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

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 & OBJECTION TO MOTION TO DISMISS

March 21, 2016

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Attorney/s for Respondent:
South Carolina Federal Credit Union

Comes now the Appellant, Dorothy Harley Sistrunk, to file her Return, Objection & Reasons to deny Respondent, South Carolina Federal Credit Union's (SCFCU) Motion to Dismiss, i.e., South Carolina Federal Credit Union, Respondent v. Dorothy Harley Sistrunk, Appellant - Case 2015-001112.

REASONS TO DENY RESPONDENT'S MOTION TO DISMISS

A. Frivolous Motion that ignores Rule 210(h), SCACR .

1. **Reason #1 for Denial:** Respondent, South Carolina Federal Credit Union (hereafter also called SCFCU) has filed a frivolous motion, that can correctly be characterized as a misuse and abuse of Appellate Court Rule 240 and a complete disregard for Rules 210(c) and 210(h). Every item cited was presented in the Lower Court. In addition,

> **(1)** Rule 210(h), SCACR clearly states in pertinent parts; "[E]xcept as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal."
>
> **(2)** *Polk County v. Dodson*, 454 US 312 (S. Ct 1981) "[t]he cannons of professional ethics impose limits on permissible advocacy. It is the obligations of any lawyer — whether privately retained or publicly appointed — not to clog the courts with frivolous motions or appeals."
>
> **(3)** *INVST Financial Group v. Chem-Nuclear Systems*, 815 F. 2d 391 (6th Cir. 1987) "[F]ederal Rule of Civil Procedure 11, as amended in 1983, provides: [e]very pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated.... The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.... If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee. ---- The 1983 amendment to Rule 11 removed much of the district court's discretion in imposing sanctions; Rule 11 now mandates the imposition of sanctions if the underlying conduct is found to violate the Rule. The standard by which

conduct is judged has become more stringent as well; a showing of "good faith" will no longer be sufficient to avoid sanctions. The conduct of counsel that is the subject of sanctions will be measured by an objective standard of reasonableness under the circumstances. *Albright v. Upjohn Co.,* 788 F.2d 1217, 1221 (6th Cir.1986). *See also Eavenson, Auchmuty & Greenwald v. Holtzman,* 775 F.2d 535, 540 (3d Cir.1985); *Rodgers v. Lincoln Towing Service, Inc.,* 771 F.2d 194, 205 (7th Cir.1985); *Westmoreland v. CBS, Inc.,* 770 F.2d 1168, 1177 (D.C.Cir.1985); *Davis v. Veslan Enterprises,* 765 F.2d 494, 497 (5th Cir.1985); *Eastway Construction Corp. v. City of New York,* 762 F.2d 243, 253-54 (2d Cir.1985)."

(4) Rule 269, SCACR clearly states in pertinent parts; "[W]here an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require."

2. The Appellant has a duty, obligation and a requirement to present her entire case including when this case began, how it proceeded in the Lower Court and the failures of the Lower Court to act and rule responsibly and judicially. Therefore, there is no legitimate basis for Respondent's "Motion to Dismiss" based on the unambiguous language of Rule 210(h), SCACR. In addition.....

(1) *I'ON, LLC v. Town of Mt. Pleasant*, 526 SE 2d 716 (2000) "[I]f the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review. *E.g., Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton,* 311 S.C. 56, 427 S.E.2d 673 (1993); *Hoffman v. Powell,* 298 S.C. 338, 380 S.E.2d 821 (1989); *see also* Rules 52(b) and 59(e), SCRCP. ---- Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. *See Roche v. South Carolina Alcoholic Beverage Control Comm'n,* 263 S.C. 451, 211 S.E.2d 243 (1975) (purpose of an appeal is to determine whether the trial judge erroneously acted or failed to act and when appellant's contentions are not presented or passed on by the trial judge, such contentions will not be considered on appeal). The requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve— intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case. *See Brown v. Singletary,* 226 S.C. 482, 85 S.

E.2d 738 (1955) (party may not neglect or ignore vices in the trial, then expect to assert those vices on appeal in case of disappointment at trial); *State v. Warren,* 207 S.C. 126, 134, 35 S.E.2d 38, 41 (1945) (same).

(2) *Windham v. Honeycutt*, 348 SE 2d 185 (Ct. App. 1986) "[T]he burden is on the appellant to furnish a sufficient record on appeal from which this court can make an intelligent review."

(3) *Price v. Pickens County*, 416 SE 2d 666 (Ct. App. 1992) "[T]he burden is on the appellant to provide a sufficient record such that this court can make an intelligent review. *Taylor v. Taylor*, 294 S.C. 296, 363 S.E. (2d) 909 (Ct. App. 1987). This court will not consider issues on appeal that were neither raised before nor ruled upon by the court below. *Windham v. Honeycutt*, 290 S.C. 60, 348 S.E. (2d) 185 (Ct. App. 1986). A trial judge will not be reversed for failing to act on a matter that was not submitted to him. *Roche v. S.C. Alcoholic Beverage Control Commission*, 263 S.C. 451, 211 S.E. (2d) 243 (1975)."

B. An Appeals Court can examine the entire record.

3. **Reason #2 for Denial:** An Appeals Court has the power and authority to examine the entire record for errors of law, judgment and/or failures of due process; as well as, any other error committed by a Lower Court as excerpts from the following case histories reveal and prove.

(1) JUSTICE POWELL, concurring.
Anderson v. Bessemer City, 470 US 564 (S.Ct. 1985) "[I] do not dissent from the judgment that the Court of Appeals misapplied Rule 52(a) in this case. I write separately, however, because I am concerned that one may read the Court's opinion as implying criticism of the Court of Appeals for the very fact that it engaged in a comprehensive review of the entire record of this case. Such a reading may encourage overburdened Courts of Appeals simply to apply Rule 52(a) in a conclusory fashion, rather than to undertake the type of burdensome review that may be appropriate in some cases. ----- In this case, the Court of Appeals made no arbitrary judgment that the action of the District Court was clearly erroneous. On the contrary, the court meticulously reviewed the entire record and reached the conclusion that the District Court was in error."

(2) *Forner v. Butler*, 460 SE 2d 425 n. 1 (Ct.App. 1995) "[R]ule 211 governs supplemental records. Rule 207(b) governs contents of the briefs, and requires "references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 209(c)] to support the salient facts alleged." Rule 207(b)(4). The only matter

which should not appear in the record are those items a party believes to be "not relevant to the appeal." Rule 208(b), SCACR. If the parties in this case considered a fact relevant and worthy of mention in the brief, the parties should have included matter in the record to support that factual assertion."

(3) *Doe v. Baby Boy Roe*, 578 SE 2d 733 (Ct.App. 2003) "[F]urthermore, in a TPR case, the appellate court has jurisdiction to examine the entire record to determine the facts according to its view of the evidence."

(4) *State v. Cannon*, 151 SE 2d 752 (1966) "[I]n addition, since this is a capital case, under our well established rule, *in favorem vitae*, it is our duty to examine the entire record to determine whether there were any prejudicial errors affecting any substantial rights of the appellant."

(5) *B & B Liquors, Inc. v. O'NEIL*, 603 SE 2d 629 (Ct.App. 2004) ... "[a]n appellate court must determine whether the trial court's stated grounds for its decision are supported by the record. It is our duty to undertake a thorough and meaningful review of the trial court's order and the entire record on appeal."

C. An Appendix is appropriate for supplementing the Record on Appeal or Amending the Record.

4. **Reason #3 for Denial:** The Respondent's complaint about the Appellant including the documents the Respondent requested in an Appendix is also not only superfluous it is also indicative of frivolity and a misuse and abuse of the Rules. There is no Appellate Court Rule mandating the Record on Appeal must be rewritten. The Rules clearly allow for supplementing the Record with an Appendix.

(1) Rule 212(c), SCACR clearly states in pertinent parts; "[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."

(2) *Johnson v. Stone*, 281 SE 2d 661 (NC: S. Ct. 1981) "[I]t further appearing that the interests of justice would be better served if the record is amended to include such notice of appeal to permit plaintiff's appeal to be heard on the merits by the Court of Appeals, ---- NOW, THEREFORE, upon motion by the plaintiff that this Court note *de novo* a deficiency in the record, and pursuant to Rule 15(f)(1) of the Rules of Appellate Procedure, the Court hereby amends the record on appeal before the Court of Appeals to include plaintiff's notice of appeal in open court in the trial tribunal. ---- IT IS

FURTHER ORDERED that the decision of the North Carolina Court of Appeals in number 8017SC836 filed 2 June 1981 is reversed and the cause is remanded to the North Carolina Court of Appeals for further proceedings consistent with this order."

(3) *McElveen v. Stokes*, 124 SE 2d 592 (1962) "[T]here is, of course, abundant authority for the proposition that this court should not consider issues not passed upon by the circuit judge. However, since the factual matters shown in the appendix are urged by the respondents in support of their additional sustaining grounds urged upon this court and since we deem it in the public interest that this controversy be brought to an end without needless further litigation, we shall comment briefly on the contents of the appendix."

D. The Appellant is Pro Se.

5. **Reason #4: for Denial:** The Appellate Court and the Respondent, SCFCU know the Appellant is Pro Se and therefore should realize nothing the Appellant can or will do in this Appeal or in Court will equal a Judges' or a practicing attorneys' skill and expertise. Nor do the Courts in America tolerate using rules and/or procedures to abuse or harass Pro Se litigants under the clever disguise of quoting rules. The Courts have already established precedents and procedures for handling Pro Se litigants in civil suits. The Appellant and her husband do the very best they can with the information and resources available. {See attached Exhibits 53 & 54} and the following excerpts from case file histories...

(1) *Ferdik v. Bonzelet*, 963 F. 2d 1258 (9th Cir. 1992) "[M]oreover, in deciding whether the district court abused its discretion in dismissing this case, we also are mindful of Supreme Court precedent that instructs federal courts liberally to construe the "inartful pleading" of pro se litigants. *Boag v. MacDougall,* 454 U.S. 364, 365, 102 S.Ct. 700, 701, 70 L.Ed.2d 551 (1982) (per curiam); *Hughes v. Rowe,* 449 U.S. 5, 9, 101 S.Ct. 173, 175, 66 L.Ed.2d 163 (1980); *Noll v. Carlson,* 809 F.2d 1446, 1448 (9th Cir.1987); *see Draper v. Coombs,* 792 F.2d 915, 924 (9th Cir.1986) (should treat pro se litigants with great leniency when evaluating compliance with the technical rules of civil procedure). This rule is particularly important in civil rights cases. *Eldridge,* 832 F.2d at 1137. Thus, before dismissing a pro se complaint the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively. *Noll,* 809 F.2d at 1448-49...."

(2) *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."

(3) *Mala v. Crown Bay Marina, Inc.*, 704 F. 3d 239 (3rd Cir. 2013) "[T]o be sure, some cases have given greater leeway to pro se litigants. These cases fit into two narrow exceptions. First, we tend to be flexible when applying procedural rules to pro se litigants, especially when interpreting their pleadings. *See, e.g., Higgs v. Att'y Gen.,* 655 F.3d 333, 339 (3d Cir.2011) ("The obligation to liberally construe a *pro se* litigant's pleadings is well-established."). This means that we are willing to apply the relevant legal principle even when the complaint has failed to name it. *Dluhos v. Strasberg,* 321 F.3d 365, 369 (3d Cir.2003). And at least on one occasion, we have refused to apply the doctrine of appellate waiver when dealing with a pro se litigant. *Tabron v. Grace,* 6 F.3d 147, 153 n. 2 (3d Cir.1993). This tradition of leniency descends from the Supreme Court's decades-old decision in *Haines v. Kerner,* 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). In *Haines,* the Court instructed judges to hold pro se complaints "to less stringent standards than formal pleadings drafted by lawyers." *Id.* at 520, 92 S.Ct. 594; *see Erickson v. Pardus,* 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007)."

CONCLUSION

6. Every item the Respondent requested is in the Appendix, including the **BOGUS ADDENDUM**. Therefore, for all the reasons stated in this Return and Objection to Motion to Dismiss, the Respondent's Motion should be denied so the Appellate Court can review the Record in its entirety and decide this case on the law and the merits and not on any technicality that subverts the administration of justice and the due process of law.

March 21, 2016

Respectfully Submitted;

/s Dorothy Harley Sistrunk

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Exhibit 53

No. COA _____ _____ JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

IN THE MATTER OF:)
(Initials)) From _____ County
) J File Number

****

APPELLANT'S MOTION TO AMEND THE RECORD ON APPEAL

****

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

COMES NOW Appellant [*Name*], through his/her undersigned counsel, pursuant to N.C. Rules of Appellate Procedure 37 and 3A(b)(1) and respectfully requests the Court allow him/her to amend the record on appeal and allow the filing of a supplement to the record on appeal. In support of his/her motion, Appellant shows unto the Court:

1. The record on appeal in this matter was filed by mailing on _____. It was recorded as filed in the Clerk's Office on _____.

Exhibit 54

2. While drafting the brief for appellant, undersigned counsel noted that although she had assigned error to conclusion of law no. ___, he/she had failed to assign error to conclusion of law no.___. **OR**

3. While drafting the brief for appellant, undersigned counsel noted that she had failed to assign error to the following issue:_____.

4. Although appellant believes that the issues may be preserved through his/her other assignment of errors, undersigned counsel wants to ensure that the issue of _____ has not been waived by his/her failure to specify these issues in the record on appeal.

5. Appellant's counsel proposes to file a Supplement to the Record on Appeal, a copy of which is attached hereto, which adds the additional assignment of error challenging conclusion of law no. ___/adding the following assignment of error:

_____.

6. This motion is not filed in order to delay or hamper these proceedings.

WHEREFORE, Appellant respectfully requests the Court grant his/her motion allowing the filing and service of a Supplement to the Record on Appeal amending his/her assignment of errors.

Exhibit 54

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

2015-001112

South Carolina Federal Credit Union — Respondent,

v.

Dorothy Harley Sistrunk aka Dcorothy Harley Sistrunk aka Dorothy A. Dorothy Sistrunk, — Appellant.

PROOF OF SERVICE

I certify that I have served a copy of my Return & Objection to Motion to Dismiss on South Carolina Federal Credit Union, by depositing a copy of it in the Postal Service, postage prepaid, on March 21, 2016, addressed to SCFCU's attorney/s of record listed below.

March 21, 2015

/s Dorothy Harley Sistrunk

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Pro Se

cc: Moore & Van Allen, PLLC
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Return & Objection
To Motion To Dismiss With Proof Of Service

March 21, 2016

The Honorable Jenny Abbot Kitchings Clerk of Court
& Deputy Clerk of Court V. Claire Allen
South Carolina Court of Appeals
POB 11629
Columbia, SC 29211

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

Ms. Kitchings and/or Ms. V. Claire Allen

Pursuant to Rule 240(e), SCACR, I have enclosed an original and six (6) copies of my **"Return & Objection to Motion to Dismiss"**. I have also served one copy of the **"Return" along with the Proof of Service"** on all parties to the appeal listed below.

Thank you.

/s Dorothy Harley Sistrunk
Dorothy Harley Sistrunk

CC:

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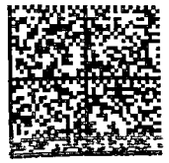

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