

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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JUL 25 2016

APPEAL FROM BARNWELL COUNTY  
Court of Common Pleas  
J. Martin Harvey, Special Referee

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**S.C. SUPREME COURT**

Circuit Court Civil Action No. 2015-CP-06-00070  
Appellate Case No. 2016-001214

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**RECEIVED**

JUL 25 2016

Quicken Loans, Inc.,

Appellant,

**SC Court of Appeals**

v.

Wayne D. Wilson; Calvin O. Wilson, III; Any other Heirs-in-Law or devisees of Ezekiel (Ellen) T. Wilson, deceased, their heirs, personal representatives, administrators, successors and assigns, and all other persons entitled to claim through them; all unknown persons with any right, title or interests in the real estate described herein; also any persons who may be in a class designated as John Doe; any unknown minors or persons under a disability being a class designated as Richard Roe; Park Sterling Bank,

Respondents.

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**RESPONDENTS' REPLY  
TO APPELLANT'S RETURN IN OPPOSITION  
TO MOTION TO CERTIFY AND TRANSFER CASE  
FROM THE COURT OF APPEALS**

**Rule 204(b), SCACR**

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Pursuant to Rule 204(b), SCACR, Respondent Wayne D. Wilson as Personal Representative of the Estate of Ezekiel T. (Ellen) Wilson moved for an Order of the Supreme Court transferring this consumer protection case from the Court of Appeals to permit the appeal to be heard and decided in the first instance by the Supreme Court.

Appellant Quicken Loans, Inc. opposes the transfer, asserting:

- This is not a case of “utmost importance” and
- This case “does not present any issues of public interest or major importance” and
- A transfer of the appeal “does not serve judicial economy.”<sup>1</sup>

Appellant’s first arguments are dismissive of two important statements of public policy in South Carolina.

First, the General Assembly, in enacting the South Carolina Consumer Protection Code (SCCPC), set forth the “purposes and policies” that the Code was intended to advance. S.C. Code Section 37-1-102. The General Assembly was clear: “This title shall be liberally construed and applied to promote its underlying purposes and policies.” *Id.* See also Tilley v. Pacesetter Corp., 333 S.C. 33, 508 S.E.2d 16 (1998) (“Construing the statutes liberally, as required by section 37-1-102”), Sea Cove Dev’t v. Harbourside Cmty. Bank, 387 S.C. 95, 691 S.E.2d 158 (2010) (“the liberally construed purposes, rules of construction and underlying policies of the South Carolina Consumer Protection Code. See S.C.Code Ann. § 37-1-102.”). See generally discussion of the origins of the SCCPC by Harry J. Haynsworth and Kathleen Goodpasture Smith in their introduction to the Bar’s treatise on the SCCPC.<sup>2</sup>

Second, the dismissive treatment of a borrower’s right to select his or her lawyer to advise the borrower and to supervise the various stages of a real-estate secured transaction importance of a lawyer flies in the face of three decades of clearly stated – and frequently restated – public policy. In State v Buyers Service, 292 S.C. 426, 357 S.E.2d 15 (1987), this Court stated:

“The reason preparation of instruments by lay persons must be held to constitute the unauthorized practice of law is not for the economic protection of the legal profession. Rather, it is for the protection of the public from the potentially severe economic and emotional consequences

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1. *Return in Opposition to Motion to Certify and Transfer Appeal from the Court of Appeals Pursuant to Rule 204(b)*, filed by Appellant Quicken Loans, Inc. on July 11, 2016. (herein “App.Return”).
  2. “Background” appearing at pages 1-5 in Kathleen Goodpasture Smith, *The South Carolina Consumer Protection Code*, 4th ed. (S.C. Bar, 2001).

which may flow from erroneous advice given by persons untrained in the law. . . . [T]he circuit court properly enjoined Buyers Service from the preparation of deeds, mortgages, notes and other legal instruments related to mortgage loans and transfers of real property.”

....

“We are convinced that real estate and mortgage loan closings should be conducted only under the supervision of attorneys, who have the ability to furnish their clients legal advice should the need arise and fall under the regulatory rules of this court. Again, protection of the public is of paramount concern.”

Buyers Service, 292 S.C. at 431-434, 357 S.E.2d at 18-19

Although examined and cited on numerous occasions, this policy has remained unaltered for 29 years. See, e.g., Condon, McMaster, Doe Law Firm v Richardson and Matrix.<sup>3</sup>

\* \* \*

This appeal arises out of a foreclosure action filed in Barnwell County, South Carolina as Quicken Loans, Inc. v. Ezekiel T. Wilson et al., Civil Action 2015-CP-06-070. Simultaneous with the filing of the Motion to Transfer, Respondent (as Petitioner) also filed a Petition for Original Jurisdiction to authorize the bringing of a declaratory judgment action within the original jurisdiction pursuant to Rule 245, SCACR. The Complaint attached to the Petition raises substantial and crucial questions regarding the practice of law – questions that are exclusively within the jurisdiction of the South Carolina Supreme Court. S.C. Constitution Article V, § 4, S.C. Code §§ 40-5-10, 40-5-220.

In the proceedings before Special Referee Harvey certain matters were raised and addressed. The Order setting forth those findings and rulings is the subject of the appeal pending in the Court of Appeals and the object of this Rule 204(b) Motion. Other matters were raised below but not addressed by the Special Referee because they were questions

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3. Doe v. Condon, 351 S.C. 158, 568 S.E.2d 356 (2002), Doe v. McMaster, 355 S.C. 306, 585 S.E.2d 773 (2003), Doe Law Firm v. Richardson, 371 S.C. 14, 636 S.E.2d 866 (2006), Matrix Financial Services Corp. v. Frazer, 394 S.C. 134, 714 S.E.2d 532 (S.Ct. 2011).

regarding the practice of law – questions that are exclusively within the jurisdiction of the South Carolina Supreme Court.

The two concurrent requests to this Court – the Petition for Original Jurisdiction and this Motion to Certify and Transfer – are intended to bring a single case before this Court so that all issues may be addressed at the same time.

Also pending before this Court in the original jurisdiction is *Vance L. Boone, Thelma Boone, Travis G. Messex, Teresa S. Messex, Brian Johnson, and Kelli Johnson, on behalf of themselves and all others similarly situated, Plaintiffs, v. Quicken Loans Inc. and Title Source, Inc., Defendants*, docketed as Appellate Case No. 2013-002288 (the “Boone UPL” case). Respondent Wayne D. Wilson as Personal Representative of the Estate of Ezekiel T. (Ellen) Wilson is a member of the putative class in *Boone*, which also presents questions regarding the practice of law and seeks a declaratory judgment. The UPL issues in the *Wilson* Petition for Original Jurisdiction are essentially the same as those raised in *Boone* and counsel for the parties are essentially the same.

The dismissive attitude of Appellant, referenced above, is also noted by undersigned borrowers’ counsel in their brief filed with this Court on July 18, 2016 in the *Boone* UPL case.

“During an evidentiary hearing that spanned several weeks and resulted in a transcript of several thousand pages and hundreds of exhibits, a record emerged that demonstrates that “there’s a way around everything” is embedded in the corporate culture of the Quicken Family of Companies. And this corporate culture is embedded in the procedures devised by Quicken and Title Source for “complying” with South Carolina law.”

Brief at 51.<sup>4</sup>

Rule 204 of the South Carolina Appellate Court Rules permits this Court “in its discretion, on motion of any party to the case, on request by the Court of Appeals, or on its own motion,” to “certify [a] case for review by the Supreme Court before it has been determined by the Court of Appeals.” SCACR 204(b). “Certification is normally

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4 *Petitioners/Respondents’ Brief in Response to Brief of Quicken Loans Inc. and Title Source, Inc. on Their Exceptions to the Report of Special Referee* at 51.

appropriate where the case involves an issue of significant public interest or a legal principle of major importance." *Id.* The purpose of the certification procedure is to bring issues of moment before this Court in an expeditious fashion. *See, e.g., Willis v. Wu*, 362 S.C. 146, 607 S.E.2d 63 (2004) (wrongful life); *Steinke v. South Carolina Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999) (certified case involving the question whether the Department of Labor, Licensing and Regulation can be sued for the wrongful death of riders on amusement park rides). This case warrants certification under Rule 204(b).

As noted in the discussion that accompanied Respondent's motion, in this case as in *Boone*, Quicken Loans, through the use of a pre-populated attorney preference form, steered borrowers to its affiliate company, Title Source, which acted as Settlement Agent in the mortgage loan transaction. These issues are set forth in the Complaint attached to the Petition for Original Jurisdiction. Respondent is informed and believes that virtually the same issues which are before the Court in *Boone* are also present in this case. Quicken denies UPL occurred. Appellant and Respondent each asserts that this Court, as opposed to the Circuit Court, has the exclusive jurisdiction to make all determinations of UPL. While Respondent believes the ultimate disposition of *Boone* should also resolve the UPL issues presented in the Wilson case, he has filed his Petition for Original Jurisdiction out of an abundance of caution, in the event that *Boone* is not certified as a class action or the Special Referee's recommended finding of UPL in *Boone* is not adopted and construed so as to be binding precedent in this case.

As a further defense to the foreclosure, Respondent asserted that Quicken Loans violated S.C. Code Ann. Section 37-10-102 (commonly referred to as the "Attorney Preference statute") and that the violation was unconscionable under S.C. Code Ann. 37-10-105(C). Petitioner moved for partial summary judgment as to the attorney preference cause of action, and the trial court granted the motion and made a finding of unconscionability under S.C. Code Ann. Section 37-10-105(C). That Order is the subject of the present appeal pending before the South Carolina Court of Appeals, and, as noted above, this Rule 204(b), SCACR Motion transfer of that appeal to this Court.

In this case and in *Boone*, there is interplay between Quicken's UPL and its violation of the Attorney Preference statute. In fact, portions of the record in *Boone* were presented to the court below in this case as evidence of the practices and procedures of Quicken Loans. At the conclusion of the evidentiary hearing in *Boone*, Judge Goodstein concluded that "Quicken Loans and Title Source have engaged in the unauthorized practice of law by the way in which they conducted their business in South Carolina." In her observations from the bench after closing arguments, she explained:

"I believe that the process began with the forced workflow software process through which the software would not, could not allow for counsel, private counsel to be listed. There were no names of lawyers given for which a borrower could choose. And that the information that was propagated in this software was that borrowers would simply use lawyers provided by Quicken Loans. It's my feeling that that is the beginning of what then becomes the unauthorized practice of law, that act. I think that is significant. I think that the reason that we have that requirement is to engage lawyers on behalf of borrowers in a real way on the front end."

Hearing in *Boone* (08/19/2015 transcript at 106:12-23)  
(copy attached hereto as Attachment A).<sup>5</sup>

This Court has original jurisdiction of UPL and appellate jurisdiction of the statutory attorney preference violation issues. Since the lower court's Order finding a violation of the Attorney Preference statute is now on appeal, this case presents an opportunity for both issues to be addressed at one time. Further, since the foreclosure action is now stayed because of the appeal, resolving all issues now promotes judicial economy and hopefully will shorten the time needed to adjudicate the various issues presented.

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5. Page R.2613 in the Record on file with this Court in connection with the Exceptions to Judge Goodstein's Report and Recommendations in *Boone*.

## CONCLUSION

Respondent Wayne D. Wilson as Personal Representative of the Estate of Ezekiel T. (Ellen) Wilson respectfully requests that this Court grant his Rule 204(b), SCACR motion for an Order certifying this case from the Court of Appeals and transferring jurisdiction to this Court.

Respectfully submitted,



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Steven W. Hamm

C. Bradley Hutto

Daniel Webster Williams

Charles L. Dibble

Attorneys for Respondent Wayne D. Wilson  
as Personal Representative of the Estate of  
Ezekiel T. (Ellen) Wilson

July 25, 2016  
Columbia, South Carolina

Attachment "A" (extract from 8/19/2015 transcript)

**Attorneys for Respondent Wayne D. Wilson  
as Personal Representative of the Estate of Ezekiel T. (Ellen) Wilson**

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1 to review, make that determination, that upon receiving that  
2 and hearing the argument and reviewing them, I deemed it to  
3 be appropriate that I not, that I not take judicial notice  
4 that non-lawyer employees prepare mortgages and deeds. So  
5 that would be next.

6 Next in the order, the proposed order, will be a  
7 determination that Quicken Loans and Title Source have  
8 engaged in the unauthorized practice of law by the way in  
9 which they conducted their business in South Carolina.  
10 Entering the beginning point and the end point. And, of  
11 course, many of these things are already in your proposed  
12 order. I believe that the process began with the forced  
13 workflow software process through which the software would  
14 not, could not allow for counsel, private counsel to be  
15 listed. There were no names of lawyers given for which a  
16 borrower could choose. And that the information that was  
17 propagated in this software was that borrowers would simply  
18 use lawyers provided by Quicken Loans. It's my feeling that  
19 that is the beginning of what then becomes the unauthorized  
20 practice of law, that act. I think that is significant. I  
21 think that the reason that we have that requirement is to  
22 engage lawyers on behalf of borrowers in a real way on the  
23 front end.

24 I do not believe that the attorneys were independent.  
25 I think they were hired by Title Source. I think that the

1 determination to have lawyers hired and had a formal  
2 business relationship with those lawyers was contemplated by  
3 Quicken Loans and Title Source in their relationship that  
4 then was reduced to the master services agreement, which was  
5 then expanded. And I think that language is pretty clear.  
6 I think that the agreements then between Title Source and  
7 counsel bear that out. I recall specifically the agreement  
8 between Title Source and McDonald and Associates, where the  
9 lawyers' law firms are referred to simply as signing agents,  
10 providing signing services. And in it, without any  
11 redaction, any amendment by either the law firm or Title  
12 Source, I note that each page is initialed, it appears, by  
13 the law firm, that the signing agents, which would in this  
14 instance be McDonald and Associates, cannot give legal  
15 advice, explain legal documents, or aid clients in  
16 completing legal. And while their other agreements with  
17 counsel are different, and I think they're referred to in  
18 some extent in the proposed order of the plaintiffs, it can  
19 be expounded upon, because I have concern about those  
20 agreements and what they mean to counsels' limitation vis-a-  
21 vis borrowers.

22 Based upon the evidence that has been presented and  
23 based upon even, I believe, the concurrence of the  
24 defendant, there is no representation, there is no  
25 attorney/client privilege afforded borrowers until after the

9.

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SC Court of Appeals

APPEAL FROM BARNWELL COUNTY  
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Circuit Court Civil Action No. 2015-CP-06-00070  
Appellate Case No. 2016-001214

Quicken Loans, Inc., Appellant, v. Wayne D. Wilson et al., Respondents.

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that service of **RESPONDENTS' REPLY TO APPELLANT'S RETURN IN OPPOSITION** to Motion to Transfer was made this 25<sup>th</sup> day of July 2016, by mailing a copy to the offices of counsel for Respondents/Petitioners as follows:

**NELSON, MULLINS RILEY & SCARBOROUGH LLP**  
Attn: B. Rush Smith III, Esquire  
Meridian, 17th Floor  
1320 Main Street  
Columbia, SC 29201

and to

Warren R. Herndon, Jr., Esquire as GAL  
WOODWARD COTHRAN & HERNDON  
218 E Main St Ste 2  
Lexington SC 29072-3546

As agreed by counsel, copies in PDF format were also forwarded via electronic mail this day addressed to:

B. Rush Smith III  
A. Mattison Bogan  
Carmen Harper Thomas  
Jeffrey B. Morganroth

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July 25, 2016  
Columbia, South Carolina

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JUL 25 2016

SC Court of Appeals

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July 25, 2016

914 GREGG STREET  
COLUMBIA, SOUTH CAROLINA 29201-3928

Deliver by Hand

The Honorable Daniel E. Shearouse, Clerk  
Supreme Court of South Carolina  
1231 Gervais Street  
Columbia, SC 29201

Re: Quicken Loans, Inc., Appellant  
vs.  
Wayne D. Wilson et al., Respondents  
Appellate Case No. 2016-001214

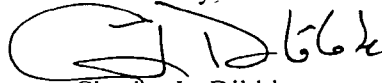
Dear Mr. Shearouse:

Pursuant to Rule 204(b), delivered herewith for filing on behalf of Respondent Wayne D. Wilson as Personal Representative of the Estate of Ezekiel T. (Ellen) Wilson are the original and six copies of the following:

1. Respondent's Reply to Appellants' Return in Opposition to Motion to Transfer, and
2. Certificate of Service.

In addition to service on opposing counsel, a copy is being filed with the Clerk of the Court of Appeals today.

Yours truly,

  
Charles L. Dibble

7744:CLD:me

cc: Hon. Jenny Abbott Kitchings, Clerk of Court  
B. Rush Smith, Esquire  
A. Mattison Bogan, Esquire  
Carmen Harper Thomas, Esquire  
Brian M. Barnwell, Esquire  
Warren R. Herndon, Jr., Esquire  
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Daniel W. Williams, Esquire