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Aug 02 2024

SC Court of Appeals

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 COMPEL RESPONDENTS' FOR SUBSTANTIAL EVIDENCE:
FEB. 2, 2023 SURVEILLANCE FOOTAGE**

The Appellant in accordance with SC Court Rule 37 moves to Compel Respondents' SC Department of Employment & Workforce and Wells Fargo & Co. for substantial evidence; particularly in this case, the surveillance footage from February 2, 2023, testified on by McCarthy. (*ROA pg51 lines 27-29; pg52 lines 1-2; pg54 lines 10-11*) Again, McCarthy does not say she watched the footage herself and nor does the Hearing Officer execute her role as a neutral party by questioning McCarthy on whether McCarthy watched the footage or not. McCarthy's testimony does imply to a reasonable mind that she actually did not watch the footage: McCarthy: "According to the footage that **they** reviewed." (*pg54 lines 10-11*). (Although the "*they*" during trial is not clarified.) McCarthy's testimony on the surveillance footage is what

the Hearing Officer and Respondents' use as the basis for their arguments that the Appellant acted "unilaterally" and that the Appellant's alleged completion of the transaction is what establishes her misconduct. The Hearing Officer's decision and Respondents' argument are based on only assumed actions taken by the Appellant that are not substantiated on the Record.

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." Appellate Panel Decision based on the Hearing Officer's decision: "Claimant used a branch manager's credentials to approve a customer transaction" (*ROA pg122*) based on "Employer conducted its investigation [not substantiated by anything on the Record] by [allegedly] interviewing all of the parties involved, and reviewing surveillance video and documentation." (*ROA pg122*). The Appellate Panel erred in basing any of the hearsay on non-existent hard evidence and the surveillance footage is contested by the Appellant consistently and the footage is not found on the Record. Final Order by the Admin Law Court decided by Judge Phillip Lenski (Case No. 23-ALJ-22-0342-AP) dated February 8, 2024: "The record establishes that the Appellant used a branch manager's credentials to approve a customer transaction that exceeded her authorized limit." To be clear, the Hearing Officer in trial made a judgement which

is affirmed by the Appellate Panel and Admin Law Court; all of which are based on non-existent evidence and testimony by a non-credible witness. The affirmations are based on the Hearing Officer's error and clearly erroneous acceptance of unsubstantiated evidence and testimony. SC Court Rule 802 states: "Hearsay is not admissible."

A logical mind would conclude an approval happens upon completion of a transaction and as Tyler Faizo completed the transaction, it is logical to conclude that the Appellant's advice or action was not of a sole facilitator. 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. (*ROA pg59 lines19-22; lines27-28; pg60 lines17-20; pg61 lines8-9 lines27-28; pg69 lines17-23; pg75 lines13-21*) 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*) In accordance with Rule 3.3, Respondents' withholding knowledge of who actually completed the transaction (and thus if done unilaterally) the Appellant was terminated for is unlawful and misleading. Respondents are obligated to exercise truth within the briefs and litigation. Invoking this Court Rule 37 for a Motion to Compel only seems right and appropriate since the hearsay testimony of McCarthy relies on what the surveillance footage captured, who completed the transaction in question and whether the Appellant acted unilaterally.

This surveillance footage is on February 2, 2023 of the transaction that took place that the Appellant was terminated for. The footage should be under a litigation hold as recognized by the Respondents' Wells Fargo's Attorney Return to Appellant's Motion for Preservation of Evidence dated April 29, 2024 states: "Wells Fargo represents that the Company has issued a litigation

hold and will continue to preserve all available evidence in accordance with its obligation to do so.” If there was hard evidence, such as a surveillance video, why was it not procured by the Hearing Officer after request by the Appellant during trial? (*ROA pg61 lines8-9*) From a Pro Se Litigant’s perspective, it would be common sense to enter the surveillance footage in to the trial and on the record if it so extensively used as evidence of the Appellant’s unilateral misconduct. Why allow testimony on surveillance footage but object to the very thing: the actual, tangible footage to be entered?

Rule 37(c)(1): “A party that without substantial justification fails to disclose information required by Rule(26)(a) or 26(e)(1) shall not, unless such a failure is harmless, be permitted to use evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to and in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions.”

As the record does not contain any hard evidence and the provided testimony is by what the record shows as hearsay by a non-credible witness who contradicts herself: McCarthy: “The email that Ariana [Nadi] received stated that initiator Tyler [Faizo].” (*ROA pg76 lines2-3*). McCarthy: “she [Appellant] used that branch manager’s [Nadi’s] information to override the transaction.” (*ROA pg.51 lines16-17*), The Appellant moves to enter the surveillance footage for consideration in this Appeal, as the footage is only rumored and the hearsay testimony is not tangible. This Motion to Compel comes after the Hearing Officer erred during trial and was clearly erroneous in not hearing the Appellant’s objection to the false statements made by witness McCarthy. Appellant: “I just want to state that is false-” [Interrupted by Hearing Officer] (*ROA,*

pg57 lines19-21). To be clear, this was an objection by the Appellant that the Respondents' have brushed off.

This motion to compel comes after the Motion to dismiss Respondents' briefs under SC Court Rule 3.3. The Appellant does not want to serve excessive motions but moves for this Motion to Compel as it seems a logical and effective step in determining the Appellant's role in the transaction she was terminated for. How could the Respondents object to entering this evidence as it is the very thing they use as a basis to indict the Appellant? It seems only fair to give the surveillance footage actual merit and valid basis by asking for it to be entered in to this decision by the Court of Appeals. This is the Respondents chance to enter the footage as concrete evidence to solidify their argument. There is no justice in assumptions and the Appellant asks the Court to solidify this evidence.

If this Motion to Compel is denied, the Appellant moves to strike the Respondents' briefs based on the fundamental basis that the Hearing Officer, the Trial and the Respondents' have not produced substantial evidence. The Court defines "Substantial" under Rule 1.0 (p) "Substantial": when used in reference to degree or extent denotes a material matter of clear and weighty importance." The Respondents' briefs have been rooted on hearsay evidence and hearsay testimony that contains no merit in accordance with Court Rule 220(c)(2): "The Court of Appeals need not address a point in which is manifestly without merit." And in accordance with SC Court Rule 802: "Hearsay is not admissible." If the surveillance footage cannot be compelled by this motion to be entered to substantiate McCarthy's claims or the Respondents' collective arguments; the Appellant moves to strike any and all testimony and related statements by the Respondents and contents within their briefs that mention 1.the surveillance footage 2. Mention

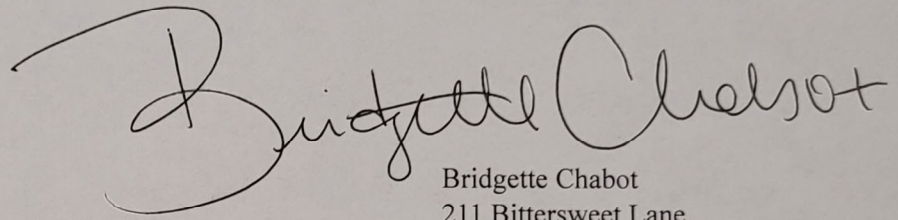
of the Appellant completing the transaction 3. Mention of the Appellant acting unilaterally as the Surveillance Footage is not found on the record and the testimony by McCarthy is non-credible due to her inconsistencies and contradictions found on the Record.

Respectfully Submitted,

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Respectfully Submitted,

A large, elegant handwritten signature in cursive script that reads "Bridgette Chabot". The signature is written in dark ink and is positioned to the left of the typed contact information.

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Aug 2nd 2024.

Last Page of Motion to Compel.

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

Appellate Case No. 2024-000251

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

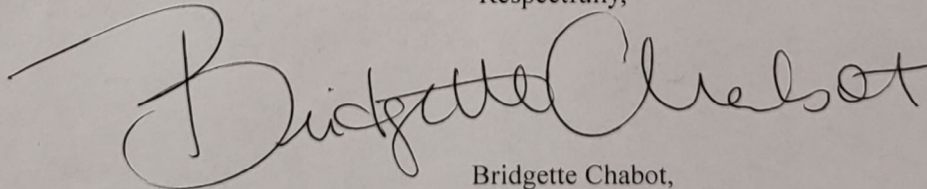
v.

Bridgette Chabot, Appellant.

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,



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