THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Diane Shafer Goodstein, Circuit Court Judge

Appellate Case No. 2014-001683
Unpublished Opinion No. 2016-UP-472
Submitted October 1, 2016—Filed November 9, 2016

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

APPELLANT PETITION FOR REHEARING OR REHEARING EN BANC

November 21, 2016

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STATEMENT OF ISSUES ON REHEARING OR REHEARING EN BANC

I. INTRODUCTION

In order to prevail on a petition for rehearing, the Appellant must demonstrate the Court overlooked or misapprehended her arguments. Appellant, Dorothy Sistrunk files this "Petition to Rehear Or Rehear En Banc" (hereafter "Petition") the Appellate Court's ***"Order Dismissed in Part and Affirmed in Part"***, that is included herewith and attached hereto. The Appellant's "Petition" is filed pursuant to Rule 221(a) and Rule 240(i), SCACR. As before, the Appellant will let court rulings and opinions speak for themselves.

The questions presented in this case are too important to leave unsettled and they are guaranteed to reoccur in the absence of a definitive ruling from this Court on **"Illegal Contracts"**. The Appellant respectfully requests the Court to rehear this case. While rehearing is, of course, extraordinarily rare when the Court has decided an issue, it is quite common in the interest of justice and to avoid a manifest injustice.. Therefore, "[T]his is not the raising of a new question on appeal, but the exercise by the court of its inherent power to remand a case, in the interest of justice, to the fact finding body for the purpose of making essential factual findings, so that litigation may be disposed of in accordance with the principles of law governing the decision of factual issues." *Drake v. Raybestos-Manhattan, Inc.*, 127 SE 2d 288 (SC: S. Ct. 1962)

The Appellant respectfully submits and unequivocally states the opinion in this case overlooked **Illegality**, the relevant Rules of Civil Procedure, misread the Record on Appeal and misapprehended the law in this case for reasons that shall be hereinafter set forth. *Kennedy v. Columbia Lumber & Mfg. Co., Inc.*, 384 SE 2d 730 (1989) and *New Hampshire Ins. Co. v. Bey Corp.*, 435 SE 2d 377 (Ct.App. 1993) When the Court fails to address the arguments raised in the appeal, "[a] prima facie case for rehearing has been made." *Covar v. Sallat*, 22 S.C. 265, 272 (1885)

II. GROUNDS FOR REHEARING THE ORIGINAL APPEAL

1. Abuse of Discretion

A. The Appeals Court overlooked the Abuse of Discretion that resulted from improperly granting judgment when issues of fact, material facts and law still exist that mandate a jury trial or a review of the evidence in a trial without a jury.

B. The Appeals Court overlooked the Discretionary Abuse of denying the Appellant's Motion for a New Trial when witness testimony that has never been heard in court, evidence and exhibits that have never been seen or reviewed in court were excluded during 6 years of litigation that should have been presented to a jury or at the very least reviewed and ruled upon by a judge sitting without a jury.

C. The Appeals Court overlooked the Discretionary Abuse of denying the Appellant's Motion to Alter or Amend the Partial Summary Judgment Order when the documents clearly show Wells Fargo's Mortgage is falsely certified in violation of South Carolina law and do not comply with the filing requirements of **SECTIONS 26-3-40**(1) **and 30-5-30**(C) SC Code of Laws.

D. The Appeals Court erred by failing to consider Wells Fargo's mortgage, loan and fixed rate note are based on falsified documentation and values that constitute an illegal contract that is unenforceable in South Carolina due to illegal brokering, misrepresentation of material facts, concealment of material facts, omission of material facts and meets the statutory description of operating a fraud upon a person in **SECTION 40-58-70**(3).

2. Fraud Upon the Court

A. The Appeals Court erred by failing to enforce the Appellant's Motion to vacate the Partial Summary Judgment Order due to the Fraud upon the Court that was perpetrated by Wells Fargo, Elizabeth Scott Moise and James H. Burns for 2 years during the Stay/TRO, i.e., Administrative Order #2009-05-22-01 that falsely accused the Appellant; misrepresented material facts and were replete with false statements? **These are grounds for a dismissal.**

B. The Appeals Court err by failing to enforce the Appellant's Motion to Alter or Amend the Partial Summary Judgment Order because the signed Order of March 27, 2014 that was drafted by Nelson Mullins Riley & Scarborough, LLP not only misstates and misrepresents facts, and material facts, the signed Partial Summary Order is replete with false statements; as well as, outright lies?

C. The Appeals Court failed to recognize James H. Burns and Elizabeth Scott Moise committed Fraud upon the Court by changing the Appellant's Defensive Pleading from Defrauding or Swindling with falsified documents to *Fraud.* **This defense was never heard.**

III. SUMMARY OF ARGUMENTS & IGNORING CRIMINALITY

None of the **Grounds for Dismissal** presented in the Record on Appeal were addressed by the Appellate Court in the Order. As already stated, the proceedings in the Lower Court and this Order by the Appellate Court sends a clear signal to profiteering sellers, mortgage brokers and banks they can falsify documents, forge signatures, falsely accuse innocent people, take advantage of people, substitute names on documents, falsely certify documents and participate in appraisal and mortgage fraud with impunity.. as long as they are dealing with poor people and/or people that cannot pay high attorney fees,

As stated, this Case #2014-001683 / 2008-CP-38-1024 is a precedent setting case because it is analogous to a Judge writing a court order that sends the witnesses to a crime and/or the victims of a crime to prison, while the perpetrators of the crime enjoy the benefits of never spending a day in court or prison; as well as, the financial rewards and/or advantages that were generated from their criminal enterprise/s. Such an act by a sitting judge violates public policy, the rule of law and makes a mockery of justice.

"[H]owever, "[e]very ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to `grope in the dark' to ascertain the precise point at issue." *Jones v. Lott,* 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) (internal citation omitted). Similarly, a petition for rehearing must "state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR. "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." *Kennedy v. S.C. Retirement Sys.,* 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (quoting Jean H. Toal, *Appellate Practice in South Carolina* 309 (1999))." *Herron v. CENTURY BMW*, 719 SE 2d 640 (2011)

IV. ARGUMENT I: UNTIMELINESS MUST BE QUASHED DUE TO THE LOWER COURT'S FAILURE TO PROPERLY INFORM

A. The Appellate Court Misapprehended The Appellant's Motions. Each Motion Filed Was In Response To The Word Partial. To the Appellant, Partial Meant Not Complete. Without Instructions From The Court, The Appellant Was Forced To Use Her Own Judgment. A Failure To Properly Inform A *Pro Se* Litigant Is An Abuse of Discretion.

1. A review of the language and the requirements of Rule 59(e), SCRCP.

Rule 59(e), SCRCP, states, **"[A] motion to alter or amend the judgment shall be served not later than 10 days** after receipt of written notice of the entry of the order." The Record on Appeal verifies no hearing was scheduled for the Appellant's Rule 59(e), SCRCP Motion or any other motion filed by the Appellant in over 6 years. Consequently, if any schedules were missed, relative to the Appellant's Rule 59(e) Motion, for which, no hearing was scheduled, it was entirely due to the failure of the Court to instruct the Appellant as to the proper procedure." See also *Breck v. Ulmer,* 745 P.2d 66, 75 (Alaska 1987) *[**Boldness** added for emphasis that will be addressed later in this Brief]*

2. A review of the language and the requirements of Rule 59(a)(2)-(c), SCRCP.

Rule 59(a)(2), SCRCP clearly states in pertinent parts, "[A] new trial may be granted to all or any of the parties and on all or part of the issues....; and **(2)** in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment."

Rule 59(b) SCRCP. states in pertinent parts, "[T]he motion for a new trial shall be made promptly .....**In non-jury actions the motion shall be made not later than 10 days after the receipt of written notice of the entry of judgment or of the filing of an**

order disposing of the action, if no judgment has been entered." *[**Boldness** added for emphasis that will be addressed later in this Brief]*

Rule 59(c), SCRCP, states in pertinent parts, "[W]hen a motion for new trial is based upon affidavits they shall be served with the motion. **The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits."**

B. Explanation of Boldness Added for Emphasis

All the motions the Appellant filed pursuant to Rule 59, SCRCP, required the Appellant to file her motions within 10 days after receiving a Judgment or Order. There is no explanation in the Rules that defines Partial Summary Judgment. In filing her motion for a New Trial the Appellant relied on the language in Rule 52(b), SCRCP.

> Rule 52(b), SCRCP, clearly states in pertinent parts, **"[U]pon motion of a party made not later than 10 days** after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly, **and the motion may be made with a timely motion for a new trial.** When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment." [**Boldness** added]

Quality Trailer Products v. CSL EQUIP., 562 SE 2d 615 (2002) and Elam v. South Carolina Dept. of Transp., 602 SE 2d 772 (2004), do not apply in this case. There is no reference in any of these cases to a Partial Summary Judgment or the use of falsified, forged and altered documents by 2nd and/or 3rd parties or attorneys and others falsely accusing the Appellant. There is no JNOV/verdict in this case. Judge Goodstein made a false statement on this Order and on others that are noted. Plus, there were new issues, Complicitous Liability, Unclean Hands, Violation of Rule 56(c), SCRCP, In Pari Delicto

and Violation of the Compliance Agreement. (R. Vol. IV, Part 1, p. 970, ¶19; p. 984, ¶59; p. 986, ¶63 & p. 987, ¶¶65-66) In another pleading, filed prior to issuing her Order denying the Appellant's Motion to Alter Amend, Notary Fraud was also new and filed on March 31, 2014 (R. Vol. IV, Part 1, pp. 1031-1069) and noted on the Order. (R. p. 46)

Since every pleading filed by the Appellant in the Lower Court and every Brief filed in the Appellate Court is notarized or verified, Wells Fargo and the Court violated this Rule by not filing an opposing affidavit and this requirement was not enforced by the Lower Court. In addition, the Record on Appeal verifies no hearing was scheduled or held. This violation of Rule 59(c), SCRCP was ignored and not enforced by the Lower Court. *cf. Arnold v. Arnold*, 285 S.C. 296, 328 S.E. (2d) 924 (Ct. App. 1985) (where the court accepted verified pleadings as evidence). **[See also Rule 8(d), SCRCP]**

North Carolina Nat'l Bank v. Harwell, 38 N.C.App. 190, 192, 247 S.E.2d 720, 722, disc. rev. denied, 296 N.C. 410, 267 S.E.2d 656 (1979) (failure to object to form or sufficiency of pleadings and affidavits waives objection on summary judgment); *Noblett v. General Electric Credit Corp.,* 400 F.2d 442, 445 (10th Cir.1968), cert. denied, 393 U.S. 935, 89 S.Ct. 295, 21 L.Ed.2d 271 (1969) (affidavit not conforming to Rule 56(e) is subject to motion to strike, but objection waived absent motion); see also *10A C. Wright & A. Miller, Federal Practice and Procedure* Sec. 2738 at 507-09 (1983) (party must move to strike affidavit not conforming with Rule 56(e) before appeal).See also the following:

> *Pentecost v. Harward*, 699 P.2d 696 (Utah 1985) (holding that a verified pleading that meets the requirements of Rule 56(e) can be considered the equivalent of an affidavit); *cf. Willis v. Lauridson*, 118 P. 530 (Cal. 1911) (holding that when seeking an injunction, a verified pleading is equivalent to an affidavit); *Golden Canal Co. v. Bright*, 6 P. 142 (Colo. 1884) (holding that under mandamus statute, a verified petition was equivalent to an affidavit); *Iowa v. One Certain Automobile*, 23 N.W.2d 847 (Iowa 1946) (noting the general rule that a verified pleading may be held to be an affidavit); *Missouri ex rel. Burton v. City of Parsons*, 95 P. 391 (Kan. 1908) (noting that a verified petition can be used as an affidavit and the allegations contained therein should be treated accordingly);

Montana ex rel. Redle v. District Court In and For Missoula County, 59 P.2d 58 (Mont. 1936) (noting that under statutes requiring an affidavit, a verified petition is equivalent to, and can be used as, an affidavit); *Renville State Bank v. Kinsberg*, 166 N.W. 643, 644 (S.D. 1918) ("A written declaration, properly sworn to, may constitute an affidavit, even though in the form of an ordinary pleading."); *Washington ex rel. Victor Boom Co. v. Peterson*, 70 P. 71 (Wash. 1902) (holding that a verified pleading can constitute an affidavit) *Hladczuk v. Epstein*, 470 N.Y.S.2d 211 (App. Div. 1983) (stating that a verified pleading is the equivalent of an affidavit for purposes of summary judgment);

Rule 59(f), SCRCP clearly states in pertinent parts, "[T]he time for appeal for all parties shall be stayed by a timely motion under this Rule and shall run from the receipt of written notice of entry of the order granting or denying such motions.

Finally, Rule 203(b)(1) SCACR, clearly states, "[A] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. **When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment**." [**Boldness** added]

In addition; Rule 72, SCRCP states... "[A]ppeal may be taken, as provided by law, from any final judgment or appealable order." And..Rule 201(a), SCACR provides; in pertinent parts..."**[A]ppeal may be taken, as provided by law, from any final judgment, appealable order or decision.**" [**Boldness** added]

"[A] trial judge must advise a defendant of his right to file an appeal and the time within which that right must be exercised; where the trial judge failed to inform a defendant of his appellate rights, an otherwise untimely appeal will not be quashed." *Com. v. Wright*, 846 A.2d 730 (Pa: Super. Ct. 2004) & *Com. v. Hurst*, 532 A. 2d 865 (Pa: S. Ct. 1987)

1. No hearing were scheduled for any of the Appellant's Motions.
2. No explanation was given relative to the meaning of Partial Summary Judgment, no hearing was held and no explanation in the Rules.
3. No instructions were given to the Appellant about an appeal on or off the Record or written on the motions denied. (R. pp. 46 & 48)

These failures; themselves are an Abuse of Discretion. Since the Appellant filed her Motions based on the language in the Rules of Civil Procedure and on the Order [**Partial or incomplete**], the Appellant relied on Rule 72, SCRCP and waited until a Final Judgment or Order was received on all her filed motions before filing an appeal.

Because there never was a jury trial in this case, in addition to providing the Lower Court with new reasons to Alter or Amend its Partial Summary Order and schedule a trial, subsequent pleadings also provided case law excepts in their entirety. None of the particulars in this case are present in *Elam v. South Carolina Dept. of Transp.*, 602 SE 2d 772 (2004), and *Quality Trailer Products v. CSL EQUIP.*, None of the Appellants were *Pro Se* and all were represented by attorneys. **To the Appellant, Partial Summary Judgment meant an incomplete judgment that was not final.** (See Webster Pocket, p. 366)

As for all the technicalities and ramifications this would have in the Appellate Court or how her actions might impact her appeal, this...the Appellant still does not know after 2 years **The Order denying all the Appellant's Motions was issued on July 11, 2014 (R. p. 48). The Appellant's Notice of Appeal was filed on July 30, 2014 (R. p. 57)**

C. The Appeals Court Overlooked The Fact That The Appellant Is *Pro Se* And Not An Attorney And Could Not Possibly Have Known What Filing Multiple Motions Meant To Her Appeal Or What To File & When

The Appellant's Motions and Appeal are filed pursuant to her understanding of the Rules of Civil and Appellate Procedure and the 10 day rule, accordingly, if there exists another interpretation of South Carolina's Rules of Civil Procedure, this information was withheld from the Appellant. It is painfully clear that whatever rule violation that may have occurred was not intentional and is the result of the difficulties inherent in proceeding

Pro Se. Cf. Schacht v. United States, 398 U.S. 58, 64 (1970) ("The procedural rules adopted by the Court for the orderly transaction of its business... can be relaxed by the Court in the exercise of its discretion when the ends of justice so require."). And there is no reason why justice must be denied because of Court failures and misunderstanding.

As District Courts, State Appellate and Supreme Courts and The United States Supreme Court have recognized, "[n]avigating the appellate process without a lawyer's assistance is a perilous endeavor for a layperson." Halbert v. Michigan, 545 U.S. 605, 621 (2005); *see also, e.g.*, Erickson v. Pardus, 551 U.S. 89, 94 (2007) (emphasizing that "[a] document filed *pro se* is 'to be liberally construed'"); Estelle v. Gamble, 429 U.S. 97, 106 (1976) (same); Haines v. Kerner, 404 U.S. 519, 520-21 (1972) (same).

This is no less true of the process before this Court. *Pro se* pleadings and filings should be reviewed liberally. Howard v. U.S. Bureau of Prisons, 487 F.3d 808, 815 (10th Cir. 2007). "[I]n addition, "[w]hen the substance of a legal claim is otherwise present, this court has indicated that 'confusion of various legal theories,' a technical pleading error, should not be dispositive in pro se cases." Switzer v. Coan, 261 F.3d 985, 988 (citing Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991)). "[A]t the same time, we do not believe it is the proper function of the district court to assume the role of advocate for the pro se litigant." Hall, 935 F.2d at 1110.

"[I]t is well established that "[a] pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). "[T]his liberal treatment has limits, however, and we have "repeatedly insisted that pro se parties follow the same rules of procedure that govern other litigants." Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 840 (10th Cir. 2005). "[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. [**Also see Rule 15(d), SCRCP**]

(2) "[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)

"[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 (W Va 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). [See also *Jennings v. State,* 566 P.2d 1304, 1310 (Alaska 1977)]

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." This did not happen in Judge Goodstein's Court for almost 6 years. The evidence in the Record On Appeal verifies this Statement of Fact. Failure to give notice or properly instruct a *Pro Se* litigant of rights and procedures is also an Abuse of Discretion.

Rule 614(a)-(b), SCRE, states the following in pertinent parts.. "**[(a)]** In 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. **(b)** When required by the interests of justice only, the court may

interrogate witnesses." **This did not happen either in Judge Goodstein's Court.**

Rule 8(f), SCRCP clearly states in pertinent parts.... "[A]ll pleadings shall be so construed as to do substantial justice to all parties." There is no substantial justice when the perpetrators of a criminal act are allowed to walk free (**See notation on:** R. p. 39) and the victims are harangued by a legal process that overlooks the crime while penalizing and persecuting the victims and/or witnesses of the crime. Just because her counterclaims and/or defenses were not worded to some standard that a *Pro Se* does know and is not instructed how to improve, is not a justifiable reason to strike. "[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)

V. ARGUMENT II: THE OPINION FAILED TO CONSIDER RULE 60(b)(3), SCRCP'S MISCONDUCT & MISREPRESENTATION

A. The Appellant's Motion To Vacate The Judgment Was Filed Pursuant To The Language Of Rule 60(b)(3), SCRCP & F.R.C.P

When a sitting Judge accepts false statements, misrepresented material facts and overlooks misconduct by officers of the court, and enters false statements into the record herself/himself, there is no fair trial or hearing. The following is by no means an attempt to try the case in a rehearing. See *Kennedy v. RETIREMENT SYSTEM*, 564 SE 2d 322 (2001) However, in order to understand how the abuses, misrepresentations, false statements and misconduct by officers of the court have effected this case some snippets in the Record on Appeal are in order. (Also see R. Vol. VI, Part 2, pp. 1390-93 for more)

(1) (R. pp. 35-36) An Order compelling discovery of documents Nelson Mullins Riley & Scarborough, LLP already had [WF00001-WF00137] R. Vol. V, Part 2, pp. 1623-1759 & Appendix, pp. 21-39)

(2) (R. pp. 39-45) The Partial Summary Judgment Order that is replete with false statements [underlined] and an Outright Lie (R. p. 41, ¶ 12)

(3) (R. Vol. I, Part 2, p. 190) False statement by attorney Calub.

(4) (R. Vol. 1, Part 2, pp. 198, 200, ¶¶3-5 & Vol. V, Part 1, p. 1577) False statements and misrepresented facts by attorney Burns..

(5) (R. Vol. V, Part 1, pp.1580-1581,) False statement by attorney Eliza-Scott Moise.

The Appellant Court made a grievous error in assuming these issues were tried and passed upon in the original action. Nothing is farther from reality and truth. My defense is **Defrauding** and **Swindling** with the falsified, forged, altered and unauthorized documents of 2nd and/or 3rd parties **has never been heard**. Attorney's Moise and Burns changed it to "Fraud" and the Judge complied with the change over my objections. Rule 60(b)(3), SCRCP clearly states in unambiguous language, "[O]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:...**(3)** fraud, misrepresentation, or other misconduct of an adverse party;" (R. Vol. IV, Part 1, pp. 1134-1152, ¶¶7-12)

The Federal Rule 60(b)(3) states, "[f]raud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;" sets aside a judgment. In addition, "[O]ne who asserts that an adverse party has obtained a verdict through fraud, misrepresentation or other misconduct has the burden of proving the allegations by clear and convincing evidence. **The rule is addressed to judgments that are unfairly obtained** and not at those which are factually incorrect." *Dunn v. Consolidated Rail Corp.*, 890 F. Supp. 1262 (Dist. Ct, MD La 1995) & (R. Vol. IV, Part 1, p. 1188, **(13);** Part 2, pp. 1362-1364, ¶18; Vol. V, Part 1, pp. 1525-1544, 1549, 1552, 1575 & 1586)

The Appeals Court also overlooked or failed to consider attorney Burns', Moise's (R. Vol. II, Parts 1 & 2, pp. 411-626) and Calub's misrepresentations and misconduct that are thoroughly documented; especially the abuses of attorney Calub. (R. Vol. II, Part 2, pp. 667-733 & Vol. III, pp. 749-800 & 801-829) Also see *H.K. Porter Co. v. Goodyear Tire & Rubber,* 536 F.2d 1115, 1119 (6th Cir.1976) ("Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court."); *Synanon Found., Inc., v. Bernstein,* 503 A.2d 1254 (D.C.1986) (attorney subornation of perjury and false

statements to trial court constitute fraud upon the court); *Porcelli v. Joseph Schlitz Brewing Co.*, 78 F.R.D. 499 (E.D.Wis.1978) (noting distinction between perjury involving officers of the court and witness or party); *see* 12 James Wm. Moore et al., *Moore's Federal Practice* ¶ 60-21[4][b] (3d ed.2002) & (R. Vol. IV, Part 2, pp. 1364-1383, ¶19-27)

B. The Appeals Court Has Overlooked The Lower Court's Failure To Rule On.. Or..Address The Massive Filing Fraud Of Burns & Moise During The TRO/Stay From May of 2009 To August Of 2011.

The Appellant's Jury Trial could have been scheduled before the TRO. During the Stay/TRO; from May of 2009 to August 1, 2011, the Appellant and the Appellant's husband witnessed and experienced the ***Massive Filing Fraud*** of attorneys, James H. Burns and Elizabeth Scott Moise and Judge Goodstein's failure to investigate Burns and Moise's ***Massive Filing Fraud***. "[T]he duty to investigate serious, credible allegations of misconduct is precisely that, a duty." *US v. Gianakos*, 415 F. 3d 912 (8th Cir.2005) See also R. p. 30, ¶6; Part 2, pp. 245-250 & R. Vol. II., Parts 1 & 2, pp. 411-733.

Dishonest conduct by attorneys in the form of misrepresenting material facts, falsely accusing the Appellant..and..filing false statements from 5/2009 to 5/2011 by Officers of the Court is defined as "Fraud upon the Court". (H. Lightsey, J. Flanagan, *South Carolina Civil Procedure*, 408 (2nd Ed. 1985). Also R. Vol. V, Part 1, pp. 1580, 1587-1608.

"[R]egardless of the specific form of the allegation, the party relying on Rule 60 (b)(3) must, by adequate proof, clearly substantiate the claim of misrepresentation, misconduct or fraud." *Zurich N. Am. v. Matrix Serv., Inc.*, 426 F.3d 1281, 1290. "[The fabrication of evidence by a party in which an attorney is implicated will constitute a fraud on the court." *Weese v. Schukman*, 98 F.3d 542, 552-53 (10th Cir. 1996)."[L]ess egregious misconduct, *such as nondisclosure to the court of facts allegedly pertinent to the matter before it*, will not ordinarily rise to the level of fraud on the court." Id. at 553. *Kupferman v. Consolidated Research & Mfg. Corp.*, 459 F. 2d 1072 (2nd Cir. 1972) "[W]hile an

attorney "should represent his client with singular loyalty that loyalty obviously does not demand that he act dishonestly or fraudulently; on the contrary his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court. And when he departs from that standard in the conduct of a case he perpetrates a fraud upon the court." 7 Moore, *supra,* at 513 (footnote omitted)." See R. Vol. V, Part 1, pp. 1580, 1587-1608.

Sun World, Inc. v. Lizarazu Olivarria, 144 F.R.D. 384, 389 (E.D. Cal. 1992) (holding that, when a litigant commits a fraud upon the court, "the inherent powers of the court support the sanction of dismissal and entry of default judgment"); *Pope v. Federal Express Corp.,* 138 F.R.D. 675, 683 (W.D. Mo. 1990), aff'd in part, vacated in part on other grounds, 974 F.2d 982, 984 (8th Cir. 1992) (court has inherent power to sanction litigants for improper conduct) *Pope,* 138 F.R.D. at 682 (dishonest conduct by a party or conduct that "threatens the integrity of the judicial process" is grounds for dismissal with prejudice under Rule 41(b))." **The Appellant filed a Rule 41(b) Motion to Dismiss with Prejudice on August 15, 2011**. (R. Vol. II, pp. 627-666 & Vol. IV, Part 1, p. 997)

As with her Demand for a Jury Trial, this motion was ignored. In fact, if this case had occurred in any one of 13 other states, the Appellant would not be in Court. (R. Vol. V, Part 1, pp. 1468-1474) The Appellant is not delaying justice for Wells Fargo, it is Wells Fargo's **Willful Blindness**. See *Louis Vuitton SA v. Lee*, 875 F. 2d 584 (7th Cir. 1989)

VI: ARGUMENT III: THE OPINION OVERLOOKS THE ABUSES OF DISCRETION IN THE RECORD ON APPEAL

1. The first Abuse of Discretion the Appeals Court overlooked is the failure of the Lower Court to Amend a Judgment that is based on false statements and misrepresented material facts.

Bowen v. Lee Process Systems Co., 536 SE 2d 86 (Ct.App. 2000) "[O]n 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. Such an order must **"include those facts which the circuit court finds relevant, determinative of the issues and undisputed."** In doing so, the trial court should "provide clear notice to all parties and the reviewing court as to the rationale applied in granting ... summary judgment." *Rothrock v. Copeland,* 305 S.C. 402, 409 S.E.2d 366 (1991) "[I]f triable issues exist, those issues must go to the jury." (Review R. pp. 39-45 & p. 46)

2. The second most egregious Abuse of Discretion the Appeals Court overlooked is denial of the Appellant's Right to a Jury Trial on her defense of Defrauding and Swindling.

For over 6 years, the Lower Court's Records and the Record On Appeal verify the Lower Court Judge(s) never conducted any hearings or ruled on the Appellant's *Demand for a Jury Trial* that was filed in August of 2008 and all other subsequent demands were also ignored. (R. pp. 1-5; Vol. I, Part 2, p. 238, Vol. II, Part 2, pp. 627-671; Vol. III, pp. 734, 749, 801, 830 & 865; Vol. IV, Part 2, pp. 1228, 1265 & pp. 1381-1385, ¶¶ 27-30)

Rule 38(a), SCRCP, clearly states in pertinent parts; "[T]he right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived."

STATE OF SOUTH CAROLINA CONSTITUTION - ARTICLE 1 - § 14; 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."

Rule 38(b), SCRCP, states, "[A]ny party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party." (R. p. 5)

3. The third most egregious Abuse of Discretion the Appeals Court overlooked is the Lower Court's refusal to allow the Appellant's witness to testify under oath at the hearings.

For almost 3 years the lower court judge did not allow the Appellant's witness to give testimony at 3 of Wells Fargo's hearings (R. Vol. IV, Part 2, pp. 1387-1393, ¶¶ 35-43, Re: December of 2011, September of 2012 & September of 2013) This is a violation of relevant rules of evidence and Article 1 - § 14 of South Carolina's Constitution that mandates a compulsory process for obtaining witnesses on behalf of the Appellant. Rule 601(a), SCRE, clearly states, "[E]very person is competent to be a witness except as otherwise provided by statute or these rules." (R. Vol. I, Part 2, pp. 251-261)

Rule 701, SCRE, states, "[I]f the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony **or the determination of a fact in issue**, and (c) do not require special knowledge, skill, experience or training." [**Boldness** added]

4. The fourth Abuse of Discretion the Appeals Court overlooked is the Lower Court's failure to comply with the requirements for a Summary Judgment.

The Record on Appeal clearly shows the Lower Court Judge did not consider or refer to any of the Appellant's affidavits, pleadings, answers to interrogatories and/or admissions. See R. Vol. I, Part 2, pp. 245-336 & R. Vol.'s I-V. Rule 56(c), SCRCP

states in pertinent parts.."[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is **no genuine issue as to any material fact** and that the moving party is entitled to a judgment as a matter of law." **There are numerous Material Facts.**

Wells v. City of Lynchburg, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998) ("An appellate court reviews the granting of summary judgment under the same standard applied by the trial court.") "[T]he evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Law v. S.C. Dep't of Corrs.*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006) "[I]f triable issues exist, those issues must go the jury." *Mulherin-Howell v. Cobb*, 362 S.C. 588, 595, 608 S.E.2d 587, 591 (Ct. App. 2005) The Lower Court's failure to find the facts, read the pleadings and affidavits, see the evidence and hear testimony maintains this illegal loan transaction.

5. The fifth Abuse of Discretion the Appeals Court overlooked is the Lower Court's violation of Rule 42(b), SCRCP by striking counterclaims that deserved a Jury Trial, or at the very least... an evidentiary hearing on the Record.

The Lower Court misapprehended the Appellant's pleadings and erroneously assumed the Appellants defenses were solely based on the seller and appraiser. (R. p. 39) This is not true. As the Record on Appeal shows, the Appellant's defenses include malfeasance by Wells Fargo, the Closing Agent, the Notary and the Broker. (R. Vol. IV, Part 1, pp. 1055-1058) Rule 13(a), SCRCP, 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."

Rule 8(c), SCRCP, states in pertinent parts; "[W]hen a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court shall treat the

pleading as if there had been a proper designation...." Rule 42(b), SCRCP, clearly 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." The Appellant was not given an opportunity to clarify defenses or counterclaims or instructed how to improve or reword them to a legal standard. For 6 years the Appellant, her objections and motions were ignored. (R. Vol. III, pp. 734-839)

Johnson v. SC National Bank, 354 SE 2d 895 (1987) "[I]n *C & S Real Estate Services v. Massengale*, 290 S.C. 299, 350 S.E. (2d) 191 (1986), this Court issued an order clarifying the procedure to be followed under Rules 13, 38 and 42, SCRCP, when a complaint is equitable and a counterclaim is legal and compulsory: (4) If the complaint is equitable and the counterclaim legal and compulsory, the *defendant* has the right to a jury trial on the counterclaim. In that case, the proper procedure is as follows: (a) The trial judge should, pursuant to Rule 42(b), order separate trials of the legal and equitable claims. [Emphasis supplied]. 290 S.C. at 302, 350 S.E. (2d) at 193."

6. The sixth Abuse of Discretion the Appeals Court overlooked is is the illegality that renders loan 0174072777 null and void as a legal document due to the criminality that created it and the material facts that verify its illegality.

Other than the price that was not lowered during closing and Appraisal Fraud, the Appellant did not know the extent of the fraud associated with loan #0174072777 until Nelson Mullins Riley & Scarborough. LLP, sent the Appellant WF00001-137 in October or November of 2008. (R. Vol. V, Part 2, pp. Bi-Bxxxii & 1623-1759)

There are no hearings in the Record on Appeal for the Appellant. For 6 years, (8/2008-7/2014) Judge Goodstein did not conduct any hearings on any of the Appellant's

judicial and/or evidentiary admissions in notarized and verified pleadings. Therefore, she had no idea as to the extent and nature of the various types of false accusations, misrepresentation of material facts, false documentation, fraudulent conduct, fraudulent concealment of material facts, dishonest conduct, false statements, forgery, forgery by substitution, concealment of material facts, and the various categories of fraud associated with loan #0174072777 that existed prior to December 21, 2007. (R. Vol. IV, Part 2, p. 1292, ¶ 1)

The Lower Court failed to consider Wells Fargo's Insurance, Securities and Title Insurance Fraud, *(Wells Fargo has known since 02/2008 that the value of 423 Bayne St., is falsified)*, and the seller's and broker's Home Improvement Fraud, Mortgage and/or Bank Fraud and Appraisal Fraud that are verified by the following Material Facts that were never discussed or reviewed by the Lower Court: (See also R. Vol. IV, Part 2, pp. 1409-25)

(1) No improvements were done at.. or to..423 Bayne Street in 2007. (R. pp. 110-114) [WF00009 & WF00022] (R. Vol. V, Part 2, pp. 1631 &1644)

(2) Jim H. Austin, III did not appraise the property on October 8th or 9th, in 2007 [WF00020-21] (R. Vol. I, Part 2, pp. 256-257 & R. Vol. V, pp. 1642-1643)

(3) The value of Wells Fargo's mortgage and note is falsified. (R. Vol. V, Part 2, pp. 1661-1682) The 423 Bayne Street described on Wells Fargo's WF00001-26 does not exist in reality, actuality or fact. (R. Vol. V, Part 2, pp. 1623-1648)

(4) Wells Fargo never had a legally brokered loan pursuant to South Carolina and Federal law. Loan #0174072777 was done by the Seller - Thomas Jacobs [WF00015, 23-29, 88 & 90-91] (R. Vol. V, pp. 1637, 1645-1651, 1710, 1712-1713, and not by the Broker - David Terrell/Golden Gate Mortgage [WF00032 & 81] (R. Vol. V, Part 2, pp. 1654 & 1703) with help from the Appraiser - Jim H. Austin, III. [WF00078] (R. Vol. V, Part 2, p. 1700) Also see (Appendix pp. 16-43)

(5) All the supporting documents Wells Fargo's underwriters used to approve loan #0174072777 from Golden Gate Mortgage are forgeries. (R. Vol. V, Part 2, pp. 1623-1660, 1702-1707 & 1709) *In fact, any document dated 11/26/07.*

(6) Wells Fargo was notified of the Mortgage Fraud on December 22, 2007 and has been notified as often as possible since.. by correspondence, by phone, by notarized and/or verified pleadings, in filed affidavits and in all the Briefs filed in the Appellate Court that includes this Petition.

As the Court can plainly see, the Appellant is not standing in the way of truth or justice for Wells Fargo and herself. It is the Lower Court's failure to examine the Record

and Wells Fargo's attorneys that are standing in the way of justice for Wells Fargo and the Appellant. By devoting time and resources to persecuting and prosecuting the Appellant, the perpetrators that defrauded Wells Fargo have not spent a day a court.

The real 423 Bayne Street is described in the Appellant's *First Amendment to Answer to Complaint with Counterclaims*, (R. pp. 110-115), that was filed on July 31, 2008. See also Appellant Exhibits 8-14; (R. Vol. V, Part 1, pp. 1525-1531) and Wells Fargo's [WF00001-26]. (R. Vol. V, Part 2, pp. 1623-1648 & R, Vol. I, Part 2, pp. 256-257, ¶¶ 17-18) The Satisfaction Completion Certificate Wells Fargo refers to is a scam document.

In addition to the aforementioned Material Facts that were never contested, denied, controverted or refuted in 6 years of litigation, the following Material Facts were never contested, denied, controverted, discussed or reviewed in the Lower Court either.

(1) Document Fraud by Wells Fargo's underwriters and the so-called Broker - David Terrell. Both falsified income and documents to avoid compliance with **SECTION 37-23-40**(1)-(2) SC Code of Laws. [WF00030-38], (R. Vol. V, Part 2, pp. 1652-1660)

(2) Notary Fraud by employees at the Player Law Firm, located at 1415 Broad River Road, in Columbia, South Carolina on 12/21/2007. [WF00058 & 60], (R. Vol. V, Part 2, pp. 1680 & 1682 and Appendix, pp. 37 & 39) [WF00097], (R. Vol. V, Part 2, p. 1719) Stephanie Hammond was not at the closing.

(3) Wells Fargo is deemed present at the closing via the Player Law Firm. [WF00102], (R. Vol. V, Part 2, p. 1724)

(4) There never was a legitimate Bill of Sale. The 423 Bayne Street Wells Fargo used for lending purpose does not exist and never existed. The Seller has literally given the real 423 Bayne Street to the Appellant. The Bill of Sale Wells Fargo presented to the court and used for lending purposes is not the Bill of Sale the Appellant signed on 11/26/2007. It has been doctored and forged. (R. Vol. V, Part 2, pp. 1650-1651) [*Any 11/26/07 date is a forgery.*]

(5) The #7-59 Appraisal used by Wells Fargo is a fabrication that was created for the Seller. [WF00001-WF00013] (R. Vol. V, Part 2, pp. 1623-1635 & p. 1649)

(6) Wells Fargo did not pay the Appellant. Wells Fargo paid the Seller (R. Vol. V, Part 2, p. 1710) [WF00088] for a fictitious house with a 423 address and supported by forged and falsified documents; along with unethical business practices by its own employees. [WF00001-WF00137] (R. Vol. V)

(7) Wells Fargo's underwriters used an unauthorized credit report to approve loan #0174072777. (R. Vol. V, Part 2, pp. 1687-1695) [WF00065-WF00073]

(8) The Seller was not a licensed Mortgage Broker or Loan Originator pursuant to South Carolina law §§ 40-58-20(1), 40-58-20(40) & 40-58-30(A) & (B)

(9) Any person acting on behalf of the lender (Wells Fargo) has a duty and an obligation to report this fraud to Wells Fargo.(R. Vol. V. Part 2, p.1739) [WF00117] Wells Fargo's attorneys violated the Compliance Agreement.

(10) As officers of the court, Wells Fargo's attorneys have a legal obligation and duty to report this fraud. Judges as keepers of the law, have a legal duty and obligation not to condone it, ignore it or dismiss it.

Giglio v. United States, 405 US 150 (1972) "[A]s long ago as *Mooney* v. *Holohan*, 294 U. S. 103, 112 (1935), this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice." This was reaffirmed in *Pyle* v. *Kansas*, 317 U. S. 213 (1942). In *Napue* v. *Illinois*, 360 U. S. 264 (1959), we said, "[t]he same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." *Id.*, at 269." (Also R. Vol. IV, Part 2, pp. 1425-1440 & R. Vol. V, Part 1, pp. 1441- 1510)

"[E]vidence is admissible which tends to make the fact at issue more or less probable or intelligible or to show the origin and history of the transaction between the parties and explain its character." *Gregg v. Fisher*, 377 Pa. 445, 454, 105 A.2d 105, 110 (1954)." See also *Com. v. Copeland*, 554 A. 2d 54 (Pa: S. Ct. 1988)

Riley Hill Gen. Contr. v. Tandy Corp., 737 P. 2d 595 (Or: S. Ct. 1987) "[A] party who is found "guilty" of deceit is not found merely negligent in deceiving the victim. That party must have intended to deceive the victim or acted in reckless disregard for the truth. The type of interest protected by the law of deceit is the interest in formulating business judgments without being misled by others — in short, in not being cheated. --- A person who has been found "guilty" of deceiving or cheating someone certainly has been found "guilty" of conduct which carries the same stigma of guilt whether the conduct is a criminal or civil act of deceit." (Internal citations omitted)" The seller, broker, appraiser, the notary and Wells Fargo's employees knew they were falsifying documents.

New York Life Ins. Co. v. Wittman, 813 F. Supp. 1287 n. 6 (OH: D. Ct. N.D. 1993) ---"[a] party seeking avoidance of a contract at common law. *See* Restatement (Second) of Contract § 164(1) ("Misrepresentation makes a contract voidable ... if a party's manifestation of assent is induced by *either fraudulent or material* misrepresentation....") *See also* Introductory note preceding § 159 of the Restatement ("Notably, under tort law a misrepresentation does not give rise to liability for fraudulent misrepresentation unless it is both fraudulent and material, while under contract law a misrepresentation may make a contract voidable if it is either fraudulent or material.")"

All the fraudulent misrepresentations by the Broker, Appraiser, the Seller and the Notary led to this illegal loan transaction. Therefore, they are material. (R. Vol. IV, Part 2, pp. 1355-1359 & Vol. V Part 1, pp. 1511-1622 & Part 2, pp. Bi-1759)

VII. ARGUMENT IV: DISMISSING THIS CASE OR AFFIRMING THE ILLEGALITIES WITHIN IT, WOULD BE THE SAME AS ALLOW- AND APPROVING VIOLATIONS OF SOUTH CAROLINA LAW, FEDERAL LAW AND SANCTIONING CRIMINAL BEHAVIOR

7. The seventh Abuse of Discretion the Appeals Court overlooked is the failure of the Lower Court to uphold South Carolina's Code of Laws.

Judges and attorneys; as officers of the court, have an obligation, duty and responsibility to uphold lawfully enacted statutes of this State and the laws of this nation. Upholding the law, and administering justice to law breakers and outlaws is a solemn responsibility that binds our entire nation together. The second lawless is condoned, overlooked, swept under the carpet or ignored, the death knell has sounded for this State and this nation. The lower court Abused its Discretion by failing in its duty to find the facts in this case and uphold South Carolina law. Whenever a perpetrator of a criminal or civil act walks free from punishment or accountability, it weakens the fabric of law, order and justice that safeguards all of us from crimes, torts and any other nefarious activity.

In re Treatment and Care of Luckabaugh, 568 SE 2d 338 (2002) The South Carolina Rules of Civil Procedure require "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon." *Cockfield v. Jeffcoat*, 313 SE 2d 365 (Ct.App. 1984) "[W]hile this Court's inclination is to affirm the trial court's order sustaining the demurrer since the complaint is obviously defective, we are bound to uphold the law as set out in our statutes and interpreted by our Supreme Court." See R. Vol. IV, Part 1, pp. 1031-1047

"[A]n attorney must uphold the law and administer justice." *Attorney Grievance v. Gore*, 845 A. 2d 1204 (Md: Ct.App. 2004). "As judges, we must uphold the law." *State v. Lockwood*, 632 A. 2d 655 (Vt: S. Ct. 1993) Since the Appellant has already written the statutes that have been violated, overlooked or ignored by the Lower Court, (R. Vol. IV, Part 1, pp. 1097-1102, ¶¶60-75 and pp. 1136-1149, ¶¶8-12) in the interest of time and expediency, the Appellant will only write the statutes and a brief description that highlights some of the laws the Lower Court failed to consider that would exonerate the Appellant.

SECTION 16-9-10(A)-(C) - Perjury and subornation of perjury.
SECTION 16-13-10(A)(1)-(4) - Forgery
SECTION 26-1-95 now **26-1-160** - Unlawful acts; forfeiture of commission; penalties.
SECTION 26-3-40(1) - Substance of certification.
SECTION 26-3-60(1)-(3) - "Acknowledged before me" defined.
SECTION 30-5-30(A)(2)-(C) - Prerequisites to recording.§
SECTION 30-5-40(1)(a)-(b) - Validation of certain instruments....
SECTION 34-3-110 - Crimes against a federally chartered or insured financial institution.
SECTION 36-3-305(a)(1)(ii-iii) - Defenses and claims in recoupment.
SECTION 37-5-108 - Unconscionability; inducement by unconscionable conduct.
SECTION 37-23-40(1)-(2) - Lender limitations.
SECTION 37-23-50 - Borrower's right in action for violations; penalties....
SECTION 37-23-60 - Bona fide error; restitution
SECTION 39-5-20 - Unfair methods of competition and unfair or deceptive acts or practices unlawful..
SECTION 40-58-20(36) - Soliciting, processing, placing, or negotiating a mortgage loan.
SECTION 40-58-20(40) - Qualified loan originator.
SECTION 40-58-30(A)-(B) - Mortgage brokers and loan originators to be licensed...
SECTION 40-58-50(E)(1) - A person may not act as a qualified loan originator....

SECTION 40-58-70(1)-(3) - Prohibited activities.
S. C. CONST. - ART. I - § 14 - Trial by jury; witnesses; defense.

8. The eighth Abuse of Discretion the Appeals Court overlooked is the failure of the Lower Court to uphold federal laws, rules, mandates and/or regulations relative to mortgage fraud.

The Lower Court Abused its Discretion by failing in its duty to find the facts and and uphold federal law. The following are some of the laws that are relevant to this case.

Wells Fargo paid the Seller and the Broker, not the Appellant.

12 C.F.R. § 1731.2(c) – Mortgage fraud reporting
15 USC § 1681n(a) - Civil liability for willful noncompliance
15 USC § 1692f(1) – Unfair practice -- The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law. (**There is no permission of law for an illegal loan transaction based on falsified, forged, altered and unauthorized documents**.)
18 U.S.C. § 1001(a)(1)-(3) – False statements, concealment.
18 USC § 1014 – Fraud and false statements
18 U.S.C. § 1344 – Bank fraud.
18 U.S.C. § 1346 – Definition of scheme or artifice to defraud.
24 C.F.R. Part 35 – Subpart A – Disclosure of known lead-based paint and/or lead-based paint hazards upon sale or lease of residential housing.

9. The ninth Abuse of Discretion the Appeals Court overlooked is the failure of the Lower Court to apply applicable law based on the evidence and the facts".

Wells Fargo's willing and knowing continued participation in an illegal loan transaction that was obtained by violating federal and state law and based on verifiable forged and falsified documents, after all the facts were known, and after being duly notified by the Appellant, should not be allowed to recover any damages from the Appellant under any theory of law. **Damages must be sought from the perpetrators of the crime and the Notary the falsely certified mortgage documents.** "[A]t common law actual knowledge is not necessary to hold a principal liable, if misrepresentations are made by the agent while acting within the scope of his agency." (*See West v. Service Life & Health Insurance Co.*, 220 S.C. 198, 66 S.E.2d 816 (1951); *Restatement (Second) of Agency § 261, comment a (1958)*)" (See also R. Vol. IV, Part 1, pp. 1048-1122)

Since Well Fargo and Wells Fargo's attorney's have failed to take appropriate action after the facts were known, makes Wells Fargo a willing accomplice. "[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. 86 C.J.S. *Torts* § 12 (1954). This rule applies at both law and in equity and whether the cause of action is in contract or in tort. 1A C.J.S. *Actions* § 29 (1985). *See also* Graham v. Graham, 276 S.C. 341, 278 S.E.2d 345 (1981); Nelson v. Bryant, 265 S.C. 558, 220 S.E.2d 647 (1975); Roundtree v. Ingle, 94 S.C. 231, 77 S.E. 931 (1913); Restatement (Second) of Torts § 774 (1977)." "[T]he illegality doctrine has also been recognized by the United States Supreme Court which, in McMullen v. Hoffman, 174 U.S. 639, 19 S.Ct. 839, 43 L.Ed. 1117 (1899), held illegality is a defense to a contract action:

> The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, *nor will they enforce any alleged rights directly springing from such contract.*

Id. at 654, 19 S.Ct. at 845 (emphasis added)." Jackson v. Bi-Lo Stores, Inc., 437 SE 2d 168 (Ct.App. 1993). Herrod v. First Republic Mortg. Corp., Inc., 625 SE 2d 373 – W Va: S. Ct.App. (2005) "[T]he Restatement (Second) of Contracts notes the difference between fraud as a contractual defense and fraud as a tort: A misrepresentation is an assertion that is not in accord with the facts. Concealment, and in some cases non-disclosure of a fact are equivalent to such an assertion. A misrepresentation may have three distinct effects under the rules stated in this Chapter. First, in rare cases, it may prevent the formation of any contract at all. Second, it may make a contract voidable. Third, it may be the grounds for a decree reforming the contract. In the case of non-disclosure by a fiduciary, making a contract with his beneficiary, these rules are supplemented by the rule stated in § 173." (Also see Appendix pp. 17-39)

"[A] misrepresentation may also be the basis for an affirmative claim for liability for misrepresentation under the law of torts. Such liability for misrepresentation is dealt with in the Restatement, Second, Torts. *See Restatement, Torts chs. 22, 23.* The rules stated there conform generally to those stated here. However, because tort law imposes liability in damages for misrepresentation, while contract law does not, the requirements imposed by contract law are in some instances less stringent. Notable, under tort law a misrepresentation does not give rise to liability for fraudulent misrepresentation unless it is both fraudulent and material, while under contract law a misrepresentation may make a contract voidable if it is either fraudulent or material." (R. Vol. V. Part 2, pp. 1623-1660)

"[R]estatement (Second) Contracts ch. 7, Introductory Note (1981) (citations omitted) (emphasis added). The question of whether a party was fraudulently induced into a contract may go to the formation of the contract. A party that is misled as to the essential terms of a contract does not technically agree to the contract, as no assent to its terms has been formulated due to the misrepresentation. In this situation, it is irrelevant whether the misrepresentation was made by the other party to the contract or a third person. *See Restatement (Second) Contracts § 163 (1981)* ("It is immaterial under the rule stated in this Section whether the misrepresentation is made by a party to the transaction or by a third person."). Excerpts from the following reports are in the Court's Records and in the Record on Appeal. (R. Vol. V, Part 1, pp. 1136-1137, ¶8)

> **(a)** *FBI Mortgage Report 2006:* "[E]ach Mortgage fraud scheme contains some type of "material misstatement, misrepresentation, or omission relating to the property or potential mortgage relied on by an underwriter or lender to fund, purchase or insure a loan."
>
> **(b)** *Crimes Enforcement Network (FinCEN) Mortgage Loan Fraud Report 11/2006:* "[F]raud for profit is often committed with the complicity of industry insiders such as mortgage brokers, real estate agents, property appraisers, and settlement agents (attorneys and title examiners). Typical fraudulent activities associated with this category in the SAR filing sampling are: appraisal fraud; fraudulent flipping;.." (R. Vol. V, Part 2, Bi-1660)

(c) *FBI 2007 Mortgage Fraud Report:* "[M]ortgage fraud is defined as the intentional misstatement, misrepresentation, or omission by an applicant or other interested parties, relied on by a lender or underwriter to provide funding for, to purchase, or to insure a mortgage loan."

(d) *Financial Crime Report to the Public 2007:* ""[F]raud for Profit" is sometimes referred to as "Industry Insider Fraud" and the motive is to revolve equity, falsely inflate the value of the property, or issue loans based on fictitious properties. Based on existing investigations and Mortgage Fraud reporting, 80 percent of all reported fraud losses involve collaboration or collusion by.... insiders."" (R. Vol. IV, Part 1, pp. 1055-1058)

10. The tenth Abuse of Discretion the Appeals Court overlooked is the Lower Court's and attorney Burns' & Moise' MISCONDUCT of changing the Appellant's pleading from Defrauding and Swindling with Falsified Documents to "Fraud".

Misconduct prevented the Appellant from fully and fairly presenting her defense The **MOST OFFENSIVE MISCONDUCT** by Wells Fargo's attorneys Burns and Moise and the Lower Court Judge was changing the Appellant's defensive pleading from **Defrauding and Swindling with Falsified Documents** to "Fraud". **FRAUD WAS NEVER THE APPELLANT'S DEFENSE**. The Appellant never accused Wells Fargo of fraud. The Appellant accused Wells Fargo of **Defrauding and Swindling** with falsified and forged documents from second and/or third parties and the Appellant was not going to participate in Wells Fargo's illegal scheme. **The Appellant's defense was never heard**. (R. p. 68, ¶1; R. Vol. IV, Part 1, pp. 1134-1136, ¶7; Part 2, pp.1361-1364 & Vol. V, Part 1, p. 1586)

*State v. Wescot*t, 450 SE 2d 598 (Ct.App. 1994) "[T]he statute against forgeries is a mere enlargement of the common law offense. *State v. Singletary*, 187 S.C. 19, 196 S.E. 527 (1938). The purpose of the statute "is to protect society against fabrication, falsification, and the uttering, publishing, and passing of forged instruments...." *Id.* The three important factors requisite to constitute forgery by uttering or publishing a forged instrument are: (1) it must be uttered or published as true or genuine (2) it must be known by the party uttering or publishing it that it is false, forged, or counterfeited and (3) there must be intent to prejudice, damage, or defraud another person. *Id.*" (R. pp. 5-24, 68-117)

Voest-Alpine Intern. Corp. v. Chase Manhattan Bank, 707 F. 2d 680 (2nd Cir. 1983) "[F]alsified documents are the same as no documents at all. *See Old Colony Trust Co. v. Lawyers' Title & Trust Co.*, 297 F. 152, 158 (2d Cir.), *cert. denied,* 265 U.S. 585, 44 S.Ct. 459, 68 L.Ed. 1192 (1924); *Prutscher v. Fidelity International Bank*, 502 F.Supp. 535 (S.D.N.Y.1980)." (R. Vol. V, Part 2, pp.1623-1660, 1680, 1682, 1685-1709)

ATLANTIC COAST BUILDERS v. Lewis, 730 SE2d282 (2012) "[O]ur jurisprudence supports that a court's authority to declare a contract void *ab initio* is impervious to our issue preservation rules:

> The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. *In case any action is brought which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it,* nor will they enforce any alleged rights directly springing from such contract.

Jackson v. Bi-Lo Stores, Inc., 313 S.C. 272, 276, 437 S.E.2d 168, 170 (Ct.App.1993) (quoting *McMullen v. Hoffman*, 174 U.S. 639, 654, 19 S.Ct. 839, 43 L.Ed. 1117 (1899) (emphasis in original)). In *Ward v. West Oil Co., Inc.*, 387 S.C. 268, 692 S.E.2d 516, this Court specifically noted that issue preservation rules were "inapplicable as the Court will not `lend its assistance to carry out the terms of a contract that violates statutory law or public policy.'" *Id.* at 274,692 S.E.2d at 519. The Court then cited a number of other authorities that support the proposition that a court may void a contract as unenforceable regardless of whether the issue of the contract's legality was developed in lower courts. *Id.* at 274-75, 692 S.E.2d at 520 (citing *Hyta v. Finley*, 137 Idaho 755, 53 P.3d 338, 340-41 (2002) (holding that an appellate court could *sua sponte* raise issue of whether an underlying contract was illegal); *Parente v. Pirozzoli*, 87 Conn.App. 235, 866 A.2d 629, 635 (2005) ("`It is generally true that illegality of a contract, if of a serious nature, need not be pleaded, as a court will generally of its own motion take notice of anything contrary to public policy if it appears from the pleadings or in evidence, and the plaintiff will

be denied relief, for to hold otherwise would be to enforce inappropriately an illegal agreement.'") (internal quotations omitted)). As it relates to issue preservation, courts of this state should operate as well-behaved children, but only when spoken to by well-behaved litigants. In this case, I do not believe the court can enforce, and thereby condone, a contract whose sole purpose is illegal." (R. Vol. V, Part 2, pp. 1623-1759)

"[T]he refusal of the courts to entertain litigation based upon an illegal contract can, at times, lead to inequitable results. However, as stated by Lord Mansfield in the landmark case of *Holman v. Johnson,* the illegality doctrine.....

> is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff, by accident, if I may so say. The principle of public policy is this; *ex dolo malo non oritur action* (an action does not arise from a fraud). No Court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act.... It is upon that ground the Court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff. So if the plaintiff and defendant were to change sides, and the defendant was to bring his action against the plaintiff, the latter would then have the advantage of it; for where both are equally in fault, *potior est conditio defendentis* (stronger is the condition of the defendant, than that of the plaintiff). *Holman* (1775) 98 Eng. Rep. 1120, 1121."

"[J]udges cannot change a Defensive Pleading without consent. Attorneys cannot change a defense pleading to expedite a judgment or obtain a favorable Court Order or Ruling. Changing a defense pleading is not something Wells Fargo did..or..can do...and... the offense is an egregious affront to justice. This offense was done by Officers of the Court. (See R. Vol. V, Part 1, pp. 1552 & 1586) The Appellant's primary Defense in case #2008-CP-38-1024 still is Wells Fargo is "Perpetuating a Fraud" that is based on Wells Fargo's acceptance, approval, funding, use and defending the use of falsified, forged, altered and unauthorized documents from 2nd and/or 3rd parties; i.e., the Seller, Broker, the Appraiser, the Notary and Wells Fargo's own employees to **Defraud or Swindle** the Appellant out of property and/or money one month at a time and one payment at a time. (R. pp. 68-71; Vol. IV, Part 2, pp. 1361-1364, ¶¶16-18**(a)-(d)** & Vol. V, Part 1, pp. 1564-1567)

In *6 Angels, Inc. v. Stuart-Wright Mortgage, Inc.* (2001) 85 Cal.App.4th 1279 at 1286; where the Court stated: "[I]t is the general rule that courts have power to vacate a foreclosure sale where there has been fraud in the procurement of the foreclosure decree or where the sale has been improperly, unfairly or unlawfully conducted, or is tainted by fraud, or where there has been such a mistake that to allow it to stand would be inequitable to purchaser and parties." (See R. pp. 39-48 & Order #2016-UP-472)

Hammerschmidt v. United States, 265 U.S. 182, 188, 44 S.Ct. 511, 512, 68 L.Ed. 968 (1924). "[I]t is true that the words "to defraud" as used in some statutes have been given a wide meaning, wider than their ordinary scope. They usually signify the deprivation of something of value by trick, deceit, chicane or over-reaching. They do not extend to theft by violence. They refer rather to wronging one in his property rights by dishonest methods or schemes." The Supreme Court has made it clear that "defraud" is limited only to wrongs done "by deceit, craft or trickery, **or at least by means that are dishonest."** *Hammerschmidt, 265 U.S. at 188, 44 S.Ct. at 512.* (R. pp. 68-71)

Under prevailing criminal codes and statutes, it is not necessary for the Appellant to prove Wells Fargo actually succeeded in **Defrauding or Swindling** the Appellant by means of false or fraudulent pretenses, representations, or promises. It is not necessary to prove the Appellant lost any money or property as a result of Wells Fargo's scheme or plan to **Defraud or Swindle** *with the falsified documents of the Seller, Appraiser, Notary Broker and Wells Fargo's Underwriters* (R. Vol. V, pp. 1638-1707) and false accusations of *Janet Frotscher.* (R. Vol. V, Part 2, p. 1747) An unsuccessful scheme to **Defraud or Swindle** is as just as illegal as a scheme that is ultimately successful. Pursuant to *§ 40-58-20(28)* relative to "security interest"; the Appellant has a legal right to ensure the documents supporting Wells Fargo's security interest are legitimate and not falsified and a legal right not to participate in an illegal contract. [***Any 11/26/07 date is a forgery***]

VIII: SUMMATION

South Carolina's *§ 40- 58-70(1)-(3)* effectively addresses Wells Fargo's violations, fraudulent conduct, misrepresentations and concealment of material facts; as well as, the Seller's, Notary's, Broker's and the Appraiser's. **The Appellant Defenses that were never heard should have gone to a jury**. The Appellant did not know the Judge and attorneys Burns and Moise had changed her defenses until March 15, 2014. Dated: March 13, 2014. (R. Vol. V, Part 1, pp. 1585-86) (Also see R. Vol. IV, Part 1, p. 1135) Such unconscionable acts by officers of the court not only deserve dismissal with prejudice, these acts also deserve sanctions to the fullest extent of the Court's authority as well as punitive and compensatory damages to the fullest extent of the law.

IX: CONCLUSION

My case for **Defrauding and Swindling** with the falsified, forged, altered and unauthorized documents of 2nd and/or 3rd parties was never heard. It was replaced, by attorneys Burns, Moise and the Judge with *"Fraud"*. This Court fabrication has been constantly denied. **Perpetuating a Fraud..with falsified, forged, altered and unauthorized documents...YES. Fraud..NO**. In short, there is no reason not to reinstate this case and every reason to do so. Convincing this Court to review a case is no mean feat for any petitioner, let alone for a petitioner proceeding *Pro Se*. It would be inequitable to deny the Appellant a "Rehearing", that is based on the facts, material facts and the evidence.

For the reasons stated above and reasons stated in every filed pleading and Brief, including this Petition, this Court should reverse its judgment in the interest of justice so that this these unwarranted acts of persecuting and prosecuting an innocent victim of a notorious scheme and criminal act can end. For relief: (See R. Vol. IV, Part 2, p. 1361)

Respectfully submitted,

November 21, 2016

/s Dorothy Sistrunk

Dorothy Sistrunk
423 Bayne Street
Orangeburg, South Carolina 29115
(803) 268-0716

Note: Due to averments that are stated with specificity and particularity, this "Petition" will be verified and notarized: *Winnetka Bank v. Mandas,* 202 Ill. App. 3d 373, 397 (1st Dist. 1990). "[W]hen a pleading is verified, every subsequent pleading must also be verified unless the trial court excuses the verification."

DOROTHY SISTRUNK'S DECLARATION

I. Let it be known that 18 U.S. Code § 1621 clearly states in pertinent parts; "[W]hoever— (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States."

II. And...28 U.S. Code § 1746 clearly states in pertinent parts; "[W]herever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)". "

III. Based on the above federal laws; I declare; under the PENALTY of PERJURY, that the foregoing is true and correct. Executed on November 18, 2016.

Dorothy Sistrunk

NOTARY CERTIFICATION

IN WITNESS WHEREOF, The undersigned, being duly ***SWORN***, declares under the ***PENALTY OF PERJURY*** that the facts in her "Petition for Rehearing or Rehearing En Banc" are true and correct as of her own knowledge. Except as to those matters stated herein 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: Appellate Case No. 2014-001683, Civil Action Case No. 2008-CP-38-1024 and Unpublished Opinion No. 2016-UP-472 will sign, seal and execute her attestations on this 21 day of November in the year 2016 in the City and County of Orangeburg, in the State of South Carolina.

> Rule 11(c), SCRCP 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 Sistrunk

Notary's Signature as Witness (1): Kim Layn Power

Signed, Sealed, Executed and Delivered in the Presence of:

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

On November 21, 2016 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 is executing the same in her authorized capacity, and by her signature on her "Petition For Rehearing or Rehearing En Banc" and this Notary Certification presents this document to the Appellate Court.

WITNESS My Hand and Official Seal.

Notary's Signature Kim Layn Power

Commission Expires 10-17-24

(Seal)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

Appellate Case No. 2014-001683

Appeal From Orangeburg County
Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2016-UP-472
Submitted October 1, 2016 – Filed November 9, 2016

DISMISSED IN PART AND AFFIRMED IN PART

Dorothy Sistrunk, of Orangeburg, pro se.

Elizabeth Scott Moise, of Nelson Mullins Riley & Scarborough, LLP, of Charleston; and Michael J. Anzelmo, of Nelson Mullins Riley & Scarborough, LLP, of Columbia, for Respondent.

PER CURIAM: Dorothy Sistrunk appeals the circuit court's order denying her motions to vacate under Rule 60(b), SCRCP, and for a new trial under Rule 38(a)-

(d), Rule 59(a)(2), and Rule 60(b)(1), SCRCP. We dismiss in part and affirm in part.[1]

1. We find any appeal from the circuit court's order granting partial summary judgment is untimely. *See* Rule 203(b)(1), SCACR ("A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment."); *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 20, 602 S.E.2d 772, 778 (2004) ("An appeal may be barred due to untimely service of the notice of appeal when a party—instead of serving a notice of appeal—files a successive Rule 59(e) motion, where the [circuit court's] ruling on the first Rule 59(e) motion does not result in a substantial alteration of the original judgment."); *Coward Hund Constr. Co. v. Ball Corp.*, 336 S.C. 1, 3, 518 S.E.2d 56, 58 (Ct. App. 1999) ("[A] second motion for reconsideration is appropriate only if it challenges something that was altered from the original judgment as a result of the initial motion for reconsideration."); *Camp v. Camp*, 386 S.C. 571, 574-75, 689 S.E.2d 634, 636 (2010) ("Service of the notice of appeal is a 'jurisdictional requirement, and [the appellate c]ourt has no authority to extend or expand the time in which the notice of intent to appeal must be served.'" (quoting *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985))). Accordingly, any appeal stemming from the order granting partial summary judgment is dismissed.

2. We find the circuit court did not abuse its discretion by denying Sistrunk's motion to vacate under Rule 60(b), SCRCP. *See Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 17, 594 S.E.2d 478, 482 (2004) ("Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the [circuit court]."). On appeal, Sistrunk alleges only intrinsic fraud. *See Gainey v. Gainey*, 382 S.C. 414, 425, 675 S.E.2d 792, 798 (Ct. App. 2009) ("In South Carolina, extrinsic fraud is the only type of fraud for which relief may be granted under Rule 60(b)(3), SCRCP."); *see also Hilton Head Ctr. of S.C. v. Pub. Serv. Comm'n of S.C.*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987) ("Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard."); *Gainey*, 382 S.C. at 426, 675 S.E.2d at 798 ("[I]ntrinsic fraud is fraud which was presented and considered at trial."); *see also Raby Constr.*, 358 S.C. at 19, 594 S.E.2d at 483 ("The classic case of intrinsic fraud is perjured testimony or presenting forged documents at trial."). Additionally, Sistrunk does not allege there was any after-discovered evidence or "mistake, inadvertence, surprise, or excusable neglect." *See* Rule 60(b). Accordingly, the circuit court's order denying Sistrunk's motion to vacate is affirmed.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

DISMISSED IN PART AND AFFIRMED IN PART.

WILLIAMS, THOMAS, and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Diane Shafer Goodstein, Circuit Court Judge

2014-001683

Wells Fargo Bank, N.A.,

Respondent,

v.

Dorothy Sistrunk, Appellant.

PROOF OF SERVICE

I certify that I served a copy of my "Appellant Petition For Rehearing Or Rehearing En Banc" on Wells Fargo Bank, N.A., by depositing a copy of it in the United States Postal Service, postage prepaid, on November 21, 2016, addressed to Wells Fargo's attorney/s of record that are listed below.

Today's Date: November 21, 2016

/s Dorothy Sistrunk
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Appellant Petition For Rehearing Or Rehearing En Banc

November 21, 2016

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

RE: Wells Fargo Bank, N.A. v. Dorothy Sistrunk
Civil Action Case #2008-CP-38-1024
Appellate Case #2014-001683
Opinion No. 2016-UP-472

Ms. Kitchings and/or Ms. V. Claire Allen

I am enclosing my **"Appellant Petition For Rehearing Or Rehearing En Banc"**. Enclosed is my check for $25.00 and Proof of Service. In accordance with *Rule 240(e), SCACR*, I am enclosing an original and six (6) copies of my Petition; paper clipped and not stapled, and I have also served a copy of same on all parties listed below.

Thank you.

/s Dorothy Sistrunk
Dorothy Sistrunk

CC:

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