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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY  
James B. Jackson, Jr., Master-In-Equity  
Trial Court Case No. 2011CP3801392

Appellate Case No. 2015-001112

**RECEIVED**  
MAR 16 2016  
SC Court of Appeals

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.

MOTION TO DISMISS

Pursuant to Rules 210(a), 240, and 260(a) of the South Carolina Appellate Court Rules, Respondent South Carolina Federal Credit Union ("SCFCU") hereby moves for dismissal of this appeal as a result of Appellant's failure to timely and fully comply with this Court's February 11, 2016 Order requiring Appellant to serve an amended record on appeal within twenty (20) days of the entry thereof.

FACTUAL BACKGROUND

This case is an appeal of a judgment in a collections action entered in favor of SCFCU against Appellant by the Honorable James B. Jackson, Jr., Master-In-Equity for Orangeburg County. Appellant filed her Notice of Appeal on May 22, 2015 and

filed her initial brief and designation of matters to be included in the record on appeal on June 22, 2015. After requesting, and being granted, an extension, SCFCU timely filed its initial brief and designation of matters to be included in the record on appeal on August 21, 2015. The parties completed initial briefing of this appeal on October 20, 2015, when, following Appellant's request for an extension, Appellant filed her initial reply brief.

Appellant served a copy of what purported to be the record on appeal on SCFCU by mail on December 8, 2015. However, Appellant's purported record on appeal served on SCFCU was defective in that it (a) failed to include a number of items designated to be included by SCFCU and (b) included items which were not designated to be included in the record by either SCFCU or Appellant in their respective designations. As a result of these defects, as well as Appellant's failure to timely serve the purported record on appeal, on December 23, 2015, SCFCU filed a motion to dismiss this action or, in the alternative, to compel Appellant to include in the record on appeal all items designated by SCFCU and strike the "undesigned" items included by Appellant in the record on appeal.

On February 11, 2016, the Court entered an order (the "Order") which declined to dismiss the appeal but required that "Within twenty days of the date of this order, Appellant shall serve and file an amended record on appeal. Appellant shall include all matters designated by both parties and shall not include any matter not designated by either party to be included in the record on appeal." The Order further provides that "Failure of Appellant to serve a proper record on appeal and file

a proof of service with this court within twenty days may result in the dismissal of this appeal.”

On March 1, 2016, Appellant served counsel for SCFCU with an “Appendix to the Record on Appeal” (the “Appendix”). The Appendix appears to contain the items designated for appeal by SCFCU which were not included in the original purported record on appeal. However, as of the date of this motion, Appellant has failed to address the portion of the Order requiring that Appellant serve and file an amended record on appeal which “shall not include any matter not include any matter not designated by both parties and shall not include any matter not designated by either party to be included in the record on appeal.” In fact, Appellant has served SCFCU with no amended record on appeal other than the Appendix.

As originally noted by SCFCU in its December 23, 2015, motion, the “undesigned” items included in Appellant’s purported record on appeal, which have not been removed by the filing of an amended record on appeal, include the following (as listed on the index to Appellant’s purported record on appeal):

- Complaint – Magistrate Court, (Also **Exhibit II**) [2 pgs] – Dated: May 11, 2011 (R. pp. 14-15);
- Affidavit and Itemization of Accounts – Magistrate Court, (Also **Exhibit V**) [2 pgs] – Dated: May 11, 2011 (R. pp. 16-17);
- Summons – Magistrate Court, (Also **Exhibit I**) – [1 pg] – Dated: May 18, 2011 (R. p. 18);
- Answer – Magistrate Court, (Also **Exhibit III**) – [1 pg] – Dated: June 28, 2011 (R. p. 19);
- Magistrate Court – **Response to Summons and Complaint with Counterclaims, Affirmative Defenses & Demand for a Trial by Jury**, (Also **Exhibit IV**) [15 pgs] – Dated: June 28, 2011 (R. pp. 20-34);

- Plaintiff's Reply to Defendants' Answer & Counterclaim, [8 pgs] – Dated: May 10, 2012 (R. pp. 111-118);
- Plaintiff's Notice of Hearing, [2 pgs] – Dated: June 8, 2012 (R. pp.165-166);
- Notice of Hearing, [2 pgs] – Dated: June 27, 2012 (R. pp. 213-214);
- Notice of Hearing, [2 pgs] – Dated: August 23, 2012 (R. pp. 215-216);
- Unsigned Stipulation of Dismissal, [2 pgs] – Dated: December 19, 2012 (R. pp. 218-219);
- Defendant Dorothy Harley Sistrunk's Notice of Settlement Offer to the Plaintiff South Carolina Federal Credit Union (SCFCU), Pursuant to Rule 43(k), SCRCF for a Return of \$4,660.89 Back to the Defendant for an Equitable Settlement, [15 pgs] – Dated: May 10, 2013 (R. pp. 232-246);
- Defendant Dorothy Harley Sistrunk's Statement of Damages That Is Filed in Conjunction with SC Code of Laws §§ 39-5-20 & 39-5-140 and 15 USC 1601 et. seq. – the Truth in Lending Act (TILA), (Also **Exhibit 35**) [7 pgs] – Dated: November 18, 2013 (R. pp. 247-253);
- Affidavit of Amy Rogers in Support of Renewed Motion for Summary Judgment, (Also **Exhibit 38**) [4 pgs] – Dated: March 24, 2014 (R. pp. 300-303);
- Notice of Hearing, [2 pgs] – Dated: March 26, 2014 (R. pp. 306-307);
- Memorandum in Support of Plaintiff's Renewed Motion for Summary Judgment, [17 pgs] – Dated: April 1, 2014 (R. pp. 308-324);
- Defendant Dorothy Harley Sistrunk Objects to the Affidavit of Amy Rogers in Support of the Plaintiff's Renewed Motion for Summary Judgment, (Also **Exhibit 39**) [9 pgs] – Dated: April 9, 2014 (R. pp. 357-365);
- Notice of Trial, [2 pgs] – Dated: November 5, 2014 (R. pp. 366-367);
- Notice of Continuance of Trial, [2 pgs] – Dated: December 3, 2014 (R. pp. 368-369);
- Defendant Dorothy Harley Sistrunk's Outline for the February 18<sup>th</sup> 2015 Hearing, [14 pgs] – Dated: February 18, 2015 (R. pp. 370-383);

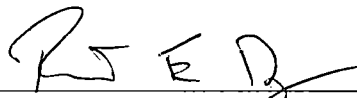
#### ARGUMENT

Appellant has failed to comply with Rule 210(c), SCACR, by continuing to include items in the record on appeal which were not designated to be included by either SCFCU or Appellant in their respective designations. *See* Rule 210(c),

SCACR (“The 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.”). Such failure to serve a proper record on appeal on SCFCU constitutes cause for dismissal of this appeal. *See* Rule 260(a), SCACR (“Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk **shall** issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.”) (emphasis added); *Wise v. S.C. Dept. of Corrections*, 372 S.C. 173, 173, 642 S.E.2d 551, 551 (2007) (same). Appellant’s status as a *pro se* litigant does not alter that result. *See, e.g., State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9, n.5 (2003) (“A *pro se* litigant who knowingly elects to represent h[er]self assumes full responsibility for complying with substantive and procedural requirements of the law.”).

Moreover, pursuant to its February 11, 2016, Order, the Court has already granted Appellant an additional opportunity to bring the record on appeal into compliance with the SCACR. However, despite being given the chance to cure the deficiency, Appellant has not submitted an amended record on appeal which does not contain the “undesigned” items within the timeframe set forth in the Order. In the course of maintaining her appeal, Appellant cannot refuse to follow this Court’s rules of procedure or its orders without consequence. As such, SCFCU requests the entry of an order dismissing this appeal as a result of Appellant’s failure to timely comply with Rule 210(c), SCACR and the Court’s February 11, 2016 Order.

Respectfully submitted,



Cynthia Jordan Lowery (SC Bar No. 12499)

Reid E. Dyer (SC Bar No. 79155)

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Attorneys for Respondent South Carolina  
Federal Credit Union

March 15, 2016

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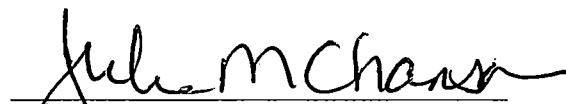
Dorothy Harley Sistrunk a/k/a Dorothy  
Harley-Sistrunk a/k/a Dorothy A. Harley  
a/k/a Dorothy Sistrunk .....Appellant.

PROOF OF SERVICE

This is to certify that I have this day served the Appellants in the foregoing matter with a copy of the foregoing *Motion to Dismiss* by depositing same in the United States Mail with adequate postage affixed thereon to ensure delivery, addressed as follows:

Dorothy Harley Sistrunk  
423 Bayne Street  
Orangeburg, SC 29115

March 15 2016



MOORE & VAN ALLEN, PLLC  
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Attorneys for Respondent South Carolina Federal Credit  
Union

**Moore&VanAllen**

March 15, 2016

Reid E. Dyer  
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The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Moore & Van Allen PLLC

78 Wentworth St.  
Charleston, SC 29401-1428

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Charleston, SC 29413-2828

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**SC Court of Appeals**

**Re: 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.  
Appellate Case No. 2015-001112  
MVA File No. 028648.003865**

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Dear Ms. Kitchings:

Enclosed for filing, please find the original and seven (7) copies of Appellant South Carolina Federal Credit Union's *Motion to Dismiss* in connection with the above-referenced matter. Also enclosed is our check in the amount of \$25.00 as the required filing fee.

Please file the original and return a clocked-in copy to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, I am serving a copy of the foregoing pleadings on the pro se appellant.

Sincerely,

MOORE & VAN ALLEN, PLLC



Reid E. Dyer

Enclosures – as stated

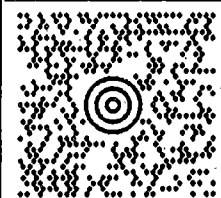
cc (w/ encl.): Dorothy Hayes Sistrunk  
423 Banye Street  
Orangeburg, SC 29115

JAY UNTHANK  
(843) 579-7097  
MOORE & VAN ALLEN PLLC  
78 WENTWORTH ST.  
CHARLESTON SC 29401-1428

1 LBS

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SHIP TO:  
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The Honorable Jenny Abbott Kitchings  
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SC Court of Appeals



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