THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

James B. Jackson, Jr., Master in Equity

Case No. 2015-001112

South Carolina Federal Credit Union, Respondent

v.

Dorothy Harley Sistrunk aka Dorothy Harley-Sistrunk aka Dorothy A. Harley aka Dorothy Sistrunk Appellant.

INITIAL BRIEF OF APPELLANT

June 22, 2015

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NOTATIONS: Throughout this Initial Brief, the Respondent/Plaintiff, South Carolina Federal Credit Union, will be identified as **SCFCU**. The Appellant's "**Statement of the Evidence**" will be identified as **SOTE.**

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PREVIEW OF STATEMENT OF ISSUES & THIS CASE

I only have a lay person's understanding of **[Lack of Subject Matter Jurisdiction]**; **[Abuse of Discretion]** and **[Error of Fact or Law]** that are the issues in this case. In the interest of justice, I must ask the Appellate Court's indulgence. I have no expertise in identifying judicial abuses. I do not know by definition and/or precedent what offense belongs in what category. If I have mistakenly placed an offense in an inappropriate category, I ask the court to place it where it belongs.

> *Breck v. Ulmer,* 745 P.2d 66, 75 (Alaska 1987) "[T]he trial judge should inform a pro se litigant of the proper procedure for the action he or she is obviously attempting to accomplish." {SOTE, ¶¶79-84 & subparts **(a)-(m)**, pgs 82-85}

I would also like to clarify matters for the Appellate Court. For almost 4 years, when I referred to a city mentioned in my pleadings that is a subdivision, I referred to it by the larger city's name. For example, when I refer to SCFCU's office in Charleston, South Carolina, the physical location is actually in North Charleston at 6265 Rivers Avenue. When I refer to SCFCU's Columbia Office, the physical location is in West Columbia at 109 N 12th Street. {SOTE, ¶¶8-10, pgs 7-8}

There are many abuses and violations associated with this case that occurred over a 4 year period such as; **[1]** no hearing was ever scheduled for my Demand for a Jury Trial that is written on pg 1 of my *Answer to Complaint* that was filed on 12/21/2011; **[2]** no hearing was ever scheduled for my Motion for Summary Judgment that was filed on 04/25/2012, **[3]** SCFCU never complied with the TILA, **[4]** no mobile home purchase is in the records and **[5]** the Court's failure to consider Judicial Admissions. I will do the very best that I can to frame the issues, abuses and violations into questions as concisely as possible pursuant to Rule 208(b)(1)(B), SCACR. Hereafter, I will write in this "Brief" and others; if needed, as the Appellant, rather than in the first person (I, me or my).

STATEMENT OF THE ISSUES ON APPEAL

I. LACK OF SUBJECT MATTER JURISDICTION

Pursuant to Rule 12(b)(1), SCRCP. Did the lower court lack subject matter jurisdiction to rule on; and issue an Order of Judgment for a Complaint that was never filed?

II. ABUSE OF DISCRETION

A. Did the lower court judge abuse his discretion by improperly granting judgment when issues of fact, material facts and law still exist that mandate a jury trial, rather than an Order of Judgment?

B. Did the lower court judge abuse his discretion by denying the Appellant's Motion to Alter or Amend the Order of Judgment and for a New Trial when evidence and exhibits that have never been seen or reviewed in court were never considered during 4 years of litigation that should have been presented to a jury or at the very least, reviewed before issuing an Order of Judgment?

III. ERRORS OF FACT OR LAW

A. Did the lower court err by failing to consider the Appellant's judicial admissions in Notarized, Sworn to and Verified Pleadings?

B. Did the lower court err by failing to rule on the Appellant's Counterclaim for TILA violations before issuing an Order of Judgment?

C. Did the lower court err by failing to rule on the Appellant's Counterclaim for SCUTPA violations before issuing an Order of Judgment?

D. The Appellant is Pro Se. Did the lower court err by failing to inform the Appellant of her right to a Jury Trial after Summary Judgments were denied, rather than consent, uninformed, to a Master in Equity hearing?

E. Did the lower court err by failing to rule on the Appellant's Affirmative Defense for Recoupment before issuing an Order of Judgment?

F. Did the lower court err by failing to rule on the Appellant's Affirmative Defense of Unclean Hands before issuing an Order of Judgment?

G. Did the lower court err by failing to consider SCFCU's and/or SCFCU's law firm's false evidence and testimony, dishonest conduct and misrepresentation of material facts before issuing an Order of Judgment?

H. Did the lower court err by failing to comply with Rule 42(b), SCRCP?

I. Did the lower court err by failing to comply with Rule 54(b), SCRCP?

J. Did the lower court err by failing to comply with Rule 13(a), SCRCP?

K. Did the lower court err by failing to comply with Amendment VII to the United States Constitution before issuing an Order of Judgment?

L. Did the lower court err by failing to comply with Article I – Section 14 of South Carolina's Constitution before issuing an Order of Judgment?

The Appellant has 11 Counterclaims and 18 Affirmative Defenses relative to this case and none were ruled upon or considered by the lower court. Therefore, the Appellant's Statement of the Issues; divisions and subparts, are not a smorgasbord, an issue buffet or a shotgun approach to Appellate review. The Judges at the Appellate level are too busy for that. The aforementioned are simply the most serious violations, when it comes to adjudicating this case according to the facts, the law and civil procedure rules. {SOTE, pgs 94-130}

> **(1)** *Pye v. Estate of Fox*, 633 SE 2d 505 (2006) "[I]n *Coward Hund*, the court of appeals explained: "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment[,] is to request the trial judge to `reconsider matters properly encompassed in a decision on the merits.'" *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (quoting *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 200, 108 S.Ct. 1717, 100 L.Ed.2d 178 (1988)). As one authority has noted, "Once the issue has been properly raised by a Rule 59(e) motion, it appears that it is preserved and a second motion is not required if the trial court does not specifically rule on the issue so raised." *James F. Flanagan South Carolina Civil Procedure* 475 (2d ed.1996).""
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> **(2)** *North River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F. 3d 1194 (3rd Cir. 1995) "[A] proper motion to alter or amend judgment "must rely on one of three major grounds: (1) an intervening change in controlling law; (2) the availability of new evidence [not available previously]; [or] (3) the need to correct clear error [of law] or prevent manifest injustice'" *Natural Resources Defense Council v. United States Envtl. Protection Agency*, 705 F.Supp. 698, 702 (D.D.C.1989) (quoting *All Hawaii Tours, Corp. v. Polynesian Cultural Ctr.*, 116 F.R.D. 645, 649 (D.Haw. 1987)."
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> **(3)** *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." *Noisette v. Ismail*, 304 S.C. 56, 403 S.E.2d 122 (1991) (holding that where a trial court does not explicitly rule on an argument raised, and appellant makes no Rule 59(e) motion to obtain a ruling, the appellate court may not address the issue)

STATEMENT OF THE CASE

A. Introduction.

It is virtually impossible to properly adjudicate case #2015-001112 without an understanding and/or insight into the factual history of this case that occurred in 2002 and 2003 prior to litigation. The factual history of this case is in the court's records in Notarized, Sworn to, and/or Verified Pleadings that have never been contested in 4 years. Instead of the Court's record, eyewitness testimony and affidavits of fact, Judge Jackson, like Judge Goodstein, relied on attorney arguments.{SOTE, ¶¶202-204, pg 145}

It is not easy condensing 4 years of abuses into 50 pages. In order to conserve paper and space, all caps will be used sparingly and subparts of uncontroverted and uncontested facts in Verified Pleadings will be single spaced. **Since allegations are stated with specificity and particularity, this "Brief" will be verified**. Much of the history of this case is in the **Statement of the Evidence** that is identified by the acronym [SOTE] that is dated and filed on June 15, 2015.

This appeal is before the Appellate Court, because the lower court denied the Appellant's Motions for **(1)** A New Trial; **(2)** To Alter or Amend the Judgment; and **(3)** To Vacate the Order of Judgment Order.{Appellant Exhibits 41,46 & 47}

> **(1)** *Black's Law Dictionary* (4th ed. 1968), pg 706, defines **[Fact]**, in pertinent parts as; "[A] thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence. An actual happening in time or space or an event mental or physical..." "That which has taken place, not what might or might not have taken place."
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> **(2)** *Diblik v. Marcy,* 166 P.3d 23, 28 (Alaska 2007) "[A] [**Material Fact]** is one "to which a reasonable man might be expected to attach importance in making his choice of action." It is a fact which could reasonably be expected to influence someone's judgment or conduct concerning a transaction. (quoting W. Prosser, Law of Torts § 108, at 719 (4th ed. 1971))" [**Note: Boldness** with Capitalization and **Boldness** without Capitalization are for emphasis.]

B. The facts and the material facts in this case.

"[F]acts are stronger than arguments, more dependable than opinions and more profound than reasoning. Facts silence disputes, supersedes predictions and always end the argument when presented to anyone with reasonable intelligence." {Dr. Walter Williams}

The Appellant does not argue law or speculate about legal theories. Therefore, she can never be accused of the "Unauthorized Practice of Law". The Appellant states the facts relative to the lower court's or SCFCU's Errors of Law and/or Judgment as to the facts and/or law. Finally, the Appellant supports her "Statements of Fact" with the appropriate evidentiary basis and/or material/s; be it an Exhibit, Affidavit, Document, Eye-witness Testimony and/or Citation to an Authority. {SOTE, ¶93, pg 91}

> *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."

(Fact: #1) For over 4 years, the lower court judge never conducted any hearings on the Appellant's *Demand for a Jury Trial* that was filed in June of 2011 at the Magistrate Court and December of 2011 in this Action. {SOTE, ¶170**(a)**, pg 133} For over 2 years Judge Goodstein never scheduled a hearing for the Appellant's *Motion for Summary Judgment* that was filed in April of 2012. {SOTE, ¶170**(b)-(c)**, pg 133}

Judge Goodstein did not review the Appellant's evidence, objections, affidavits and exhibits in or attached to Verified Pleadings {Rule 10(c), SCRCP} and did not acknowledge the fact that no Statement of Fact has ever been refuted, denied or contested by SCFCU in 4 years. This was also overlooked by Judge Jackson. {SOTE, ¶4, pg 4}

(**Fact: #2**} When Judge Jackson took over the case, he did not go back to 2011. Judge Jackson based his entire assessment of the case on SCFCU's presentation on February 18, 2015. On February 18, 2015, SCFCU's attorney from Moore & Van Allen, PLLC, Reid E. Dyer, handed Judge Jackson the Exhibit Notebook with SCFCU's **Bogus Addendum**. My testimony was basically ignored; as well as, the Evidence, Affidavits and Exhibits that are in the Court's record and have been there since 2011.

> **(1)** *The Long Term View, Massachusetts School of Law*, Vol. 4, No. 1, 1997, pp. 90-97 "[j]udicial independence is predicated on "good faith" decision-making. It was never intended to include "bad-faith" decision-making, where a judge knowingly and deliberately disregards the facts and law of a case. This is properly the subject of disciplinary review, irrespective of whether it is correctable on appeal."
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> **(2)** *Tipton v. Bergrohr GMBH-Siegen*, 965 F. 2d 994 (11th Cir. 1992) "[I]n opposing summary judgment, the nonmoving party may avail itself of all facts and justifiable inferences in the record taken as a whole. *See United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S.Ct. 993, 994, 8 L.Ed.2d 176 (1962). In reviewing whether the nonmoving party has met its burden, the court must stop short of weighing the evidence and making credibility determinations of the truth of the matter. *Anderson*, 477 U.S. at 255, 106 S.Ct. at 2513. Instead, "[t]he evidence of the **non-movant is to be believed**, and all justifiable inferences are to be drawn in his favor." *Id.* (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-59, 90 S.Ct. 1598, 1608-09, 26 L.Ed.2d 142 (1970)). If, so viewed, a rational trier of fact could find a verdict for the nonmoving party under the substantive evidentiary standard, the nonmoving party can defeat summary judgment. *Id.* 477 U.S. at 252, 106 S.Ct. at 2512." [**Boldness** added for emphasis]

1. Lack of Subject Matter Jurisdiction pursuant to Rule 12(b)(1).

(**Fact: #3**) The first element that led to this appeal is the lower court judge abused his discretion by signing an Order of Judgment for a Complaint and Debt Collection that was never filed in Court. {SOTE, ¶¶93-96, pgs 91-93} (**Material Fact: #1**) No Complaint and Debt Collection was ever filed for a LOANLINER® loan that was executed and delivered on February 28, 2003. {SOTE, ¶129 & subparts **(a)-(b)**, pg 108}

> **(1)** *Cox v. Lunsford*, 272 S.C. 527, 252 S.E. (2d) 918 (1979) "[P]arties cannot by consent confer jurisdiction upon a court."

(2) *Town of Hilton Head Island v. Godwin,* 634 SE 2d 59 (Ct. App. 2006) "[T]he appellate court must always take notice of the lack of subject matter jurisdiction. *Amisub of S.C., Inc. v. Passmore,* 316 S.C. 112, 114, 447 S.E.2d 207, 208 (1994). The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court. *See, e.g., Lake v. Reeder Constr. Co.,* 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct.App.1998) (holding issues related to subject matter jurisdiction may be raised at any time)"

(3) *Bunkum v. Manor Properties,* 467 SE 2d 758 (Ct. App. 1996) "[S]ince the master had entered final judgment in this case, and therefore had no subject matter jurisdiction to hear the motion for assessment of costs, fees, expenses and damages against the appeal bond, his order entering judgment against Bunkum on the appeal bond is void. *See DeWitt v. S.C. Dept. of Highways & Public Transp.,* 274 S.C. 184, 262 S.E.2d 28 (1980) (all proceedings of a court lacking subject matter jurisdiction are a nullity, and its judgment has no effect).

2. Abuse of Discretion.

(Fact: #4) The second element that led to this appeal is the lower court abused its discretion. An Error of Law is manifest when the error is indisputable, obvious and warrants reversal on appeal. A failure to exercise discretion is also an Abuse of Discretion.

(1) *Tri-County Ice & Fuel Co. v. Palmetto Ice Co.,* 303 S.C. 237, 242, 399 S.E.2d 799, 782 (1990). "[A]n abuse of discretion arises where the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support."

(2) *Samples v. Mitchell,* 329 S.C. 105,112, 495 S.E.2d 213, 216 (Ct. App. 1997). "[A] failure to exercise discretion amounts to an abuse of that discretion."

(Fact: #5) Rules 12 & 56, SCRCP do not require a lower court judge to do any fact finding. **(Fact: #6)** 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." A failure to "Substantially Comply" with the requirements of Rule 56(c) can also be an Abuse of Discretion. {SOTE, ¶7**(b)**, pg 7 & ¶¶9-10, pg 8}

> *Ballon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 155, 399 S.E.2d 439, 441 (1990). "[W]hen a trial judge is vested with discretion; but his ruling reveals no discretion was in fact exercised, an error of law has occurred."

(**Fact: #7**) There is no information in South Carolina's Rules of Civil Procedure that tells a Pro Se litigant what to do if a Judge does not schedule hearings for motions, ignores objections, does not read the pleadings, fails to explain the difference between a trial and a hearing and the expectations during each...or why a trial; with or without a jury, was denied or replaced with a no evidence hearing for a summary judgment motion.

Case #2015-001112 / 2011-CP-38-1392 is another precedent setting case like Wells Fargo Bank, N.A. v. Sistrunk, Case #2014-001683 / 2008-CP-38-1024 because both are analogous to a Judge writing a court order that sends the witnesses to a crime and/or the victims of a crime to prison. Such acts by sitting judges violate public policy, the rule of law and makes a mockery of justice. {Code of Judicial Conduct CANON 2}

If a Judge is going to pass judgment without a jury and he/ she is not going to read the pleadings, at least conduct the hearings so that all the claims and/or issues and the facts and the truth can be accurately determined. If a Judge is not going to initiate a truth-determining process during the hearings, at least read the pleading or substantially comply with Rule 56(c), SCRCP.

> **(1)** *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 Judge Goodstein's Court for almost 3 years.
>
> **(2)** *Rule 614(a)-(b), SCRE*, states the following in pertinent parts.. "**[(a)]** In 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. **(b)** When required by the interests of justice only, the court may interrogate witnesses."

(3) *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. This discretion will not be controlled except where it appears that the manner in which the judge exercised the right tended to unduly impress the jury with the importance of the testimony elicited, or would be likely to lead the jury to suppose that the judge was of the opinion that one party rather than the other was correct upon a particular issue of fact."

3. Errors of Fact or Law.

(Fact: #8) For almost 3 years, (December of 2011-July of 2014) Judge Goodstein did not conduct any hearing on any of the Appellant's judicial and/or evidentiary admissions in Notarized, Sworn to and/or Verified Pleadings. Therefore, she had no idea as to the extent and nature of SCFCU's and/or SCFCU's attorneys misrepresented material facts, false documentation, misconduct and false statements.{SOTE, ¶180, pgs 137-138}

(Fact: #9) When Judge Jackson took over the case, he was also not aware of the various types of misrepresentation of material facts, false documentation, concealment of material facts, dishonest conduct and false statements from SCFCU and/or SCFCU's attorneys ---- the most egregious one being; **(Material Fact: #2 – SCFCU's Misrepresentation of a Material Fact)** "[T]hat on or about February 24, 2003, the Defendant executed and delivered to South Carolina Federal Credit Union that certain Open-End Disbursement Receipt Plus Loanliner® Credit and Security Agreement ("Fixed Interest Rate Agreement") calling for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 Dollars ($5,556.44) a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference" {Complaint, ¶7, pg 2}

(Material Fact: #3) The Appellant never executed and delivered any such agreement to SCFCU on February 24, 2003 and there is no paperwork, agreement or voucher for it. {SOTE, ¶51, pg 31}

(1) *New York Life Ins. Co. v. Wittman*, 813 F. Supp. 1287 n. 6 (OH: D. Ct. N.D. 1993) ---"[a] party seeking avoidance of a contract at common law. *See* Restatement (Second) of Contract § 164(1) ("Misrepresentation makes a contract voidable ... if a party's manifestation of assent is induced by *either fraudulent or material* misrepresentation....") *See also* Introductory note preceding § 159 of the Restatement ("Notably, under tort law a misrepresentation does not give rise to liability for fraudulent misrepresentation unless it is both fraudulent and material, while under contract law a misrepresentation may make a contract voidable if it is either fraudulent or material.")"

(2) (**Fact: #10**) *Rule 11(a), SCRCP*, clearly states in pertinent parts; "[T]he written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it;"

(3) However, once this belief is proven erroneous or false by the facts, material facts, the evidence and the truth... *Rule 3.3, RPC, Rule 407, SCACR*: **Candor Toward The Tribunal**, clearly states the following in pertinent parts; [**Boldness** shall be added for emphasis.]

(Facts: #11 - #14) "[(a)] A lawyer shall not knowingly:

> **(1)** make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
>
> **(2)** fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;
> or
>
> **(3)** offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false." {SOTE, ¶¶65-70 & subparts **(a)-(e)**, pgs 66-69}

(4) *Hendricks v. Clemson Univ.*, 353 S.C. 449, 459, 578 S.E.2d 711, 716 (2003) "[I]f the evidence as to the existence of a contract is conflicting or raises more than one reasonable inference, the issue should be submitted to the jury." Also see *Easler v. Pappas*, 252 S.C. 398, 166 S.E. (2d) 808 (1969); *Crossley v. State Farm Mutual Auto. Ins.*, 307 S.C. 354, 415 S.E.2d 393 (1992); & *Weir v. Citicorp Nat'l Services, Inc.*, 312 S.C. 511, 435 S.E.2d 864 (1993)

(**Fact: #15** & **Error: #1.** A sitting Judge's acceptance of false statements, evidence and/or testimony and misrepresented facts; such as, believing SCFCU gave the Appellant an Addendum prior to 9/5/2002 is an Error of Fact and Law. {SOTE, ¶161, pg 128 & Memorandum to Set Aside Judgment, ¶¶18-20, pgs 15-18} Since a major category in this Appeal is the lower court's Errors of Fact or Law, the Appellant will only address a few of the lower court's Errors of Fact or Law in this section.

Error: #2, is the lower court's failure to acknowledge the **Offers of Proof** in the Appellant's Adjudicative Facts that should have been apparent from the context. (**Fact: #16**) The Appellant specifically requested Judicial Notice of Adjudicative Facts in her *Legal Memorandum Supporting Motion to Alter or Amend the Order of Judgment* that was filed on April 6, 2015 that has 80 adjudicative facts. {SOTE, ¶62, pg 64}

(**Fact: #17**) Judicial Notice is mandatory when requested and (**Fact: #18**) some of the Appellant's Adjudicative Facts should have been considered by the lower court. {SOTE, ¶61, pg 64} **Error: #3.** By failing to examine the Appellant's offers of proof and adjudicative facts, the lower court's Order of Judgment was issued in violation of Rules 103(a)(2) and 201(d), SCRE. The following are: (**Facts: #19 – #24**}

> **(1)** *State v. Foster,* 277 S.C. 211, 212, 284 S.E.2d 780, 780 (1981) ("Taken literally, the word '**shall**' **is mandatory**.") [**Boldness** added for emphasis]
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> **(2)** *Value Oil Company v. Town of Irvington,* 377 A. 2d 1225 (NJ. 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)." [**Boldness** added for emphasis]
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> **(3)** *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." [**Boldness** added for emphasis]

C. Background to the Appellant's Automobile Purchase in 2002.

Error: #4. The Court's acceptance of SCFCU's false evidence - the **Bogus Addendum** - on February 18, 2015, is also a violation of South Carolina's and the Federal Rules of Evidence. {SOTE, ¶¶198-202, pgs 143-145} (**Fact: #25**) During the summer of 2002, the Appellant needed another automobile. The engine had blown in her Chevrolet Celebrity. A sales associate at Schult Home Center in Orangeburg, South Carolina where her husband worked as a mobile home salesman, Arline Bethea, recommended the Appellant use a friend of hers that was a car broker. According to Arline, he had gotten her a Cadillac SUV for an excellent price. Over time, the Appellant has forgotten his name and whereabouts, Arline has moved and changed her phone number.

(**Fact: #26**) After about 7 to 8 weeks of trying to find the Appellant an affordable automobile in excellent condition for under $10,000.00, the broker gave up the project to devote more time to his other customers that were looking for higher end cars. Before abandoning the project, the broker gave the Appellant the address and phone number of his contact at SCFCU in Charleston, South Carolina.

(**Fact: #27**) The Appellant called the number the broker gave her and spoke to an account representative. Over time, the Appellant has also forgotten his name. The Appellant asked him would it be alright if she found a car herself, and if she did find a car, would the Credit Union still finance it since she was not buying it through a broker? SCFCU's account representative (hereafter called the *representative*) told the Appellant they would, if the Appellant could meet SCFCU's credit qualifications.

(**Fact: #28**) During August of 2002, the Appellant was taking her husband to work at Schult Home Center and using his car all day. One morning, while off from work, and driving pass Pooser Auto Sales, the Appellant notice a gray sedan that was not

there before. At this time, the Appellant did not know the name of the automobile. All the Appellant knew for a fact...was the car looked good...and it was selling for $6,500.00.

(**Fact: #29**) On August 29, 2002, the Appellant drove in and made inquiries. The Appellant discovered the car was a 1987 Mercedes Benz SDL. {Appellant Exhibit "N"} The Appellant asked the salesman could she test drive the car? She wanted her husband to see it before making a decision. The salesman agreed.

(**Fact: #30**) The Appellant and the salesman drove to Schult Home Center where her husband worked. After questioning the salesman about the car, her husband told the Appellant to go to the bank, withdraw $1,000.00 from the account and use it for the down payment. The Appellant went to the bank, withdrew $1,000.00 and returned to Pooser's Auto Sales. She gave the salesman the $1,000.00, completed a credit application and a Buyer's Order. {Review Appellant Exhibit "N"}

(**Fact: #31**) From this point forward, the salesman at Pooser Auto Sales and the *representative* handled the transaction. (**Fact: #32**) On August 30, 2002, the salesman called the Appellant and told her SCFCU had approved the purchase. However, she had to call SCFCU in order to finalize the sale.

(**Fact: #33**) On Tuesday, September 3rd , 2002, the Appellant called the *representative* to finalize the sale. During the conversation on September 3rd, the *representative* asked the Appellant on what date could she come to Charleston? He would have a check ready by the time the Appellant arrived. The Appellant asked him did she have to come to Charleston ? **The reason:** She was not familiar with Charleston and would not know how to find his office. At this point in the conversation the *representative* asked the Appellant; "[A]re you familiar with Columbia?" The Appellant said; "[S]omewhat."

The Appellant told the *representative*, she could be in Columbia by Thursday be-

fore 12 o'clock. Thursday was September 5th, 2002. The *representative* gave the Appellant directions to SCFCU's office in West Columbia at 109 N 12th Street and told the Appellant the check would be there by the time she arrived.

(**Material Fact: #4**) On September 5th, 2002, the Appellant arrived at SCFCU's West Columbia office, met Leon Frazier, signed a Member 1 Plan {SOTE, ¶55**(a)(1)-(4)**, pgs 49-50}, and a Credit Insurance Enrollment Form and Schedule {SOTE, ¶55**(r)(1)-(3)**, pg 41}. The Appellant was given a Membership and Account Agreement Book. {SOTE, ¶51**(p)(1)-(2)**, pg 36} and a check for $5,845.00 {SOTE, ¶55**(s)**, pg 58} (**Material Fact: #5**) This is the reason why the Appellant does not have an Addendum. **SCFCU violated the TILA in 2002.... No one at SCFCU gave her one.** {SOTE, ¶¶8-53, pgs 7-47}

> **(1)** *Rudisell v. Fifth Third Bank*, 622 F. 2d 243 (6th Cir. 1980) "[T]ILA requires that disclosures be made "before the credit is extended". *See* 15 U.S.C. § 1639(b). Regulation Z, 12 C.F.R. § 226.1, *et seq.*, promulgated by the Federal Reserve Board under the authority granted in 15 U.S.C. § 1604, gives further guidance. Section 226.8(a) provides that the disclosures "shall be made before the transaction is consummated," which occurs "at the time a contractual relationship is created between a creditor and a customer or a lessor and lessee irrespective of the time of performance of either party," 12 C.F.R. § 226.2(kk). Since the "purpose of disclosure is clearly to give the borrower an opportunity to do some comparative shopping for credit terms", 476 F.2d at 1064, this Court held: a credit transaction which requires disclosures under the Act [TILA] is completed when the lender and borrower contract for the extension of credit. The disclosures must be made sometime before this event occurs. **If the disclosures are not made, this violation of the Act occurs, at the latest, when the parties perform their contract.** 476 F.2d at 1065." (Citations *Wachtel v. West*, 476 F. 2d 1062 (6th Cir. 1973))
>
> **(2)** *Rubio v. Capital One Bank*, 613 F. 3d 1195 (9th Cir. 2010) "[I]n applying TILA and its implementing regulations, we "require absolute compliance by creditors," *Hauk v. JP Morgan Chase Bank USA*, 552 F.3d 1114, 1118 (9th Cir. 2009), and "[e]ven technical or minor violations of the TILA impose liability on the creditor," *Jackson v. Grant*, 890 F.2d 118, 120 (9th Cir. 1989)..... The form of Regulation Z that governs this case, however, does prohibit disclosures that a reasonable consumer will not understand. 12 C.F.R. pt. 226 supp. I, para. 5a(a)(2), cmt. 1. --What was misleading in 2006 and 2007, ----, was also misleading in 2004, when Rubio received Capital One's solicitation."

D. Background to the Appellant's mobile home purchase in 2003.

(**Fact: #34**) Sometimes during the first week in February of 2003, the Appellant learned from her husband, who was a mobile home salesman at Schult Home Center in Orangeburg, that Bombardier Capital was liquidating its entire inventory of repossessed singlewide mobile homes for as low as $5,000.00.

The Appellant's husband also revealed that many of the singlewides that were scheduled for liquidation, were still occupied. Unfortunately, because he was actively involved in the liquidation process, he could not personally purchase one, nor give or loan her any money to make the purchase. However, if the Appellant wanted to purchase one on her own, that would not violate any of his obligations or agreements.

(**Fact: #35**) At some point in time; between Thursday, February 20th and Sunday, February 23rd, 2003, the Appellant completed an online application just to see if she could obtain a loan from SCFCU to purchase one of Bombardier Capital's occupied mobile homes. Since the sales staff at Schult Home Center and salesman everywhere else in South Carolina were finding buyers on a daily basis, Bombardier's inventory was dwindling rapidly. However, there was an occupied 1999 Redman still available in Holly Hill, South Carolina for $5,500.00. {SOTE, ¶55**(f)**, pg 52}

The Appellant had no idea she would be approved for a loan. (**Fact: #36**) On Monday, February 24, 2003, while checking her mailbox at Yahoo.com, there was an email from Angel Rabon. {SOTE, ¶51**(t)**, pg 42} (**Material Fact: #6**) **On Tuesday, February 25, 2003, the Appellant called Angel Rabon.**

Angel Rabon asked the Appellant for what purpose did she want the $5,500.00 loan? (**Fact: #37**) The Appellant told Ms. Rabon she wanted to purchase a singlewide mobile home from Bombardier Capital. {SOTE, ¶55**(e)**, pg 52}

After hearing the Appellant's reason for the loan, (**Material Fact: #7**) Ms. Rabon told the Appellant, since the loan was for a mobile home, the loan would be essentially the same as her car loan. {SOTE, ¶55**(r)(1)-(5)**, pgs 57-58} (**Material Fact: #8**) The interest rate would be fixed at 15%, the monthly payment would be $110.00 {SOTE, ¶51**(u)(1)-(2)**, pgs 42-43} and the paperwork would arrive in a few days.

(Fact: #38) On Monday, March 3, 2003, the Appellant's mother called her and told her a letter had arrived from SCFCU. The Appellant's mother resides at 223 Martha Heights Lane in North, South Carolina. In 2002, she was splitting her living arrangements between 5074 Coburg Lane and 223 Martha Heights Lane to help with family matters.

On Wednesday, March 5th, 2003, the Appellant drove to North, South Carolina to retrieve the letter. (**Material Fact: #9**) In the envelope was a Credit Life Insurance Enrollment Form {SOTE, ¶55**(c)**, pg 52}; (**Material Fact: #10**) a check for $5,500.00 {SOTE, ¶55**(p)**, pg 57} and (**Material Fact: #11**) a credit application agreement. Everything Angel Rabon had discussed with the Appellant about the mobile home loan was highlighted in pink and [***House***] was handwritten on the application or agreement. {SOTE, ¶55**(o)**, pg 57} (**Material Fact: #12**) On March 5th, 2003, the Appellant deposited the check in her account at BB & T. {Appellant Exhibit 26} (**Material Fact: #13**) The Appellant Court can now clearly see why..."**No Agreement was executed and delivered on 02/24/03 and no mobile home is in SCFCU's records.**" {SOTE, ¶¶45-47, pg 29}

> *In re Mourer*, 287 BR 889 (Bankr. Ct. W.D. Mich. 2003) "[C]onsumer lending transactions under TILA are divided into "open end credit plans" under 15 U.S.C. § 1602(i) and "closed end credit." Reg. Z, **12 C.F.R. § 226.2(a)(10). Closed end transactions are one time credit loans and many consumer loans such as car or home loans.** Chapter 2 of TILA focuses on consumer credit transactions and contains civil liability provisions, See 15 U.S.C. §§ 1635 and 1640, that allow consumers to recover damages against creditors who do not comply with TILA's requirements." [**Boldness** is added for emphasis.]

E. Procedural History from 2011 to the Notice of Appeal.

1. Date of commencement of the action & nature of the action.

(**Facts: #39-#40**) This action and nature of the action began with a Summons and Complaint for a Debt Collection for $4,999.19 that was filed by Amy L. Hewitt in the Magistrate Court in Orangeburg, South Carolina on May 18, 2011. {Appellant Exhibits I & II} The Summons and Complaint was served on the Appellant during the first week in June of 2011. On June 28, 2011, the Appellant filed a timely reply that demanded a Jury Trial and Counterclaimed for a return of $9,240.00. {Appellant Exhibits III & IV} Shortly after the filing, the case was transferred to the Court of Common Pleas.

(**Fact: #41**) On November 23, 2011, Moore & Van Allen, PLLC, filed another Summons and Complaint in the Court of Common Pleas {Appellant Exhibit 24} for a Debt Collection for $5,274.84 {SOTE, ¶181, pgs 138-139} The Complaint specifically stated, (**Material Fact: #14**) "[T]hat on or about February 24, 2003, the Defendant executed and delivered to South Carolina Federal Credit Union that certain Open-End Disbursement Receipt Plus Loanliner® Credit and Security Agreement ("Fixed Interest Rate Agreement") calling for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 Dollars ($5,556.44) a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference." {SOTE, ¶26, pg 20}

(**Fact: #42**) On December 21, 2011, the Appellant filed a timely *Answer* to SCFCU's Complaint with Counterclaims, Affirmative Defenses and another Demand for a Jury Trial. {Answer, pg 1} The Appellant denied each element of SCFCU's Complaint relative to an executed and delivered loan on 02/24/2003. {Answer, ¶¶ 4-22, pgs 5 – 12} The Appellant's $110.00 monthly mobile home payments were misapplied to SCFCU's open-end loan that was created on 02/24/03. 02/24/03 is an approval date, not a loan date.

(**Fact: #43**) Pursuant to the language on the credit application agreement and based on the facts and the evidence, SCFCU's loan was not consummated until March 5, 2003, the date the check was deposited. There is no agreement or contract until after the check is endorsed and deposited.

> SCFCU's credit application agreement that is dated, 02/28/2003 clearly states in pertinent parts; "[B]y endorsing the proceeds check for the advance described above, or by having the loan proceeds deposited into your share/share draft account or paid to a third party, you agree..." {SOTE, ¶55**(o)**, pg 57}

(**Fact: #44**) On April 25, 2012, the Appellant filed a *Notice of Motion and Motion for Summary Judgment* that is supported by *Defendant Dorothy Harley Sistrunk's Legal Memorandum in Support of Notice of Motion and Motion for Summary Judgment* and by *Defendant Dorothy Harley Sistrunk's Statement of Material Facts That Are Not in Dispute*. {SOTE, ¶170**(b)-(c)**, pg 133}. In over 2 years, no hearing has been scheduled for the Appellant's Motion. {The Court's calendar is public and available online}

2. Action/s of SCFCU and the Court and my response/s.

(**Fact: #45**) As stated, February 24, 2003, is an approval date, not a loan date. {SOTE, ¶51**(t)**, pg 42} (**Material Fact: #15**) There is no paperwork for a 02/24/2003 loan of any kind; (**Material Fact: #16**) there is no voucher or check to deposit, (**Material Fact: #17**) there is no credit application agreement, (**Material Fact: #18**) the Appellant's 15% fixed interest rate mobile home purchase is not in SCFCU's account records {SOTE, ¶51**(p)(1)-(2)**, pg 36} and (**Material Fact: #19**) **the Appellant's monthly payments for her mobile home loan were misapplied to a February 24, 2003 computer entered (cyber) loan of SCFCU's own creation, that the Appellant never approved.**

(**Fact: #46**) Therefore, on May 10, 2012, SCFCU's law firm of Moore & Van Allen, PLLC; filed a Motion for Summary Judgment and Amy Rogers' Affidavit in Sup-

port of Motion for Summary Judgment. (**Fact: #47**) On May 18, 2012, the Appellant filed a timely response in her *Defendant Dorothy Harley Sistrunk's Response to Plaintiff's Motion for Summary Judgment, Affidavit of Amy Rogers in Support of Motion for Summary Judgment and the Plaintiff's Reply to Defendant's Answer and Counter-claims*. {SOTE, ¶170**(d)**, pg 133}

(**Material Fact: #20**) SCFCU's Charleston office failure to give the Appellant an Addendum prior to September 5, 2002; not only violated the TILA, it also means; without an Addendum being given, no legitimate Membership & Account Agreement exists and the missing Addendum also serves as undeniable proof of SCFCU's TILA violations. {SOTE, ¶137**(a)-(d)**, pgs 114-115 & ¶¶156-161 & subparts 161**(a)-(g)**, pgs 127-130}

> LOANLINER® Credit and Security Agreement, in ¶ 1, on pg 21, clearly states in pertinent parts; "[T]he LOANLINER® Credit and Security Agreement which includes the Truth in Lending Disclosures, will be referred to as **the Plan**. The Plan documents include this agreement and an Addendum."

(**Facts: #48-#49**) The hearings for June 19 and July 10, 2012 were cancelled. (**Fact: #50**) On September 4, 2012, Judge Goodstein conducted a hearing for SCFCU's Cross Motion for Summary Judgment. The motion was denied and Judge Goodstein commented, **the loan would have been paid out if it were not for the high interest** and she demanded **SCFCU prove the Appellant signed for Credit Life & Disability Insurance on the mobile home.** Under **"By the Court"**, Rule 212(a), SCACR, for verification, the Appellate Court can review the transcript of this hearing, if it is available.

> *Rule 212(a), SCACR*, clearly states in pertinent parts; **By the Court.** "[T]he appellate court may require copies of all or any part of the transcript of proceedings or other matter which was before the lower court or administrative tribunal to be sent up for its inspection and consideration. It may likewise require a report of the trial or hearing, or of any matter relative thereto, to be made by the trial judge or administrative tribunal. These matters shall become part of the Record on Appeal."

(**Fact: #51**) On December 19, 2012, SCFCU's law firm of Moore & Van Allen, PLLC, filed a Stipulation of Dismissal. {Also see Appellant Exhibit VII} (**Fact: #52**) On January 3, 2013, the Appellant filed her *Defendant Dorothy Harley Sistrunk's Objections to Dismissal Pursuant to SCRCP Rule 41(a)(2); Response to the Plaintiff's Stipulation of Dismissal, and Counter Stipulations for Dismissal* and (**Fact: #53**) on November 18, 2013, the Appellant filed her *Request to Submit for a Decision Pursuant to Rule 56(e), SCRCP.* {SOTE, ¶170**(h)-(i)**, pg 134}

(**Fact: #54**) On March 17, 2014, the Appellant filed her *Defendant Dorothy Harley Sistrunk Objects to Notice of Continuance and Files a Second Settlement Offer to the Plaintiff, South Carolina Federal Credit Union (SCFCU), Pursuant to Rule 43(k), SCRCP for a Return of $4,660.89 Back to the Defendant for An Equitable Settlement.* (**Fact: #55**) On April 1, 2014, SCFCU's law firm of Moore & Van Allen, PLLC, filed a Memorandum in Support of Plaintiff's Renewed Motion for Summary Judgment.

(**Fact: #56**) On April 8, 2014, the Appellant filed timely objections to the Plaintiff's Memorandum in her *Defendant Dorothy Harley Sistrunk's Objections to the Plaintiff's Memorandum in Support of Plaintiff's Renewed Motion for Summary Judgment --- **Notification: This Is A Verified Pleading***. {SOTE, ¶170**(k)**, pg 134} The Appellant knew SCFCU or Moore & Van Allen, PLLC, was going to produce a **Bogus Addendum.** from somewhere...from someone's account...at some point in time.

To put the court on notice of SCFCU's and/or Moore & Van Allen, PLLC's upcoming deceit and deception, (**Fact: #57**) On April 8, 2014, the Appellant filed her *Defendant Dorothy Harley Sistrunk Does Not Object to Plaintiff's Renewed Motion for Summary Judgment. The Defendant Encourages the Court to Accept the Motion as Written and the New Evidence as Presented & Deny Any Attempt By the Plaintiff to With-*

draw the Motion and/or the Evidence and/or Alter Amy Rogers' Filed Affidavit in Support of the Plaintiff's Renewed Motion for Summary Judgment. {SOTE, ¶¶186-201, pgs 141-144}

(**Fact: #58**) On April 10, 2014, Judge Jackson conducted a hearing. Even though the Appellant's *Motion for Summary Judgment* has not been opposed for over 2 years, Judge Jackson, in his Order dated, April 21, 2014 and filed on April 23, 2014, decided to deny both motions because numerous facts were in dispute. {Appellant Exhibit 49}

Error: #5. This case should have been sent to a jury, instead of a Master-in-Equity.

> **(1)** *Viock v. Stowe-Woodward Co.*, 13 Ohio App. 3d 7 (Ct.App. 6th App. D. 1983) "[I]t is settled law that "[t]he inferences to be drawn from the underlying facts contained in the affidavits and other exhibits must be viewed in the light most favorable to the party opposing the motion, * * *" which party in the instant case is appellant. *Hounshell* v. *American States Ins. Co.* (1981), 67 Ohio St. 2d 427, 433 [21 O.O.3d 267]; see *Far Eastern Textile, Ltd.* v. *City National Bank & Trust Co.* (S.D. Ohio 1977), 430 F. Supp. 193, 196. It is imperative to remember that the purpose of summary judgment is not to try issues of fact, but rather to determine whether triable issues of fact exist." [Internal supra citations omitted]
>
> **(2) UNITED STATES CONSTITUTION - AMENDMENT 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."
>
> **(3)** *Nelson v. Charleston County Parks & Recreation Comm'n,* 362 S.C. 1, 5, 605 S.E.2d 744 (Ct.App. 2004) "[E]ven when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied."
>
> **(4)** *Nard, Inc. v. DeVito Contracting & Supply, Inc.*, 769 So.2d 1138 (Fla. 2d DCA 2000). "[T]o determine whether a genuine issue of material fact exists, the court must view every possible inference in favor of the non-moving party." *Maynard v. Household Finance Corp.* III, 861 So.2d 1204 (Fla. 2d DCA 2003). The non-moving party is generally the homeowner or defendant. The moving party, who is generally the lender or plaintiff, bears the burden of proving the non-existence of genuine issues of material fact. "[F]urthermore, the burden of proving that such issues exist does not shift to the non-moving party until the movant has successfully met his burden."

(**Fact: #59**) On April 30, 2014, another Order was filed in Court referencing another hearing before the Honorable James B. Jackson, Jr. The Order is dated, April 25, 2014. {Appellant Exhibit 50} (**Fact: #60**) On February 18, 2015, Judge Jackson conducted a hearing. (**Material Fact: #21**) At the hearing, attorney Reid E. Dyer, from Moore & Van Allen, PLLC, handed Judge Jackson a black exhibit notebook. In the notebook, is SCFCU's second exhibit 3. SCFCU's 2nd exhibit 3 is a **BOGUS ADDENDUM**. {SOTE, ¶51(q)(1)-(2)(A)-(Z), pgs 36-41} (**Material Fact: #22**) SCFCU's **BOGUS ADDENDUM** is intended to deceive the Court into believing, Leon Frazier, SCFCU's account representative at their West Columbia Office,{Appellant Exhibit VI} gave her an **Addendum** on September 5th in 2002. **Nothing is farther from the truth.** {SOTE, ¶¶8-53, pgs 7-47} **Error: #6.** SCFCU's **Bogus Addendum** was not even addressed by the court.

> **(1)** *Sun World, Inc. v. Lizarazu Olivarria,* 144 F.R.D. 384, 389 (E.D. Cal. 1992) (holding that, when a litigant commits a fraud upon the court, "the inherent powers of the court support the sanction of dismissal and entry of default judgment"); *Pope v. Federal Express Corp.,* 138 F.R.D. 675, 683 (W.D. Mo. 1990), aff'd in part, vacated in part on other grounds, 974 F.2d 982, 984 (8th Cir. 1992) (court has inherent power to sanction litigants for improper conduct) *Pope,* 138 F.R.D. at 682 (dishonest conduct by a party or conduct that "threatens the integrity of the judicial process" is grounds for dismissal with prejudice under Rule 41(b)).
>
> **(2)** "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.}
>
> **(3)** *Kupferman v. Consolidated Research & Mfg. Corp.*, 459 F. 2d 1072 (2nd Cir. 1972) "[W]hile an attorney "should represent his client with singular loyalty that loyalty obviously does not demand that he act dishonestly or fraudulently; on the contrary his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court. And when he departs from that standard in the conduct of a case he perpetrates a fraud upon the court." 7 Moore, *supra,* at 513 (footnote omitted)."

3. Order/s of Judgment and Appellant's response/s.

(**Irrefutable Fact: #1**) An Order of Judgment was filed with the Clerk of Court in Orangeburg, that is dated and filed on March 26, 2015. The initials on the filed Order of Judgment look like [J.B.M.] {Appellant Exhibit 41} **Error : #7.** In ¶2, on pg 1, sent. #2, The Order clearly states;

> "[I] find that the Defendant borrowed money from the Plaintiff pursuant to a Loan Liner open ended disbursement agreement dated February 28, 2003."

(**Material Fact: #1**) **There is no filed Complaint or an Amended filed Complaint for a LoanLiner open ended disbursement agreement dated February 28, 2003. The 02/ 28/2003 agreement states the Interest Rate is "Fixed" not open or variable** {SOTE, ¶51, & subparts **(a)-(w)**, pgs 31-43}

> *Premier Federal Credit Union v. Douglas*, 465 SE 2d 338 (NC: Ct.App. 1996) "[a]n automobile loan is not the type of transaction in which a creditor would reasonably contemplate repeated transactions with the average consumer. *Vines v. Hodges,* 422 F.Supp. 1292, 1297, 1298 n. 10 (1976). These two assertions of fact, taken as true, necessarily raise an inference that the loan transaction at issue was not open-ended. 12 C.F.R. § 226.2(a)(20) (Regulation Z). Plaintiff maintains that defendant's signature on the Loanliner Advance (which constituted the car loan) settles the factual issue regarding whether repeated transactions were contemplated by the parties. Plaintiff characterizes the Advance as evidence that a sub-account of Defendant's preexisting open-ended account was being used for the car purchase by defendant. Plaintiff is mistaken."

Error: #8. In ¶1, on pg 2, sent. #1 in the Judgment Order;{Appellant Exhibit 41}

> "[I] find that there was substantial confusion between the Plaintiff and the Defendant in that the Defendant thought she was receiving a closed ended loan that was similar to the previous loan in which she financed her automobile."

(**Material Facts:#23-#24**) SCFCU's and CUNA Mutual Group's own documents prove this an erroneous finding of fact. See SCFCU's Exhibits 6 & 7 {SOTE, ¶51**(t)-(u)** & subparts **(1)-(2)**, pgs 42-43} See CUNA Mutual Group's lending guidelines in Exhibits D & J-M. {SOTE, ¶55**(d)(1)-(6)**, pg 52, subparts **(j)-(m)**, pgs 53-56} and review the background of the mobile home purchase in this Brief, Section **[D]**, pgs 22-23.

(**Fact: #61**) Because of the Court's erroneous findings of fact and other egregious violations, On April 6, 2015, the Appellant filed her *Dorothy Harley Sistrunk's Legal Memorandum of Law and Authorities Supporting Motion to Alter or Amend the Judgment Pursuant to Rule 59(e), SCRCP.* {SOTE, ¶170**(m)**, pg 134} On April 8, 2015, the Appellant also filed a *Notice of Motion and Motion for a New Trial Pursuant to Rule 52(b), SCRCP and in Conjunction with the Motion to Alter or Amend the Order of Judgment Pursuant to Rule 59(e), SCRCP, that was filed on April 6, 2015.* {Appellant Exhibit 51}

> **(1)** *Hendricks v. Clemson Univ.*, 353 S.C. 449, 459, 578 S.E.2d 711, 716 (2003) "[I]f the evidence as to the existence of a contract is conflicting or raises more than one reasonable inference, the issue should be submitted to the jury." Also see *Easler v. Pappas*, 252 S.C. 398, 166 S.E. (2d) 808 (1969); *Crossley v. State Farm Mutual Auto. Ins.*, 307 S.C. 354, 415 S.E.2d 393 (1992) and *Weir v. Citicorp Nat'l Services, Inc.*, 312 S.C. 511, 435 S.E.2d 864 (1993)
>
> **(2)** *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."

(**Irrefutable Fact: #2**) On April 20, 2015 an Order was issued denying a Motion to Reconsider. {Appellant Exhibit 46} There is no motion to Reconsider. The Appellant's filed Motion is to Alter or Amend, not Reconsider. This is why the Appellant filed her *Dorothy Harley Sistrunk's Objections to Judicial Errors; Re: A Judgment on a Complaint That Was Never Filed; A Denial of a Motion Never Filed, and Additional Errors of Fact or Law That Are Not in Accordance With South Carolina's Rules of Civil Procedure Rules of Evidence, Precedent and Amendment VII to the Constitution of the United States of America* on April 30, 2015. {SOTE, ¶¶203-204, pg 145}

F. Statement of Appealabiity.

This appeal, dated, May 20, 2015 is taken pursuant to Rules 72 SCRCP, Rule 201(a), 203(b)(1) & Rule 241(a) SCACR. The denial of the Appellant's motions to Alter or Amend the Order of Judgment and a New Trial are appealable court orders.

(a) Rule 72, SCRCP, says this... "[A]ppeal may be taken, as provided by law, from any final judgment or appealable order."

(b) Rule 201(a), SCACR, clearly provides; in pertinent parts... "[A]ppeal may be taken, as provided by law, from any final judgment, appealable order or decision."

(c) Rule 203(b)(1), SCACR, states in pertinent parts; "[A] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment."

(d) Rule 241(a), SCACR, clearly states in pertinent parts... "[A]s a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court....."

G. Standard of Review

1. Summary Judgment.

Since the Appellant never had a real jury trial, "[A]s a conclusion of law, the Appellate Court reviews the trial court's grant of summary judgment de novo." *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 530 S.E.2d 369 (2000) "[T]o obtain summary judgment, the moving party must demonstrate there is "no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law." *Rule 56, SCRCP; Wilson v. Moseley*, 327 S.C. 144, 146, 488 S.E.2d 862, 863 (1997); *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998) ("An appellate court reviews the granting of summary judgment under the same standard applied by the trial court.") "[T]he evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Law v. S.C. Dep't of Corrs.*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006) "[I]f triable issues exist, those issues must go the jury." *Mulherin-Howell v. Cobb*, 362 S.C. 588, 595, 608 S.E.2d 587, 591 (Ct. App. 2005)

"[I]f triable issues exist, those issues must go to the jury." *Rothrock v. Copeland*, 305 S.C. 402, 409 S.E.2d 366 (1991); "[S]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000). "[A]ll inferences, conclusions and ambiguities, arising from the evidence must be construed most strongly against the moving party." *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). "[E]ven when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000)

2. Abuse of Discretion.

Even though, "[T]he admission or exclusion of evidence is within the sound discretion of the trial court and the trial court's decision will not be disturbed on appeal absent an abuse of discretion" *Pike v. S.C. Dept. of Transp.*, 343 S.C. 224, 234, 540 S.E.2d 87, 92 (2000); "[A]n abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support." *Carlyle v. Tuomey Hosp.*, 305 S.C. 187, 193, 407 S.E.2d 630, 633 (1991). "[T]o warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, *i.e.*, there is a reasonable probability the jury's verdict was influenced by the wrongly admitted or excluded evidence." *Hanahan v. Simpson*, 326 S.C. 140, 156, 485 S.E.2d 903, 911 (1997); "[A] circuit court's failure to exercise discretion is itself an abuse of discretion." *State v. Smith*, 276 S.C. 494, 280 S.E.2d 200 (1981); *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct.App.1997) ("When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred."); *Balloon Plantation*, 303 S.C. at 155, 399 S.E.2d at 441 ("It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.")

White v. ARCO/Polymers, Inc., 720 F. 2d 1391 (5th Cir. 1983) "[T]his Court has elaborated on that explication with explanation that clear error exists where (1) the findings are without substantial evidence to support them, (2) the court misapprehended the effect of the evidence, and (3) if, although there is evidence which if credible would be substantial, the force and effect of the testimony, considered as a whole, convinces the Court that the findings are so against the great preponderance of the credible testimony that they do not reflect or represent the truth and right of the case."

ARGUMENTS

I. LACK OF SUBJECT MATTER JURISDICTION

A. The lower court Judge lacked subject matter jurisdiction to rule on and enter an Order of Judgment for a Complaint that was never filed.

The Court lacked subject matter jurisdiction to issue an Order of Judgment. (**Material Fact: #1**) No Complaint was ever filed for a LOANLINER® loan that was executed and delivered on February 28, 2003. {SCFCU's Complaint, ¶7, pg 2}, the court lacked "Subject Matter Jurisdiction" for the following reason, (**Material Fact: #25**) There is no filed Complaint or an amended filed Complaint or Debt Collection in the Court's records against the Appellant for an open-end Loanliner loan that was executed and delivered on February 28, 2003.

> **(1)** *Rule 3(a), SCRCP*, clearly states, in pertinent parts; "[A] civil action is commenced when the summons and complaint are filed with the clerk of court."
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> **(2)** *Rule 4(a), SCRCP*, states, "[T]he summons shall be issued by plaintiff or plaintiff's attorney. Copies of the original summons shall be served upon each defendant."
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> **(3)** *Rule 4(b), SCRCP*, clearly states, "[T]he summons shall be signed by the plaintiff or his attorney, contain the name of the State and county, the name of the court, the file number of the action, and the names of the parties, be directed to the defendant ---- and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint."
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> **(4)** *Rule 4(d), SCRCP*, clearly states, "[T]he summons and complaint must be served together." *Subpart d(1)* states in pertinent parts, that service shall be made; "[U]pon an individual other than a minor under the age of 14 years or an incompetent person, by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service of process."
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> **(5)** *Rule 7(a), SCRCP*, states in pertinent parts; "[T]here shall be a complaint and an answer. ---- No other pleadings shall be allowed...,"

(6) *MATTER OF FRY v. Tarrytown*, 680 NE 2d 578 (NY: Ct. App. 1997) "[O]ther Federal courts have also held that the failure to properly commence an action because of a defect in the initiatory document deprives the court of power to act (*see, e.g., Application of Howard*, 325 F.2d 917, 919-920 [ordering the dismissal of an "application" for "failure to comply with the applicable rules of civil procedure" where the party failed to file a complaint and to "proceed in such manner as the rules of civil procedure prescribe"]; *Farrell v Ignatius*, 283 F Supp 58, 60 ["Since [only an affidavit and] no complaint was filed and no summons was issued in the case at bar, no action has ever been commenced or is pending in this court. The court has no jurisdiction to act. The order to show cause is vacated and set aside as wholly void and the proceeding is dismissed"]; *Warren v Arzt*, 18 FRD 11, 13 ["To commence an action, it is necessary that the Rules of Civil Procedure be complied with, that a complaint be filed, a summons issued, and service made as prescribed in the Rules. * * * Since no action has ever been commenced or is pending in this Court, this Court obviously has no jurisdiction to act"]; *In re Market Basket*, 122 F Supp 321, 322 ["Inasmuch as no action has been commenced or is pending in this court in respect of this matter, it follows that the jurisdiction of the court has never been invoked and that the ex parte order signed and entered herein by the court on September 9, 1953, is, and always was, wholly void"]).

(7) *Cox v. Lunsford*, 272 S.C. 527, 252 S.E. (2d) 918 (1979) "[P]arties cannot by consent confer jurisdiction upon a court."

B. The lower court Judge lacked subject matter jurisdiction pursuant to Rule 12(b)(1), SCRCP. SCFCU's loan is dated 02/24/2003.

(**Material Fact: #3**) SCFCU's Complaint and Debt Collection are for a Loan-Liner account executed and delivered on February 24, 2003 that called for the payment of $5,556.44. There is no filed Complaint or an amended filed Complaint for a Loanliner open rate agreement either. {SOTE, ¶51, pg 31 & SCFCU's Complaint ¶7, pg 2}

(1) *State v. Guthrie*, 352 S.C. 103, 107, 572 S.E.2d 309, 311-12 (Ct.App.2002) "[T]he acts of a court with respect to a matter as to which it has no jurisdiction are void."

(2) *Dema v. TENET PHYSICIAN SERVICES-HILTON*, 678 SE 2d 430 (2009) "[S]ubject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. *Skinner v. Westing-house Elec. Corp.*, 380 S.C. 91, 93, 668 S.E.2d 795, 796 (2008). South Carolina trial courts are vested with general original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts. S.C. Const. art. V, § 11."

(3) *Bunkum v. Manor Properties,* 467 SE 2d 758 (Ct. App. 1996) "[S]ince the master had entered final judgment in this case, and therefore had no subject matter jurisdiction to hear the motion for assessment of costs, fees, expenses and damages against the appeal bond, his order entering judgment against Bunkum on the appeal bond is void. *See DeWitt v. S.C. Dept. of Highways & Public Transp.,* 274 S.C. 184, 262 S.E.2d 28 (1980) (all proceedings of a court lacking subject matter jurisdiction are a nullity, and its judgment has no effect)."

(4) *Fielden v. Fielden,* 262 SE 2d 43 (1980) "[L]ack of subject matter jurisdiction cannot be waived and should be taken notice of by this Court on its own motion. *Harden v. S.C.H.D.*, 266 S.C. 119, 221 S.E. (2d) 851 (1976); *McCullough v. McCullough*, 242 S.C. 108, 130 S.E.2d 77 (1963)"

(5) *Lake v. Reeder Const. Co.,* 498 SE 2d 650 (Ct. App. 1998) "[L]ack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court. *Ex Parte Reichlyn,* 310 S.C. 495, 427 S.E.2d 661 (1993); *Eaddy v. Eaddy,* 283 S.C. 582, 324 S.E.2d 70 (1984); *Bunkum v. Manor Properties,* 321 S.C. 95, 467 S.E.2d 758 (Ct. App. 1996). The burden rests on the appellant to show the Circuit Court's decision is against the preponderance of the evidence. *Crim v. Decorator's Supply,* 291 S.C. 193, 352 S.E.2d 520 (Ct.App.1987)."

(6) *Town of Hilton Head Island v. Godwin,* 634 SE 2d 59 (Ct. App. 2006) "[T]he appellate court must always take notice of the lack of subject matter jurisdiction. *Amisub of S.C., Inc. v. Passmore,* 316 S.C. 112, 114, 447 S.E.2d 207, 208 (1994). The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court. *See, e.g., Lake v. Reeder Constr. Co.,* 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct.App.1998) (holding issues related to subject matter jurisdiction may be raised at any time)"

(7) *STANDARD FED. S&L ASSOC. v. Mungo*, 410 SE 2d 18 (Ct. App. 1991) "[R]ule 1, S.C.R. Civ. P., provides the Rules of Civil Procedure govern procedure in all South Carolina courts in all suits of a civil nature."

II. ABUSE OF DISCRETION

A. The lower court judge abuse his discretion by improperly granting judgment when issues of fact, material facts and law still exist that mandate a jury trial.

(Material Facts: #26-#27) There is no evidence in the Court's records that prohibits purchasing a mobile home for $5,500.00. {SOTE, ¶¶52-53, pgs 44-48} There is no evidence in the Court's records that will allow SCFCU to ignore or violate the TILA's

requirement that disclosures must be given to the consumer, in this case, an Addendum to the Appellant.....**before a loan agreement or contract is consummated.**

> *Brodo v. Bankers Trust Co.,* 847 F. Supp. 353 (D. C. E. D. Pa. 1994) "[T]ILA is a consumer protection statute designed to ensure "a meaningful disclosure of credit terms" to applicants for credit to alleviate the unequal bargaining power and sophistication between consumers and lenders. 15 U.S.C. § 1601(a); *Thomka v. A.Z. Chevrolet, Inc.,* 619 F.2d 246, 248 (3d Cir.1980). The statute imposes strict liability upon lenders which fail to disclose any mandated information, even if the violation is technical and unintended. *Smith v. Fidelity Consumer Discount Co.,* 898 F.2d 896, 898 (3d Cir.1990). TILA is to be liberally construed in favor of the borrower. *Id.* A borrower is not required to prove or even to allege any injury resulting from a TILA violation. *Thomka,* 619 F.2d at 250. Courts should defer to the interpretation of TILA set forth in 12 C.F.R. § 226 ("Regula-tion Z"), promulgated by the Federal Reserve Board pursuant to expansive authority granted by Congress, "absent some obvious repugnance to the statute." *Smith,* 898 F.2d at 898 (citations omitted.)"

(**Material Fact: #28**) There is no evidence in the Court's records that would allow SCFCU to ignore or violate CUNA Mutual Group's lending guidelines that exclude, home equity loans, mobile homes and home purchases from its open-end lending plans. Review CUNA Mutual Group's lending guidelines in Exhibit "D". {SOTE, ¶55**(d)(1)-(6)**, pg 52}

(**Material Fact: #29**) There is no evidence in the Court's records verifying SCFCU told the Appellant her interest rate was not fixed at 15%, but open-ended and at times, would average 55.5% [(11% + 100%) ÷ 2] {Appellant Exhibit 29, pg 1}

B. The lower court judge abused his discretion by denying the Appellant's Motion to Alter or Amend the Order of Judgment and for a New Trial when evidence and exhibits that have never been seen or reviewed in court were never considered during 4 years of litigation that should have been presented to a jury or at the very least reviewed before issuing an Order of Judgment?

(**Fact: #62**) During 4 years of litigation, the lower court has never reviewed or discussed the Appellant's filed Exhibits, D-N, nor has the lower court considered the relevancy of SCFCU's own exhibits that clearly show a 15% "Fixed Interest Rate" loan for a

mobile home and not an open-end charge account. {SOTE, ¶51**(a)-(w)**, pgs 31-43}

(**Fact: #63**) During 4 years of litigation, the lower court also failed to consider the relevancy of SCFCU's consistent failure to produce or present any evidence, affidavits, answers to interrogatories, admissions or any eyewitness testimony from any official from SCFCU that an Addendum was given to the Appellant prior to 09/05/2002. {SOTE, ¶185- **(A)**, pg 140}

> **(1)** *Com. v. Copeland*, 554 A. 2d 54 (Pa: S. Ct. 1988) "[C]oncerning the matter of relevancy, it has been said that: "The law furnishes no test of relevancy, but tacitly refers it to logic and general experience. Evidence is admissible which tends to make the fact at issue more or less probable or intelligible or to show the origin and history of the transaction between the parties and explain its character. *Gregg v. Fisher*, 377 Pa. 445, 454, 105 A.2d 105, 110 (1954)."
>
> **(2)** *Quick v. Donaldson Co., Inc.*, 90 F. 3d 1372 (8th Cir. 1996) "[A]t the summary judgment stage, the court should not weigh the evidence, make credibility determinations, or attempt to determine the truth of the matter. 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. The evidence of the non-movant is to be believed..."
>
> **(3)** *Hager v. Venice Hosp., Inc.*, 944 F. Supp. 1530 (D. C. M.D. Fla. 1996) "[T]he movant can demonstrate that the plaintiff's evidence is insufficient to establish his case, or an essential element thereof, by either affirmatively demonstrating the plaintiff's lack of evidence or by reviewing for the court the record to show such lack of evidence."

III. ERRORS OF FACT OR LAW

A. The lower court judge erred by failing to consider the Appellant's Judicial Admissions in Notarized, Sworn To and Verified Pleadings.

(**Fact: #64**) "[J]udicial admissions are formal admissions in the pleadings which have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." *In re Fordson Engineering Corp.*, 25 B.R. 506, 509 (Bankr.E.D.Mich. 1982). "[F]actual assertions in pleadings and pretrial orders, unless amended, are considered judicial admissions conclusively binding on the party who made them." *American*

Title Ins. Co. v. Lacelaw Corp., 861 F.2d 224 (9th Cir.1988) {SOTE, ¶¶90-93, pgs 89-91}

(1) *Ferguson v. Neighborhood Housing Services.*, 780 F.2d 549, 551 (6th Cir.1986) "[U]nder federal law, stipulations and admissions in the pleadings are generally binding on the parties and the Court. Not only are such admissions and stipulations binding before the trial court, but they are binding on appeal as well."

(2) *Houston First American Sav. v. Musick*, 650 S.W.2d 764 (1983) "[A]ssertions of fact, not pled in the alternative, in the live pleadings of a party are regarded as formal judicial admissions. Any fact admitted is conclusively established in the case without the introduction of the pleadings or presentation of other evidence."

(3) *Whitehurst v. Corey*, 364 SE 2d 728 (N.C. Ct. App. 1988) "[W]e disagree. Defendants' verified answer and counterclaim constitute an "affidavit" for purposes of determining either party's right to summary judgment. See *Schoolfield v. Collins*, 281 N.C. 604, 612, 189 S.E.2d 208, 213 (1972) (to extent verified pleadings meet requirements of Rule 56(e), pleadings are "affidavit").

(4) *Pentecost v. Harward*, 699 P.2d 696 (Utah 1985) (holding that a verified pleading that meets the requirements of Rule 56(e) can be considered the equivalent of an affidavit)

(5) *Willis v. Lauridson*, 118 P. 530 (Cal. 1911) (holding that when seeking an injunction, a verified pleading is equivalent to an affidavit)

(6) *Iowa v. One Certain Automobile*, 23 N.W.2d 847 (Iowa 1946) (noting the general rule that a verified pleading may be held to be an affidavit)

B. The lower court erred by failing to rule on the Appellant's Counter-claim for TILA violations before issuing an Order of Judgment.

(**Fact: #65**) The lower court failed to rule on the Appellant's counterclaim for SCFCU's disclosure violations in 2002 and 2003. A credit transaction which requires disclosures under the [TILA] is completed when the lender and borrower contract for the extension of credit. The disclosures must be made sometime before this event occurs. **If the disclosures are not made, this violation of the Act occurs, at the latest, when the parties perform their contract.** *Wachtel v. West*, 476 F.2d 1062, 1065 (6th Cir.1973) Therefore, the lower court failed to address SCFCU's TILA violations pursuant to federal law. {SOTE, ¶14 & subparts **(a)-(d)**, pgs 10-12}

Roberts v. Fleet Bank (RI), 342 F. 3d 260 (3rd Cir. 2003) "[B]ecause the purpose of the TILA is to assure meaningful disclosures, "the issuer must not only disclose the required terms, it must do so accurately." *Rossman v. Fleet Bank (R.I.) Nat'l Ass'n*, 280 F.3d 384, 390-91 (3d Cir.2002). "The accuracy demanded excludes not only literal falsities, but also misleading statements." *Id.* (citing *Gennuso v. Commercial Bank & Trust Co.*, 566 F.2d 437, 443 (3d Cir.1977)). As "the TILA is a remedial consumer protection statute, we have held it `should be construed liberally in favor of the consumer.'" *Rossman*, 280 F.3d at 390 (quoting *Ramadan v. Chase Manhattan Corp.*, 156 F.3d 499, 502 (3d Cir.1998)). *See also Begala v. PNC Bank, Ohio, N.A.*, 163 F.3d 948, 950 (6th Cir.1998) ("We have repeatedly stated that TILA is a remedial statute and, therefore, should be given a broad, liberal construction in favor of the consumer."); *Fairley v. Turan-Foley Imps., Inc.*, 65 F.3d 475, 482 (5th Cir.1995) ("The TILA is to be enforced strictly against creditors and construed liberally in favor of consumers....").

C. The lower court erred by failing to rule on the Appellant's Counter-claim for SCUTPA violations before issuing an Order of Judgment.

(**Fact: #66**) The lower court failed to rule on the Appellant's counterclaim for SCFCU's SCUTPA violations. SCFCU's 15% fixed interest rate is misleading, deceitful and deceptive and in 2003, this kind of deception had and will continue to have a tremendous impact on the unsuspecting public in the State of South Carolina. The illusion of compliance is not compliance. Therefore, this kind of deception has the potential for repetition, either openly or covertly. {SOTE, ¶¶26-34, pgs 20-23}

(1) *Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 351 SE 2d 347 (Ct. App. 1986) "[T]he requirement of Section 39-5-140(b) that the clerk of court notify the Attorney General of any action brought by a private party pursuant to Section 39-5-140(a) indicates that the private cause of action created by the latter section was intended by the legislature to serve the same objective and to be similarly restricted in scope. The legislature's intent to limit the application of the UTPA to only those unfair or deceptive acts or practices in the conduct of trade or commerce that affect the public interest is made even more clear when one considers the language used by Section 39-5-10 in defining the terms "trade" and "commerce," particularly, the language "and shall include any trade or commerce directly or indirectly affecting the people of this State." This language reflects the legislature's intent than an unfair or deceptive act or practice in the conduct of any trade or commerce injuriously affect "the people of this State," *i.e.*, the public interest, before it can be actionable under the UTPA. *See Butterfield v. Butler*, 50 Okla. 381, 150 P. 1078 (1915) (the word "affect" is often used in the sense of acting injuriously upon persons and things)."

(2) *Riley Hill Gen. Contr. v. Tandy Corp.*, 737 P. 2d 595 (Or: S. Ct. 1987) "[A] party who is found "guilty" of deceit is not found merely negligent in deceiving the victim. That party must have intended to deceive the victim or acted in reckless disregard for the truth. The type of interest protected by the law of deceit is the interest in formulating business judgments without being misled by others — in short, in not being cheated. --- A person who has been found "guilty" of deceiving or cheating someone certainly has been found "guilty" of conduct which carries the same stigma of guilt whether the conduct is a criminal or civil act of deceit." (Internal citations omitted)

(3) *Rubio v. Capital One Bank*, 613 F. 3d 1195 (9th Cir. 2010) "[t]he Board categorized the term "fixed" as "[m]isleading" and stated that it had "found through consumer testing ... that consumers generally believe a `fixed' rate does not change. Here, the Board has concluded that "fixed" is "generally" interpreted to mean that the rate will not be changed and that the creditor has not reserved the right to change it at a later date. 74 Fed. Reg. at 5373. --- But the Board's conclusion and the study on which it relies certainly persuade us that "fixed" can *reasonably* be interpreted to mean "unchangeable." For that reason, it is not "clear and conspicuous" to describe an APR as "fixed" when the creditor has reserved the right to change the APR for any reason."

D. The lower court err by failing to inform the Appellant that by consenting to a hearing with a Master in Equity after Summary Judgment was denied waived her right to a jury trial.

(**Fact: #67**) On December 15, 2012, the lower court judge erred by not informing the Appellant; after summary judgments motion were denied, of her right to a jury trial on all issues triable of right by a jury. The Appellant could have avoided the hearing in the Master in Equity court with appropriate and timely information from the lower court. {Appellant Exhibits 49 & 50}

(1) *Wilcher v. City of Wilmington*, 139 F. 3d 366 (3rd Cir. 1998) "[F]ed. R. Civ.P. 39(a) (emphasis added). This Court has stated that once a party makes a timely demand for a jury trial, that party subsequently waives that right when it participates in a bench trial without objection. *See Cooper v. Loper*, 923 F.2d 1045, 1049 (3d Cir.1991). Numerous courts have adopted this position. *See generally* 5 James Wm. Moore et al., Moore's Federal Practice, ¶ 39.03 n. 5-6 (2d ed.1988) (consent can be inferred from conduct of parties or counsel). *See also Royal American Managers, Inc. v. IRC Holding Corp.*, 885 F.2d 1011 (2d Cir. 1989) (plaintiff waived right to jury trial in securities action by participating in bench trial without objection)"

(2) *US v. RUIZ-BAUTISTA*, (10th Cir. 2012) "[W]e agree with Mr. Ruiz-Bautista that the magistrate judge erred by not informing him of these Rule 11 rights and obligations. *See Ferrel,* 603 F.3d at 763; *see also* Fed. R. Crim. P. 11(b)(1) (stating "the court must inform the defendant of, and determine that the defendant understands" the enumerated rights and obligations).

(3) *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."

E. The lower court err by failing to rule on the Appellant's Affirmative Defense for Recoupment before issuing an Order of Judgment.

(**Fact: #68**) The lower court Judge failed to rule on the Appellant's Affirmative Defense for Recoupment for SCFCU's TILA violations before issuing an Order of Judgment. Under the Discovery Rule, the statute of limitations begins to run from the date the Appellant knew or should have known, by the exercise of reasonable diligence that a cause of action existed for the wrongful conduct of SCFCU. S.C. Code Ann. § 15-3-535 (2005); *Dean v. Ruscon Corp.,* 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996).

(**Material Facts: #5, #18 & #19**} No Addendum was given to the Appellant on or before 9/5/02 to consummate SCFCU's Membership & Account Agreement (MAAA) pursuant to law and CUNA's procedures. There is no mobile home purchase in SCFCU's account records and SCFCU's interest rate is not fixed at 15%. {Appellant Exhibits 20 & 21} (**Facts: #69-#70**) The Appellant's Recoupment is justifiable and statutorily enforceable. The lower court failed to enforce statutory law. {SOTE, ¶¶21-25, pgs 16-20}

(1) *Matter of Coxson,* 43 F. 3d 189 (5th Circuit 1995) "[T]he mere fact that the Coxsons were the plaintiffs in the case below does not preclude the finding that their TILA claim was raised defensively. *See, e.g., In re Jones,* 122 B.R. 246 (plaintiff permitted to raise TILA recoupment claim defensively). Furthermore, Texas state courts have held that a TILA claim may be asserted defensively as a recoupment action against a lender attempting to enforce contractual obligations. — We find that the TILA claim was not barred by the statute of limitations, and therefore remand the issue for consideration of the merits of the claim." (Citations omitted)

(2) *Werts v. Federal Nat. Mortg. Ass'n*, 48 BR 980 (D. C. E.D. Pa. 1985) "[M]oreover, plaintiff need not claim that he was actually deceived by the absence of the terms in order for the court to find that the Act was violated. *Dzadovsky v. Lyons Ford Sales, Inc.*, 593 F.2d 538, 539 (3d Cir.1979). In fact, in *Thomka v. A.Z. Chevrolet*, 619 F.2d 246, 250 (3d Cir. 1980), the Third Circuit cited a Fifth Circuit holding that "[o]nce the court finds a violation, no matter how technical, it has no discretion with respect to the imposition of liability."

F. The lower court erred by failing to rule on the Appellant's Affirmative Defense of Unclean Hands before issuing an Order of Judgment.

The Appellate Court must decide by virtue of SCFCU's TILA violations in 2002 and 2003; whether or not SCFCU has Unclean Hands that effectively bar any judicial relief. {SOTE, ¶¶38-42, pgs 24-26}

Gaudiosi v. Mellon, 269 F. 2d 873 (3rd Cir. 1959) "[A]s Judge Learned Hand in his dissenting opinion in *Art Metal Works v. Abraham & Straus*, 2 Cir., 1934, 70 F.2d 641, at page 646, certiorari denied 293 U.S. 596, 55 S.Ct. 110, 79 L.Ed. 689, so aptly stated: "The doctrine [of unclean hands] is confessedly derived from the unwillingness of a court, originally and still nominally one of conscience, to give its peculiar relief to a suitor who in the very controversy has so conducted himself as to shock the moral sensibilities of the judge. *It has nothing to do with the rights or liabilities of the parties; indeed the defendant who invokes it need not be damaged, and the court may even raise it sua sponte.* * *" (Emphasis supplied.)"

G. The lower court erred by failing to rule on SCFCU's and/or SCFCU's law firm's false evidence and testimony, dishonest conduct and misrepresentation of material facts before issuing an Order of Judgment.

The Appellate Court must decided whether or not the lower court's acceptance of false testimony, false evidence and/or misrepresented material facts constitutes a denial of due process.{SOTE, ¶¶8-10, pgs 7-8; ¶51**(q)(1)-(2)(A)-(Z)**, pgs 36-41; ¶¶64-73 & subparts **(a)-(d)**, pgs 64-72; and ¶¶156-161 & subparts **(a)-(g)**, pgs 127-130}

(1) *Giglio v. United States*, 405 US 150 (1972) "[A]s long ago as *Mooney* v. *Holohan*, 294 U. S. 103, 112 (1935), this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice." This was reaffirmed in *Pyle* v. *Kansas*, 317 U. S. 213 (1942). In *Napue* v. *Illinois*, 360 U. S. 264 (1959), we said, "[t]he same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." *Id.*, at 269."

(2) Coe v. Bell, 161 F. 3d 320 (6th Cir. 1998) "[T]he knowing use of false or perjured testimony constitutes a denial of due process if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. In order to establish prosecutorial misconduct or denial of due process, the defendants must show (1) the statement was actually false; (2) the statement was material; and (3) the prosecution knew it was false." United States v. Lochmondy, 890 F.2d 817, 822 (6th Cir.1989) (citations omitted)."

H. The lower court erred by failing to comply with Rule 42(b), SCRCP.

The Appellate Court must decide whether or not the lower court violated Rule 42(b), SCRCP's option to order a separate trial of any claim, cross-claim or counterclaim. {Appellant's Memorandum to Set Aside Judgment, ¶12, & subparts **(1)-(4)**, pgs 11-12}

(1) Rule 42(b), SCRCP, clearly states in pertinent parts; "[T]he court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State."

(2) Johnson v. SC National Bank, 354 SE 2d 895 (1987) "[I]n C & S Real Estate Services v. Massengale, 290 S.C. 299, 350 S.E. (2d) 191 (1986), this Court issued an order clarifying the procedure to be followed under Rules 13, 38 and 42, SCRCP, when a complaint is equitable and a counterclaim is legal and compulsory: (4) If the complaint is equitable and the counterclaim legal and compulsory, the *defendant* has the right to a jury trial on the counterclaim. In that case, the proper procedure is as follows: (a) The trial judge should, pursuant to Rule 42(b), order separate trials of the legal and equitable claims... [Emphasis supplied]. 290 S.C. at 302, 350 S.E. (2d) at 193."

(3) FIRST-CITIZENS BANK & TRUST OF SC v. Hucks, 408 SE 2d 222 (1991) "[A] party does not waive its rights to a jury trial on a counterclaim asserted in an equity action if the counterclaim is legal and compulsory in nature. North Carolina Federal S & L v. DAV Corp., 298 S.C. 514, 381 S.E. (2d) 903 (1989). "If the complaint is equitable and the counterclaim legal and compulsory, the defendant has the right to a jury trial on the counterclaim." Johnson v. South Carolina Nat. Bank, 292 S.C. 51, 52, 354 S.E. (2d) 895, 896 (1987)."

The Appellant is *Pro se* and unknowingly consented to a Master-in-Equity hearing {Appellant Exhibit 50} and did not waive any rights to a Jury Trial on her Counterclaims.

I. The lower court erred by failing to comply with Rule 54(b), SCRCP.

The Appellate Court must decide whether or not the lower court erred by failing to consider Rule 54(b), SCRCP's mandate not to terminate the action as to any of the claims before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties. {Appellant's Memorandum to Set Aside Judgment, ¶13 & subparts **(1)-(4)**, pgs 12-13}

> **(1)** *Rule 54(b), SCRCP*, clearly states in pertinent parts; "[W]hen more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."
>
> **(2)** *Morrison-Knudsen Co., Inc. v. Archer*, 655 F. 2d 962 (9th Cir. 1981) "[T]he trial court should not direct entry of judgment under Rule 54(b) unless it has made specific findings setting forth the reasons for its order. Those findings should include a determination whether, upon any review of the judgment entered under the rule, the appellate court will be required to address legal or factual issues that are similar to those contained in the claims still pending before the trial court. A similarity of legal or factual issues will weigh heavily against entry of judgment under the rule, and in such cases a Rule 54(b) order will be proper only where necessary to avoid a harsh and unjust result, documented by further and specific findings."

J. The lower court erred by failing to comply with Rule 13(a), SCRCP.

The Appellate Court must decide whether or not the lower court erred by failing to consider Rule 13(a), SCRCP allows the Appellant to plead as a counterclaim any claim arising out of the transaction that is the subject matter of SCFCU's Complaint and she is entitled to a jury trial on a compulsory counterclaim if it is legal in nature. {SOTE, pg 70}

(1) *Rule 13(a), SCRCP*, clearly states in pertinent parts, "[A] pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction."

(2) *C & S Real Estate Services v. Massengale*, 290 S.C. 299, 350 S.E. (2d) 191 (1986) "[I]n view of the change in practice brought about by Rule 13, we take this opportunity to summarize the proper analysis for determining the trial of issues raised by counterclaim and to set out the procedure to be followed when issues are to be tried before a jury. (1) If both the complaint and the counterclaim are in equity, the entire matter is triable by the court. **(2) If both are at law, the issues are triable by a jury.** (3) If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial. **(4) If the complaint is equitable and the counterclaim legal and compulsory, the defendant has the right to a jury trial on the counterclaim.** In that case, the proper procedure is as follows: (a) The trial judge should, pursuant to Rule 42(b), order separate trials of the legal and equitable claims. (b) The judge must then determine which issues are to be tried first. (c) If there are factual issues common to both claims, absent the "most imperative circumstances," *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 79 S.Ct. 948, 3 L.Ed. (2d) 988 (1959), the "at law" claim must be tried first. The clerk of court shall immediately place the "at law" action at the top of the trial roster. (d) If there are no common factual issues, it is within the trial judge's discretion which claim will be tried first." [**Boldness** for emphasis]

Based solely on the language found in *C & S Real Estate Services v. Massengale*, 290 S.C. 299, 350 S.E. (2d) 191 (1986), the lower court ignored the guidelines and failed to follow the proper procedures that have been established by South Carolina's Supreme Court; i.e., **"[(2)] If both** [the complaint and counterclaim] **are at law, the issues are triable by a jury."** and **"[(4)] If the complaint is equitable and the counterclaim legal and compulsory, the defendant has the right to a jury trial on the counterclaim."**

Therefore, this case should be remanded *sua sponte* back to the Court of Common Pleas for a Jury Trial on all issues triable of right by a Jury. {SOTE, ¶¶71-72, pgs 69-71} The lower court failed to inform the Appellant of her right to a Jury Trial after the Summary Judgments were denied. Hence, consent was without knowledge. {Exhibit 49}

K. The lower court erred by failing to comply with Amendment VII to the United States Constitution.

The Appellate Court must decide whether or not the lower court erred by failing to consider Amendment VII to the United States Constitution; especially as it relates to Civil Procedure Rules 13(a), 42(b) and 54(b). {SOTE, ¶76 & subparts **(a)-(o)**, pgs 75-78 & Appellant's Memorandum to Set Aside Judgment, ¶21 & subparts **(1)-(2)**, pg 19}

> **(1) UNITED STATES CONSTITUTION - AMENDMENT 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."
>
> **(2)** *Kiernan v. Van Schaik*, 347 F. 2d 775 (3rd Cir. 1965) "[A]mendment VII preserves "the right of trial by jury" in civil cases, and although the impartiality of the jury is not expressly mentioned it is inherent in the right of trial by jury and is implicit in the requirement of the Fifth Amendment that "No person shall * * * be deprived of life, liberty, or property, without due process of law * * *."
>
> **(3)** *Rogers v. Loether*, 467 F. 2d 1110 (7th Cir. 1972) "[T]he term "civil action" in legislation enacted since the merger of law and equity in 1938 is comparable to the words "action at law" or "suit in equity" which were used previously. The words "action at law" implied a right to jury trial. The words "civil action," as *Beacon, Dairy Queen* and *Ross* make clear, do not in any sense imply that there is no right to a jury trial — a "civil action" asserting a legal claim is triable to a jury.

L. The lower court erred by failing to consider Article I – Section 14 of South Carolina's Constitution.

The Appellate Court must decide whether or not the lower court erred by failing to consider ARTICLE I – § 14 of South Carolina's Constitution; especially as it relates to Civil Procedure Rules 13(a) and 42(b).

> **(1) SOUTH CAROLINA CONSTITUTION – ARTICLE I - § 14:** 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."

(2) *Johnson v. South Carolina National Bank*, 292 S.C. 51, 354 S.E. (2d) 895 (1987) "[A] party does not waive its right to a jury trial on a counterclaim asserted in an equity action if the counterclaim is legal and compulsory in nature."

(3) *NC FED. SAVINGS & LOAN ASSOC. v. DAV CORP.*, 381 SE 2d 903 (1989) "[C]ourts have employed four tests to determine whether a counterclaim is compulsory under this definition: **1)** Are the issues of fact and law largely the same? **2)** Would res judicata bar a subsequent suit on the counterclaim? **3)** Does substantially the same evidence apply? **4)** Is there any logical relationship between the claim and the counterclaim The fourth test, the "logical relationship test" is by far the most widely accepted because of its flexibility. See 6 C. Wright & A. Miller, Federal Practice & Procedure § 1410 (1971)." [**Boldness** for emphasis]

As a Pro Se litigant, the Appellant does not know the difference between a Counterclaim and an Affirmative Defense, therefore, based on Rules 8(c) and 8(f), SCRCP, the lower court must make the determination. Based on the Court's 4 pronged test, the Appellant's TILA and SCUTPA Counterclaims are compulsory.

(1) *Rule 8(c), SCRCP*, clearly states in pertinent parts; "[W]hen a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court shall treat the pleading as if there had been a proper designation. A party may file a reply to any of the foregoing affirmative defenses." *Rule 8(f), SCRP*, states the following; "[A]ll pleadings shall be so construed as to do substantial justice to all parties."

(2) *Singleton v. Stokes Motors, Inc.*, 595 SE 2d 461 (2004) "[T]he South Carolina Unfair Trade Practices Act declares unfair or deceptive acts or practices in trade or commerce unlawful. S.C.Code Ann. 39-5-20(a) (2002). The Act provides that: [a]ny person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice may bring an action to recover actual damages. S.C.Code Ann. 39-5-140(a) (2002). Plaintiffs must allege and prove that the defendant's actions adversely affected the public interest. *Daisy Outdoor Adver. Co., Inc. v. Abbott*, 322 S.C. 489, 493, 473 S.E.2d 47, 49 (1996) (citations omitted). An impact on the public interest may be shown if the acts or practices have the potential for repetition. *Crary v. Djebelli*, 329 S.C. 385, 387, 496 S.E.2d 21, 23 (1998) (citation omitted). The potential for repetition may be shown in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair and deceptive acts. *Id.* at 388, 496 S.E.2d at 23. (citation omitted)."

IV. SCFCU'S BOGUS ADDENDUM OF 02/18/2015 – FRAUDULENT REPRESENTATION OR FRAUD UPON THE COURT?

There are 7 material and factual elements in this case that SCFCU's attorneys have known since April of 2012. **(1)** SCFCU never gave the Appellant the TILA's disclosures; i.e., an Addendum, **(2)** the Addendum and the Agreement is **the Plan**, hence, there is no SCFCU consummated Membership & Account Agreement, **(3)** no loan was ever executed and delivered to SCFCU on February 24, 2003, **(4)** my mobile home purchase is not in SCFCU's account records, **(5)** the interest rate on my mobile home purchase of February 28, 2003 is not fixed, **(6)** my mobile home payments were misapplied to a computer entered (cyber) loan dated, February 24, 2003. {SOTE, ¶¶75-78, pgs 74-80} and **(7)**...February 24, 2003 is an approval date, not a loan agreement date.

Therefore, SCFCU's attorney/s inclusion of a **BOGUS ADDENDUM** as Exhibit 3 in the black exhibit notebook that Reid E. Dyer gave to Judge Jackson at the hearing on February 18, 2015, is beyond the pale. However, it is up to the Appellate Court to decide the nature of this deception and deceit -"Fraudulent Representation" or "Fraud upon the Court" or one of several legal classifications that can describe this kind of Dishonest Conduct. What is even more disturbing is the lower court accepted this deception and failed to even mention it in the Court's findings fact. {SOTE, ¶¶198-204, pgs 143-145}

CONCLUSION

For all the reasons stated, this Court should reverse the judgment of the Master-in-Equity and Remand this case to the Circuit Court.

Respectfully submitted,

June 22, 2015

/s Dorothy Harley Sistrunk

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

NOTARY CERTIFICATION

IN WITNESS WHEREOF, The undersigned, being duly ***SWORN***, declares under the ***PENALTY OF PERJURY*** that the facts in her "Initial Brief" 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: Appellate Case No. 2015-001112 and Civil Action Case No. 2011-CP-38-1392, will sign, seal and execute her attestations on this 22nd day of June in the year 2015 in the City and County of Orangeburg, in the State of South Carolina.

Rule 11(c), SCRCP 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 Harley Sistrunk

Notary's Signature as Witness (1): Lillian D. Buck

Signed, Sealed, Executed and Delivered in the Presence of:

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

On 6/22/15 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 is executing the same in her authorized capacity, and by her signature on her "Initial Brief" and this Notary Certification presents this document to the Appellate Court.

WITNESS My Hand and Official Seal.

Notary's Signature Lillian D. Buck

Commission Expires My Commission Expires July 24, 2022

LILLIAN D. BUCK NOTARY PUBLIC SOUTH CAROLINA (Seal)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

James B. Jackson, Jr., Master in Equity

2015-001112

South Carolina Federal Credit Union — Respondent,

v.

Dorothy Harley Sistrunk aka Dorothy Harley-Sistrunk aka Dorothy A. Harley aka Dorothy Sistrunk — Appellant.

PROOF OF SERVICE

I certify that I have served a copy of my "Initial Brief" on South Carolina Federal Credit Union, (hereafter SCFCU) by depositing a copy of it in United Parcel Service, postage prepaid, on Monday, June 22, 2015, addressed to SCFCU's attorney/s of record that are listed below.

Date: June 22, 2015

/s Dorothy Harley-Sistrunk
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Attorney/s for Respondent: South Carolina Federal Credit Union

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June 22, 2015

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

RE: South Carolina Federal Credit Union v. Dorothy Harley Sistrunk
Civil Action Case #2011-CP-38-1392
Appellate Case #2015-001112

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

Pursuant to Rule 203(b)(1), SCACR, "[A] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment."

Time Line For Appeal

This time line is included so that all parties will be in accordance with the scheduling rules.

April 23, 2015 – Date of receipt of the Denial of Motion to Alter or Amend. The Denial was filed on April 20th , 2015 {Review Exhibit 46}

April 24, 2015 – Effective date time line begins pursuant to Rule 263(a), SCACR, that clearly states in pertinent parts; "[t]he day of the act, event, or default after which the designated period of time begins to run is not to be included."

May 24, 2015 - Pursuant to Rule 203(b)(1), SCACR, date **Notice of Appeal** was due.

June 24, 2015 – Pursuant to Rule 208(a)(1), SCACR, date **"Initial Brief"** is due, if no transcript is ordered. I am not ordering a transcript.

In accordance with Rule 208(a)(1), SCACR, I am enclosing my **"Initial Brief"**. A copy of my **"Initial Brief"** has been served on all parties listed on page 2. One copy to the Appellate Court is not punched, bound or stapled.

Designation of Matters to be Included in the Record on Appeal

Rule 209(a), SCACR clearly states in pertinent parts; "**[(a)]** At the same time a party

serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a "Designation of Matters to be Included in the Record on Appeal" which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal. One copy of this Designation with proof of service shall immediately be filed with the clerk of the appellate court."

Therefore, in accordance with Rule 209(a), SCACR, I am also enclosing my **"Designation of Matters to be Included in the Record on Appeal"**. A copy of my **"Designation of Matters"** for the Record on Appeal, with Proof of Service has also been served on all parties listed below. One copy to the Appellate Court is not punched, bound or stapled.

/s Dorothy Harley-Sistrunk
Dorothy Harley Sistrunk

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RECEIVED
JUN 22 2015
SC Court of Appeals

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