

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable James R. Barber, III, Circuit Court Judge

RECEIVED

JAN 11 2016

SC Court of Appeals

Laurel Vaughn.....Appellant,

v.

Synchrony Bank.....Respondent.

Appellate Case No. 2015-002504

**APPELLANT'S REPLY BRIEF
ON THE ISSUE OF APPEALABILITY**

INTRODUCTION

The appellant and the respondent have both submitted briefs on the issue of appealability, and background information is contained in both of those briefs. Of utmost importance to the issue of appealability is the fact that this appeal arises from the Circuit Court's *sua sponte* remand of the action to Magistrate Court, where jurisdiction is not proper, where the damages in this case do not fit with in the Court's jurisdiction, where trial of the case without discovery is impossible, and where neither party sought for the case to be tried. In reply to the respondent's brief, the appellant sets forth the following reasons this action is appealable.

ARGUMENT

As set forth in the appellant's initial brief on appealability, *S.C. Code Ann.* § 1-23-390 provides "an aggrieved party may obtain a review of any final judgment of the circuit court under this article by appeal to the Supreme Court. The appeal shall be taken as in other civil cases." The right of appeal arises from and is controlled by statutory law. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464 (2006). *South Carolina Code Ann.* § 14-3-330(1) also provides that "...an interlocutory order is immediately appealable if it involves the merits." *Ex*

parte Capital U-Drive-It, Inc., supra; Charlotte-Mecklenburg Hosp. v. DHEC, 692 S.E.2d (2010). Contrary to the respondent's position, this appeal involves the merits, and is appealable at this stage, pursuant to *Ex parte Capital*. The Circuit Court remanded this action to Magistrate Court, *sua sponte*, which limits the plaintiff's damages, pursuant to the Magistrate Court's jurisdiction. The plaintiff has incurred over \$7,800 in damages, depending on whether the Unfair Trade Practices statute is applied, and the plaintiff will lose her right to recover those damages, which continue to grow, unless the action is litigated in Circuit Court. Additionally, it is expected that the hearing transcript will show that order is at least partially in error as to damages.

Neither the respondent nor the appellant requested, or at any time demonstrated, any intent or interest in litigating this matter in Magistrate Court before the Circuit Court stopped a hearing prematurely and stated it was remanding the action. In fact, it is unclear why the Circuit Court stopped the hearing after only a few minutes and decreed same. The parties' motions were not fully heard-the appellant's motion for summary judgment and to compel was not heard at all-the same motion for which the appropriate filing fee was paid to the Court. In addition, in response to the appellant's motion to reconsider, the Circuit Court Judge had a telephone conference with the parties and instructed the appellant's attorney to provide case law supporting the appellant's position on damages within 48 hours. The appellant timely submitted the email attached hereto as "Exhibit A." The Court was therefore aware that the action, which it remanded *sua sponte*, did not belong in Magistrate Court.

The respondent attempts to analogize this appeal to the appeal of a motion for change of venue, but this scenario simply does not fit within that analogy. A different venue is another Court of equal jurisdiction. In this instance, the case has been forced into a forum where prejudice to the appellant is inevitable, and where the merits of her claim are significantly impacted. Merits of the appellant's case include the magnitude of her damages; the Circuit Court's decision determines part of the merits, and this action is therefore appealable now.

If the appellant is not allowed to go forward with her appeal, she will have to litigate in Magistrate Court, then if an unfavorable verdict is returned, which is likely since the respondent will not have to respond to requests for admission which prove the appellant's case, the appellant will be in Circuit Court all over again, which will frustrate judicial economy. This case simply involves too much need for discovery to be litigated in Magistrate Court, even if jurisdiction

were proper there, which it is not. The appellant will also be limited in damages, and as stated above, the amount of damage to the appellant is contained within the merits of the case.

Unfair prejudice will be worked against the appellant if she is not allowed to proceed with her appeal. While presumably the respondent's counsel is billing a large corporation at an hourly rate, the appellant is a working-class citizen, incurring unnecessary expenses each time the respondent maneuvers to avoid responding to discovery or complying with the Rules of Civil Procedure. The respondent has been rewarded for its refusal to respond to discovery with a *sua sponte* remand to Magistrate Court, where it does not have to follow discovery rules. Since that creates a scenario where the respondent is more likely to prevail, the appellant is likely to incur even more fees, and in some cases double fees, by being in Circuit Court, then Magistrate Court, then Circuit Court again.

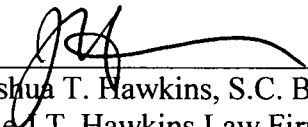
On page 5 of the respondent's brief, the respondent states "[the Circuit Court's decision] merely confines Vaughn to what she originally pled in her complaint-the \$242.33 check," but this statement is misleading. The complaint does not merely pray for the amount stated repeatedly by the respondent. The complaint prays for all the remedies provided by the South Carolina Unfair Trade Practices Act, which provides for a monetary award in excess of \$7,500. A possible verdict exceeding the jurisdiction of the Magistrate Court has been communicated to the respondent's counsel and the Circuit Court. The reason the SCUTPA exists is to deter unfair and deceptive acts, such as the acts of Synchrony described in the complaint, and that statute is the reason the plaintiff can bring this action Circuit Court and request an award exceeding the jurisdiction of the Magistrate Court. Allowing the respondent to litigate in Magistrate Court frustrates the purpose of that statute and completely avoid discovery. In Magistrate Court, the respondent has no incentive to correct the wrongs exacted by it against the appellant.

CONCLUSION

For the foregoing reasons, the appellant requests that the Appellant Court issue an Order that this action is immediately appealable in order to protect the appellant's interest and allow her to proceed with her appeal.

January 7, 2016

Respectfully submitted,



Joshua T. Hawkins, S.C. Bar #78470
The J.T. Hawkins Law Firm, LLC
1225 South Church Street
Greenville, South Carolina 29605
Tel: (864) 275-8142
Attorney for Appellant

Josh Hawkins

From: Josh Hawkins
Sent: Tuesday, November 03, 2015 9:48 AM
To: 'Barber, James R. III Law Clerk (Robert C. Osborne) (JBarberLC@sccourts.org)'
Cc: 'John Devlin'; 'Cuff, Alexandria E.'; 'Sabalewski, Travis A.'
Subject: Vaughn v. Synchrony Bank

Ms. Osborne,

Yesterday, Judge Barber instructed me to provide the Court with authority allowing to the trebling of damages in and unfair trade practices lawsuit. I have copied and pasted language from a few cases and applied them this case. The first case I reviewed is **Mull v. RIDGELAND REALTY, LLC, SC: Court of Appeals 2010**, which contains the following language:

The **SCUPTA** permits recovery of actual **damages**. S.C. Code Ann. § 39-5-140(a) (Supp. 2008).^[6] Actual **damages** under the SCUTPA include special or consequential **damages** that are a natural and proximate result of deceptive conduct. Taylor v. Medenica, 324 S.C. 200, 219, 479 S.E.2d 35, 45 (1996). Section 39-5-140(a) also provides if a court finds a defendant's violation of the **SCUPTA** to be willful or knowing, the court shall award treble **damages**.^[6] Finally, section 39-5-140(a) provides, "Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs." Reading section 39-5-140(a) in its entirety leads to two conclusions: (1) actual **damages** are distinct from attorneys' fees, and (2) whereas actual **damages** are subject to trebling, attorneys' fees are not.

The damages described in my email to Mr. Devlin, which exceed the jurisdictional limit of magistrate court, are "special or consequential damages that are a natural and proximate result" of the defendant's conduct. The plaintiff has a right to attend all court proceedings, including hearings. This particular plaintiff is very involved in her case, and wants to make sure the defendant does not continue to engage in unfair practices. Her travel costs are special or consequential damages subject to trebling under the statute. Further, Mull v. Ridgeland says only that attorney's fees cannot be trebled, which we have not done, I don't think. Unless this case has been overruled (I cannot Shepardize caselaw, but I think this is still good law), it appears that my client's calculation of damages fits within the parameters of the current law in SC. The Taylor case that Mull cites to contains the following language:

Under the UTPA "[a]ny person who suffers any ascertainable loss of money ... as a result of the use or employment by another person of an unfair or deceptive method, act or practice ... may bring an action individually, but not in a representative capacity, to recover actual **damages**." S.C. Code Ann. § 39-5-140(a). Actual **damages** include special or consequential **damages** which are the natural and proximate result of the deceptive conduct. Fields v. Yarborough Ford, Inc., 307 S.C. 207, 414 S.E.2d 164 (1992).

The SCUPTA is meant to discourage unfair trade practices like those alleged in the complaint. The statute does not limit expenses so that they do not include travel costs that are a natural result of a defendant's unfair conduct. But for the defendant's unfair practices, the plaintiff would not have to file any of these lawsuits (the defendant has already engaged in similar practices with the plaintiff before). It appears that the legislature took measures to make sure the statute had teeth to dissuade companies such as Synchrony; if plaintiffs were forced to litigate in Magistrate Court every time this happened, there would be no incentive for defendants to right wrongs exacted on plaintiffs. The plaintiff carefully attached exhibits to her requests to admit in and effort to narrow down issues and prove deceptive acts. The defendant didn't want to respond to that so it simply filed for a protective order. if the action is remanded to Magistrate

Court, the defendant gets off without responding to discovery and the legislature's intent is frustrated because the defendant incurred no discovery or mediation costs.

The plaintiff continues to incur costs and attorney's fees as a result of the defendant's actions. The damages in this case exceed the jurisdictional maximum of Magistrate Court. The plaintiff therefore respectfully requests that the motion for reconsideration be granted, and the plaintiff be allowed to engage in discovery pursuant to the rules of civil procedure and the intent of the SCUTPA.

Sincerely,

Joshua T. Hawkins
The J.T. Hawkins Law Firm, LLC
1225 South Church Street
Greenville, South Carolina 29605
Telephone: (864) 275-8142
Facsimile: (864) 752-0911

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JAN 11 2016

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable James R. Barber, III, Circuit Court Judge

Laurel Vaughn.....Appellant,

v.

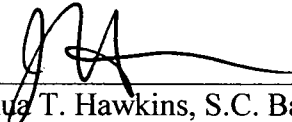
Synchrony Bank.....Respondent.

Case No. 2015-002504

PROOF OF SERVICE

I certify that I have mailed the appellant's reply brief on the issue of appealability, for filing on the date below, by depositing it in the United States Mail, postage prepaid. I have also mailed a copy to the attorney for the respondent on the date below.

January 7, 2016



Joshua T. Hawkins, S.C. Bar #78470
The J.T. Hawkins Law Firm, LLC
1225 South Church Street
Greenville, South Carolina 29605
Tel: (864) 275-8142
Attorney for Appellant

The J.T. Hawkins Law Firm, LLC

1225 South Church Street
Greenville, South Carolina 29605

Phone: (864) 275-8142

Fax: (864) 752-0911

josh@jthawkinslaw.com

RECEIVED

JAN 11 2016

SC Court of Appeals

January 7, 2016

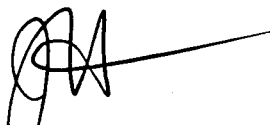
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *Laurel Vaughn v. Synchrony Bank*
Appellate Case No. 2015-002504

Dear Ms. Kitchings,

Please find enclosed the appellant's reply brief on the issue of appealability and the appellant's proof of service. Should you have any questions, please do not hesitate to contact me.

Sincerely,



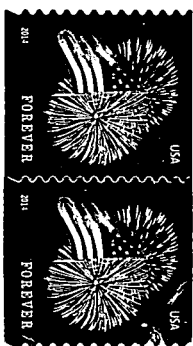
Joshua T. Hawkins

cc: John R. Devlin, Jr.

The J.T. Hawkins Law Firm, LLC
1225 South Church Street
Greenville, South Carolina 29605

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

RECEIVED
JAN 11 2015
Court of Appeals



2920180769 50076

