

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

PART 7
ATTACHMENTS-16

STATE!! TRIAL COURT TRANSCRIPT
in -May 8, 2012 –OPEN COURT HEARING

Showing BOA's VOLUNTEERED BROUGHT FEDERAL Case LAW CLAIMS to be JOINT
within an ONGOING YET PENDING Open Court STATE! COURT! LAW ISSUES –
THEREFORE shows - "Where substantial constitutional issues are directly involved" SCACR 242(b)(4)
Involving Whaley's STATE! COURT! CLAIMS of "THEFT" of Cashier's Checks' named
PAYEE/CCG

See Transcript 5/8/2012 – pages 3- 8 – Shows BOA Volunteered
BROUGHT FEDERAL ISSUES Of LAWS within a STATE COURT LAWS
WHICH BOA ADMITS! INVOLVES the SAME! Identical Claims, & Parties

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State of South Carolina)
County of Dorchester)

In the Court
Of Common Pleas

Docket No. 2012-CP-18-00539

Roger L. Whaley,)
Plaintiff,)
vs.)
South Carolina Federal)
Credit Union, Bank of America,)
Defendants.)

Transcript of Record

May 8, 2012 *
St. George, South Carolina

B E F O R E:

The Honorable Maite' Murphy, Judge.

A P P E A R A N C E S:

Roger Whaley
Pro Se Plaintiff

Jody Alan Bedenbaugh, Esquire *
Attorney for the Defendant Bank of America *

E. Caleb Riser, Esquire *
Attorney for the Defendant South Carolina Credit Union *

Brenda J. Sigwald, Circuit Court
P.O. Box 206, Jackson, South Carolina 29831

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
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(There were no exhibits
entered during this hearing.) *Error*

*** Not True! - Court
Reporter's Error - See
transcript page 3, and — shows Exhibits
were offered in said
Court Hearing. . .*

1 THE COURT: The next case is Roger Whaley versus
2 South Carolina Federal Credit Union.

3 Good afternoon.

4 * MR. RISER: Good afternoon, Your Honor.

5 THE COURT: How are y'all this afternoon?

6 MR. RISER: Great.

7 THE COURT: And whose motion is this?

8 * MR. BEDENBAUGH: Your Honor, Jody Bedenbaugh for
9 Bank of America. It's our motion to dismiss.

10 * MR. RISER: And, Your Honor, I'm Caleb Riser for
11 South Carolina Federal Credit Union. We have nearly
12 identical motions to dismiss. Our pending motion is next
13 on the roster, so I will join arguments of Bank of
14 America Counsel.

15 THE COURT: Okay. And sir?

16 * MR. WHALEY: My name is Roger Whaley. I'm not an
17 attorney, but I'm just here to get my rights.

18 THE COURT: All right, sir. Thank you.

19 Are you ready to proceed?

20 * * MR. BEDENBAUGH: Yes, Your Honor. Your Honor, I
21 have a group of exhibits. May I pass those up?

22 THE COURT: Sure.

23 MR. BEDENBAUGH: Your Honor, again, my name is
24 Jody Bedenbaugh from the Richland County Bar. I'm here
25 for Bank of America. The background is fairly simple, * *

** Court reports
transcribed
Admits!
to exhibits
opened*

~~But~~ Judge's Hearing held 8-29, 2012. Say a pt of
whaley's claims are very clear!
verbally & w/ documents...

Both's
Attorney's
A Pro se
Standard
that
different
than
an
Attorney's
Standard
But!
Judge
8-29-2012
says

1 though this complaint is not. As we stated in our motion
2 to dismiss, the complaint is virtually incomprehensible,
3 and I don't mean that any disrespect to Mr. Whaley, but
4 in terms of the legal standards that we normally review
5 complaints, and even pro se standards, it's
6 incomprehensible.

7 Unfortunately, I believe this is part of a trend.
8 This is the third case for Bank of America that I'm
9 handling that has virtually identical allegations to
10 those that Mr. Whaley is making in this case. I think
11 there is a nonlawyer drafter behind all these documents,
12 but that's not necessarily in front of Your Honor today
13 unless Your Honor deems it appropriate to ask Mr. Whaley
14 about that.

15 That being said, I'm handling two cases for Bank
16 of America with the same factual allegations and I'm
17 aware of at least one other case involving the South
18 Carolina Federal Credit Union with the same allegations
19 and at least two other Bank of America cases in South
20 Carolina handled by another firm, all with the same
21 allegations. They all relate to the Three Hebrew Boys
22 Ponzi scheme which was a Ponzi scheme that was apparently
23 ran out of Columbia.

24 There is a federal receivership now pending with
25 Beatty Ashmore as the receiver. Judge Seymore is the

BOA credit
Attorney's
bring
other
issues
+ his
said
case
matter
involve
Hebrew
Boys
ponzi
scheme
and
involving
Federal
Receiver
Ashmore

Mr.
Whaley
Pro se
NON-
Attorney
Must
have
the
Same
Standards
as an
Attorney

but showed
Special Attorney
Favor and
Instructed Adviser...

BOA - Admits! Bank
Federal Judge Seymour is
The Ponzi's Judge
in case dealing with Cashier's Checks
payable to CCB...

1 judge and all of these cases deal with cashier's checks
 2 payable to Capital Consortium Group, which is apparently
 3 one of the aliases of one the Three Hebrew Boys Ponzi
 4 scheme and is one of the entities that's in that
 5 receivership. The Exhibit 1 in the package that I handed
 6 up are just examples of the two cases that I'm handling
 7 for Bank of America that have the same unique style as
 8 I'll call it.
 9 Exhibit 2 are orders dismissing two cases that
 10 were recently entered. One entered by Judge Strickland
 11 in Richland County and another one entered for South
 12 Carolina Federal Credit Union matter by Judge Benjamin in
 13 Richland County. The facts of this particular case, as
 14 well as all the others, are essentially the same; and
 15 that is the plaintiff is apparently seeking the return of
 16 funds that were in the form of a cashier's check made
 17 payable the Capital Consortium Group and deposited at a
 18 bank.
 19 In this case, the cashier's check was drawn on
 20 South Carolina Federal Credit Union and deposited at Bank
 21 of America. Bank of America is the defendant as is South
 22 Carolina Federal Credit Union.
 23 Exhibit 3 in my package are copies of these
 24 checks that were attached to the complaint. So they're a
 25 part of the complaint for all intents and purposes.

* See Court Reporter's Index Shows Court Reporter Info In correct which says no Exhibits were entered during the hearing!

BOA placed Exhibits in my records but not stated in Transcript

*** BOA Names State court Judge Strickland & others in Richland County as party? What's Law Suit?

* BOA Admits Both BOA and S.C. Fed. Credit Union are defendants in this case

All seeking the Return of Funds forms of Cashier's checks made payable to CCA

and Admits BOA Also! provided pl't Whaley & All other individuals Cashier's checks as Exhibits 5---

placed in the Bank BOA

BOA REASONS for Dismissal - 1. Legal Standard
 2. Cashier Checks allegedly delivered to CCG - Business was Allegedly Deposited
 3. *Exh. VI

1 The argument we set forth in our memorandum, we
 2 set forth essentially four basic grounds for dismissal of
 3 this case. The first one is even giving plaintiff all
 4 the benefit of the doubt as a pro se litigant, the
 5 allegations don't rise to the legal standard necessary to
 6 assert a claim for relief.
 7 The second argument is aside from the pleading
 8 deficiencies, the substantive law governing cashiers
 9 checks and official checks and bank checks does not give
 10 the plaintiff a cause of action against Bank of America.
 11 And that's basically two rules that provide that
 12 argument. The first one is if you look at the copies of
 13 the checks and the allegation in the complaint, it's
 14 clear the plaintiff was the remitter, the purchaser of
 15 the cashier's check. The cashier's check was made
 16 payable to Capital Consortium Group.
 17 Under the Uniform Commercial Code, Article III,
 18 the drawer bank, South Carolina Federal Credit Union, is
 19 both the drawee and the drawer of the check; and of
 20 course, Bank of America was the depository bank. The
 21 plaintiff, as remitter, does not have an interest in that
 22 check once they purchase it and deliver it to Capital
 23 Consortium Group. South Carolina has recognized that a
 24 remitter does not have a cause of action for wrongful
 25 endorsement. And that case is Steele versus Victory

* BOA Admits the Remitter Roger Whaley yet, had interest in the cashier's checks up until the checks were

"Delivered it to Capital Consortium Group."
 But! Whaley provided no evidence - the state Department of Revenue - Return! Money funds of CCG's other member - where BOA admits! CCG never receive the cashier's checks - which made Remitters yet! Only Hold

* * BOA - Untruthfully claimed & below that plt Whaley did not dispute - the cashier's checks were not put in the CCG account by CCG - see affid. & plt's pleadings

1 Savings bank. A copy of that case is Exhibit 4 to the
2 package that I passed up. So under the substantive law,
3 the plaintiff doesn't have standing to sue Bank of
4 America for these cashier's checks.
5 Secondly, even if the plaintiff had standing,
6 it's clear that the checks were made payable to Capital
7 Consortium Group. They were deposited into an account
8 with Capital Consortium Group and the plaintiff doesn't
9 dispute that based on their allegations. So I'm not
10 clear what the plaintiff is alleging, whether Capital
11 Consortium Group fraudulently forged their own signature
12 or not, but it's clear that the checks went into the
13 account of the payee and South Carolina has recognized
14 that even if you have an unauthorized signature, if the
15 check goes into the account of the intended payee, then
16 you don't have a cause of action for the conversion of
17 the check. * BOA - Will not Produce Exhibit to
18 support BOA's Alleged Acct. w/CCG...
19 The case that recognized that is a Court of
20 Appeals case, Banker's Trust versus South Carolina
21 National. It's Exhibit 5 to the materials I passed up.
22 The third argument and probably the one I should
23 have started with is the simplest. It's the statute of
24 limitations. The checks, Your Honor will see, are dated
25 between October of 2006 and April of 2007. This action
was brought in February of 2012, well outside the three

and
BoA
Never
produced
any Exhibi
to show its
agreement
or contract
w/ CCG
Requested by
Plaintiff
Complaint
Always
Claims
of
Theft &
Comp. Alleged
Disputed
that
HAS
Money
or
Improperly
used
not
Deposited
in
CCG's
Account
Approved
by
CCG
Authorized
person
therefore
Money
Never
went
in
the
account
of the
Intended
Payee.

* Uniform
State
Limitation
statute
says
begin
only
when BOA
or Bank
first notified
the
party
of any
dispute
or
document
BOA admitted checks
BOA account showed
BOA account with
CCG was
closed
not March
April of 2007
and possibly
starting
since
Jan. 2007

BOA - Never provided Whaley's requested Documented Evidence from BOA as of 1/15/12

** BOA - Rules that 54 state of limitation on BOA does not
begin until - Bank - Notify Customer that their
claims account is frozen - involving court
enforcements - ... or
other Bank
Suspension*

*Exhibit 1
Complaint
Mr. Whaley
Never
Claims
it's
Wants
it
Money
from
CCG and
Especially
Never
The
3-HBs
Because
Mr.
Whaley
Never
Had
any
Account
or
Agreement
with
3-HBs*

year statute of limitations That's another independent
ground for dismissing the action. And finally, Your
Honor, we put as our final ground, to the extent the
plaintiff wants their money back from Capital Consortium
Group and the Three Hebrew Boys, they're seeking their
funds that were deposited into these bank accounts, their
cause of action is in the receivership. - Receiver in a
Judge Seymore has set up a claims administration Federal Court
process in that federal receivership. We've attached to Not
our motion and memo and I've put as Exhibit 6 the Receiver
receivership order and the claims administration order in Appointed
that receivership. So that is the plaintiff's remedy, for
not against Bank of America or South Carolina Federal the
Credit Union. And that's all I have on the foregrounds, State
Your Honor. ** Federal Judge M. B. Seymour was*
forcefully removed / order terminated
THE COURT: Thank you. *as being a presiding*
Judge - in CCG
case M.B. Seymour
brought BOA
in this case when...
MR. RISER: No, Your Honor. Again, our motion to Not
dismiss also included grounds for dismissal under Rule a Federal
12(b)6, which are identical to those of Bank of America Receiver
as well as the statute of limitations and just for not and
wasting the Court's time I won't repeat any of those State
arguments, but would ask that South Carolina Federal Receiver
Credit Union also be dismissed. Thank you. State
Plaintiff

THE COURT: Mr. Whaley?

*Termination
+ Spent
Full Relief
in 2007 + 2010
in favor
of CCG and its
agents, and Pro 92
participants.*

*BOA + S.C. Fed. C.U. & Court - is
illegally using federal cases for laws
to attempt to govern State cases*

1 MR. WHALEY: All right. Yes, ma'am. Yes, I did
2 make a check out to Capital Consortium Group, but it
3 wasn't proven that Capital Consortium Group received that
4 check. Looking on the back of the check, I couldn't see
5 that Capital Consortium signed it. Bank of America
6 stamped that themselves and I just feel like some wrong
7 doing been done on that because the boys, there wasn't a
8 constant flux with the State and Bank of America, I'd say
9 they had control of more Capital Consortium Group checks
10 and stuff like that.

11 THE COURT: Let's go through a couple of these
12 arguments. First of all, tell me about the statute of
13 limitations problem that you're facing.

14 MR. WHALEY: Okay. The statute of limitation.
15 Now, for that, most of the constituents of Capital
16 Consortium Group was kept in the dark about that. I
17 didn't find out about this until almost four years into
18 the -- all this been going on. And things started
19 researching -- they done some research on it and that's
20 how I got the final allotment of money and everything and
21 how it was -- how it was found.

22 THE COURT: And tell me, what is your
23 relationship to Capital Consortium Group.

24 MR. WHALEY: I was an investor and -- well, they
25 are supposed to invest the money, but the way it looks

*Plt Whaley Always stated that CCG Never received plt's Whaley's money. * Exh. X*

1 Like, CCG never received it.

2 THE COURT: Well, then, you get to the next

3 argument that they addressed, as far as why you would not

4 go against the receivership rather than the bank. If

5 you're an investor and they deposited the money, then, of

6 course --

7 MR. WHALEY: I didn't deposit the money. I

8 invested the money. An investor.

9 THE COURT: Well, if you invest the money, tell

10 me your theory that they're liable for it.

11 MR. WHALEY: Because they so much stamped the

12 check and put that money in their account. I don't see

13 nothing saying that CCG deposited that money.

14 THE COURT: So your argument is that if any

15 investor deposits money with a bank, the bank is liable

16 if the investment is no good?

17 MR. WHALEY: Yes, because CCG did not never sign

18 it. They don't have proof saying that CCG deposited that

19 check.

20 THE COURT: And, tell me this though, as far as

21 your -- I mean have you had an opportunity to look at the

22 exhibits and look at the cases?

23 MR. WHALEY: Some of the exhibits. I did read

24 some of the material.

25 THE COURT: All right, sir. Well, I understand

*accord with
599 Agreement
NO. Mr.
Whaley
is that
an investor
But a
depositor
with
CCG
only*

*BOA of
S.C. Fed
Ct
Refused
BFS cover
as
to
Produce
any
signed
Contract
w/
BOA
and
CCG*

1 that you're representing yourself in this court and just
 2 like in any other court, when you represent yourself, you
 3 have to still abide by the same standards. You have to
 4 follow the rules of civil procedure. You have to --
 5 you're treated as if you were an attorney and you have
 6 to -- your pleadings have to be accurate and, you know,
 7 sometimes when pro se people appear with the courts, we
 8 try to help and nudge them along as much as we can, but
 9 we can't.

10 We can't give you legal advice. You are held to
 11 the same standard as an attorney would be held. So if
 12 your pleadings are deficient, A, if you miss the statute
 13 of limitations and your pleadings are deficient where
 14 they fail to state a cause of action for which relief can
 15 be granted, your case is going to go away.
 16 But I've got to look at your pleadings and
 17 certainly look at the exhibits. But if there's anything
 18 else you need to tell me -- but I'll look at everything
 19 before I make that decision. Is there anything else you
 20 would like to add?

21 MR. WHALEY: Yes. What I understand that Bank of
 22 America had turned most of that money into state of
 23 revenue or something like that and they say they're going
 24 to be giving people their money, but it's just a bunch of
 25 talk and stuff like that; and that's why I have to come

*The Court Erred
 The Laws
 more did
 Shows
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 Held
 the
 same
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 as
 an
 attorney
 would
 be
 held*

*Judge
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 Therefore
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 Defendant's
 504's
 Exhibit
 AT
 Hears
 5-8-2012
 kind never
 Plt's many Exhibits*

Whaley acknowledged that state Dept of Revenue received 2009-2010 monies from BOA

1 to the Court.

2 Now, I went to Bank of America and tried to
3 recoup my money and they said I have to file in the Court
4 to get it. So that's why I'm in court today because --
5 and that just seem like the only way I could get my
6 money.

7 THE COURT: Mr. Whaley, do you have -- is your
8 e-mail attached to your pleadings?

9 MR. WHALEY: I think so.

10 THE COURT: Do you have an e-mail address?

11 MR. WHALEY: Yes.

12 THE COURT: Was it attached to your complaint?

13 MR. WHALEY: I think so. I'm not a hundred
14 percent sure.

15 THE COURT: Can you give it to me?

16 MR. WHALEY: Okay. It's La99 --

17 THE COURT: What was that? La?

18 MR. WHALEY: La99 --

19 THE COURT: One L?

20 MR. WHALEY: Yeah.

21 THE COURT: Small A?

22 MR. WHALEY: Yes.

23 THE COURT: Okay.

24 MR. WHALEY: 99.

25 THE COURT: 99.

Suggested
State Court
to communicate
with Mr. Whaley
Prosecutor - Email

** Exh. XIII*
** Judge Admits to Communicate with 13*
All parties at the same time

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MR. WHALEY: --mont at Yahoo dot com.

But court filed

THE COURT: And the reason I ask for that,

December shows

Mr. Whaley, is that when the Court communicates with the parties, it has to be all at the same time. Of course, I wouldn't contact them and talk to them without having you on the same communication. Okay?

She did not do so

So their addresses are on file with the attorney information system, but I didn't have yours right on hand, so that's why I asked for that.

A Court procedure

MR. WHALEY: Okay.

only communicating with those - not

THE COURT: Just to make sure that you get contacted just as they would get contacted when we make a decision. Okay?

Attorney - By mail

MR. WHALEY: All right.

unless order otherwise

THE COURT: So I'll take the time to look at your complaint and see how it's worded and certainly take into consideration their exhibits and whatnot and what you've told me here today; and I will e-mail all the parties with the Court's decision.

MR. WHALEY: Okay.

THE COURT: Okay. Thank you, sir.

MR. BEDENBAUGH: Thank you, Your Honor.

MR. RISER: Thank you:

(WHEREUPON this hearing was concluded and following another hearing the same day the following took

** Judge Admits Again She Never Reminded pts. what complaint and exhibits! Also see page 11 Trans.*

1 place:)

2 THE COURT: Mr. Whaley, I see you're back.

3 MR. WHALEY: Yes, ma'am.

4 THE COURT: And I can't talk about your case at
5 all without the other parties present.

6 MR. WHALEY: Oh, no, no, no, no. Since I can't
7 talk like a lawyer or do things -- any way you can
8 recommend me one?

9 THE COURT: I wish I could recommend an attorney
10 for you, but I'm not allowed to do that from the bench.
11 You can certainly contact the South Carolina Bar Lawyer
12 Referral Service. That's a good avenue.

13 MR. WHALEY: Okay.

14 THE COURT: You know certainly there's some fine
15 attorneys here in the courtroom. Just go through the
16 phonebook. I wish I could recommend somebody, but I'm
17 not allowed to do that.

18 MS. WHALEY: What about a continuance? I'm
19 sorry, I hope I'm not speaking out of line.

20 THE COURT: No, ma'am, we've already had the
21 hearing. And, you know, that obviously would have been
22 something to file prior to the hearing and I can't rule
23 on anything like that after the fact.

24 MS. WHALEY: Right.

25 THE COURT: Especially since the parties aren't

1 present.

2 MS. WHALEY: So I'm sorry, what exactly was the
3 purpose of the hearing?

4 THE COURT: I can't tell you that.

5 MS. WHALEY: Okay.

6 THE COURT: I can't tell you that.

7 MS. WHALEY: All right. Thank you.

8 * * * * * END OF TRANSCRIPT * * * * *

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* Exh. XVI

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State of South Carolina)
County of Aiken) Certificate of Reporter

I, THE UNDERSIGNED, Brenda J. Sigwald,
Official Court Reporter for the Fifth Judicial Circuit of
the State of South Carolina, do hereby certify that I
reported the proceedings in the captioned case in the
Court of Common Pleas in and for the State of South
Carolina on the 8th day of May, 2012.

I FURTHER CERTIFY that the foregoing pages,
numbered 1 through 15 constitute a true, accurate and
complete transcript of said hearing.

I FURTHER CERTIFY that I am neither kin, counsel,
nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal at Aiken County, this 3rd day of January, 2013.

Brenda J. Sigwald
Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020.