

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

---

Case No. 2012-CP-36-00484

---

Samantha Hendrix,

Appellant,

v.

Discover Bank

Respondent.

---

INITIAL REPLY BRIEF OF APPELLANT

---

Rolf M. Baghdady  
118 Cobblestone Court  
Chapin, SC 29036-9705  
803-345-7653  
Attorney for Appellant

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
ARGUMENT .....	1
CONCLUSION.....	2

TABLE OF AUTHORITIES

RULES

S.C. R. Civ. P. 12 (b) ..... 2

## ARGUMENT

### **I. Reply to Discover's First Argument**

Discover's argument "Plaintiff Discover Bank followed the S. C. R. C. P. by serving process on defendant's last known address, reported as the defendant's address by defendant, and by credit reporting inquiry, to a person over the age of 18 years, then living in the residence, and related to the defendant" detracts nothing from the disputed issue of fact as argued by Hendrix. Hendrix's argument is that the Trial Court erred granting summary judgment to Discover because a material issue of fact existed as to whether Discover established personal jurisdiction over Hendrix. Therefore, the Court should remand for a factual finding before the Trier of fact.

### **II. Reply to Discover's Second Argument**

Discover's argument "Defendant timely answered the complaint, making appearance, said appearance in timely answering the complaint, in accordance with Rule 4(d) of the S.C.R.C.P. as described on the notes therein such voluntary appearance is equivalent to personal service", must fail. This argument understood to be that the responsive pleading, namely the answer, waived objection to service or that a special appearance was necessary to assert objection as to personal jurisdiction, is directly addressed in the S.C. Rules of Civil Procedure and is accordingly without merit.

The answer's first defense [Answer p.1] was a S.C.R. Civ. P. 12(b)(2) objection. S.C.R.

Civ. P. 12 provides, *inter alia*, no defense or objection is waived by being joined with one or more defenses or objections and responsive pleading or motion. This is further clarified in the Note to the S.C.R. Civ. P. 12 that provides this important Rule 12(b) enables a party to: (1) raise by motion or answer all of the defense is now raised by demurrer, and (2) eliminates the necessity of the awkward “special appearance subject to jurisdiction” under present state practice. Accordingly, any argument that the appearance by answer that included the objection waived the objection cannot be sustained. Therefore, the court should remand for a factual finding before the Trier of fact.

### **III. Reply to Discover’s Third Argument**

Discover’s argument “the trial court did not err in granting summary judgment to Discover because defendant’s answer admitted all the allegations as to the debt and no material issue of fact existed as to whether Defendant owed Discover the amount of the judgment” ignores the material issue of fact as to personal jurisdiction by failure of service of process. While Hendrix does not deny but rather admits the debt is due, the gravamen of Hendrix’s argument is that she denies that the court has jurisdiction to enter judgment that may be executed on by the sheriff because there is no personal jurisdiction since there was not service of process. Therefore, the court should remand for a factual finding before the Trier of fact.

### **CONCLUSION**

Discover’s three arguments to sustain the trial court are as follows:

1. Discover served defendant;
2. That even if Discover's service failed to confer jurisdiction, the answer, which included the objection as to personal jurisdiction, waived the objection to personal jurisdiction by failure of service of process on Hendrix; and
3. Hendrix's admission that the debt is due waives any objection to the court's personal jurisdiction.

These three arguments must all fail because:

1. There is a disputed issue of fact as to service of process on Hendrix to confer personal jurisdiction on the court.
2. An objection to jurisdiction is not waived when filed with an answer; and
3. That the due is due does not in and of itself confer jurisdiction on the court.

Therefore, the court should remand to the trial court on the material issue of service of process for personal jurisdiction.

April 3, 2014

Respectfully submitted,



Rolf M. Baghdady  
118 Cobblestone Court  
Chapin, SC 29036-9705  
803-345-7653  
rolf@rolfbaghdady.com  
Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2012CP3600484

Samantha Hendrix,

Appellant,

v.

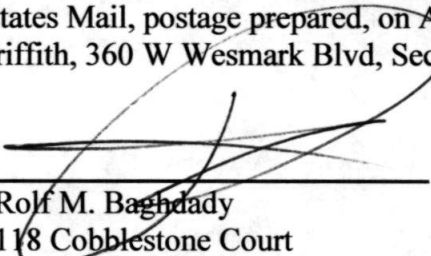
Discover Bank

Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Reply Brief on Respondent Discover Bank by depositing a copy of it in the United States Mail, postage prepared, on April 3, 2014, addressed to its attorney of record, Timothy Lee Griffith, 360 W Wesmark Blvd, Second Floor, Sumter, SC 29150.

April 3, 2014

  
\_\_\_\_\_  
Rolf M. Baghdady  
118 Cobblestone Court  
Chapin, South Carolina 29036-9705  
803-345-7653  
Attorney for Appellants

Other Counsel of Record:  
Timothy Lee Griffith  
360 W Wesmark Blvd  
Second Floor  
Sumter, SC 29150  
803-968-0609  
Attorney for Respondent

**RECEIVED**  
APR 03 2014  
SC Court of Appeals

*Rolf M. Baghdady, P.A.*  
*Attorney and Counselor at Law*  
*1224 Pickens Street, Suite 110*  
*Columbia, South Carolina 29201*  
*Telephone (803) 771-0013*  
*Website: www.rolfbaghdady.com*  
*E-mail: rolf@rolfbaghdady.com*

April 3, 2014

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29221

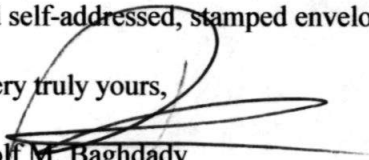
RE: Samantha Hendrix v. Discover Bank  
Case No.: 2012CP3600484

Dear Ms. Kitchings:

Enclosed for filing please find the original and one copy of the Initial Reply Brief of Appellant and the corresponding proof of service to Timothy Lee Griffith, Esq.

Please return a clocked copy in the included self-addressed, stamped envelope.

Very truly yours,

  
Rolf M. Baghdady  
118 Cobblestone Court  
Chapin, SC 29036-9705  
803-345-7653  
Attorney for Appellant

cc: Timothy Lee Griffith  
360 W Wesmark Blvd, Second Floor  
Sumter, SC 29150  
803-968-0609  
Attorney for Respondent

**RECEIVED**

APR 03 2014

SC Court of Appeals

*Office locations [www.rolfbaghdady.com / Offices.html](http://www.rolfbaghdady.com/Offices.html)*  
*Admitted to Practice in South Carolina, Georgia, Florida, and New York*