

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

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James B. Jackson, Jr., Special Circuit Court Judge

SC Court of Appeals

Case No. 2007-CP-38-00196 and 2007-CP-38-0201  
Appellate Case No. 2014-001634

First Citizens Bank and Trust Company, Inc., ..... Appellant/Respondent,

v.

Clyde B. Livingston, Technico Marketing & Distribution,  
Inc., B. Livingston and Charlotte V. Livingston, American  
First Federal, Inc., Citibank South Dakota, N.A., Branch  
Bank and Trust Company of South Carolina, G&G Rentals,  
Miler Communications, Wells Fargo Bank, N.A., .....

Defendants,

Of whom Clyde B. Livingston is the ..... Respondent/Appellant,

And

First Citizens Bank and Trust Company, Inc., ..... Appellant/Respondent.

v.

Clyde B. Livingston, American First Federal, Inc., Citibank  
South Dakota, N.A., Branch Bank and Trust Company of  
South Carolina, G&G Rentals, Miler Communications,  
Wells Fargo Bank, N.A.,.....

Defendants,

Of whom Clyde B. Livingston is the ..... Respondent/Appellant.

**FIRST CITIZENS' FINAL RESPONDENT'S BRIEF**

A. Mattison Bogan  
Erik T. Norton  
Tara C. Sullivan  
Post Office Box 11070  
Columbia, SC 29211-1070  
(803) 799-2000

*Attorneys for First Citizens Bank and Trust Company, Inc.*

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## Table of Contents

Table of Authorities .....	ii
Counter-Statement of Issues on Appeal.....	1
Counter-Statement of the Case .....	2
Standard of Review .....	4
Argument .....	5
I.    The circuit court correctly granted summary judgment in favor of First Citizens on Livingston’s counterclaims for violation of the SCUTPA because there is no private right of action for the unauthorized practice of law and because a mere breach of contract only affecting the two parties to the contract may not support liability under the SCUTPA .....	6
A.    There is no private right of action for the unauthorized practice of law and a SCUTPA claim may not be premised on the unauthorized practice of law .....	6
B.    The alleged failure to disburse the maximum amount available under a home equity line of credit may not support liability under the SCUTPA because it would constitute a mere breach of contract that only affects the parties to the transaction .....	9
C.    Livingston does not provide factual or legal support for his SCUTPA counterclaim in action 201, and the circuit court properly granted summary judgment on this counterclaim .....	11
II.   This Court may also affirm the circuit court’s grant of summary judgment pursuant to Rule 220(c), SCACR, because Livingston’s SCUTPA counterclaims are barred by the statute of limitations.....	12
Conclusion .....	14

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Ardis v. Cox</i> , 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993) .....	10
<i>Columbia East Associates v. Bi-Lo, Inc.</i> , 299 S.C. 515, 386 S.E.2d 259 (Ct. App. 1989) .....	10
<i>Columbia/CSA-HS Greater Columbia Healthcare Sys., LP v. S. Carolina Med. Malpractice Liab. Joint Underwriting Ass'n</i> (S.C. Sup. Ct. filed Jan. 21, 2015) .....	4
<i>Crary v. Djebelli</i> , 329 S.C. 385, 496 S.E.2d 21 (1998) .....	10
<i>Doe v. McMaster</i> , 355 S.C. 306, 585 S.E.2d 773 (2003) .....	7
<i>Eaddy v. Smurfit-Stone Container Corp.</i> , 355 S.C. 154, 584 S.E.2d 390 (Ct. App. 2003) .....	12
<i>First Sav. Bank v. McLean</i> , 314 S.C. 361, 444 S.E.2d 513 (1994) .....	12
<i>Gentry v. Yonce</i> , 337 S.C. 1, 522 S.E.2d 137 (1999) .....	9
<i>Gibson v. Bank of Am., N.A.</i> , 383 S.C. 399, 680 S.E.2d 778 (Ct. App. 2009) .....	14
<i>Hambrick v. GMAC Mortgage Corp.</i> , 370 S.C. 118, 634 S.E.2d 5 (Ct. App. 2006) .....	7, 8, 11
<i>Health Promotion Specialists, LLC v. S. Carolina Bd. of Dentistry</i> , 403 S.C. 623, 743 S.E.2d 808 (2013) .....	6, 9
<i>I'On, L.L.C. v. Town of Mt. Pleasant</i> , 338 S.C. 406, 526 S.E.2d 716 (2000) .....	12
<i>Key Co. v. Fameco Distributors, Inc.</i> , 292 S.C. 524, 357 S.E.2d 476 (Ct. App. 1987) .....	10
<i>Lanham v. Blue Cross &amp; Blue Shield of S.C., Inc.</i> , 349 S.C. 356, 563 S.E.2d 331 (2002) .....	4

<i>Linder v. Ins. Claims Consultants, Inc.</i> , 348 S.C. 477, 560 S.E.2d 612 (2002) .....	7, 11
<i>Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.</i> , 290 S.C. 475, 351 S.E.2d 347 (Ct. App. 1986) .....	10
<i>Perry v. Green</i> , 313 S.C. 250, 437 S.E.2d 150 (Ct. App. 1993) .....	9
<i>S. Carolina Nat. Bank v. Silks</i> , 295 S.C. 107, 367 S.E.2d 421 (Ct. App. 1988) .....	9, 10
<i>Stevens &amp; Wilkinson of S. Carolina, Inc. v. City of Columbia</i> , 409 S.C. 568, 762 S.E.2d 696 (2014) .....	4
<i>In re Unauthorized Practice of Law Rules Proposed by S. Carolina Bar</i> , 309 S.C. 304, 422 S.E.2d 123 (1992) .....	7
<i>Wright v. Craft</i> , 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006) .....	6
<b>Rules</b>	
S.C. Rule of Civil Procedure 56(c) .....	4
S.C. Rule of Civil Procedure 208(b) .....	12
S.C. Rule of Civil Procedure 220(c) .....	1, 5, 12, 14
<b>Statutes</b>	
S.C. Code Ann. § 37-10-105(A) .....	14
S.C. Code Ann. § 39-5-20(a) .....	6
S.C. Code Ann. § 39-5-140(a) .....	6
S.C. Code Ann. § 39-5-150 .....	13
<b>Other Authorities</b>	
South Carolina Unfair Trade Practices Act .....	1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14

**Counter-Statement of Issues on Appeal**

- I. Did the circuit court correctly grant summary judgment in favor of First Citizens on Livingston's counterclaims for violation of the SCUTPA because there is no private right of action for the unauthorized practice of law and because a mere breach of contract only affecting the two parties to the contract may not support liability under the SCUTPA?**
  
- II. May this Court also affirm the circuit court's grant of summary judgment pursuant to Rule 220(c), SCACR, because Livingston's SCUTPA counterclaims are barred by the statute of limitations?**

### Counter-Statement of the Case

Appellant/Respondent First Citizens Bank and Trust Company, Inc. (“First Citizens”) hereby files its initial respondent’s brief in connection with the notice of appeal filed by Respondent/Appellant Clyde B. Livingston (“Livingston”) arising out of the circuit court’s order denying summary judgment in part, granting summary judgment in part, and denying First Citizens’ demand for a bench trial in the foreclosure actions commenced against Livingston.<sup>1</sup>

On November 9, 2000, Livingston obtained a home equity line of credit in the amount of \$57,000 from Community Resource Bank, N.A. (Compl., C.A. No. 2007-CP-38-196, at ¶ 9; R. 59.) The equity line was secured by a second mortgage on Mr. Livingston’s primary residence at 260 North Brookside, Orangeburg, South Carolina. (*Id.* at ¶ 10; R. 59.) On November 29, 2000, Livingston obtained another loan from Community Resource Bank, in the original principal amount of \$30,500.00, which was secured by a first mortgage on a different property owned by Mr. Livingston located at 116 Gold Drive, Orangeburg, South Carolina. (Compl., C.A. No. 2007-CP-38-201, at ¶¶ 7-8; R. 85.) Livingston subsequently defaulted on both loans. (Compl., C.A. No. 2007-CP-38-196, at ¶ 17; R. 61; Compl., C.A. No. 2007-CP-38-201, at ¶ 13; R. 86.)

On February 15, 2007, First Citizens filed a foreclosure action on the first mortgage on the second property (“action 201”), and on February 16, 2007, First Citizens

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<sup>1</sup> First Citizens provides this condensed Counter-Statement of the Case which only includes matters relevant to the appeal of Respondent/Appellant Livingston. For the complete procedural history of these matters, First Citizens also restates and incorporates by reference herein the Statement of the Case set forth in its brief filed in the appeal of Appellant/Respondent First Citizens.

filed a foreclosure action on the home equity line of credit (“action 196”).<sup>2</sup> (Compl., C.A. No. 2007-CP-38-196; R. 51; Compl., C.A. No. 2007-CP-38-201; R. 77.) On March 27, 2007, Livingston answered the foreclosure complaints in both actions, and on August 9, 2007, Livingston filed motions to amend his answers in both actions. (Answer, C.A. No. 2007-CP-38-196; R. 104; Answer, C.A. No. 2007-CP-38-201; R. 110; Mot. Amend Answer, C.A. No. 2007-CP-38-196; R. 463; Mot. Amend Answer, C.A. No. 2007-CP-38-201; R. 465.) By Orders dated December 11, 2007, and filed December 14, 2007, the master-in-equity granted Livingston’s motions to amend in both actions. (Order Granting Mot. Amend, C.A. No. 2007-CP-38-196; R. 5; Order Granting Mot. Amend, C.A. No. 2007-CP-38-201; R. 9.)

Livingston’s amended answer in action 201 asserted counterclaims for breach of contract and violation of the South Carolina Unfair Trade Practices Act (“SCUTPA”). (Am. Answer and Countercl., C.A. No. 2007-CP-38-201; R. 125.) Livingston’s amended answer in action 196 asserted counterclaims for violations of the South Carolina Consumer Protection Code, including the right to cure and attorney preference statutes; breach of contract; violations of the SCUTPA; and libel. (Am. Answer and Countercl., C.A. No. 2007-CP-38-196; R. 115.) In the Orders granting Livingston’s motions to amend, the Master severed the counterclaims from the foreclosure actions, retained jurisdiction over the foreclosure claims, and ordered that, because “Defendant Livingston’s Amended Answer and Counterclaim asserts counterclaims on which he has the right to a trial by jury, his counterclaims [were] returned to the circuit court.” (Order

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<sup>2</sup> First Citizens is the successor-in-interest to Community Resource Bank, N.A., and was substituted as the Plaintiff on May 17, 2013, in action 196 and on June 10, 2013, in action 201. (Order Amending Caption, C.A. No. 2007-CP-38-196; R. 28; Order Amending Caption, C.A. No. 2007-CP-38-201; R. 30.)

Granting Mot. Amend, C.A. No. 2007-CP-38-196; R. 5; Order Granting Mot. Amend, C.A. No. 2007-CP-38-201; R. 9.)

First Citizens filed motions for summary judgment on Livingston's counterclaims on October 19, 2012, in action 196 and on January 3, 2013, in action 201. (10/19/12 Mot. Summ. J., C.A. No. 2007-CP-38-196; R. 498; 1/03/13 Mot. Summ. J., C.A. No. 2007-CP-38-201; R. 515.) The two actions were consolidated for pre-trial purposes, and by Order filed April 17, 2014, summary judgment was granted on Livingston's SCUTPA counterclaims and denied on the remaining counterclaims. (Order Granting Summ. J. in Part, Den. Summ. J. in Part, and Den. Pl.'s Mot. Strike Jury Demand; R. 32.) Both parties filed motions for reconsideration of the circuit court's April 17, 2014 Order, which were denied via order dated July 2, 2014. (Order Den. Mots. Reconsideration; R. 47.) Both parties have appealed these orders. (Notice of Cross-Appeal; R. 692.)

#### **Standard of Review**

"An appellate court reviews the grant of summary judgment using the same standard employed by the circuit court." *Columbia/CSA-HS Greater Columbia Healthcare Sys., LP v. S. Carolina Med. Malpractice Liab. Joint Underwriting Ass'n*, (S.C. Sup. Ct. filed Jan. 21, 2015) (Shearouse Adv. Sh. No. 3 at 59) (quoting *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002)). "Summary judgment is proper where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law." *Id.* (citing Rule 56(c), SCRPC). "In reviewing the evidence, all inferences must be viewed in the light most favorable to the non-moving party." *Stevens & Wilkinson of S. Carolina, Inc. v. City of Columbia*, 409 S.C. 568, 576, 762 S.E.2d 696, 700 (2014) (citing Rule 56(c), SCRPC).

## Argument

This cross-appeal arises out of the circuit court's Order, filed April 17, 2014, in which First Citizens was granted summary judgment on Livingston's counterclaims for alleged violations of the SCUTPA. In his counterclaims, first filed in 2007, Livingston argues that First Citizens violated the SCUTPA in two particulars: (1) by Orangeburg National Bank, First Citizens' predecessor-in-interest, closing the home equity loan in action 196 without attorney supervision in 2000, and (2) by disbursing to him less than the maximum amount offered under the terms of the home equity line of credit in action 196. In its April 17, 2014 Order, the circuit court correctly ruled that First Citizens was entitled to summary judgment on Livingston's SCUTPA counterclaims as a matter of law because there is no genuine issue of material fact in the Record that First Citizens committed an unfair or deceptive act or practice that had an impact on the public interest in either of these manners. The circuit court's decision in action 196 should be affirmed because (1) Livingston cannot premise a claim for recovery under the SCUTPA on the alleged unauthorized practice of law, and (2) a mere breach of contract between two private parties, standing alone, may not constitute a SCUTPA violation. Livingston does not support his SCUTPA counterclaim in action 201 with factual or legal argument in his brief, but it may be affirmed for the same reasons herein, beyond issue preservation grounds. Additionally, this Court may affirm the decision of the circuit court pursuant to Rule 220(c), SCACR, because Livingston's counterclaims are also barred by the statute of limitations for SCUTPA actions.

**I. The circuit court correctly granted summary judgment in favor of First Citizens on Livingston's counterclaims for violation of the SCUTPA because there is no private right of action for the unauthorized practice of law and because a mere breach of contract only affecting the two parties to the contract may not support liability under the SCUTPA.**

The SCUTPA provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” S.C. Code Ann. § 39-5-20(a). It creates a private right of action for “[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 declared unlawful by § 39-5-20 . . . .” S.C. Code Ann. § 39-5-140(a). “To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant’s unfair or deceptive act(s).” *Health Promotion Specialists, LLC v. S. Carolina Bd. of Dentistry*, 403 S.C. 623, 638, 743 S.E.2d 808, 816 (2013) (quoting *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006)). Livingston’s asserted SCUTPA violations fail because he has no private right of action to recover for the alleged unauthorized practice of law and because a mere breach of contract is not unfair or deceptive and has no impact on the public interest.

**A. There is no private right of action for the unauthorized practice of law and a SCUTPA claim may not be premised on the unauthorized practice of law.**

Livingston’s first allegation of a SCUTPA violation is that, in 2000, Orangeburg National Bank closed the home equity loan in action 196 without attorney supervision. (Answer to Am. Compl., C.A. No. 2007-CP-38-196 at ¶¶ 30, 51; R. 157, 160.)

Livingston argues this was an unfair or deceptive business practice that affects the public interest and which Orangeburg National Bank actually repeated. Accepting the allegations of the counterclaim and the evidence in the Record in the light most favorable to Livingston, as the circuit court did, the grant of summary judgment was proper.

Under South Carolina law, there is no private right of action for the unauthorized practice of law. *Linder v. Ins. Claims Consultants, Inc.*, 348 S.C. 477, 497, 560 S.E.2d 612, 623 (2002). The only remedy that interested private individuals may pursue for the unauthorized practice of law is a declaratory judgment in the original jurisdiction of the state Supreme Court, which is the sole body with the constitutional duty to regulate the practice of law. *In re Unauthorized Practice of Law Rules Proposed by S. Carolina Bar*, 309 S.C. 304, 307, 422 S.E.2d 123, 125 (1992). A private individual may not attempt to bypass this prohibition on recovery for the unauthorized practice of law by instead asserting claims that are only premised on the unauthorized practice of law. *Hambrick v. GMAC Mortgage Corp.*, 370 S.C. 118, 634 S.E.2d 5 (Ct. App. 2006). This prohibition is appropriate because the determination of which actions constitute the practice of law is contextually specific and a definition of unauthorized practice of law in one scenario cannot be consistently applied later in a factually distinct case. *Id.* (citing *Doe v. McMaster*, 355 S.C. 306, 312, 585 S.E.2d 773, 776 (2003)). Here, Livingston's first allegation of a SCUTPA violation is wholly premised on the alleged unauthorized practice of law, which is prohibited by this Court's decision in *Hambrick*.

In *Hambrick*, private individual borrowers obtained a mortgage secured by their home, which they alleged was prepared and closed without attorney supervision. *Id.* at 120, 634 S.E.2d at 6. The borrowers filed suit in circuit court, asserting several legal and

equitable common law claims against the lender, stemming from their allegation that the lender charged them legal fees for legal services that were not provided. *Id.* at 121, 634 S.E.2d at 6. The borrowers argued that they were not seeking a declaration that the lender's actions constituted the unauthorized practice of law and instead sought recovery for acts which the South Carolina Supreme Court had *already declared* to be the unauthorized practice of law. *Id.* at 124, 634 S.E.2d at 8. This Court disagreed, holding that the borrowers' claims were premised on the unauthorized practice of law, for which no private remedy exists whatsoever outside of a declaratory judgment action in the original jurisdiction of the Supreme Court. *Id.* at 125, 634 S.E.2d at 9. Accordingly, this Court held that the circuit court correctly granted the lender's motion to dismiss all of the claims. *Id.*

The same result follows here. In action 196, Livingston alleges that the unauthorized practice of law occurred when Orangeburg National Bank closed the home equity loan without attorney supervision, which, he argues, violates the SCUTPA because it is a business practice affecting the public interest that Orangeburg National Bank actually repeated. (Answer to Am. Compl., C.A. No. 2007-CP-38-196; R. 153; *see also* Initial Br. of Resp't/Appellant at pp. 8-10, 13-14.) Like the claims in *Hambrick*, this SCUTPA allegation is entirely premised on the unauthorized practice of law for which there is no private right of action. Accordingly, the trial court properly granted summary judgment on Livingston's counterclaim for violations of the SCUTPA, and this ruling should be affirmed.

**B. The alleged failure to disburse the maximum amount available under a home equity line of credit may not support liability under the SCUTPA because it would constitute a mere breach of contract that only affects the parties to the transaction.**

Livingston also alleges that First Citizens violated the SCUTPA in action 196 by purportedly orally modifying the home equity loan by not providing him with the maximum amount available under the home equity line of credit. (Answer to Am. Compl., C.A. No. 2007-CP-38-196 at ¶¶ 30, 51; R. 157, 160.) The circuit court found that, in a light most favorable to Livingston, First Citizens “simply reneged on its own agreement with Defendant Livingston by refusing him access to the remainder of his credit line,” which was not unfair or deceptive and had no impact on the public interest. (Order Granting Summ. J. in Part, Den. Summ. J. in Part, and Den. Pl.’s Mot. Strike Jury Demand at p. 12; R. 45.) The circuit court’s decision to grant summary judgment was correct and should be affirmed.

Under the SCUTPA, “[a]n act is ‘unfair’ when it is offensive to public policy or when it is immoral, unethical, or oppressive.” *Health Promotion Specialists, LLC v. S. Carolina Bd. of Dentistry*, 403 S.C. 623, 638, 743 S.E.2d 808, 816 (2013) (quoting *Gentry v. Yonce*, 337 S.C. 1, 12, 522 S.E.2d 137, 143 (1999)). “An act is ‘deceptive’ when it has a tendency to deceive.” *Id.* (quoting *Gentry* at 12, 522 S.E.2d at 143). Generally, “[a] mere breach of contract does not constitute a violation of the UTPA.” *S. Carolina Nat. Bank v. Silks*, 295 S.C. 107, 111, 367 S.E.2d 421, 423 (Ct. App. 1988). Accepting the evidence in the Record as true, then First Citizens’ purported unilateral modification only could constitute a breach of either the terms of the note or an oral modification of the note. However, the breach of a contract is not unfair or deceptive, even if it was intentional or deliberate. *See, e.g., Perry v. Green*, 313 S.C. 250, 257, 437

S.E.2d 150, 154 (Ct. App. 1993); *Columbia East Associates v. Bi-Lo, Inc.*, 299 S.C. 515, 522, 386 S.E.2d 259, 263 (Ct. App. 1989); *Silks* at 111, 367 S.E.2d at 423. There is no evidence in the record that not disbursing the maximum amount under the home equity line to Livingston, even if intentionally not done, was deceptive, unfair, immoral, unethical, or oppressive. Thus, Livingston's SCUTPA counterclaim fails.

Moreover, Livingston's SCUTPA counterclaim also fails because there is no impact on the public interest. This Court has stated that the SCUTPA "is not available to redress a private wrong where the public interest is unaffected," *Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 479, 351 S.E.2d 347, 350 (Ct. App. 1986), and "[a]n unfair or deceptive act or practice that affects only the parties to a trade or a commercial transaction is beyond the Act's embrace." *Ardis v. Cox*, 314 S.C. 512, 518-19, 431 S.E.2d 267, 271 (Ct. App. 1993). Even if First Citizens' purported improper disbursement was unfair or deceptive, a single breach that only affects the amount to which Livingston is entitled has no effect on the public interest. *See, e.g., Bi-Lo* at 522, 386 S.E.2d at 263. Livingston argues that the alleged breach affects the public interest because First Citizens is a business with numerous contracts in a commercial setting and could similarly breach other contracts. *See Crary v. Djebelli*, 329 S.C. 385, 387, 496 S.E.2d 21, 23 (1998) (stating that the public interest element may be satisfied by showing a potential for repetition). However, Livingston's "repetitive breaches" argument has previously been rejected—or else any single alleged breach of contract in a commercial setting would be elevated to an unfair trade practice in every case. *See, e.g., Key Co. v. Fameco Distributors, Inc.*, 292 S.C. 524, 527, 357 S.E.2d 476, 478 (Ct. App. 1987) ("Were we to agree with Great Games' theory in this case, then

every intentional breach of a contract within a commercial setting would constitute an unfair trade practice and thereby subject the breaching party to treble damages.”).

Livingston argues that the failure to grant him the maximum amount available under the home equity credit line was more than a mere breach of contract between two private parties because First Citizens had a practice of closing loans without attorney supervision. (Initial Br. of Resp’t/Appellant at pp. 13-14.) In making this argument, Livingston admits that his contractual SCUTPA violation is “very much linked” with his unauthorized practice of law SCUTPA violation. (*Id.* at p. 13.) He further argues that, had he been represented by competent counsel at the closing, First Citizens would not have “unilaterally imposed” a condition on the parties’ contract. (*Id.* at p. 13.) However, as argued above, Livingston cannot premise a SCUTPA violation on allegations of the unauthorized practice of law, regardless of whether the unauthorized practice of law is the SCUTPA violation itself or whether it merely provides the public impact element of a SCUTPA violation. *Hambrick v. GMAC Mortgage Corp.*, 370 S.C. 118, 634 S.E.2d 5 (Ct. App. 2006). There is no private right of action for Livingston recover for the unauthorized practice of law at all. *Linder v. Ins. Claims Consultants, Inc.*, 348 S.C. 477, 497, 560 S.E.2d 612, 623 (2002). Accordingly, Livingston cannot support the “public interest” element of his SCUTPA counterclaims, and the circuit court properly granted summary judgment on this basis as well.

**C. Livingston does not provide factual or legal support for his SCUTPA counterclaim in action 201, and the circuit court properly granted summary judgment on this counterclaim.**

The circuit court properly granted summary judgment on Livingston’s SCUTPA counterclaim in action 201 because the allegations, viewed in a light most favorable to

Livingston, only support a claim that First Citizens breached the contract by providing “inconsistent representations to Defendant Livingston concerning the amount it claims it is owed on the debt subject of this action.” (Am. Answer and Countercl., C.A. No. 2007-CP-38-201 at ¶¶ 19, 36; R. 128, 130.) Livingston does not offer factual support from the Record or legal argument in his brief to support his appeal of the circuit court’s order as to action 201. As a result, Livingston has abandoned any argument that the order was erroneous as to action 201. *See, e.g., First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (“Appellant fails to provide arguments or supporting authority for his assertion. Thus, he is deemed to have abandoned this issue.”); *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) (“This court has noted that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.”); Rule 208(b), SCACR (stating that arguments in initial briefs shall contain citations to authority). The Record reflects that the allegations supporting Livingston’s SCUTPA counterclaim in action 201 are also a single alleged breach of contract, which cannot be an unfair or deceptive act and has no impact on the public interest. *See* Section I(B), *supra*. For these reasons, the grant of summary judgment on the SCUTPA counterclaim in action 201 should be affirmed.

**II. This Court may also affirm the circuit court’s grant of summary judgment pursuant to Rule 220(c), SCACR, because Livingston’s SCUTPA counterclaims are barred by the statute of limitations.**

This Court may also affirm the decision of the circuit court to grant summary judgment on Livingston’s SCUTPA counterclaims because the Record reflects that the claims are barred by the statute of limitations. *See* Rule 220(c), SCACR; *F On, L.L.C. v.*

*Town of Mt. Pleasant*, 338 S.C. 406, 420-21, 526 S.E.2d 716, 723 (2000) (stating that an appellate court may affirm the decision of the trial court on an additional sustaining ground for any reason appearing in the record on appeal). Hence, this Court may affirm the decision of the circuit court to grant summary judgment on Livingston's SCUTPA counterclaims on this basis as well.

The limitations period to bring causes of action under the SCUTPA is three years. S.C. Code Ann. § 39-5-150. The closings of Livingston's two loans occurred on November 9, 2000 and November 29, 2000. (Compl., C.A. No. 2007-CP-38-196, at ¶¶ 9-10; R. 59; Compl., C.A. No. 2007-CP-38-201, at ¶¶ 7-8; R. 85.) Livingston filed his amended answers and counterclaims first asserting his counterclaims under the SCUTPA on December 3, 2007. (Am. Answer and Countercl., C.A. No. 2007-CP-38-196; R. 115; Am. Answer and Countercl., C.A. No. 2007-CP-38-201; R. 125.) Livingston either knew at the closing or was on notice as a matter of law that his loan purportedly closed without the supervision of an attorney. Accordingly, even though it is an improper basis for a claim, the limitations period for Livingston to assert his SCUTPA counterclaim premised on the unauthorized practice of law ended in 2003. Thus, even if Livingston were entitled to recover under the SCUTPA because First Citizens purportedly closed the loans without attorney supervision, this allegation would be time-barred regardless and may not support liability under the SCUPTA.

Similarly, Livingston either knew or was on notice as a matter of law that he was lent less than the maximum amount under the note at the time that the lending occurred. (Livingston Dep. 62:9-64:22; R. 225-27.) Livingston could not, as a matter of law, have reasonably ignored that he was disbursed less than the maximum line of credit for *four*

years, as would be required for his SCUTPA counterclaim premised on this allegation to not be time-barred. *See Gibson v. Bank of Am., N.A.*, 383 S.C. 399, 405-06, 680 S.E.2d 778, 782 (Ct. App. 2009) (stating that a statute of limitations begins to run when the plaintiff knew **or by the exercise of reasonable diligence** should have known that he had a cause of action (emphasis in original and internal quotation omitted)). Therefore, this allegation is also time-barred and may not provide the basis for a SCUTPA counterclaim.

Livingston's SCUTPA claims are analogous to his attorney preference claim, which also has a three-year statute of limitations, *see* S.C. Code Ann. § 37-10-105(A), and also arises out of events at the closing of the loans. The circuit court properly found that affirmative recovery on Livingston's attorney preference counterclaim was barred by the statute of limitations because the events giving rise to the claim occurred at the closing in 2000 and the counterclaim was first asserted in 2007. (Order Granting Summ. J. in Part, Den. Summ. J. in Part, and Den. Pl.'s Mot. Strike Jury Demand at p. 9; R. 42.) Livingston's SCUTPA claims are analogously barred by the three-year statute of limitations. Affirmance on statute of limitations grounds would be wholly consistent with the circuit court's ruling on the attorney preference counterclaim, and this Court may do so pursuant to Rule 220(c), SCACR.

#### **Conclusion**

Based on the above, this Court should affirm the circuit court's order granting First Citizens summary judgment on Livingston's counterclaims for the alleged violation of the SCUTPA.

*[signature page attached]*

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Tara C. Sullivan

A. Mattison Bogan

SC Bar No. 72629

E-mail: matt.bogan@nelsonmullins.com

Erik T. Norton

SC Bar No. 78360

E-Mail: erik.norton@nelsonmullins.com

Tara C. Sullivan

SC Bar No. 79806

E-Mail: tara.sullivan@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

*Attorneys for Appellant/Respondent First Citizens  
Bank and Trust Company, Inc.*

Columbia, South Carolina

July 15, 2015

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

JUL 15 2015

James B. Jackson, Jr., Special Circuit Court Judge

**SC Court of Appeals**

Case Nos. 2007-CP-38-0196 and Case No. 2007-CP-38-0201  
Appellate Case No. 2014-001634

First Citizens Bank and Trust Company, Inc., ..... Appellant/Respondent,

v.

Clyde B. Livingston, Technico Marketing &  
Distribution, Inc., B. Livingston and Charlotte V.  
Livingston, American First Federal, Inc., Citibank South  
Dakota, N.A., Branch Bank and Trust Company of  
South Carolina, G&G Rentals, Miller Communications,  
Wells Fargo Bank, N.A., ..... Defendants,

Of whom Clyde B. Livingston is the ..... Respondent/Appellant,

And

First Citizens Bank and Trust Company, Inc., ..... Appellant/Respondent,

v.

Clyde B. Livingston, American First Federal, Inc.,  
Citibank South Dakota, N.A., Branch Bank and Trust  
Company of South Carolina, G&G Rentals, Miller  
Communications, Wells Fargo Bank, N.A., ..... Defendants,

Of whom Clyde B. Livingston is the ..... Respondent/Appellant.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that this First Citizens' Final Respondent's Brief  
complies with Rule 211(b), SCACR.

*SIGNATURE PAGE ATTACHED*

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Tara C. Sullivan

A. Mattison Bogan

SC Bar No. 72629

E-mail: matt.bogan@nelsonmullins.com

Erik T. Norton

SC Bar No. 78360

E-Mail: erik.norton@nelsonmullins.com

Tara C. Sullivan

SC Bar No. 79806

E-Mail: tara.sullivan@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

*Attorneys for Appellant/Respondent First Citizens  
Bank and Trust Company, Inc.*

Columbia, South Carolina

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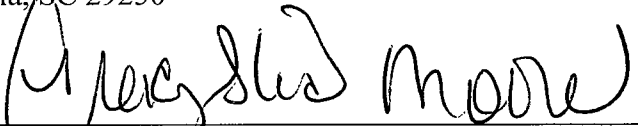
**PROOF OF SERVICE**

I, the undersigned Paralegal of the law offices of Nelson Mullins Riley &  
Scarborough LLP, attorneys for Appellant/Respondent, do hereby certify that I have  
served all counsel in this action with a copy of the document(s) hereinbelow specified

by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Document(s): FIRST CITIZENS' FINAL RESPONDENT'S BRIEF  
CERTIFICATE OF COUNSEL, RULE 211(b), SCACR

Counsel Served: Andrew S. Radeker, Esquire  
Harrison & Radeker, P.A.  
PO Box 50143  
Columbia, SC 29250

  
\_\_\_\_\_  
Tracy Slice Moore

July 15, 2015

# Nelson Mullins

Nelson Mullins Riley & Scarborough LLP  
Attorneys and Counselors at Law  
1320 Main Street / 17th Floor / Columbia, SC 29201  
Tel: 803.799.2000 Fax: 803.255.9079  
www.nelsonmullins.com

Tara C. Sullivan  
Tel: 803.255.9591  
Fax: 803.255.9079  
tara.sullivan@nelsonmullins.com

July 15, 2015

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SC Court of Appeals

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RE: First Citizens Bank v. Clyde Livingston  
Appellate Case No. 2014-001634  
Our File 00689/01777

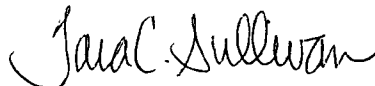
Dear Ms. Kitchings:

Enclosed please find the original and sixteen copies each of:

1. First Citizens' Final Appellant's Brief;
2. First Citizens' Final Reply Brief;
3. First Citizens' Final Respondent's Brief; and
4. Record on Appeal.

We would ask that you file the originals and return clocked-in copies to us via our courier. By copy of this letter to counsel of record, we are hereby serving him with copies of same.

Very truly yours,



Tara C. Sullivan

TCS:tm6

Enclosures

cc: Andrew S. Radeker, Esquire