

**THE STATE OF SOUTH CAROLINA**

In The Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY

Court of Common Pleas

James B. Jackson, Jr., Master in Equity

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Case No. 2015-001112

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South Carolina Federal Credit Union

Respondent

v.

Dorothy Harley Sistrunk aka Dorothy

Appellant

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**APPELLANT'S MEMORANDUM WITH  
CITATIONS OF AUTHORITIES SUPPORTING MOTION TO REMAND**

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June 6, 2016

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I.

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## II. THE PURPOSE AND REASONS FOR CITATIONS OF AUTHORITIES SUPPORTING THE APPELLANT'S MOTION TO REMAND

1. The purpose and reasons for the Appellant's Citations of Authorities are five-fold. [Note: **Boldness** and/or Underling will be added for emphasis.]

(a) **First**, Citations of Authorities are a mandatory requirement that must be included with any motion or petition filed in the Appellate Court. This is according to the language of Rule 240(c)(2), SCACR.

Rule 240(c)(2), SCACR, clearly states 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.** [Note: **Boldness** added for emphasis]

(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."

(A) Value Oil Company v. Town of Irvington, 377 A. 2d 1225 (N.J. Superior Ct. Law Div. 1977) "[T]he general rule of construction is that "may" means permissive and "shall" means mandatory. Harvey v. Essex Cty. Freeholder Bd., 30 N.J. 381, 391 (1959). Accord, Franklin Estates, Inc. v. Edison Tp., 142 N.J. Super. 179, 184 (App. Div. 1976)."

(B) Ratliff v. Phillips, 746 SW 2d 405 (Ky. S. Ct. 1988) "[B]oth by dictionary definition and legislative enactment the word "shall" means mandatory. KRS 446.010 (29). In the common understanding of most individuals, the word "shall" means must and such a view is supported by the dictionary and the statute."

(b) **Second**, Citations of Authorities allow the Appellant to take advantage of an Appellate Court procedure and remedy with no time limit for filing.

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*." [Note: **Boldness and Underlining** added for emphasis.]

- (c) **Third**, Citations of Authorities support the Appellant's *Motion to Remand*.
- (1) Thummel v. King, 570 SW 2d 679 (Mo. S. Ct. 1978) "[I]f the point is one for which precedent is appropriate and available, it is the obligation of appellant to cite it if he expects to prevail."
  - (2) Battle v. State, 478 P. 2d 1005 (Okla. Ct. Crim. App. 1970) "[I]t is necessary for counsel for Plaintiff in error not only to assert error, but to support his contentions by both argument and the citations of authorities."
  - (3) Ala Moana Boat Owners v. State, 434 P. 2d 516 (Ha. S. Ct. 1967) "[W]here arguments in a brief are unsupported by citations of authorities, this court will not ordinarily search out authorities, and will assume that counsel, after diligent search, had been unable to find any supporting authority. Malstrom v. Kalland, 62 Wash.2d 732, 384 P.2d 613 (1963); DeHeer v. Seattle Post-Intelligencer, 60 Wash.2d 122, 372 P.2d 193 (1962); Lindsay v. Keimig, 184 Kan. 89, 334 P.2d 326 (1959); 5 Am.Jur.2d, Appeal and Error, § 700."
  - (4) Jones v. Wolff, 887 SW 2d 806 (Mo.App. E.D. 1994) "[T]he points relied on must state briefly what actions or rulings of the court for which review is sought and wherein and why they are claimed to be erroneous, with citations of authorities thereunder."
  - (5) First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting that when a party fails to cite supporting authority or when the argument is simply a conclusory statement, the party is deemed to have abandoned the issue on appeal).
- (d) **Fourth**, in addition to filed exhibits and affidavits, Citations to Authorities support the Appellant's Statements of Fact; as well as, her contentions relative to the Lower Court's Errors of Law and/or Judgment as to the facts and/or law. The Appellant does not speculate or argue law. The Appellant states the facts and supports her facts with the appropriate evidentiary basis and/or material/s; be it an exhibit, affidavit, document or citation to an authority and/or from an authority.

*Straeter Distributing v. Fry-Wagner Moving*, 862 S.W.2d 415, 417 (Mo.App.E.D.1993) at 417. “[T]he three components of a point relied on are: a concise statement of the challenged ruling of the trial court; the rule of law the court should have applied; and the evidentiary basis upon which the asserted rule is applicable. Points which do not state what ruling of the trial court is challenged nor provide a proper evidentiary basis, but instead set out abstract statements of law, preserve nothing for appeal. *Id.*”

(e) **Fifth:** Finally, Citations of Authorities gives the Appellant Court sufficient cause to grant the Appellant’s *Motion to Remand* based on established precedent, procedural rules, the facts, the evidence or a lack thereof, the law, the merits of the request for the *Motion to Remand* and the truth.

### III. **GROUND & ADDITIONAL REASONS TO GRANT THE APPELLANT’S MOTION TO REMAND WITH CITATIONS OF AUTHORITIES**

2. In addition to the additional reasons that will follow, the Appellant; as the movant, must also state the grounds thereof for her *Motion to Remand*.

Rule 240(c), SCACR clearly states 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.”

#### A. **Grounds for granting the Appellant’s Motion to Remand.**

3. **Ground #1:** In addition to settling the issue that necessitated the transfer of this case from the Magistrate Court to the Court of Common Pleas, a **Jury Trial**, {See Reason #1 *Motion to Remand*, ¶2, p. 3}, the Appellant must obtain rulings on the issues raised in her pleadings that are in the Lower Court. Without rulings, there is essentially little the Appellate Court can review. {R. Vol. II, ¶(a)-(e), pp. 387-388}

4. **Ground #2:** The Lower Court’s failure to correct errors of fact, procedures and/or law can still result in a **Miscarriage of Justice**. {*Motion to Remand*, ¶6, pp. 5-6}

(a) “[T]he phrase miscarriage of justice used as descriptive of that condition of a cause which justifies the reversal of a judgment, has no hard and fast definition. It seems assured, however, that where errors have been committed, and where the appellate court finds that upon the record it is

seriously doubtful that without such errors the defendant would have been convicted, then it may well be that errors which otherwise would not be considered to be seriously prejudicial, will require a reversal. "The rule applies to civil as well as to criminal cases." Justice Seawell of the Supreme Court of California wrote this in *Herbet v Lankershim* (1937): <http://www.duhaime.org/LegalDictionary/M/MiscarriageofJustice.aspx>

(b) "[T]he term 'miscarriage of justice' refers to a legal act or verdict that is clearly mistaken, unfair, or improper." {USLegal}

5. **Ground #3:** In addition to preventing a Miscarriage of Justice, granting the Appellant's *Motion to Remand* will also prevent a Manifest Injustice. A **Manifest Injustice** means something which is 'obviously unfair' or 'shocking to the conscience.' It refers to an unfairness that is direct, obvious, and observable. {USLegal}

(a) *State v. Pugh*, 222 P. 3d 821 (Wash: Ct.App, 2nd Div. 2009) "[M]anifest injustice" means "an injustice that is obvious, directly observable, overt, [and] not obscure." *State v. Taylor*, 83 Wash.2d 825 594, 596, 521 P.2d 699 (1974) (citing Webster's Third International Dictionary (1966))."

(b) *Harris v. Commonwealth*, (Ky: Ct.App. 2010) "[M]anifest injustice means "the error so seriously affected the fairness, integrity, or public reputation of the proceeding as to be 'shocking or jurisprudentially intolerable.'" Id. (citations omitted)."

(c) *Finley v. Mole*, (Dist. Ct, D. Virgin Islands at n.3, 2015) "[M]anifest injustice means "the Court overlooked some dispositive factual or legal matter that was presented to it that might reasonably have resulted in a different conclusion." *Bank of Nova Scotia v. Ross*, 2014 U.S. Dist. LEXIS 135848, at n.28 (D.V.I. Sept. 26, 2014) (internal quotation marks omitted); see *George v. George*, 2015 U.S. Dist. LEXIS 27003, at n.4 (D.V.I. Mar. 5, 2015) (noting manifest injustice has also been defined as "an error in the trial court that is direct, obvious, and observable") (internal quotation marks omitted)."

(d) *Chasteen v. Jackson*, (Dist. Ct, SD Ohio 2012) "[T]hird, a "manifest injustice" means a "clear and gross injustice." *United States v. Luciano*, 329 F.3d 1, 5 (1st Cir. 2003). It also means an error that was "direct, obvious, and observable." In re UBS AG ERISA Litig., No. 08 Civ. 6696(RJS), 2012 WL 1034445, at n. 4 (S.D.N.Y. Mar. 23, 2012)."

6. There is no rule, statute or procedure the Appellant could have used to compel a Judge to rule on issues. In addition to not being able to compel a Judge to rule on issues, research reveals there are many things a Judge does not have to do. Example..

(a) US v. Dixon, 913 F. 2d 1305 (8th Cir. 1990) ("the trial judge does not have to make an explicit finding of "manifest necessity" or expressly state that particular alternatives were considered and rejected. Arizona v. Washington, 434 U.S. at 516-17, 98 S.Ct. at 835-36.)

(b) State v. Ovitt, 878 A. 2d 314 (Vt: S. Ct. 2005) ("[T]he trial judge does not need to articulate the precise weights assigned to the probative value or prejudicial effect of evidence, or specify why one outweighs the other.")

(c) Payton-Henderson v. Evans, 180 Md.App. 267, 286, 949 A.2d 654 (2008). "[A] judge does not need to state every consideration or factor, so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion. Id."

7. **Ground #4:** Even though, there are many things a Judge does not have to do; there are requirements of law a Judge cannot ignore. Example..

(a) State v. Johnson, 692 SW 2d 412 (Tenn: S.Ct. 1985) " "[A]s the Eighth Circuit stated in United States v. Lincoln, 630 F.2d 1313 (8th Cir.1980), even if the trial judge concludes that "despite the abstract sufficiency of the evidence to sustain the verdict, [that] the evidence preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred, [he] may set aside the verdict, grant a new trial, and submit the issues for determination by another jury." Id. at 1319."

(b) Quick v. Donaldson Co., Inc., 90 F. 3d 1372 ( 8th Cir. 1996) "[T]he basic inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson, 477 U.S. at 251-52, 106 S.Ct. at 2512. At the summary judgment stage, the court should not weigh the evidence, make credibility determinations, or attempt to determine the truth of the matter. Id. at 249, 106 S.Ct. at 2510. Rather, the court's function is to determine whether a dispute about a material fact is genuine, that is, whether a reasonable jury could return a verdict for the nonmoving party based on the evidence. Id. at 248, 106 S.Ct. at 2510. The evidence of the non-movant is to be believed..., "If reasonable minds could differ as to the import of the evidence," summary judgment is inappropriate. Id. at 250, 106 S.Ct. at 2511."

8. **Ground #5:** The Appellant was and still is at a disadvantage and must grope about in ignorance of court procedures and without knowledge of judicial decisions that number into the hundreds of thousands. Therefore, it is neither practical nor reasonable for any Judge or Jury to conclude that the Appellant should possess the knowledge

of a practicing trial lawyer that may have taken years to accumulate the experience, the understanding and to master the protocols arguing a case in Court requires. In addition, there are precedents that mandate treating *Pro Se* litigants with some degree of respect.

(a) *Erickson v. Pardus*, 127 S. Ct. 2197 (2007) "[T]he Court of Appeals' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more pronounced in this particular case because petitioner has been proceeding, from the litigation's outset, without counsel. A document filed *pro se* is "to be liberally construed, "*Estelle*, 429 U.S., at 106, 97 S.Ct. 285....,"

(b) *Rule 13(a), SCRMC* clearly states in pertinent parts; "....[I]n the trial of a civil action, in which one or both parties are unrepresented by legal counsel, the court shall question the parties and witnesses in order to assure that all claims and defenses are fully presented."

(c) *Rule 614(a)-(b), SCRE*, states the following in pertinent parts.. "[I]n extraordinary circumstances, the court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called. Before calling a court's witness, the court shall afford the parties a hearing on the matter outside the presence of the jury." "[W]hen required by the interests of justice only, the court may interrogate witnesses."

(d) *Williams v. S.C. Farm Bureau Mutual Ins. Co.*, 251 S.C. 464, 163 S.E.2d 212 (1968) "[t]he trial judge, of course, has the right, in his discretion, and in a proper manner, to question witnesses during a trial, in order to elicit the truth."

(e) *Fowler v. Laney Tank Lines, Inc.*, 263 S.C. 422, 211 S.E.2d 231 (1975) ("[I]f a trial judge in the exercise of his discretion feels called upon, in the interest of justice, to question witnesses to elicit the truth, he should be cautious to see that such questions are propounded in a fair and impartial manner, and should not express or indicate to the jury the judge's opinion as to the facts of the case or the weight or sufficiency of the evidence.")

(e) *State v. Chasteen*, 228 S.C. 88, 88 S.E. (2d) 880 (1955) quoting *State v. Anderson*, 85 S.C. 229, 67 S.E. 237, 238. ("[I]t is his duty to see to it that justice be done in every case, if it can be done according to law; and, if he thinks that the attorney for either party, either from inadvertence or any other cause, has failed to ask the witnesses the questions necessary and proper to bring out all the testimony which tends to ascertain the truth of the matter under investigation, we can see no legal objection to his propounding such questions; but, of course, he should do so in a fair and impartial manner and should not by the form or manner of his questions express or indicate to the jury his opinion as to the facts of the case, or as to the weight or sufficiency of the evidence.")

**B. Additional reasons to grant the Appellant's Motion To Remand.**

9. **Reason #6 to Remand – The Lower Court Failed To Address Or Rule**

**On Affirmative Defenses:** In addition to failing to address the issue that transferred the case to the Court of Common Pleas from the Magistrate Court, a **Jury Trial**, {R. pp. 20} this case must be remanded because the Lower Court failed to rule on the Appellant's affirmative defenses. {R. pp. 1-12, Vol. II, ¶(e)(1)-(8), pp. 410-12 & Vol. III, pp. 582-608}

10. **Reason #7 to Remand – The Lower Court Failed To Rule On The**

**Appellant's Counterclaims:** In addition to failing to address the issue that transferred the case to the Court of Common Pleas from the Magistrate Court, a **Jury Trial**, and the Appellant's affirmative defenses, the Lower Court failed to rule on the Appellant's compulsory counterclaims. {R. pp. 1-12 & Vol. III. pp. 572-581} This is a violation of Rule 13(a), SCRPC and South Carolina's legal precedents.

(a) *Rule 13(a), SCRPC* clearly states in pertinent parts; “[A] pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.”

(b) *Hendricks v. Clemson Univ.*, 353 S.C. 449, 459, 578 S.E.2d 711, 716 (2003) “[I]f the evidence as to the existence of a contract is conflicting or raises more than one reasonable inference, the issue should be submitted to the jury.” Also see *Easler v. Pappas*, 252 S.C. 398, 166 S.E. (2d) 808 (1969); *Crossley v. State Farm Mutual Auto. Ins.*, 307 S.C. 354, 415 S.E.2d 393 (1992)

(c) *Airfare, Inc. v. Greenville Airport Comm.*, 153 SE 2d 846 (1967) “[U]nder our Code practice legal and equitable issues and rights may be asserted in the same complaint, and legal and equitable remedies and relief afforded in the same action. In such event the legal issues are for determination by the jury, and the equitable issues for the judge sitting as a chancellor. The legal and equitable issues should be separated and each tried by the appropriate branch of the court. *Standard Warehouse Co. v. A.C.L.R. Co.*, 222 S.C. 93, 71 S. E. (2d) 893; *Winter v. U.S.F. & G. Co.*, 240 S.C. 561, 126 S.E. (2d) 724. An action for damages for a breach of contract is an action at law and either party has the right of trial by jury.”

11. **Reason #8 to Remand – The Lower Court Failed To Rule On The Appellant’s**

**Demand For A Jury Trial:** In addition to failing to rule on the original issue that transferred this case from the Magistrate Court, a **Jury Trial**, the Appellant’s affirmative defenses and compulsory counterclaims, the Lower Court failed to rule on the Appellant’s demand for a **Jury Trial** in Civil Court. {R. p. 40} This is a violation of Rule 38(a)-(b), SCRPC, South Carolina’s Article I, §14 and Amend. VII to the United States Constitution. {R. Vol. II, ¶26(d)(1)-(6), pp. 408-409}

*SC Const. Art. I, §14* clearly states in pertinent parts; “[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.”

12. **Reason #9 to Remand – The Lower Court Failed To Rule On SCFCU’S TILA**

**Violations:** In addition to failing to rule on the original issue that transferred this case from the Magistrate Court, the Appellant’s affirmative defenses, compulsory counterclaims and the Appellant’s demand for a **Jury Trial**, the Lower Court failed to rule on SCFCU’s TILA violations. This violates 15 U.S.C. § 1601(a). {R. Vol. II, ¶16, pp. 395-431} The Appellant was never given the mandatory Addendum to consummate SCFCU’s Membership & Account Agreement. {R. Vol. II, ¶23(a), p. 402 & Vol. III, pp. 636-639}

*Brodo v. Bankers Trust Co.*, 847 F. Supp. 353 (D. C. E. D. Pa. 1994) “[T]ILA is a consumer protection statute designed to ensure "a meaningful disclosure of credit terms" to applicants for credit to alleviate the unequal bargaining power and sophistication between consumers and lenders. 15 U.S.C. § 1601(a); *Thomka v. A.Z. Chevrolet, Inc.*, 619 F.2d 246, 248 (3d Cir.1980). The statute imposes strict liability upon lenders which fail to disclose any mandated information, even if the violation is technical and unintended. *Smith v. Fidelity Consumer Discount Co.*, 898 F.2d 896, 898 (3d Cir.1990). TILA is to be liberally construed in favor of the borrower. *Id.* A borrower is not required to prove or even to allege any injury resulting from a TILA violation. *Thomka*, 619 F.2d at 250. Courts should defer to the interpretation of TILA set forth in 12 C.F.R. § 226 ("Regulation Z"), promulgated by the Federal Reserve Board....”

13. **Reason #10 to Remand – The Lower Court Failed To Acknowledge The Appellant’s Affidavits, Verified and/or Notarized Pleadings:** In addition to failing to rule on the original issue that transferred this case from the Magistrate Court, failing to rule on the Appellant’s affirmative defenses, compulsory counterclaims, demand for a **Jury Trial** and SCFCU’s TILA violations, the Lower Court failed to acknowledge the facts and material facts in the Appellant’s affidavits, verified and/or notarized pleadings. No Statement of Fact has been refuted or controverted by evidence or testimony in over 4 years. {R. pp. 161-164, 180-189 & Vol. II, ¶10(a)-(n), pp. 390-392}

14. **Reason #11 to Remand – The Lower Court Failed To Acknowledge The Appellant’s Judicial Admissions:** In addition to failing to rule on the original issue that transferred this case from the Magistrate Court, failing to rule on the Appellant’s affirmative defenses, compulsory counterclaims, demand for a **Jury Trial**, SCFCU’s TILA violations and failing to acknowledge the facts and material facts in the Appellant’s affidavits, verified and/or notarized pleadings, the Lower Court also failed to acknowledge the Appellant’s Judicial Admissions that also have not been refuted or controverted by evidence or testimony in over 4 years. {R. Vol. III, pp. 479-624}

15. **Reason #12 to Remand – The Lower Court Failed To Rule On Moore & Van Allen, PLLC’s or SCFCU’s Use Of Bogus Addendums:** In addition to failing to rule on the original issue that transferred this case from the Magistrate Court, failing to rule on the Appellant’s affirmative defenses, compulsory counterclaims, demand for a **Jury Trial**, SCFCU’s TILA violations, failing to acknowledge the facts and material facts in the Appellant’s affidavits, verified and/or notarized pleadings and failing to acknowledge the Appellant’s Judicial Admissions, the Lower Court also failed to rule on Moore & Van Allen, PLLC’s or SCFCU’s **Bogus Addendums** that are an **In-Your-Face** “Fraud Upon the Court”. {R. Vol. III, ¶¶7-10, pp. 485-486, ¶q(2)(A)-(Z), pp. 515-519}

16. **Reason #13 to Remand – The Lower Court Ignored Well-Founded**

**Policies of Law:** In addition to failing to rule on the original issue that transferred this case from the Magistrate Court, failing to rule on the Appellant's affirmative defenses, compulsory counterclaims, demand for a **Jury Trial**, SCFCU's TILA violations, failing to acknowledge the facts and material facts in the Appellant's affidavits, verified and/or notarized pleadings, failing to acknowledge the Appellant's Judicial Admissions and failing to rule on Moore & Van Allen, PLLC's and/or SCFCU's use of **Bogus Addendums** that is an **In-Your-Face** "Fraud Upon the Court", {Appendix, pp. 16-17} the Lower Court also ignored well-founded policies of law.

(a) *Berkebile v. Outen*, S.C. 426 S.E.2d 760, 762 (1993) (holding that "[a]n illegal contract has always been unenforceable --- South Carolina courts will not enforce a contract which is violative of public policy, statutory law or provisions of the Constitution.").

(b) *W & N CONSTRUCTION COMPANY v. Williams*, 472 SE 2d 622 (SC: S. Ct. 1996) "[S]imilarly, the Court of Appeals recently held: 'It is a well-founded policy of law that no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act. This rule applies at both law and in equity and whether the cause of action is in contract or in tort.'"

(c) *Batchelor v. American Health Ins. Co.*, 234 S.C. 103, 107 S.E.2d 36 (1959) (noting that contracts violating public policy as expressed in constitutional provisions, statutes, or judicial decisions are void).

(d) *Wachovia Bank, NA v. Coffey*, 698 SE 2d 244 (Ct.App 2010) "[T]he 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.*

17. **Reason #14 to Remand – The Lower Court Failed To Accept Offers Of**

**Proof:** In addition to the grounds, reasons for remanding this case and the failures from

¶¶3-16, pp. 7-14, the Lower Court failed to accept the Appellant's **Offer of Proof**. There is no mobile home purchase in SCFCU's records. {R. Vol. II, pp. 383-465 & Vol. III, ¶9, p. 473}

*Rule 103(a)(1)-(2), SCRE* clearly states in pertinent parts; “[E]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) **Objection.** In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) **Offer of Proof.** In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer **or were apparent from the context.**” [Boldness for emphasis]

18. **Reason #15 to Remand – The Lower Court Ignored The Appellant’s Request To Take Notice Of Adjudicative Facts:** In addition to the grounds, reasons for remanding this case that have already been stated, the failures from ¶¶3-17, pp. 7-15 and failure to accept the Appellant’s **Offer of Proof**, the Lower Court ignored the Appellant’s request to take judicial notice of adjudicative facts. {R. Vol. II, pp. 387-465} Rule 201, SCRE clearly states the following in pertinent parts;

(a) “[T]his rule governs only judicial notice of adjudicative facts.

(b) A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) A court may take judicial notice, whether requested or not.

(d) A court shall take judicial notice if requested by a party and supplied with the necessary information. [Note: **Shall means mandatory**] *State v. Foster*, 277 S.C. 211, 212, 284 S.E.2d 780, 780 (1981) (“Taken literally, the word ‘**shall**’ is **mandatory**.”) [Boldness is for emphasis]

(e) A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Judicial notice may be taken at any stage of the proceeding....”

(1) *Moss v. Aetna Life Ins. Co.*, 267 S.C. 370, 228 S.E.2d 108 (1976) “[A] trial court may take judicial notice of a fact only if sufficient notoriety attaches to the fact involved as to make it proper to assume its existence without proof.”

(2) *Masters v. Rodgers Dev. Group*, 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984). “[A] fact is not subject to judicial notice unless the fact is either of such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability.”

(3) *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984) “[A] court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records. 31 C.J.S., Evidence, Section 50(1), p. 1018-1021.”

19. **Reason #16 to Remand – The Lower Court Issued An Erroneous Court Order For A Motion That Was Never Filed:** In addition to the grounds, reasons for remanding this case that have already been stated, the failures from ¶¶3-18, pp. 7-16, the failure to accept the Appellant’s **Offer of Proof**, and ignoring the Appellant’s request to take judicial notice of adjudicative facts. the Lower Court issued a Court Order for a motion that was never filed. {Appendix, p. 1 }

20. The Appellant did not file a motion for summary judgment in 2013, 2014 or 2015. The Appellant’s motion was filed in April of 2012 {R. pp. 78-110} and was denied by Judge Goodstein on 10/17/2012. The denial was filed on October 22, 2012 {R. p. 217} The objection to this judicial error and others was filed on April 30, 2015. {R. Vol. III, pp. 467-478}

21. **Reason #17 to Remand–The Lower Court Issued a Judgment & Court Orders For A Complaint That Was Never Filed:** In addition to the grounds, reasons for remanding this case that have already been stated, the failures from ¶¶3-20, pp. 7-16, the Lower Court’s failure to accept the Appellant’s **Offer of Proof**, ignoring the Appellant’s request to take judicial notice of adjudicative facts and issuing a Court Order for a

a motion that was never filed, the Lower Court issued erroneous judgments and Court Orders for a complaint that was never filed. {R. pp. 3-12} There is no filed complaint or an amended complaint for a February 28, 2003, fixed interest rate mobile home loan. {R. Vol. III, pp. 629-639} The Respondent's filed complaint is for a February 24, 2003 open-end loan that was never approved by the Appellant. {R. pp. 35-38}

22. **Reason #18 to Remand – The Lower Court Ignored Rule 42(b), SCRCP:** In addition to the grounds, reasons for remanding this case that have already been stated, the failures from ¶¶3-21, pp. 7-17, the Lower Court's failure to accept the Appellant's **Offer of Proof**, with adjudicative facts, {R. Vol. II, pp. 387-465} ignoring the Appellant's request to take judicial notice of adjudicative facts, issuing a Court Order for a motion that was never filed and issuing erroneous judgments and Court Orders for a complaint that was never filed, the Lower Court ignored Rule 42(b), SCRCP by failing to order a **Jury Trial** for the Appellant's compulsory counterclaims.

*Rule 42(b), SCRCP*, states in pertinent parts; “[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.”

23. **Reason #19 to Remand - The Lower Court Ignored Rule 38(d), SCRCP:** In addition to all the errors cited in the Appellant's *Motion to Remand*, and in this *Memo-randum* on pages 7-17, the Lower Court also ignored Rule 38(d), SCRCP.

*Rule 38(d), SCRCP*, clearly states in pertinent parts; “[A] demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties,”

There is no waiver in the Court's records that will verify the Appellant waived her rights to a **Jury Trial**. In addition, the Judge would have to explain to the Appellant the perils of waiving her rights to a **Jury Trial**. No such explanation exists in the Court's records.

24. **Reason #20 to Remand – Judges cannot operate outside of the Rules of Civil Procedure, South Carolina Law or Federal Law:** In addition to all the errors cited in the Appellant's *Motion to Remand*, and in this Memorandum on pages 7-17 relative to the errors and failures of the Lower Court, that includes ignoring Rule 38(d), SCRCP, Judges cannot operate outside of the Rules of Civil Procedure and South Carolina or Federal Law.

#### **IV. SUMMARY & RELIEF REQUESTED**

25. The Appellant has consistently stated this case must be remanded back to the Circuit Court from which it came with clear instructions to examine the evidence, the pleadings, the depositions, answers to interrogatories, the exhibits, and the admissions on file; especially the Judicial Admissions in verified pleadings, together with the affidavits, to determine the facts and the truth.

26. Failing to give the Appellant the mandated Addendum for a LOANLINER consumer agreement is not only a violation of LOANLINER's guidelines, it is also a violation of a federal code that the Courts cannot ignore. Therefore, no legitimate and enforceable Membership and Account Agreement ever existed between SCFCU and the Appellant. Because no valid credit agreement ever existed, this case must be remanded back to the Circuit Court and under the direction of the Circuit Court, SCFCU must;

- (a) Return all the interest it collected from the Appellant from 2002.
- (b) Return all the credit life insurance premiums it collected from the Appellant from 2002.
- (c) Return the overpayment on the mobile home purchase, all the interest paid and the credit life insurance premiums it collected.
- (d) Reasonably compensate the Appellant for 4 years of aggravation.
- (e) Seek restitution from its employees for any loss it incurs due to its own employees actively perpetrating these despicable and criminal acts upon the Appellant. SCFCU's personnel in Charleston, SC that handled the loan in 2002, knew they never gave the Appellant an Addendum. The loan was done by phone and closed by dealer.

## V. CONCLUSION

27. Somehow the Lower Court forgot this case originated in the Magistrate Court and was sent to the Circuit Court because the amount of money involved exceeded the Magistrate Court's jurisdiction to have a **Jury Trial** to settle the matter.

28. Since the transfer in 2011, no **Jury Trial** was ordered by any Circuit Court Judge and the Appellant has suffered one indignity after another in the Circuit Court as a Pro Se Litigant. It was and still is SCFCU's responsibility, obligation and duty to comply with LOANLINER and Federal lending mandates and/or guidelines; as well as, "Substantially Comply" with South Carolina's relevant Code of Laws and not the Appellant's.

29. Therefore, for all the reasons stated in the Appellant's *Motion to Remand* and in this *Memorandum with Citations of Authorities*, the Appellant prays the Appellant Court will grant the *Motion to Remand* this Civil Action Case #2015-001112 back to the Court of Common Pleas, in Orangeburg, South Carolina so that all the issues relative to this action can be ruled upon and properly preserved for Appellate Review or have the **Jury Trial** that has been denied for over 4 years.

30. One way or another this case must end and the injustices and indignities associated with it. At this point in time, all the Appellant wants to do is get on with her life.

Thank you,

**Note:** Since allegations have been stated with specificity and particularity, this "*Memorandum with Citations of Authorities*" will be verified.

June 6, 2016

Respectfully submitted,

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

VI.

**NOTARY CERTIFICATION**

*IN WITNESS WHEREOF*, The undersigned, being duly *SWORN*, and under the *PENALTY OF PERJURY* declares the facts in her "Memorandum with Citations of Authorities Supporting Motion to Remand" are true and correct as of her own knowledge. When it comes to matters stated therein that are based upon information and/or belief; as to those matters, she believes them to be true. Accordingly, based on the stated facts; Re: Case No. 2015-001112, has signed, sealed, attested and executed this 6<sup>th</sup> day of June in the year 2016 in City and County of Orangeburg, in the State of South Carolina.

Rule 11(c), SCRPC 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."

Appellant's Signature: Dorothy Harley Sistrunk

Notary's Signature as Witness (1): Kir Penn

*Signed, sealed and delivered in the presence of:*

**STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG**

On 6-6-16 before me appeared Dorothy Sistrunk and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and by her signature on the "Memorandum with Citations of Authorities Supporting Motion to Remand" and this Notary Certification presents this document to the Appellate Court. WITNESS my hand and official seal.

Notary's Signature Kir Penn

Commission Expires 10-17-21



