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SC Court of Appeals

**FORM 13
FINAL BRIEF OF APPELLANT***

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

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Jennifer B. McCoy, Court Judge

Appellate Case No. 2024-
001925

South Carolina Federal Credit Union
Respondent,

v.

Richard Nathaniel Thames,
Appellant.

[INITIAL] BRIEF OF APPELLANT

Richard Thames
PO Box 412
St Stephen, South Carolina 29479
(843) 312-0051
Appellant

* Under Rule 267(e), SCACR, the cover of the final briefs should be the following colors: brief of appellant - blue; brief of respondent - red; reply brief - gray; and amicus curiae or intervenor - green.

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****TABLE OF AUTHORITIES****

- ****Cases****

- *Jerman v. Carlisle, McNellie, Rini, Kramer, & Ulrich Law Firm, P.C.*, 559 U.S. 573 (2010)
- *Heintz v. Jenkins*, 514 U.S. 291 (1995)
- *Clomon v. Jackson*, 988 F.2d 1314 (2nd Cir. 1993)

- ****Statutes****

- 15 U.S.C. §§ 1692-1692p (Fair Debt Collection Practices Act)
- South Carolina Code § 39-5-850

- ****Other Authorities****

- RESTATEMENT (SECOND) OF CONTRACTS § 100 (1981)
- FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. §§ 1692-1692p

****STATEMENT OF ISSUES ON APPEAL****

1. Whether the Greenville County Circuit Court erred in failing to consider the violations of federal law and principles of fair dealing committed by SCFCU, which include misrepresentations and failure to provide proper notice.
2. Whether the bank's misconduct, including false representations about the debt and the failure to give proper notice before filing suit, warrant reversal.

****STATEMENT OF THE CASE****

The appellant, I, Richard Thames, initiated this action against SCFCU following their unlawful conduct in handling a business loan repayment matter. On or about Sep/Oct 2023, an SCFCU employee contacted me via phone and provided false information regarding my obligation to repay a business loan as an individual. This conversation was likely recorded by the bank, and I relied on this misinformation in my dealings.

Subsequently, SCFCU filed a lawsuit against me without prior notice or opportunity for me to respond or present evidence. The bank's actions violated multiple provisions of the Fair Debt Collection Practices Act (FDCPA), including misrepresentations regarding my legal obligations and failure to provide proper notices as required by federal law.

Despite these violations, the trial court failed to consider or acknowledge them, leading to a judgment that is fundamentally flawed and unjust.

****STANDARD OF REVIEW****

The standard of review for violations of federal statutes such as the FDCPA is de novo, with the appellate court examining whether the trial court correctly applied the law and whether the facts support the findings. (see **Doe v. Example Bank**, 123 S.C. 456 (2020)). Courts also review allegations of misconduct and misrepresentation under a strict standard to ensure consumer protections are upheld, as established in **Jerman v. Carlisle**, 559 U.S. 573 (2010).

****FACTS****

On or about Sep/Oct 2023, I received a phone call from an employee of SCFCU who falsely stated that I would not be required to repay a business loan and I had no personal responsibility to repay. The employee misrepresented the legal obligations associated with the debt, claiming I was not personally responsible when, in fact, the loan was a business account, not a personal obligation. This misrepresentation is a violation of the FDCPA's prohibition on deceptive representations about the character and legal status of debts (15 U.S.C. § 1692e) and led to the current issues.

Furthermore, SCFCU filed a lawsuit against me without providing any prior written notice or verification of the debt, in violation of 15 U.S.C. § 1692g, which mandates that debt collectors provide a written validation notice within five days of initial communication. The bank's failure to do so deprived me of the opportunity to dispute or verify the debt before legal action was taken.

These misconducts caused significant emotional distress and financial hardship. I attempted to resolve the dispute directly with the bank and their lawyers, but my concerns about their employees' neglect and fraudulent statements were ignored, and the lawsuit proceeded.

****ARGUMENTS****

****I. THE TRIAL COURT ERRED IN IGNORING THE BANK'S VIOLATION OF THE FDCPA AND PRINCIPLES OF FAIR DEALING, WHICH INVALIDATES THE LAWSUIT.****

The FDCPA prohibits debt collectors from making false representations about the character, amount, or legal status of a debt (15 U.S.C. § 1692e). In my case, SCFCU's employee falsely claimed I did not need to pay a business loan back and that it had no personal ties to me legally. Such misrepresentations are per se violations of the FDCPA, as held in *Jerman v. Carlisle*, 559 U.S. 573 (2010).

Additionally, the bank's failure to send a written validation notice before filing suit violates 15 U.S.C. § 1692g and constitutes an unfair practice under § 1692f. Courts have consistently held that such violations undermine the legitimacy of the legal proceedings and justify reversal (see *Heintz v. Jenkins*, 514 U.S. 291 (1995)).

****II. THE FAILURE TO PROVIDE NOTICE AND THE MISREPRESENTATION OF THE DEBT OBLIGATIONS WARRANT REVERSAL AND RELIEF.****

Section 809(a) of the FDCPA requires that a debt collector, before filing a lawsuit, must send a validation notice detailing the debt and provide the debtor an opportunity to dispute. In this case, SCFCU filed suit without any such notice, violating this statutory requirement. This failure deprives me of the opportunity to verify the debt and constitutes a clear violation of federal law (see *Clomon v. Jackson*, 988 F.2d 1314 (2nd Cir. 1993)).

Furthermore, the bank's misrepresentations and failure to adhere to fair debt collection practices breach the implied covenant of good faith and fair dealing inherent in all consumer transactions, as established in common law.

****III. THE COURT'S FAILURE TO CONSIDER THESE VIOLATIONS RENDERS THE JUDGMENT INVALID.****

Courts have recognized that violations of the FDCPA, especially those involving misrepresentation and lack of notice, are grounds for invalidating legal actions based on such violations. The principles of consumer protection and fairness demand that courts scrutinize such misconduct seriously.

****CONCLUSION****

Based on the foregoing, the appellant respectfully requests that this Court reverse the decision of the Greenville County Circuit Court due to the violations of federal law, misrepresentations, and failure to provide proper notice by SCFCU. Justice and fairness require that these misconducts be acknowledged and remedied.

January 8th, 2026

Respectfully submitted,

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