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**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

**RECEIVED**  
JUN 07 2016  
SC Court of Appeals

Case No. 2015-001112

South Carolina Federal Credit Union

Respondent

v.

Dorothy Harley Sistrunk aka Dorothy  
Harley-Sistrunk aka Dorothy A. Harley  
aka Dorothy Sistrunk

Appellant

**APPELLANT'S MOTION TO REMAND**

June 6, 2016

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Attorneys for Respondent

Comes now the Appellant, Dorothy Harley Sistrunk, to file her Motion to Remand, i.e., South Carolina Federal Credit Union Respondent v. Dorothy Harley Sistrunk, Appellant - Case 2015-001112. This Motion to Remand is based upon the following fact and reasons; as well as the original issue why this case was transferred from the Magistrate Court to the Court of Common Pleas...a **Jury Trial**.

I. **RULE 240, SCACR**

1. **Fact:** Rule 240, SCACR does not state with specificity or particularity the grounds or guidelines upon which a Motion to Remand must be based. In Powers v. City of Aiken, 255 S.C. 115, 117, 177 S.E. (2nd) 370, 371 (1970), the Supreme Court of South Carolina stated; "[t]he purpose of appeal under our procedure is "to determine if the lower court did something that it should not have done, or omitted doing something it should have done. Accordingly, a trial judge will not be reversed for failing to act on a matter that was not submitted to him."

(a) Rule 240(a), SCACR states in pertinent parts; "[T]his Rule governs all motions or petitions filed in the appellate court, including but not limited to: motions for extension of time, motions to reinstate, petitions for rehearing, motions to be relieved as counsel or for substitution of counsel, petitions for supersedeas, **motions to remand** or dismiss and petitions for hearing *en banc*." {**Boldness and Underlining** for emphasis}

(b) Rule 240(c), SCACR, states the following in pertinent parts; "[A]ll motions or petitions filed in an appellate court shall be in writing, shall state the grounds thereof, and shall comply with the requirements of Rule 267. The pages of the motion or petition and all supporting documents shall be consecutively numbered. Each motion or petition shall include the following:

(1) A certificate or affidavit of service reflecting the date of service upon all parties. The original certificate or affidavit of service must be filed with the original motion or petition.

(2) A memorandum with citation of authorities in support of the motion.

(3) Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions."

(c) Rule 240(d), SCACR states in pertinent parts; “[A]n original and six (6) copies of the motion shall be filed with the clerk of the appellate court, and a copy shall be served upon each party. The copies filed with the appellate court shall be accompanied by the filing fee set by order of the Supreme Court.” Re: \$25.00 {See also State v. Foster, 277 S.C. 211, 212, 284 S.E.2d 780, 780 (1981) (“Taken literally, the word ‘shall’ is mandatory.”)}

## II. REASONS FOR THE APPELLANT'S MOTION TO REMAND

2. Reason #1 for Remand – Failure To Rule On The Original Issue: Based upon the above stated Rules and Case Law reference, the Appellant moves the Appellate Court to Remand this case back to the Court of Common Pleas in Orangeburg where it was transferred from the Magistrate Court to the Court of Common Pleas. As the record clearly shows, based on filed Orders, the original issue that necessitated the transfer from the Magistrate Court; **a Jury Trial**, was never ordered by Judge Goodstein or Jackson.

3. Reason #2 for Remand – Failure To State With Specificity: Based upon the Appellate Court’s Order dated 6/1/16, {See Attached Exhibit 51} the Appellate Court must accept the reality that Respondent; South Carolina Federal Credit Union (“SCFCU”), has failed to state with specificity the documents needed that would help the Appellant make a decision as to what documents the Respondent wants filed. The Appellant has filed the documents the Respondent sent her including the **BOGUS ADDENDUMS**. {See Filed Appendix - Received & Stamped - MAR 01 2016, pp. 16-17 }

(a) Rule 209(a), SCACR clearly states 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.**” [Boldness for emphasis]

(b) Rule 210(c), SCACR clarifies matters by stating 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.”

4. **Reason #3 for Remand – Failure To Acknowledge Origin:** As evidence by the Clerk of Court date stamp, the Appellant has included all the pleadings and exhibits that are filed in the Lower Court that are relevant to the Appellant's Appeal. This is in compliance with Rule 210(h), SCACR that includes the complete history of the case. This case originated in the Magistrate Court with a Summons and Compliant that was received on 6/9/11 and answered on 6/28/11. {See R. pp. 18-35} As evidenced from the Court's records, the original issue in this case, a **Jury Trial**, was ignored by the Lower Court.

(a) *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.”

(b) *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.”

(c) *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).”

5. **Reason #4 for Remand – Documents May Not Have Been Received:** In response to the Appellate Court's Order {Exhibit 51}, the Appellate Court may have to accept the reality the Respondent may be requesting documents the Appellant may not have received. If this is proven true, this would be a violation of Rule 5(a)(11), SCRCP and this case must be remanded.

*Rule 5(a), SCRCP* clearly states in pertinent parts; “[U]nless otherwise ordered by the court because of numerous defendants or other reasons, all (1) written orders; (2) pleadings subsequent to the original summons and complaint, which includes answers, counterclaims, cross claims, replies and amended complaints; (3) written motions, other than ones which may be heard ex parte; (4) written notices; (5) discovery requests and responses; (6) appearances; (7) demands; (8) offers of judgment; (9) designations of record or case; (10) grounds or exceptions on appeal; and (11) **other similar papers shall be served upon each of the parties of record.**” [Note: Rule 5(a)(11), SCRCP is in **Bold** for emphasis]

6. **Reason #5 for Remand – To Avoid A Miscarriage Of Justice:** It would be a Miscarriage of Justice to dismiss a case based on documents that may not have been received and failures of the Lower Court. Since the Appellant is *Pro Se*, the Appellant and her husband have done their best to comply with Appellate Procedures within their knowledge and available information from online sources. Therefore, the Appellant relied on Rule 212(c), SCACR, Case Law, Rule 8(f), SCRCR and Georgia's Code §5-6-48(3)(f).

(a) 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. [Note: The Appellant proposed to include the Respondent’s request as a Supplement to expedite matters]

(b) Pro Se pleadings and filings should be reviewed liberally. Howard v. U.S. Bureau of Prisons, 487 F.3d 808, 815 (10th Cir. 2007). “[I]n addition, “[w]hen the substance of a legal claim is otherwise present, this court has indicated that ‘confusion of various legal theories,’ a technical pleading error, should not be dispositive in pro se cases.” Switzer v. Coan, 261 F.3d 985, 988 (citing Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991)). “[A]t the same time, we do not believe it is the proper function of the district court to assume the role of advocate for the pro se litigant.” Hall, 935 F.2d at 1110.

(c) “[I]t is well established that “[a] pro se litigant’s pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers.” Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). “[T]his liberal treatment has limits, however, and we have “repeatedly insisted that pro se parties follow the same rules of procedure that govern other litigants.” Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 840 (10th Cir. 2005).

(d) 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.”

(e) 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).”

(f) Rule 8(f), SCRPC clearly states in pertinent parts.. “[A]ll pleadings shall be so construed as to do substantial justice to all parties.”

(g) 2010 Georgia Code § 5-6-48(3)(f) that states in pertinent parts; “[W]here it is apparent from the notice of appeal, the record, the enumeration of errors, or any combination of the foregoing, what judgment or judgments were appealed from or what errors are sought to be asserted upon appeal, the appeal shall be considered in accordance therewith notwithstanding that the notice of appeal fails to specify definitely the judgment appealed from or that the enumeration of errors fails to enumerate clearly the errors sought to be reviewed. An appeal shall not be dismissed nor consideration thereof refused because of failure of the court reporter to file the transcript of evidence and proceedings within the time allowed by law or order of court unless it affirmatively appears from the record that the failure was caused by the appellant.” [Source: February 12, 2016-<http://law.justia.com/codes/georgia/2010/title-5/chapter-6/article2/5-6-48>]

7. Additional reasons why it is in the best interest of justice to have this case remanded for further proceedings or its original issue, a **Jury Trial**, and the grounds therefor will be set forth in the accompanying Memorandum with Citations to Authority.

June 6, 2015

Respectfully submitted,

/s/ Dorothy Harley Sistrunk  
Dorothy Harley Sistrunk  
423 Bayne Street  
Orangeburg, South Carolina 29115

# The South Carolina 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.

Appellate Case No. 2015-001112

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## ORDER

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Appellant has failed to comply with the South Carolina Appellate Court Rules and with this court's February 11, 2016 order requiring the service of an amended record on appeal that omits matters not designated by either party and includes all matters designated by both parties. Respondent has filed a motion to dismiss. Respondent's motion to dismiss is denied at this time; however, this court notes the arduous procedural history of this case and hereby orders Appellant to serve an amended record on appeal that includes all matters designated by both parties and omits all of the documents that were not designated by either party. This amended record on appeal shall be served within twenty days of the date of this order and a proof of service shall be filed with this court. Failure of Appellant to comply may result in the dismissal of this appeal.

  
FOR THE COURT

Columbia, South Carolina

cc:

Dorothy Sistrunk  
Reid Evan Dyer, Esquire

**Exhibit 51**

**FILED**  
SF 6/11/16

**Exhibit 51**





**Dorothy Sistrunk**

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SC Court of Appeals

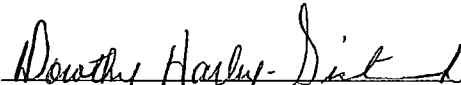
The Honorable Jenny Abbot Kitchings - Clerk of Court  
& the Highly Esteemed V. Claire Allen – Deputy Clerk of Court  
South Carolina Court of Appeals  
POB 11629  
Columbia, SC 29211

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

Ms. Kitchings or Ms. Allen,

In accordance with Rule 240(d), SCACR, I have enclosed an original and six (6) copies of my *Appellant's Motion to Remand, Exhibit 51*, my *Appellant's Memorandum With Citations to Authorities Supporting Motion to Remand*, [paper clipped and not stapled], a *Proof of Service* and my filing fee of \$25.00. I have also served a copy of same on all parties listed below.

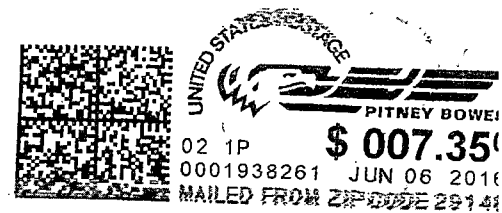
Thank you.

  
Dorothy Harley Sistrunk

CC:

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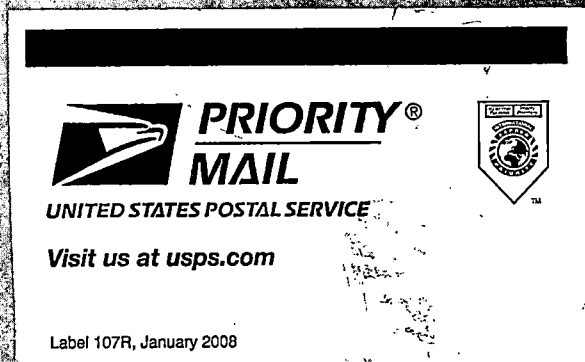
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JUN 07 2016

SC Court of Appeals



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