

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Wells Fargo Bank, N.A.,
Plaintiff,

v.

Dorothy Sistrunk,
Defendant,

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Civil Action Case No. 2008-CP-38-1024

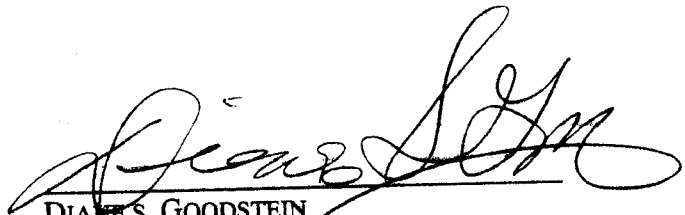
ORDER DENYING MOTION FOR
A NEW TRIAL AND MOTION TO
VACATE PLAINTIFF'S PARTIAL
SUMMARY JUDGMENT ORDER

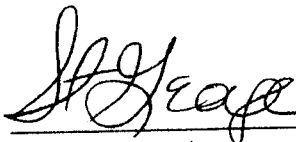
FILED FOR RECORD
WINNIE E. CLARK
CLERK OF COURT
ORANGEBURG, SC
2014 JUL 17 AM 11:36

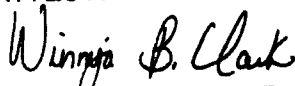
This matter is before the Court on a motion for a new trial based on SCRCP 38(a)-(d), 59(a)(2) and (60)(b)(1), and a motion to vacate Plaintiff's partial summary judgment order based on SCRCP 60(b) filed by Dorothy Sistrunk ("Defendant").

After careful consideration, the Court finds that oral argument would be of no assistance in the furtherance of this case. Accordingly, the motion for a new trial and motion to vacate Plaintiff's partial summary judgment order are respectfully **DENIED**.

AND IT IS SO ORDERED.


DIANE S. GOODSTEIN
Chief Administrative Judge
First Judicial Circuit


_____, South Carolina
7-11, 2014

ATTEST: TRUE COPY

Winnie E. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

RECEIVED
Page 1 of 1
AUG 01 2014

SC Court of Appeals

Exhibit 359

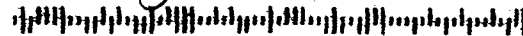
**COUNTY OF ORANGEBURG
CLERK OF COURT**

P.O. DRAWER 9000, ORANGEBURG, S.C. 29116-9000

*Received
7/23/14*

Dorothy Sistrunk
423 Bayne Street
Orangeburg, SC 29115

29115680723



U.S. POSTAGE >>> PITNEY BOWES



ZIP 29115 \$ 000.48⁰
02 1#
0001375422 JUL 22 2014

RECEIVED

AUG 01 2014

SC Court of Appeals

Exhibit 360

**LETTER TO CLERK OF LOWER COURT
NOTICE OF FILING A STATEMENT OF THE EVIDENCE
RE: CASE 2008-CP-38-1024**

July 30, 2014

The Honorable Winnifa Brown-Clark
Clerk of Court for Orangeburg County @ Orangeburg County Courthouse
Post Office Drawer 9000
Orangeburg, South Carolina 29116-9000

RE: Wells Fargo Bank, N. A., v. Dorothy Sistrunk, Case #2008-CP-38-1024.

Dear Ms. Brown-Clark:

Since no viable transcript or Court Order exist that discussed the evidence in Case 2008-CP-38-1024 or identified Wells Fargo's falsified, forged, altered, unauthorized and uncertified supporting documents, I must file a **Statement of the Evidence**. This notice will allow you to prepare and assemble the original papers and exhibits that have been filed in the Court of Common Pleas and a certified copy of the docket and journal entries. A **Statement of the Evidence** will be included in my Appeal in a Civil Case. The **Statement of the Evidence** will be filed shortly.

Do not transmit the Court Records to the Clerk of the Court of Appeals in Columbia, South Carolina until requested. At that time you can transmit the records that have been assembled and the filed **Statement of the Evidence** to the Clerk of the Court of Appeals that will be included in the Record on Appeal.

In the event unforeseen circumstances prevent me from filing the **Statement of the Evidence** within the time allowed by the Appellate Rules; or within the time allowed for filing the record set forth in any accelerated calendar scheduling order, or within a proper extension thereof, as prescribed by the Appellate Rules...then pursuant to the scheduling order, or upon the last day of any proper extension of the time for transmission of the record, you shall transmit the records to Clerk of the Court of Appeals or instruct me; as to any responsibility I might have.

Sincerely,

/s/ Dorothy Sistrunk
Dorothy Sistrunk
423 Bayne Street
Orangeburg, South Carolina 29014
(803) 268-0716
Pro Se

cc: Rogers Townsend & Thomas, PC.,
c/o Jason D. Wyman
Post Office Box 100200
Columbia, South Carolina 29202
(803) 771-7900
Attorney for Respondent

RECEIVED

AUG 01 2014

SC Court of Appeals

**CERTIFICATE THAT NO TRANSCRIPT WILL
BE ORDERED BY APPELLANT FOR THE APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Diane Shafer Goodstein, Circuit Court Judge

Case No. 2008-CP-38-1024

Wells Fargo Bank, N. A.,

Respondent,

v.

Dorothy Sistrunk,

Appellant.

RECEIVED
AUG 01 2014
SC Court of Appeals

**CERTIFICATE THAT NO
TRANSCRIPT WILL BE ORDERED BY APPELLANT**

Dorothy Sistrunk, Appellant, files this Certificate certifying that no transcript will be ordered for the Appeal in a Civil Case; i.e., Wells Fargo Bank, N. A., Respondent v. Dorothy Sistrunk, Appellant - Case 2008-CP-38-1024, for the following reasons:

(1) *Rule 10(b)(1)(B), F. R. App. P.*, clearly allows me to “[f]ile a certificate stating that no transcript will be ordered.”

(2) *Rule 52, SCRCP*, provides that “[f]indings of facts and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56.” Judge Goodstein did not refer to any evidence during any hearing and relied on the representations and/or arguments of Wells Fargo’s attorneys Elizabeth Scott Moise and James H. Burns and under the rule, did not have to engage in fact finding.

(3) *Rule 56(c), SCRCP*; clearly states in pertinent parts, summary judgment is based on “[t]he pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any...” My Verified Pleadings, depositions, answers to interrogatories, admissions and affidavits on file are sufficient evidentiary materials for review. Since I am *Pro Se* and have no experience in law, if the Appellate Court believes, in the interest of justice, that I should order them, I will ask for leave to do so. {See also Quail Hill, L.L.C. v. Cnty. of Richland, 387 S.C. 223, 234, 692 S.E.2d 499, 505 (2010)}

(stating appellate courts apply the same standard as the trial court under Rule 56(c), SCRCP); *Porter*, 372 S.C. at 568, 643 S.E.2d at 100 (stating that “not all situations require a detailed order, and the circuit court's form order may be sufficient if the appellate court can ascertain the basis for the circuit court's ruling from the record on appeal”)} In addition, since all my pleadings are verified, in accordance with...

(a) *Dawkins v. Fields*, 580 S.E.2d 433 (S.C. 2003) (“...a verified pleading is equivalent to an affidavit, provided it meets the requirements of Rule 56(e). Under Rule 56(e), an affidavit or verified complaint must meet three criteria to be considered by the court: (1) it must be made upon personal knowledge; (2) it must set forth facts admissible in evidence; (3) it must show that the affiant is competent to testify to the matters stated therein.”)

(b) *State v. Colf*, 332 S.C. 313, 504 S.E.2d 360 (Ct. App. 1998) (noting that federal interpretation of the rules of civil procedure is persuasive when there is no South Carolina interpretation).

(c) *Moore v. Goldome Credit Corp.*, 370 S.E.2d 843 (Ga. 1988) (holding a properly verified pleading containing specific factual allegations must be considered in opposition to affidavits filed in support of a motion for summary judgment)

(d) *Hladczuk v. Epstein*, 470 N.Y.S.2d 211 (App. Div. 1983) (stating that a verified pleading is the equivalent of an affidavit for purposes of summary judgment)

(e) *Fidelity Financial Services, Inc. v. Hicks*, 214 Ill.App.3d 398, 574 N.E.2d 15, 158 Ill.Dec. 221 (1st Dist. 1991) (admissions in [a] verified pleading that are not product of mistake or inadvertence become binding judicial admissions)

(f) *U.S. Bank National Ass'n v. Clark*, 216 Ill.2d 334, 837 N.E.2d 74, 297 Ill.Dec. 294 (2005). *Winnetka Bank v. Mandas*, 202 Ill.App.3d 373, 559 N.E.2d 961, 147 Ill.Dec. 621 (1st Dist. 1990) (provision that verified allegations constitute evidence by way of admission refers to admissions of fact, not legal conclusions or admissions of law). See also *Robins v. Lasky*, 123 Ill.App.3d 194, 462 N.E.2d 774, 78 Ill.Dec. 655 (1st Dist. 1984).

(g) *Pinnacle Corp. v. Village of Lake in the Hills*, 258 Ill.App.3rd 205, 209, 196 Ill.Dec. 567, 630 N.E.2d 502 (1994) “[w]hen a pleading is verified, every subsequent pleading must also be verified unless verification is excused by the court. There is no allegation that verification was excused by the court. When a subsequent pleading is not verified, it is as if the unverified pleading was never filed; it must be disregarded.” (*Charter Bank v. Eckert*, (1992), 223 Ill.App.3d 918, 924, 166 Ill.Dec. 282, 585 N.E.2d 1304; *Florsheim v. Travelers Indemnity Co.* (1979), 75 Ill.App.3d 298, 308, 30 Ill.Dec. 876, 393 N.E.2d 1223.) “[C]onsequently, we must ignore the allegations in Crystal Lake's unverified answer. Moreover, a failure to file an answer results in well-pleaded facts being deemed admitted. (*Florsheim*, 75 Ill.App.3d at 309, 30 Ill.Dec. 876, 393 N.E.2d 1223.) *Estate of Rennick*, 181 Ill.2d 395, 407, 692 N.E.2d 1150, 1156 (1998)

"[A] judicial admission binds the party who made the admission. If the admission is merely an evidentiary admission (instead of a judicial admission), the party may contradict or explain it." *Williams Nationalease, Ltd. v. Motter*, 271 Ill.App.3d 594, 597, 207 Ill.Dec. 914, 648 N.E.2d 614, 616-17 (1995).

(h) From *West v. Gladney*, 533 S.E.2d 334, 337 (S.C. May 8, 2000) ("[G]ladney produced no evidence to refute West's statements... this court ordinarily will not consider statements of fact presented only in an attorney's argument in determining whether a genuine issue of material fact exists sufficient to preclude summary judgment." *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct.App.1986)

(4) In *Woodson v. DLI Props.*, Op. No. 2011-UP-291 (S.C. Ct. App. filed on June 14, 2011 and decided on January 8, 2014 in Case No. 27344), the Supreme Court stated the following; "[I]n the presence of a written order, the court of appeals erred in affirming summary judgment on the basis that Petitioners did not provide the hearing transcript as part of the Record. See Ford, 344 S.C. at 645-646, 545 S.E.2d at 823; see also Rule 56(c), SCRPC (listing the factual material that is reviewable for purposes of deciding whether to grant a motion for summary judgment)."

(a) "Summary judgment cannot be granted unless the pleadings, depositions, answers to interrogatories, and admissions on file together with affidavits, if any, conclusively show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Frost v. Regions Bank*, 15 So. 3d 905, 906 (Fla. 4th DCA 2009).

(b) "[a] summary judgment should not be granted where there are issues of fact raised by [the] affirmative defense[s] which have not been effectively factually challenged and refuted." *Cufferi v. Royal Palm Dev. Co.*, 516 So. 2d 983, 984 (Fla. 4th DCA 1987). Thus, "[i]n order for a plaintiff . . . to obtain a summary judgment when the defendant asserts affirmative defenses, the plaintiff must either disprove those defenses by evidence or establish the legal insufficiency of the defenses." *Id.* (quoting *Bunner v. Fla. Coast Bank of Coral Springs, N.A.*, 390 So. 2d 126, 127 (Fla. 4th DCA 1980)). In such instances, "[t]he burden is on the plaintiff, as the moving party, to demonstrate that the defendant could not prevail. *Id.*"

(c) The Fourth DCA reversed summary judgment where Wells Fargo did not refute affirmative defenses raised in an affidavit in opposition to summary judgment. *Woodrum v. Wells Fargo Mortgage Bank*, 73 So. 3d 873 (Fla. 4th DCA 2011). (holding there is no case law supporting Wells Fargo's position that affirmative defenses raised in an affidavit cannot be considered.)

(d) *Stop & Shoppe Mart, Inc. v. Mehdi*, 854 So. 2d 784, 786 (Fla. 5th DCA 2003) ("Furthermore, the moving party must disprove the affirmative defenses or establish that they are insufficient as a matter of law. Where the movant merely denies the affirmative defenses and the affidavit in support of summary judgment only supports the allegations of the complaint and does not address the affirmative defenses, the burden of disproving the affirmative defenses has not been met." (citations

omitted)). The entry of summary judgment where affirmative defenses are extant is error. Stop & Shoppe Mart, Inc., 854 So. 2d at 787; Wendt v. Laske, 760 So. 2d 1125 (Fla. 5th DCA 2000), (reversing summary judgment where affirmative defenses were raised that were not addressed in trial court's order); Fla. Dep't of Agric. v. Go Bungee, Inc., 678 So. 2d 920, 921 (Fla. 5th DCA 1996) (holding trial court's failure to address affirmative defenses before granting summary judgment was error)."

(e) "[I]n interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes." Maxwell v. Genez, 356 S.C. 617, 591 S.E.2d 26 (2003); Green v. Lewis Truck Lines, Inc., 314 S.C. 303, 443 S.E.2d 906 (1994). "[I]f a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced. See Maxwell, 356 S.C. at 617, 591 S.E.2d at 26"

(f) U.S. Const. art. IV, § 1 ("Full Faith and Credit shall be given in each State to the public acts, records, and judicial proceedings of every other State.")

(g) The United States Supreme Court defines a **Court Record** as "[A] written account of the proceedings in a case, including all pleadings, evidence, and exhibits submitted in the course of the case."

(5) Finally, other than the Plaintiff's forged, falsified, altered, unauthorized and uncertified documents, referred to by Wells Fargo's attorneys; as well as, what I was supposed to believe, Judge Goodstein never referred to or considered any of my evidence, any of my objections or any statement of fact in any one of my Verified Pleadings, affidavits, exhibits, the witness' deposition and/or affidavits, interrogatories and/or admissions on file in any hearing or Court Order, therefore, there is no real need for me to order any transcript. In addition, the transcript for December 6, 2011, verifies my sworn statement of fact that Wells Fargo did not substantially comply with Administrative Order #2009-05-22-01. Attorney Brian A. Calub admitted this in Judge Goodstein's Courtroom. However, these are matters for the Appellate Court to decide, not me. Since I am *Pro Se* and have no experience in law, if the Appellate Court believes, in the interest of justice, that I should order them, I will ask for leave to do so.

July 30, 2014

/s Dorothy Sistrunk
Dorothy Sistrunk
423 Bayne Street
Orangeburg, South Carolina 29115
(803) 268-0716
Pro Se

Other Counsel of Record:
Rogers Townsend & Thomas, PC
Jason D. Wyman
POB 100200
Columbia, South Carolina 29202
Attorney for Respondent
(803) 771-7900

**LETTER TO CLERK OF LOWER COURT
FILING NOTICE OF APPEAL**

July 30, 2014


The Honorable Winnifa Brown-Clark
Clerk of Court for Orangeburg County @ Orangeburg County Courthouse
Post Office Drawer 9000
Orangeburg, South Carolina 29116-9000

RE: Wells Fargo Bank, N. A., Respondent v. Dorothy Sistrunk, Appellant -
Case No. 2008-CP-38-1024.

Dear Ms. Brown-Clark:

Enclosed for filing is a Notice of Appeal in the above case.

Sincerely,

/s 

Dorothy Sistrunk
423 Bayne Street
Orangeburg, South Carolina 29014
(803) 268-0716
Pro Se

cc: Rogers Townsend & Thomas, PC.,
c/o Jason D. Wyman
Post Office Box 100200
Columbia, South Carolina 29202
(864) 000-000-0000
Attorney for Respondent