

STATE OF SOUTH CAROLINA
COURT OF APPEALS
DISTRICT V

Anderson Brothers Bank
Plaintiff-respondent,

Vs.

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone)Parson, Jr., South Carolina Department of
Revenue and South Carolina Department of Motor Vehicles, Defendants,
Defendant-appellants.

Appellant's Reply Brief
Appeal number 2013-001865
Marion County Case number 2013-CP-33-306

Appeal from order granting summary judgment
Marion County Special Referee,
Haigh Porter, presiding

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SC Court of Appeals

Arnold Jr. Dazarhea Parson
3546 Quail Roost Road
Mullins, South Carolina [29574]

November 25, 2013

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<i>GE Capital Hawaii, Inc. v. Yonenaka</i> 25 P.3d 807, 96 Hawaii 32, (Hawaii App 2001)	(7)
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Dec. 890, 516 N. E.2d 1045 (3Dist. 1987)	(9)
 <i>LYNN E. SZYMONIAK, Plaintiffs, vs. AMERICAN HOME MORTGAGE SERVICING et al., Defendants. September 20th, 2013</i>	 (7)

Appellants, is unschooled in law and notices the court of enunciation of principles as stated in Haines v. Kerner, 404 U.S. 519, wherein the court has directed that those who are unschooled in law making pleadings and/or complaints shall have the court look to the substance of the pleadings rather than in the form, and hereby makes the following pleadings/notices in the above referenced matter without waiver of any defenses. With this fact in mind, Appellants requests this Honorable Court to consider his pleadings in substance.

STATEMENT OF ISSUES ON APPEAL

Statement of the issues (submitted: it is not at issue whether a summary judgment is inappropriate where the plaintiff enters no facts on the record in support of their claim – that summary judgment is inherently void where the plaintiff's totally insufficient pleadings pose only conclusory and theoretical matters absent any facts is not in controversy).

1. Whether violation of the Fair Debt Collections Practices Act deprives the alleged debtor of due process rights depriving the court of subject matter jurisdiction?

2. Whether a summary judgment is void where party fails to prove standing?
3. Whether a summary judgment is void where party fails to prove up claim?

Statement regarding oral argument

This court is noticed: In the court below the oral argument was between appellant, respondent, and special referee in the special referee's office not in open court. For if objected to the special referee in jury court would this case stay.

Statement regarding whether
the decision should be published

In as much as rulings of compelling public interest such as whether state citizens are subjected to sham legal process for reason that "judgments" are being rendered against parties without any evidentiary support whatsoever – merely the warrants of attorneys, the decision of this court should be in publication.

Statement of the case

Anderson Brothers Bank, alleging indebtedness, without answering prior request in writing required under the Fair Debt Collections Practices Act,(USC15 1692G(b)) sued consumers Arnold Jr. and Dazarhea Parson and allegedly obtained a summary judgment. This court is noticed: Anderson Brothers Bank did not show evidence that Arnold Jr. and Dazarhea Parson had a contract with Anderson Brothers Bank. Anderson Brothers Bank did not show that Arnold Jr. and Dazarhea Parson had damaged Anderson Brothers Bank in any way. The court below had nothing to rely on to prove that Anderson Brothers Bank has standing to sue in South Carolina court's or that Anderson Brothers Bank's

charter authorizes Anderson Brothers Bank to enter into fraudulent consumer debt contracts. The court below disregarded the record which contained only hypothetical and theoretical conclusions and no fact whatsoever and entered summary judgment for Anderson Brothers Bank and against Arnold Jr. and Dazarhea Parson. It is from this miscarriage of justice that Arnold Jr. and Dazarhea Parson appeals.

FACTS

On April 3, 2012 Appellants executed a promissory note and mortgage with respondents Anderson Brothers Bank. The reason for coming to Anderson Brothers Bank for a loan was the company that appellants were dealing with prior to, was foreclosed upon. Even though Appellants made every payment on time the bank foreclosed on the company that the Appellants were paying. At the time Appellants unaware of any remedy went to Anderson Brothers Bank for a loan to keep the property that they had been paying on for three years without missing a payment. Pressed for time and due to lack of knowledge the Appellants entered into a mortgage after depositing the promissory note with Anderson Brothers Bank. After securing the home Appellants the begin there due diligence on the interactions of banks, negotiable instruments, Uniform Commercial Code(UCC), Fair Debt Collection Practice Act, Federal Reserve Process, and Rules regarding funding of instruments. After gaining knowledge on the inner workings of banks, correspondence was sent on February 21, 2013 disputing the debt, and asking for validation of the purported debt. The respondents Anderson Brothers Bank dishonored the correspondence by not responding properly ("River Anderson Agent for ABB contacted Appellants warning them that if they did not resume payments the bank would foreclose." The Appellants replied, "That if the questions were answered validating the purported debt,

that the Appellants in good faith would resume making their monthly payments.” Anderson Brothers Bank never responded to the loan validation questions verifying their claim sworn to under penalty of perjury), not performing, and proceeding with foreclosure. Silence being Acquiescence Anderson Brothers Bank and its agents gave their tacit consent to enter into a new lawfully binding contract with the Appellants. On May 1, 2013 Appellants were served with mortgage foreclosure documents. The Appellants filed a response in the Lower Court and mailed a certified copy of the same by certified mail on May 2, 2013 and received on May 6, 2013 by Respondents Attorney. (It was dishonored by non- response non-performance) Showing implied intent to comply with the terms and conditions set forth in the new contract the Respondents attorney replied (though response was deemed frivolous) with the time allotted within the new contract. Certificate of non-response was issued in good faith a fault in dishonor opportunity to cure was sent to the Respondents allotting additional time to cure the fault. (It too was a non-response) Anderson Brothers Bank without validation aggressively pursued summary judgment against Appellants. The Appellants according to S.C. Code Section 18-9-130(2) (A plaintiff may not enforce a sale of property after a notice of appeal is filed without giving a undertaking or bond to the defendant, with two good sureties, in (1) doubled the appraised value of the property (2) doubled the amount of the judgment, conditioned to pay all damages the defendant may sustain by reason of sale in case the judgment is reversed.) Noticed the Respondents Attorney that a bond or undertaking was needed to continue with sale of Appellants property.

Argument

The circuit court lacks discretion to proceed where the record shows matters before the court do not rise to a justiciable controversy. Where there are no affidavits rebutted, or interrogatories answered, the court is without factual basis to rule judicially for the plaintiff. South Carolina summary judgment rule 56(e).

Violation of the Fair Debt Collections Practices Act deprives the alleged debtor of due process rights depriving the court of subject matter jurisdiction. The Act applies to third party debt collectors. Third party debt collectors includes lawyers and law firms who are attempting to collect any alleged debt. *George W. Heintz v. Darlene Jenkins*, 514 U.S. 291, 115 S.Ct. 1489. The alleged debtor has thirty (30) days to dispute the debt requiring the collectors to furnish validation of the debt. 15 USC 1692G(b). Debt collection activity must cease if the debt is disputed. Failure to notice the alleged debtor of their due process rights or failure to cease collection activity until timely validation voids any legal proceedings. As a matter of law, a creditor violating the WCA must suffer the consequences of its wrongful repossession and prohibited debt collection practices. The WCA plainly treats venue as a jurisdictional issue. Therefore, the failure to have proper venue means the judgment is void. Void judgments can always be challenged. Moreover, there is no need for a trial in this instance. As a matter of law, the creditor violated the WCA and must suffer the consequences of its wrongful repossession and prohibited debt collection practices. This court is noticed: the court below failed to require counsel for Anderson Brothers Bank to show that the Fair Debt Collections Practices Act and the WCA had been complied with.

A summary judgment is void where party fails to prove standing. To have standing, party suing in foreclosure of debt must produce the original promissory note. Complaining party must (1). Prove standing by possession of the original promissory note, and (2). Must prove damages by appearance of a competent fact witness: Where the complaining party cannot prove the existence of the note, then there is no note. To recover on a promissory note, the plaintiff must prove: (1) the existence of the note in question; (2) that the party sued signed the note; (3) that the plaintiff is the owner or holder of the note; and (4) that a certain balance is due and owing on the note. See *In Re: SMS Financial LLC. v. Abco Homes, Inc.* No.98-50117, and the ninth district appellate court for South Carolina has ruled the same on September 20th, 2013. February 18, 1999 (5th Circuit Court of Appeals.), Volume 29 of the New Jersey Practice Series, Chapter 10 Section 123, page 566, emphatically states, "...; and no part payments should be made on the bond or note unless the person to whom payment is made is able to produce the bond or note and the part payments are endorsed thereon. It would seem that the mortgagor would normally have a Common law right to demand production or surrender of the bond or note and mortgage, as the case may be. *Carnegie Bank v, Shalleck* 256 N.J. Super 23 (App. Div 1992), the Appellate Division held, "When the underlying mortgage is evidenced by an instrument meeting the criteria for negotiability. Since no one is able to produce the "instrument" there is no competent evidence before the Court that any party is the holder of the alleged note or the true holder in due course. New Jersey common law dictates that the plaintiff prove the existence of the alleged note in question, prove that the party sued signed the alleged note, prove that the plaintiff is the owner and holder of the alleged note, and prove that certain balance is due and owing on any alleged

note. Federal Circuit Courts have ruled that the only way to prove the perfection of any security is by actual possession of the security. See *Matter of Staff Mortg. & Inv. Corp.*, 550 F.2d 1228 (9th Cir 1977). "Under the Uniform Commercial Code (codified in South Carolina under title 36) the only notice sufficient to inform all interested parties that a security interest in instruments has been perfected is actual possession by the secured party, his agent or bailee." Bankruptcy Courts have followed the Uniform Commercial Code. *In Re Investors & Lenders, Ltd.* 165 B.R. 389 (Bkrtcy.D.N.J.1994), "Under the New Jersey Uniform Commercial Code (NJUCC), promissory note is "instrument," security interest in which must be perfected by possession ..." Unequivocally the Court's rule is that in order to prove the "instrument", possession is mandatory. According to rule 1002 "To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, and according to rule 1003 (1&2) "A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." This court is noticed: the record in the court below does not show that Anderson Brothers Bank had standing in the underlying case.

Summary judgment is void where party fails to prove up claim. Prevailing party in civil action must prove damages. For example, see *American Red Cross v. Community Blood Center of the Ozarks*, 257 F.3d 859 (8th Cir. 07/25/2001). Claim of damages, to be admissible as evidence, must incorporate records such as a general ledger and accounting of an alleged unpaid promissory note, the person responsible for preparing and maintaining the account general ledger must provide a complete accounting which must

be sworn to and dated by the person who maintained the ledger. See *Pacific Concrete F.C.U. V. Kauanoie*, 62 Haw. 334, 614 P.2d 936 (1980), *GE Capital Hawaii, Inc. v. Yonenaka* 25 P.3d 807, 96 Hawaii 32, (Hawaii App 2001), *Fooks v. Norwich Housing Authority* 28 Conn. L. Rptr. 371, (Conn. Super.2000), and *Town of Brookfield v. Candlewood Shores Estates, Inc.* 513 A.2d 1218, 201 Conn.1 (1986). See also *Solon v. Godbole*, 163 Ill. App. 3d 845, 114 Ill. Dec. 890, 516 N. E.2d 1045 (3Dist. 1987).

Conclusion and remedy sought

Determination by this court that the record in the court below does not verify compliance with consumer debtor law, does not verify standing on the part of Anderson Brothers Bank, and does not verify damages in the form of verified sums due and owing Anderson Brothers Bank, requires vacating the lower court's order of summary judgment and remand to the court below with instructions of recoupment to repair damages incurred by Arnold Jr. and Dazarhea Parson.

Prepared and submitted by:

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without recourse

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By: Dazarhea Parson All rights reserved
without recourse

Dazarhea Parson In Propria Persona sui juris

**FORM 14
DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

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

**APPEAL FROM MARION COUNTY
Court of Common Pleas**

The Honorable Haigh Porter, Master in Equity Special Referee Judge

APPELLATE NO. 2013-001865

**Suzanne Grigg, as
Attorney of Anderson
Brothers Bank,**

Respondent,

v.

**Arnold Jr., Dazarhea
Parson**

Appellant.

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**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- 1. Order of Special Referee's Order and Judgment of Foreclosure and Sale August 5, 2013;**
- 2. Order for Deficiency Judgment October 16, 2013;**
- 3. Complaint; (Foreclosure of Mortgage) (Foreclosure of Security Interest in Personalty) (Deficiency Sought)**
- 4. Response; Discovery and Full Disclosure(Validation of Debt)**

5. Transcript of Proceedings pp.3- Line 13 of pg . 4, Line 19-25 pg 6-Line 10 of pg 7, pg 13- Line 5 of pg 14, Line 12 of pg. 21- Line6 pg 31, Line 23 pg. 34- Line 13 pg 45, Line 16 pg 50- Line 9 pg. 59, Line 1- 24 pg. 64.
6. Defendant's Request to Charge No. 4;
7. Defendant's Exhibit's A-Modern Money Mechanics, B- Affidavit of Walker Todd
8. Affidavit of Obligation
9. Notice of Fraud, Correction of Fraud, Cease and Desist
10. Certificate of Non-Response for Affidavit of Obligation
11. Fault in Dishonor and Opportunity to Cure for Affidavit of Obligation,
12. Certificate of Non-Response/ Non-Performance for Notice of Fault Opportunity to Cure Affidavit of Obligation
13. Correspondence between Attorney for Respondents and Appellants
14. Objection to Master in Equity
15. Statement of Account
16. Indemnity Bond

We certify that this designation contains no matter which is irrelevant to this appeal.

November 25, 2013

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By: Arnold Parson Jr. Dazarhea Parson without recourse

Arnold Jr. and Dazarhea Parson In Propria Persona Sui Juris

P O Box 776

Mullins, South Carolina [29574]

**FORM 7
PROOF OF SERVICE OF INITIAL REPLY BRIEF & DESIGNATION OF
MATTER**

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

APPEAL FROM MARION COUNTY
Court of Common Pleas

The Honorable Haigh Porter, Master in Equity Special Referee Judge

Case No. 2013-CP-33-306
Appellant's Number 2013-001865

Suzanne Grigg, as
Attorney of Anderson
Brothers Bank,

Respondent,

v.

Arnold Jr., Dazarhea
Parson

Appellant.

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SC Court of Appeals

PROOF OF SERVICE

We certify that we have served the Initial Reply Brief and Designation of Matter on Anderson Brothers Bank by depositing a copy of it in the United States Mail, postage prepaid, on November 29, 2013, addressed to Anderson Brothers Bank attorney of record, Suzanne Grigg, 1230 Main Street, Suite 700 (29201) Post Office Drawer 2426 Columbia, South Carolina 29202.

November 25, 2013

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