THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

James B. Jackson, Jr., Master in Equity

2015-001112

South Carolina Federal Credit Union — Respondent,

v.

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

RETURN & OBJECTIONS TO RESPONDENT'S MOTION TO DISMISS & TO THE RESPONDENT'S ALTERNATIVE

January 4, 2016

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Comes now the Appellant, Dorothy Harley Sistrunk, to file her Return & Objections to Respondent's Motion to Dismiss & to the Respondent's Alternative; i.e., South Carolina Federal Credit Union., Respondent v. Dorothy Harley Sistrunk, Appellant - Case 2015-001112.

THE REASONS WHY RESPONDENT'S MOTION TO DISMISS AND RESPONDENT'S ALTERNATIVE MUST BE DENIED

A. Misstated the facts.

1. **Reason #1:** Respondent, South Carolina Federal Credit Union , (hereafter also called SCFCU) has misstated the facts. The Appellant has substantially complied with the requirements of Rule 209(a)-(c), SCACR that clearly states the following in pertinent parts;

> **(a)** *Rule 209(a), SCACR*, "[A]t the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials **which he proposes to include in the record on appeal**. One copy of this Designation with proof of service shall immediately be filed with the clerk of the appellate court. [**Boldness** added for emphasis]
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> **(b)** *Rule 209(b), SCACR*, "**[T]he Designation must clearly identify what the party desires to have included in the Record on Appeal**, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. A party shall not include any matter in his Designation which is not relevant to the appeal. [**Boldness** added for emphasis]
>
> **(c)** *Rule 209(c), SCACR*, "[T]he Designation shall be accompanied by a certificate signed by the party's counsel of record that the Designation contains no matter which is irrelevant to the appeal."

2. Respondent, SCFCU has misstated the facts. The documents the Appellant filed were filed or presented in the lower court as evidenced by the stamp of the Clerk of Court. Therefore, the Appellant has also substantially complied with Rule 210(c)-(g), SCACR that clearly states in pertinent parts;

(a) *Rule 210(c), SCACR*, "[T]he Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. **The Record shall not, however, include matter which was not presented to the lower court or tribunal.** Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits **and other materials or documents**, and a certificate by appellant. Each page of the Record on Appeal shall be numbered consecutively beginning with the index. **Where a portion of a page of the trial transcript, or a page of an exhibit or document, is to be included in the Record on Appeal, the entire page shall be included. When a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record, to include the caption and signature(s)**; provided, however, that the portion of a pleading showing verification or service shall not be included unless relevant to the appeal. If the original court reporter's numbering has been deleted, the Record on Appeal shall contain ellipses or other notation indicating when pages of the court reporter's transcript have been omitted. [**Boldness** added for emphasis]

(b) *Rule 210(d), SCACR*, "[T]he title page shall contain the caption as set forth in Rule 267. Nothing shall be printed on the title page except the caption."

(c) *Rule 210(e), SCACR*, **"[E]very Record on Appeal shall contain an index to the principal matters therein to include orders, judgments, decisions, pleadings, pretrial matters, opening statements, testimony, motions, closing arguments, jury charges, post-trial motions and exhibits.** For witness testimony, the index shall show the pages on which direct, cross, redirect and recross examination begins." [**Boldness** added for emphasis]

(d) *Rule 210(f), SCACR*, "[P]hotographs, plats and diagrams, and other paper **exhibits shall be inserted in the Record on Appeal where they can reasonably be reduced or drawn to a size which permits them to be printed and inserted in the Record on Appeal, without folding more than one time.** Where they are larger, or do not reasonably lend themselves to accurate reproduction, they need not be included in the Record on Appeal, but shall be filed separately. All exhibits other than paper exhibits must be retained in the trial court and delivered to the appellate court only upon receipt of an order from the clerk of the appellate court." [**Boldness** added for emphasis]

(e) *Rule 210(g), SCACR*, "[A]ppellant or his counsel shall certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material."

3. **Reason #2:** *Rule 210(h), SCACR,* clearly states in pertinent parts; "**[t]he appellate court will not consider any fact which does not appear in the Record on Appeal.** This also includes by default the lack of facts or records. [**Boldness** for emphasis]

B. Wide range of Lower Court failures & issues.

4. **Reason #3:** The Appellant has presented to the Appellate Court a wide range of Lower Court failures that are relative to her appeal. These failures clearly demonstrate the dysfunctionality of the Lower Court; especially when it comes to her shabby treatment as a Pro Se Litigant in Orangeburg County's Circuit Court before 5/20/15 that include, but are not limited to the following failures or issues; any one of which is grounds for reversal:

> **(a) Failure to Inform the Defendant/Appellant of her right to a jury trial and the consequences of a hearing in a Master-in-Equity Court where a judge; sitting without a jury, decides guilt or innocence.** {R. pp. 1-12 & Vol. II, pp. 365-368}
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> (1) (*Commonwealth v. Abreu*, 463 NE 2d 1184 (Mass: S. Ct. 1984) "[I]n *Ciummei* v. *Commonwealth, supra,* we established an evidentiary prerequisite to a valid waiver of the right to trial by jury. We stated that a judge must conduct a colloquy with the defendant on the record, regarding the defendant's right to trial by jury, contemporaneously with and before accepting any waiver. The purpose of the colloquy is to include as part of the trial record evidence indicating whether the defendant's waiver of his right was sufficient to pass constitutional scrutiny. See *Brady* v. *United States,* 397 U.S. 742, 748 (1970). "In the exchange, the judge will advise the defendant of his constitutional right to a jury trial, and will satisfy himself that any waiver by the defendant is made voluntarily and intelligently."
>
> (2) *United States ex rel. Williams v. DeRobertis*, 715 F. 2d 1174 (7th Cir. 1983) "[T]he court reasoned that one cannot knowingly waive a right unless one is cognizant of the character or nature of the right he is waiving, and concluded that a defendant must have knowledge of four concepts to effect a constitutionally valid waiver of the right to trial by jury: (1) a jury is composed of 12 members of the community; (2) a defendant may participate in the selection of jurors; (3) a "substantial majority" of the jurors must vote to convict in order for a conviction to be obtained; and (4) if a defendant waives a jury trial, a judge alone will decide his guilt or innocence."
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> (3) *United States v. Scott*, 583 F. 2d 362 (7th Cir. 1978) "[I]t appears, however, that admonitions to trial judges that the better practice is to interrogate defendants on the subject of their understanding of the right to a

jury trial and waiver thereof have not fully succeeded. Formal adoption of a procedure analogous to that required for guilty pleas by Rule 11, Fed.R.Crim.P., will provide an additional safeguard against unintelligent waiver. It will avoid the argument now raised on appeal and tend to prevent misunderstanding which could be the subject of a § 2255 proceeding. ----- Accordingly, this panel has recommended and the full court has adopted a rule under its supervisory power. The rule now announced, and effective one month after the date of this decision, requires that before a district court accepts a waiver of jury trial the court will interrogate the defendant to ensure that he understands his right to a jury trial and the consequences of waiver. Once the rule goes into effect, failure to comply will call for reversal on appeal."

(b) Failure to Schedule Hearings for the Appellant's Summary Judgment Motion or for any of the pleadings filed in 2013, to which there has been no response or reply in 2 years. {R. pp. 1-12, 165-166 & 213-216}

(1) *Rule 56(b), SCRCP*, clearly states in pertinent parts; "[A] party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof."

(2) *Rule56(c), SCRCP*, states the following in pertinent parts; "[T]he motion shall be served at least 10 days before the time fixed for the hearing. The adverse party may serve opposing affidavits not later than two days before the hearing. The 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."

(3) *Rule 56(d), SCRCP*, provides the following 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."

(c) Failure to consider Sworn Statements in Affidavits, {R. pp. 1-12}

(1) *Pfeil v. Rogers*, 757 F. 2d 850 (7th Cir. 1985) "[A]ffidavits are

admissible in summary judgment proceedings if they are made under penalties of perjury; only unsworn documents purporting to be affidavits may be rejected. 28 U.S.C.A. § 1746 (West Supp.1984); *Adickes v. S.H. Kress & Co.,* 398 U.S. 144, 157 n. 16, 90 S.Ct. 1598, 1608 n. 16, 26 L.Ed.2d 142 (1970). "[T]he absence of the formal requirements of a jurat in ... sworn affidavits [does] not invalidate the statements or render them inadmissible [if] they were actually sworn to before an officer authorized to administer an oath." *Peters v. United States,* 408 F.2d 719, 722, 187 Ct.Cl. 63 (1969); *accord Dickinson v. Wainwright,* 626 F.2d 1184 (5th Cir.1980) (per curiam)."

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

(3) *Rule 56(e), SCRCP*, clearly states in pertinent parts; "[]Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

(d) Failure to consider Judicial Admissions, {R. pp. 1-12}

(1) American Title Ins. Co. v. Lacelaw Corp., 861 F. 2d 224 (9th Cir. 1988) ""[U]nder federal law, stipulations and admissions in the pleadings are generally binding on the parties and the Court. Not only are such admissions and stipulations binding before the trial court, but they are binding on appeal as well." *Ferguson v. Neighborhood Housing Services.,* 780 F.2d 549, 551 (6th Cir.1986)(citations omitted). "Judicial admissions are formal admissions in the pleadings which have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." *In re Fordson Engineering Corp.,* 25 B.R. 506, 509 (Bankr.E.D.Mich.1982). Factual assertions in pleadings and pretrial orders, unless amended, are considered judicial admissions conclusively binding on the party who made them. *See White v. Arco/Polymers, Inc.,* 720 F.2d 1391, 1396 (5th Cir.1983); *Fordson,* 25 B.R. at 509."

(2) Glick v. White Motor Company, 458 F. 2d 1287 (3rd Cir.1972) "[I]t has been held that judicial admissions are binding for the purpose of the case in which the admissions are made including appeals, *State Farm Mutual Auto Ins. Co. v. Worthington*, 405 F.2d 683 (8th Cir. 1968), and that an admission of counsel during the course of trial is binding on his client. *Rhoades, Inc. v. United Air Lines, Inc.*, 340 F.2d 481 (3d Cir. 1965). However, to be binding, judicial admissions must be unequivocal. *Oscanyan v. Arms Co.*, 103 U.S. 261, 26 L.Ed. 539 (1880), *The Doyle*, 105 F.2d 113 (3d Cir. 1939), *Rhoades, Inc. v. United Air Lines, Inc., supra.* The scope of judicial admissions is restricted to matters of fact which otherwise would require evidentiary proof, and does not include counsel's statement of his conception of the legal theory of a case. *New Amsterdam Casualty Co. v. Waller,* 323 F.2d 20 (4th Cir. 1963), cert. denied, 376 U.S. 963, 84 S.Ct. 1124, 11 L.Ed.2d 981 (1964)."

(3) *Pinnacle Corp. v. Village of Lake in the Hills,* 258 Ill.App. 3d at 209, 196 Ill.Dec.567, 630 N.E.2d 502. "[O]nce a pleading has been verified, facts contained within it are judicial admissions that remain part of the record and are admissible against the pleading party, even if the pleading is subsequently amended." *Fidelity Financial Services, Inc. v. Hicks, 214 Ill.App.3d 398, 574 N.E.2d 15, 158 Ill.Dec. 221 (1st Dist. 1991)* (admissions in verified pleading that are not product of mistake or inadvertence become binding judicial admissions.)

(4) *Bowers v. Bowers*, 403 SE 2d 127 (Ct. App. 1991) "[M]ere allegations, denied by the other party, are not evidence. *See Griffin v. Van Norman,* ___ S.C. ___, ___, 397 S.E. (2d) 378, 379 (Ct. App. 1990) ("Allegations in a [c]omplaint denied in answer are evidence of nothing."). Arguments of counsel are also not evidence. *See McManus v. Bank of Greenwood,* 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered.");"

(e) Failure to rule on or consider Counterclaims, {R. pp. 1-12}

(1) *Beach Co. v. Twillman, Ltd.*, 566 SE 2d 863 (Ct. App. 2002) "[T]he test for determining if a counterclaim is compulsory is whether there is a "logical relationship" between the claim and the counterclaim. *Mullinax v. Bates,* 317 S.C. 394, 396, 453 S.E.2d 894, 895 (1995). Whether a counter-claim is logically related to the initial claim depends upon the facts of each case.."

(2) *C & S Real Estate Services v. Massengale*, 290 S.C. 299, 350 S.E. (2d) 191 (1986) "[R]ule 13(a), SCRCP, now requires a defendant to plead as a counterclaim any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim. He is entitled to a jury trial on these compulsory counterclaim if legal in nature even though asserted in an equitable action. *See, e.g., Amoco Oil Co. v. Torcomian*, 722 F. (2d) 1099 (3d Cir.1983); "

(f) Failure to rule on or consider Affirmative Defenses, {R. pp. 1-12}

(1) *Alejandre v. Deutsche Bank Trust Co. Ams.*, 44 So. 3d 1288, 289 (Fla. 4th DCA 2010) (quoting *Cufferi v. Royal Palm Dev. Co.*, 516 So.2d 983, 984 (Fla. 4th DCA 1987)). "[T]he movant must disprove the affirmative defenses or show they are legally insufficient. When a party raises affirmative defenses, 'a summary judgment should not be granted where there are issues of fact raised by the affirmative defenses which have not been effectively factually challenged and refuted.'"

(2) *United States v. 416.81 Acres of Land*, 514 F.2d 627, 631 (7th Cir. 1975) "[A]ffirmative defenses will not be struck if they are sufficient as a matter of law or if they present a question of law or fact."; *FDIC v. Niblo*, 821 F. Supp. 441, 449 (N.D. Tex. 1993)

(3) *Cufferi v. Royal Palm Dev. Co.*, 516 So. 2d 983, 984 (Fla. 4th DCA 1987) "[W]hen a party raises affirmative defenses, "[a] summary judgment should not be granted where there are issues of fact raised by [the] affirmative defense[s] which have not been effectively factually challenged and refuted.". "[T]hus, "'[i]n order for a plaintiff . . . to obtain a summary judgment when the defendant asserts affirmative defenses, the plaintiff must either disprove those defenses by evidence or establish the legal insufficiency of the defenses.'" *Id.* (quoting *Bunner v. Fla. Coast Bank of Coral Springs, N.A., 390 So. 2d 126, 127 (Fla. 4th DCA 1980))*. "[I]n such instances, "[t]he burden is on the plaintiff, as the moving party, to demonstrate that the defendant could not prevail." *Id.*

(g) Failure to schedule a Jury Trial as mandated by Rules 38 and 39(a), SCRCP, {R. pp. 20 & 40}

(1) *Rule 38(a), SCRCP*, clearly states; "[T]he right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.

(2) *Rule 38(b), SCRCP*, adds the following, "[A]ny party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party."

(3) *Rule 39(a), SCRCP*, mandates a trial by clearly stating the following in pertinent parts; "[W]hen trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the calendar and the clerk's filebook as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and

entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or its own initiative finds that a right of trial by jury of some or all of those issues does not exist.

(h) Violation of Article I, Section 14 of South Carolina's Constitution, that clearly states the following; {R. pp. 20 & 40}

"[T]he right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both. (1970 (56) 2684; 1971 (57) 315.)"

(i) Failure to consider the requirements of Rule 42(b), SCRCP that clearly states the following and is supported by judicial precedents, {R. pp. 1-12, 20 & 40}

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

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

(3) *FIRST-CITIZENS BANK & TRUST OF SC v. Hucks*, 408 SE 2d 222 (SC S. Ct. 1991) "[A] party does not waive its rights to a jury trial on a counterclaim asserted in an equity action if the counterclaim is legal and compulsory in nature. *North Carolina Federal S & L v. DAV Corp.*, 298 S.C. 514, 381 S.E. (2d) 903 (1989). "If the complaint is equitable and the counterclaim legal and compulsory, the defendant has the right to a jury trial on the counterclaim." *Johnson v. South Carolina Nat. Bank*, 292 S.C. 51, 52, 354 S.E. (2d) 895, 896 (1987). This Court set forth in *Johnson* the procedure to be followed in suits such as the case at bar.... [W]here a complaint is equitable and the counterclaim is legal and compulsory, the trial judge has two options. He may either order separate trials pursuant to Rule 42(b) or may

order the claims tried in a single proceeding. In making this determination, caution should be taken to assure that, under the circumstances of the case, a joint trial will not deprive a party of his right to a full jury trial of legal issues. *Johnson*, 354 S.E. (2d) at 897.

(j) Failure to follow precedent relative to Unclean Hands, {R. Vol. II, pp. 414-417}

(1) *Wachovia Bank, NA v. Coffey*, 698 SE 2d 244 (Ct.App. 2010) ""The doctrine of **unclean hands** precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." *First Union Nat'l Bank of S.C. v. Soden,* 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct.App.1998). "The expression `clean hands' means a clean record with respect to the transaction with the defendants themselves and not with respect to others." *Arnold v. City of Spartanburg,* 201 S.C. 523, 532, 23 S.E.2d 735, 738 (1943). The rule must be understood to refer to some misconduct concerning the matter in litigation of which the opposing party can, in good conscience, complain in a court of equity. *Id.*"

(2) *Emery v. Smith*, 603 SE 2d 598 (Ct.App. 2004) "[*S*]*ee Precision Instrument Mfg. Co. v. Automotive Co.,* 324 U.S. 806, 814, 65 S.Ct. 993, 89 L.Ed. 1381 (1945) ("He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief."); *Wilson v. Landstrom,* 281 S.C. 260, 315 S.E.2d 130 (Ct.App.1984) ("The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.") (quotations and citations omitted). We find Smith's hands are unclean because he failed to inform Emery that: (1) he was retired; (2) was receiving benefits; and (3) Emery was entitled to her 25% share."

(k) Acting without "Subject Matter Jurisdiction" by Ruling on a Complaint and a Motion that were never filed. There is no Summons and Complaint that was filed for a LoanLiner® loan of any kind that is dated February 28, 2003, {R. pp. 35-38} and the Appellant's Motion for Summary Judgment was filed in 2012 and denied in 2012. {R. pp. 78-79 & 217}

(1) *Dove v. Gold Kist, Inc.*, 442 SE 2d 598 (SC: S. Ct. 1994) A court lacking subject matter jurisdiction, however, has no authority to act regardless of the geographical location or consent of the litigants. *Nix v. Mercury Motor Express, Inc.,* 270 S.C. 477, 242 S.E.2d 683 (1978).

(2) § 15-3-20(B) SC Code of Laws clearly states; "[A] civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing."

(3) *Rule 4(a), SCRCP*, clearly states, "[T]he summons shall be

issued by plaintiff or plaintiff's attorney. Copies of the original summons shall be served upon each defendant."

(4) *Murdock v. Murdock*, 526 SE 2d 241 (Ct.App. 1999) "[I]n *Webster v. Clanton,* 259 S.C. 387, 391, 192 S.E.2d 214, 216 (1972), the Supreme Court held: It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on."

(l) Failure to allow a jury to decide issues of fact, {R. pp. 1-12, 20, 40, 165-166, 213-216, Vol. II, pp. 306-307 & 365-368}

(1) *Daniels v. Timmons*, 59 SE 2d 149 (SC: S. Ct. 1950) "[E]rrors of law are to be corrected on appeal. Issues of fact are to be settled by the jury. If an argument on the facts fails to convince a jury, there is small chance of a reversal on appeal, except in a case where there is absolutely no competent evidence to be submitted to the jury on a particular issue of fact. A party litigant should be satisfied with the finding of a jury in a fair trial in a meritorious case, as far as the disputed facts are involved. We have no better or higher method under the law to settle controversies between litigants arising out of disputes in regard to business matters, and the rights and remedies of the parties, on the law side of the Court. A fair trial before an impartial jury is the acme of a case."

(2) *Yeager v. JR Christ Co.*, 364 F. 2d 96 (3rd Cir. 1966) "[T]he judge cannot say as a matter of law which are facts and which are not unless they are admitted or the evidence is inherently incredible. Also, it is beyond the power of the court to say whether two or more reasonable inferences are 'equal.' ---- The facts are for the jury in any case whether based upon direct or circumstantial evidence where a reasonable conclusion can be arrived at which would place liability on the defendant. ---- The right of a litigant to have the jury pass upon the facts is not to be foreclosed just because the judge believes that a reasonable man might properly find either way. A substantial part of the right to trial by jury is taken away when judges withdraw close cases from the jury.""

(m) Failure to consider or rule on SCFCU's TILA violations, {R. p. 1-12}

(1) *Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 US 50 (S. Ct. 2004) "[I]n 1974, Congress amended TILA's civil-liability provision, 15 U.S.C. § 1640(a), to allow for the recovery of actual damages in addition to statutory damages and to provide separate statutory damages for class actions. Pub. L. 93-495, § 408(a), 88 Stat. 1518. Congress reworded the original statutory damages provision to limit it to individual actions, moved the pro-

vision from § 1640(a)(1) to § 1640(a)(2)(A), and retained the $100/$1,000 brackets on recovery. In order to account for the restructuring of the statute, Congress changed the phrase "under this paragraph" to "under this subparagraph." The amended statute provided for damages in individual actions as follows:

"(a) [A]ny creditor who fails to comply with any requirement imposed under this chapter . . . is liable to such person in an amount equal to the sum of—

"(1) any actual damage sustained by such person as a result of the failure;

"(2)(A) in the case of an individual action twice the amount of any finance charge in connection with the transaction, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000 . . . ." § 408(a), 88 Stat. 1518."

(2) *Tuloka Affiliates, Inc. v. Moore*, 268 SE 2d 293 (SC: S. Ct. 1980) "[A] recoupment, unlike a counterclaim, only reduces the plaintiff's claim; it does not allow recovery of an affirmative money judgment for any excess over that claim. Unlike set-off, it must grow out of the identical transaction that gave rise to the plaintiff's claim. *Mullins Hospital v. Squires*, 233 S.C. 186, 104 S.E. (2d) 161 (1958). ----- "Recoupment, therefore, is the right of the defendant to cut down or diminish the claim of the plaintiff in consequence of his failure to comply with some provision of the contract sought to be enforced, *or because he has violated some duty imposed upon him by law in the making or performance of that contract.* The delinquency or deficiency which will justify the reduction of the plaintiff's claim must arise out of the same transaction, and not out of a different transaction." *Mullins Hospital v. Squires, supra*, 104 S.E. (2d) at page 166, citing Burks' Pleading and Practice, 4th Ed., Section 247, page 438. (Emphasis added). While the limitation of Section 1640(e) may be interposed to bar an affirmative counterclaim or set-off, it may not be used to defeat the equitable defense of recoupment. This Court has long held the view that: "[Recoupment] grows out of the contract itself which is the cause of action, and is not barred by the statute of limitations. It would be manifestly unjust to permit the vender to enforce a subsisting contract, and deny to the purchaser, from lapse of time, a defense involving the validity of it at its inception. *Evans' Executors v. Yongue*, 42 S.C.L. (8 Rich.) 113, 115 (1854). ---- See also, *Bull v. United States*, 295 U.S. 247, 55 S.Ct. 695, 79 L.Ed. 1421 (1935); *Earle v. Owings*, 72 S.C. 362, 51 S.E. 980 (1905). ----- The purpose of the TILA is "to assure meaningful disclosure of credit terms" so that the consumer can shop for credit on an informed basis. 15 U.S.C. § 1601. The provisions for remedies at Section 1640(a) place enforcement of the TILA in the hands of the consumer. If recoupment claims were barred by the limitation in Section 1640(e), lenders could avoid the consequences of non-compliance simply by waiting a year to bring suit on a default, thereby defeating the purpose of the TILA. ----The summary judgment on appellants'

recoupment claim is reversed and the matter is remanded. For guidance recoupment is available against the costs and attorney's fees, as well as any other monetary claim awarded to respondent in this action. LEWIS, C.J., and LITTLEJOHN, NESS and GREGORY, JJ., concur."

(n) Accepting "False Evidence" as genuine; i.e., SCFCU's BOGUS Addendum – Exhibit 3. {R. Vol. II. pp. 332-360, 373-381 & 393-464}

(1) Duggan v. State, 778 SW 2d 465 (Tex.Cr.App.1989) "[S]tated another way, false evidence, left uncorrected, can mislead the factfinder, thereby misdirecting the due course of law and diverting due process from its intended progression toward a just and fair trial. ---- Because false evidence corrupts the truth seeking function of trial, a new trial will be necessary unless the false evidence does not violate the accused's right to due process. Error such as this is subject to the harm analysis found in Tex.R. App.Pro., Rule 81(b)(2). See *Ex parte Adams,* 768 S.W.2d 281 (Tex.Cr. App.1989). See also *Granger v. State,* 683 S.W.2d 387 (Tex.Cr. App.1984)."

(2) Douglas v. Workman, 560 F. 3d 1156 (10th Cir. 2009) "[B]eginning with its seminal decisions in *Napue v. Illinois,* 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959), and *Brady v. Maryland,* 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), the Supreme Court established the principle that criminal convictions obtained by presentation of known false evidence or by suppression of exculpatory or impeaching evidence violates the due process guarantees of the Fourteenth Amendment. "[D]eliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice." *Giglio v. United States,* 405 U.S. 150, 153, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) (internal quotations omitted). "The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." *Napue,* 360 U.S. at 269, 79 S.Ct. 1173."

5. **Reason #4:** There is no court of law, regardless of its level, government agency, precedent, constitutional, statutory or regulatory provision and/or members of the bar or the American Bar Association that can force the Appellant to accept ***"Known False Evidence"-SCFCU's Ex. 3,*** as legitimate. Judge Jackson's acceptance of ***"Known False Evidence"*** is an error of law, judgment and discretion and his error is correctable on appeal.

6. All the aforementioned subparts in ¶4(a)-(n), are relevant to the Appellant's appeal. It is not the Appellant's duty or responsibility to decide what is relevant to SCFCU's defense of the Appellant's appeal. Nor is there any Appellate Court Rule mandating the

Appellant decide these matters for another party. Therefore, the documents Respondent, SCFCU is lamenting over on pages 3-5 in its motion is an argument without merit.

7. **Reason #5:** The Appellant cannot be penalized for exercising economy, prudence and common sense in her appeal. If the Appellant believes a document is not relevant she does not have to include it and vice versa. In addition, Rule 212(b)-(c), SCACR allows any party to supplement the Record by clearly stating the following in pertinent parts;

> **(a)** *Rule 212(b), SCACR*, "[W]ith the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences. Without such consent or after argument commences, a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so. In response to that motion, the other party(s) shall designate any supplemental materials which that party desires to add if the Court grants the motion.
>
> **(b)** *Rule 212(c), SCACR*, "[S]upplemental materials filed under Rule 212(b) shall be included in an Appendix to the Record on Appeal. Unless otherwise agreed by the parties or ordered by the Court, the Appendix shall be compiled, served and filed by the party initially proposing it."

A REVIEW OF THE RESPONDENT'S MISSING ITEMS IN THE RECORD ON APPEAL

8. Not only has Respondent, SCFCU, misstated the facts relative to the Appellant's documents on pages 3-5 that chronicle the procedural history of this case from its inception in the Magistrate Court, Respondent, SCFCU, has overlooked or failed to realize some of the items cited on page 3 in its motion, are included in the *Record on Appeal.*

- **Certificate of Service of Complaint, filed December 15, 2011.** This item is not relevant to the Appeal and needs correction. The service of process was on December 9, 2011, not December 8, 2011. {See R. pp. 40 & 77}
- **Order Denying Appellant and Respondent's Motions for Summary Judgment.** This item is a nullity. The Appellant's motion was filed on April 25, 2012 under Judge Diane Shafer Goodstein {R. pp. 78-79} and denied by Judge Goodstein on 10/17/2012. {R. p. 217} The Appellant did not file a Summary Judgment Motion in 2014. Judge Jackson simply committed a judicial error that is an error of fact. Judge Jackson lacked "Subject Matter Jurisdiction" to deny a motion on 4/21/15 that was already denied by Judge Goodstein on 10/17/2012. Since the Appellant filed no Motion, the judge's Form Order misstates material facts. In addition, no judge can deny a motion that was never filed, therefore, it is void and has no legal effect.

- **SCFCU's Exhibit 1** – The relevant page of the Member 1 Plan for the Appellant is page 1, and it is included in the *Record on Appeal* as **[Exhibit A]**. Since no Addendum was given to the Appellant on September 5, 2002, no valid plan exists, signed or not.{R. Vol. III, pp. 626, 637 & 639}

- **SCFCU's Exhibit 2** – Membership & Account Agreement and Loanliner Credit and Security Agreement. The only relevant page from the Agreements is **[p. 21]**. This page is included in the *Record on Appeal* as **[Exhibit 17]** that proves the Addendum and the Agreement is the Plan. Without the Addendum being given before the first transaction and given with the Agreements, THERE IS NO VALID AGREEMENT. {R. Vol. III, pp. 637, 639 & 656}

- **SCFCU's Exhibit 3** – Is the BOGUS Addendum that is ***"Known False Evidence"*** and a ***"Fraud upon the Court"***, that is being perpetrated by the Law Firm and/or SCFCU. {See R. Vol. II, pp. 290-294, 345-352, 373-378 & 383-403} Since SCFCU wants **Exhibit 3** submitted, the Appellant will gladly submit it under Rule 212(b), SCACR. The Appellant was hesitant about presenting ***"Known False Evidence"*** to the Appellate Court. No Addendum was ever given to the Appellate in 13 years; therefore, it is not an acceptable part of the Record; except as ***"Known False Evidence"*** and the verifiable proof of the Law Firm's ***"Fraud upon the Court"*** or SCFCU's misconduct.

- **SCFCU's Exhibit 5** – Credit Insurance Certificate. The only page in the Certificate that is relevant to the Appellant's appeal is page 2 – WHEN INSURANCE STOPS; and it is included in the *Record on Appeal* as **[Exhibit 18]**. {R. Vol. III, p. 657}

- **SCFCU's Exhibit 9** – Monthly Statements. The Appellant's car purchase is not relevant to the appeal and should not be included in the *Record on Appeal*. One monthly statement is all the evidence that is needed to prove conclusively, the Appellant's mobile home purchase is not in SCFCU's account records. SCFCU's necessary Monthly Statement is included in the *Record on Appeal* as **[Exhibit 14]**. {R. pp. 653-654}

9. Respondent SCFCU and the Court cannot forget or overlook the undeniable fact, the Appellant is Pro Se. Unless specific instructions are given, the Appellant uses the plain and ordinary meaning of words. *Rule 209(b), SCACR*, states"[T]he Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. A party shall not include any matter in his Designation which is not relevant to the appeal."

(a) Jackson v. Doe, 537 SE 2d 567 (Ct.App. 2000) "[S]*ee Green v. Lewis Truck Lines, Inc.,* 314 S.C. 303, 443 S.E.2d 906 (1994) (opining that in interpreting the language of a court rule, we should look to the plain and ordinary meaning of the rule's words without limiting or expanding the rule).

(b) State v. Oglesby, 681 SE 2d 620 (Ct. App. 2009) "[W]hen interpreting a court rule, an appellate court applies the same rules of construction used in interpreting statutes. *State v. Brown,* 344 S.C. 302, 307, 543 S.E.2d 568, 570 (Ct.App.2001). Thus, the language of a rule must be given its plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule. *Id.*

10. **SCFCU's Exhibit 3** is relevant to the appeal. As stated, **SCFCU's Exhibit 3** was never given to the Appellant before, on or after 9/5/2002, it was never a part of the Court's records until SCFCU filed a "Renewed Motion for Summary Judgment" and it is not stamped by the Clerk of Court. Once the attorneys realized, they had no case without it, the Appellant knew a BOGUS Addendum was going to be produced from somewhere.

11. Until Respondent's Motion, the Appellant did not know how to present ***"Known False Evidence"-SCFCU's Ex. 3,*** to an Appellate Court that is documentable ***"Fraud upon the Court"*** by attorneys or SCFCU without the court coming to an erroneous conclusion the BOGUS documents were given to the Appellant before, on or after 2002.

Nix v. Whiteside, 475 US 157 (S. Ct. 1986) "[I]n *Strickland,* we recognized counsel's duty of loyalty and his "overarching duty to advocate the defendant's cause." *Ibid.* Plainly, that duty is limited to legitimate, lawful conduct compatible with the very nature of a trial as a search for truth. Although counsel must take all reasonable lawful means to attain the objectives of the client, counsel is precluded from taking steps or in any way assisting the client in presenting false evidence or otherwise violating the law. This principle has consistently been recognized in most unequivocal terms by expositors of the norms of professional conduct since the first Canons of Professional Ethics were adopted by the American Bar Association in 1908. The 1908 Canon 32 provided: ---- "No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive nor should any lawyer render any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public.. He must ... observe and advise his client to observe the statute law . . . ."

12. In addition, only two of the so-called courtesy documents sent to the Appellant by Moore & Van Allen, PLLC, with their motion have been stamped by the Clerk of Court – Service of Process and Judge Jackson's Form Court Order. Therefore, there is no way of proving, the remaining documents were entered into the Court's Record.

> *Rule 210(c), SCACR*, clearly states in pertinent parts; "[T]he Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. **The Record shall not, however, include matter which was not presented to the lower court or tribunal.**

13. The Appellant is an eyewitness to the Court proceedings and the 200 plus pages of so-called courtesy Monthly Statements that were sent to the Appellant and to the Appellate Court by Moore & Van Allen, PLLC, were never presented to Judge Goodstein or Jackson in court. No valid credit plan exists to collect interest or credit insurance premiums.

MISREPRESENTING THE FACTS & RULES

14. Misrepresenting the facts and the Rules of Appellate procedure seem to be the stock and trade of attorneys when dealing with Pro Se Litigants. The Appellant encountered similar factual misrepresentations from attorneys in another case before the Appellate court - Wells Fargo Bank, N.A., v. Dorothy Sistrunk - 2014-001683. There is no Appellate Court Rule that tells a Pro Se Litigant or anyone else how many pages of a party's document(s) to include in the *Record on Appeal*. Rule 209(b), SCACR mandates clear identification.

> *Rule 209(b), SCACR*, states"[T]he Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)].

15. Rule 209(b)'s plain language and meaning clearly limits documents to only those documents that may be properly included. The burden is on the Appellant to present **her entire case** and not anyone else's.

> *Rule 209(a) SCACR* clearly states the following in pertinent parts; "[A]t the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials **which he proposes to include in the record on appeal.**"

16. The Appellant does not choose to get elementary about this, but after the Appellant's experience with Nelson Mullins Riley & Scarborough, LLP's attorneys, it is best the Appellate court come to some understanding how the Appellant is interpreting the words of these Rules. **Note the words that have been highlighted in bold in Rule 209(a).** The Rule does not state: **which he proposes the Appellant to include in the record on appeal.**

17. The same is true for Rule 210(c), SCACR that states in pertinent parts; "[T]he Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267." The Rule does not state: **The Record on Appeal shall include all matter the Appellant must include that has been designated to be included by any party under Rule 209.**

18. This leads the Appellant to Rule 212(b)-(c), SCACR that states the following in pertinent parts;

> **(a)** *Rule 212(b),* "[W] ith the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences. Without such consent or after argument commences, a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so. In response to that motion, the other party(s) shall designate any supplemental materials which that party desires to add if the Court grants the motion.
>
> **(b)** *Rule 212(c),* "[S]upplemental materials filed under Rule 212(b) shall be included in an Appendix to the Record on Appeal. Unless otherwise agreed by the parties or ordered by the Court, the Appendix shall be compiled, served and filed by the party initially proposing it."

19. The Appellant interprets these rules to mean exactly what the words are stating. Hence, SCFCU can Supplement the Record to include any material it needs or wants.

20. Since any party can supplement the *Record on Appeal*, when an attorney states what he/she cannot do because a Pro Se Litigant did not include this or that in the *Record on Appeal*, he/she is simply lying. In addition, if the material is already included in the *Record on Appeal* as in both cases, 2014-001683 and 2015-001112, it is not a breach of Appellate Court Protocol for the Respondent to refer to the documents that the Respondent gave to or sent to the Appellant that are numbered or identified as Exhibits in the *Record on Appeal*.

21. Its up to the Appellate Court to accept an attorney's misrepresentations or lie(s) or sanction an attorney(s) for lying or misrepresenting facts or excuse the disingenuous and/or unprofessional behavior that an attorney demonstrates. The cold hard facts are justice in America is not cheap, prudence must be exercised and the Appellate Court is not a jury.

> Commonwealth v. Alphas, 430 Mass. 8 (Mass. S. Ct. 1999) "[A]ppellate courts do not sit as triers of fact. Any test concerning reversible error that requires an appellate court to determine whether a defendant is actually innocent is conceptually flawed because such a test converts the appellate function into the jury function in violation of their different purposes. I do not accept recent pronouncements of Federal law that may suggest the contrary. The correct formulation of basic principles in this area is the one stated by Justice Rutledge in *Kotteakos* v. *United States,* 328 U.S. 750, 763-764 (1946), in these terms: ---- "Some aids to right judgment may be stated more safely in negative than in affirmative form. Thus, it is not the appellate court's function to determine guilt or innocence.... Nor is it to speculate upon probable reconviction and decide according to how the speculation comes out. Appellate judges cannot escape such impressions. But they may not make them sole criteria for reversal or affirmance. Those judgments are exclusively for the jury....But this does not mean that the appellate court can escape altogether taking account of the outcome. To weigh the error's effect against the entire setting of the record without relation to the verdict or judgment would be almost to work in a vacuum...."

PROFFER

22. To bring closure to these matters in a just and equitable way, like in case #2014-001683, the Appellant is grateful the Respondent has given the Appellant an opportunity to include in the *Record on Appeal* documents the Appellant chose not to include for monetary; and in this case, for other reasons. Therefore, the Appellant wants to Supplement

the *Record on Appeal* pursuant to Rule 212(b), with the following documents with some guidance and instructions from the Appellate Court that are highlighted in **bold print.**

- SCFCU's Exhibit 1 [2 pgs] – This is also Appellant's **Exhibit A** (R. Vol. III, p. 626) The Appellant only needs one page. Another page is immaterial.
- SCFCU's Exhibit 2 - This is also Appellant's **Exhibit 17 p. 21** (R. Vol. III, p. 656) The Appellant only needs pg 21 to prove without an Addendum no valid Agreement or Plan exists and SCFCU's TILA violations. **Therefore, the Appellate Court can determine the number of pages the Court needs.**
- SCFCU's Exhibit 3 [3 pgs] – The BOGUS Addendum. These documents were never given to or sent to the Appellant at any time in 13 years. This is why the Appellant does not have it, never had it and cannot present it. As already stated in this Return, in filed Notarized and Verified Pleadings, in the Appellant's Briefs and Reply Brief, these documents are ***"Known False Evidence"*** and the verifiable proof of the Law Firm's ***"Fraud upon the Court"*** and/or SCFCU's verifiable misconduct and "[D]eliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice." *Giglio v. United States,* 405 U.S. 150, 153, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) (internal quotations omitted). "The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." *Napue,* 360 U.S. at 269, 79 S.Ct. 1173." The Appellant is pleased Respondent SCFCU is demanding the inclusion of ***"Known False Evidence"*** that the Appellant was hesitant to included because the Appellate Court may have come to an erroneous conclusion just like the Lower Court.
- SCFCU's Exhibit 5 [2 pgs] – Certificate of Insurance. This is also Appellant's **Exhibit 18** (R. Vol. III, p. 657) The Appellant only needs one page to prove WHEN INSURANCE STOPS. Another page is immaterial to the appeal.
- SCFCU's Exhibit 9 – Monthly Statements - This is also Appellant's **Exhibit 14** (R. Vol. III, pp. 653-654) The Appellant only needs 2 pages to prove her mobile home purchase is not in SCFCU's account records. The Appellant's car payments are not relevant and the 200 plus pages were never presented in court. This is another matter the Appellate Court can decide. **Therefore, the Appellate Court can determine how many pages the Court needs.**
- SCFCU's Certificate of Service [1 pg] ...As stated service occurred on December 9, 2011, not December 8, 2011. In any event, based on what the Appellant has read in more than 500 hundred case file histories, this error will more than likely be considered as harmless. Since it is totally an irrelevant matter to the *Record on Appeal*, **the Court can decide its fate.** And finally,
- Judge Jackson's Form Court Order [2 pgs] – This Form Order verifies the Appellant's statement of fact: The Form Order misstates facts. The Appellant never filed a Summary Judgment Motion in 2014. The only Motion filed was

> in 2012 that was never controverted or responded to by SCFCU and no hearing was ever scheduled for the Motion as evidenced by the Court's Records. {R. pp. 78-79} The motion was summarily denied by Judge Goodstein on 10/17/2012 without any scheduled hearing. {R. p. 217} Like the second and third Orders, this is the first Order by Judge Jackson that does not reflect the facts and material facts that are...or...not in the Court's Records. **The Appellate Court can also decide its fate.**

OBJECTION TO REFERENCE TO APPELANT'S PRO SE STATUS

23. It is up to the Courts to deal with attorney indiscretions. The primary reason why the Appellant is a Pro Se litigant in a civil case is because the Appellant cannot afford an attorney's services. Since attorneys; as Officers of the Court, have a monopoly on legal representation; in many instances, they have priced themselves beyond the financial means of the Appellant who earns a fixed hourly wage. There is no knowing or willing waiver of counsel, nor will one be provided by the Court in a civil suit in South Carolina.

24. Therefore, unless an individual is an indigent or has considerable financial means; an individual like the Appellant, as a person with limited financial means, like the Appellant, has no other choice except to proceed in a civil suit as a Pro Se litigant. In addition, unlike an attorney that can demand fees for his/her time and/or services, this compensation is not available for a Pro Se litigant. "[M]any times, defendants are without the resources necessary to secure the legal representation of their choice...," *Com. v. Ellis*, 626 A. 2d 1137 (Pa: S. Ct. 1993)

> *Balistreri v. Pacifica Police Dept.*, 901 F. 2d 696 (9th Cir.1990) "[T]his court recognizes that it has a duty to ensure that pro se litigants do not lose their right to a hearing on the merits of their claim due to ignorance of technical procedural requirements. *Borzeka v. Heckler,* 739 F.2d 444, 447 n. 2 (9th Cir.1984) (defective service of complaint by pro se litigant does not warrant dismissal); *Garaux v. Pulley,* 739 F.2d 437, 439 (9th Cir.1984). Thus, for example, pro se pleadings are liberally construed, particularly where civil rights claims are involved. *Christensen v. C.I.R.,* 786 F.2d 1382, 1384-85 (9th Cir.1986); *Bretz v. Kelman,* 773 F.2d 1026, 1027 n. 1 (9th Cir.1985) (en banc). Defendants suggest no reason to treat pro se appellate briefs any less liberally than pro se pleadings.

CONCLUSION

25. Since Respondent SCFCU claims in its Motion, courtesy documents were sent to the Appellate Court, the Appellant will not duplicate what has already been sent. Therefore, the Appellate Court should deny the Motion to Dismiss and the Respondent's Alternative and accept the Appellant's proffer to end this matter justly and fairly so this case can proceed to its ultimate end one way or the other. Since the Appellant has also stated opinions, views and interpretations based on her personal experience and understanding, this Return and Objections will not be verified.

January 4, 2016

Respectfully Submitted;

Dorothy Harley Sistrunk

RECEIVED
JAN 04 2016
SC Court of Appeals

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 a/k/a
Dorothy Harley-Sistrunk a/k/a
Dorothy A. Harley a/k/a
Dorothy Sistrunk Appellant.

PROOF OF SERVICE

I certify that I have served a copy the Appellant's Return & Objections to Respondent's Motion to Dismiss & to the Respondent's Alternative by depositing a copy of the aforementioned with United Parcel Service, postage prepaid, on January 4, 2016, addressed to SCFCU's attorney/s of record listed below.

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

cc: Moore & Van Allen, PLLC
Reid E. Dyer
78 Wentworth Street
Office Box 22828 (29413-2828)
Charleston, SC 29401-1428
Ph: 843-579-7045 Fx: 843-579-8754
Attorney/s for Respondent South Carolina Federal Credit Union (SCFCU)

Dorothy Sistrunk

423 Bayne Street • Orangeburg, SC 29115 • Ph: 803-268-0716 • Fx: 803-534-6727

Hand Delivered

RETURN & OBJECTIONS TO RESPONDENT'S MOTION TO DISMISS & TO THE RESPONDENT'S ALTERNATIVE

January 4, 2016

The Honorable Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
POB 11629
Columbia, SC 29211

RE: South Carolina Federal Credit Union, Respondent v. Dorothy Harley Sistrunk, Appellant – Case No. 2011-CP-38-1392 / 2015-001112

Ms. Kitchings,

I am hand delivering my **"Return & Objections to Respondent's Motion to Dismiss & to the Respondent's Alternative"** and **Proof of Service.** In accordance with *Rule 240(e), SCACR*, I also hand delivering an original and six (6) copies of my "Return & Objections"; paper clipped and not stapled, and I have also served a copy on all parties listed below.

Thank you.

Dorothy Harley Sistrunk

CC:

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