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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DARLINTON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No.2013-002356

Opinion No. 2015-UP-402

Fritz Allen Timmons

Petitioner
~~Appellant.~~

v.

SCESC and Browns a/s RV and Campers

Respondent

PETITION FOR A WRIT OF CERTIORARI

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J. Michael Baxley, Circuit Court Judge

Appellate Case No.2013-002356

Fritz Allen Timmons

Appellant.

v.

SCESC and Browns a/s RV and Campers

Respondent

CERTIFICATE OF COUNSEL

The Appellant certifies that the petition for Rehearing was made and finally denied by the Court of Appeals on Oct. 23, 2015.



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P. O. Box 367
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Nov. 20, 2015

QUESTIONS PRESENTED

- I. CAN THIS COURT JUSTIFY THE DECISIONS OF THE SCESC IN WHICH VIOLATIONS OF FED CODE IS NOT CONSIDERED “GOOD CAUSE” FOR AN EMPLOYEE TO QUIT AND THAT AN EMPLOYEE CONSIDERED AS QUITTING WHEN AN EMPLOYER TERMINATES A HIRE FOR WORK CONTRACT?

- II. CAN THIS COURT JUSTIFY THE FAILURE OF THE SCESC TO PRODUCE THE RECORD FOR APPEAL TO THE CIRCUIT COURT AND APPLY SC CODES §41-35-720 AND §41-35-750 WITHOUT CONSIDERED AS FRAUD?

- III. DOES THIS COURT CONSIDERS A JUDGE TO COMMIT PERJURY BY PRODUCING A COURT ORDER OVER A HEARING OF WHICH HE WAS NOT PRESENT NOR PRESIDING OVER AND BASING THE DECISION UPON EX-PARTY COMMUNICATIONS, ALSO TO VIOLATE THE RIGHTS TO DUE PROCESS BY THE FAILURE TO PRODUCE A DECISION OVER A DIFFERENT HEARING?

- IV. DOES THIS COURT CONSIDERS A HEARING IN WHICH A PARTY IS AWARDED A CASE IN WHICH THE PARTY FAILS TO HAVE

REPRESENTATION AND FAILS TO PROVIDE ANY EVIDENCE IN ACCORDENCE TO STATE CODES §41-35-720, §41-35-750 AND 1-23-380 TO BE A SHAME LEGAL PROCES AND FRAUD?

V. CAN THIS COURT JUSTIFY THE REFUSAL, OF THE 3 CONCERNED APPEALS COURT JUDGES, TO TAKE APPROPRIET DISAPLANARY ACTIONS?

STATEMENT OF THE CASE

On Feb 12, 2009 technicians was informed of termination hourly pay wage to flat rate pay wage without any overtime pay .

On March 4, 2009, Technician hourly pay was terminated by the employer without options, Terms of new contract of hire was activated in which violates Federal Codes and continues through this day.

On April , 2009, SCESC Testimonial hearing was held

On July 1, 2009, Appeal tribunal hearing held without representative or documentation by the Employer.

On July 24, 2009, Appeal filed with Darlington Clerk of Court.

On Aug 26, 2009, Motion to Dismiss filed (after 30 day limitation) by Romi Yolanda Robinson (Counsel for SCESC)

On Sep 2, 2009, Motion to Amend filed

On Nov 4, 2009, First Motion to Dismiss hearing held with Judge Baxley presiding and denied (Ap. p. 4) due to lack of representation for SCESC nor employer.

On Jan 6, 2010, SCESC Second Motion to Dismiss hearing held with Judge Burch presiding with no decision order made. SCESC was represented by Romi Yolanda Robinson and the employer had no representation.

On May 25, 2011, Motion to Amend hearing held without Brown's Rvs representation, SCESC was represented by Romi Yolanda Robinson and with unknown judge presiding. Due to NO decision filed from the Motion to Dismiss hearing (Jan 6, 2010), the unknown Judge informed the Appellant that he could not make a decision and contacted Judge Burch (on premises but not in Court Room) as to decision of which led to the "motion under advisement" document (Ap. p. 5) that referred to the Motion to Dismiss hearing (One year and Four month earlier) and filed on same day as Motion to Amend hearing. The Judge then informed the Appellant that once Judge Burch made a decision that then he could make a decision.

On Jan 23, 2013, Letter as to status of case served (Ap. p. 31)

On Jan 28, 2013, Appellant contacted Darlington Clerk of Court Office as to waiting on Judge Burch's decision. Office personnel were to contact Burch's office.

On Feb 11, 2013, Contacted Darlington Clerk of Court Office again, still not response from Judge Burch's office.

Mid March 2013, Contacted Darlington Clerk of Court Office again, still not response from Judge Burch's office.

Early August 2013, Ex parte communication started between SCESC/Romi Yolanda Robinson and Judge Birch. Recent changes does not explain the failure to produce order from years previous. (Ap. pp. 89-91)

On Sep 10, 2013, Appeal case added to roster and served notice of.

On Sep 11, 2013, Motion to Amend order (signed by Judge Burch) filed with Darlington Clerk of Court Office, never served upon Appellant. (Ap. p. 6)

Oct 8, 2013, Appeal hearing held and denied without representatives for SCESC nor employer also without whole record from SCESC.

On Oct 29, 2013, Appellant served Notice of Appeal.

On Feb. 2, 2014, Appellant's Initial Brief filed

On April 2, 2014, Respondent's Motion to Dismiss filed SCESC represented by Derrick K. McFarland and not Romi Yolanda Robinson without petitioning the Court nor notice to Appellant and without Cause or Order from the Court.

On April 4, 2014 Appellant's Motion Return filed

On May 15, 2014 Motion to Dismiss Decision Order filed

On June 30, 2014, Respondent's Initial Brief filed

On July 2, 2014, Appellant's Final Brief and Record on Appeal filed

On July 11, 2014, Appellant's Reply Brief filed

On July 11, 2014, Respondent's Final Brief filed

On May 1, 2015, Case Submitted

On August 12, 2015 Decision Order filed

On August 31, 2015 Petition for Rehearing filed (no Return was filed).

On Oct. 23, 2013, Petition for Rehearing Order filed (Ap. p. 88)

ARGUMENTS

Pursuant to Rule 242, SCACR, the Petitioner respectfully moves for a Writ of Certiorari and for this Court to review and reverse the Court of Appeals' Opinion No.

2015-UP-402 of Oct 23, 2015, which affirmed the Circuit court's ruling. Review should be granted because of the special and important issues raised by the Opinion' rulings below. Furthermore, the Opinion directly conflicts with decisions and Rules of this Court. This Court's consideration is necessary to secure and/or maintain uniformity of the appellate courts' opinions concerning the issues, preservation and procedure as well as uniformity of appellate review of which is currently fatally flawed For the reasons that follow, The Appellant therefore respectfully requests that this Court grant his Petition for Writ of Certiorari.

The Court below has misapprehended the record before it and misapplied the law of South Carolina with regard to the preservation of issues on appeal. Therefore, the Record of the Circuit Court should be inspected and considered by this Court of which lacks any of the Record of the SCESC except for the Decision Letter filed with the SCESC's Motion to Dismiss. The Court also misapplied *McEachern v. S.C. Emp't Sec. Comm'n*, 370 S.C. 553, 557, 635 S.E.2d 644, 646 (Ct. App. 2006) due to lack of record, ipso facto, lacked any reliable, probative or substantial evidence to support its decision. Therefore it would be impossible for the Court to come to any conclusion. Without defense nor supporting evidence that contradicts the violations by the Respondents, the burden of proof falla upon this Court.

The Court below also misapplied *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998) due to extrinsic fraud committed by the SCESC of which caused the lack of record, ipso facto, nothing was preserved for the Circuit Court to determine as to what was or was not the issues that was raised to and ruled upon by the agency.

The Court below also misapplied *Thompson v. S.C. Steel Erectors*, 369 S.C. 606, 617-18, 632 S.E.2d 874, 881 (Ct. App. 2006) with the judges refusal to grant a default judgment against parties that has abandoned the case and in which makes a judgment of in favor of violations of Federal Laws with evidence of violations "ON ITS FACE" and supposedly in the record according to Law. With the same judge that has already violated the Constitutional Rights of the Appellant in another case and with the Perjury and violations of Constitutional Rights of another judge for Motion Hearings of said case, Therefore any man of common reasoning would conclude that the furthering of any other arguments would be futile in said court and would be justifiably remedied in an appellant court due to the fatally flawed process and fraud that has caused this violations of the Appellants Rights to Due Process.

The Record preserve the trial court's denial of default and violations of the law of South Carolina and Federal Regulations, the Opinion directly conflicts with this Court's previous opinion of Chewning v. Ford Motor Company, 354 S.C. 72, 579 S.E.2d 605 Also, the Opinion unconstitutionally creates a change to the rules of civil procedure of which is inconsistent with the plain language of Rule 15(a), SCRPC and State Laws §41-27-230, §41-35-720 and §41-35-750, and unsupported by South Carolina precedent and has permitted extrinsic fraud upon the court and miscarriage of justice upon the Appellant.

Next, the Court should grant certiorari to consider the Opinion because the Opinion fails to give effect to the factual stipulation of the parties and the effect of that stipulation on the parties. On this issue too, the Opinion does not address or misapprehends the record, which requires a finding that the trial court erred by failing to

find as a matter of law that Respondent SCESC breached the statutory duty found at S.C. Code Ann. §41-35-720 and §41-35-750 . Review is also required because in addressing the allegations of Lack of Record from SCESC to the Circuit Court and abandonment of case by the Respondents, the Court of Appeals chose to not address issues and arguments which should be addressed in considering the Record as a whole. By claiming that certain violations need not be addressed, the Opinion simply avoided addressing the merits of a fatally flawed Record and process by which Appellant was actually prejudiced and which requires reversal.

The Appeals Court below Ignored the Fact that the Employer has abandoned the entire Appeals process and is not represented by the Commission. The Court also ignored the fact that the SCESC has defaulted on the own Motion to Dismiss hearing of Nov. 4, 2009 and the Appeal hearing of Oct 8, 2013.

The Appeals Court below Ignored Rule 264, SCACR (“ on petition to and by written order of the appellate court, and with notice to the adverse party”) by permitting the SCESC’s counsel of the Circuit Court to withdraw and substituted with another counsel for the Appeals Court.

With the Appellants filing of the initial Brief (Feb. 18, 2014) The Appeals Court below Ignored Rule 208(a)(2) SCACR (“**Brief of Respondent.** Within thirty (30) days after service of appellant's brief, respondent shall serve one copy of his brief on all parties to the appeal and file with the clerk of the appellate court one copy of the brief with proof of service.”) and Rule 37 (a)(3), SCRCP “For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.”, Thus, The SCESC has failed to Answer the complaint and by permitting the Respondent to file a Motion to Dismiss

April, 2, 2014, of which does not stay the court process of Appeals, and file the Respondents Brief June 30, 2014 without Cause or petitioning the Court.

With the above said Court Rule violations by the Appeals Court, not only has the Rule been flexed in order to correct for Clerical Error, the Court of Appeals has subverted the Rules and permitted a violation of the Appellant's Rights to Due Process. Therefore this Court should grant certiorari.

If this Court System cannot abide by its own Rules and Regulations within reason or abide by State or Federal Statutes, Then this Court system has Committed treason against the Constitution of the United States and denies the Citizens the Rights Guarantied to them by the Constitution of the United States and the Constitution of the State of South Carolina.

THE TERMINATION OF A WORK FOR HIRE CONTRACT AND/OR WAGES BY AN EMPLOYER IS CONSIDERED AS THE TERMINATION OF THE EMPLOYEE AND FEDERAL CODE VIOLATIONS IS CONSIDERED "GOOD CAUSE" FOR AN EMPLOYEE TO QUIT.

Can this court rationally justify the SCESC decision that the violations of Federal codes §778.0 ("Employers having such employees are required to comply with the Act's provisions in this regard unless relieved there from by some exemption in the Act. The law also provides for enforcement in the courts."), §778.223 ("(a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the

hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness.”) §778.315 (Payment for all hours worked in overtime workweek is required.), §778.316 (Agreements or practices in conflict with statutory requirements are ineffective.), §778.317 (“An agreement not to compensate employees for certain nonovertime hours stands on no better footing since it would have the same effect of diminishing the employee's total overtime compensation.”), and §778.318 (“Failure to pay for nonproductive time worked. ... Payment pursuant to such an agreement will not comply with the Act; such nonproductive working hours must be counted and paid for.”,) does not constitute as “GOOD CAUSE” for an employee to quit (Ap. p. 20).

With Brown’s termination of the work for hire contract that included the termination of wages on March 4, 2009 under which the Appellant was employed (§41-27-230 (2009) “Employment” means for wages under a contract of hire, written or oral, expressed or implied, commerce by: Any officer of a corporation”, §41-27-370(1) (2009) “An individual is deemed “unemployed” with respect to which no wages are payable”), The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). If a statute’s language is plain, unambiguous, and conveys a clear meaning, “the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Also, with these violation, plain and clearly printed “ON ITS FACE” (Ap. p. 20), on the new work for hire contract by Browns and without argument that they do not violate these codes (§779.101

("It is clear that Congress intended the Fair Labor Standards Act to be broad in its scope. "Breadth of coverage is vital to its mission." (Powell v. U.S. Cartridge Co., 339 U.S. 497.) An employer who claims an exemption under the Act has the burden of showing that it applies. (Walling v. General Industries Co., 330 U.S. 545; Mitchell v. Kentucky Finance Co., 359 U.S. 290; Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52.) Conditions specified in the language of the Act are "explicit prerequisites to exemption." (Arnold v. Kanowsky, 361 U.S. 388.) "The details with which the exemptions in this Act have been made preclude their enlargement by implication." (Addison v. Holly Hill, 322 U.S. 60; Maneja v. Waiialua, 349 U.S. 254.) Exemptions provided in the Act "are to be narrowly construed against the employer seeking to assert them" and their application limited to those who come plainly and unmistakably within their terms and spirit; this restricted or narrow construction of the exemptions is necessary to carry out the broad objectives for which the Act was passed. (Phillips v. Walling, 324 U.S. 490; Mitchell v. Kentucky Finance Co., supra; Arnold v. Kanowsky, supra; Calaf v. Gonzalez, 127 F. 2d 934; Bowie v. Gonzalez, 117 F. 2d 11; Mitchell v. Stinson, 217 F. 2d 210; Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52.)"), Can this court rationally justify the failure of the lower courts to file complaint with the appropriate authorities.

With the violations above said, and the refusal to accept a new work for hire contract (Ap. p. 20) when the work for hire contract under which the Appellant was employed was terminated of which constitutes a breach of contract. Can this court justify the SCESC decision that the Appellant had quit and without "GOOD CAUSE". Also with the abandonment of the case by the employer prior to any appeals, can this court justify that any of these violations of federal law was defended in accordance to said federal

laws.

With the above said, Does this court considers the burden of proof for violations of Federal codes under §778 and the termination of Contract falls upon the employer and/or upon the Commission.

THE FAILURE OF THE SCESC TO PRODUCE THE RECORD FOR APPEAL TO
THE CIRCUIT COURT VIOLATES STATE CODES §41-35-720 AND §41-35-750
AND IS CONSIDERED AS FRAUD UPON THE COURT.

The Respondent's deliberate concealment of the record constitutes extrinsic fraud based on this Court's opinion in Chewing v. Ford Motor Company, 354 S.C. 72, 579 S.E.2d 605. Fraud upon the court is a "serious allegation . . . involving 'corruption of the judicial process itself.'" Cleveland Demolition Co., Inc. v. Azcon Scrap Corp., *supra* 827 F.2d at 986 quoting In re Whitney-Forbes, 770 F.2d 692, 698 (7th Cir. 1985). Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). The intentional concealment of documents by an attorney are actions which constitute extrinsic fraud. An attorney - an officer of the court - intentionally conceals documents, he or she effectively precludes the opposing party from having his day in court. These actions by an attorney constitute extrinsic fraud.

South Carolina Code §41-35-720 states "A full and complete record **shall** be kept

of all proceedings in connection with an appealed claim. All testimony at any hearing upon an appealed claim **shall** be recorded, but shall not be transcribed unless the claim is further appealed.” and Code §41-35-750 states “With its answer the commission shall certify and file with the court **all documents and papers and a transcript of all testimony** taken in the matter and its findings of fact and decision In a judicial proceeding under this chapter, the findings of the commission as to the facts, if supported by evidence and **in the absence of fraud**, must be conclusive and the jurisdiction of the court must be confined to questions of law.” “ An appeal may be taken from the decision of the court of common pleas in the manner provided by the South Carolina Appellate Court Rules. ”

It is well settled that “[t]he findings of fact of an administrative body **must be sufficiently detailed** to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings.” Heater of Seabrook, Inc. v. Pub. Serv. Comm’n of S.C., 332 S.C. 20, 26, 503 S.E.2d 739, 742 (1998). Furthermore, courts reviewing the decisions of administrative agencies may look to written documents as well as records of proceedings as sufficient formats for final decisions. Austin v. Bd. of Zoning Appeals, 362 S.C. 29, 34, 606 S.E.2d 209, 212 (Ct. App. 2004).

The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). If a statute’s language is plain, unambiguous, and conveys a clear meaning, “the rules of statutory interpretation are not needed and **the court has no right to impose another**

meaning.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

Thus the statement by Judge Baxley ““I don’t find a violation of federal law, which you have talked about, for overtime -- failure to pay overtime; nor do I find any other violation of state law.” (Ap p 15, L4-6). “ is a direct contradiction to Commission records exhibit C# 2 (terms for new contract of hire) (Ap p 20) that clearly states “There is no overtime pay”, “No pay for cleaning up the shop-ever.”, and “Do not work on anything at any time without a time ticket and a work order.” **ON ITS FACE.**

With the above said, the appeals from the SCESC was based upon extrinsic fraud by the SCESC with evidence there of. The burden of proof that the Commission complied to State Statutes fall upon the Respondents. Without the record of the SCESC, how can any court Appellant capacity rationally decide what was or was not ruled upon or what any evidence exist to support their decision, ipso facto, the lack of the record condemns the case laws *TNS478 (1998) Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 624, 503 S.E.2d 471, and *McEachern v. S.C. Emp't Sec. Comm'n*, 370 S.C. 553, 557, 635 S.E.2d 644, 646 (Ct. App. 2006) to be void of any merit due to the extrinsic fraud to committed upon this court for failure to produce the whole record to the court. If this court is to bound itself to these case laws then this court bears the burden of proof that the whole record was provided by the SCESC of which this court has the authority and ability to inspect the Courts Records in accordance to court rules.

With *Thompson v. S.C. Steel Erectors*, 369 S.C. 606, 617-18, 632 S.E.2d 874, 881 (Ct. App. 2006), without the record nor any representative for the opposing party and with a judges decision from the bench that completely defies substantial evidence “On it Face” what is supposed to be in the record (according to SC statues) that violates Federal

Laws, can this court rationally consider that actions of the court is a miscarriage of justice and that any other argument by a pro se would be anything other than futile.

With the failure to produce the Record to the Circuit Court and with only a Motion to Dismiss along with commission's decision letter (Ap. pp. 10 and 11) filed Aug. 26, 2009 by the SCESC and beyond the 30 day limitation of filing. The SCESC has failed to Answer the complaint in accordance to Rule 37 (a)(3), SCRCF "For purposes of this subdivision an **evasive or incomplete answer is to be treated as a failure to answer.**"

With the refusal of the Darlington Clerk of Courts Office to provide a letter of verification as to what is or is not in the Circuit Courts Records, then Justice demands that this court inspects that Record for the Absent of Records of the SCESC and also the Absent of Orders of Motion Hearings. The Record provided under Rule 1004(3), SCRE (all documents in Record (Ap. Pp. 8 - 29 except pages 10 and 11) provides substantial evidence of the Absents of the SCESC Records and supports the lack of substantial evidence to support the decision of the SCESC. The burden of proof as to regarding the absence of Record provided to the Circuit Court is upon the SCESC, it is not upon the Appellant to show burden of proof of the Absence of the Record. This Court does not provide a proper avenue for the process that proves the Absent of a Record. Thus the orders of the lower Courts should be reversed upon Rule 60(b)(3), SCRCF (upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following ...fraud, misrepresentation, or other misconduct of an adverse party)

A JUDGE COMMITES PERJURY BY PRODUCING A COURT ORDER OVER A

HEARING OF WHICH HE WAS NOT PRESENT NOR PRESIDING OVER WHILE
BASING THE DECISION UPON EX-PARTY COMMUNICATIONS, ALSO A
JUDGE COMMITTES VIOLATE THE RIGHTS TO DUE PROCESS BY THE FAILURE
TO PRODUCE A DECISION OVER A HEARING.

With the recent discovery (under Rule 1004(3), SCRE) by the Appellant of the communication between Judge Burch and SCESC and/or counsel of (Ap p. 89-91) without informing the Appellant, Ipso facto, has committed ex parte communication. "[E]x parte communication is defined as 'prohibited communication between counsel and the court when opposing counsel is not present.'" *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440 n.3, 581 S.E.2d 836, 838 n.3 (2003) (quoting *Black's Law Dictionary* 597 (7th Ed. 1999)). The Code of Judicial Conduct prohibits a judge from initiating, permitting, or considering *ex parte* communications unless the judge takes certain precautions, including but not limited to notifying the other parties of the substance of the *ex parte* communication and giving them the opportunity to respond. Rule 501, SCACR, Canon 3(B)(7)(a)(ii).

Respondent as well as Judge Burch has violated the Code of Judicial Conduct by failing to maintain and observe high standards of conduct to preserve the independence and integrity of the judiciary (Canon 1); by failing to conduct himself in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Canon 2(A)). Ipso facto has violated SC Codes §8-1-60 ("Any ..., judge ... this State who shall wilfully fail or neglect to discharge all the duties and perform all the services which are required of him by law shall, in addition to his liability to the person aggrieved, be liable to be indicted as for a misdemeanor and upon conviction thereof shall be fined, at the

discretion of the court, not exceeding five hundred dollars“), §16-17-410 (“The common law crime known as "conspiracy" is defined as a combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means. “), and §16-5-10 (“It is unlawful for two or more persons to band or conspire together ... with the intent to injure, oppress, or violate the person ...or attempt by any means, measures, or acts to hinder, prevent, or obstruct a citizen in the free exercise and enjoyment of any right or privilege secured to him by the Constitution and laws of the United States or by the Constitution and laws of this State.”)

With Judge Burch presiding over the second Motion to Dismiss hearing (Jan 6, 2010 fist Motion to Dismiss hearing (Nov 4, 2009) (Ap. p. 4) was awarded to Appellant for default by the Responds absence and set then aside by Judge Baxley) and not the Motion to Amend hearing (May 25, 2011) and issuing an Order for the Motion to Amend (Sep. 11, 2013) (Ap. p 6) that was Presided over by another Judge (Due to lack of Order for the Motion to Dismiss, the Presiding Judge Acquired the Order under Advisement (Ap. p. 5) from Judge Burch on same day as the Motion to Amend Hearing) and failure to decide and issue an Order for the Motion to Dismiss, Judge Burch has committed a violation of §16-17-735 ((C) It is unlawful for a person to act without authority under state law as a Supreme Court Justice, a court of appeals judge, a circuit court judge, ... in determining a controversy, adjudicating the rights or interests of others, or signing a document as though authorized by state law. , (E) (3) "Sham legal process" means the issuance, display, delivery, distribution, reliance on as lawful authority, or other use of an instrument that is not lawfully issued,..., which purports to: (a) be a ... judgment, ... or other order of a court of this State, ... established by state law; (b) assert jurisdiction or

authority over or determine or adjudicate the legal or equitable status, rights, duties, powers, or privileges of a person or property;) Giving false information in a document or report required by the laws of this State is perjury, S.C. Code Ann. §16-9-10(A)(2), and Barratry S.C. Code Ann. §16-17-10(2) (b) “Wilfully bring, prosecute or maintain an action, at law or in equity, in any court having jurisdiction within this State and thereby seeks to defraud or mislead the court”

With Judge Burch Illegal Order denial of the Motion to Amend (Ap. P. 6), has also violated Rule 15, SCRPC ((a) **Amendments**. A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served. This Rule 15(a) is substantially the same as the Federal Rule, and preserves present State practice under Code §15-13-910 and §15-13-920.). Respondent’s Motion to Dismiss filed on Aug. 26, 2009 and Appellant’s Motion to Amend filed on Sep. 2, 2009.

There for, Judge Burch has committed *ex parte* communications, perjury, conspiracy and barratry thereby producing a Sham legal process. There for the Order for the Motion to Amend by Judge Burch is Void and subject under Rule 60, SCRPC.

UNDER STATE CODES §41-35-720, §41-35-750 AND 1-23-380 WITHOUT REPRESENTATIVES NOR RECORD PROVIDED, THE CASE WAS AWARDED TO THE RESPONDENTS BY A SHAME LEGAL PROCES AND FRAUD.

"An abuse of discretion in setting aside a default judgment occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support." In re Estate of Weeks, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App. 1997).

The failure of an entry of default was an abuse of discretion because the appellant process was defective and based on extrinsic fraud Respondents absence of argument fails on the merits. Respondents failed to show good cause to set aside a default judgement. Negligence of an insurance company is imputed to a defaulting litigant and cannot constitute good cause to relieve Respondents from the entry of default. *See Roberts v. Peterson*, 292 S.C. 149, 355 S.E.2d 280 (Ct. App. 1987) (observing that the “courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant”) and *Williams v. Vanvolkenburg*, 312 S.C. 373, 440 S.E.2d 408 (Ct. App. 1994) (imputing an attorney’s negligence to a defaulting litigant). Moreover, the *Wham* factors do not weigh in favor of lifting the entry of default.

An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support. *Conner v. City of Forest Acres*, 363 S.C. 460, 467, 611 S.E.2d 905, 908 (2005); *Carlyle v. Tuomey Hosp.*, 305 S.C. 187, 193, 407 S.E.2d 630, 633 (1991).

Rule 37 (a)(3), SCRPC “For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer. (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or **rendering a judgment by default against the disobedient party**. Thus, an action of judgment by default is a preventative measure to assure that fraud is not conducted upon the Courts and that the opposing party is not subjected to miscarriage of justice, unreasonable delay, unjust actions or other burdens brought on by the defaulting party.

In its appellate capacity "as prescribed in [South Carolina Code] Section 1-23-380

[(Supp. 2013)]." S.C. Code Ann. § 1-23600(E) (Supp. 2013). Subsection 1-23-380(5) provides the reviewing court "may affirm the decision of the agency," "remand the case for further proceedings," or "reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are . . . (d) affected by [an] error of law; [or] (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record"

The Fifth Circuit reaffirmed *Bass* in *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396 (5th Cir.1981), where the district court entered default judgment against the defendants for failure to appear at trial. Quoting *Bass*, the court explained that Rule 55 "does not require that to escape default the defendant must not only file a sufficient answer to the merits, but must also have a lawyer or be present in court when the case is called for trial." *Seven Elves, Inc.*, 635 F.2d at 401, n.2. For examples of state courts that have followed or endorsed the *Bass* rule in interpreting local default judgment rules, see *Coulas v. Smith*, 395 P.2d 527, 529 (Ariz. 1964); *Rombough v. Mitchell*, 140 P.3d 202, 205 (Colo. App. 2006); *Klein v. Rappaport*, 90 A.2d 834, 835 (D.C. 1952); *Sharp v. Sharp*, 409 P.2d 1019, 1022 (Kan. 1966); *Black v. Rimmer*, 700 N.W.2d 521, 526 (Minn. App. 2005); *Hous. Found., Inc. v. Beagle*, 957 A.2d 405 (Vt. 2008).

The interests of justice require the circuit court to order a default judgment when a party fails to show, ipso facto. has failed to plead or otherwise defend and their misconduct has been willful, thus has abandoned the case and has shown no interest in victory of the case and waiving any defense. The court must also strike from the record any response of that party due to lack of merit and abandonment of said case. Only upon

excusable neglect may the default be overturned and a remedy must be due for the delay before bringing the matter before the court. Awarding a case to a party that is in default is a miscarriage of justice and an abuse of discretion while no valid reason or credible explanation for the conduct has been offered. With failure to produce the whole record under SC Code §41-35-720 and §41-35-750 will give rise to sanctions under Federal Rule of Procedure 37(b). With this courts standard of review derives from the APA. Al-Shabazz v. State, 338 S.C. 354, 379, 527 S.E.2d 742, 755 (2000), the Appellants has proven beyond any doubt that the action of the SCESC (and counsel of) along with the lower courts have violated constitutional and statutory provisions, case was made upon unlawful procedure, affected by error of law, decisions was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record (in said case lack of any record), and a clear abuse of discretion. Ipso facto, by filing a motion to dismiss and without providing the whole record (only the Commission's decision letter (Ap. p. 10 and 11) , the SCESC has failed to answer the origin complaint of July 24, 2009.

With Brown's Rvs abandonment of case prior to any appeal and is not exempt under 29 U.S.C. 213 and failed to prove otherwise, The Commission ignored the violations and abandonment of case. This Court has also ignored the fact that the Employer abandoned the case and that the Commission does not represent the employer in any Appeals from the Commission, ipso facto, the Employer has defaulted and failed to answer and/or defend on all appeals and hearings of said case. Exemptions are to be narrowly construed against the employer and the employer carries the burden of proving an exemption applies. *McDonnell v. City of Omaha*, 999 F.2d 293, 295 (8th Cir. 1993) (Employers have the burden of proving that the exemption applies, and they must

demonstrate that their employees fit "plainly and unmistakably within the exemption's terms and spirit."). Therefore the Commission stepped beyond its Jurisdiction in the determination that the employer did not violate Federal Laws as well as the Circuit Court and Appeals Court.

THE REFUSAL OF THE 3 CONCERNED APPEALS COURT JUDGES TO TAKE APPROPRIET DISAPLANARY ACTIONS DIRECTLY VIOLATES COURT RULES AND PROMOTES CURRUPTION IN THE COURT SYSTEM.

Advisory Committee on Standards of Judicial conduct opinion NO. 2-2008

“Canons 1 and 2 impose on judges the duty to uphold the integrity of the judiciary and promote public confidence in it. A courtroom is not a “duty free zone” in which serious crimes may be admitted with impunity. A blanket judicial attitude of “hear no evil, see no evil, report no evil” does not inspire public confidence.”

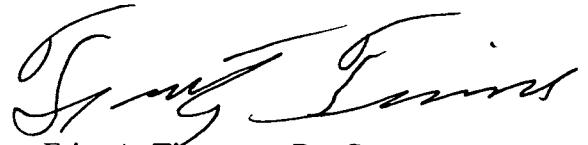
CANON 3D. Disciplinary Responsibilities.- (1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.*- (2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct contained in Rule 407, SCACR, should take appropriate action. A judge having knowledge* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the

appropriate authority.*

With the above violations, ipso facto, the involved 3 judges of the Appeals court has committed conspiracy after the fact of the violations. With the saying “Corruption breeds Corruption” , the Corruption of the Appeals Court judges promotes the Corruption of the Circuit Court judges and further to the SCESC witch lead to the employee’s to work under and still working under violations of Federal Laws without a proper means of escape. If this court refuses to enforce Federal Laws then as a matter of fact it would not enforce state laws, rules, or regulations. Ipso facto, the court system would be a complete fraud and a complete violations to the constitution and the rights given by it. As so far seen by the Appellant, this is the reality of this entire court system including the Chief Justice of the Supreme Court for failing to take appropriate discipline actions for the Appellants Appeal’s Case No 2013-001415 that includes a dog catcher practicing law without a license to barratry by the county solicitors up to and including the Attorney General and staff of which the same case involves the same judges that completely subverted Court Rules on behalf of the State while enforcing the same Rules upon a pro se while Violating the Appellants Rights to Due Process. There for, how can this Court Justify its own actions of these violations of its own Rules and disregard for State and Federal Rules. Regulations and Laws. With these violation of Court Rules and State Statutes, Does this court system totally ignore said rules and statutes and only conveniently use them when they are in the Courts and/or States favor and will.

CONCLUSION

Pursuant to Rule 242, SCACR, the Petitioner respectfully moves for a Writ of Certiorari and for this Court to review and reverse the Court of Appeals' Opinion No. 2015-UP-402 of Oct 23, 2015, which affirmed the Circuit court's ruling. Review should be granted because of the special and important issues raised by the Opinion' rulings below. Furthermore, the Opinion directly conflicts with decisions and Rules of this Court. This Court's consideration is necessary to secure and/or maintain uniformity of the appellate courts' opinions concerning the issues, preservation and procedure as well as uniformity of appellate review of which is currently fatally



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Nov. 20, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

NOV 23 2015

APPEAL FROM DARLINTON COUNTY
Court of Common Pleas

S.C. Supreme Court

J. Michael Baxley, Circuit Court Judge

Appellate Case No.2013-002356

Fritz Allen Timmons

Appellant.

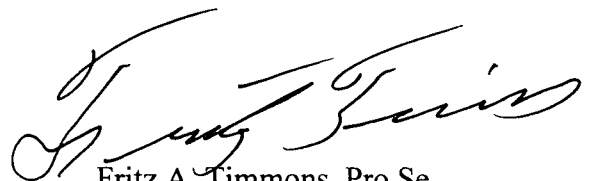
v.

SCESC and Browns a/s RV and Campers

Respondent

PROOF OF SERVICE

I, hereby certify that I have served the Petition for A Writ of Certiorari on Derrick K. McFarland, P.O. Box 8597, Columbia, SC 29202 for Respondents, by mailing one copy of the same, postage prepaid and return address clearly indicated on said envelope on Nov. 20, 2015,



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Nov. 20, 2015