' corporate legal team stance is that Faizo did complete the transaction. Respondent Wells Fargo's

brief pg4: “Appellant went behind McCarthy’s desk and retrieved Nadi’s employee ID and unilaterally approved the transaction.”

Both Respondents arguments and the Admin Law Court’s decision are entrenched on two main key factors: 1.Tracy McCarthy, Wells Fargo Branch Manager’s hearsay testimony and 2. Surveillance Footage which was not entered in to evidence nor found on Record and contested thoroughly by the Appellant. This footage was used to allege the Appellant acted unilaterally and solely completed the transaction. Based on these cornerstones of their argument, the Appellant seeks a dismissal of both Respondents’ briefs as they should be found without merit: Court Rule 220(c)(2): “The Court of Appeals need not address a point in which is manifestly without merit.”

Although the Appellant recognizes some facts are outside the realm of the record and may not be considered, the Appellant asks the Court to recognize the Respondents’ Attorneys dishonesty and contempt of court by withholding the sanctity of honesty during this appeal as admittance of McCarthy’s dishonesty and that Faizo actually completed the transaction are central to this case. The Appellant seeks a dismissal of both Respondents briefs under Rule 3.3 and Rule 220(c)(2) as neither brief contains any examples of substantial evidence. The Appellant only seeks a fair judgement in this appeal.

Respectfully Submitted,

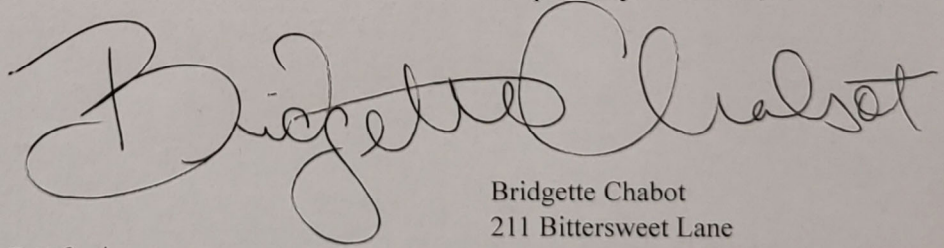
Bridgette Chabot
211 Bittersweet Lane
Myrtle Beach, SC 29579
BridgetteChabot@gmail.com
240.626.7543

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Bridgette Chabot
211 Bittersweet Lane
Myrtle Beach, SC 29579
BridgetteChabot@gmail.com
240.626.7543

August 2nd, 2024

Last Page motion to Strike Respondents Briefs.

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Aug 02 2024

SC Court of Appeals

FORM 7
PROOF OF SERVICE FOR:
APPELLANT'S MOTION TO STRIKE AND DISMISS RESPONDENTS'
BRIEFS/ MOTION TO COMPEL

THE STATE OF SOUTH CAROLINA
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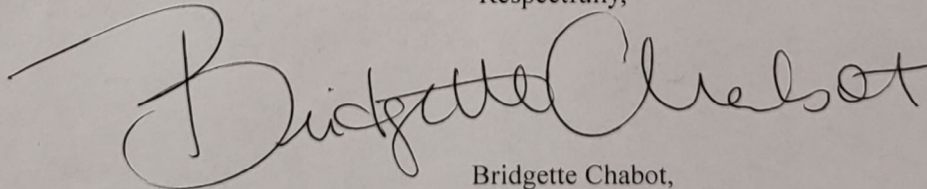
v.

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PROOF OF SERVICE

I certify that I have served the **Appellant's Motion to Strike & Dismiss Respondents' Briefs and the Motion to Compel** on SC Dept. of Employment & Workforce and on Wells Fargo & Co., by depositing a copy of it in the United States Mail, postage prepaid, on *Aug. 2nd, 2024*, addressed to their attorneys on record: Ben Cook ESQ, SC Dept. of Employment & Workforce, P.O. Box 8597 Columbia, SC 29202 and Wells Fargo's counsel Matthew Korn & Andreas Mosby of Fisher & Phillips, LLP, 1320 Main Street, Ste 750, Columbia SC 29201.

Respectfully,



Bridgette Chabot,
Appellant & Pro Se Litigant
211 Bittersweet Lane, Myrtle Beach, SC 29579
240.626.7543 BridgetteChabot@gmail.com