

WHALEY'S REPLY TO BOA'S "RETURN" TO
WRIT OF CERTIORARI

PART 5
ATTACHMENTS - 11

Exh. G

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
FEB 05 2014
SC Court of Appeals

* SCFCU ^{with} page 2,
Shows and Adm's!
the Appeals &
Lower Courts Ordered
Decisions ^{are ongoing state Receiver} ^{to be reviewed by ongoing Federal Receiver}
Constitutional Question
involving a State!
and Federal Law
that conflict with
the Supreme Court Law
+ his
involving

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

a qualified
Receiver
pursuant
with
Case-958
and
SCAC
Rule
242(d)(5)

Roger L. Whaley Appellant,

South Carolina Federal Credit Union and Bank of America Respondents.

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,

Sheila M. Bias

Drew H. Butler, Esquire

Caleb M. Riser, Esquire

Sheila M. Bias, Esquire

RICHARDSON PLOWDEN & ROBINSON, P.A.

1900 Barnwell Street (29201)

P.O. Drawer 7788

Columbia, South Carolina 29202

803-771-4400

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.

Claimed (illegally)

As a result of said theft of money funds claims which the lower court never ruled on

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.

Showing a Constitutional Question - Ordered by lower trial court - which conflicts with this Supreme 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

** Shows B.O.A. never complied with*

same

The Appeals Court to file its Initial Brief & Designation matter by Oct 4, 2013; and B.O.A. never filed! Filed! Not legally PAID its Required \$25.00 - to file & pay! Motion for an extension; Just as SCFCU & Cong continued game by Aspl...

Exh. G-2

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

Best Interest Granted Dismissal due to Alleged Offending portions of Record on Appeal that were also located on Lower courts records.

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.

SCFCU Admits! Respondents BOA! WAS Granted by Appeals Court in Error on other basis of its Motion to Strike

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),

on 2-27-2014 (See Exh. AA) WAS NOT! Due to Petitioner Whaley wrote for stated claim that were not. STATED in the Lower trial court records, but! the Appeals Court granted BOA Motion to strike the

3 8/13

offending portions! that were written in the records... involving BOA - LAWYER (also) Being the PAID Appointed Attorney & AW firm for Whaley's cashier checks pay refs;

Exh. #

* Appeal Record Shows Whaley's Initial Brief was timely by Appeals Court Aug. 2013

* SEFCU doc! BOA Filed their Initial Brief by the 5th 15!!

Count Board member B.B. Ashmore's

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,

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Columbia, South Carolina 29202
803-771-4400

Counsel for Respondent South Carolina Federal Credit Union

Although
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checks from C.C.G.'s
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into the
account
C.C.G.'s Bank
as to why!
Money!
The 5th of C.C.G.'s
Customer's
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By! the
Respondent!
BOA and by
by the Dept
of Revenue - due to UCC & the Law
When BOA Money to Dept J
Toward C.G. Money! Dept J
Revenue due to C.C.G. Money!
Most or Money! of C.C.G.'s
Money!

February 5, 2014

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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.
Based on the foregoing, Respondents respectfully move this honorable Court for an Order dismissing this appeal.
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BOA + like Congress
CCG's Com. St. Funds
Return of C.C.G.'s Com. St. Funds
Money!

Exh. I-1 * BOA - Never! Provided any Document to support his Allegations To Defeat Petitioner's Properly Designated Documents & Evidence
improperly designated by Appellant in his Designation of Matter which are not in the record

below.

* BOA Admits to Comprehend Petitioner's Whaley's Complaint Claims

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.

See Exh. Dd - Shows in Email from Trial Court Judge - requested for Order Both!! Respondents - BOA and SCFCU

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.

False statement - see SCFCU's letter 9-10-13

Out of! on Extension to BOA see Exh. AAAA + Acc

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

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.

BOA Admits Whaley objected to the trial court's email which BOA Admits or shows in its "Return" 7/22/14 7/24/14 THAT A email Delivery! is not a perfect Delivery pursuant with SCACR 262(b) and 262-(c)

SCFCU to Plaintiff Each! of their own! Proposed Order but only requested BOA to send a copy to Petitioner! Whaley, . . . Admitted Judge's Clear understanding see Whaley's Initial Brief + Designation shows page in transcript of Judge's admitted clear understanding of Whaley's Complaint Claim.

Exh. T-3

Petitioner/Whaley Didn't Ignore Judge

comply with the trial court's emailed instructions regarding the Order. Appellant ignores the fact that in its Order on his Motion for Reconsideration, the trial court confirmed it reviewed the proposed Order dismissing his Complaint carefully to ensure it accurately stated the court's ruling before it was signed. In any event, Appellant fails to set forth any arguments or identify any errors of law or fact to support his appeal of the Orders at issue. This appeal should therefore be dismissed.

Misconduct do to why? Petitioner Request in his Filed Said Motion to

Alternatively, Those Matters Designated by Appellant in His Designation of Matter Which Are Not in the Record Below Should Be Stricken.

Disqualify said Judge which the said Lower Court Order never ruled.

Appellant's Designation of Matter shall not "include matter which was not presented to the lower court or tribunal." Rule 210(c), SCACR.

The following items were listed by Appellant in his Designation of Matter but were not presented to the lower court or tribunal, and should, therefore, be stricken:

A) Item Two*;

*Although the text of this UCC Section was included as an Exhibit to Appellant's Complaint, the page referencing UCC Section 3-312 entitled "National Check Fraud Center, Other Check Problems: Lost, Stolen, or Destroyed Cashier Checks, Teller and Certified Checks" attached as an Exhibit to his Initial Brief (all of which exhibits seem to correspond with those items listed in his Designation of Matter) was not presented to the lower court and should therefore be stricken.

B) Item Five; and

C) Items Seven through Fourteen.

Use Plt's Lower Court mt for Reconsideration and Disqualify of Judge! Also see Lower Court Transcript as well as the Attached Email Exh. Dd speaks for itself!

Comp. Unsupported Claims and Appeals Court Never! Reviewed Nor Required BOA to Produced the Records of the said Lower Court. Although! Petitioner Whaley did Produced the Records of said Court that supported all his claims.

When Email Lower Court Ordered Instructions was for Both SLFCU & BOA - to prepared EACH of their own Propos all Orders and! Lower Court never claimed Whaley's complaint or pleadings were Unintelligible

Conclusion

For the foregoing reasons, Respondent Bank of America respectfully requests that the Court dismiss this appeal with prejudice, or in the alternative, strike those matters designated by Appellant in his Designation of Matter which are not in the record below as listed in Section II above.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: *Tara C. Sullivan*

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Attorneys for Respondent Bank of America

Columbia, South Carolina

10/31, 2013.

** ↑*

** Conflict of Interest
Law Firm
with
et. Himm*

*Whaler
and/or
Whaler's
Cashier's
Check's
named
payee
ccg
Same Money
Interest
Involving
Respondent
BOA*

Exh. I - ~~W.A.~~

THE SOUTH CAROLINA COURT OF APPEALS

Roger L. Whaley, Appellant, Pro Se

v.

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

Appellate Case No. 2012-213208

Presiding Lower Court Judge Maite D. Murphy
Dorchester County
Trial Court Case No. 2012CP-1800539

Attachments - 2

*Appeals Order 9/27/13
*and Respondent SCFCU Letter 9/10/13

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 Pursuant with SCRAP 208(a)(2),(4)&(7)¹

Dear Clerk:

Pursuant with SCRAP Rule 208(a)(4)&(7), by the understanding of this Pro Se, Plaintiff/Appellant Whaley, can write a LETTER/a/k/a/or MOTION FOR JUDGMENT against Defendant/RESPONDENT-BANK OF AMERICA /or Request to REMAIN that said Defendant/Respondent/Bank of America's MATTER BACK to Lower Trial Court with INSTRUCTION for the lower trial court Judge to Enter DIRECT JUDGMENT in FAVOR of PLAINTIFF/Appellant Roger Whaley, as in indeed the Respondent BANK OF AMERICA, has not/and or CAN NOT Denied any!! of Appellant/Whaley's State of Facts/nor Arguments made in his Initial Brief/and/or Designation; as well as Respondent/Bank of America has FAILED to file its required Responsive Brief, pursuant with SCRAP 208(2), nor did Defendant/Respondent Bank of America, never! requested any kind of extension of time to file any Response, as is required by SCRAP Rule 7, just as the Defendant/ Respondent South Carolina Federal Credit Union.³

Therefore I, the Appellant, Roger Whaley is requesting this said APPEALS Court to Grant Plaintiff/Appellant/Whaley Motion for Judgment/and/or Requesting this Appeals Court Remain Respondent/ Bank of America's case matters Back before the said lower trial court with in SPECIAL INSTRUCTION to render Judgment in FAVOR of Plaintiff/Appellant Whaley, will not bias no party. But will indeed show that this said Appeals Court is not biased against the Plaintiff/Appellant Whaley, as a Pro Se, non-attorney.

Please find, attached also Plaintiff/Appellant Whaley's CASHIER'S CHECK for \$25.00, in case this said letter/or motion must be paid so to file in this said Appeals Court/or in order for this matter to receive such equal justice. If there is any other information needed, please do not hesitate to write this said Pro Se Appellant/Whaley.

September 30, 2013

Respectfully,

Roger L. Whaley
Roger Whaley, Pro Se

CC: Drew Hamilton Butler; Erik Tison Norton; Jody A. Bedenbaugh; Sheila M. Bias;

¹ SCRAP Rule (7) Supplemental Citations. When pertinent and significant authorities come to the attention of a party after his initial brief(s) has been served and filed, the party shall promptly advise the clerk of the appellate court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to an issue to which the citations pertain, but the letter shall, without argument, state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

² SCRAP Rule (4) Failure to File. Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260. Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper.

³ Which this said Appeals Court Clerk could ONLY GRANTED the EXTENSION of Defendant/Respondent "SC Federal Credit Union" request for "...a 30 day Extension in which to SERVE and FILE...(their/ONLY SCFCU's)...Initial Respondent's Brief and Designation of Matter" when SCFCU's LETTER dated "September 10, 2013" shows it only!! requested in its said LETTER for the Extension for 30 days ONLY from the "COUNSEL" for "Respondent SC Federal Credit Union".

Exh. I-5
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

** Denied by Appeals Court official w/out any party objection!! to the said withdrawal pursuant to SCACR against Rule 240(2) + (3) Appeals court's shown Bias and Personal Interest rule of Canon 2+3*

ORDER

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

[Signature]
FOR THE COURT

Columbia, South Carolina

cc:

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

FILED
1-3-14