

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.

REPLY BRIEF OF APPELLANT

October 16, 2015

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Comes now the Appellant, Dorothy Sistrunk, to file her *Reply to the Respondent's; Initial Brief* i.e., South Carolina Federal Credit Union, Respondent v. Dorothy Harley Sistrunk, Appellant (Refer to the cover for additional aka's if needed) - Case No. 2015-001112; that was retrieved from the mailbox at 423 Bayne Street on August 29, 2015. **Please Note:** The *Respondent's Initial Brief* is dated August 21, 2015.

I. VIOLATIONS OF SOUTH CAROLINA'S RULES OF PROFESSIONAL CONDUCT & ESTABLISHED JUDICIAL PROCEDURES

1. Before replying to the Respondent's Initial Brief, the Appellant cannot allow the Respondent's Law Firm of Moore & Van Allen to continue their abuse of the judicial process. Moore & Van Allen violated professional ethics and committed a "***Fraud upon the Court***" by presenting a **Bogus Addendum** in its pleading to Judge Jackson on March 14, 2015. {SCFCU's Exhibit 3}

2. This **Bogus Addendum** was added after the law firm discovered; from reading the Appellant's filed pleadings, that no Addendum was given to the Appellant. The Appellant's September 5, 2005 car loan transaction with South Carolina Federal Credit Union (hereafter referred to as SCFCU or Respondent) was handled by phone and by a second party, i.e., Pooser Service Center Auto Sales. {Appellant's Exhibit N} The Lower Court failed to question the authenticity of the Addendum and it led to this appeal.

3. The Court's acceptance of false evidence is not only a violation of South Carolina's and the Federal Rules of Evidence, it is also a violation of Rule 60(b)(3), SCRPC, that specifically allows for judgments to be set aside for Fraud, Misrepresentation or Misconduct by an Adverse Party. SCFCU's presenting an Addendum to the Court as though one were given to the Appellant on September 5, 2002; by definition; is either, "**Fraud**" - a deliberated deception; a "**Misrepresentation**" - false evidence; or "**Misconduct by an Adverse Party**" that can also be defined as..and/or described as..Improper Conduct or Dishonest Conduct during a legal proceeding.

(a) 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)).

(b) Black's Law Dictionary (rev. 4th ed. 1968) pg 1150, defines **Misconduct** in pertinent parts as; "[A] transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness."

4. In addition to committing a blatant and **in-your-face "Fraud upon the Court"** with a **Bogus Addendum**, the Law Firm of Moore & Van Allen continued its violation of professional ethics by ignoring South Carolina's Rules of Professional Conduct, i.e., Rule 3.3(a)-(c), RPC, Rule 407, SCACR that clearly states in relevant parts;

"(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.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) apply when the lawyer is representing a client before a tribunal as well as in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. These duties continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6."

5. By the time of the hearing before Judge Jackson, the law firm knew, without an Addendum being given to the Appellant before the transaction as required by Federal law, SCFCU violated the mandate. Since the Appellant is not a bank or a chartered credit union, the Appellant had to rely to on SCFCU's compliance. Therefore, Moore & Van Allen also had a duty and responsibility to notify SCFCU of this fact.

II. REPLY TO STATEMENT OF THE CASE

6. In ¶1, on pg 2, the Respondent inadvertently establishes the Appellant's right to "Recoupment" pursuant to federal law, identifies a lower Court's error of law and firmly supports judicial precedents by clearly stating; "this case is a collection action.."

(a) *Smith v. Fidelity Consumer Discount Co.*, 898 F. 2d 896 (3rd Cir. 1990) "**[15] U.S.C. § 1601(a). TILA, as a remedial statute which is designed to balance the scales "thought to be weighed in favor of lenders," is to be liberally construed in favor of borrowers. Bizier v. Globe Financial Services**, 654 F.2d 1, 3 (1st Cir.1981). See *Johnson*, 527 F.2d at 262. TILA achieves its remedial goals by a system of strict liability in favor of the consumers when mandated disclosures have not been made. 15 U.S.C. § 1640(a). A creditor who fails to comply with TILA in any respect is liable to the consumer under the statute regardless of the nature of the violation or the creditor's intent. *Thomka v. A.Z. Chevrolet Inc.*, 619 F.2d 246, 249-50 (3d Cir.1980). "**[O]nce the court finds a violation, no matter how technical, it has no discretion with respect to liability.**" *Grant v. Imperial Motors*, 539 F.2d 506, 510 (5th Cir. 1976). **A single violation of TILA gives rise to full liability for statutory damages.** Damages include actual damages incurred by the debtor plus a civil penalty equal to double the finance charge up to a maximum of \$1,000. 15 U.S.C. § 1640(a)-(1)(2)(A)(i). Multiple violations of TILA in the course of a single loan transaction do not yield multiple civil penalties but result in only a single penalty. 15 U.S.C. § 1640(g)" [**Boldness & Underlining** for emphasis]

(b) *US Life Credit Corp. v. James*, 279 SE 2d 367 (1981) "[T]he trial judge ruled that the one-year statute of limitations under the Truth in Lending Act, 15 U.S.C.A. § 1640(a), barred Debtor from pleading this alleged violation by answer almost five years later. We disagree. In *Tuloka Affiliates v. Moore*, S.C. 268 S. E. (2d) 293 (1980) filed approximately one month after the order in this action), we held that **a debtor can allege these violations as an affirmative defense by recoupment even after the one-year limitation period for bringing an action under the Truth in Lending Act has lapsed.**"

(c) *Beach v. Ocwen Fed. Bank*, 523 US 410 (1998) “[A]ccordingly, the Act requires creditors to provide borrowers with clear and accurate disclosures of terms dealing with things like finance charges, annual percentage rates of interest, and the borrower's rights. See §§ 1631, 1632, 1635, 1638. Failure to satisfy the Act subjects a lender to criminal penalties for noncompliance, see § 1611, as well as to statutory and actual damages traceable to a lender's failure to make the requisite disclosures, see § 1640. Section 1640(e) provides that an action for such damages "may be brought" within one year after a violation of the Act, but that **a borrower may assert the right to damages "as a matter of defense by recoupment or setoff" in a collection action brought by the lender even after the one year is up.**” [Boldness added for emphasis]

7. In ¶2, on pg 2, the Respondent misstates and/or mischaracterizes and/or misrepresents the facts. On July 10, 2012, the Honorable Judge Diane S. Goodstein orally denied SCFCU's motion and did not even refer to the Appellant's motion. In addition, SCFCU has not responded to the Appellant's Motion for Summary Judgment in over 3 years. Instead of presenting the documentation Judge Goodstein requested, the Respondent decided to file a “Stipulation of Dismissal” on December 19, 2012. After the Respondent decided to use a **Bogus Addendum** to deceive the court, the Respondent filed a Renewed Motion for Summary Judgment on March 26, 2014.

8. In ¶3, on pg 2, the Respondent once again misrepresents the facts. On November 18, 2013, the Appellant filed a pleading requesting the Court to submit a decision on the Plaintiff's failure to respond to counterclaims and affirmative defenses pursuant to Rule 56(e), SCRCP. The Appellant learned of the “Request to Submit for Decision” from studying Court cases in other states and Federal District Courts. The following Civil Procedure Rule is from the State of Utah.

Rule 12(b), URCP, clearly states in pertinent parts; “[R]equest to Submit for Decision. If neither party has advised the court of the filing nor requested a hearing, when the time for filing a response to a motion and the reply has passed, either party may file a request to submit the motion for decision. If a written Request to Submit is filed it shall be a separate pleading so captioned.....”

9. In ¶3, on pg 2 @ sentence #2, the Respondent, mischaracterized the facts. On April 10, 2014, Judge Jackson never referred to or heard the Appellant's "Request to Submit for Decision". In addition, the Appellant never filed any new motion for Summary Judgment for Judge Jackson to deny.

10. In ¶1, on pg 3, the Respondent again misstates the facts. The Appellant consented to a hearing, not a trial. The Appellant received the Court Orders in the mail. (Appellant's Exhibits 49-50) Therefore, the Appellant did not agree to a non-jury trial, the Appellant agreed to a hearing. From ¶¶2-3 on pgs 3-4, the case proceeded as outlined.

(a) Rule 42(b), SCRPC that clearly states the following 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, counter-claims, 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."

(b) Advance Intern., Inc. v. NC BANK OF SC, 449 SE 2d 580 (Ct.App. 1994) "[W]here a complaint is equitable and the counterclaim, for which a jury trial is requested, is legal and compulsory, the trial court must order separate trials pursuant to Rule 42(b), SCRPC. First-Citizens Bank and Trust Co. of S.C. v. Hucks, 305 S.C. 296, 408 S.E.2d 222 (1991) ----. See Payne v. Holiday Towers, Inc., 283 S.C. 210, 321 S.E.2d 179 (Ct.App.1984) (action alleging unfair trade practices is an action at law).

(c) Wright v. Hiester Const. Co., Inc., 698 SE 2d 822 (Ct.App. 2010) "[A] trial court "may order a separate trial...of any separate issue ... always preserving inviolate the right of trial by jury..." Rule 42(b), SCRPC (emphasis added). "Trial judges have discretion as to whether to bifurcate a trial." Durham v. Vinson, 360 S.C. 639, 644 n. 2, 602 S.E.2d 760, 763 n. 2 (2004). "A trial should be bifurcated only if the issues are so distinct that trial of each alone would not result in injustice." Creighton v. Coligny Plaza Ltd. P'ship, 334 S.C. 96, 108, 512 S.E.2d 510, 516 (Ct.App. 1998)."

(d) Rule 56(c) SCRPC, that 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."

(e) Rule 56(d), SCRPC, that states in pertinent parts..“[I]f on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.”

(f) *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]

(g) *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)”

III. REPLY TO FACTS

11. In ¶1, on pg 5, the Respondent’s statements of fact are misrepresentations of material facts. Loanliner® guidelines require an Addendum for a valid account agreement. Therefore, the Appellant never became a valid member. **Respondent’s Trial Exhibit 3 is the Bogus Addendum** that is the **in-your-face “Fraud upon the Court”**. Without an Addendum, no legitimate agreement ever existed that bound the Appellant.

12. @ Sentence #3, in ¶1 on pg 5, The Appellant's Trial Exhibit 2 is not a copy of SCFCU's Agreement. The Appellant's Trial Exhibit 2 is a email from Sabrina Gaskins. The Appellant's Trail Exhibit 3, is not a copy of any Agreement with SCFCU. The Appellant's Trial Exhibit 3 is a copy of SCFCU 's Statement of Account that is marked as Exhibit 3; by the law firm, that verifies SCFCU's loan is not fixed and there are no Addendums included therewith or thereto. **This is SCFCU's infamous Trial Exhibit 3.**

13. The Appellant's Trial Exhibit 5, is a copy of SCFCU's loan application, that clearly and unequivocally proves there is no mobile home in SCFCU's account records, the interest rate is fixed at 15% and not open-ended and the document is dated February 28, 2003 As the Appellant has consistently stated, February 24, 2003 is an approval date and not a loan. The loan was not agreed to on or after February 25, 2003.

14. The Respondent's remaining statements and exhibits in ¶¶2-5, on pgs 5-7 are the factual representations of SCFCU's deceitful dealings with the Appellant. SCFCU's own facts reveal how SCFCU took advantage of the Appellant and relied on the Appellant's ignorance of federal mandates to exact payments and interest. For these unscionable actions, the Court must Order the return of all the money paid.

IV. REPLY TO ARGUMENTS IN SECTIONS I, II & III

15. On pg 8, under STANDARD OF REVIEW, in ¶1, in sentence #2, the Respondent has misstated the facts. The Appellant never agreed to waive her right to a jury trial and Judge Jackson did not inform the Appellant that if she agreed or consented to a hearing in his Master-in-Equity Court, such rights would be waived. Therefore, there is no informed consent.

16. Unlike *Williams v. Reidman*, the Respondent cites in ¶1, a TILA violation was not involved, nor the deceitful practice of a lender's employees that violated TILA and

CUNA Mutual Group's guidelines and withheld this information from the Appellant and possibly SCFCU for years. In addition, there was a trial with a jury. There was no jury in the case at bar. This case is analogous to a 12 year old crime that suddenly comes to light.

17. Accordingly, the Appellant Court has the authority to correct errors of law and abuses of discretion rather than condone or support them. Plaintiff and Defendant alike must be duly notified of rights and consequences under prevailing law. This is the Lower Court's responsibility, not the Plaintiff's or a Pro Se litigant's.

(a) "[I]mplicit in the right to self-representation is an obligation on the part of the court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training. While the right "does not exempt a party from compliance with relevant rules of procedural and substantive law," Birl v. Estelle, 660 F.2d 592,, 593 (5th Cir.1981)

(b) "[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." Breck v. Ulmer, 745 P.2d 66, 75 (Alaska 1987)

(c) Advance Intern., Inc. v. NC BANK OF SC, 449 SE 2d 580 (Ct.App. 1994) "[W]here a complaint is equitable and the counterclaim, for which a jury trial is requested, is legal and compulsory, the trial court must order separate trials pursuant to Rule 42(b), SCRCPP. First-Citizens Bank and Trust Co. of S.C. v. Hucks, 305 S.C. 296, 408 S.E.2d 222 (1991) ----. See Payne v. Holiday Towers, Inc., 283 S.C. 210, 321 S.E.2d 179 (Ct.App. 1984) (action alleging unfair trade practices is an action at law).

18. Under Section II, in ¶¶1-2, pgs 9-10, the Respondents argues Germain v. Nichol, D & D Leasing Co. v. Gentry, Broom v. Southeastern Highway Contracting Co., Hamilton v. Greyhound Lines East, Goode v. St. Stephens United Methodist Church, and Rule 207(a), SCACR. The Respondent's arguments lack merit, because none of the cases involved TILA violations that went on for years or close-ended fix rated loans being billed and charged as an open-ended account that is another violation of TILA and SCUTPA.

19. Nor are there indications in the case file histories of a sitting Judge, failing to consider judicial admissions, follow South Carolina's Rule of Criminal Procedure (Rule

201), that mandates judicial notice be taken when requested by a party; especially when judicial notice is of the Court's Records, CUNA guidelines, TILA's guidelines and case file histories. {See Appellant's Memorandum Supporting Motion to Alter or Amend}

20. Therefore, the Appeals Court is not limited to transcripts because many cases do not have transcripts. The Appeals Court can rely on the entire record. In addition, the documents needed to decide this case are included in the Record on Appeal and not in the transcripts. The Appellant's Record on Appeal is more than sufficient.

Reeves v. Sanderson Plumbing Products, Inc., 530 US 133 (2000) "[I]n the analogous context of summary judgment under Rule 56, we have stated that the court must review the record "taken as a whole." *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U. S. 574, 587 (1986). And the standard for granting summary judgment "mirrors" the standard for judgment as a matter of law, such that "the inquiry under each is the same." *Anderson v. Liberty Lobby, Inc.*, 477 U. S. 242, 250-251 (1986); see also *Celotex Corp. v. Catrett*, 477 U. S. 317, 323 (1986). It therefore follows that, in entertaining a motion for judgment as a matter of law, the court should review all of the evidence in the record."

21. Under Section III, in ¶¶1-2, on pages 10-11, the Respondent argues exhibits and facts that were not made part of the record at trial. If counsel for the Respondent will recall, Judge Jackson shut the Appellant down. In addition, no record of the evidence was ever made by Judge Goodstein or Judge Jackson. Therefore, the Appellant was forced to rely on case law, Rule 10(c), FRAP and Rule 13(a), SCRMC.

(a) *Antoine v. Byers & Anderson, Inc.*, 508 US 429, n. 1 (1993) "[F]ederal Rule of Appellate Procedure 10(c) provides in relevant part: "Statement on the evidence or proceedings when no report was made or when the transcript is unavailable.— If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection."

(b) 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."

V. DE NOVO REVIEW

22. There were some issues raised by the Respondent on pages 10 and 11 that had to be researched, because, no case file references were available for review or inclusion. In ¶1 on page 10, in sentence #3, the Respondent's attorney states; "*Appellant's failure to order a transcript is fatal to her appeal.*" As stated in the reasons to extend time to file her "Reply Brief", research had to be done to address the issues that were raised.

Gagne v. Fessenden (In re Gagne), 394 B.R. 219, 225 (1st Cir. BAP 2008) (holding that failure to provide hearing transcript is not fatal to appeal where appellate record provides sufficient basis on which to review decision).

23. Every Appeals Court has the power and authority to use *De Novo as a Standard of Review*. Therefore, the Appeals Court can rule on the evidence and matters of law without giving deference to the Goodstein or Jackson Courts that never initiated or used a genuine fact finding process. Even if they are officers of the Court, attorneys are not paragons of virtue, they do not and cannot speak for GOD and they are not citadels of truth.

Twitty v. Harrison, 95 SE 2d 879 (1956) "[E]xcept where the facts have been settled by a jury, whose verdict has not been set aside, it is the duty of this court in equity cases to review challenged findings of fact as well as matters of law. Const. 1895, Article V, Section 4; *Bates v. Bates*, 213 S.C. 26, 48 S.E. (2d) 612; *Little v. Little*, 215 S.C. 52, 53 S.E. (2d) 884; *Gilbert v. McLeod Infirmary*, 219 S.C. 174, 64 S.E. (2d) 524, 24 A.L.R. (2d) 60. But such duty on our part does not require that we disregard the findings below, or that we ignore the fact that the trial Judge who saw and heard the witnesses is in better position than this court to evaluate their credibility; nor does it relieve the appellant of the burden of convincing this court that the trial Judge committed error in his findings of fact. *Cogswell v. Cannady*, 135 S.C. 365, 133 S.E. 834."

24. Accordingly, the Lower Court's reliance on an attorney's presentation at the so-called trial; because it was decidedly; lopsided; was misplaced; especially, when the Appellant Court considers the fact that all the Appellant's pleadings are either notarized or verified. These facts were also overlooked or ignored by the Lower Court.

Lewis v. Lewis, 709 SE 2d 650 (2011) “[T]he second concept is the tenet that *de novo* standard of review does not relieve an appellant from demonstrating error in the trial court's findings of fact. See Crowder v. Crowder, 246 S.C. 299, 301, 143 S.E.2d 580, 581 (1965) (citing Forester v. Forester, 226 S.C. 311, 85 S.E.2d 187 (1954)) (“It is now well settled that this court has jurisdiction in appeals in equity cases to find the facts in accord with our view of the preponderance or greater weight of the evidence, in the absence of a verdict by a jury; and may reverse a factual finding by the lower court in such cases when the appellant satisfies this court that the finding is against the preponderance of the evidence.”); Inabinet v. Inabinet, 236 S.C. 52, 55-56, 113 S.E.2d 66, 67 (1960) (citing Twitty v. Harrison, 230 S.C. 174, 94 S.E.2d 879 (1956)) (“Our duty in equity cases to review challenged findings of fact as well as matters of law does not require that we disregard the findings below or that we ignore the fact that the trial judge, who saw and heard the witnesses, was in better position than we are to evaluate their credibility; nor does it relieve appellant of the burden of convincing this court that the trial judge erred in his findings of fact.”); Gilbert v. McLeod Infirmary, 219 S.C. 174, 184, 64 S.E.2d 524, 528 (1951) (“We have jurisdiction in appeals in equity to find the facts in accord with our view of the preponderance or greater weight of the evidence, in the absence of verdict by jury.”)....”

25. A trial *de novo* is one in which “[t]he whole case is tried as if no trial whatsoever had been had in the first instance.” See National Health Corporation v. S.C. Dept. of Health, 298 S.C. 373, 378 n. 1, 380 S.E. (2d) 841, 844 n. 1 (Ct. App. 1989) [citing Black's Law Dictionary (5th Ed. 1979)]. A TILA violation is a question of law. This question of law was not addressed by the Lower Court. In addition, the Lower Court’s failure to address the Appellant’s Counterclaims and Affirmative Defenses are not questions of fact, they are facts, that are verified by the Court Form 4 Orders themselves. {Appellant Ex.s 49-50}

(a) Barnes v. Fleet Nat. Bank, NA, 370 F. 3d 164 (1st Cir. 2004) (“[T]he act provides two distinct remedies for violation of ‘any requirement’ it imposes: any actual damages caused, and, whether or not any actual damages were suffered, a recovery of up to \$1000 plus attorney’s fees for any individual transaction.”); see also Smith v. Cash Store Mgmt., 195 F.3d 325, 328 (7th Cir.1999) (“Subject to narrow exceptions, ‘hypertechnicality reigns’ in the application of TILA.”); Purtle v. Eldridge Auto Sales, Inc., 91 F.3d 797, 801 (6th Cir.1996) (holding that TILA imposes strict liability); Grant v. Imperial Motors, 539 F.2d 506, 510 (5th Cir.1976) (“[O]nce the court finds a violation [of TILA], no matter how technical, it has no discretion with respect to the imposition of liability.”).

(b) Catawba Indian Tribe v. State, 642 SE 2d 751 (2007) “[T]he issue of interpretation of a statute is a question of law for the court. Charleston County Parks & Recreation Comm’n v. Somers, 319 S.C. 65, 67, 459 S.E. 2d 841, 843 (1995) (“The determination of legislative intent is a matter of law.”). We are free to decide a question of law with no particular deference to the circuit court. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000).”

26. Conflicting evidence is also a matter for a jury to decide and not a judge sitting without a jury. Therefore, Judge Jackson erred by not sending this case to a jury.

Pierce v. Ford Motor Co., 190 F. 2d 910 (4th Cir. 1951) “[I]n a federal court, it is for the jury, not the judge, to say what evidence it will believe and what inferences or conclusions it will draw therefrom, even though it is susceptible of conflicting inferences. Tennant v. Peoria & P. U. Ry. Co., 321 U.S. 29, 35, 64 S.Ct. 409, 88 L.Ed. 520.” --- “[T]he rule of the federal courts is thus stated in Tennant v. Peoria & P. U. R. Co., supra: “It is not the function of a court to search the record for conflicting circumstantial evidence in order to take the case away from the jury on a theory that the proof gives equal support to inconsistent and uncertain inferences. --- It is the jury, not the court, which is the fact-finding body. It weighs the contradictory evidence and inferences, judges the credibility of witnesses, receives expert instructions, and draws the ultimate conclusion as to the facts. The very essence of its function is to select from among conflicting inferences and conclusions that which it considers most reasonable.”

VI. REPLY & COUNTER ARGUMENT TO - SECTION IV- RESPONDENT’S RESPONSES TO APPELLANT’S ARGUMENTS

27. The Respondent’s vehement denials in ¶1, on pg 11, are without merit. In addition to the *in-your-face* “**Fraud upon the Court**” that the law firm perpetrated on the Honorable Judge Jackson, the law firm was brazen enough to identify the **Bogus Documents** for the Appellate Court. SCFCU’s **Bogus Documents** do not belong to the Appellant. In addition, there is no evidence, admissions, interrogatories, eye witness testimony, or affidavits in the record that supports or verifies an Addendum was given to the Appellant on September 5, 2002. The Appellant never went to Charleston, South Carolina.

28. There is no evidence, admissions, interrogatories, eye witness testimony, or affidavits in the record that supports or verifies the Appellant agreed to an open-end mobile

home loan on February 24, 2003. In addition, the Trial Court's Order does not refer to any of the Appellant's counterclaims that are actions at law that demand a trial on the merits. These are all errors of law and abuse of discretion that began in 2011.

29. An abuse of discretion occurs when the judge's ruling is based upon an error of law or based upon factual conclusions that have no genuine evidentiary support.

Renney v. Dobbs House, Inc., 275 S.C. 562, 274 S.E. (2d) 290 (1981); *Fontaine v. Peitz*, 354 SE 2d 565 (SC: S. Ct 1987) “[W]hen the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred. *Mark, Inn, Inc. v. Department of Transportation*, 174 Ga. App. 420, 330 S.E. 330 S.E. (2d) 134 (1985); *Calloway v. Ford Motor Co.*, 281 N.C. 496, 189 S.E. (2d) 484 (1972). See also, *Sumner v. Pruitt*, 281 S.C. 63, 314 S.E. (2d) 150 (Ct. App. 1984); *Wright v. Charleston & Western Railway*, 59 S.C. 268, 37 S.E. 832 (1901). Where a court is clothed with discretion, but rules as a matter of law, the appealing party is entitled to have the matter reconsidered and passed on as a discretionary matter. *Capps v. Lynch*, 253 N.C. 18, 116 S.E. (2d) 137 (1960).”

A. Lower Court's dysfunctionality when it comes to Pro Se.

30. The dysfunctionality of the Lower Court; as it relates to the Appellant's case as a Pro Se litigant, has been going on for quite some time with no systems or methods for remedy. The Appellant notices the State of South Carolina has not established any fund/s to pay attorney fees for Pro Se litigants that are not indigent.

31. To expect a Pro Se litigant to walk in off the street and perform like a seasoned attorney or know law like a sitting judge is misguided intellectual arrogance, insensitivity and borders on legal incongeniality and not legal impartiality.

32. In addition, it is a severe deviation from what a prudent person would do with reasonable intelligence under the same or similar circumstances. Even a sales clerk in a department store will ask a customer, “May I help you?” or “Is there anything, I can help you with?” When a Pro Se litigant walks into a courtroom, that is not indigent, far more often than not, he/she cannot afford an attorney. A court is not a social club or a country

club, it's a government institution that is suppose to serve all the people fairly and equally; not disportionately, imprudently, indifferently and/or disparagingly.

B. Judge's responsibilities.

33. Judges have a duty, obligation and a responsibility to administer justice by making sure all pertinent issues in a case are presented and a litigant knows the consequences of his/her action/s and/or lack thereof. Far more often than not, John Doe from suburbia is not going to know what to plead or how to plead. Therefore, it is the Judge's responsibility to initiate the process and provide enough clear instructions, so that John Doe, will have a fair hearing. It is the Judge's responsibility to know the law, not John Doe. Rather than tell a Pro Se litigant to get an attorney, or ask a Pro se litigant, do you have an attorney? A better and more insightful question would be.... can you afford an attorney?

C. Reply & counter argument to subsection [A.] – pgs 11-12.

34. Respondent's statements under subpart [A], on pages 11-12 are disingenuous, dishonest and can be legitimately construed as a violation of professional ethics. No complaint was ever filed for a LOANLINER® loan that was executed and delivered on February 28, 2003. {Review SCFCU's Complaint, ¶7, pg 2 & Appellant's Exhibits 9 & 11}

35. 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. Under existing South Carolina law, a complaint must filed. "[A] defect in the initiatory document deprives the court of power to act." *MATTER OF FRY v. Tarrytown*, 680 NE 2d 578 (NY: Ct. App. 1997)

(a) *Kupferman v. Consolidated Research & Mfg. Corp.*, 459 F.2d 1072 (2d Cir. 1972) "[S]ee 7 Moore, Federal Practice ¶ 60.33 at 511 (1971 ed.). Professor Moore submits that the concept should "embrace only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Id.* at 515 (footnote omitted). We accepted that

formulation in *Martina Theatre Corp. v. Schine Chain Theatres, Inc.*, 278 F.2d 798, 801 (2 Cir. 1960). Professor Moore explains *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944), setting aside a judgment on motion because of conduct which, shocking as it was, was a shade less flagrant than that held insufficient to sustain a plenary action in *United States v. Throckmorton*, 98 U.S. 61, 25 L.Ed. 93 (1878), see fn. 7, largely on the basis, claimed by appellant to be presented here, that an attorney was implicated in perpetrating the fraud. While 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)."

(b) 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."

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

36. SCFCU's Complaint and Debt Collection are for a LOANLINER® account executed and delivered on February 24, 2003 [Complaint, ¶7, pg 2] 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. {Appellant's Exhibit L & SCFCU's Complaint ¶7, pg 2} There is no evidence in the Court's records that prohibits purchasing a mobile home for \$5,500.00. {Appellant's Exhibit E} 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 [Exhibit K] to the Appellant, **before a loan agreement or contract is consummated.** {15 U.S.C. § 1640(a) & App. Exhibit K}

D. Reply & counter argument to subsection [B.] – pgs 12-13.

37. Respondent has once again demonstrated disingenuousness by mischaracterizing the facts in the Court's Records. The Appellant admits there is a PAL account, it is just not the Appellant's account. {SCFCU's Complaint, ¶7, pg 2} There is no mobile home pur-

chase in SCFCU's records and there is no fixed interest rate account in the records for a mobile home. {Appellant's Exhibits 7-13}

38. If Angel Rabon had not stated in her conversation with the Appellant on the phone, wrote in her email [Appellant's Exhibit 11] and on the Appellant's loan documents, house, and the fixed interest rate, no loan would have occurred. [Appellant's Exhibit 9]

E. Reply & counter argument to subsection [C.] – Pgs 13-14.

39. Judge Jackson told the Appellant, that was then, this is now. This is now is a Complaint that was never filed, 2/28/03; documents that do not exist; an Addendum, and no verifiable or valid Loanliner® agreement pursuant to CUNA Mutual Group's guidelines (an Addendum is mandated) or pursuant to federal mandates; (before consummation) and [Appellant's Exhibits L & M] a right to recoupment for violations. {15 U.S.C. § 1640(a)}

1. Reply & counter argument to subsection [C.], subparts a-b, pgs 14-15.

40. Contrary to beliefs, the Trial Court must review all the material facts in the record, accepting some and/or disregarding some. However, when it comes to disputed or contested issues of fact, a jury becomes the fact finder, not a judge sitting without a jury. In *Strauss v. United States*, 376 F.2d 416, 419 (5th Cir. 1967), where the court stated: "[T]he **jury is the fact finder**. If the trial judge evaluates or screens the evidence supporting a proposed defense, and upon such evaluation declines to charge on that defense he dilutes the defendant's jury trial by removing the issue from the jury's consideration. In effect, the trial judge directs a verdict on that issue against the defendant. This is impermissible."

41. Again contrary to the learned counsel's assessments, relative to disregarding the Appellant's request for judicial notice, counsel failed to mention "a court can take judicial notice of its own records, files and proceedings for all proper purposes includ-

ing facts established in its records." *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct.App.1984). In addition, *Rule 201(d), SCRE*, clearly states in pertinent parts; "[A] court shall take judicial notice if requested by a party and supplied with the necessary information." **Shall means mandatory.** *State v. Foster*, 284 S.E.2d 780 (S.C. 1981) Rule 201, SCRE clearly states within the rule itself – **When Mandatory.**

42. What the Respondent is actually endeavoring to do is put the lower Court's failures in the best possible light to maintain the Order. Without the Court's failures, this case would have ended differently. There is no explicit denial of the Appellant's Affirmative Defenses or Counterclaims in the Court's Form 4 Orders or in the Court's records.

2. **Reply & counter argument to subsection [C.], subparts c-d, pgs 15-16.**

43. **First**, "[W]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." *Brady v. United States*, 397 US 742 (1970)

44. **[S]econd**, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran v. Burbine*, 475 US 412 (1986) [**Boldness and Underlining** added for emphasis]

45. **Third**, "[O]n a bench trial, the decision of the fact-finding court should not be disturbed upon appeal unless it is obvious that the court's conclusions could not be reached under any fair interpretation of the evidence..." *Claridge Gardens, Inc. v. Menotti*, 160 AD 2d 544 (NY: App. Div., 1st Dept. 1990)

46. In citing *Wilcher v. City of Wilmington*, 139 F. 3d 366 (3rd Cir. 1998), and as the Appellant stated in **Fact: #67**, in her Initial Brief, 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}

47. Knowingly waiving a right, as in *Wilcher v. City of Wilmington*, is not the same as not being informed of a right; as well as, the consequences that can ensue from waving that right. In the case cited, the jury was dismissed. In the case at bar, there never was a jury to dismiss. As the case files cited in this section of the Brief indicate, when rights are waived, this must be done with full knowledge like in *Wilcher*, not the absence of knowledge as in the case at bar.

Wilcher v. City of Wilmington, 139 F. 3d 366 (3rd Cir. 1998) “[T]wo days into the trial, the plaintiffs brought to the district court’s attention our statement in *Bolden v. SEPTA* that reasonableness under the Fourth Amendment was an issue to be decided by the judge. See *Bolden*, 953 F.2d at 822. Based on its reading of *Bolden*, the district court, with plaintiffs’ agreement, dismissed the jury. Plaintiffs now claim that this was error and that the district court violated their right to a jury trial. We reject this argument as lacking merit. Although plaintiffs had a right to a jury trial, they waived that right when they acquiesced in the district court’s dismissal of the jury.”

48. In response to ¶1, on pg 16, by definition, instruction and information cannot be considered as legal advice. Accordingly, there is merit to the Appellant’s contentions that are supported by hundreds of case file histories from criminal Courts. If this were not true, educational institutions would be Courtrooms and not classrooms. Therefore, it is the duty and the responsibility of Judges to instruct and inform. This includes Pro Se litigants, juries and attorneys. Otherwise, the Courts would be engaging in a dictatorial process and not a judicial process. The judicial process itself, demands that instructions and information be given from the bench in order to have a fair, orderly and impartial judicial proceeding for the plaintiff and the accused/defendant.

49. In response to ¶2, on pg 16, the Appellant is not trained in law and; therefore, does not know the physical, intellectual or legal difference between an Equity Court and a Circuit Court or legal claim from an equity claim. These are matters for Judges to decide not Pro Se Litigants. All the Appellant knows for a fact, is she was in a Courtroom presided over by a Judge. Therefore, it is the Judges responsibility and duty to inform litigants as to the nature of a claim in a civil proceeding.

50. The case files cited, Johnson v. SC National Bank, 354 SE 2d 895 (1987) and FIRST-CITIZENS BANK & TRUST OF SC v. Hucks, 408 SE 2d 222 (1991) dealt with Court matters clarifying procedures for Judges, not litigants. The Appellant raised the issue, because the case was presided over by a Master-in-Equity. Therefore, since the Appellant raised the issue of a mobile home purchase, someone decided it was an equity action and not a legal action..and that someone..was not the Appellant. Accordingly, since the decision was made to proceed in equity....

“[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). “[I]f 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).”

VII. REPLY TO RESPONDENT’S CONCLUSION

51. Lower Court Judges have a responsibility to know the law and uphold the law in legal proceedings. This is not a requirement for a Pro Se litigant who is not a Judge or a practicing attorney. The Appellate Court will have ample evidence and documents to decide this case without a transcript. The material facts and facts in this case are clearly written in the Court’s records or they are conspicuously absent from the Court’s records.

- ✓ There is no voucher or agreement for a loan of any kind dated February 24, 2003.

- ✓ No Addendum was given to the Appellant at any time by anyone and there are no interrogatories, admissions on file, eyewitness testimony, affidavits, videotapes or anything else that even hints that it was. Therefore, no valid agreement ever existed between SCFCU and the Appellant.
- ✓ The Appellant's mobile home purchase that was agreed to with Angel Rabon on February 25, 2003 is not in SCFCU's Account Record's.
- ✓ SCFCU's own documents state the interest rate is fixed at 15% and not open-ended.
- ✓ In 2003, CUNA Mutual Group's LOANLINER® credit plans prohibited using open-ended plans for mobile home purchases.
- ✓ Federal guidelines mandate strict compliance and 15 U.S.C. § 1640(a) nullifies a Judge's discretion if a violation is discovered during a proceeding.

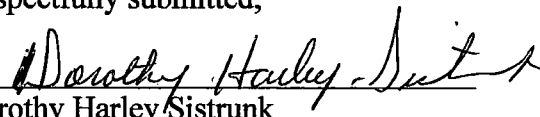
52. The aforementioned are just a few of the many issues that are verified in the Court's records. Therefore, for the foregoing reasons, the Appellant respectfully requests that this Court reverse the Order of the Honorable James B. Jackson, Jr., Master in Equity for Orange-burg County, entered on May 21, 2014 and grant judgment in favor of the Appellant against the Respondent pursuant to SCFCU's obligations under TILA and South Carolina Law.

APPELLANT'S CONCLUSION

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

October 16, 2015

Respectfully submitted,

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

NOTARY CERTIFICATION

RECEIVED

RECEIVED
OCT 16 2015
SC Court of Appeals

IN WITNESS WHEREOF, The undersigned, being duly **SWORN**, declares under the **PENALTY OF PERJURY** that the facts in her "Reply 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 16 day of October in the year 2015 in the City and County of Orangeburg, in the State of South Carolina.

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

Appellant's Signature: Dorothy Houley-Sistunk
Notary's Signature as Witness (1): Dorothy Garrick

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

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

On 10/16/15 before me appeared Dorothy Houley-Sistunk 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 "Reply Brief" and this Notary Certification presents this document to the Appellate Court.

WITNESS My Hand and Official Seal.

Notary's Signature Dorothy Garrick
Commission Expires _____

Dorothy Garrick
South Carolina Notary Public
Commission Expires 06-15-16

(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

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SC Court of Appeals

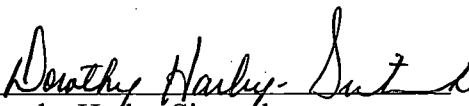
South Carolina Federal Credit Union Respondent,
v.

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 "Reply Brief" on South Carolina Federal Credit Union, (hereafter SCFCU) by depositing a copy of it in United Parcel Service, postage prepaid, on Tuesday, October 20, 2015, addressed to SCFCU's attorney/s of record that are listed below. **Please Note:** The "Reply Brief" was completed and Notarized on October 16, 2015, there was a printing delay.

Date: October 20, 2015

/s 
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