

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

JUN 05 2015

Judge James B. Jackson, Jr., Master in Equity SC Court of Appeals

Case No. 2015-001112

South Carolina Federal Credit Union

Respondent,

v.

Dorothy Harley Sistrunk aka Dorothy Harley-  
Sistrunk aka Dorothy A. Harley a/k/a  
Dorothy Sistrunk

Appellant.

**CERTIFICATION THAT NO TRANSCRIPT WILL  
BE ORDERED BY THE APPELLANT FOR APPEAL IN A CIVIL CASE**

Dorothy Harley Sistrunk, Appellant, files this Certification to verify that no transcripts will be ordered for the Appeal in Civil Case 2011-CP-38-1392 for the following reasons:

(1) *Rule 10(b)(1)(B), F. R. App. P.*, clearly allows me to “[f]ile a certificate stating that no transcript will be ordered.”

(2) *Rule 52, SCRCP*, provides that “[f]indings of facts and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56.” Judge Jackson did not refer to any evidence during any hearing and relied on the representations and/or arguments of South Carolina Federal Credit Union’s attorney Reid E. Dyer.

(3) *Rule 56(c), SCRCP*; clearly states in pertinent parts, summary judgment is based on “[t]he pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any...” My Notarized and/or Verified Pleadings and Affidavits on file are sufficient evidentiary materials for review. Since I am *Pro Se* and have no experience in law, if the Appellate Court believes, in the interest of justice, that I should order them, I will ask for leave to do so. {See also *Quail Hill, L.L.C. v. Cnty. of Richland*, 387 S.C. 223, 234, 692 S.E.2d 499, 505 (2010) (stating appellate courts apply the same standard as the trial court under Rule 56(c), SCRCP); *Porter*, 372 S.C. at 568, 643 S.E.2d at 100 (stating that “not all situations require a detailed order, and the circuit court's form order may be sufficient if the appellate court can ascertain the basis for the circuit court's ruling from the record on appeal”)} In addition, since all my pleadings are notarized or verified, in accordance with...

- (a) Dawkins v. Fields, 580 S.E.2d 433 (S.C. 2003) (“...a verified pleading is equivalent to an affidavit, provided it meets the requirements of Rule 56(e). Under Rule 56(e), an affidavit or verified complaint must meet three criteria to be considered by the court: (1) it must be made upon personal knowledge; (2) it must set forth facts admissible in evidence; (3) it must show that the affiant is competent to testify to the matters stated therein.”)
- (b) State v. Colf, 332 S.C. 313, 504 S.E.2d 360 (Ct. App. 1998) (noting that federal interpretation of the rules of civil procedure is persuasive when there is no South Carolina interpretation).
- (c) Moore v. Goldome Credit Corp., 370 S.E.2d 843 (Ga. 1988) (holding a properly verified pleading containing specific factual allegations must be considered in opposition to affidavits filed in support of a motion for summary judgment)
- (d) Hladczuk v. Epstein, 470 N.Y.S.2d 211 (App. Div. 1983) (stating that a verified pleading is the equivalent of an affidavit for purposes of summary judgment)
- (e) Fidelity Financial Services, Inc. v. Hicks, 214 Ill.App.3d 398, 574 N.E.2d 15, 158 Ill.Dec. 221 (1st Dist. 1991) (admissions in [a] verified pleading that are not product of mistake or inadvertence become binding judicial admissions)
- (f) U.S. Bank National Ass’n v. Clark, 216 Ill.2d 334, 837 N.E.2d 74, 297 Ill.Dec. 294 (2005). Winnetka Bank v. Mandas, 202 Ill.App.3d 373, 559 N.E.2d 961, 147 Ill.Dec. 621 (1st Dist. 1990) (provision that verified allegations constitute evidence by way of admission refers to admissions of fact, not legal conclusions or admissions of law). See also Robins v. Lasky, 123 Ill.App.3d 194, 462 N.E.2d 774, 78 Ill.Dec. 655 (1st Dist. 1984).
- (g) Pinnacle Corp. v. Village of Lake in the Hills, 258 Ill.App.3rd 205, 209, 196 Ill.Dec. 567, 630 N.E.2d 502 (1994) “[w]hen a pleading is verified, every subsequent pleading must also be verified unless verification is excused by the court. There is no allegation that verification was excused by the court. When a subsequent pleading is not verified, it is as if the unverified pleading was never filed; it must be disregarded.” (Charter Bank v. Eckert, (1992), 223 Ill.App.3d 918, 924, 166 Ill.Dec. 282, 585 N.E.2d 1304; Florsheim v. Travelers Indemnity Co. (1979), 75 Ill.App.3d 298, 308, 30 Ill.Dec. 876, 393 N.E.2d 1223.) “[C]onsequently, we must ignore the allegations in Crystal Lake’s unverified answer. Moreover, a failure to file an answer results in well-pleaded facts being deemed admitted. (Florsheim, 75 Ill.App.3d at 309, 30 Ill.Dec. 876, 393 N.E.2d 1223.) Estate of Rennick, 181 Ill.2d 395, 407, 692 N.E.2d 1150, 1156 (1998)

(h) From *West v. Gladney*, 533 S.E.2d 334, 337 (S.C. May 8, 2000) (“[G]ladney produced no evidence to refute West’s statements... this court ordinarily will not consider statements of fact presented only in an attorney’s argument in determining whether a genuine issue of material fact exists sufficient to preclude summary judgment.” *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct.App.1986)

(4) In *Woodson v. DLI Props., Op. No. 2011-UP-291* (S.C. Ct. App. filed on June 14, 2011 and decided on January 8, 2014 in *Case No. 27344*), the Supreme Court stated the following; “[I]n the presence of a written order, the court of appeals erred in affirming summary judgment on the basis that Petitioners did not provide the hearing transcript as part of the Record. See Ford, 344 S.C. at 645–646, 545 S.E.2d at 823; see also Rule 56(c), SCRCP (listing the factual material that is reviewable for purposes of deciding whether to grant a motion for summary judgment).”

(a) “Summary judgment cannot be granted unless the pleadings, depositions, answers to interrogatories, and admissions on file together with affidavits, if any, conclusively show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Frost v. Regions Bank*, 15 So. 3d 905, 906 (Fla. 4th DCA 2009).

(b) “[a] summary judgment should not be granted where there are issues of fact raised by [the] affirmative defense[s] which have not been effectively factually challenged and refuted.” *Cufferi v. Royal Palm Dev. Co.*, 516 So. 2d 983, 984 (Fla. 4th DCA 1987). Thus, “[i]n order for a plaintiff . . . to obtain a summary judgment when the defendant asserts affirmative defenses, the plaintiff must either disprove those defenses by evidence or establish the legal insufficiency of the defenses.’ Id. (quoting *Bunner v. Fla. Coast Bank of Coral Springs, N.A.*, 390 So. 2d 126, 127 (Fla. 4th DCA 1980)). In such instances, “[t]he burden is on the plaintiff, as the moving party, to demonstrate that the defendant could not prevail. Id.’”

(c) The Fourth DCA reversed summary judgment where Wells Fargo did not refute affirmative defenses raised in an affidavit in opposition to summary judgment. *Woodrum v. Wells Fargo Mortgage Bank*, 73 So. 3d 873 (Fla. 4<sup>th</sup> DCA 2011). (holding there is no case law supporting Wells Fargo’s position that affirmative defenses raised in an affidavit cannot be considered.)

(d) *Stop & Shoppe Mart, Inc. v. Mehdi*, 854 So. 2d 784, 786 (Fla. 5th DCA 2003) (“Furthermore, the moving party must disprove the affirmative defenses or establish that they are insufficient as a matter of law. Where the movant merely denies the affirmative defenses and the affidavit in support of summary judgment only supports the allegations of the complaint and does not address the affirmative defenses, the burden of disproving the affirmative

defenses has not been met.” (citations omitted)). The entry of summary judgment where affirmative defenses are extant is error. Stop & Shoppe Mart, Inc., 854 So. 2d at 787; Wendt v. Laske, 760 So. 2d 1125 (Fla. 5th DCA 2000), (reversing summary judgment where affirmative defenses were raised that were not addressed in trial court’s order); Fla. Dep’t of Agric. v. Go Bungee, Inc., 678 So. 2d 920, 921 (Fla. 5th DCA 1996) (holding trial court’s failure to address affirmative defenses before granting summary judgment was error).”

(e) “[I]n interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.” Maxwell v. Genez, 356 S.C. 617, 591 S.E.2d 26 (2003); Green v. Lewis Truck Lines, Inc., 314 S.C. 303, 443 S.E.2d 906 (1994). “[I]f a rule’s language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced. See Maxwell, 356 S.C. at 617, 591 S.E.2d at 26.”

(5) Finally, my Affirmative Defenses, Counterclaims and the Issues Raised in my Verified and/or Notarized Pleadings were never discussed or ruled upon by the lower court. Judge Jackson never referred to or considered any of my evidence, any of my objections or any Statement of Fact in any one of my Verified or Notarized Pleadings, Affidavits and/or Exhibits. Therefore, there is no real need for me to order any transcript.

June 2, 2015

/s/ Dorothy Harley-Sistrunk  
Dorothy Harley Sistrunk  
423 Bayne Street  
Orangeburg, South Carolina 29115  
803) 268-0716  
*Pro Se*

Attorney for Respondent  
& Counsel of Record:  
Moore & Van Allen, PLLC  
Reid E. Dyer  
78 Wentworth Street  
Office Box 22828 (29143-2828)  
Charleston, South Carolina 29401-1428  
Ph: (843) 771-7900  
Fx: (843) 579-8754

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South Carolina Federal Credit Union

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Dorothy Harley-Sistrunk a/k/a  
Dorothy A. Harley a/k/a  
Dorothy Sistrunk

Appellant.

**PROOF OF SERVICE**

I certify that I have served the Certification that I will not be ordering a transcript for my Appeal in a Civil Case because no evidence was discussed during any hearing presided over by Judge Diane Shafer Goodstein or Judge James B. Jackson, Jr. Therefore, I have deposited a copy of my Certification with United Parcel Service, postage prepaid, on June 3, 2015, addressed to SCFCU's attorney/s of record listed below.

June 3, 2015

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

cc: Moore & Van Allen, PLLC  
Reid E. Dyer  
78 Wentworth Street  
Office Box 22828 (29413-2828)  
Charleston, SC 29401-1428  
Ph: 843-579-7045 Fx: 843-579-8754  
Attorney/s for Respondent South Carolina Federal Credit Union (SCFCU)



*Dorothy Sistrunk*

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

**Letter to the Clerk of the Lower Court  
Notice of Statement of the Evidence; Re: Case #2011-CP-38-1392**

June 2, 2015

The Honorable Winnifa Brown-Clark  
Clerk of Court for Orangeburg County @ Orangeburg County Courthouse  
Post Office Drawer 9000  
Orangeburg, South Carolina 29116-9000

Re: Civil Action Case #2011-CP-38-1392; Appellate Case #2015-001112

Dear Ms. Brown-Clark:

Since no viable transcript or Court Order exists that discussed the evidence in C. A. #2011-CP-38-1392; Appellate Case #2015-001112, I must file a **Statement of the Evidence**. You can now prepare and assemble the original papers and exhibits that have been filed in the Court of Common Pleas and a certified copy of the docket and journal entries. The **Statement of the Evidence** will be included in my Appeal in a Civil Case and will be filed shortly.

Do not transmit the Court Records to the Clerk of the Court of Appeals in Columbia, South Carolina until requested. At that time you can transmit the records that have been assembled and the filed **Statement of the Evidence** to the Clerk of the Court of Appeals that will be included in the Record on Appeal.

In the event unforeseen circumstances prevent me from filing the **Statement of the Evidence** within the time allowed by the Appellate Rules; or within the time allowed for filing the record set forth in any accelerated calendar scheduling order, or within a proper extension thereof, as prescribed by the Appellate Rules...then, pursuant to the scheduling order, or upon the last day of any proper extension of the time for transmission of the Record on Appeal, you shall transmit the Records to the Clerk of the Court of Appeals or instruct me; as to any responsibility I might have.

Sincerely,

*Dorothy Harley Sistrunk*  
Dorothy Harley Sistrunk

423 Bayne Street  
Orangeburg, South Carolina 29014  
(803) 268-0716

*Pro Se*

cc: Moore & Van Allen, PLLC  
Reid E. Dyer  
78 Wentworth Street  
Office Box 22828 (29413-2828); Charleston, SC 29401-1428  
Ph: 843-579-7045 Fx: 843-579-8754  
Attorney/s for Respondent South Carolina Federal Credit Union (SCFCU)

 **Dorothy Sistrunk**

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

**Certification Letter to the Appellate Court Clerk  
That No Transcripts Will Be Ordered for My Appeal in a Civil Case**

June 2, 2015

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Post Office Box 11629  
Columbia, South Carolina 29211  
Re: Civil Case No. 2011-CP-38-1392  
Appellate Case No. 2015-001112

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JUN 05 2015

SC Court of Appeals

Dear Ms. Kitchings:

Enclosed for filing is my **Certification** that no transcripts will be ordered for my Appeal in a Civil Case for reasons stated in the **Certification**. I will be filing a **Statement of the Evidence** in the lower court so that the evidence that was not reviewed or considered can be reviewed by the Appellate Court. Due to the lateness of the hour, this letter along with my **Proof of Service** and **Notification to the Lower Court** concerning my **Statement of the Evidence** will be deposited with United Parcel Service on June 3, 2015.

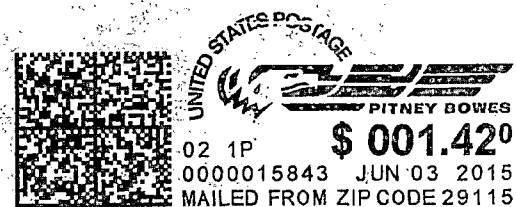
Sincerely,

*Dorothy Harley Sistrunk*  
/s/ *Dorothy Harley Sistrunk*

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

cc: Moore & Van Allen, PLLC  
Reid E. Dyer  
78 Wentworth Street  
Office Box 22828 (29413-2828)  
Charleston, SC 29401-1428  
Ph: 843-579-7045 Fx: 843-579-8754  
Attorney/s for Respondent South Carolina Federal Credit Union (SCFCU)

thy Sistrunk  
Bayne Street  
Igeburg, SC 29115



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JUN 03 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