

**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 14 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 2014-001683, 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, SCRPC*, 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), SCRPC*; 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) Hlaczuk 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 Nationallease, 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 *Burner 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. 4<sup>th</sup> 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. Genex*, 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**

Elizabeth Scott Moise  
SC Bar No. 012945  
151 Meeting Street / Sixth Floor  
Post Office Box 1806 (29402-1806)  
Charleston, SC 29401 -2239  
(803) 853-5200

James H. Burns & Michael J. Anzelmo  
SC Bar No. 70313  
1320 Main Street / 17<sup>th</sup> Floor  
Post Office Box 11070 (29211-1070)  
Columbia, SC 29201  
(803) 799-2000