

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

JUN 20 2016
SC Court of Appeals

Appellate 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.

RETURN TO APPELLANT'S MOTION TO REMAND

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Respondent South Carolina Federal Credit Union ("SCFCU") hereby files this return to Appellant's Motion to Remand (the "Motion") filed on June 6, 2016. Pursuant to her Motion, Appellant is requesting that this Court, without ruling on Appellant's appeal, remand the case back to the circuit court so that court may, apparently, issue rulings that are more to Appellant's liking.

Appellant's Motion seeks remand on three general bases, that: (1) she was entitled to a jury trial; (2) the trial court failed to rule on certain matters such as Appellant's affirmative defenses and counterclaims; and (3) the trial court erred in

considering (or failing to consider) certain facts. Unfortunately for Appellant, none of her asserted arguments constitute a valid basis for remand.

The case law on appellate motions for remand in South Carolina is limited. Among the narrow set of circumstances in which remand has been found to be appropriate is that where remand is necessary to allow a trial court to rule on post-trial motions which were pending at the time an appeal is filed. For example, in *Otten v. Otten*, 287 S.C. 166, 337 S.E.2d 207 (1985), remand was found to be proper where an appellant filed a notice of appeal along with Rule 59 and 60 motions. In that case, remand was found to be jurisdictionally necessary to allow the trial court to rule on those post-trial motions, with the appeal dismissed without prejudice. *Id.*

Here, no such “unruled upon” motions remain pending with the trial court. Following a trial on the merits of this action, an order granting judgment in favor of SCFCU was filed by the trial court on March 26, 2015 (the “Order”). On April 6, 2015, Appellant filed a “Motion To Alter Or Amend The Order Of Judgment Pursuant To Rule 59(e), SCRPC.” On April 8, 2015, Appellant filed a “Motion For A New Trial Pursuant To Rule 52(b), SCRPC And In Conjunction With Her Motion To Alter Or Amend The Order Of Judgment Pursuant To Rule 59(c), SCRPC That Was Filed On April 6, 2015.” Both motions were denied by order of the trial court filed on April 20, 2015. On May 1, 2015, Appellant filed a “Motion To Set Aside The Judgment And Vacate The Order Ending This Case Due To Judicial Errors That Do Not Comply With Rules 42(b), 52(b), 54(b), 56(c)-(d), 60(b)(3), SCRPC, South Carolina’s Policies of Law, Precedents And The 7th Amend. To The Constitution Of

The United States Of America.” Appellant’s May 1 motion was denied by the trial court’s order filed on May 21, 2015, which further clarified that any other motions filed by Appellant, as well as any counterclaims of Appellant, were denied. On May 22, 2015, Appellant filed her Notice of Appeal.

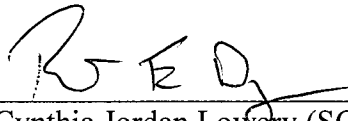
As the above procedural history from the trial level clearly shows, there were no outstanding, “unruled upon” motions pending with the trial court at the time Appellant’s Notice of Appeal was filed. As such, there is no reason to remand back to the trial court for further proceedings.

Moreover, all of the bases that Appellant asserts in support of her Motion have already been argued as part of the appellate briefs Appellant has submitted during the course of this appeal. As such, Appellant has previously adopted the position that those issues, on which she now seeks remand, are properly before this Court for appellate review. It follows that Appellant should now be estopped from asserting that it is necessary for the trial court to address such issues as a basis for remand.

Finally, while—for the reasons set forth above—the relief requested in Appellant’s Motion should be denied, the Motion is correct on one count, stating: “One way or another this case must end” (Appellant’s Memorandum in Support of Motion, ¶ 30). On this point, SCFCU is in agreement. This meritless appeal has been prolonged by Appellant’s failure to comply with the South Carolina Appellate Court Rules, as well as this Court’s orders, with respect to furnishing a complete, accurate record on appeal, which, as of the date of this Return, SCFCU has still not

yet received.¹ Through the baseless filing of this Motion, Appellant is further drawing out the appellate process and wasting the time and resources of all parties, along with those of the Court. Therefore, in addition to denying the Motion, SCFCU respectfully requests that the Court, in recognition of Appellant's failure to prosecute her appeal in accordance with this Court's orders and rules, grant it further relief by dismissing this appeal.

Respectfully submitted,



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Attorneys for Respondent South Carolina
Federal Credit Union

June 16, 2016

¹ On February 1, 2016, this Court entered an order requiring that Appellant serve an amended record on appeal that both (1) omits matters not designated by either party and (2) includes all matters designated by both parties within twenty (20) days. Following Appellant's failure to do so, SCFCU filed a motion to dismiss. On June 1, 2016, the Court entered a second order requiring that Appellant serve an amended record on appeal in compliance with the Court's February 1 Order. Appellant has thus far failed to do so.

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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 *Return to Appellant's Motion to Remand* 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

June 16, 2016



Julie M. Chanson
MOORE & VAN ALLEN, PLLC
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Moore & Van Allen

June 16, 2016

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JUN 20 2016

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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**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**

Dear Ms. Kitchings:

Enclosed for filing, please find the original and seven (7) copies of Respondent's Return to Appellant's Motion to Remand.

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 pleading on the pro se appellant.

Sincerely,

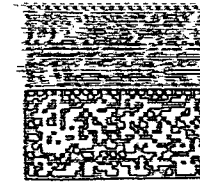
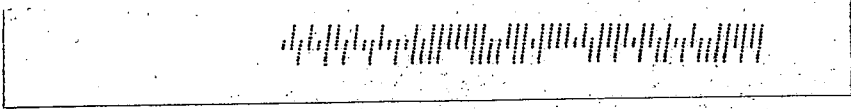
MOORE & VAN ALLEN, PLLC



Reid E. Dyer

Enclosures – as stated

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



Master

06/16/2016
Mailed From 29401
US POSTAGE

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The Honorable Jenny Abbott Kitchings
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