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S.C. Supreme Court

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM MARION COUNTY
Court of Common Plea

Haigh Porter, Special Referee for Marion County

Appeal number 2013-001824
Marion County Case number 2013-CP-33-306

Anderson Brothers Bank
Respondent,

V.

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone Parson, Jr., South Carolina Department of
Revenue and South Carolina Department of Motor Vehicles, Defendants,

Defendant

Of Whom

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone Parson, Jr., is the.....Appellants

PETITION FOR A WRIT OF CERTIORARI

Arnold Jr. Dazarhea Parson Sui Juris
Post Office Box 776
Mullins, South Carolina [29574]
(843)-409-9086

April 8, 2015

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CERTIFICATE OF COUNSEL

Appellants certifies pursuant to SCACR 242 (d) (1) that a Petition for Rehearing was made and finally ruled on by the Court of Appeals on March 12, 2015.

QUESTIONS PRESENTED

1. Is any judgment, order, decision or the like granted by one who is coram non judice mandatory grounds for retrial?

STATEMENT OF THE CASE

On May 1, 2013 Appellants were served with mortgage foreclosure documents. The Appellants filed a response in the Lower Court and mailed a certified copy of the same by certified mail on May 2, 2013 and received on May 6, 2013 by Respondents Attorney. (See App 49) On July 29, 2013 a hearing was held and presided over by Special Referee Haigh Porter which was objected to in accord with SCRCR 38 (See App. 46). At this hearing Special Referee did not have the file present to determine all issues between the parties. With no regards to Appellants unrebutted affidavits (See App 55) Special Referee ruled in favor of Anderson Brothers Banks Plaintiff. Appellants appealed what appeared to be a miscarriage in justice. During the course of the Appeal Respondents made several attempts to deny Appellants due process of law. Most troubling was the Show Cause why a Writ of Assistance should be not be granted. Where at this hearing it was admitted and unrebutted that Anderson Brothers Bank was a fictitious plaintiff and not the Real Party

in Interest to the Foreclosure Hearing held on July 29, 2013. Even more concerning is the fact that Special Referee Haigh Porter admitted on and for the record he has not sworn an Oath of Office (See App 136 Line 22-App 140 Line 11). These issues were raised with Court of Appeals and on December 18, 2014 it was dismissed for failure to comply.

ARGUMENT

I. CERTIORARI IS NECESSARY TO DETERMINE WHETHER A RETRIAL SHOULD BE GRANTED

- a) The question presented by this petition is whether an order, judgment, decree, or the like signed by one who is coram non iudice, mandatory grounds for a retrial? It appears that the Court of Appeals erred by dismissing the appeal for form (failure to comply). Substance has precedence over form in accord with SCRCP 8(f) where all pleadings shall be construed as to do substantial justice to all parties; Haines v. Kerner, 404 U.S.519 1972, wherein the court has directed those who are unschooled in law making pleadings and/or complaints shall have the court look to the substance of pleadings rather than form; “And be it further enacted, that no summons, writ, declaration, return, process, judgment, or other proceedings in civil cases in any of the courts of the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects or want of form in such writ, declaration, or other pleading, returns process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer as the cause thereof. And the said courts respectively shall and

may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any time, permit either of the parties to amend any defect in the process of pleadings upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe.” Judiciary Act of September 24, 1789, Section 342, FIRST CONGRESS, Sess. I, ch. 20, 1789; Due Process provides that the rights of pro se (sui juris) litigants are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers; if court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or unfamiliarity with pleading requirements” *Spencer v Doe*, (1998); *Green v. Branson* (1997); *Boag v. McDougall*, (1998).

- b) Where the issue raised is one that appears to be a violation of South Carolina State and Federal Constitution. The Court of Appeals had a duty to void the judgment and order for sale, and remand the case to the lower court for a retrial after being provided with evidentiary facts in support of the ultimate facts that Special Referee Haigh Porter has admitted on and for the record that he has not sworn an Oath of Office which is required. (See App. 89-91) “Office is vacant by reason of failure to file a required oath.” *Boisvert v. County Ontario*, 395 NYS2d 617; “[an] Act Declaring office vacant and to be filled as provided by law for failure to qualify within 60 days after beginning of term is unconstitutional and applies to all officers enumerated and similarly situated”. *State Ex Rel. Stain v. Christensen*, 84 U. 185, 25 P.2d 775; “Judges of the Supreme Court

subscribe to this oath when entering upon their duties as justices thereof”. Critchlow v. Monson, 102 U.378, 131 P.2d 794; “Filing an oath of office after the time prescribes by law is not a compliance with the law, confers no power to act as a public officer or in a public office and any person who fails to file his oath of office within time limits required by law creates an ipso facto vacancy and such person’s acts are void and vitiate any subsequent proceedings”. Parker v. Overman, 59 U.S. 137, 15 L. Ed 316; “Whenever a judge acts where he/she does not have jurisdiction to act, the judge is engaged in an act or acts of treason”. U.S. v. Will, 449 U.S. 200, 216, 101, S. Ct. 471, 66 L. Ed. 2d 392, 400 (1900), Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5L. Ed. 257 (1821); “ In such case the judge has lost his judicial function, has become a mere private person, and is liable as a trespasser for damages resulting from his unauthorized acts”. Dykes v. Hosemann, 743 F.2d 1488(1984); “Not every action by any judge is in exercise of his judicial function. It is not a judicial function for a Judge to commit an intentional tort even though the tort occurs in the Courthouse. When a judge acts as a Trespasser of the Law, when a judge does not follow the law, the judge loses subject matter jurisdiction and The Judge’s orders are void, of no legal force or effect”. The Court in Yates v. Village of Hoffman Estates, Illinois, 209 F. Supp. 757 (N.D. Ill. 1962); “An unconstitutional act is not law; it confers no rights; imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as it had never been passed.” Norton v. Shelby County.” 118 U.S. 425; “State courts, like federal courts, have a “constitutional obligation” to safeguard personal liberties and to uphold federal law.” Stone v. Powell 428 US 465, 96 S. Ct. 3037, 49 L. Ed. 2d 1067; “The obligation of

state courts to give full effect to federal law is the same as that of federal courts.” New York v. Eno. 155 US 89, 15 S. Ct. 30, 39 L. Ed. 80.

Therefore in light of the above stated facts this court should review the decision, void the judgment, and remand back to the lower court for retrial before one who is a judge who is a sworn officer of the court.

CONCLUSION

For the foregoing reasons the Appellants urges this court to grant a Writ of Certiorari to resolve the question whether a retrial should be granted to allow a fair impartial proceeding before a judge who has sworn their Oath of Office..

Respectfully submitted,

UCC 1-308/1-103.6
By: Arnold Parson Jr. Dazarhea Parson
Arnold Jr. Dazarhea Parson Sui Juris
Post Office Box 776
Mullins, South Carolina [29574]

STATE OF SOUTH CAROLINA
In the Supreme Court

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Revenue and South Carolina Department of Motor Vehicles, Defendants,

Defendant

Of Whom

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone Parson, Jr., is the.....Appellants

AFFIDAVIT

Arnold Jr. Dazarhea Parson Sui Juris
Post Office Box 776
Mullins, South Carolina [29574]
(843)-409-9086

April 8, 2015

AFFIDAVIT

The undersigned Affiant(s) Arnold Jr. and Dazarhea Parson, hereinafter "Affiant," does
solemnly affirm, declare and state as follows:

1. Affiant is competent to state the matters set forth herein.
2. Affiant has personal knowledge of the facts stated herein.
3. All facts herein are true correct and not misleading

Plain Statement of Facts:

1. On April 30, 2014 Suzanne Grigg attorney for plaintiff Anderson Brothers Bank was present at the Show Cause why a Writ of Assistance should not be granted when Special Referee Haigh Porter admitted on and for the record that he has not sworn an Oath of Office. If it's not rebutted it is affirmed.

UCC 1-308 / 1-103.6
 By: Arnold Parson Jr. Dazarhea Parson

Arnold Jr. Dazarhea Parson Sui Juris
 Post Office Box 776
 Mullins, South Carolina [29574]
 (843)-409-9086

JURAT

STATE OF SOUTH CAROLINA))
))
 COUNTY OF MARION))

ss.

Notary

On this date 9 April 2015, a natural man and woman appeared in their true characters, who identified themselves as Arnold Parson Jr & Dazarhea Parson., appeared before me Wm. Penn Hoy, a notary public residing in MULLINS County, MARION, S.C. state and attested to the veracity of this Affidavit with their oath and autograph.

Wm. Penn Hoy
 Notary Public

Commission Expires 12-31-2020

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Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone Parson, Jr., are the.....Appellants

PROOF OF SERVICE

We certify that we served the Petition for Writ of Certiorari, Appendix, and Affidavit on Respondents, represented by Suzanne Taylor Graham Grigg of Nexsen Pruet, LLC, by depositing a copy of it in the United States Mail, postage prepaid, addressed to Respondent's Attorney as follows: Suzanne Taylor Graham Grigg 1230 Main St. Suite 700 Columbia, SC 29202

Arnold Jr. Dazarhea Parson Sui Juris
Post Office Box 776
Mullins, South Carolina [29574]

April 9, 2015

April 8, 2015

Arnold Jr. & Dazarhea Parson
P.O Box 776
Mullins, South Carolina [29574]
843-409-9086

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APR 13 2015

S.C. Supreme Court

The Honorable Daniel Shearhouse
Clerk of Court, South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29211

Re: Anderson Brothers Bank v. Dazarhea M. Parson & Arnold Parson Jr.
Appellate Case No. 2013-001824

Dear Mr. Shearhouse:

Enclosed for filing please find an original and six (6) copies of the Petition for Writ of Certiorari and two copies of the Appendix to same. Also enclosed is our \$100 money order for filing fee as required.

By copy of this letter I am serving a copy of the Petition on counsel of record.

With kindest regards, I remain,

Yours very truly,
ucc 1-308/1-103.6
By: Arnold Parson Jr. - Dazarhea Parson
Arnold Jr. & Dazarhea Parson Sui Juris

Cc w/encl:
The Honorable Jenny Abbott Kitchings SC Court of Appeals
&
Suzanne Griggs & Kirsten Smalls
Nexsen Pruet LLC
P O Box 2426
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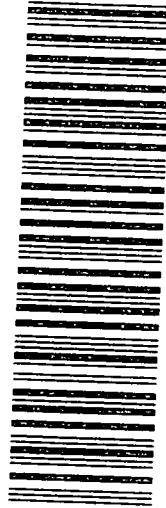
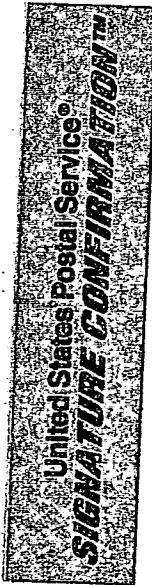
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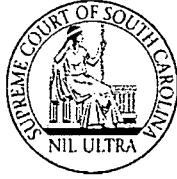
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The Supreme Court of South Carolina

Arnold Jr. Dazarhea Parson

04/13/2015

RECEIPT #75663

Case No: 2015-000761
Case Short Title: Anderson Brothers Bank v. Dazarhea Monique Parson
Event: Petition for Writ of Certiorari and Responses - Petition and Appendix
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