

75721

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of Common Pleas

RECEIVED
APR 20 2015
SC Court of Appeals

Diane Shafer Goodstein, Circuit Court Judge

Case No. 2014-001683

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

APPELLANT'S MOTION TO REMAND

April 14, 2015

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

Nelson Mullins Riley & Scarborough, LLP

Michael Anzelmo
SC Bar No. 72933
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

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

Comes now the Appellant, Dorothy Sistrunk, to file her Motion to Remand, i.e., Wells Fargo Bank, N. A., Respondent v. Dorothy Sistrunk, Appellant - Case 2014-001683 See pg 3 for Appellant's Motion to Remand based upon the following grounds and reasons.

I. A REVIEW OF RULE 240, SCACR

1. Rule 240, SCACR does not state with specificity or particularity the grounds or guidelines upon which a Motion to Remand can or must be based. In Powers v City of Aiken, 255 S C 115, 117, 177 S E (2nd) 370, 371 (1970), the Supreme Court of South Carolina stated; "[t]he purpose of appeal under our procedure is "to determine if the lower court did something that it should not have done, or omitted doing something it should have done. Accordingly, a trial judge will not be reversed for failing to act on a matter that was not submitted to him."

(a) Rule 240(a), SCACR states in pertinent parts;"[T]his Rule governs all motions or petitions filed in the appellate court, including but not limited to: motions for extension of time, motions to reinstate, petitions for rehearing, motions to be relieved as counsel or for substitution of counsel, petitions for supersedeas, **motions to remand** or dismiss and petitions for hearing *en banc*."
{**Boldness** and Underlining for emphasis}

(b) Rule 240(c), SCACR, states the following in pertinent parts; "[A]ll motions or petitions filed in an appellate court shall be in writing, shall state the grounds thereof, and shall comply with the requirements of Rule 267. The pages of the motion or petition and all supporting documents shall be consecutively numbered. Each motion or petition shall include the following:

(1) A certificate or affidavit of service reflecting the date of service upon all parties. The original certificate or affidavit of service must be filed with the original motion or petition.

(2) A memorandum with citation of authorities in support of the motion.

(3) Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions."

(c) Rule 240(d) states in pertinent parts; "[A]n original and six (6) copies of the motion shall be filed with the clerk of the appellate court, and a copy shall be served upon each party. The copies filed with the appellate court shall be accompanied by the filing fee set by order of the Supreme Court." Re: \$25.00


State v Foster, 277 S.C. 211, 212, 284 S.E.2d 780, 780 (1981)
("Taken literally, the word 'shall' is mandatory.")

II. APPELLANT'S MOTION TO REMAND

2. Based upon the above stated Rules and Case Law reference, the Appellant moves the Appellate Court to Remand this case back to the Court of Common Pleas in Orangeburg, South Carolina, in the First Judicial Circuit; where it was originally filed, for further proceedings, relative to the issue and/or issues raised and the grounds thereof that are identified and set forth in the accompanying Memorandum. Because statements are made with specificity and particularity, the accompanying Memorandum will be verified.

April 14, 2015

Respectfully submitted,

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

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. 2014-001683

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant

**AFFIDAVIT AND OFFER
OF PROOF SUPPORTING MOTION TO REMAND**

April 14, 2015

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

Michael Anzelmo
SC Bar No. 72933
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

I. I, **Dorothy Sistrunk**, first being duly **SWORN**, and under the **PENALTY OF PERJURY**, under the laws of the United States of America declares the facts in my "Affidavit and Offer of Proof supporting my Motion to Remand" are true and correct as of my own knowledge. When it comes to matters stated herein that are based upon information and belief; as to those matters, I believe them to be true. Accordingly, based on the following statements of fact; Re: Case No. 2014-001683, will sign, seal, attest and execute this document on this 13th day of April in the year 2015 in the City and County of Orangeburg, in the State of South Carolina, after deposing and stating the following;

- (1) I am the Defendant/Appellant that is identified in this litigation.
- (2) I have made **Offers of Proof** to the Lower Court, the Plaintiff, Wells Fargo Bank, N.A., and their attorneys from Nelson Mullins Riley & Scarborough, LLP, in my filed pleadings, exhibits and/or correspondence since 2008 and to the Appellate Court in 18 Appendices. Wells Fargo was duly notified on December 22, 2007, that its mortgage loan was mired in fraud, deceit and deception.
- (3) The evidence in this case has never been reviewed by the Lower Court in 2008; and from December 6, 2011 to September 3, 2013, Judge Goodstein conducted no evidence hearings. These no evidence hearings were prejudicial to me and beneficial to Wells Fargo. No hearings were held during the Stay/TRO.
- (4) If the manner and method in which I offered the proof and evidence were unacceptable to the Lower Court, and as a Pro Se litigant without legal training, the Lower Court had a duty and responsibility to inform me of any deficiency, so that any such deficiency could have been corrected in a timely manner.
- (5) If the Motion to Remand is granted, the Lower Court Judge/s will have an opportunity to review and rule upon the evidence, Wells Fargo's WF00001-137, and see for themselves, the Document Fraud, Notary Fraud, Insurance Fraud, Fraud in Factum, Fraud in the Inducement, Appraisal Fraud and Forgery by Name Substitution; as well as, the **Massive Filing Fraud** of Elizabeth Scott Moise, James H. Burns and Wells Fargo, during the Stay/TRO. In the Lower Court, the Stay/TRO was over for me in August of 2011.
- (6) If the Motion is granted, the Lower Court will be able to see the evidence that verifies the False Accusations of Wells Fargo's employees and their attorneys from Nelson Mullins Riley & Scarborough, LLP; Burns, Moise and Calub; as well as, their misrepresented facts and in some instances outright lies.
- (7) Finally, if the Motion to Remand is granted, the Lower Court will also see the documented evidence that the attorney drafted Court Orders from Nelson Mullins Riley & Scarborough, LLP that Judge Goodstein signed are replete with misstated, misrepresented and omitted facts and in some instances outright lies.

II. "Let it be known that 18 US Code § 1621 clearly states in pertinent parts; "[W]hoever— (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States."

III. Rule 11(c), SCRPC clearly states in pertinent parts; "[A]ffidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, sworn to or affirmed before an officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true.""

After this the Appellant sayeth naught.

Appellant's Signature: Dorothy Sistrunk

Notary's Signature as Witness (1): Lina Etelle

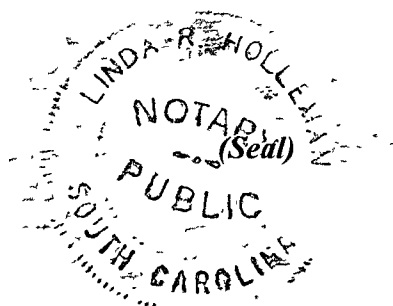
NOTARY CERTIFICATION

Signed, sealed and delivered in the presence of:

On 4-14-2015 before me appeared Dorothy Sistrunk and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and by her signature on her "Affidavit and Offer of Proof supporting Motion to Remand" and this Notary Certification presents this document to the Appellate Court. WITNESS my hand and official seal.

Notary's Signature Lina Etelle

Commission Expires 01-21-2025



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. 2014-001683

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

**APPELLANT'S MEMORANDUM WITH
CITATIONS OF AUTHORITIES SUPPORTING MOTION TO REMAND**

April 14, 2015

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

Nelson Mullins Riley & Scarborough, LLP

Michael Anzelmo
SC Bar No. 72933
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

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

**TABLE OF CONTENTS TO MEMORANDUM WITH
CITATIONS OF AUTHORITIES SUPPORTING MOTION TO REMAND**

I.	TABLE OF AUTHORITIES	iii
	A. Cases	iii-iv
	B. Additional Authorities	iv-vi
	C. Other Authorities	vi
II.	THE PURPOSE OF CITATIONS OF AUTHORITIES SUPPORTING THE MOTION TO REMAND.....	7-9
III.	STATEMENT OF GROUNDS FOR MOTION TO REMAND WITH CITATIONS OF AUTHORITIES	9-13
IV.	ISSUES THE LOWER COURT FAILED TO RULE ON OR ADDRESS THAT NECESSITATES A REMAND TO THE LOWER COURT WITH CITATIONS TO THE RECORD AND AUTHORITIES	14-21
V.	ADDITIONAL REASONS WHY THIS CASE MUST BE REMANDED TO THE LOWER COURT WITH CITATIONS OF AUTHORITIES AND TO THE RECORD	22-30
VI.	STATEMENT OF FACTS THAT HAVE NEVER BEEN REFUTED OR DENIED THAT SUPPORT A REMAND WITH CITATIONS OF AUTHORITIES AND TO THE RECORD	30-35
VII.	OFFER OF PROOF, EVIDENCE & DOCUMENTATION SUPPORTING THE MOTION TO REMAND WITH CITATIONS OF AUTHORITIES AND TO THE RECORD	36
	A. A Review Of Rule 240(c)(3), SCACR	36
	B. The Proof, Evidence & Documentation Supporting the Motion to Remand Are in the Appendices to the Reply Brief That Must Be Resubmitted to Verify Statements of Fact Pursuant to Rule 103(a)(2), SCRE	37-38
	C. The Appellate Court Order Dated, April 3, 2015	38
VIII.	SUMMARY & RELIEF REQUESTED	39
IX.	CONCLUSION	39
X.	NOTARY CERTIFICATION	40

I. TABLE OF AUTHORITIES

A. <u>Cases</u>	<u>Page Number/s</u>
<i>Abrishamian v Barbely</i> , 981 A. 2d 797 (Md. Ct. Spcl. Apps. 2009)	10-11
<i>Airfare, Inc v Greenville Airport Comm.</i> , 153 SE 2d 846 (1967)	17
<i>Ala Moana Boat Owners v State</i> , 434 P. 2d 516 (Ha. S. Ct. 1967)	8
<i>Alejandre v Deutsche Bank Trust Co Ams.</i> , 44 So 3d 1288, 289 (Fla. 4th DCA 2010)	20-21
<i>Ariasi v Orient Ins Co.</i> , 50 F. 2d 548 (9th Cir. 1931)	11
<i>Balistreri v Pacifica Police Dept.</i> , 901 F. 2d 696 (9th Cir. 1990)	12
<i>Bateman v Rouse</i> , 596 SE 2d 386 (Ct. App. 2004)	16-17
<i>Battle v State</i> , 478 P. 2d 1005 (Okla. Ct. Crim. App. 1970)	8
<i>Beacon Theatres, Inc v Westover</i> , 359 US 500 (1959)	17
<i>Burns v Equilease Corp.</i> , 357 So.2d 786, 787 (Fla. 3d DCA 1978)	21
<i>Cufferi v Royal Palm Dev Co.</i> , 516 So. 2d 983, 984 (Fla. 4th DCA 1987)	21
<i>Elam v South Carolina Dept of Transp.</i> , 602 SE 2d 772 (2004)	13
<i>Erickson v. Pardus</i> , 127 S. Ct. 2197 (2007)	12
<i>Fidelity Financial Services, Inc v Hicks</i> , 214 Ill.App.3d 398, 574 N.E.2d 15, 158 Ill.Dec. 221 (1st Dist. 1991)	20
<i>First Sav. Bank v McLean</i> , 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994)	8
<i>Florida Dept of Agric v Go Bungee, Inc.</i> , 678 So.2d 920, 921 (Fla. 5th DCA 1996)	21
<i>Fowler v Laney Tank Lines, Inc.</i> , 263 S.C. 422, 211 S.E.2d 231 (1975)	13
<i>Freeman v McBee</i> , 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984)	23
<i>Gee Chee On v. Brownell</i> , 253 F. 2d 814 (5th Cir. 1958)	11
<i>I'ON, LLC v. Town of Mt. Pleasant</i> , 526 S.E.2d 716 (2000)	9-10
<i>Johnson v Collins Entm't Co. Inc.</i> , 349 S.C. 613, 636, 564 S.E.2d 653, 665 (2002)	20
<i>Jones v Wolff</i> , 887 SW 2d 806 (Mo.App. E.D. 1994)	8
<i>Moss v. Aetna Life Ins Co.</i> , 267 S.C. 370, 228 S.E.2d 108 (1976)	23
<i>Pacific Ins Co. v American Nat Fire Ins Co.</i> , 148 F. 3d 396 (4th Cir. 1998)	30

<u><i>Pinnacle Corp v Village of Lake in the Hills</i></u> 258 Ill. App.3rd 205, 209, 196 Ill.Dec.567, 630 N.E.2d 502 (1994)	20
<u><i>Quick v Donaldson Co, Inc</i></u> , 90 F. 3d 1372 (8th Cir. 1996)	11
<u><i>Ratliff v. Phillips</i></u> , 746 SW 2d 405 (Ky. S. Ct. 1988)	7
<u><i>Regions Bank v. Schmuck</i></u> 354 S.C. 648, 672, 582 S.E.2d 432, 444-45 (Ct. App. 2003)	29
<u><i>S C Dep't of Transp. v. First Carolina Corp of S C.</i></u> 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007)	13-14
<u><i>Sojak v Hudson Waterways Corp</i></u> , 590 F. 2d 53 (2nd Cir. 1978)	30
<u><i>State v Chasteen</i></u> , 228 S C. 88, 88 S.E (2d) 880 (1955)	13
<u><i>State v Dunbar</i></u> , 587 SE 2d 691 (2003)	14
<u><i>State v Foster</i></u> , 277 S.C. 211, 212, 284 S.E.2d 780, 780 (1981)	7, 22
<u><i>State v Johnson</i></u> , 692 SW 2d 412 (Tenn. S.Ct. 1985)	11
<u><i>State v Ovitt</i></u> , 878 A. 2d 314 (Vt: S. Ct. 2005)	10
<u><i>Straeter Distributing v. Fry-Wagner Moving</i></u> 862 S.W.2d 415, 417 (Mo.App.E.D.1993)	9
<u><i>Synanon Found, Inc, v Bernstein</i></u> , 503 A.2d 1254 (D.C.1986)	30
<u><i>Thummel v King</i></u> , 570 SW 2d 679 (Mo. S. Ct. 1978)	8
<u><i>United States v 416 81 Acres of Land</i></u> , 514 F.2d 627, 631 (7th Cir. 1975)	21
<u><i>US v Dixon</i></u> , 913 F. 2d 1305 (8th Cir. 1990)	10
<u><i>United States v Joseph G. Moretti, Inc</i></u> , 478 F. 2d 418 (5th Cir. 1973)	10
<u><i>Value Oil Company v. Town of Irvington</i></u> 377 A. 2d 1225 (NJ. Superior Ct. Law Div. 1977)	7
<u><i>Wachovia Bank, N.A v Coffey</i></u> 389 S.C. 68, 74 n. 1, 698 S.E.2d 244, 247 n. 1 (Ct. App. 2010)	14
<u><i>Wendt v Laske</i></u> , 760 So. 2d 1125 (Fla. 5th DCA 2000)	21
<u><i>West v Gladney</i></u> , 533 S.E.2d 334, 337 (S.C. May 8, 2000)	29
<u><i>Williams v S C. Farm Bureau Mutual Ins Co.</i></u> 251 S.C. 464, 163 S.E.2d 212 (1968)	13
<u><i>Winnetka Bank v Mandas</i></u> , 202 Ill. App. 3d 373, 397 (1st Dist. 1990)	20
<u><i>Woodrum v. Wells Fargo Mortgage Bank</i></u> , 73 So. 3d 873 (Fla. 4 th DCA 2011)	21

B. Additional Authorities

South Carolina’s Constitution And/Or Code of Laws Or Statutes

SECTION 16-13-10(A)(1)-(4) 23
SECTION 26-1-160 (26-1-95 in 2007) 16, 23, 33
SECTION 26-3-40(1) 23, 33
SECTION 26-3-60(1)-(3) 23, 33
SECTION 30-5-30(A)(2)-(C) 23, 33
SECTION 30-5-40(1)(a)-(b) 23, 33
SECTION 34-3-110 23
SECTION 36-3-305(a)(1)(ii-iii) 23
SECTION 37-5-108 23
SECTION 37-23-40(1)-(2) 15, 23
SECTION 39-5-20(a)-(b) 20, 23
SECTION 40-58-20(40) 23
SECTION 40-58-30(A)-(B) 23
SECTION 40-58-50(E)(1) 23
SECTION 40-58-70(1)-(3) 23
S. C. CONST. - ART. I - § 14 23, 27

United States Constitution, Codes And/Or Regulations

12 C.F.R. § 1731.2 24
15 U.S.C. § 1681n(a) 19, 24
18 U.S.C. § 1001(a)(1)-(3) 24
18 U.S.C. § 1344 24
18 U.S.C. § 1346 24
24 C.F.R. Part 35 – Subpart A 15, 24
U.S. Const. Amend. VII 17, 24

South Carolina Rules of Civil Procedure

Rule 26(a)(i)(ii), SCRCP 28
Rule 31(a) SCRCP 28
Rule 30(b)(2), SCRCP..... 24, 25
Rule 32(a)(4) & 32(a)(5), SCRCP..... 24, 25
Rule 38(a), SCRCP 17
Rule 39(a), SCRCP 27
Rule 41(b), SCRCP 19
Rule 43(a), SCRCP 27

South Carolina Appellate Court Rules

Rule 210(h), SCACR 14
Rule 212(b), SCACR 36
Rule 212(c), SCACR 37
Rule 240(a), SCACR 8

B. Additional Authorities

South Carolina's Constitution And/Or Code of Laws Or Statutes

SECTION 16-13-10(A)(1)-(4)	23
SECTION 26-1-160 (26-1-95 in 2007)	16, 23, 33
SECTION 26-3-40(1)	23, 33
SECTION 26-3-60(1)-(3)	23, 33
SECTION 30-5-30(A)(2)-(C)	23, 33
SECTION 30-5-40(1)(a)-(b)	23, 33
SECTION 34-3-110	15, 33
SECTION 36-3-305(a)(1)(ii-iii)	23
SECTION 37-5-108	23
SECTION 37-23-40(1)-(2)	15, 23, 26
SECTION 39-5-20(a)-(b)	20, 23, 26
SECTION 40-58-20(40)	23
SECTION 40-58-30(A)-(B)	23
SECTION 40-58-50(E)(1)	23
SECTION 40-58-70(1)-(3)	23
S. C. CONST. - ART. I - § 14	23, 27

United States Constitution, Codes And/Or Regulations

12 C.F.R. § 1731.2	15-16, 24
15 U.S.C. § 1681n(a)	19, 24
18 U.S.C. § 1001(a)(1)-(3)	16, 24
18 U.S.C. § 1344	16, 24
18 U.S.C. § 1346	24, 26
28 U.S.C. § 1746	38
24 C.F.R Part 35 – Subpart A	16, 24
U.S. Const. Amend. VII	17, 24, 27

South Carolina Rules of Civil Procedure

Rule 11(c), SCRPC	38
Rule 26(a)(i)-(ii), SCRPC	28
Rule 30(b)(2), SCRPC.....	24-25, 28
Rule 31(a), SCRPC	28
Rule 32(a)(4) & 32(a)(5), SCRPC.....	24-25
Rule 38(a), SCRPC	17
Rule 39(a), SCRPC	27
Rule 41(b), SCRPC	19, 31
Rule 43(a), SCRPC	27
Rule 56(c), SCRPC	25
Rule 56(e), SCRPC	38

South Carolina Appellate Court Rules

Rule 210(h), SCACR	14
--------------------------	----

Rule 212(b), SCACR	36
Rule 212(c), SCACR	37
Rule 240(a), SCACR	8
Rule 240(c)(2), SCACR	7, 9
Rule 240(c)(3), SCACR	36-38

South Carolina Rules of Evidence

Rule 103(a)(1)-(2), SCRE	22, 37-38
Rule 201, SCRE	22-23
Rule 601(a), SCRE	27
Rule 614(a)-(b), SCRE	13
Rule 701, SCRE	27
Rule 704, SCRE	27

C. Other Authorities

Restatement (Second) Contracts Ch. 7, Introductory Note (1981)	24
Restatement (Second) Contracts § 163 (1981)	24
Administrative Order # 2009-05-22-01	18
Rule 13(a), SCRMC	12-13
SEO Law Firm, Tampa, Fl	29
12 Williston on Contracts	35
FBI Mortgage Report 2006	35
FBI Mortgage Fraud Report 2007	36
FBI Financial Crime Report to the Public 2007	36
Crimes Enforcement Network (FinCEN) Mortgage Loan Fraud Report - 11/2006	36

II. THE PURPOSE AND REASONS FOR CITATIONS OF AUTHORITIES SUPPORTING THE MOTION TO REMAND

1. The purpose and reasons for the Appellant's Citations of Authorities are four-fold. [Note: **Boldness** and/or Underling will be added for emphasis.]

(a) **First**, Citations of Authorities are a mandatory requirement that must be included with any motion or petition filed in an Appellate Court. This is according to the language of Rule 240(c)(2), SCACR. Rule 240(c)(2), SCACR, clearly states in pertinent parts;

"[A]ll motions or petitions filed in an appellate court shall be in writing, shall state the grounds thereof, and shall comply with the requirements of Rule 267. The pages of the motion or petition and all supporting documents shall be consecutively numbered. Each motion or petition shall include the following:

(1) A certificate or affidavit of service reflecting the date of service upon all parties. The original certificate or affidavit of service must be filed with the original motion or petition.

(2) **A memorandum with citation of authorities in support of the motion.**

(3) Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions."

(i) Value Oil Company v Town of Irvington, 377 A 2d 1225 (N.J. Superior Ct Law Div. 1977) "[T]he general rule of construction is that "may" means permissive and "**shall**" means mandatory. Harvey v Essex Cty Freeholder Bd, 30 N.J 381, 391 (1959). Accord, Franklin Estates, Inc v Edison Tp, 142 N.J. Super. 179, 184 (App. Div. 1976)."

(ii) Ratliff v Phillips, 746 SW 2d 405 (Ky. S Ct. 1988) "[B]oth by dictionary definition and legislative enactment the word "**shall**" means mandatory. KRS 446.010 (29). In the common understanding of most individuals, the word "shall" means must and such a view is supported by the dictionary and the statute."

(iii) State v. Foster, 277 S.C 211, 212, 284 S E 2d 780 (1981) ("Taken literally, the word '**shall**' is mandatory.")

(b) **Second**, to take advantage of an Appellate Court procedure and remedy. Rule 240(a), states in pertinent parts; [**Note: Boldness & Underlining** will be added for emphasis.]

"[T]his Rule governs all motions or petitions filed in the appellate court, including but not limited to: motions for extension of time, motions to reinstate, petitions for rehearing, motions to be relieved as counsel or for substitution of counsel, petitions for supersedeas, **motions to remand** or dismiss and petitions for hearing *en banc*."

(c) **Third**, Citations of Authorities support the Appellant's Motion to Remand.

(1) *Thummel v King*, 570 SW 2d 679 (Mo. S. Ct. 1978) "[I]f the point is one for which precedent is appropriate and available, it is the obligation of appellant to cite it if he expects to prevail."

(2) *Battle v State*, 478 P. 2d 1005 (Okla Ct. Crim App. 1970) "[I]t is necessary for counsel for Plaintiff in error not only to assert error, but to support his contentions by both argument and the citations of authorities."

(3) *Ala Moana Boat Owners v State*, 434 P 2d 516 (Ha S Ct 1967) "[W]here arguments in a brief are unsupported by citations of authorities, this court will not ordinarily search out authorities, and will assume that counsel, after diligent search, had been unable to find any supporting authority. *Malstrom v. Kalland*, 62 Wash.2d 732, 384 P.2d 613 (1963); *DeHeer v. Seattle Post-Intelligencer*, 60 Wash.2d 122, 372 P.2d 193 (1962); *Lindsay v. Keimig*, 184 Kan. 89, 334 P.2d 326 (1959); 5 Am.Jur.2d, Appeal and Error, § 700."

(4) *Jones v Wolff*, 887 SW 2d 806 (Mo App. E D. 1994) "[T]he points relied on must state briefly what actions or rulings of the court for which review is sought and wherein and why they are claimed to be erroneous, with citations of authorities thereunder."

(5) *First Sav. Bank v McLean*, 314 S.C 361, 363, 444 S E 2d 513, 514 (1994) (noting that when a party fails to cite supporting authority or when the argument is simply a conclusory statement, the party is deemed to have abandoned the issue on appeal).

(d) **Fourth**, in addition to filed exhibits and affidavits, Citations of Authorities support the Appellant's Statements of Fact; as well as, her contentions relative to the Lower Court's Errors of Law and/or Judgment as to the facts and/or law. The Appellant does not speculate or argue law. The Appellant states

the facts and supports her facts with the appropriate evidentiary basis and/or material/s; be it an exhibit, affidavit, document and/or citation to an authority.

Straeter Distributing v Fry-Wagner Moving, 862 S W 2d 415, 417 (Mo App E D 1993) at 417. “[T]he three components of a point relied on are: a concise statement of the challenged ruling of the trial court; the rule of law the court should have applied; and the evidentiary basis upon which the asserted rule is applicable. Points which do not state what ruling of the trial court is challenged nor provide a proper evidentiary basis, but instead set out abstract statements of law, preserve nothing for appeal. Id.”

III. STATEMENT OF GROUNDS FOR MOTION TO REMAND WITH CITATIONS OF AUTHORITIES

2. Rule 240(c), SCACR also requires a movant or petitioner to state the grounds thereof for his/her/their petition and/or motion to the Appellate Court.

“[A]ll motions or petitions filed in an appellate court shall be in writing, **shall state the grounds thereof**, and shall comply with the requirements of Rule 267.”

3. **Reasons #1 & #2 for Remand:** The Grounds for the Appellant’s Motion to Remand, is to obtain rulings on the issues raised in her pleadings. Without rulings from the Lower Court on the arguments and issues the Appellant raised in her pleadings over the past 6 years, there is essentially nothing for the Appellate Court to review.

(a) From *I'ON, LLC v Town of Mt Pleasant*, 526 S E.2d 716 (2000), “[T]he losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments. E g, *Smith v Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995) (appellate court generally will not address an issue unless the issue was raised to and ruled upon by the trial court); *State v Williams*, 303 S.C. 410, 401 S.E.2d 168 (1991) (same); *Sumter Building & Loan Ass'n v Winn*, 45 S.C. 381, 23 S.E. 29 (1895) (same).”

(b) From the same case; *I'ON, LLC v Town of Mt. Pleasant*, 526 S E.2d 716 (2000), “[I]f the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate

review. E.g., Pelican Bldg Centers of Horry-Georgetown, Inc. v Dutton, 311 S.C. 56, 427 S.E.2d 673 (1993); Hoffman v Powell, 298 S.C. 338, 380 S.E.2d 821 (1989); see also Rules 52(b) and 59(e), SCRCP.

(c) In the same case; I'ON, LLC v Town of Mt Pleasant, 526 S E 2d 716 (2000), "[I]mposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. See Roche v South Carolina Alcoholic Beverage Control Comm'n, 263 S.C. 451, 211 S.E.2d 243 (1975) (purpose of an appeal is to determine whether the trial judge erroneously acted or failed to act and when appellant's contentions are not presented or passed on by the trial judge, such contentions will not be considered on appeal)."

(d) Finally, from the same case; I'ON, LLC v Town of Mt Pleasant, 526 S E 2d 716 (2000) because it is very instructive, detailed in its decision and presents numerous precedents to research for guidance. "[T]he requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case. See Brown v Singletary, 226 S.C. 482, 85 S.E.2d 738 (1955) (party may not neglect or ignore vices in the trial, then expect to assert those vices on appeal in case of disappointment at trial); State v Warren, 207 S.C. 126, 134, 35 S.E.2d 38, 41 (1945) (same)."

4. **Reason #3 for Remand:** There is no rule, statute or procedure the Appellant could have used to compel a Judge to rule on issues. In addition to not being able to compel a judge to rule on issues, research reveals there are many things a Judge or Trial Judge does not have to do. The following are just a few examples out of many.

(a) United States v Joseph G Moretti, Inc, 478 F. 2d 418 (5th Cir 1973) ("..the Judge does not have to involve himself in the sometimes impossible task of writing an impact statement that will satisfy all.")

(b) US v Dixon, 913 F 2d 1305 (8th Cir 1990) ("the trial judge does not have to make an explicit finding of "manifest necessity" or expressly state that particular alternatives were considered and rejected. Arizona v Washington, 434 U.S. at 516-17, 98 S.Ct. at 835-36.)"

(c) State v Ovitt, 878 A 2d 314 (Vt: S Ct 2005) ("[T]he trial judge does not need to articulate the precise weights assigned to the probative value or prejudicial effect of evidence, or specify why one outweighs the other.)

(d) Abrishamian v Barbely, 981 A 2d 797 (Md: Ct. Spl App 2009)

"[W]e presume that a trial judge correctly exercised discretion, knows the law, and performed his or her duties properly. Payton-Henderson v Evans, 180 Md.App. 267, 286, 949 A.2d 654 (2008). A judge does not need to state every consideration or factor, so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion. Id."

5. **Reason #4 for Remand:** Even though, there are many things a Judge does not have to do; there are requirements of law a Judge cannot ignore.

(a) Gee Chee On v Brownell, 253 F 2d 814 (5th Cir 1958) "[T]he Government devotes much space in its brief toward convincing us that a trial judge does not have to believe any witness. That is true only if there is reasonable cause not to believe him, for a court may not arbitrarily reject the testimony of a witness whose testimony appears credible United States v. Johnson, 5 Cir., 1953, 208 F.2d 729, 730; Arnall Mills v Smallwood, 5 Cir., 1933, 68 F.2d 57, 59."

(b) Ariasi v Orient Ins Co, 50 F 2d 548 (9th Cir 1931) "[i]t is a fundamental rule of law that a trial court is not required to accept the testimony of any witness as true, but must weigh the testimony of such witness in connection with all the other evidence in the case and determine the truth, in the absence of all contradictory evidence and any inherent improbability in the testimony, the court cannot arbitrarily reject the testimony of a witness whose testimony appears credible."

(c) State v Johnson, 692 SW 2d 412 (Tenn S Ct 1985) " "[A]s the Eighth Circuit stated in United States v Lincoln, 630 F.2d 1313 (8th Cir.1980), even if the trial judge concludes that "despite the abstract sufficiency of the evidence to sustain the verdict, [that] the evidence preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred, [he] may set aside the verdict, grant a new trial, and submit the issues for determination by another jury." Id. at 1319."

(d) Quick v Donaldson Co, Inc., 90 F 3d 1372 (8th Cir 1996) "[T]he basic inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson, 477 U.S. at 251-52, 106 S.Ct. at 2512. At the summary judgment stage, the court should not weigh the evidence, make credibility determinations, or attempt to determine the truth of the matter. Id. at 249, 106 S.Ct. at 2510. Rather, the court's function is to determine whether a dispute about a material fact is genuine, that is, whether a reasonable jury could return a verdict for the nonmoving party based on the evidence. Id. at 248, 106 S.Ct. at 2510. The evidence of the non-movant is to be believed..., "If reasonable minds could differ as to the import of the evidence," summary judgment is inappropriate. Id. at 250, 106 S.Ct. at 2511."

6. **Reason #5 for Remand:** Even though not specifically stated in South Carolina's Code of Laws, Mortgage Fraud is a state and federal offense. As stated in the "Appellant Objects to Wells Fargo's Motion to Strike", the Appellant must struggle in legal darkness. The Appellant must grope about in ignorance of court procedures and without knowledge of judicial decisions that number into the hundreds of thousands.

7. Therefore, it is neither practical nor reasonable for any Judge or Jury to conclude that the Appellant should possess the knowledge of a practicing trial lawyer that may have taken years to accumulate the experience, the understanding and to master the protocols arguing a case in Court requires. In addition, as previously stated, there are enough precedents that mandate treating pro se litigants with a some degree of respect for their claims and defenses. The following precedents were cited previously.

(a) Erickson v Pardus, 127 S Ct 2197 (2007) "[T]he Court of Appeals' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more pronounced in this particular case because petitioner has been proceeding, from the litigation's outset, without counsel. A document filed *pro se* is "to be liberally construed," Estelle, 429 U.S., at 106, 97 S.Ct. 285, and "a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," *ibid* (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice")."

(b) Balistreri v Pacifica Police Dept, 901 F. 2d 696 (9th Cir 1990) "[T]his court recognizes that it has a duty to ensure that pro se litigants do not lose their right to a hearing on the merits of their claim due to ignorance of technical procedural requirements. "Borzeka v Heckler, 739 F.2d 444, 447 n. 2 (9th Cir.1984) (defective service of complaint by pro se litigant does not warrant dismissal); Garaux v. Pulley, 739 F.2d 437, 439 (9th Cir. 1984) "[D]efendants suggest no reason to treat pro se appellate briefs any less liberally than pro se pleadings."

8. **Reason # 6 for Remand:** The Appellant suffered from nervousness at the hearings. Therefore, her factual live presentations were far from perfect. The Lower Court could have easily remedied the situation by conducting the hearing.

(a) Rule 13(a), SCRMC clearly states in pertinent parts; "... [I]n the

trial of a civil action, in which one or both parties are unrepresented by legal counsel, the court shall question the parties and witnesses in order to assure that all claims and defenses are fully presented.” **This did not happen in the Lower Court.**

(b) Rule 614(a)-(b), SCRE, states the following in pertinent parts.. “[I]n extraordinary circumstances, the court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called. Before calling a court's witness, the court shall afford the parties a hearing on the matter outside the presence of the jury.” “[W]hen required by the interests of justice only, the court may interrogate witnesses.”

(c) Williams v S C Farm Bureau Mutual Ins Co, 251 S.C. 464, 163 S E 2d 212 (1968) “[t]he trial judge, of course, has the right, in his discretion, and in a proper manner, to question witnesses during a trial, in order to elicit the truth.” Fowler v Laney Tank Lines, Inc, 263 S.C. 422, 211 S.E.2d 231 (1975) (“[I]f a trial judge in the exercise of his discretion feels called upon, in the interest of justice, to question witnesses to elicit the truth, he should be cautious to see that such questions are propounded in a fair and impartial manner, and should not express or indicate to the jury the judge's opinion as to the facts of the case or the weight or sufficiency of the evidence.”)

(d) State v Chasteen, 228 S.C 88, 88 S E (2d) 880 (1955) quoting State v Anderson, 85 S.C. 229, 67 S.E. 237, 238. (“[I]t is his duty to see to it that justice be done in every case, if it can be done according to law; and, if he thinks that the attorney for either party, either from inadvertence or any other cause, has failed to ask the witnesses the questions necessary and proper to bring out all the testimony which tends to ascertain the truth of the matter under investigation, we can see no legal objection to his propounding such questions; but, of course, he should do so in a fair and impartial manner and should not by the form or manner of his questions express or indicate to the jury his opinion as to the facts of the case, or as to the weight or sufficiency of the evidence.”)

9. **Reason #7 for Remand:** Even though the Appellant’s live performance fell short, the same cannot be said for her filed pleadings, that are excruciatingly detailed, especially after 2012. It takes time to learn how to present issues to a Court; and since issues must be preserved for Appellate review, this case must be remanded to the Lower Court so that Lower Court can properly rule on the issues.

(a) S C Dep't of Transp v First Carolina Corp. of S.C, 372 S C 295, 301-02, 641 S.E.2d 903, 907 (2007) (holding, to be preserved for appellate

review, an issue must have been: (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity)

(b) Wachovia Bank, N.A v Coffey, 389 S.C. 68, 74 n 1, 698 S.E.2d 244, 247 n 1 (Ct App 2010) (finding appellant's argument on appeal, that respondent was barred from raising affirmative defense of unclean hands, was not preserved where master did not address the procedural issue when he ruled appellant had unclean hands, and appellant failed to raise the matter in a Rule 59(e) motion)

(c) State v Dunbar, 587 S.E.2d 691 (2003) “[I]n order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal. Humbert v State, 345 S.C. 332, 548 S.E.2d 862 (2001). A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground. State v Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct.App.2001).

(d) Elam v South Carolina Dept. of Transp., 602 S.E.2d 772 (2004) “[S]econd, a great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court. E.g., Wilder Corp v Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”)

(e) Rule 210(h), SCACR, clearly states in pertinent parts; “[E]xcept as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.”

IV. ISSUES THE LOWER COURT FAILED TO RULE ON OR ADDRESS THAT NECESSITATES A REMAND TO THE LOWER COURT WITH CITATIONS OF AUTHORITIES AND TO THE RECORD

10. **Reason #8 for Remand:** This case must be remanded to the Lower Court in the First Judicial Circuit so that the Appellant’s issues and arguments can be preserved for Appellate review. The issues include, but are not limited to the following:

(a) **Issue #1 – The Lower Court Failed to Rule on the Material**

Fact that There is No Evidence of a Legally Brokered Loan. This is Error of

Law #1: C.A. Case #2008-38-CP-1024 should have been sent to a Jury. For over 6 years, Wells Fargo has consistently failed to present evidence of a legally brokered loan for which relief can be granted. This cannot be done, because Wells Fargo's 0174072777 mortgage, loan and note were brokered by the unlicensed seller, Thomas Jacobs and not by Golden Gate Mortgage/David Terrell. {See Appendix 14 Exhibits 92, 245, 12 C.F.R. § 1731.2 & § 34-3-110 SC Code of Laws}

(b) **Issue #2 – The Lower Court Failed to Rule on Wells Fargo's**

Failure to Prove How the Appellant Harmed Wells Fargo. This is Error of

Law #2: For more than 6 years, Wells Fargo has consistently failed to prove how the Appellant harmed Wells Fargo. Wells Fargo did not pay the Appellant \$75,000.00, Wells Fargo relied exclusively on documents submitted by the Broker/Golden Mortgage/Inc./David Tertrell...and the Appellant did not send any falsified, forged and altered documents to Wells Fargo. In addition, Wells Fargo was duly notified the documents upon which it relied were falsified, forged and altered. {See Appendix 5 Filed Exhibits 4-64 & Appendix 14 Exhibit 92}

(c) **Issue #3 – The Lower Court Failed to Rule on Wells Fargo's**

Violation of § 37-23-40(1)-(2). This is Error of Law #3:

For over 6 years, the Lower Court failed to rule on Wells Fargo's violation of § 37-23-40(1)-(2) SC Code of Laws that mandates counseling and documentation of counseling and limitations. Home-loans cannot exceed 50% of gross monthly income. {See Appendix 8 Statement of Uncontested Facts, pgs 20-21, filed on May 28, 2014}

(d) **Issue #4 – The Lower Court Failed to Rule on the Massive**

Filing Fraud of Burns & Moise. This is Error of Law #4: For over 3 years, the

Lower Court failed to rule on the Massive Filing Fraud of Elizabeth Scott Moise, James H. Burns and Wells Fargo during the Stay/TRO. Massive, because it lasted for over 2 years – June of 2009 to August of 2011. {See Appendices 16, 17 & 18 Burns & Moise’s filed Case Status Updates from June of 2009 – August 1, 2011 - Exhibits MFF 101- 123 & the Appellant’s Responses - Exhibits – RTFF 101-123}

(e) **Issue #5 – The Lower Failed to Rule on Notary Fraud & The False Certification of Wells Fargo’s Mortgage. This is Error of Law #5:** For over 2 years, the Lower Court failed to rule on the Notary Fraud and False Certification of Wells Fargo’s mortgage by attorney Debra C. Galloway; along with Stephanie Hammond and her violation of 24 C.F.R. Part 35 – Subpart A as closing agent for Wells Fargo. Stephanie Hammond was not in the Appellant’s presence on 12/21/2007. Therefore, she could not have witnessed the Appellant signing any documents or executing a mortgage for Wells Fargo. This was and still is a violation of § 26-1-95 SC Code of Laws in 2007. The law prohibiting false certification is now § 26-1-160 {See Appendix 3 or Statement of the Evidence, pg 46, filed on August 14, 2014 & Appendix 4 Wells Fargo’s Filed Documents - WF00058, 60, 97, 12 C.F.R. § 1731.2 & 18 USC §§ 1001 & 1344}

(f) **Issue #6 – The Lower Court Failed to Rule on the Appellant’s Demand for a Jury Trial. This is Error of Law #6:** For over 6 years, the Lower Court failed to rule on the Appellant’s Demand for a Jury Trial. {See Appendix 1, Exhibit 341 or Demand for a Jury Trial filed on August 15, 2008}

(1) (*Bateman v Rouse*, 596 SE 2d 386 (Ct App 2004) “[T]he trial judge erred in denying Helen's request for a jury trial and compounded that error when he ruled that the denial of a right to a jury trial was not immediately appealable. Because Helen had no opportunity to appeal from the trial judge's ruling prior to com-

mencing the non-jury trial, we hold she did not waive her right to a jury trial. This case presents both legal and equitable issues, and as such, the legal issues are for determination by a jury and the equitable issues are for determination by the court. *Floyd*, 306 S.C. at 380, 412 S.E.2d at 399. If both the legal claims and the equitable claims are to be tried in a single proceeding, the legal issues are to be determined first, and the findings of the jury are binding on the court. *Johnson v South Carolina Nat'l Bank*, 292 S.C. 51, 55, 354 S.E.2d 895, 897 (1987). Therefore, we reverse and remand....”

(2) *Beacon Theatres, Inc v. Westover*, 359 US 500 (1959) “[A]s this Court said in *Scott v. Neely*, 140 U. S. 106, 109-110: "In the Federal courts this [jury] right cannot be dispensed with, except by the assent of the parties entitled to it, nor can it be impaired by any blending with a claim, properly cognizable at law, of a demand for equitable relief in aid of the legal action or during its pendency." This longstanding principle of equity dictates that only under the most imperative circumstances, circumstances which in view of the flexible procedures of the Federal Rules we cannot now anticipate, can the right to a jury trial of legal issues be lost through prior determination of equitable claims.....”

(3) *Airfare, Inc v Greenville Airport Comm*, 153 SE 2d 846 (1967) “[U]nder our Code practice legal and equitable issues and rights may be asserted in the same complaint, and legal and equitable remedies and relief afforded in the same action. In such event the legal issues are for determination by the jury, and the equitable issues for the judge sitting as a chancellor. The legal and equitable issues should be separated and each tried by the appropriate branch of the court. *Standard Warehouse Co v A C L R. Co*, 222 S.C. 93, 71 S. E. (2d) 893; *Winter v. U S F & G Co*, 240 S.C. 561, 126 S.E. (2d) 724. An action for damages for a breach of contract is an action at law and either party has the right of trial by jury. *Givens v North Augusta Electric & Improvement Co*, 91 S.C. 417, 74 S.E. 1067.....”

(4) *Rule 38(a), SCRPC* clearly states in pertinent parts; “[T]he right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.”

(5) *U.S. Const – Amend VII*: “In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.”

(g) **Issue #7 – The Lower Court Failed to Act When Attorneys Misrepresented the Appellant’s Defensive Pleadings. This is Error of Law #7 and another Fraud upon the Court:** In 2013, the Lower Court failed to act when Wells Fargo’s attorneys Elizabeth Scott Moise and James H. Burns misrepresented facts to the Lower Court by changing the Appellant’s defensive pleading from **Defrauding** and **Swindling** with falsified documents to **“Fraud”**. The Appellant’s primary Defense was never fraud. It was and still is **Defrauding** or **Swindling** with falsified documents. {See Appendix 2, Exhibit 297 or the Appellant’s Answer to Complaint, pg 1, that was filed on July 18, 2008}

(h) **Issue #8 – The Lower Court Failed to Rule on Attorneys Violation of Wells Fargo’s Compliance Agreement. This is Error of Law #8:** For over 6 years, the Lower Court failed to address or rule on Nelson Mullins Riley & Scarborough, LLP’s violation of Wells Fargo’s Compliance Agreement. There is no evidence in the Court’s records verifying Burns, Moise, Calub or Anzelmo notified Wells Fargo that the documents upon it which Wells Fargo relied are falsified, forged and altered. Therefore, Wells Fargo’s mortgage, loan and note do not conform and represent an illegal loan transaction that is unacceptable to the marketplace. {See Appendix 4, WF00117 - The is the same WF00117 that was filed in October of 2008 by Attorneys Moise and Burns}

(i) **Issue #9 – The Lower Court Failed to Rule on the Appellant’s Rule 41(b) Motion to Dismiss with Prejudice. This is Error of Law #9:** When Wells Fargo and Nelson Mullins Riley & Scarborough, LLP failed to Substantial-ly Comply with Administrative Order #2009-05-22-01, the Appellant filed a Rule 41(b), SCRPC Motion to Dismiss on August 15, 2011 that was never ruled on.

Rule 41(b), SCRCP, clearly states in pertinent parts; “[F]or failure of the plaintiff to prosecute or to comply with these rules or **any order of court**, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for failure to join a party under Rule 19, operates as an adjudication upon the merits.”

(j) **Issue #10 – The Lower Court Failed to Rule on the Appellant’s**

Affirmative Defense that Wells Fargo’s Violated 15 U.S.C. § 1681n(a), This is

Error of Law #10: There is no authorization for the credit report Wells Fargo used to approve loan #0174072777 This offense represents “**Unclean Hands**”.

15 USC § 1681n(a) clearly states in pertinent parts.... “[A]ny person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of— (1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or (B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater; (2) such amount of punitive damages as the court may allow; and (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney’s fees as determined by the court...”

(k) **Issue #11 – The Lower Court Failed to Rule on the Appellant’s**

Counterclaim that Wells Fargo Violated SCUTPA. This is Error of Law

#11: Wells Fargo’s attempt to collect money on a Note that is based on falsified,

forged and alter documents is a SCUTPA violation that can impact the public.

(1) §39-5-20(a)(b)-SC Code of Laws, clearly states in pertinent parts.. “[a] Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. (b) It is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to Section 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.”

(2) Johnson v Collins Entm't Co Inc, 349 S.C 613, 636, 564 S E 2d 653, 665 (2002). “[A]n act is ‘unfair’ when it is offensive to public policy or when it is immoral, unethical, or oppressive; a practice is ‘deceptive’ when it has a tendency to deceive.”

(l) **Issue #12 – The Lower Court Failed to Rule on the Appellant’s**

Counterclaims and Affirmative Defenses in Notarized, Sworn to and/or

Verified Pleadings. This is Error of Law #12: The Appellant does not feel it is

necessary to present every Counterclaim and Affirmative Defense that was not ruled on by Lower Court in this memorandum. The Appellant’s purpose is a

Remand so that all the issues relative to this action can be presented and ruled

upon. This includes the Appellant’s Judicial and Evidentiary Admissions that

should have been deemed admitted since 2011 and definitely by 2013.

(1) Winnetka Bank v. Mandas, 202 Ill App 3d 373, 397 (1st Dist 1990). “[A]llegations contained in verified pleadings are deemed to be admissions of fact.”

(2) 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 verified pleading that are not product of mistake or inadvertence become binding judicial admissions)

(3) 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). “[O]nce a pleading has been verified, facts contained within it are judicial admissions that remain part of the record and are admissible against the pleading party, even if the pleading is subsequently amended. Id.”

(4) Alejandre v Deutsche Bank Trust Co. Ams., 44 So 3d 1288

289 (Fla. 4th DCA 2010) (quoting *Cufferi v. Royal Palm Dev. Co.*, 516 So.2d 983, 984 (Fla. 4th DCA 1987)). “[W]hen a party raises affirmative defenses, ‘a summary judgment should not be granted where there are issues of fact raised by the affirmative defenses which have not been effectively factually challenged and refuted.’”

(5) *United States v 416 81 Acres of Land*, 514 F 2d 627, 631 (7th Cir 1975) “[A]ffirmative defenses will not be struck if they are sufficient as a matter of law or if they present a question of law or fact.”, *FDIC v Niblo*, 821 F. Supp. 441, 449 (N.D. Tex. 1993)

(6) *Cufferi v Royal Palm Dev. Co.*, 516 So 2d 983, 984 (Fla 4th DCA 1987) “[W]hen a party raises affirmative defenses, “[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.” “[T]hus, “[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, NA*, 390 So. 2d 126, 127 (Fla. 4th DCA 1980)). “[I]n such instances, “[t]he burden is on the plaintiff, as the moving party, to demonstrate that the defendant could not prevail.” Id.

(7) *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.)

(8) *Florida Dept of Agric. v. Go Bungee, Inc.*, 678 So 2d 920, 921 (Fla 5th DCA 1996), citing *Wilson v Pruette*, 422 So.2d 351, 352 (Fla. 2d DCA 1982) “[O]nce an affirmative defense is raised, the Plaintiff has the burden of either disproving it or establishing the legal insufficiency of the affirmative defense.”

(9) *Burns v Equilease Corp.*, 357 So.2d 786, 787 (Fla 3d DCA 1978) “[A]ffirmative defenses are subject to the same pleading rules as the complaint.”

(10) *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).

V. ADDITIONAL REASONS WHY THIS CASE MUST BE REMANDED TO THE LOWER COURT WITH CITATIONS OF AUTHORITIES AND TO THE RECORD

11. **Reason #9 for Remand & Error of Fact or Law #13:** In addition to failing to rule on key aspects of the Appellant’s defense, the Lower Court and the Plaintiff’s also failed to acknowledge or accept the Appellant’s Offer of Proof. {See Appendix 17 RTFF Exhibits 101, pg 8, 102, pg 7, 103, pg 7, 104, pg 7 & Rule 103(a)(1)-(2), SCRE}

(a) *Rule 103(a)(1)-(2), SCRE* clearly states in pertinent parts; “[E]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) **Objection.** In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) **Offer of Proof.** In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer **or were apparent from the context.**

12. **Reason #10 for Remand & Error of Fact or Law #14:** The Lower Court also ignored the Appellant’s request for Judicial Notice of Adjudicative Facts {See Appendix 7, pg 1 of 35} This is pursuant to Rule 201, SCRE that clearly states in pertinent parts;

(a) “[T]his rule governs only judicial notice of adjudicative facts.

(b) A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) A court may take judicial notice, whether requested or not.

(d) **[Adjudicative Fact]:** A court shall take judicial notice if requested by a party and supplied with the necessary information. [Note: **Shall means mandatory**] *State v Foster, 277 S C 211, 212, 284 S E.2d 780, 780 (1981)* (“Taken literally, the word ‘shall’ is mandatory.”)

(e) A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Judicial notice may be taken at any stage of the proceeding....”

(1) “[A] trial court may take judicial notice of a fact only if sufficient notoriety attaches to the fact involved as to make it proper to assume its existence without proof.” *Moss v Aetna Life Ins Co*, 267 S.C. 370, 228 S.E.2d 108 (1976). “[A] fact is not subject to judicial notice unless the fact is either of such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability.” *Masters v Rodgers Dev. Group*, 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984).

(2) *Freeman v McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984) “[A] court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records. 31 C.J.S., Evidence, Section 50(1), p. 1018-1021.”

13. **Reason #11 for Remand & Error of Law #15:** The Lower Court also failed to apply the following Federal and State laws and codes to the facts in this case and rule accordingly thereon.

(a) South Carolina Code of Laws

SECTION 16-13-10(A)(1)-(4) – Forgery

SECTION 26-1-160 (26-1-95 in 2007) - False Certification

SECTION 26-3-40(1) – Notaries Public & Acknowledgments

SECTION 26-3-60(1)-(3) – Notaries Public & Acknowledgments

SECTION 30-5-30(A)(2)-(C) – Public Records & Recording

SECTION 30-5-40(1)(a)(b) - Public Records & Recording

SECTION 34-3-110 – Crimes Against Financial Institutions

SECTION 36-3-305(a)(1)(ii-iii) - Defense to Contracts

SECTION 37-5-108 – Unconscionability

SECTION 37-23-40(1)(2) – High-Cost Consumer Home Loans

SECTION 39-5-20(a)(b) – Unfair Trade Practices

SECTION 40-58-20(40) – Mortgage Brokering

SECTION 40-58-30(A)(B) – Mortgage Brokering

SECTION 40-58-50(E)(1) - Mortgage Brokering

SECTION 40-58-70(1)-(3) – Mortgage Brokering

S. C. CONST. - ART. I - § 14 - Trial by Jury; Witnesses; Defense

(b) United States Constitution, Codes And/Or Regulations

12 C.F.R. § 1731.2 – Definition of Mortgage Fraud

15 U.S.C. § 1681n(a) – Unauthorized use of Credit Reports

18 U.S.C. § 1001(a)(1)-(3) – Fraudulent Representations

18 U.S.C. § 1344 – Defrauding a Financial Institution

18 U.S.C. § 1346 – Right to Honest Services

24 C.F.R. Part 35 – Subpart A – Mandatory Federal Disclosure
Requirements for Pre 1978
Homes

U.S. Const. Amend. VII - Trial by Jury

14. **Reason #12 for Remand & Error of Law #16:** The Lower Court failed to take advantage of Restatement guidelines for adjudicating the Appellant’s case, such as the following:

(a) If the “Fraud” is in the factum, done during the execution of the contract, then the contract is void *ab initio*. The signatory is not bound, because the contract or agreement would not have been entered into if all the facts were known. If the “Fraud” is in the inducement, then the contract is not void, but is voidable by the innocent party (the Defendant), because what was intended to be executed was not in fact executed. *Restatement, Second of Contracts § 167* (“[a] misrepresentation induces a party’s manifestation of assent if it substantially contributes to his decision to manifest assent.”)

(b) “[a] misrepresentation may make a contract voidable if it is either fraudulent or material.” *Restatement (Second) Contracts ch 7, Introductory Note (1981)* “[T]he question of whether a party was fraudulently induced into a contract may go to the formation of the contract. A party that is misled as to the essential terms of a contract does not technically agree to the contract, as no assent to its terms has been formulated due to the misrepresentation. In this situation, it is irrelevant whether the misrepresentation was made by the other party to the contract or a third person. *See Restatement (Second) Contracts § 163 (1981)* (“It is immaterial under the rule stated in this Section whether the misrepresentation is made by a party to the transaction or by a third person.”).

15. **Reason #13 for Remand & Error of Law #17:** The Lower Court ignored and participated in Nelson Mullins Riley & Scarborough, LLP’s violation of Rules 30(b)(2), 32(a)(4) & 32(a)(5), SCRCP. {See Appendix 8, Statement of the Evidence, pgs 60-61 & Appendix 1, Exhibit 326}

(a) Rule 30(b)(2), SCRCP, clearly states the following in pertinent parts; “[I]f a party shows that when he was served with notice under this subdivision (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.” {Re: Appendix 1, Exhibit 326, ¶ 2, pg 2 to Verify Court’s Participation}

(b) Rule 32(a)(4), SCRCP, clearly states in pertinent parts.. “[I]f only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.” [This was not done by the Lower Court.]

(c) Rule 32(a)(5), SCRCP, states the following in pertinent parts; “[A]t least 1 day prior to offering excerpts from a deposition in the case in chief counsel, unless otherwise ordered by the trial judge, shall furnish to the trial judge and, at the same time and by the same means, furnish to all opposing counsel the excerpts from depositions (by page and line number) and a list of deposition exhibits which counsel expects to introduce in the case in chief at trial. When the deposition excerpt is offered at trial counsel for the adverse party shall furnish to the trial judge and, at the same time and by the same means, furnish to all opposing counsel any objections (by page and line number) to opposing counsel's deposition excerpts and any additional excerpts from the depositions (by page and line number) which counsel expects to be read pursuant to SCRCP (a)(4), as well as a list of deposition exhibits to be used. With reasonable notice to the trial judge and all counsel, other excerpts may be read.” [This also was not done by the Lower Court.]

16. **Reason #14 for Remand & Error of Law #18:** The Lower Court failed to follow the mandatory guidelines for Summary Judgment as established by and pursuant to Rule 56(c), SCRCP. The Lower Court Judge’s Partial Summary Judgment Order was based entirely on the Appellant’s *Answer* and the misrepresented facts and false statements in attorney Elizabeth Scott Moise’s drafted Court Order. {See Appendix 1, Exhibits 326, pg 1, 329 pgs 1-4 & 6 & Appendix 3, pgs 102-103}

Rule 56(c), SCRCP clearly states in pertinent parts; “[T]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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.”

17. **Reason #15 for Remand & Error of Law #19:** The Lower Court failed to follow South Carolina's long standing **Policies of Law**, relative to Wells Fargo's **Massive Filing Fraud** during the Stay/TRO, along with attorneys Elizabeth Scott Moise and James H. Burns. Forgery {Appendix 4, WF00029}, Falsifying Income {WF00034}; Document Fraud {WF00035}, Unauthorized use of a Credit Report {WF00065-73}, Violation of South Carolina Code of Laws {§§ 37-23-40(1)(2) & 39-5-20(a)(b)} and another Violation of a Federal Law, 18 U.S.C. § 1346 – Re: Right to Honest Services.

(a) “[A] contract which contravenes public policy is void, and an action cannot be maintained for either its breach or for inducing its breach.”

(b) “[a]n illegal contract has always been unenforceable ... South Carolina courts will not enforce a contract which is violative of public policy, statutory law or provisions of the Constitution.”

(c) “[N]o person is permitted to acquire a right of action from an unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act. This rule applies at both law and in equity and whether the cause of action is in contract or in tort.”

18. **Reason #16 for Remand & Error of Law #20:** The Lower Court Judge failed to rule on the **False Accusations** of Wells Fargo's employees, most notably Janet Frotscher {Appendix 4, WF00125} and Wells Fargo's attorneys James H. Burns, Elizabeth Scott Moise and Brian A. Calub. {See Appendix 1, Exhibits 228, pg 1, 331, pg 1, 332, pg 1, Appendix 6, Exhibit 229, pg 15 and Appendix 16, MFF - Exhibit 101} **False Accusations by attorneys are grounds for sanctions. False Accusations by Wells Fargo are grounds for Defamation. Verifiable False Accusations by Attorneys and the Plaintiff are grounds for Dismissal with Prejudice and Punitive Damages,** especially, after all the facts were known by Wells Fargo since February of 2008.

19. **Reason #17 for Remand and Error of Law #21:** The Lower Court Judge also did not rule on any of the following for over 6 years. {Appendix 4, WF00001-134}

- (a) The Seller, Broker and Appraiser's Mortgage and/or Bank Fraud after all the facts were known,
- (b) The Seller, Broker, Appraiser and Wells Fargo's Document Fraud, after all the facts were known.
- (c) The Appraiser's Forgery by Name Substitution and his Appraisal Fraud after all the facts were known.

20. **Reason #18 for Remand and Error of Law #22:** The Lower Court's refusal to allow eyewitness testimony not only was prejudicial to the Appellant; this refusal is a Due Process violation of S. C.'s Const. - Article I - Section 14, a violation of South Carolina's Rules of Civil Procedure and a violation of the Rules of Evidence.

(a) **SOUTH CAROLINA CONSTITUTION - ARTICLE 1 - § 14:** clearly states in pertinent parts.. "[T]he right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; **to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense** by himself or by his counsel or by both."

(b) *Rule 43(a), SCRPC* – Clearly states in pertinent parts.. "In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules. All evidence shall be admitted which is admissible under the statutes or rules of evidence heretofore applied in the courts of this State. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner."

(c) *Rule 601(a), SCRE* clearly states... "Every person is competent to be a witness except as otherwise provided by statute or these rules."

(d) *Rule 701, SCRE* firmly states... "If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training."

(e) *Rule 704, SCRE* emphatically states,... "Testimony in the form of

an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.”

21. **Reason #19 to Remand and Error of Law #23:** In addition to the Lower Court Judge allowing a violation of the Rules of Civil Procedure and participating in the violation; i.e. Rule 30(b)(2), SCRCF, Appendix 1, Exhibit 326, ¶ 2, pg 2, i.e., the **Deposition Scam** of Nelson Mullins Riley & Scarborough, LLP, and signing Court Orders that are replete with misrepresented facts {Appendix 1, Exhibit 329, pgs 1-4 and 6}, the Lower Court Judge also allowed a violation of Rule 26(a)(i)(ii), SCRCF and participated in the violation by signing a Court Order to compel discovery of documents Wells Fargo and Nelson Mullins Riley & Scarborough, LLP already had, WF00001-137 and for oral depositions without an attorney that cannot be used against a litigant, rather than using written questions that can be used. {See Appendix 10, Indices vii – xi, Appendix 12, Indices v-viii to review & Appendix 1, Exhibit 255, pg 1 for Verification}

(a) Rule 26(a)(1)(ii), SCRCF, clearly states in pertinent parts; “[T]he frequency or intent of use of discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is --- duplicative, or is obtainable from some other source that is more convenient---; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought;”

(b) Rule 31(a) SCRCF, clearly states in pertinent parts; “[A] party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken.”

22. **Reason #20 to Remand & Error of Law #24:** For over 4 years, the Lower Court failed to investigate the Appellant’s Statements of Facts relative to Wells Fargo’s and Nelson Mullins Riley & Scarborough, LLP’s **Fraud upon the Court** that occurred during the Stay/TRO, i.e., the **Massive Filing Fraud** {See Appendices 16-18} and on 03/

13/2013 participated in attorneys Burns and Moise's **Fraud upon the Court** that misrepresented the Appellant's **Defrauding Defense** as *Fraud*. {Appendix 1, Ex. 326, pg 2}

(a) "Fraud upon the court is committed when a representative of the court – mediators, evaluators, administrators, special appointees, lawyers, judges, referees or guardian ad litem, fraudulently present facts to the court that interfere with a just and equitable decision making process. This is an extremely serious crime, and so in dire opposition to the definition of justice that this crime is not subject to any statute of limitations." {*SEO Law Firm, Tampa, Fl*}

(b) *Answer to Complaint, ¶ 1, pg 1, filed on July 18, 2008* "[T]hat this action for the foreclosure of a mortgage upon certain real estate in Orangeburg County, South Carolina is an attempt by the Plaintiff to perpetuate a Predatory Lending Scheme in which a falsified appraisal was used to inflate the value of the real estate identified in this complaint I have refused to participate in this scheme. Therefore, the Plaintiff has filed a foreclosure proceeding in an attempt to coerce or force me to participate in this scheme by accepting terms that will only extend the scheme and in due course **defraud** or **swindle** me out of \$75,000.00 plus interest one month at a time, one payment at a time. Either I accept the terms or lose my home by foreclosure."

23. **Reason #21 to Remand & Error of Law #25:** The Lower Court Judge relied exclusively on the misrepresented facts and false statements of Wells Fargo's attorneys, most notably, Elizabeth Scott Moise, James H. Burns and Brian A. Calub {Appendix 1, Exhibits 228, ¶ 3, pg 1, 331, ¶ 2, pg 1 & 332, ¶¶ 1-2, pg 1} and Wells Fargo's employees, most notably Janet Frotscher. {Appendix 4, WF00120 & WF00125}

(a) *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)*)

(b) *Regions Bank v Schmuck, 354 S.C. 648, 672, 582 S.E.2d 432, 444-45 (Ct App 2003)*. "[T]he right to rely must be determined in light of the plaintiff's duty to use reasonable prudence and diligence under the circumstances in identifying the truth with respect to the representations made to him." *Id.* at 672, 582 S.E.2d at 445. "[A] party may not rely upon a misstatement of fact when the truth is easily within his reach." *King v Oxford, 282 S.C. 307, 312, 318 S.E.2d 125, 128 (Ct. App. 1984)*.

(c) *Synanon Found, Inc, v. Bernstein*, 503 A 2d 1254 (D C.1986)
(attorney subornation of perjury and false statements to trial court constitute fraud upon the court)

24. **Reason #22 to Remand:** Considering the Errors of Law and failures of the Lower Court in this litigation, a Remand would give the Lower Court an opportunity to correct its errors.

25. **Reason #23 to Remand:** Remanding can prevent a **Manifest Injustice**, a **Miscarriage of Justice** and an **Egregious Error of Law**.

(a) *Pacific Ins Co v American Nat Fire Ins Co*, 148 F 3d 396 (4th Cir 1998) “[I]n its opinion, the district court noted, first, that one of the grounds on which a Rule 59(e) motion could be granted was to correct a clear error of law or to prevent a manifest injustice. The district court then held that it had made such a clear error of law, one which would result in manifest injustice, when it considered and decided the applicability of FELA to Womack's claim notwithstanding the judgment already entered in Pacific's favor in September 1996. The district court noted that the only motion before the court at the time it decided to rule on the FELA issue was Pacific's motion to amend the judgment to include a monetary award. The district court then held that it should not have considered and decided the applicability of FELA to the Underlying Action because it did not have before it any pleading or motion upon which relief for American National could have been granted.”

(b) *Sojak v Hudson Waterways Corp*, 590 F 2d 53 (2nd Cir 1978) “[W]here a jury's verdict is wholly without legal support, we will order a new trial in order to prevent a manifest injustice. See *Oliveras v. American Export Isbrandtsen Lines, Inc.*, supra, 431 F.2d at 817. We therefore remand the case for a new trial on the merits of the unseaworthiness claim.”

VI. STATEMENTS OF FACT THAT HAVE NEVER BEEN REFUTED OR DENIED THAT SUPPORT A REMAND WITH CITATIONS TO THE RECORD AND OF AUTHORITIES

26. **Reason #24 to Remand:** The following Statements of Fact have never been refuted, contested or denied by Wells Fargo, the Seller, the Broker, the Appraiser or the Lower Court. The Appellant's Statement of Fact also support her **Motion to Remand**.

(a) **From the Lower Court's Filed Orders for Over 3-6 Years**

(1) The Appellant never waived her right to a Jury Trial.

(2) The Appellant's Demand for a Jury Trial was never ruled on by the Lower Court.

(3) The Appellant's Rule 41(b) Motion was never ruled on by the Lower Court.

(b) The Plaintiff, Wells Fargo Bank, N.A. for Over 6 Years

(1) Wells Fargo has never refuted or denied they were not notified on December 22, 2007 that their loan was mired in fraud, deceit and deception. {See Appendix 14 Exhibit 92}

(2) Kathryn R. Perkinson {Appendix 4, WF00042} has never refuted or denied she advised the Appellant to work things out with the Seller and if that could not be done to send a request to cancel the loan to Des Moines, Iowa on December 24, 2007. {See Appendix 5 Exhibits 1 & 2}

(3) Wells Fargo has never refuted or denied they were notified on January 14, 2008, the Appraisal and Satisfaction Completion Certificate were falsified. {See Appendix 14, Exhibit 379, pg 3}

(4) Wells Fargo has never refuted or denied they were notified on February 25, 2008 the loan was brokered by Thomas Jacobs and not Golden Gate Mortgage. {See Appendix 14 Exhibits 245 & 253}

(5) Wells Fargo has never refuted or denied they were notified by phone in November of 2008, the credit report used for loan #0174072777 was not authorized. {See Appendix 14 Exhibit 378}

(6) Janet Frotscher has not presented any evidence in over 6 years that she was at 423 Bayne Street and witnessed the Appellant show invoices to the Appraiser - Jim H. Austin, III. {See Appendix 4, WF00125}

(7) Ben Windust has not presented any evidence in over 4 years to verify his statement the Appellant's loan, note and mortgage could not be modified because of another lien on 423 Bayne Street. {See Appendix 6, Exhibit 198}

(8) Wells Fargo has never refuted or denied, the Seller's sales contract was altered and initialed at Wells Fargo Home Mortgage {See Appendix 4, WF00029 and Appendix 6, Exhibit 141}

(9) Wells Fargo has not presented any evidence in over 6 years to validate or prove Golden Gate Mortgage /Inc./ David Terrell actually brokered loan 0174072777. {See Court's Records}

(10) Elizabeth S. Hodgson, has not presented any documentation in over 6 years that she is familiar with the Appellant's loan. {See Appendix 14, Exhibits 235 & 266}

(11) Amanda Weatherly, has not presented any documentation

in over 2 years that she is familiar with the Appellant's loan. {See {See Appendix 14, Exhibits 253 & 343}}

(12) Wells Fargo has not presented any evidence in over 6 years that has refuted or denied any Statement of Fact in the Appellant's filed pleadings from 2008 to the present.

(c) Wells Fargo's Attorneys, Burns, Moise & Calub

(1) There are no statements in the Court's Records from attorney James H. Burns that refutes or denies the Appellant's Statement of Fact that he misstated and misrepresented facts in his filed arguments. {Review Court's Records}

(2) There are no statements in the Court's Records from attorney Elizabeth Scott Moise that refutes or denies the Appellant's Statement of Fact that she misrepresented and misstated facts in her filed arguments. {Review Court's Records}

(3) There are no statements in the Court's Records from attorney Brian A. Calub that refutes or denies the Appellant's Statement of Fact that he misstated and misrepresented facts in his filed arguments. {Review Court's Records}

(d) The Seller, Broker & Appraiser for Over 6 Years

(1) There are no statements or documents in the Court's Records from the Seller - Thomas Jacobs that refutes or denies the Appellant's Statement of Facts that he brokered loan 0174072777, the Appraisals are falsified, he altered the Contract of Sale after signing and he misled the Appellant into believing she was cancelling a \$75,000.00 mortgage loan in exchange for a mortgage loan at a much lower price. **The Seller had no intention of lowering the price of 423 Bayne Street.** {See Appendix 4 WF000 92- 96 & WF00107-112}

(2) There are no statements in the Court's Records from the Broker – David Terrell that refutes or denies the Appellant's Statement of Facts that he had nothing to do with the mortgage loan, he submitted the falsified, forged and altered paperwork of Thomas Jacobs and Jim H. Austin, III, with full knowledge Appraisal 7-59 was not ordered for the Appellant and he committed his own document fraud. He was not at 423 Bayne on 11/26/2007 and his submitted paperwork is typed and not done by hand. {See Appendix 4 WF00030-33, 64, 66-74, 80-87 & 89 & Appendix 3, Statement of the Evidence, Exhibit 49, pgs 23-25}

(3) There are no statements in the Court's Records from the Appraiser – Jim H. Austin, III, that refutes or denies the Appellant's Statements of Fact that he never inspected the property on

September 14, 2007 {WF00009 & 22}, he never appraised 423 Bayne Street on October, 7th, 8th, or 9th {WF00008 & 21}, he engaged in Forgery by Name Substitution {WF00001-26}, he falsified the value of 423 Bayne Street {WF00001-26}, and he committed Appraisal Fraud and Document Fraud by misrepresenting the property to potential buyers or lenders. {18 USC § 1001}

(e) The Player Law Firm, Stephanie Hammond & Debra C. Galloway for Over 6 Years

(1) There are no statements in the Court's Records from attorney Debra C. Galloway that refutes or denies the Appellant's Statements of Fact that she knowingly violated 24 C.F.R. Part 35 – Subpart A , §§ 26-1-95/160, 26-3-40(1), 26-3-60(1)-(3), 30-5-30(A)(2)-(C) and 30-5-40(1)(a)-(b) SC Code of Laws and she knowingly falsely certified Wells Fargo mortgage because Stephanie Hammond was not in the closing room with the Appellant and Debra C. Galloway on 12/21/2007. {See Appendix 4, WF00058, 60 & 97, Appendix 5, Exhibit 69 & Appendix 14 Exhibit 378}

(2) There are no statements in the Court's Records from Stephanie Hammond that refutes or denies the Appellant's Statement of Fact that she participated in false certification of Wells Fargo's mortgage because she was not in the closing room with attorney Galloway and the Appellant on 12/21/2007. {See Appendix 4, WF00058, 60 & 97 and Appendix 14 Exhibit 378}

(f) Statements of Fact Relative to the Appellant that have never been refuted, denied or proven false that include but are not limited to:

(1) The Appellant did not broker the loan. Thomas Jacobs did that. {See Appendix 14, Exhibit 245}

(2) The Appellant did not appraise the property. Jim H. Austin, III {See Appendix 4 WF00078-79} misrepresented and omitted facts about that. {See Appendix 4 WF00001-26}

(3) The Appellant did not send Wells Fargo any documents with fraudulent representations. The Seller, Broker, the Appraiser and the Closing Agent did that. {See Appendix 4 WF00001-33, 58, 60, 64, 74, 80-87, 90-97 & 107-112}

(4) Wells Fargo paid the Seller \$75,000.00... not the Appellant. {See Appendix 4, WF00088}

(5) Wells Fargo did not call the Appellant or communicated with the Appellant prior to or after 12/21/2007 to inquire about its 0174072777 mortgage loan or note. {See Appendix 14 Exhibit 92}

(6) Wells Fargo has presented no evidence to refute or deny the Appellant's Statements of Facts that David Terrell has never seen

her, know her, or corresponded with her either in person, by mail or by any authorized representative. Then how did he obtain the loan paperwork, if Thomas Jacobs – the unlicensed Seller did not give it to him or submitted it himself as Golden Gate Mortgage?

(7) Wells Fargo relied on the representations of the Broker, Seller, the Appraiser, the Player Law Firm and its own employees. Wells Fargo did not rely on any representations from the Appellant. Even the signed documents in Appendix 4, WF00033-57, were her attempt to cancel mortgage loan 0174072777, and Wells Fargo has been continuously notified about Mortgage Fraud.

(8) Wells Fargo and Janet Frotscher's Executive Resolution Team have not provided any evidence that refutes or disproves the documents supporting Wells Fargo's loan, note and mortgage are falsified, forged and altered. {Review the Court's Records}

(9) After February 21, 2008 and prior to June 26, 2008, Wells Fargo has not and did not provide any evidence that appropriate actions were taken to investigate allegations of suspected "Fraud" or initiated an onsite investigation to inspect 423 Bayne Street after Wells Fargo discovered its supporting documents did not belong to the Appellant, were never ordered for the Appellant and Janet Frotscher misrepresented the facts and the material facts after they were known. {See Appendix 4 WF00120 & WF00125}

(10) Janet Frotscher admitted the "Value" of the Note and Mortgage were taken from the appraisal ordered by the Broker. If the appraised value is falsified, the mortgage value is falsified and the note is unenforceable because it is also based on a falsified value. {See Appendix 4 WF00120}

(11) If documents Wells Fargo relied upon to make decisions cannot be verified, validated or substantiated and are filled with lies, half truths, misrepresentation of material facts, omissions and/or misleading information, Wells Fargo's acceptance and reliance upon falsified documents after all the facts are known is to Wells Fargo's detriment. The Appellant has no liability.

(12) Wells Fargo is justified in seeking relief from the individual(s) that sent them false and misleading documents and/or misrepresented material matters and/or material facts upon which Wells Fargo justifiably relied, i.e., the Appraiser, Broker, Seller, the Player Law Firm, Wells Fargo's Executive Resolution Team, Hired Lawyers, and Employees...and not the Appellant.

(13) Based on Wells Fargo's filed documents, Wells Fargo's loan, note and mortgage were an illegal transaction on December 04, 2007. {See Appendix 4 WF00030-33 & 65}

(14) The Appellant is not responsible for Well Fargo's errors in

judgment or bad decisions. Wells Fargo should have filed lawsuits against the Broker, the Seller, the Appraiser, the Player Law Firm, its Hired Lawyers and its Own Employees at Wells Fargo Home Mortgage rather than maliciously persecute the Appellant. According to Janet Frotscher {See Appendix 4 WF00125} Wells Fargo did not base its loan, note and mortgage on any supporting documents from the Appellant.

(15) If Wells Fargo knowingly accepted a lie, rather than truth; or knowingly accepted falsified documents to substantiate value, rather than ones that can be verified, then Wells Fargo does so to its detriment. Wells Fargo is barred from receiving any relief in any court of competent jurisdiction due to its own negligence.

(16) The Appellant presented the Court sufficient credible evidence to prove Wells Fargo knowingly accepted and used a falsified appraisals #7-59 to establish the "Value" of its note, loan and mortgage. It is immaterial that Wells Fargo claims it did not know they were falsified, the fact remains that they are falsified and the Appellant did not send them to Wells Fargo. After January 14, 2008, Wells Fargo knew they were falsified and had the documented evidence of falsification by February 29, 2008.

(17) Should Wells Fargo defend the practice of accepting and using falsified documents to support its mortgage backed securities, Wells Fargo (being a bank) has the potential to defraud millions of people. It is the duty of the Courts to prevent, not aid and abet the use of falsified documents to support securities.

(18) Even though the Appellant's signature on the overwhelming majority of Wells Fargo's supporting documents are forgeries, the Appellant's signature does not make Wells Fargo's fraudulent note and mortgage any less fraudulent or exempt it from the FBI's designation that mortgage fraud is illegal and using falsified documents and inflated appraisals to support a mortgage and note's value is illegal. {Review 12 C.F.R. § 1731.2 & § 34-3-110}

(a) "[W]here a person is fraudulently induced to sign or endorse a bill or note in the reasonable belief that he is signing something else, he cannot really be said to have made or indorsed the bill or note; hence the ancient plea of *non est factum* is applicable. He is in effect stating that this is not his contract; in fact, it is not a contract at all." 12 Williston on Contracts § 1488, at 333.

(b) *FBI Mortgage Report 2006* "[E]ach Mortgage Fraud scheme contains some type of 'material misstatement, misrepresentation, or omission relating to the property or potential mortgage relied on by an underwriter or lender to fund, purchase or insure a loan.'"

(c) *FBI 2007 Mortgage Fraud Report*. “[M]ortgage Fraud is defined as the intentional misstatement, misrepresentation, or omission by an applicant or other interested parties, relied on by a lender or underwriter to provide funding for, to purchase, or to insure a mortgage loan.”

(d) *FBI Financial Crime Report to the Public 2007* In pertinent parts; “[F]raud for Profit is sometimes referred to as "Industry Insider Fraud" and the motive is to revolve equity, falsely inflate the value of the property, or issue loans based on fictitious properties. Based on existing investigations and Mortgage Fraud reporting, 80 percent of all reported fraud losses involve collaboration or collusion by.... insiders.”

(e) *Crimes Enforcement Network (FinCEN) Mortgage Loan Fraud Report - 11/2006* In pertinent parts; “[F]raud for profit is often committed with the **Complicity** of industry insiders such as mortgage brokers, real estate agents, property appraisers, and settlement agents (attorneys and title examiners). Typical fraudulent activities associated with this category in the SAR filing sampling are: appraisal fraud; fraudulent flipping; straw buyers..”

VII. OFFER OF PROOF, EVIDENCE & SUPPORTING DOCUMENTATION SUPPORTING THE MOTION TO REMAND WITH CITATIONS OF AUTHORITIES AND TO THE RECORD

A. A Review of Rule 240(c)(3), SCACR.

27. In order for the Respondent, and perhaps, the Appellate Court to fully grasp what has happened, a review of Rule 240(c)(3), SCACR is absolutely necessary. It would also be helpful to review Rule 212(a) & (b), SCACR as well.

(a) *Rule 240(c)(3), SCACR*, clearly states in pertinent parts; “[W]here the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions.”

(b) *Rule 212(b), SCACR*, states in pertinent parts; “[W]ith the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences. Without such consent or after argument commences, a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so. In response to that motion, the other party(s) shall designate any supplemental materials which that party desires to add if the Court grants the motion.”

(c) Rule 212(c), SCACR, clearly states the following in pertinent parts; “[S]upplemental materials filed under Rule 212(b) shall be included in an Appendix to the Record on Appeal. Unless otherwise agreed by the parties or ordered by the Court, the Appendix shall be compiled, served and filed by the party initially proposing it.”

28. As stated in ¶ 12, on pg 6, in **Reason #11 to Deny** Respondent’s *Motion to Strike*, that is dated February 14, 2015, the Appellant's 18 Affidavits in Pleading and Appendix form are based on personal knowledge. The Appellant's Verification covered the Appendices and the "Reply Brief". The 18 Affidavits are based on Matters Designated for the Record on Appeal and consist entirely of documents already filed in the Lower Court. Attorney Anzelmo's misrepresentations necessitated proof and were dealt with as a separate matter because they occurred in the Appellate Court. Therefore, the Appellate Court received the evidence and proof and the Appendices are still Verified.

29. As stated in ¶ 13, on pgs 6-7 in **Reason #12 for Denial** of Respondent’s *Motion to Strike*, the 18 Affidavit Volumes were limited to attorney Anzelmo's misrepresentations, misstatements, mischaracterizations, distortion of facts, fabrications and false testimony in his Respondent's "Initial Brief" that is dated January 26, 2015. At the same time, 18 Affidavit Volumes presented more than enough evidence to clearly and convincingly prove a consistent pattern of **Dishonesty** by attorneys from Nelson Mullins Riley & Scarborough, LLP, relative to C. A. #2008-CP-38-1024; now Case #2014-001683. It matters little what the Appellant asserts, a Judge/s must determine validity.

B. The Proof, Evidence & Documentation Supporting the Motion to Remand Are in the Appendices to the Reply Brief That Must Be Resubmitted to Verify Statements of Fact Pursuant to Rule 103(a)(2), SCRE.

30. Even though the Lower Court has the original documents and Respondent, Wells Fargo, already has copies of every document filed since 2008 and received a copy of the 18 Pleadings in Affidavit and Appendix form, the Appendices were never filed as

such in the Lower Court. In their present booklet form, they are not a part of the Record on Appeal nor can they be defined as a Supplement. The Pleadings and Exhibits in the Appendices are already in the Record on Appeal. Since the Record on Appeal cannot supplement itself and the Pleadings cannot be defined as a Supplement by Rule; therefore, in accordance with Rules 240(c)(3), SCACR and 103(a)(2), SCRE; the Appellant is resubmitting the Appendices as the **Offer of Proof** to support her *Motion to Remand*.

C. **The Appellate Court Order Dated: April 3, 2015.**

31. On Monday, April 6, 2015, the Appellant retrieved a letter from the mailbox at 423 Bayne Street from the Appellate Court, dated: 4/3/15. The Order notified the Appellant her “Reply Brief” was accepted but not the Appendices and she has 20 days from the file date (4/3/15) to remove them. {See Attached Exhibit 390}

32. Since the issue that is now before the Appellate Court is one of format, and not substance; i.e., how the documents are identified, it would not violate the Order for the Court to review the **Offer of Proof** that is in the 18 codified Affidavits in Pleading and Appendix form before they are removed on or before April 23, 2015. So as not to delay the proceedings, the Appellant must physically remove the Appendices to honor the Order and then resubmit them; either on or after April 23, 2015.

33. Since the Appendices are the **Offer of Proof** to support her *Motion to Remand*, and since they are Verified, it would be a **Manifest Injustice** to have the Appellant spend another \$700.00 just to change the name from Appendix to Affidavit. Especially since the Appellate Court already knows the Appendices are Verified Documents Pleadings, and Exhibits that are Verified pursuant to Rule 11(c), 56(e), SCRCP and 28 USC § 1746. The reason why the documents are in their current form was thoroughly explained in the *Appellant’s Objection to Motion to Strike* in ¶¶ 14-19 on pgs 8-11.

VIII. SUMMARY & RELIEF REQUESTED

34. In Responses and/or Objections and/or Replies to Respondent, Wells Fargo's filed "Brief/s", the Appellant has consistently stated in her Conclusions to these filings, this case must be remanded back to the Circuit Court from which it came. In her, *Appellant Objects to Wells Fargo's Motion to Strike*, in ¶ 55, on pg 30, it was also stated; "[w]ith clear instructions to examine the evidence, the pleadings, the depositions, answers to interrogatories, the exhibits, and the admissions on file; especially the Judicial Admissions in verified pleadings, together with the affidavits, to determine the facts and the truth. "

IX. CONCLUSION

35. Therefore for all the reasons stated in the Appellant's *Affidavit and Offer of Proof, Motion to Remand*, in the *Appendix Volumes 1-18*, and in this *Memorandum with Citations of Authorities*, the Appellant prays the Appellant Court will not strike the facts, the material facts, the evidence, the proof and the truth for a second time... and grant the *Motion to Remand* Civil Action Case #2008-CP-38-1024 back to the Court of Common Pleas, in Orangeburg, South Carolina so that all the issues relative to this action can be ruled upon and properly preserved for Appellate Review.

Thank you,

Note: Since allegations have been stated with specificity and particularity, this "*Memorandum with Citations of Authorities*" will be verified.

April 14, 2015

Respectfully submitted,

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

NOTARY CERTIFICATION

IN WITNESS WHEREOF, The undersigned, being duly *SWORN*, and under the *PENALTY OF PERJURY* declares the facts in her "Memorandum with Citations of Authorities Supporting Motion to Remand" are true and correct as of her own knowledge. When it comes to matters stated therein that are based upon information and/or belief; as to those matters, she believes them to be true. Accordingly, based on the stated facts; Re: Case No. 2014-001683, has signed, sealed, attested and executed this 14 day of April in the year 2015 in City and County of Orangeburg, in the State of South Carolina.

Rule 11(c), SCRPC clearly states in pertinent parts, "[A]ffidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, sworn to or affirmed before an officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true "

Appellant's Signature: Dorothy Siskunk

Notary's Signature as Witness (1): _____

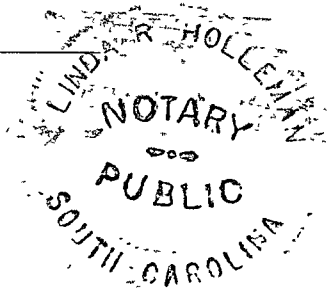
Signed, sealed and delivered in the presence of:

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

On 4-14-2015 before me appeared Dorothy Siskunk and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and by her signature on the "Memorandum with Citations of Authorities Supporting Motion to Remand" and this Notary Certification presents this document to the Appellate Court. WITNESS my hand and official seal.

Notary's Signature Luc Stalle

Commission Expires 01-21-2025



(Seal)

The South Carolina Court of Appeals

Wells Fargo Bank, N.A., Respondent,

v.

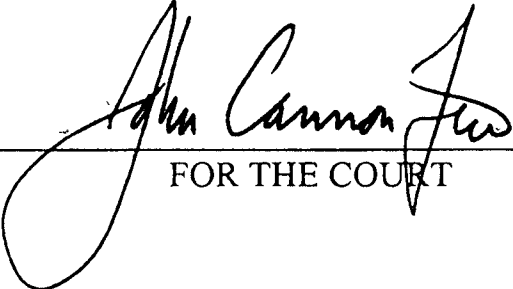
Dorothy Sistrunk, Appellant.

Appellate Case No. 2014-001683

ORDER

Respondent has filed a motion to strike Appellant's initial reply brief and the eighteen appendices submitted with the brief. Appellant has filed a return opposing the motion, and Respondent has filed a reply:

After careful consideration, this Court grants the motion to strike as follows. We accept Appellant's twenty-four page initial reply brief but reject the eighteen appendices. Appellant must remove the eighteen appendices within twenty days of the filing date of this order.


FOR THE COURT

Columbia, South Carolina

cc. Dorothy Sistrunk
Elizabeth Scott Moise, Esquire
Michael J. Anzelmo, Esquire

FILED
4/3/15

Exhibit 390

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

RECEIVED

Court of Common Pleas

APR 20 2015

Diane Shafer Goodstein, Circuit Court Judge

SC Court of Appeals

2014-001683

Wells Fargo Bank, N.A., Respondent,

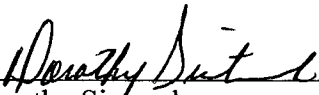
v.

Dorothy Sistrunk, Appellant.

PROOF OF SERVICE

I certify that I have served a copy of my *Motion to Remand, Affidavit and Offer of Proof*, and my *Memorandum with Citations to Authorities Supporting my Motion to Remand* on Wells Fargo Bank, N.A., by depositing a copy of them in United Parcel Service (UPS), prepaid, on April, 14, 2015, addressed to Wells Fargo's attorney/s of record that are listed below.

Today's Date: April 14, 2015

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

Attorney Michael Anzelmo
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Elizabeth Scott Moise
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401 -2239
(803)853-5200

 **Dorothy Sistrunk**

423 Bayne Street • Orangeburg, SC 29115 • Ph: 803-268-0716 • Fx: 803-534-6727

April 14, 2015

The Honorable Jenny Abbot Kitchings Clerk of Court
& Deputy Clerk of Court V. Claire Allen
South Carolina Court of Appeals
POB 11629
Columbia, SC 29211

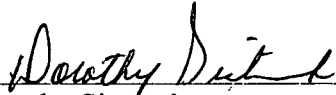
RECEIVED
APR 20 2015
SC Court of Appeals

RE: Wells Fargo Bank, N.A. v. Dorothy Sistrunk
Civil Action Case #2008-CP-38-1024
Appellate Case #2014-001683

Ms. Kitchings and/or Ms. V. Claire Allen

I am new at this so...please advise me of errors and/or any incorrect protocol I am enclosing my **“Motion to Remand, Proof of Service, Affidavit and Offer of Proof, and My Memorandum with Citations of Authorities Supporting my Motion to Remand”** along with my check for \$25.00 for the motion fee. In accordance with *Rule 240(e), SCACR*, I am enclosing an original and six (6) copies of my Motion and supporting documents; paper clipped and not stapled, and I have also served a copy of same on all parties listed below.

Thank you.

/s/ 
Dorothy Sistrunk

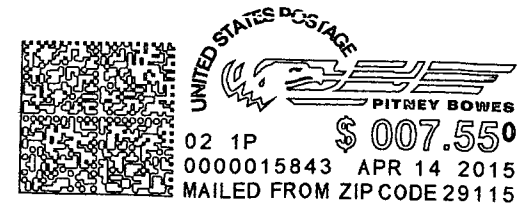
CC:

Attorney Michael Anzelmo
SC Bar No. 72933
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

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

Dorothy Sistrunk
423 Bayne Street
Orangeburg, SC 29115

PROPRIETARY



RECEIVED

APR 20 2015

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211