

**STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas  
The Honorable Maite D. Murphy

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Appellate Case No.: 2012-213208  
Civil Action No.: 2012-CP-18-539

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**RECEIVED**  
NOV 18 2013  
**SC Court of Appeals**

Roger L. Whaley .....Appellant,

vs.

South Carolina Federal Credit Union and Bank of America .....Respondents.

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**MEMORANDUM IN OPPOSITION TO APPELLANT'S MOTION FOR JUDGMENT  
ON BEHALF OF RESPONDENT SOUTH CAROLINA FEDERAL CREDIT UNION**

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Sheila M. Bias, Esquire  
Drew H. Butler, Esquire  
Caleb M. Riser, Esquire  
RICHARDSON PLOWDEN & ROBINSON, P.A.  
1900 Barnwell Street (29201)  
P.O. Drawer 7788  
Columbia, South Carolina 29202  
803-771-4400

*Counsel for Respondent South Carolina Federal  
Credit Union*

November 18, 2013

## INTRODUCTION

The instant appeal was commenced with a Notice of Appeal in October 2012. Due to various issues with the transcript order and filing deficiencies, Appellant's Initial Brief was served and filed in August of 2013. By order filed September 27, 2013, this Court extended the time for serving and filing "respondent's initial brief and designation of matter" until November 4, 2013. On October 24, 2013, Respondent Bank of America ("BOA") filed a Motion to Dismiss the appeal. Subsequent to that filing, Respondent South Carolina Federal Credit Union ("SCFCU") confirmed with this Court that Rule 240(b), SCACR, was applicable to this case; thereby staying the time for perfecting the appeal, specifically including the filing of our Initial Brief. See Exhibit A. Appellant responded, essentially contending the Motion to Dismiss on behalf of Bank of America did not effectively stay the entire appeal as provided by the rules. See Exhibit B. SCFCU provided this Court, and Mr. Whaley, with a brief response, again asserting the applicability of Rule 240(b), SCACR, and our understanding that our Initial Brief need not be served and filed until this Court has ruled on BOA's Motion to Dismiss this appeal. See Exhibit C. Despite the provisions of Rule 240(b), SCACR, Appellant has filed the instant Motion for Judgment based on SCFCU's having not yet filed an Initial Brief.

## RELEVANT BACKGROUND

The underlying action was commenced on February 16, 2012, with Appellant filing a confusing Complaint against BOA and SCFCU. It appears the allegations included claims of civil conspiracy, fraud, theft of money, and breach of contract with respect to cashier's checks issued by SCFCU to an entity known as Capital Consortium

Group and deposited into accounts at BOA.

On March 7, 2012, SCFCU filed a Motion to Dismiss, and on March 22, 2012, BOA filed its Motion to Dismiss, or, in the Alternative, Motion for a More Definite Statement. After a hearing on these motions, the trial court granted the Motions to Dismiss with prejudice. The Order dismissing the Complaint essential found the Complaint failed to meet the minimum pleading requirements of Rule 8(a), SCRCF, the Appellant lacked standing to sue as the purchaser of a cashier's check, and that Appellant's claims should be brought before the ongoing receivership action in federal court.

Appellant filed a Motion to Reconsider on June 28, 2012, and a hearing was held on August 29, 2012. On September 17, 2012, the trial court entered an Order denying Appellant's Motion to Reconsider. The instant appeal follows.

### ARGUMENT

#### **Appellant's Motion for Judgment should be denied.**

Appellant's Motion for Judgment should be denied because it is without merit. Under the South Carolina Appellate Court Rules, when BOA filed the Motion to Dismiss this appeal, all tasks required to perfect the appeal were stayed until this Court rules on the pending Motion to Dismiss. Rule 240(b), SCACR, provides:

*Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition. A motion to dismiss an appeal or a motion to relieve counsel shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided.*

(emphasis added). Accordingly, pursuant to the Rule 240(b), SCACR, BOA's filing of a Motion to Dismiss the Appeal activated the above emphasized provisions regarding the

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staying of the time limits to perfect the appeal—including the filing of SCFCU’s responsive brief. Therefore, any allegations that SCFCU is non-compliant with the SCACR, thereby entitling Appellant to judgment, should be rejected.

Additionally, SCFCU is not in violation of Rule 208(a)(4), SCACR. Rule 208(a)(4), SCACR, provides “[u]pon the failure of the respondent to timely file a brief, the appellate court may take such action as it deems proper.” Here, SCFCU has not failed to timely file a brief because, as noted above, the time to timely file our Initial Brief was stayed by BOA’s Motion to Dismiss. Consequently, Appellant’s request for judgment in his favor and an order for remand with special instructions is premature, capricious, and without merit.

Moreover, while Appellant is correct that SCFCU never sought an additional extension of time beyond the original extension granted by this honorable Court, this situation should not be characterized as an extension of time in which to file our Initial Brief. Rather, this is SCFCU’s adherence to the South Carolina Appellate Court Rules. Rule 240(b), SCACR, clearly provides for the staying of the time to perfect the appeal in this situation. The filing of our Initial Brief is a component of perfecting this appeal. Therefore, such brief is not due until this Court rules on the pending Motion to Dismiss.<sup>1</sup>

Finally, this matter should not be adjudicated on its merits without the parties having fully briefed the issues raised by Appellant on appeal. The impact of BOA’s Motion to Dismiss and our subsequent correspondence with the Court is a purely

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<sup>1</sup> Additionally, it appears Appellant is confusing the ability of BOA and SCFCU to raise separate defenses or claims at the trial level with the procedural responses and timelines applicable to both parties as required by the appellate court rules. The fact that BOA and SCFCU raised different claims and defenses at the trial level is not dispositive of the purely procedural matter presently before this Court at this time. Regardless of the claims and defenses raised below, Rule 240(b), SCACR, is clear and controlling of this issue—the perfection of this appeal, which includes the filing of our Initial Brief—is stayed until this Court rules on the pending Motion to Dismiss.

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procedural aspect of this appeal and should not be used to determine the merits of the appeal. Accordingly, Appellant's Motion for Judgment should be denied.

**CONCLUSION**

For the foregoing reasons, Respondent South Carolina Federal Credit Union respectfully requests this Court deny Appellant's Motion for Judgment, deny his request to remand the matter with special instructions to enter judgment in his favor, and all other requests embodied in Appellant's Motion for Judgment.

Respectfully submitted,

*Sheila M. Bias*

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Sheila M. Bias, Esquire  
Drew H. Butler, Esquire  
Caleb M. Riser, Esquire  
RICHARDSON PLOWDEN & ROBINSON, P.A.  
1900 Barnwell Street (29201)  
P.O. Drawer 7788  
Columbia, South Carolina 29202  
803-771-4400

*Counsel for Respondent South Carolina Federal  
Credit Union*

November 18, 2013

# EXHIBIT A

October 31, 2013

Columbia  
Direct Dial: (803) 576-3718  
sbias@RichardsonPlowden.com

**VIA Hand Delivery**

The Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

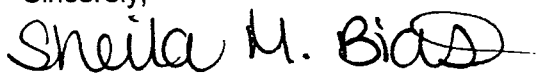
**Re: Roger L. Whaley v. South Carolina Federal Credit Union**  
**C/A No.: 2012-CP-1800539**  
**Appellate Case # 2012-213208**  
**Our File No. 7130-36**

Dear Ms. Kitchings:

I am writing to follow up on our conversation of October 29, 2013 regarding Respondent Bank of America's Motion to Dismiss staying the perfection of the appeal under Rule 240(b), SCACR. Therefore, it is my understanding that Respondent South Carolina Federal Credit Union's Initial Brief, which has a due date of November 4, 2013, is effectively stayed until the Court issues a decision with regard to the Motion to Dismiss the appeal. Therefore, Respondent South Carolina Federal Credit Union will await this Court's decision on the Motion and further instruction before filing its Initial Brief in this appeal. If my understanding is incorrect, please notify my office so that we may act accordingly.

By copy of this letter we are serving *pro se* Appellant and all opposing counsel with this response.

Thank you for taking the time to review this letter and with kind regards, I am

Sincerely,  
  
Sheila M. Bias  
SC Bar # 100005

SMB/dfb

cc: Roger Whaley, Pro se  
Jody Alan Bedenbaugh, Esquire  
Erik Tison Norton, Esquire  
Drew Hamilton Butler, Esquire

Tara C. Sullivan, Esquire

# EXHIBIT B

The Honorable Jenny A. Kitchings  
 Clerk, South Carolina Court of Appeals  
 1015 Sumter Street  
 Columbia, South Carolina 29201

November 1, 2013  
 Attachment - 1

Re: Respondent South Carolina Federal Credit Union/SCFCU's 10/31/2013 LETTER, SHOWS the Appearance of EXPARTE Communication, or Private Communication, involving allegedly! this said Appeals Court Clerk's "CONVERSATION on October 29, 2013...", which SCFCU Appears to suggest for this Appeals Court Clerk, to Improperly/or UNETHICALLY ALLOW SCFCU to DELAY!/or Extend!! for a THIRD!! TIME! SCFCU's required!! RESPONSE to Appellant-Whaley's filed Initial BRIEF! DUE by Nov. 4, 2013 - filed since about September 2013; Now!! SCFCU is REPRESENTING/or/Requesting Special FAVORS from this APPEALS COURT - for the Respondent Bank of America - although! both said Respondents' DEFENSES are Not!! legally JOINT!! /nor Consolidated by/nor within the said LOWER TRIAL COURT - and CAN BE JUDGED Separately.

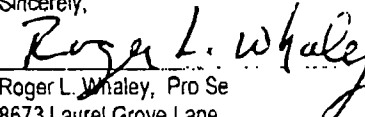
Dear Ms. Kitchings:

With no disrespect intended to this said Appeals Court's Clerk, who is indeed being misled/and or it is Obvious, that South Carolina Federal Credit Union/ SCFCU now! again! continued!! requests for SPECIAL FAVORS from this said Appeals Court Clerk, to yet! now! again to grant a THIRD!! EXTENSION!! so to file its REQUIRED!! Responsive, Initial Brief that was extended a Second time from being filed in the month of OCTOBER, 2013, to be filed on NOVEMBER4, 2013, and now again! frivolously!! request/or Suggestion that SCFCU will not file its REQUIRED Responsive Initial Brief on NOVEMBER 4, 2013, Unless! this said Appeals Court Clerk ORDERS, or write again! such a request that's ALREADY!! been DEMANDED by this said Appeals Court, which must! be upheld by the said Respondent SCFCU, otherwise SCFCU is making the appearance of this said Appeals Court is providing Special Favors for a party of interest.

Therefore, the said already provided law(s)! and rule(s)! requires!! for the said Respondent SCFCU must! file its required Responsive Brief on the Ordered!! date NOVEMBER 4, 2013, as indeed the Respondent Bank of America's recent OWN filed UNTIMELY! pleadings within this said Appeals court. ADMITS! (although! Appellant do not necessarily agree) that it is WITHOUT ANY DOUBT!!/and or is UNDISPUTED!! that ONLY!! Respondent SCFCU was indeed! Appellant Whaley's signed CONTRACTED!! BANK that took Appellant Whaley's MONEY and in return provided Appellant Whaley with the said CASHIER CHECKS, that are in question in this said Appeals Case matter. Whereas, ONLY shows Respondent SCFCU can not be JUDGED on the Exact SAME terms as the Respondent Bank of America/BOA, whose filed UNTIMELY Motion to Dismiss - is Obviously just! another! CONSPIRED TRICKERY of DELAY!!/and DECEPTION involving the Respondent SCFCU, when indeed, the Respondent BOA NEVER! DENIED!, and can not deny that Respondent BOA's LAW FIRM - NELSON, MULLINS.. can!! not!! Legally!! Represent!!! their Client - BOA's involvements with the Appellant Whaley's said CASHIERS CHECKS named PAYEE/CCG, when!! Respondent BOA's said PAID!! LAW FIRM NELSON, MULLINS ...is ALSO the SAME!! Law Firm who was APPOINTED/or PAID! to Represent Appellant Whaley interest so to get his RETURN of the same said Cashiers Checks.

WHEREFORE, in order for this said Appeals Court Clerk not to have the appearance of Bias/or Personal Interest in this said case matter, as it appears to be suggested by the Respondent SCFCU's letter dated "October 31, 2013". This said Appeals Court Clerk/or Judge(s) has ALREADY WRITTEN its said ORDER of EXTENSION Twice!! in favor of the said Respondent SCFCU, so to filed its required Responsive Initial Brief. Therefore if SCFCU does not file its required Responsive Initial Brief on the said Ordered date "November 4, 2013", which this said Appeals Court's ORDERED!, than this said Appeals Court must! consider Appellant Whaley's said filed Appeals Requests must be granted in full, against the Respondent SCFCU who also! can not!/and has not Denied! any! of Appellant Whaley's filed claims for Appeals, pursuant with SCRAP 208(a)(2)(4).

Sincerely,

  
 Roger L. Whaley, Pro Se  
 8673 Laurel Grove Lane  
 North Charleston, South Carolina 29420

cc: Jody Alan Bedenbaugh, Esquire, Erik Tison Norton, Esquire, Drew Hamilton Butler, Esquire,

RICHARDSON  
PLOWDEN

October 31, 2013

Columbia  
Direct Dial: (803) 576-3718  
sbias@RichardsonPlowden.com**VIA Hand Delivery**The Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201**Re: Roger L. Whaley v. South Carolina Federal Credit Union**  
**C/A No.: 2012-CP-1800539**  
**Appellate Case # 2012-213208**  
**Our File No. 7130-36**

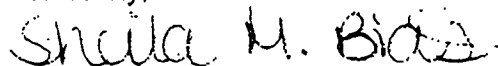
Dear Ms. Kitchings:

I am writing to follow up on our conversation of October 29, 2013 regarding Respondent Bank of America's Motion to Dismiss staying the perfection of the appeal under Rule 240(b), SCACR. Therefore, it is my understanding that Respondent South Carolina Federal Credit Union's Initial Brief, which has a due date of November 4, 2013, is effectively stayed until the Court issues a decision with regard to the Motion to Dismiss the appeal. Therefore, Respondent South Carolina Federal Credit Union will await this Court's decision on the Motion and further instruction before filing its Initial Brief in this appeal. If my understanding is incorrect, please notify my office so that we may act accordingly.

By copy of this letter we are serving *pro se* Appellant and all opposing counsel with this response.

Thank you for taking the time to review this letter and with kind regards, I am

Sincerely,

Sheila M. Bias  
SC Bar # 100005

SMB/dfb

cc: Roger Whaley, Pro se  
Jody Alan Bedenbaugh, Esquire  
Erik Tison Norton, Esquire  
Drew Hamilton Butler, Esquire

Tara C. Sullivan, Esquire

# EXHIBIT C

November 4, 2013

Columbia  
Direct Dial: (803) 576-3718  
sbias@RichardsonPlowden.com

**VIA Hand Delivery**

The Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

Re: ***Roger L. Whaley v. South Carolina Federal Credit Union and Bank of America***  
**C/A No.: 2012-CP-1800539**  
**Appellate Case # 2012-213208**  
**Our File No. 7130-36**

Dear Ms. Kitchings:

I am in receipt of Mr. Whaley's November 1, 2013 letter regarding "Respondent South Carolina Federal Credit Union/SCFCU's 10/31/2013 LETTER, SHOWS the Appearance of EXPARTE Communication . . ."

By way of brief response, Respondent South Carolina Federal Credit Union (SCFCU) did not engage in improper ex parte communications nor did it request a second extension in which to file its Initial Brief. Our letter of October 31, 2013, was merely to document our discussion with your office about a purely procedural matter; namely, Rule 240, SCACR, which suspends the perfection of the appeal—including the filing of responsive briefs—until any pending Motion to Dismiss has been decided by this Court. Given Respondent Bank of America's Motion to Dismiss, it is our understanding our client's responsive brief will be due subsequent to this Court's decision on the Motion to Dismiss. We fully intend to comply with that deadline.

Finally, it is our position that any request by Appellant for adjudication of this matter on the merits prior to this Court's ruling on the pending Motion to Dismiss and before the parties have briefed this appeal should be denied. As stated in my previous letter, if Respondent SCFCU has misinterpreted this rule, please contact me and we will do whatever is required to be in compliance with the South Carolina Appellate Court rules for perfecting this appeal.

By copy of this letter we are serving *pro se* Appellant and all opposing counsel with this response.

Thank you for taking the time to review this letter and with kind regards, I am

Sincerely,

*Sheila M. Bias*

Sheila M. Bias  
SC Bar # 100005

SMB

cc: Roger Whaley, Pro se  
Jody Alan Bedenbaugh, Esquire  
Erik Tison Norton, Esquire  
Drew Hamilton Butler, Esquire  
Tara C. Sullivan, Esquire

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY

Court of Common Pleas  
The Honorable Maite D. Murphy, Circuit Court Judge

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NOV 18 2013

SC Court of Appeals

Roger L. Whaley.....Appellant,

v.

South Carolina Federal Credit Union and  
Bank of America.....Respondents.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., attorneys for Respondent South Carolina Federal Credit Union, do hereby certify that I have this date served the foregoing Memorandum in Opposition to Appellant's Motion for Judgment on behalf of Respondent South Carolina Federal Credit Union by personally depositing a copy of the same in a United States Postal Service mailbox, postage prepaid, addressed to the following:

Roger L. Whaley  
8673 Laurel Grove Lane  
North Charleston, South Carolina 29420

Tara C. Sullivan, Esquire  
Erik T. Norton, Esquire  
Jody A. Bedenbaugh, Esquire  
Nelson Mullins Riley & Scarborough, LLP  
Post Office Box 11070  
Columbia, South Carolina 29211

  
Daisy F. Bonds

Dated: November 18, 2013

November 18, 2013

Columbia  
Direct Dial: (803) 576-3718  
sbias@RichardsonPlowden.com

**VIA HAND DELIVERY**

The Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

**Re: Roger L. Whaley v. South Carolina Federal Credit Union and Bank of America**  
**C/A No.: 2012-CP-18-539**  
**Appellate Case # 2012-213208**  
**Our File No. 7130-36**

Dear Ms. Kitchings:

As counsel for the Respondents South Carolina Federal Credit Union, I have enclosed for filing an original and six copies of our Memorandum in Opposition to Appellant's Motion for Judgment to be Included in the Record on Appeal in the above referenced matter, along with our original Certificate of Service. I have also enclosed one additional copy of our Memorandum and would request that it be file stamped and returned to our courier.

We are this day serving a copy of our Memorandum on pro se Appellant Roger Whaley and all counsel of record.

Thank you for your assistance and with kind regards, I am

Sincerely,



Sheila M. Bias  
SC Bar # 100005

SMB/dfb

cc: Roger Whaley, Pro se  
Jody Alan Bedenbaugh, Esquire  
Erik Tison Norton, Esquire  
Drew Hamilton Butler, Esquire  
Tara C. Sullivan, Esquire

**RECEIVED**

NOV 18 2013

**SC Court of Appeals**