

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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FEB 05 2014

SC Court of Appeals

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

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

Roger L. WhaleyAppellant,

vs.

South Carolina Federal Credit Union and Bank of AmericaRespondents.

**MOTION TO DISMISS ON BEHALF OF RESPONDENT SOUTH CAROLINA
FEDERAL CREDIT UNION**

Respondent South Carolina Federal Credit Union ("SCFCU") hereby respectfully moves for a dismissal of Appellant's appeal. The ground for this Motion is Appellant's failure to perfect his appeal pursuant to the South Carolina Rules of Appellate Procedure and the Orders of this Court. The accompanying memorandum of law sets forth this ground in more detail.

Respectfully submitted,



Drew H. Butler, Esquire
Caleb M. Riser, Esquire
Sheila M. Bias, Esquire
RICHARDSON PLOWDEN & ROBINSON, P.A.
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*Counsel for Respondent South Carolina Federal
Credit Union*

February 5, 2014

**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

Appellate No.: 2013-213208
Civil Action No.: 2012-CP-18-539

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 Motion to Dismiss and Memorandum In Support of Motion to Dismiss 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: February 5, 2014

February 5, 2014

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

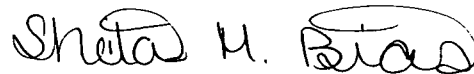
Dear Ms. Kitchings:

As counsel for the Respondents South Carolina Federal Credit Union, I have enclosed for filing an original and six copies of our Motion to Dismiss and Memorandum in Support of our Motion to Dismiss in the above referenced matter, along with our original Certificate of Service and \$ 25.00 filing fee. I have also enclosed one additional copy of our Motion and Memorandum and would request that it be file stamped and returned to our courier.

We are this day serving a copy of our Motion and 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/
cc: Roger Whaley, *Pro se*
Jody Alan Bedenbaugh, Esquire
Erik Tison Norton, Esquire
Drew Hamilton Butler, Esquire
Tara C. Sullivan, Esquire

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SC Court of Appeals

STATE OF SOUTH CAROLINA
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Civil Action No.: 2012-CP-18-539

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FEB 05 2014

SC Court of Appeals

Roger L. WhaleyAppellant,

vs.

South Carolina Federal Credit Union and Bank of AmericaRespondents.

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS ON BEHALF OF
RESPONDENT SOUTH CAROLINA FEDERAL CREDIT UNION**

Drew H. Butler, Esquire
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*Counsel for Respondent South Carolina Federal
Credit Union*

February 5, 2014

INTRODUCTION/BACKGROUND

The instant appeal is the result of Motions to Dismiss filed on behalf of Respondents at the trial level. The underlying action was commenced on February 16, 2012, with Appellant filing a confusing Complaint against Bank of America (“BOA”) and South Carolina Federal Credit Union (“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 essentially found the Complaint failed to meet the minimum pleading requirements of Rule 8(a), SCRPC, 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 Notice of Appeal was filed in October 2012. Due to various issues with the transcript and filing deficiencies, Appellant’s purported Initial Brief was not filed until August of 2013. On October 24, 2013, BOA filed a Motion to Dismiss or in the alternative a Motion to Strike those portions of Appellant’s Initial Brief and Designation

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of Matter to be Included in the Record on Appeal which were not in compliance with the Appellate Court Rules. **[Exhibit A]**.

Simultaneously, Appellant filed Motions for Judgment against both Respondents. By Order filed November 27, 2013, this Court denied Appellant's Motion for Judgment as to both Respondents. **[Exhibit B]**. The Court further granted BOA's Motion to Strike and ordered Appellant serve and file an Amended Designation of Matter to be Included in the Record on Appeal excluding the offending portions. Id. The Order also indicated Appellant was to serve and file an amended Initial Brief that fully complies with Rule 208, SCACR, within thirty days. Finally, the Order stated that at the expiration of thirty-days, the Court would consider BOA's Motion to Dismiss. Id.

On Tuesday, December 24, 2013, Appellant filed a Motion to Relieve the Counsel of Respondent Bank of America, seeking the protections of Rule 240, SCACR, thereby attempting to stay the perfection of the appeal. This Court denied the Motion to Relieve Counsel on January 3, 2014. **[Exhibit C]**. Since that time, Appellant has filed various documents in this Court and the South Carolina Supreme Court, but has failed to file an amended Initial Brief or Designation of Matter to be Included in the Record on Appeal.

ARGUMENT

Appellant has failed to perfect his appeal.

Pursuant to Rule 260(a), SCACR, Appellant moves this Court to dismiss the instant appeal because Appellant has failed to comply with the requirements of the South Carolina Rules of Appellate Procedure and Orders of this Court. Appellant has failed to perfect this appeal because he has not filed a proper Initial Brief and Designation of Matter to be Included in the Record on Appeal as ordered by this Court. Rule 208(a)(4),

SCACR, provides that “upon the failure of the appellant to file an serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal.” Because Appellant has filed no briefs which properly comply with the Appellate Court Rules, he has failed to perfect his appeal. Consequently, the instant appeal must be dismissed.

CONCLUSION

Based on the foregoing, Respondents respectfully move this honorable Court for an Order dismissing this appeal.

Respectfully submitted,



Drew H. Butler, Esquire
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*Counsel for Respondent South Carolina Federal
Credit Union*

February 5, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2012-CP-18-0539

Appellate Case No. 2012-213208

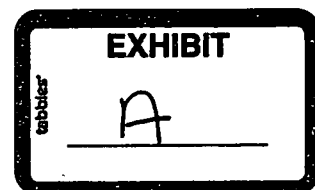
South Carolina Federal Credit Union and Bank of
America,..... Respondents,

v.

Roger L. Whaley, Appellant.

**BANK OF AMERICA'S MOTION TO DISMISS APPEAL
AND OPPOSITION TO APPELLANT'S "LETTER TO CLERK A/K/A MOTION FOR
JUDGMENT AGAINST RESPONDENT BANK OF AMERICA/OR/REQUEST TO
REMAIN THAT SAID RESPONDENT MATTER BACK TO LOWER TRIAL COURT
WITH INSTRUCTION, TO ENTER DIRECT JUDGMENT IN FAVOR OF
PLAINTIFF/APPELLANT ROGER WHALEY" DATED SEPTEMBER 30, 2013, AND,
ALTERNATIVELY, MOTION TO STRIKE PARTS OF APPELLANT'S
DESIGNATION OF MATTER**

Pursuant to Rule 240, SCACR, Respondent Bank of America ("BOA") hereby requests that the Court dismiss the instant appeal with prejudice. The grounds for this Motion are that the Appellant's Initial Brief, to the extent it can be understood, appears to be based solely on the fact that the trial court judge asked the Respondents' counsel to draft the proposed orders being appealed from, which is not an appropriate or sufficient grounds to review or overturn these orders. Alternatively, if this appeal is not dismissed, BOA moves to strike those matters



improperly designated by Appellant in his Designation of Matter which are not in the record below.

Procedural Background

On February 16, 2012, Appellant commenced the underlying action by filing a complaint against Respondents. Although it is difficult to comprehend the allegations in the Complaint, it appears that it contains general allegations of civil conspiracy, fraud, theft of money, and breach of contract with respect to cashier's checks issued by Respondent South Carolina Federal Credit Union ("SCFCU") to an entity known as Capital Consortium Group and deposited into accounts at BOA. *See generally* Compl. and Exs.

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 More Definite Statement. A hearing on these Motions was held May 8, 2012. On June 27, 2012, the trial court entered its Order granting the Motions to Dismiss and dismissing the Complaint with prejudice. The Order dismissing the Complaint finds that the Complaint was unintelligible and failed to meet the minimum pleading requirements of Rule 8(a), SCRPC. The trial court further found, among other things, that the Complaint should be dismissed with prejudice because (1) the Appellant lacked standing to sue as the purchaser of a cashier's check pursuant to *Steele v. Victory Sav. Bank*, 295 S.C. 290, 293, 368 S.E.2d 91, 92 (1988) and (2) Appellant's claims, if any, should be brought in the ongoing receivership action in federal district court related to the Capital Consortium Group/Three Hebrew Boys.

Appellant filed a Motion to Reconsider on June 28, 2012, and a hearing was held on this Motion on August 29, 2012. On September 17, 2012, the trial court entered its Order denying Appellant's Motion to Reconsider, finding that Appellant had not articulated any new

arguments or identified any errors of law or fact to support reconsideration of the Order dismissing his Complaint. Furthermore, the trial court noted that although Appellant's primary objection appeared to be that the trial court provided the grounds for its ruling in an email to counsel for BOA with a copy to Appellant and SCFCU and requested that counsel for BOA draft the proposed order, the trial court reviewed the proposed order carefully to ensure it accurately stated the court's ruling before signing.

On October 5, 2012, Appellant filed his Notice of Appeal of both the trial court's June 27, 2012, Order dismissing his Complaint with prejudice and the September 17, 2012, Order denying his Motion to reconsider the June 27th Order. Appellant's Initial Brief was submitted August 10, 2013, and by Order of September 27, 2013, this Court granted an extension for Respondents to respond to the Initial Brief until November 4, 2013.¹

Analysis

I. This Appeal Should Be Dismissed.

First, like Appellant's Complaint, Appellant's Initial Brief is unintelligible and fails to comply with the requirements of Rule 208(b)(1), SCACR, regarding the content and structure of an initial appellant's brief and should be dismissed for this reason.

Furthermore, to the extent the Initial Brief can be understood, Appellant's primary objection seems to be the same as that advanced before the trial court on Appellant's Motion for Reconsideration: that the trial court provided the grounds for its ruling in an email to counsel for BOA with a copy to Appellant and SCFCU and requested that counsel for BOA draft the proposed order. Appellant seems to be arguing that the trial court's Order did not

¹ Appellant's "Letter to Clerk a/k/a Motion for Judgment against Respondent Bank of America . . ." dated September 30, 2013, is based on his erroneous assertion that this Court's extension of time for Respondents to respond to his Initial Brief did not also apply to BOA. The Court's order is not limited as Appellant suggests.

The South Carolina Court of Appeals

Roger L. Whaley, Appellant,

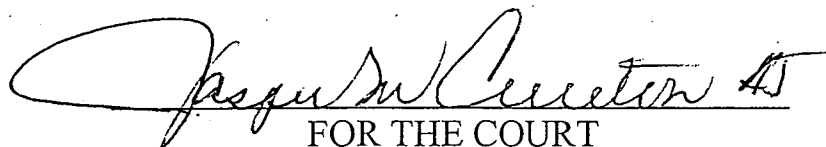
v.

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

Appellate Case No. 2012-213208

ORDER

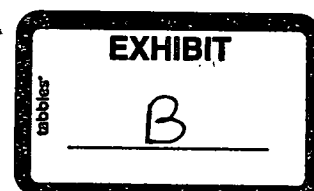
Appellant's Motion for Judgment is denied as to both Respondents. Additionally, Respondent Bank of America's motion to strike is granted. Within thirty days, Appellant shall serve and file an amended Designation of Matter which excludes items two, five, and seven through fourteen. *See* Rule 209(b), SCACR (noting the Designation of Matter "may only propose to include . . . materials which may be properly included in the Record on Appeal"); Rule 210 (c), SCACR ("The Record [on Appeal] shall not, however, include matter which was not presented to the lower court or tribunal."). Further, within thirty days, Appellant shall also serve and file an amended Initial Brief that fully complies with Rule 208, SCACR, and Rule 267, SCACR. Upon receipt of the amended Designation of Matter and Appellant's amended Initial Brief or upon the expiration of thirty days, this court will consider Respondent Bank of America's motion to dismiss.


FOR THE COURT

Columbia, South Carolina

cc:

FILED
11/27/13



Roger L. Whaley
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Jody Alan Bedenbaugh, Esquire
Sheila Marlouvon Bias, Esquire
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The South Carolina Court of Appeals

Roger L. Whaley, Appellant,

v.

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

Appellate Case No. 2012-213208

ORDER

Appellant has filed a motion to relieve Respondent Bank of America's counsel.
After careful consideration, Appellant's motion is denied.


FOR THE COURT

Columbia, South Carolina

cc:

Roger L. Whaley
Drew Hamilton Butler
Erik Tison Norton
Jody Alan Bedenbaugh
Sheila Marlouvon Bias
Tara C Sullivan

FILED

1-3-14

EXHIBIT

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