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

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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 REPLY TO RESPONDENT'S RETURN TO MOTION TO REMAMD

June 30, 2016

Dorothy Harley Sistrunk
423 Bayne Street
Orangeburg, South Carolina 29115
Ph: (803) 268-0716
Fx: (803) 534-6727

Moore & Van Allen, PLLC
Reid E. Dyer
78 Wentworth Street
Post Office Box 22828 (29413-2828)
Charleston, SC 29401-1428
Ph: (843) 579-7045
Fx: (843) 579-8754
Attorneys for Respondent

Comes now the Appellant, Dorothy Harley Sistrunk, to file her *"Appellant's Reply To Respondent's Return To Motion To Remand"*, i.e., South Carolina Federal Credit Union (hereafter also called SCFCU) Respondent v. Dorothy Harley Sistrunk, Appellant - Case 2015-001112. This *"Reply"* is based upon the following history, facts and reasons.

I. BRIEF PROCEDURAL HISTORY RELATIVE TO THE AMENDED APPEAL ISSUE CURRENTLY BEFORE THE APPELLATE COURT

1. With two cases pending in the Appellate Court, the Appellant is now accustomed to receiving complaints from Respondents' all geared toward "Dismissing the Appellant's Appeal" on one procedural or technical ground after another. The Respondent complaints the Appellant has seen to date are inconsistent with well established precedent and Rule 8(f), SCRCP.

> **(a)** 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)).
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> **(b)** *Rule 8(f), SCRCP,* clearly states in pertinent parts.... "[A]ll pleadings shall be so construed as to do substantial justice to all parties."
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> **(c)** "[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)** "[T]he trial judge should inform a pro se litigant of the proper procedure for the action he or she is obviously attempting to accomplish." *Breck v. Ulmer,* 745 P.2d 66, 75 (Alaska 1987) "[C]ourt errs if court dismisses pro se litigant without instructions of how pleadings are deficient and how to repair pleadings." *Plaskey v CIA,* 953 F .2nd 25.
>
> **(e)** "[I]mplicit in the right to self-representation is an obligation on the part of the court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training. While the right "does not exempt a party from compliance with relevant rules of procedural and substantive law," *Birl v. Estelle,* 660 F.2d 592,, 593 (5th Cir.1981)
>
> **(f)** "[T]rial courts possess "[a] discretionary range of control over parties and proceedings" that allows reasonable accommodations to self-

> represented litigants." _Blair v. Maynard_, 324 S.E.2d 391, 396 (West Virginia 1984) "[W]hen a trial judge is vested with discretion; but his ruling reveals no discretion was in fact exercised, an error of law has occurred." _Ballon Plantation, Inc. v. Head Balloons, Inc._, 303 S.C. 152, 155, 399 S.E.2d 439, 441 (1990).

2. On December 23, 2015, Respondent filed a *Motion to Dismiss with an "Alternative"* and two (2) exhibits marked as A and B. "A" is a copy of Appellant's Proof of Service served December 8, 2015 and "B" is designated as *Courtesy Copies of Items Designated by SCFCU but not Included in the Record on Appeal Served December 8, 2015.* {Review Respondent's Filed Motion Pages 1- 9 and Filed Exhibits A & B}

3. In a letter dated December 23, 2015, that is addressed to the Honorable Jenny Abbot Kitchings, Clerk of Court, the stated ***"Alternative"*** is, *"[C]ompel Appellant to Include in the Record on Appeal All Items Designated by Respondent and Strike Items Included by Appellant in the Record on Appeal Not Previously Designated."* [See Attached Exhibit 53]

4. On January 8, 2016, Respondent filed a *Reply* to *Appellant's Return & Objection to Motion to Dismiss* and in the letter addressed to the Honorable Jenny Abbot Kitchings, Clerk of Court, Respondent restates the ***"Alternative"*** again;

> "[E]nclosed for filing, please find the original and seven (7) copies of Respondent's *Reply to Appellant's Return & Objection to Motion to Dismiss or, in the Alternative, Compel Appellant to Include in the Record on Appeal All Items Designated by Respondent and Strike Items Included by Appellant in the Record on Appeal Not Previously Designated."* {See Attached Exhibit 54}

5. In an Appellate Court Order, dated 2/11/16, the *Motion to Dismiss* was denied. "[H]owever, the motion to require Appellant to serve and file an amended record on appeal that includes all items designated by both parties and omits items not previously designated by the parties is granted." {See Attached Exhibit 55}

6. Based on the Appellant's *Designated Items* for the *Record on Appeal,* filed on June 22, 2015, there is nothing to omit and the items the Respondent wanted the Appellant to include in the *Record on Appeal* and pursuant to Rule 212(c), SCACR, were filed as a Supplement in an Appendix to the *Record on Appeal* that is stamped and received by the Appellate Court on March 01, 2016. {See Attached Exhibits 56, 57 & 58}

> *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."

7. As stated above in ¶6, on June 22, 2015, the Appellant served her *Items Designated for the Record on Appeal.* The reason why the Appellant has nothing to omit is because all the items the Appellant needs for her Appeal are covered on p. 6, §**VI.**, in the *Items Designated* that are in Lower Court's records from December 2011 to the present. The relevant parts of page 6 and §**VI.** are reproduced below in their entirety.

> **"VI. OTHER RECORDS, DOCUMENTS, EXHIBITS AND/OR WRITINGS FILED IN COURT OR ANY LETTER/S SENT AND/OR MAILED THAT ARE RELEVANT TO THIS ACTION AND APPEAL FROM DECEMBER OF 2011 TO THE PRESENT**
>
> The following items will be included in the Appellant's Record on Appeal
>
> **(a)** Any subpoena/s or request for subpoena/s if allowed by the Appellate Court.
>
> **(b)** Any note/s written by a Judge in the Court's record/s or file/s that are relative to Case 2011-CP-38-1392.
>
> **(c)** Any other matter contained within the Court's records or files that are relative to Case 2011-CP-38-1392.
>
> **(d)** Notice of Motion Roster Publications issued by the Court from 2011-2015, if allowed by the Appellate Court.
>
> **VII. COMMENT, EXPLANATION & CONCLUSION**
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> **1.** As I have previously stated, other than the Rules of Civil and Appellate Procedure, I am proceeding in this matter without any guidance or instructions whatsoever. The **Designation of Matters** format that is seen in this presentation

to the Appellate Court is based on information placed online by litigants in other states; most notably, Texas, Missouri and Florida. Therefore, in the interest of Justice, I ask the Appellate Court's indulgence and understanding of my best effort defense and factual presentations. I cannot find an Appellate Handbook for Pro Se Litigants that is published by South Carolina's Judicial System.

2. I certify that this Designation of Matters to be Included in the Record on Appeal contains no matter which is irrelevant to this appeal." [END OF INSERT]

8. It is clearly stated in bold capital print in §**VI** that the Appellant's *Record on Appeal* will include "**[O]THER RECORDS, DOCUMENTS, EXHIBITS AND/OR WRITINGS FILED IN COURT OR ANY LETTER/S SENT AND/OR MAILED THAT ARE RELEVANT TO THIS ACTION AND APPEAL FROM DECEMBER OF 2011 TO THE PRESENT."** The key words are: **[FILED IN COURT]**.

(a) *Rule 210(c), SCACR*, clearly states 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.** Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate by appellant. Each page of the Record on Appeal shall be numbered consecutively beginning with the index. **Where a portion of a page of the trial transcript, or a page of an exhibit or document, is to be included in the Record on Appeal, the entire page shall be included. When a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record, to include the caption and signature(s)**; provided, however, that the portion of a pleading showing verification or service shall not be included unless relevant to the appeal." [**Boldness** added for emphasis]

(b) *Rule 210(h), SCACR*, states in relevant 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."

(c) *PIEDMONT TRIAD WATER AUTH. v. SUMNER HILLS*, 543 SE 2d 844 (NC S. Ct. 2001) "[S]ee *Mooneyham v. Mooneyham*, 249 N.C. 641, 643, 107 S.E.2d 66, 67 (1959) ("The responsibility for sending the necessary parts of the record proper is upon the appellant."); *Ronald G. Hinson Elec., Inc. v. Union County Bd. of Educ.*, 125 N.C.App. 373, 375, 481 S.E.2d 326, 328 (1997) ("it is the responsibility of each party to

ensure the record on appeal clearly sets forth evidence favorable to that party's position")."

(d) *Fluker v. Wolff*, 46 So. 3d 942 (Ala. S. Ct. 2010) "[I]t is well settled that this Court will not reverse a trial court's judgment based on arguments not presented to it. *Lloyd Noland Hosp. v. Durham*, 906 So.2d 157 (Ala. 2005). Additionally, it is the appellant's burden to offer the appellate court a record sufficient to support a reversal. *Parker v. Williams*, 977 So.2d 476 (Ala.2007)."

9. Even though, the Clerk's stamp on some are barely readable, all items in the Appellant's appeal; that are relevant to her appeal, bear the mark and stamp of the Clerk of Court. This includes the history of this case that began in the Magistrate Court and sent to the Circuit Court for a **Jury Trial**. There is no **Jury Trial** in the Court's Records. {R. pp. 1-12} In addition, the Respondent did not object to the wide range and scope of the Court's Records the Appellant can file in her Record on Appeal. {See Filed Briefs}

(a) *Hunt v. Forestry Com'm*, 595 SE 2d 846 (Ct.App. 2004) "[W]hile a trial court's findings of fact in a nonjury action at law should not be disturbed on appeal unless they are without evidentiary support, a reviewing court is free to decide questions of law with no particular deference to the trial court. *See* *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 296, 468 S.E.2d 292, 295 (1996); *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000); see *Okatie River, L.L.C. v. Southeastern Site Prep, L.L.C.*, 353 S.C. 327, 334, 577 S.E.2d 468, 479 (2003) ("In an action at law, tried without a jury, the appellate court standard of review extends only to the correction of errors of law."); *State Farm Mut. Auto. Ins. Co. v. Moorer*, 330 S.C. 46, 51, 496 S.E.2d 875, 878 (Ct.App.1998) ("In legal actions, our scope of review extends only to the correction of errors of law.")."

(b) *B & B Liquors, Inc. v. O'NEIL*, 603 SE 2d 629 (Ct. App. 2004) "[I]n *Bowen v. Lee Process Systems Co.*, 342 S.C. 232, 536 S.E.2d 86 (Ct.App.2000), we explained: On appeal from the grant of summary judgment, an 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. Where, as here, the trial court fails to articulate the reasons for its action on the record or enter a written order outlining its rationale, we simply cannot perform our designated function....."

(c) *Bowen v. Lee Process Systems Co.*, 536 SE 2d 86 (Ct. App. 2000) "[I]t is our duty to undertake a thorough and meaningful review of the trial court's order and the entire record on appeal."

10. Sometimes between June 3rd and 8th, 2016, the Appellant received a threatening Order from the Appellate Court relative to her Appeal stating in pertinent parts; "[A]ppellant has failed to comply with the South Carolina Appellate Court Rules and with the Court's February 11, 2016 order requiring Appellant to serve and file an amended record on appeal that includes all items designated by both parties and omits items not previously designated by the parties is granted." {See Attached Exhibit 51}

11. Pursuant to Rules 210(c) & (h), SCACR, the Appellant has nothing to omit and has already included all the relevant Court Records pertinent to her Appeal in accordance with p. 6, §**VI** in her *Designated Items To Be Included in the Record On Appeal*, {Review R. Vols. I-III, pp. 1-669} and pursuant to Rule 212(c), SCACR, filed a Supplement as an Appendix containing all the documents the Respondent sent her that the Respondent wanted included, {See Appendix to Record on Appeal Dated: March 01, 2016 & Review Attached Exhibits 56-58}.

12. After receiving the Appellate Court's latest Order, the Appellant concluded there must be some other way to amend the Appeal other than Supplementing the Appeal as described in Rule 212, SCACR and other than the supplement method that was discovered from online sources. {See Attached Exhibits 59 & 60}

> **(a)** Hall v. UNUM Life Ins. Co. of America, 300 F. 3d 1197 (10th Cir. 200) "[T]he party seeking to supplement the record bears the burden of establishing why the district court should exercise its discretion to admit particular evidence by showing how that evidence is necessary to the district court's de novo review."
>
> **(b)** US v. Kennedy, 225 F. 3d 1187 (10th Cir. 2000) "[S]ee In re Capital Cities, 913 F.2d 89, 96 (3d Cir.1990). In Anthony v. United States, 667 F.2d 870, 875 (10th Cir.1981), *cert. denied,* 457 U.S. 1133, 102 S.Ct. 2959, 73 L.Ed.2d 1350 (1982), we stated Rule 10(e) "allows a party to supplement the record on appeal" but "does not grant a license to build a new record." *Id.*" (citing cases)."

Anthony v. United States, 667 F. 2d 870 (10th Cir. 1981) "[F].R.A.P. Rule 10(e), 28 U.S.C.A., allows a party to supplement the record on appeal. However, it does not grant a license to build a new record. Fleming v. Gulf Oil Corporation, 547 F.2d 908 (10th Cir. 1977), Borden, Inc. v. Federal Trade Commission, 495 F.2d 785 (7th Cir. 1974)."

13. Since; based on everything the Appellant has read and reviewed from case histories around the country, she has "Substantially Complied" with all the Appellate Court's Orders and based on the rules and precedents, supplementing the record is the most preferred method, procedure and accepted process to amend the *Record on Appeal.*

> *IN RE CAPITAL CITIES/ABC, INC.'S APPLICATION FOR ACCESS TO SEALED TRANSC.*, 913 F. 2d 89 (3rd Cir. 1990) "[W]e have more often than not construed Rule 10(e) to prohibit this Court from adding to the record anything that the district court has not considered. *See Bass,* 868 F.2d at 52 & n. 15 (instead of employing Rule 10(e), we remanded the case to the district court so that a party could add to the record there); *Fassett,* 807 F.2d at 1165 (quoting 9 J. Moore, Moore's Federal Practice ¶ 210.08(1), at 10-55 (2d ed. 1985)) (neither district court nor this Court could use Rule 10(e) "`to add to the record on appeal matters that did not occur [before the district court] in the course of proceedings leading to the judgment under review'"); *Rush,* 487 F.2d at 687 ("Rule 10(e) is apparently intended to `supplement' a record, not to supply in substance a large new record never before the District Court and never considered by it.").

14. On June 6, 2016, the Appellant filed a *Motion to Remand.* It seems to the Appellant, that either the Appellate Court or the Respondent wants records the Appellant did not receive and does not have. If this is the case, then Remand is a necessity and not an option because the Record is uncertain, must be clarified and the form Court Orders do not contain specific findings of fact. {R. pp. 1-12} Claiming the defendant is confused is not a finding of fact. {R. p. 4, ¶1} Especially, since no Addendum was ever given to the Appellant and there is no mobile home purchase in SCFCU's account records or in SCFCU's court records. {Review R. Vols. I-III, pp. 1-669 & Appendix pp. 21-242}

> **(a)** Marlar v. State, 653 SE 2d 266 (SC S. Ct. 2007) "[T]he cases this Court remanded for specific findings were unique cases in which the Court attempted to remind circuit court judges and parties that: (1) specific

findings of fact and conclusions of law were required; and (2) a Rule 59(e) motion must be filed if issues are not adequately addressed in order to preserve the issues for appellate review. Although the cases apparently have not accomplished the Court's goal, they do not change the general rule that issues which are not properly preserved will not be addressed on appeal. In fact, in *Pruitt,* this Court stated in a footnote, "In vacating and remanding in this case, we are not abandoning the general rule that issues must be raised to, and ruled on by, the post-conviction judge to be preserved for appellate review. The extraordinary action we take today is necessary only because our opinion in [*McCray v. State,* 305 S.C. 329, 408 S.E.2d 241 (1991)] is not being followed." *Pruitt v. State,* 310 S.C. at 255, 423 S.E.2d at 128."

(b) *Carey v. SNEE FARM COMMUNITY FOUNDATION*, 694 SE 2d 244 (Ct.App.2010) "[I]n *Bowen v. Lee Process Systems Co.,* this court stated: On appeal from the grant of summary judgment, an 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. Where, as here, the trial court fails to articulate the reasons for its action on the record or enter a written order outlining its rationale, we simply cannot perform our designated function. We therefore hold a trial court's order on summary judgment must set out facts and accompanying legal analysis sufficient to permit meaningful appellate review. 342 S.C. 232, 235-37, 536 S.E.2d 86, 87-88 (Ct.App.2000) (footnotes omitted). The court in *Bowen* vacated the order granting summary judgment and remanded "the case to the trial court for a written order identifying the facts and accompanying legal analysis upon which it relied...." *Id.* at 241, 536 S.E.2d at 91; *see B & B Liquors, Inc. v. O'Neil,* 361 S.C. 267, 271-72, 603 S.E.2d 629, 631-32 (Ct.App.2004) (citing *Bowen,* this court vacated and remanded for a written order where trial court granted summary judgment by using a form order)."

II. RELEVANT FACTS FOR THIS REPLY TO RESPONDENT'S RETURN TO MOTION TO REMAND

15. Not only must this case be Remanded to clarify the record (the Appellant cannot present something the Appellant never received) and a **Jury Trial**, Remand is necessary to avoid a miscarriage of justice. **FACT #1:** There is no filed complaint for a February 28, 2003 fixed interest rate mobile home loan. {R. pp. 14-18 & 35-39}

(a) *EEOC v. State of Del. DHSS*, 865 F. 2d 1408 (3rd Cir. 1989) "[W]e review a decision to grant a new trial based on the weight of the evidence for an abuse of discretion, but we "must ensure that the trial court has not simply substituted its judgment of the facts and the

credibility of the witnesses for those of the jury; in other words, the new trial must be necessary to avoid a miscarriage of justice."

> **(b)** <u>United States v. Gerald</u>, 624 F. 2d 1291 (5th Cir. 1980) "[T]here is no hard and fast rule for determining whether error is plain; the determination turns upon the facts of a particular case. *Id.* The plain error rule is not a run-of-the-mill remedy. The intention of the rule is to serve the ends of justice; therefore it is invoked "only in exceptional circumstances [where necessary] to avoid a miscarriage of justice"

> **(c)** <u>Hero Lands Company v. Texaco, Inc.</u>, 310 So. 2d 93 (La: S. Ct. 1975) "[P]leadings must be reasonably construed so as to afford litigants their day in court, to arrive at the truth and to avoid a miscarriage of justice. <u>Budget Plan of Baton Rouge, Inc. v. Talbert</u>, 276 So.2d 297 (La.1973)."

16. **<u>FACT #2</u>:** There is no statement, affidavit or witness testimony in the Lower Court's Records and none in Briefs filed in the Appellate Court; including the latest Brief filed, verifying SCFCU complied with TILA's 15 U.S.C. § 1601(a). **<u>Fact #3</u>:** There is absolutely no evidence in filed Court Orders, that the Lower Court considered SCFCU's TILA violations. {R. pp 1-12} This alone is grounds for a Reversal or Remand.

> **(a)** <u>King v. State of Cal.</u>, 784 F. 2d 910 (9th Cir. 1986) Three theories have been used by other circuits to determine when the statutory period commences: (1) when the credit contract is executed; (2) when the disclosures are actually made (a "continuing violation" theory); (3) when the contract is executed, subject to the doctrines of equitable tolling and fraudulent concealment (limitations period runs from the date on which the borrower discovers or should reasonably have discovered the violation).

> **(b)** <u>Koons Buick Pontiac GMC, Inc. v. Nigh</u>, 543 US 50 (2004) "[C]ongress enacted TILA in 1968, as part of the Consumer Credit Protection Act, Pub. L. 90-321, 82 Stat. 146, as amended, 15 U. S. C. § 1601 *et seq.*, to "assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit," § 102, codified in 15 U.S.C. § 1601(a). The Act requires a creditor to disclose information relating to such things as finance charges, annual percentage rates of interest, and borrowers' rights, see §§ 1631-1632, 1635, 1637-1639, and it prescribes civil liability for any creditor who fails to do so, see § 1640."

17. Not only does the Respondent's chronology of all the motions filed by the Appellant that were denied by the Lower Court, on pp. 2-3 in ¶2 verifies the Lower

Court's errors to the raised issues, the chronology also verifies the Lower Court's errors are preserved for an Appellate Reversal or Remand for a **Jury Trial** on the merits and not a dismissal for technical reasons. {See R. Vols. I-III, pp. 1-669}

> **(a)** *Elam v. South Carolina Dept. of Transp.*, 602 SE 2d 772 (SC S. Ct. 2004) "[S]econd, a great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court. *E.g., Wilder Corp. v. Wilke,* 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.")"
>
> **(b)** *SCDOT v. First Carolina Corp. of SC*, 641 SE 2d 903 (SC. S. Ct. 2007) "[F]urther, it is a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error. *Parks v. Morris Homes Corp.,* 245 S.C. 461, 471, 141 S.E.2d 129, 134 (1965). ------ "There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002)." **The Appellant has met Justice Toal's 4 basic requirements for Appellate Review or Remand and not an Appellate dismissal.**

18. Notwithstanding the possibility that documents may have been filed that the Appellant never received, a violation of Rule 5(a)(11), SCRCP, if this is proven true, this brings into question the validity of the Respondent's demands upon the Lower Court and the Appellate Court; as well as, the Rulings and Judgment. {R. Vol. III, pp. 467-625}

> *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.*

19. By dismissing this case, the Appellate Court would be a participant in a **Miscarriage of Justice** rather than an **Adjudicator of Justice**. A premature dismissal of this case that is clearly based on a misunderstanding and a misreading of the Appellant's *Designated Items* for this Appeal by the Respondent [Review p. 6, §**VI**], and is clearly a product of "Plain Judicial Error" by the Lower Court. {Review R. pp. 1-12}

20. It is also the duty of the Courts to prevent a **Manifest Injustice** and not become a participant in it. {See also R. Vol. II, pp. 384-432 & Vol. III, pp. 467-625}

> **(a)** *Orlando v. Boyd*, 466 SE 2d 353 (SC S. Ct. 1996) "[A] sanction of dismissal is too severe if there is no evidence of any intentional misconduct. *See* Dunn v. Dunn, 298 S.C. 499, 381 S.E.2d 734 (1989)...;"

> **(b)** *Wheaton v. SZTYKOWSKI*, (Dist. Ct., D. R.I. 2004) "[T]his is not a case where a party has ignored or made virtually no effort to comply with the court's orders. ----- The court, therefore, considering the "totality of events," Young v. Gordon, 330 F.3d at 81, finds that the sanction of dismissal is too severe a penalty for Mrs. Wheaton's failure to fully comply with the court's orders."

> **(c)** *Joyner v. Glimcher Properties*, 589 SE 2d 762 (Ct.App.2002) "[I] conclude dismissal is only warranted when there is at least some evidence of unreasonable neglect, which I find totally lacking in this case. Therefore, I would rule that dismissal is unduly harsh, resulting in a manifest injustice to Appellant."

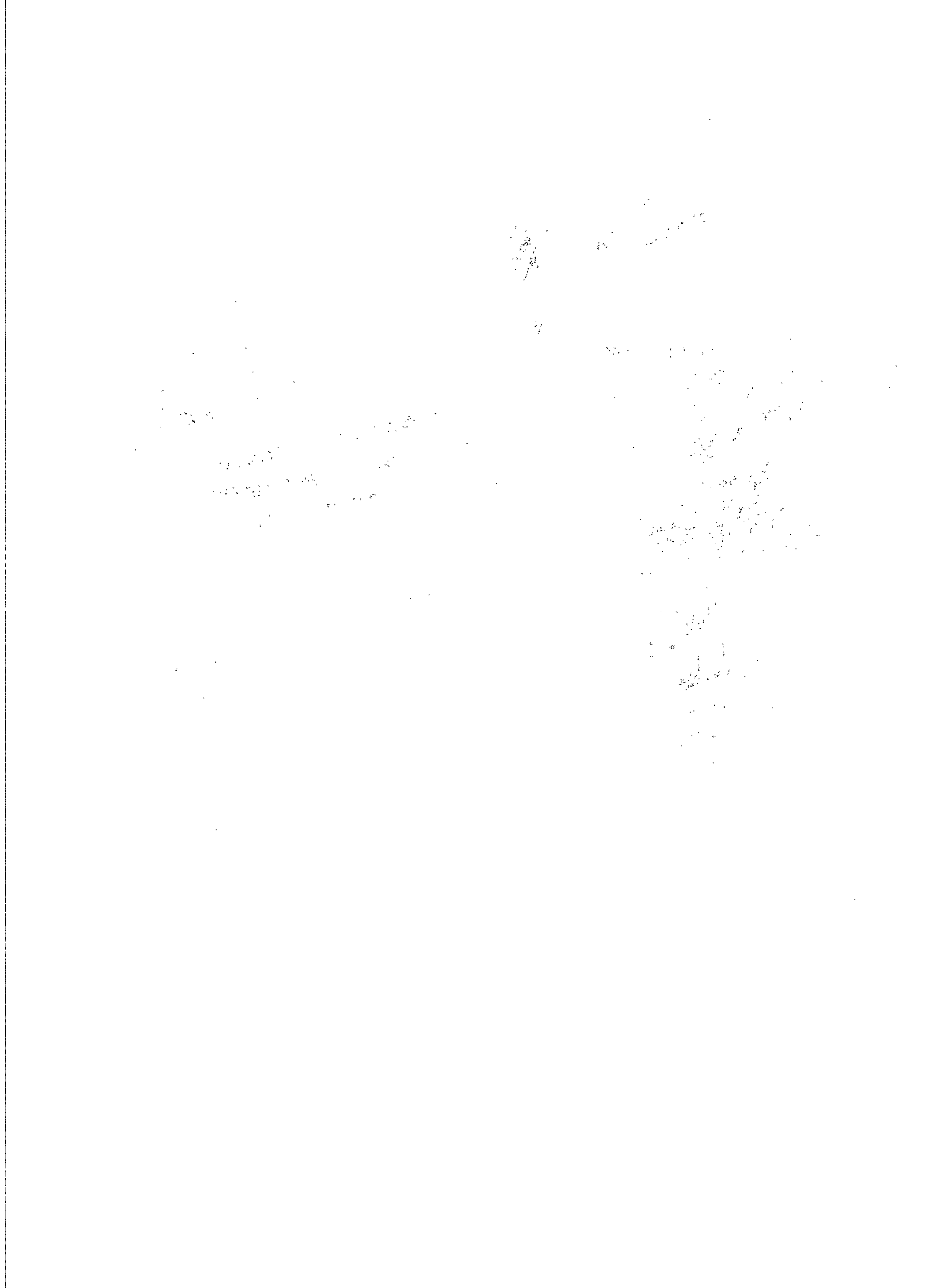
> **(d)** *Max's Seafood Cafe By Lou-Ann, Inc. v. Quinteros*, 176 F. 3d 669 (3rd Cir. 1999) "[A]ccordingly, a judgment may be altered or amended if the party seeking reconsideration shows at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; **or (3) the need to correct a clear error of law or fact or to prevent manifest injustice**." [**Boldness** added for emphasis]

21. In the Respondent's filed *Return to Motion to Remand*, on p. 3, in ¶2, it is stated in pertinent parts; "[M]oreover 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 these issues, on which she now seeks remand are properly before the court for appellate review." Even the Respondent cites this case is ripe for Appellate review. Therefore, it should not be dismissed for technicalities and/or misunderstandings and/or misreadings.

22. In addition to the above, the Appellant position is also based upon the Lower Court's numerous failures that are violations of the Rules of Civil Procedure, i.e., Rules 13(a), 38(a)-(d), and 42(b), SCRCP, the Rules of Evidence, i.e., Rules 103(a)(1)-(2), 201 and Rule 614(a)-(b), SCRE and finally, South Carolina's Constitution Article I, Section 14. The Appellate Court can even add to this list of failures, a failure to consider the provisions of Rule 13(a), SCRMC....all of which mandate a REVERSAL or a REMAND FOR A JURY TRIAL ON THE MERITS {Review R. pp. 20 & 40} and not a dismissal by the Appellate Court, especially for technical reasons.

> **(a)** *Johnson v. SC National Bank*, 354 SE 2d 895 (SC S. Ct. 1987) "[I]n *Landers v. Goetz*, 264 N.W. (2d) 459 (N.D. 1978), the court construed Rules 13(a) and 38(b), N.D.R. Civ. P., which are identical to Rules 13(a) and 38(b), SCRCP, as to this issue. The plaintiff in *Landers* brought an equitable action for the determination of title to real estate. The defendant counterclaimed for money damages, a legal remedy, but did not request a jury trial. The plaintiff replied, requesting a jury trial of the counterclaim. The court held *either* party may demand a jury trial of a compulsory legal counterclaim. *See also Forrest v. Fuchs*, 126 Misc. (2d) 8, 481 N.Y.S. (2d) 250 (1984) [right to jury trial of legal counterclaim interposed in equitable action belongs to both defendants and to plaintiffs]; *Noto v. Headley*, 28 Misc. (2d) 294, 213 N.Y.S. (2d) 936 (1961) [plaintiff entitled to jury trial as of right on legal counterclaim]; *Annot.*, 17 A.L.R. (3d) 1321 ----- We agree and hold that both plaintiffs and defendants have a right to a jury trial of issues raised in a compulsory legal counterclaim interposed in an equitable action."
>
> **(b)** *C&S REAL ESTATE SERVS. INC. v. Massengale*, 350 SE 2d 191 (SC S. Ct. 1986) "[R]ule 13(a), SCRCP, now requires a defendant to plead as a counterclaim any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim. He is entitled to a jury trial on these compulsory counterclaim if legal in nature even though asserted in an equitable action. *See, e.g., Amoco Oil Co. v. Torcomian*, 722 F. (2d) 1099 (3d Cir.1983); *Lisle Mills, Inc. v. Arkay Infants Wear, Inc.*,



90 F. Supp. 676 (E.D.N.Y. 1950); *Hightower v. Bigoney*, 156 So. (2d) 501 (Fla. 1963). The trial judge properly held appellant was entitled to a jury on the compulsory counterclaim at law."

(c) *NC FED. SAVINGS & LOAN ASSOC. v. DAV CORP.*, 381 SE 2d 903 (SC S. Ct. 1989) "[A] party does not waive its right to a jury trial on a counterclaim asserted in an equity action if the counterclaim is legal and compulsory in nature."

(d) *Cooper v. Poston*, 483 SE 2d 750 (SC S. Ct. 1997) "[S]outh Carolina Constitution art. I, § 14 provides "[t]he right to a trial by jury shall be preserved inviolate." This guarantee preserves the right to a jury trial in those cases where jury trials were allowed at the time of the adoption of the Constitution in 1868. *Medlock v. 1985 Ford F-150 Pick Up*, 308 S.C. 68, 417 S.E.2d 85 (1992). Under the common law, legal actions for the recovery of money were triable by a jury. *Collier v. Green*, 244 S.C. 367, 137 S.E.2d 277 (1964); *Bell v. Atlantic Coast Line R. Co.*, 202 S.C. 160, 24 S.E.2d 177 (1943)."

III. CONCLUSION

23. The Lower Court made a grievous Error of Law, Judgment and Fact, by relying solely on an attorney's presentation, rather than on the Court's Record. This is a violation of Rules 52(a), and 56(c)-(d), SCRCP. {See also R. pp. 3-5}

> *Bowers v. Bowers*, 403 SE 2d 127 (Ct.App. 1991) Mere allegations, denied by the other party, are not evidence. *See Griffin v. Van Norman*, ___ S.C. ___, ___, 397 S.E. (2d) 378, 379 (Ct. App. 1990) ("Allegations in a [c]omplaint denied in answer are evidence of nothing."). Arguments of counsel are also not evidence. *See McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered.");

24. Therefore, based on the facts and reasons stated herein, this case should not be dismissed, rather the Appellant's *Motion To Remand* this case for its long ignored DEMAND for a JURY TRIAL should be granted. {R. pp. 20 & 40} Thank You.

June 30, 2016

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

ORDER

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

FILED
SF 6/1/16

Exhibit 51

Moore&VanAllen

Reid E. Dyer
Attorney at Law

T 843 579 7045
F 843 579 8754
reiddyer@mvalaw.com

Moore & Van Allen PLLC

78 Wentworth St.
Charleston, SC 29401-1428

Mailing Address:
Post Office Box 22828
Charleston, SC 29413-2828

December 23, 2015

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

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:

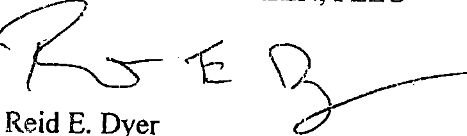
Enclosed for filing, please find the original and seven (7) copies of Appellant South Carolina Federal Credit Union's *Motion to Dismiss or, in the Alternative, Compel Appellant to Include in the Record on Appeal All Items Designated by Respondent and Strike Items Included by Appellant in the Record on Appeal Not Previously Designated.* 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

COPY

CHARLESTON\627983v1

Exhibit 53

Charlotte, NC
Research Triangle Park, NC
Charleston, SC

Moore&VanAllen

Reid E. Dyer
Attorney at Law

T 843 579 7045
F 843 579 8754
reiddyer@mvalaw.com

Moore & Van Allen PLLC

78 Wentworth St.
Charleston, SC 29401-1428

Mailing Address:
Post Office Box 22828
Charleston, SC 29413-2828

January 8, 2016

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

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:

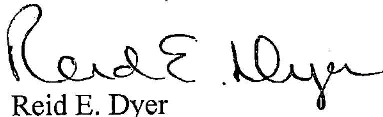
Enclosed for filing, please find the original and seven (7) copies of Respondent's *Reply to Appellant's Return & Objection to Motion to Dismiss or, in the Alternative, Compel Appellant to Include in the Record on Appeal All Items Designated by Respondent and Strike Items Included by Appellant in the Record on Appeal Not Previously Designated.*

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

COPY **Exhibit 54**

Charlotte, NC
Research Triangle Park, NC
Charleston, SC

The South Carolina Court of Appeals

South Carolina Federal Credit Union, Respondent,

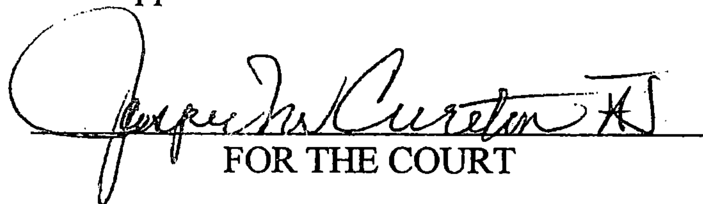
v.

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

ORDER

After careful consideration, the motion to dismiss is denied. However, the motion to require Appellant to serve and file an amended record on appeal that includes all items designated by both parties and omits items not previously designated by the parties is granted. Within twenty days of the date of this order, Appellant shall serve and file the 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 record on appeal shall be properly paginated and shall comply with Rule 210 of the South Carolina Rules of Appellate Procedure, including a proper index. 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.



FOR THE COURT

Columbia, South Carolina

cc:
Dorothy Sistrunk
Reid Evan Dyer, Esquire

Exhibit 55

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

RECEIVED
MAR 01 2016
SC Court of Appeals

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.

APPENDIX TO
THE RECORD ON APPEAL

February 26, 2016

Dorothy Harley Sistrunk
423 Bayne Street
Orangeburg, South Carolina 29115
Ph: (803) 268-0716
Fx: (803) 534-6727

Moore & Van Allen, PLLC
Reid E. Dyer
78 Wentworth Street
Post Office Box 22828 (29413-2828)
Charleston, SC 29401-1428
Ph: (843) 579-7045
Fx: (843) 579-8754
Attorneys for Respondent

Exhibit 56

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

RECEIVED
MAR 01 2016
SC Court of Appeals

James B. Jackson, Jr., Master in Equity

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.

PROOF OF SERVICE

I certify that I have served a copy of the Appellant's Appendix Supplement to the *Record on Appeal* pursuant to Rule 212(b)-(c), SCACR and in accordance with the Appellant's Court Order dated February 11, 2016 to amend the *Record on Appeal* to the Respondent's attorney of record listed below by depositing a copy of the aforementioned with the Postal Service, postage prepaid, on March 1, 2016.

Date: March 1, 2016

/s [signature]
Dorothy Harley Sistrunk
423 Bayne Street
Orangeburg, South Carolina 29115
(803) 268-0716
Pro Se

cc: Moore & Van Allen, PLLC
Reid E. Dyer
78 Wentworth Street
Office Box 22828 (29413-2828)
Charleston, SC 29401-1428
Ph: 843-579-7045 Fx: 843-579-8754
Attorney/s for Respondent South Carolina Federal Credit Union (SCFCU)

Exhibit 57

Dorothy Sistrunk

423 Bayne Street • Orangeburg, SC 29115 • Ph: 803-268-0716 • Fx: 803-534-6727

Hand Delivered

PROOF OF SERVICE &
THE APPENDIX SUPPLEMENT TO THE RECORD ON APPEAL

RECEIVED
MAR 01 2016
SC Court of Appeals

March 1, 2016

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,

I am hand delivering my ***Proof of Service*** and the "***Appendix Supplement***" to the *Record on Appeal* pursuant to Rule 212(b)-(c), SCACR and in accordance with the Appellant's Court Order dated February 11, 2016 to amend the *Record on Appeal* and I have also served a copy of same on all parties listed below.

Thank you.

Dorothy Harley Sistrunk

CC:

Moore & Van Allen, PLLC
Reid E. Dyer
78 Wentworth Street
Office Box 22828 (29413-2828)
Charleston, SC 29401-1428
Ph: 843-579-7045 Fx: 843-579-8754
Attorney/s for Respondent South Carolina Federal Credit Union (SCFCU)

Exhibit 58

Rule 1921. Composition of Record on Appeal.

The original papers and exhibits filed in the lower court, paper copies of legal papers filed with the prothonotary by means of electronic filing, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the lower court shall constitute the record on appeal in all cases.

Official Note

An appellate court may consider only the facts which have been duly certified in the record on appeal. *Commonwealth v. Young*, 456 Pa. 102, 115, 317 A.2d 258, 264 (1974). All involved in the appellate process have a duty to take steps necessary to assure that the appellate court has a complete record on appeal, so that the appellate court has the materials necessary to review the issues raised on appeal. Ultimate responsibility for a complete record rests with the party raising an issue that requires appellate court access to record materials. *See, e.g., Commonwealth v. Williams*, 552 Pa. 451, 460, 715 A.2d 1101, 1106 (1998) (addressing obligation of appellant to purchase transcript and ensure its transmission to the appellate court). Rule 1931(c) and (f) afford a "safe harbor" from waiver of issues based on an incomplete record. Parties may rely on the list of documents transmitted to the appellate court and served on the parties. If the list shows that the record transmitted is incomplete, the parties have an obligation to supplement the record pursuant to Rule 1926 (correction or modification of the record) or other mechanisms in Chapter 19. If the list shows that the record transmitted is complete, but it is not, the omission shall not be a basis for the appellate court to find waiver. This principle is consistent with the Supreme Court's determination in *Commonwealth v. Brown*,

_

Pa.

_

, 52 A.3d 1139, 1145 n.4 (2012) that where the accuracy of a pertinent document is undisputed, the Court could consider that document if it was in the Reproduced Record, even though it was not in the record that had been transmitted to the Court. Further, if the appellate court determines that something in the original record or otherwise presented to the trial court is necessary to decide the case and is not included in the certified record, the appellate court may, upon notice to the parties, request it from the trial court *sua sponte* and supplement the certified record following receipt of the missing item. *See* Rule 1926 (correction or modification of the record).

Source

The provisions of this Rule 1921 amended August 13, 2008, effective immediately, 38 Pa.B. 5422; amended May 9, 2013, effective to appeals and petitions for review filed 30 days after adoption, 43 Pa.B. 2810. Immediately preceding text appears at serial pages (338832) and (338833).

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This material has been drawn directly from the official Pennsylvania Code full text database. Due to the limitations of HTML or differences in display capabilities of different browsers, this version may differ slightly from the official printed version.

Exhibit 59

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 60 (Page 1 of 3)

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.

Submitted this the ____ day of __________, 20___.

____
Attorney Name
Bar No.
Attorney for __________
Address
Phone Number
Fax Number
E-mail Address

CERTIFICATE OF SERVICE

Appellant's Motion to Amend the Record on Appeal was filed as follows and was served by U.S. mail to:

John H. Connell, Clerk
North Carolina Court of Appeals
P.O. Box 2779
Raleigh, NC 27602-2779

Include the names and addresses of all other counsel.

This the ___ day of _________, 20___.

____
Attorney Name
Bar No.
Attorney for __________
Address
Phone Number
Fax Number
E-mail Address

Exhibit 60 (Page 3 of 3)

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.

PROOF OF SERVICE

I certify that I have served a copy of my *Appellant's Reply To Respondent's Return To Motion To Remand and Exhibits 51-60* on Respondent South Carolina Federal Credit Union, ("SCFCU") by depositing a copy of it in United Parcel Service, postage prepaid, on Thursday, June 30, 2016, addressed to SCFCU's attorney/s of record that are listed below.

Date: June 30, 2016

/s Dorothy Harley-Sistrunk
Dorothy Harley Sistrunk
423 Bayne Street
Orangeburg, South Carolina 29115
Ph: (803) 268-0716
Fx: (803) 534-6727

Moore & Van Allen, PLLC
Reid E. Dyer
78 Wentworth Street
Post Office Box 22828 (29413-2828)
Charleston, SC 29401-1428
Ph: 843-579-7045
Fx: 843-579-8754
Attorney/s for Respondent: South Carolina Federal Credit Union

RECEIVED
JUN 30 2016
SC Court of Appeals

Dorothy Sistrunk

423 Bayne Street • Orangeburg, SC 29115 • Ph: 803-268-0716 • Fx: 803-534-6727

Hand Delivered Reply & Proof Of Service
To Respondent's Return To Motion To Remand

June 30, 2016

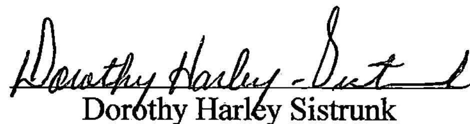
The Honorable Jenny Abbot Kitchings - Clerk of Court
& the Highly Esteemed V. Claire Allen – Deputy Clerk of Court
South Carolina Court of Appeals
POB 11629
Columbia, SC 29211

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(f), SCACR, I have enclosed an original and six (6) copies of my *Appellant's Reply To Respondent's Return To Motion To Remand, Exhibits 51-60 and Proof of Service,* [paper clipped and not stapled], I have also served a copy of same on all parties listed below.

Thank you.


Dorothy Harley Sistrunk

CC:

Moore & Van Allen, PLLC
Reid E. Dyer
78 Wentworth Street
Office Box 22828 (29413-2828)
Charleston, SC 29401-1428
Ph: 843-579-7045 Fx: 843-579-8754
Attorney/s for Respondent South Carolina Federal Credit Union (SCFCU)

RECEIVED
JUN 30 2016
SC Court of Appeals