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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM HORRY COUNTY

Court of Common Pleas

Cynthia Graham Howe, Master-in-Equity Judge

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Case No.: 2016-001550

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Branch Banking and Trust Company, .....Respondent,

v.

Cindy B. Hunt; Willow Greens

Homeowners Association, Inc.;

CJ Developers, LLC, .....Defendant(s),

Of whom Cindy B. Hunt is .....Appellant

\_\_\_\_\_

INITIAL BRIEF

\_\_\_\_\_

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## Table of Content

Table of Cases	Page No.
Austin v. Stokes-Craven Holding Corp., 34, 53 (S.C., 2010). Opinion No. 26784 (S.C. 3/8/2010)	25,
Bardoon Properties, NV v. Eidolon Corp., 485 S.E.2d 371, 372-373, 326 S.C. 166 (S.C., 1997).	9
Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).	44
BBC Intern. Ltd v. Lumino Designs, Inc., 441 F. Supp. 2d 438, 444 (E.D.N.Y. 2006).	1
Brooks, Matter of, 267 S.E.2d 74, 75-76, 274 S.C. 601 (S.C., 1980).	14
Calvert v. Berg (W.D. Wash., 2013)	1
City of Charleston, S.C. v. Hotels.Com, Lp, 520 F.Supp.2d 757, 774 (D.S.C., 2007)	4
Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001)	50
Davis v. Southpoint Condo. Ass'n, Inc. (S.D. Fla., 2014)	20,
Holden v. Cribb, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002)	48, 50, 51
Honeywell Intern., Inc. v. Intern. Union, United Auto., No. 11-04250 (WJM), 2011 WL 6293032, at *3 (D. N.J. Dec. 16, 2011);	1
In re Bennett, 960 S.W.2d 35, 40 (Tex. 1997)	4
Limehouse v. Hulsey, 404 S.C. 93,	

744 S.E.2d 566, 573 (S.C., 2013)	5, 6, 7, 9, 10, 11, 13
Mathis v. South Carolina State Highway Dept., 195 S.E.2d 713, 714, 260 S.C. 344,345 (S.C., 1973).	46
Moore v. Sullivan, 123 N.C.App. 647, 473 S.E.2d 659, 660 (1996)	53
Pebble Creek Homes, LLC v. Upstream Images, LLC., 547 F.Supp.2d 1214 (2000)	11
Pye v. Estate of Fox, 633 S.E.2d 505, 510, 369 S.C. 555 (S.C., 2006).	26, 28
Shipp v. Richardson Corporation of South Carolina, 285 S.C. 460,330 S.E.2d 291 (1985).	23
Simeone v. First Bank Nat. Ass'n, 971 F.2d 103 108 (C.A.8 (Minn.), 1992)	20
Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 204, 723 S.E.2d 597, 603 (S.C. App., 2012).	23
Stark Truss Co. v. SUPERIOR CONST. 15, 20, 41, 44, 46, 51, 53, 54 CORP., 360 S.C. 503, 508, 602 S.E.2d 99 (S.C. App., 2004).	
State Farm Fire & Cas. Co. v. Willison, 833 F. Supp. 2d 1200, 1215 (D. Ha. 2011).	1
Stoffels fels ex rel., Sbc Concession v. Sbc Comm. 430 F.Supp.2d 642, 647 (W.D. Tex., 2006)	29, 32, 33, 48
Strong v. University of South Carolina School of Medicine, 316 S.C. 189, 191, 447 S.E.2d 850, 852 (1994).	26, 29

Thynes v. Lloyd, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (Ct. App. 1987)	54, 55
Gardner v. Newsome Chevrolet-Buick, Inc., 21, 30, 34 (1991).	304 S.C. 328, 330, 404 S.E.2d 200, 201
Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750, 759 (S.C., 1997).	22, 24
Kough v. Pack (D.S.C., April 29, 2016).	24
Maybank v. BB&T CORPORATION, 20, 29, 33	Opinion No. 27640 (S.C. June 3, 2016)
Mendelsohn v. Whitfield, 430 S.E.2d 524, 530, 25, 33, 53	17, 20, 312 S.C. 17, 25 (S.C. App., 1993).
Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602-3 (1995).	44
Tharo Sys., Inc. v. cab Produkttechnik GmbH & Co. KG, No. 1:07-cv-00423, 2007 WL 3353571, at *6 (N. D. Ohio, Nov. 9, 2007).	1
Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987).	45

5C Wright & Miller. Fed. Prac. & Proc. § 1388 .....33

## **Table of Statutes**

### **State Statutes**

Rule 7(a), SCRCP	33, 51, 52, 54, 56
Rule 8, SCRCP	56
Rule 8(d), SCRCP	29, 34, 35
Rule 12(a), SCRCP	48, 49
Rule 12(b)(6), SCRCP	12, 33, 43, 44, 52
Rule 12(g), SCRCP	12, 33, 50, 56
Rule 12(h), SCRCP	50
Rule 12(h)(2), SCRCP	33, 56
Rule 15(a), SCRCP	51, 54
Rule 41, SCRCP	3, 10, 19, 21, 23, 40, 41
Rule 41(a)(1), SCRCP	16, 40
Rule 41(d), SCRCP	20
Rule 55(a), SCRCP	35, 37, 51, 54

Rule 55(b), SCRCP	37,
Rule 60(b), SCRCP	23
Rule 55(b)(1), SCRCP	55, 56
Rule 55(b)(2), SCRCP	55, 56
Rule 55(b)(3), SCRCP	56
Rule 59, SCRCP	3, 15, 36,38, 39
Rule 59(e), SCRCP	37, 41, 42
Rule 60, SCRCP	3, 15, 36, 38, 39, 42
<b>SC Code</b>	
S.C. Code Ann. 15-7-10(3)	3
S.C. Code Ann. 15-7-100	3
SC Code 39-5-10 thru 39-5-170	35
SC Code 62-7-1002 thru 62-7-1004 and 62-7-1001(b)	35
Rule 201, SCRE	3

**Federal Statutes:**

Rule 11, FRCP	26
Fed. R. App. P. 41	5
Rule 12(b)(6), FRCP	6
28 USC 1332	5
28 U.S.C.A. § 1446(d)	5, 6, 7, 9, 10, 11, 13, 42
28 U.S.C.A. § 1446(e)	5
38 A.L.R. Fed. 824 (1978 & Supp.2013)	5

**STATEMENT OF ISSUES ON APPEAL**

1. Did BBT engage in forum shopping and vexatious litigation when BBT filed the foreclosure complaint of lawsuit # 4 in State Court on 4/16/2013? Page 1
  
2. Has the jurisdiction of the State Court been suspended in this matter since the 8/6/2012 notice of removal (NOR) in lawsuit # 3? Page 5
  - a. Did the 8/6/2012 and the 11/10/2014 Notice of Removals (NOR) deprive the State Court of Jurisdiction to hear and enter all the hearings, Orders, etc. prior to the certified Order of Remand being received by the State Court on 5/11/2015? Page 9
  
3. Did BBT file an affidavit with a false statement in support of the Order of Publication on Hunt? Page 14
  
4. Is Hunt entitled to attorney fees and costs, etc.? Page 15
  - a. Did the lower court err when it denied attorney fees and costs to Hunt under the Rule 41, SCRCF motion? Page 20
  
  - b. Did the lower court err when it denied attorney fees and costs to Hunt based on the allegations and causes of action in the FAC? Page 22

- c. Did the lower court err when it denied attorney fees and costs to Hunt under the MFDJ, etc (Rule 55(b)(3), SCRCP)? Page 24
- 5. Should BBT's SOL defense be tolled? Page 26
- 6. Verified: Are the 6/6/2014 first amended counterclaims (FAC) and exhibit #s 1-42 verified? Page 24
- 7. Did the 6/6/2014 first amended counterclaims (FAC) constitute a new pleading? Page 29
- 8. Did BBT admit evidence into the record without an objection? Page 33
- 9. Was the 8/11/2015 motion as to the 1/13/2015 Order untimely pursuant to Rule 59(e), SCRCP? No. Page 41
- 10. Do all the FAC remain after application of the 6/25/2014 2<sup>nd</sup> MTD the FAC? Page 44
- 11. Did the Court err in denying Hunt's Motion for Default Judgment (MFDJ, etc) against BBT? Page 46
  - a. Is the MFDJ, etc moot? Page 46
  - b. Are exceptions to the mootness doctrine applicable? Page 50
  - c. Was the HC Clerk of Court required to make an entry of default against BBT upon receipt of the fourteen affidavits of default? Page 51
  - d. Did the lower court err when it denied Hunt's MFDJ, etc under Rule 55 (b)(1-2), SCRCP? Page 55
  - e. Did the lower court err when it denied Hunt's MFDJ, etc under Rule 55 (b)(3), SCRCP? Page 56

## **STATEMENT OF THE CASE**

This matter involving Hunt's banking relationship with BBT has been on going since about 1/18/2008. Thereafter, Hunt reported BBT to the FDIC, etc. and the first of four lawsuits were filed in the USDC on 8/13/2009. against BBT and several employee defendants for the mishandling of Hunt's accounts. Hunt was the Plaintiff in lawsuit #s 1-3. BBT removed lawsuit # 3 to the USDC on 8/6/2012. Hunt did not make an Order of remand. BBT is the Plaintiff in lawsuit # 4. BBT filed the non jury complaint in lawsuit # 4 on 4/16/2013 asserting foreclosure against Hunt about thirty three days after the USDC dismissed lawsuit #s 2-3 on 3/13/2013. Hunt, Willow Green Home Owners Association and CJ Developers were named as Defendants in lawsuit # 4. Hunt has asserted counterclaims in lawsuit # 4 against BBT for the mishandling of Hunt's accounts. Hunt has filed the notice of appeal on three of the outstanding Orders of the lower court.

The first round of hearing dates for two of the motions that was scheduled for the 10/14/2014 hearing was BBT's 6/25/2014 2<sup>nd</sup> MTD the FAC and Hunt's 9/30/2014 MFDJ, etc. The lower court made oral rulings at the 10/14/2014 hearing. Thereafter, the lower court made a written order at 9:04 am on a 10/28/2014 Order that was a ruling

against Hunt's 9/30/2014 MFDJ, etc. On 10/30/2014 Hunt made a motion under Rule 59(e), SCRCP<sup>1</sup> re the 10/28/2014 Order.

On 11/10/2014 Hunt filed a notice of removal to the USDC. On 12/8/2014 BBT made a motion to remand to state court. On 1/13/2015 the lower court filed the written Order from the 10/14/2014 hearing on BBT's 6/25/2014 2<sup>nd</sup> MTD the FAC. The 4/15/2015 RR of the USDC recommended that the case be remanded. The Order of Remand was filed on 5/8/2015. The HC Clerk of Court filed the certified Order o Remand on 5/11/2015.

Thereafter, Hunt made a motion under Rule 41, SCRCP on 5/27/2015 requesting attorney fees and costs. Hunt did not request a hearing on the motion. And BBT did not make a written objection to the 5/27/2015 motion. The lower court denied the motion in a written Order on 6/3/2015.

Hunt wrote to the HC Clerk of Court on 7/27/2015 for Orders. Hunt received three orders on 8/10/2015: the 1/13/2015 Order, the 5/11/2015 Order and the 6/3/2015 Order. On 8/11/2015 Hunt made motions under 59 and 60, SCRCP and lack of jurisdiction as to the 1/13/2015 and 6/3/2015 Orders.

A hearing was scheduled for the three motions on 11/10/2015: the 10/30/2014 motion and the two motions filed on 8/11/2015. The

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<sup>1</sup> This 10/30/2014 motion involved other Orders were only 1 of three orders of the motion is being appealed.

lower court denied all three of Hunt's motions. The 6/15/2016 Order from the 11/10/2015 hearing is the reason for the notice of appeal.

**Change in parties:** WGHOA withdrew on 11/05/2013; and CJ Developers was dissolved on 3/9/2006.

During removal the USDC made a finding of personal jurisdiction over Hunt. The date of service of the notice of appeal: July 23, 2016

The amount involved on appeal is in excess of fifty million dollars and attorney fees and costs in excess of \$ 2, 668,905, plus legal interest, etc. Please see the conclusion at the end of the Arguments for a list of the amount involved on appeal.

There is an Order of Reference to the Master in Equity.

## ARGUMENTS

### **1. Did BBT engage in forum shopping and vexatious litigation when BBT filed the foreclosure complaint of lawsuit # 4 in State Court on 4/16/2013? Yes.**

"Forum shopping may be present where a party (1) seeks to obtain a forum applying more favorable law or a forum in which it believes it will fare better;<sup>1</sup> (2) files in a forum with little or no connection to the underlying action;<sup>2</sup> (3) files with timing suggesting an attempt to obtain one forum over another;<sup>3</sup> or (4) seeks to benefit from or avoid past rulings in a particular forum.<sup>4</sup>" *Calvert v. Berg* (W.D. Wash., 2013) at pages 10-11.

This dispute between Hunt and BBT has been going on for almost nine years. BBT removed lawsuit # 3 to the USDC<sup>5</sup> and thereafter BBT requested and was granted a dismissal of lawsuit # 3. Hunt argues that about thirty three days later BBT engaged in forum shopping through lawsuit # 4 in State Court based on the Report Recommendation (RR) at exhibit # 61 and the Order at exhibit # 43.

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<sup>1</sup> *Honeywell Intern., Inc. v. Intern. Union, United Auto.*, No. 11-04250 (WJM), 2011 WL 6293032, at \*3 (D. N.J. Dec. 16, 2011); *State Farm Fire & Cas. Co. v. Willison*, 833 F. Supp. 2d 1200, 1215 (D. Ha. 2011).

<sup>2</sup> *BBC Intern. Ltd v. Lumino Designs, Inc.*, 441 F. Supp. 2d 438, 444 (E.D.N.Y. 2006).

<sup>3</sup> *Honeywell*, supra, 2011 WL 6293032, at \*4.

<sup>4</sup> *Tharo Sys., Inc. v. cab Produkttechnik GmbH & Co. KG*, No. 1:07-cv-00423, 2007 WL 3353571, at \*6 (N. D. Ohio, Nov. 9, 2007).

<sup>5</sup> BBT asserted that the amount in controversy was the amount of Hunt's mortgage. See the 8/6/2012 NOR at paragraph 7.

Arguments herein that supports Hunt's position that BBT continue to engage in forum shopping are at: **Did BBT file an affidavit with a false statement in support of the Order of Publication on Hunt;** and **Has the jurisdiction of the State Court been suspended in this matter since the 8/6/2012 notice of removal (NOR) in lawsuit # 3.** And Hunt also argues that the timing of lawsuit # 4 suggests forum shopping where BBT removed lawsuit # 3 to the USDC.<sup>6</sup> As does the fact that the USDC dismissed lawsuit #s 2-3 without prejudice. Such that if Hunt had filed this 4<sup>th</sup> lawsuit in the USDC then based on the prior ruling at exhibit #s 61 (RR) and exhibit # 43 (Order) BBT would not be able to assert the current defenses and objections in the two motions to dismiss at exhibit #s 89-90 in this 4<sup>th</sup> lawsuit. As does the fact that so far in this action the state court forum has applied more favorable law and allowed misconduct such that BBT has fared better than it would have in the USDC. See - exhibit #s 61 (RR) and exhibit # 43 (Order) vs all the favorable Orders in lawsuit # 4.

And about nineteen months into the 4<sup>th</sup> lawsuit on 11/10/2014 Hunt filed a notice of removal. In the **11/10/2014 Notice of Removal** to the State Court, the USDC and BBT, at exhibit # 80 at paragraph 5 Hunt states:

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<sup>6</sup> BBT filed the 4<sup>th</sup> lawsuit in this matter about 33 days after lawsuit #s 2-3 were

BBT went forum shopping for a forum that would allow BBT to file motions to dismiss under Rule 12(b)(6) involving the issues that the Magistrate did not reach in law suit # 3.

BBT's motion to remand is at exhibit # 81. Thus, in Hunt's response (at exhibit # 82 at pages 1-15) to BBT's motion to remand Hunt argued that BBT has engaged in forum shopping. BBT's reply re forum shopping is at exhibit # 83 at paragraph 5. If the Court takes BBT at its word then BBT had no intention of pursuing foreclosure when BBT submitted its 8/6/2012 NOR where the 2007 mortgage as per the 4/16/2013 complaint in lawsuit # 4 was delinquent as of 7/1/2012. BBT's partial cite at exhibit # 83 at paragraph 5 to S.C. Code Ann. 15-7-10(3) leaves out "subject to the power of the court to change the place of trial in certain cases as provided in Section 15-7-100". Hunt argues that the USDC agreed with Hunt that BBT had engaged in forum shopping where the USDC at exhibit # 85 at page 2 at exhibit # 4 states: "Hunt also raises several arguments regarding the merits of this action. However, the only issue presently before the court is whether removal was proper."<sup>7</sup>

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dismissed on 3/13/2013 at the request of BBT.

<sup>7</sup> At exhibit #s 86 and 87 the USDC adopted the RR of the Magistrate of the USDC. See exhibit # 82 (Hunt's Response to Motion to Remand) at all pages; and BBT reply is at exhibit # 83. The pleadings from the Removal/Remand were submitted as exhibits at the 11/10/2015 hearing and were entered into evidence without objection by BBT. See the 11/10/2015 transcript at page 8 at lines 1-24.

Thereafter, in the 5/27/2015 Motion under SCRCP 41 (MFAFC) for attorney fees and costs at page 2 Hunt requested that that the lower court take judicial notice of all four lawsuits pursuant to SCRE 201;<sup>8</sup> in both of the 8/11/2015 Motions: lack of jurisdiction, SCRCP 59 and SCRCP 60 at page 1 or 2 Hunt requested that that the lower court take judicial notice of all four lawsuits pursuant to SCRE 201; and in the 11/10/2015 Brief at page 4 Hunt requested that that the lower court take judicial notice of all four lawsuits pursuant to SCRE 201 where Hunt also provide the lower court with the exhibits listed in the 11/10/2015 Brief at page 3; and exhibit #s 46 and 53. At the 11/10/2015 hearing - BBT did not object to exhibits #s 46, 53 and 80-107 being admitted into evidence as shown in the 11/10/2015 transcript at pages 8 at line 1 thru page 9 at line 6.<sup>9</sup>

Attorneys who abuse the legal process—as through improper forum shopping — may be sanctioned. *See, e.g., In re Bennett*, 960 S.W.2d 35, 40 (Tex. 1997). See exhibit # 82 at page 15.<sup>10</sup>

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<sup>8</sup> Hunt did not request a hearing on the 5/27/2015 motion. And BBT did not file a written objection. Hunt argues that at the 11/10/2015 hearing BBT must have realized that the lower court was not reading the pleadings such that the attorney for BBT makes for the first time objections to attorney fees and costs to Hunt based on Hunt being pro se.

<sup>9</sup> The law of the case doctrine holds that once a court has decided an issue, that same court should not revisit that issue and reverse its earlier decision. *City of Charleston, S.C. v. Hotels.Com, Lp*, 520 F.Supp.2d 757, 774 (D.S.C., 2007).

<sup>10</sup> The 6/15/2016 order does not reflect the evidence at exhibit #s 46, 53, 80-107 where the Judge of the lower court - over Hunt's objection allowed BBT to write the 6/15/2016 Order. Hunt argues that this is the equivalent of allowing the fox to guard the hen house.

**Conclusion:** See below at: **Is Hunt entitled to attorney fees and costs, etc.?**

**2. Has the jurisdiction of the State Court been suspended in this matter since the 8/6/2012 notice of removal (NOR) in lawsuit # 3?<sup>11</sup> Yes.**

This matter involves two notice of removals (NOR) and one Order of Remand. The two NOR were filed on 8/6/2012 (lawsuit # 3 by BBT) and 11/10/2014 (lawsuit # 4 by Hunt). The certified Order of Remand was filed by the State Court on 5/11/2015 in lawsuit # 4. See exhibit # 87.

**Lawsuit # 3:**

The first NOR was filed by the attorney for BBT on 8/6/2012 in lawsuit # 3 under diversity jurisdiction pursuant to 28 USC 1332. See the 8/6/2012 NOR at page 2 at paragraph 8.

Removal proceedings impact the jurisdiction of the state court in that removal of a state case to federal court "divests" the state court of jurisdiction. See Michael J. Kaplan, Annotation, Effect, on Jurisdiction of State Court, of 28 U.S.C.A. § 1446(e), Relating to Removal of Civil Case to Federal Court, 38 A.L.R. Fed. 824 (1978 & Supp.2013) (analyzing jurisdictional and procedural implications of removal of state court case to federal court). Although most cases speak in terms of "divesting" the state court of jurisdiction during removal proceedings, we believe the more accurate terminology is

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<sup>11</sup> Subject matter jurisdiction can not be waived and issues relating to subject matter jurisdiction maybe raised at any time. *Bardoon Properties, NV v. Eidolon Corp.*, 485 S.E.2d 371, 372-373, 326 S.C. 166 (S.C., 1997).

a "suspension" of the state court's jurisdiction. *Limehouse v. Hulse*, 404 S.C. 93, 744 S.E.2d 566, 573 (S.C., 2013).

Pursuant to the 6/7/2012 mandate of the USCA in lawsuit # 1 - Hunt on 7/9/2012 filed a Summons and Complaint with forty two exhibits in lawsuit # 3 in State Court on 7/9/2012. Fed. R. App. P. 41, see the judgment at exhibit # 40 and see the civil docket at exhibit # 47 at page 14 at # 139.; and see exhibit # 49 entry # 1. BBT was served the Summons and Complaint with forty two exhibits on 7/10/2012. See exhibit # 49 entry # 14-1 at page 10 of 11.

**First Notice of Removal:** Thereafter, at exhibit # 49 entry # 9-2 on 8/6/2012 Hunt filed a notice of withdrawal of lawsuit # 3 in State Court. A few hours later in State Court on 8/6/2012 BBT filed a **Notice of Removal (NOR)** where BBT removed the 7/9/2012 Complaint and forty two exhibits<sup>12</sup> to the USDC.

Section 1446(d) of the United States Code provides that after an action has been removed to federal court, "the State court shall proceed no further unless and until the case is remanded." 28 U.S.C.A. § 1446(d); *Limehouse v. Hulse*, 404 S.C. 93, 744 S.E.2d 566, 570 (S.C., 2013).

Hunt in lawsuit # 3 did not ever make a motion to Remand pursuant to BBT's 8/6/2012 NOR. Thereafter, in the USDC - BBT did not answer the 7/9/2012 complaint and forty two exhibits. Instead, in lawsuit # 3

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<sup>12</sup> See herein at **Verified**.

in the USDC on 8/9/2012 BBT filed a motion under Rule 12(b)(6), FRCP to dismiss the 7/9/2012 complaint. See exhibit # 49 entry # 9; exhibit # 49 entry # 1; and exhibit # 40. With no motion to remand in hand the ruling of the USDC in lawsuit # 3 is at exhibit # 61 (RR) and exhibit # 43 (Order). The Order of dismissal at exhibit # 43 was not appealed. Hunt argues that the Order at exhibit # 43 did not terminate the jurisdiction of the USDC.<sup>13</sup> See 28 U.S.C.A. § 1446(d); *Limehouse v. Hulseley*, 404 S.C. 93, 744 S.E.2d 566, 570 (S.C., 2013).

**Lawsuit # 4:**

Through the RR at exhibit # 61 and the Order at exhibit # 43 in lawsuit # 3 the USDC told BBT that if you come back here you will not like what this USDC will do. As such, Hunt argues that lawsuit # 4 was hatched by BBT to avoid the wrath of the USDC as described through the scheme described at exhibit # 82 at pages 3-15 and page 21.

However, the scheme did not involve a certified Order of remand based on BBT's 8/6/2012 NOR. Hunt argues that the scheme on the face of BBT's 4/16/2013 Complaint results in a huge distraction but is not a certified Order of remand where "the State court shall proceed no further unless and until the case is remanded." 28 U.S.C.A. § 1446(d).

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<sup>13</sup> See herein at **did BBT engage in forum shopping and vexatious litigation when BBT filed the foreclosure complaint of lawsuit # 4 in State Court?**

The subject matter of lawsuit # 4 is the same as lawsuit # 3 (1) the verified claims and causes of action of the 6/6/2014 FAC in lawsuit # 4 are composed of the claims and causes of action of the verified 7/9/2012 complaint and the verified forty two exhibits that were asserted in lawsuit # 3.<sup>14</sup> Also, see **Did the 6/6/2014 first amended counterclaims (FAC) constitute a new pleading;** and (2) the mortgage of the foreclosure complaint in lawsuit # 4 was delinquent in lawsuit #s 2-3 and was asserted in the NOR in lawsuit # 3 as the amount in controversy.<sup>15</sup>

The parties of lawsuit # 4 are the same as in lawsuit # 3 (1) the parties in lawsuit # 4 in BBT's scheming 4/16/2013 Complaint are BBT, Hunt, Willow Greens Home Owners Association (WGHOA) and CJ Developers. However, Hunt continues to argue that WGHOA and CJ Developers are sham defendants. See exhibit #s 68-69; and exhibit # 82 at pages 8-11 and see above involving false statement in affidavit; and (2) pursuant to the RR at exhibit # 85 and the certified Order of Remand of the USDC at exhibit # 87 there is currently only two parties in lawsuit # 4 - BBT and Hunt.

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<sup>14</sup> See the 10/14/2014 Brief at page 11: **Note that:** the 7/9/2012 complaint (removed by BBT to the USDC) and the 8/2/2013 original counterclaims and exhibits are one and the same. See the Civil Docket of lawsuit # 3 at exhibit # 49 at #s 1-4, 14-16, 25 and 29. Cf. the 4/16/2013 Complaint of lawsuit # 4 and the June 4, 2012 letter to BBT at exhibit 37 and the notice of past due mortgage at exhibit # 49 entry # 14-2 from lawsuit # 3. And Cf. the 8/2/2013 Counterclaims from lawsuit # and the 7/9/2012 Complaint from lawsuit # 3.

<sup>15</sup> See the 8/6/2012 NOR at paragraph 7.

Hunt argues pursuant to the 8/6/2012 NOR that

Section 1446(d) of the United States Code provides that after an action has been removed to federal court, "the State court shall proceed no further unless and until the case is remanded." 28 U.S.C.A. § 1446(d) *Limehouse v. Hulsey*, 404 S.C. 93, 744 S.E.2d 566, 570 (S.C., 2013).

As such, Hunt argues that the only Court that has subject matter jurisdiction in lawsuit # 4 involving the same matters as in lawsuit # 3 is the USDC where the State Court's jurisdiction has been suspended since the 8/6/2012 NOR was filed and there has been no certified Order of remand filed by the HC Clerk of Court as to the 8/6/2012 NOR where all the hearings, Orders, and other proceedings of the State Court **are void** as the lack of a certified Remand Order pursuant to the 8/6/2012 NOR. 28 U.S.C.A. § 1446(d) *Limehouse v. Hulsey*, 404 S.C. 93, 744 S.E.2d 566, 570 (S.C., 2013).

**Second Notice of Removal:** Lawsuit # 4 went on for almost two years before Hunt filed a NOR on 11/10/2014 at exhibit # 80.

As such several motions have been filed and motions heard and Orders filed.

**Did the 8/6/2012 and the 11/10/2014 Notice of Removals (NOR) deprive the State Court of Jurisdiction to hear and enter all the hearings, Orders, etc. prior to the certified Order of Remand being received by the State Court on 5/11/2015?<sup>16</sup>**  
**Yes.**

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<sup>16</sup> Subject matter jurisdiction can not be waived and issues relating to subject matter jurisdiction maybe raised at any time. *Bardoon Properties, NV v. Eidolon Corp.*, 485 S.E.2d 371, 372-373, 326 S.C. 166 (S.C., 1997).

Section 1446(d) of the United States Code provides that after an action has been removed to federal court, "the State court shall proceed no further unless and until the case is remanded." 28 U.S.C.A. § 1446(d) *Limehouse v. Hulsey*, 404 S.C. 93, 744 S.E.2d 566, 570 (S.C., 2013).

Two months after the 11/10/2014 removal to the USDC and prior to remand to State Court – at exhibit # 84 the State Court filed the 1/13/2015 Order.

**One Order of Remand:** As to the 11/10/2014 NOR - BBT's 12/08/2014 motion to remand at exhibit # 81 was granted on 4/15/2015 as per the RR at exhibit # 85 based on being untimely; and the Order was filed on 5/8/2015 and the certified Order of Remand was received and filed on 5/11/2015 by the State Court at exhibit # 87.

Hunt argues that: (1) the certified Order of Remand that was filed by the HC Clerk of Court on 5/11/2015 in lawsuit # 4 does not cure the fact that there has never been a certified Order of Remand pursuant to BBT's 8/6/2012 NOR such that subject matter jurisdiction has never been re-vested in the State Court on the matters involved in lawsuit # 3 which are the same matters as involved in lawsuit # 4.

**MFAFC:** On 5/12/2015 Hunt received the Order of remand at exhibit # 86 from the USDC. As such, Hunt filed a motion under Rule 41, SCRCP on 5/27/2015.

Thereafter, at exhibit # 97 Hunt wrote to the HC Clerk of Court requesting a copy of the 1/13/2015 Order and any other Orders filed by the Clerk in 2015.

Hunt received three orders on 8/10/2015: the Orders dated 1/13/2015, 5/11/2015 and 6/3/2015. See the 11/10/2015 Brief at pages 7-13. In the 6/15/2016 Order that was written by the attorney for BBT – BBT continues to argue that the entry of the 1/13/2015 Order is saved by *Pebble Creek Homes, LLC v. Upstream Images, LLC.*, 547 F.Supp.2d 1214 (2000) - from

Section 1446(d) of the United States Code [which] provides that after an action has been removed to federal court, "the State court shall proceed no further unless and until the case is remanded." 28 U.S.C.A. § 1446(d) *Limehouse v. Hulsey*, 404 S.C. 93, 744 S.E.2d 566, 570 (S.C., 2013).

Hunt argued in the 11/10/2015 Brief at pages 1-20 that the 1/13/2015 Order was not effective until signed and filed and that when the Order was signed and filed after removal and before remand on 1/13/2015 that the 1/13/2015 Order was void for lack of the State Court having not received a certified Order of Remand.

The transcript of 11/10/2015 hearing at page 22 at line 8 – page 23 at line 6 shows that BBT argued that the lower court was not deprived of jurisdiction pursuant to *Pebble Creek Homes, LLC v. Upstream Images, LLC.*, 547 F.Supp.2d 1214 (2000)<sup>17</sup>.

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<sup>17</sup> At the 11/10/2015 hearing BBT also argued that to the extent the 8/11/2015 motion was pursuant to a 59(e) motion that it was untimely. However, the 6/15/2016 Order is silent on this issue.

Also, Hunt argued in the 11/10/2015 Brief at pages 1-15 and 20-40 that the 10/28/2014 Order denying the MFDJ, etc as moot - should be reversed where the 1/13/2015 Order was not effective on 10/14/2014 and that on 1/13/2015 that the Order was void for the lack of re-vesting of jurisdiction in State Court; and that BBT made zero objections to Hunt's MFDJ under SCRCP 55(a) and (b) and the Brief in support of entry of default and default judgment, etc.

The 10/28/2014 Order is at exhibit # 94 and Hunt's 5/20/2014 Brief and the 10/14/2014 Brief shows that the 10/28/2014 Order does not include a single argument put forth by Hunt. In the 10/30/2014 MTAOA at pages 11-14 Hunt argued that BBT had **admitted** all the allegations that make up the 6/6/2014 FAC. See above at **Verified** and at - **did BBT admit evidence into the record without an objection.**

In the 10/30/2014 MTAOA at pages 11-14 Hunt argued that **omissions** by BBT in the 9/5/2013 first motion to dismiss under SCRCP 12(b)(6) vs. the 6/2[5]/2014 second motion to dismiss under SCRCP 12(b)(6) had occurred. Such that the 6/25/2014 2<sup>nd</sup> MTD was subject to SCRCP 12 (g) - Limitations on BBT's 6/2[5]/3024 second motion to dismiss under SCRCP 12(b)(6). See the 10/14/2014 Brief at pages 4 - 12 and 14-45; and see the 8/2/2013 CC and exhibit # 89 (9/5/2013 MTD); and the 6/6/2014 FAC and exhibit # 90 (6/25/2014

2<sup>nd</sup> MTD the FAC); and see below at - **Did BBT admit evidence into the record without an objection** at 7/15/2014 Documents.

As such, Hunt argues that all the FAC survived the 6/25/2014 2<sup>nd</sup> MTD the FAC. See the 11/10/2015 Brief at page 20 at paragraph 15. Such that the entry of the 1/13/2015 Order would not and has not been administrative rather it has caused the case to proceed further during the removal period than prior to removal where

Section 1446(d) of the United States Code [which] provides that after an action has been removed to federal court, "the State court shall proceed no further unless and until the case is remanded." 28 U.S.C.A. § 1446(d) *Limehouse v. Hulse*, 404 S.C. 93, 744 S.E.2d 566, 570 (S.C., 2013).

And (2) Hunt argues that the certified Order of Remand that was filed by the HC Clerk of Court on 5/11/2015 in lawsuit # 4 does apply to the 8/6/2012 NOR and the 11/10/2014 NOR.

Such that subject matter jurisdiction has been revested in the State Court on 5/11/2015; and that all the hearings, Orders, and other proceedings of the State Court **prior** to the 5/11/2015 Order are void as the lack of a certified Remand Order having not been received by the State Court.

**Conclusion:** See below at **Is Hunt entitled to attorney fees and costs, etc.**

**3. Did BBT file an affidavit with a false statement in support of the Order of Publication on Hunt? Yes.**

As of 3/13/2013 BBT had requested and was granted dismissals in three lawsuits. Thereafter, while Hunt was in route to the United States Patent and Trademark Office (USPTO)<sup>18</sup> in the Washington, DC area - BBT filed lawsuit # 4 about thirty three days after lawsuit #3 was dismissed at the request of BBT where lawsuit # 3 was dismissed without prejudice and the box for on the merits was not checked and the USDC did not rule on several of BBT's objections and defenses in its 8/9/2012 MTD at exhibit # 49 entry # 9. The ruling of the USDC in lawsuit # 3 is at exhibit # 61 (RR) and exhibit # 43 Order and Judgment (Order).

Thereafter, in a scheme to avoid the effects of the Order and judgment at exhibit # 43 - BBT filed an affidavit at exhibit # 104 in support of an order of publication where Hunt argues that the affidavit falsely states as shown at exhibit # 92 that Hunt's power was shut off.

As such, Hunt argues that BBT intentionally submitted an affidavit with a false statement in support of its order of publication<sup>19</sup> for service on Hunt as a part of its forum shopping scheme to get Hunt

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<sup>18</sup> Hunt accepted an externship at the United States Patent and Trademark Office (USPTO). The externship started in the spring of 2013 and ran through the summer of 2013. See exhibit # 65. This externship was used to satisfy Hunt's CLE requirement with the SC Bar.

<sup>19</sup> There was no publication in the newspaper.

into State Court before Hunt could bring a fourth lawsuit in the USDC.<sup>20</sup>

**Conclusion:** see below.

**4. Is Hunt entitled to attorney fees and costs, etc.?  
Yes.**

“An abuse of discretion occurs when the order was controlled by an error of law or when the order is without evidentiary support.”  
*Stark Truss Co. v. SUPERIOR CONST. CORP.*, 360 S.C. 503, 508, 602 S.E.2d 99 (S.C. App., 2004).

BBT has threatened Hunt and Hunt’s attorneys in this matter since 5/29/2010 of lawsuit # 1 as shown in the 11/10/2015 Brief at pages 36-37. See the 5/20/2010 SAC at exhibit # 38 (signed by attorney Valtorta); and see the 5/29/2010 MTD at exhibit # 49 entry # 16-2 at pages 5-6.

In the 5/29/2010 MTD at exhibit # 49 entry # 16-2 at page 5 at paragraph 13 BBT states: The Complaint fails to allege any basis for an award of attorney’s fees or costs. Throughout the past six years and seven motions to dismiss BBT has made the same statement in all of its motions to dismiss. See exhibit #s 89 and 90. As such, Hunt argues that the statement is not an objection to Hunt being pro se.

Hunt argues herein that the 6/3/2015 Order that denied Hunt’s 5/27/2015 MFAFC should be reversed for the above and below reasons

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<sup>20</sup> Brooks, Matter of, 267 S.E.2d 74, 75-76, 274 S.C. 601 (S.C., 1980).

to include where BBT did not object to the MFAFC. The 6/3/2015 Order at exhibit # 98 was filed after the certified Order of Remand was received by the lower court on the 11/10/2014 NOR. However, the lower court denied the attorney fees and costs through the 6/3/2015 Order where BBT did not object to attorney fees and costs to Hunt and the attorneys retained by Hunt. See the 8/11/2015 Motion: (Lack of Jurisdiction, SCRCP 59 and SCRCP 60 re the 6/03/2015 Order) at all pages and in particular at page 5 at paragraph 7; and see the 11/10/2015 Brief at pages 33-34 & 40-45.

Next, Hunt argues that it is BBT whom removed lawsuit # 3 (complaint and 42 exhibits as shown at exhibit # 49 entry # 1)<sup>21</sup> to the USDC; and during lawsuit # 3 BBT encouraged the USDC to dismiss this matter based on prior withdrawal under Rule 41(a)(1), SCRCP.<sup>22</sup> BBT in lawsuit # 3 did not object to the 3/6/2013 affidavit at exhibit # 46<sup>23</sup> where Hunt requested attorney fees and costs, etc;<sup>24</sup>

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<sup>21</sup> See herein at **Verified**.

<sup>22</sup> BBT at exhibit # 49 entry # 9 in its 8/9/2012 MTD at page 1 footnote 1 requested dismissal based on prior withdrawal. The 1/25/2013 RR at exhibit # 61 at page 4 was based on withdrawal under Rule 41 (a)(1), SCRCP. On 3/6/2013 Hunt submitted the affidavit at exhibit # 46 to the USDC where Hunt requesting among other things attorney fees, costs, legal interest, etc. BBT made no objections to the documents filed on 3/6/2013. On 3/13/2013 the USDC filed the Order at exhibit # 43 where the USDC states in the Order on page 1 at footnote 1 that Hunt is pro se and is a licensed attorney in the State of South Carolina.

<sup>23</sup> During removal to the USDC at exhibit # 82 Hunt requested attorney fees and costs. BBT being concerned about the USDC denying its Motion to Remand encouraged the USDC to treat Hunt like an attorney at exhibit # 83 entry # 13. Upon remand – BBT in state court on 11/10/2015 for the first time objected to attorney fees to Hunt. Yet at the 11/10/2015 hearing BBT did not object to the affidavit at exhibit # 46 requesting attorney fees and costs. See 4/15/2015 RR at

and thereafter BBT was granted a dismissal based on Rule 41(a)(1), SCRCP at exhibit # 61 and exhibit # 43. And BBT did not appeal the final Order at exhibit # 43 which adopted the RR at exhibit # 61 where at page 1 at footnote 1 the USDC states that Hunt is pro se and is a licensed attorney in the State of South Carolina.

And it was BBT, not Hunt who filed lawsuit # 4 in State Court with no Order of Remand re the 8/6/2012 NOR after being granted a dismissal in lawsuit # 3 and also dismissals of lawsuits 1-2.<sup>25</sup>

In lawsuit # 4 Hunt has made requests for attorney fees and costs in the FAC and two motions: 9/30/2014 MFDJ, etc and the 5/27/2015 MFAFC.

Hunt argues herein that none of the 6/6/2014 FAC were dismissed through the 1/13/2015 Order at exhibit # 84 that was filed prior to a certified Order of Remand being received by the lower court. And see the 11/10/2015 Brief at pages 1-40. Also, the 1/13/2015 Order at exhibit # 84 that was written by the attorney for BBT did not object to attorney fees and costs to Hunt and the attorneys retained by Hunt.

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exhibit # 85 at footnote # 5; and see *Mendelsohn v. Whitfield*, 430 S.E.2d 524, 530, 312 S.C. 17, 25 (S.C. App., 1993). *Austin v. Stokes-Craven Holding Corp.*, Opinion No. 26784 (S.C. 3/8/2010) (S.C., 2010).

<sup>24</sup> Cf. The 11/10/2015 transcript and the 6/15/2016 Order at all pages.

<sup>25</sup> See the Orders of lawsuit # 1 at exhibit #s 41, 39, 40; lawsuit # 2 at exhibit # 52; and lawsuit # 3 at exhibit # 61 (RR) and exhibit # 43(Order).

Hunt argues herein that the 9/30/2014 MFDJ, etc is not moot where none of the FAC were dismissed through the 10/28/2014 Order at exhibit # 94; and that the 1/13/2015 Order at exhibit # 84 was filed prior to a certified Order of Remand being received by the lower court. However, the 10/28/2014 and 1/13/2015 Orders did not object to attorney fees and costs to Hunt and the attorneys retained by Hunt. See the 11/10/2015 Brief at pages 15-40.

As such, after about eighteen months into lawsuit # 4 Hunt filed a NOR on 11/10/2014 where it is BBT whom Hunt alleges has engaged in forum shopping and vexatious litigation<sup>26</sup> in the filing of the fourth lawsuit in State Court without an Order of Remand involving the same verified issues from lawsuit #s 1-3. See the 11/10/2014 NOR at exhibit # 80 at paragraph # 5.

BBT in the 1/3/2015 exhibit # 83 entry # 13 at page 4 BBT asked the USDC to take into consideration Hunt's status as an attorney licensed in SC. And in the 1/13/2015 Order that was written by the attorney for BBT- BBT did not object to attorney fees and costs to Hunt and the attorneys retained by Hunt. See the 11/10/2015 Brief at pages 40-45. Also, on 1/13/2015 this matter was on Removal to the USDC. BBT received a copy of the 1/13/2015 Order in 1/2015. See

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<sup>26</sup> See herein at: did BBT engage in forum shopping and vexatious litigation when BBT filed the foreclosure complaint of lawsuit # 4 in State Court on 4/16/2013.

the 11/10/2015 transcript at page 107 line # 2 – page 108 line 5.

However, the attorney for BBT did not submit the 1/13/2015 Order to the USDC nor to Hunt. See the 11/10/2015 Brief at pages 7-13.

Thereafter, the magistrate of the USDC states in the 4/15/2015 RR at exhibit # 85 at page 2 at footnote 4: "Hunt also raises several arguments regarding the merits of this action. However, the only issue presently before the court is whether removal was proper."<sup>27</sup>

After Hunt received the Order of remand at exhibit # 86 re the 11/10/2014 NOR Hunt filed the 5/27/2015 Motion under SCRCP 41 attorney fees and costs (MFAFC) where Hunt did not request a hearing. Thereafter, the Judge in the lower court denied the 5/27/2015 MFAFC and filed the 6/3/2015 Order at exhibit # 98 where BBT did not object to the 5/27/2015 MFAFC. See the 8/11/2015 Motion re the 6/3/2015 Order at exhibit # 98 at page 5; **see herein at: did BBT admit evidence into the record without an objection**; and see the 11/10/2015 Brief at pages 40-45.

Hunt is aware that precedent in the State Courts of SC involving attorney fees to a pro se person is as substantially stated in the 6/3/2015 Order at exhibit # 98. However, again (presumably glad

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<sup>27</sup> At exhibit #s 86 and 87 the USDC adopted the RR of the Magistrate of the USDC. See exhibit # 82 (Hunt's Response to Motion to Remand) at all pages; and BBT reply is at exhibit # 83. The pleadings from the Removal/Remand were submitted as exhibits at the 11/10/2015 hearing and were entered into evidence without objection by BBT. See the 11/10/2015 transcript at page 8 at lines 1-24.

for the Order of Remand) BBT did not object to the 5/27/2015 MFAFC in this matter. As stated in the 11/10/2015 Brief prior to 11/10/2015 BBT never objected to attorney fees and costs to pro se Hunt.

As such, notwithstanding the objections to attorney fees in the 11/10/2015 transcript at pages 75-99 Hunt believes that long before the 11/10/2015 objections at the hearing that BBT's failure to make objections to Hunt being pro se were waived and subject to estoppel.

See the 11/10/2015 Brief at pages 33-34 and 40-45; and see

*Mendelsohn v. Whitfield*, 430 S.E.2d 524, 530, 312 S.C. 17, 25 (S.C. App., 1993).

As such, Hunt argues that the orders are based on an error of law and is without evidentiary support. *Stark Truss Co. v. SUPERIOR CONST. CORP.*, 360 S.C. 503, 508, 602 S.E.2d 99 (S.C. App., 2004).

**a. Did the lower court err when it denied attorney fees and costs to Hunt under the Rule 41, SCRPC motion? Yes.**

*Davis v. Southpoint Condo. Ass'n, Inc.* (S.D. Fla., 2014)<sup>28</sup> states -

"[] Rule 41(d) [is] intended to serve as a deterrent to forum shopping and vexatious litigation." *Simeone v. First Bank Nat. Ass'n*, 971 F.2d 103 108 (C.A.8 (Minn.), 1992); and "Plaintiff's strategy of forum shopping and pursuing vexatious litigation is exactly what Rule 41 (d) was designed to prevent. Thus, pursuant to Rule 41(d) and this Court's inherent authority, this Court GRANTS Defendant's Motion to Stay Proceedings Pending Award and Payment of Attorneys' Fees and Costs Pursuant to Rule 41(D),

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<sup>28</sup> In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules. *Maybank v. BB&T CORPORATION*,

awarding the Defendant its reasonable attorneys' fees and costs incurred in Davis I and staying Davis II until Plaintiff has fully paid such fees and costs."

In the 5/27/2015 motion for attorney fees and costs (MFAFC) under Rule 41, SCRPC Hunt requested attorney fees and costs as asserted in the affidavits at exhibit #s 26 and 46.<sup>29</sup> Hunt did not request a hearing on this motion; and BBT did not object in writing. None the less, where BBT had requested and been granted three prior dismissals the lower court, in this fourth and vexatious litigation that was filed by BBT, in the 6/3/2015 Form 4 Order at exhibit # 98 without an objection from BBT has denied Hunt's 5/27/2015 motion under Rule 41, SCRPC requesting costs (attorney fees and costs) based on Hunt being pro se, etc. Hunt received a copy of this Order after request at exhibit 97 to the HC Clerk of Court.

The transcript of the 11/10/2015 hearing at pages 75-99 shows that BBT made objections for the first time in these four lawsuits to attorney fees to Hunt. See the 11/10/2015 Brief at pages 33-34 and 40-45.

See above at - **did BBT engage in forum shopping and vexatious litigation when BBT filed the foreclosure complaint of lawsuit # 4 in State Court.** Also, see above at - **did BBT admit**

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Opinion No. 27640 (S.C. June 3, 2016) citing *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991).

**evidence into the record without an objection** - at all subparts and in particular at **5/27/2015 MFAFC**.<sup>30</sup>

BBT/the lower court in the 6/15/2016 Order at pages 5-6 states that Hunt is not entitled to attorney fees based on the reasons stated therein. However, at no time prior to the 11/10/2015 hearing did BBT ever make any one of the objections contained in the 11/10/2015 transcript at pages 75-99 or the 6/15/2016 Order. See the 11/10/2015 Brief at waiver and equitable estoppel on pages 33-34 and 40-45; and see above at **5/27/2015 MFAFC**.

**Conclusion:** See below.

**b. Did the lower court err when it denied attorney fees and costs to Hunt based on the allegations and causes of action in the FAC? Yes.**

In SC attorney fees are recoverable for services rendered if provided for by contract or statute. *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750, 759 (S.C., 1997).

Hunt argues that the 6/6/2014 FAC includes all of the claims that were asserted in the 8/2/2013 counterclaims<sup>31</sup> except destruction of evidence with the result that the FAC includes allegations that support statutes and SCRPC where those statutes and SC Rules of Civil

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<sup>29</sup> Both of these exhibits were submitted in lawsuit # 3 without objections by BBT at exhibit # 46 and exhibit # 49 entry # 1.

<sup>30</sup> BBT/the lower court in the 6/15/2016 Order at pages 5-6 states that Hunt is not entitled to attorney fees based on the reasons stated therein. makes several o

<sup>31</sup> There is no blood relation between Hunt and Davis.

Procedure provide for attorney fees and costs.<sup>32</sup> BBT in its 6/25/2014 2<sup>nd</sup> MTD at exhibit # 90 objects to seven of the verified claims in the FAC; and the 2<sup>nd</sup> MTD at exhibit # 90 does not object to or deny any other verified claims.

The last page of the 6/25/2014 2<sup>nd</sup> MTD at exhibit # 90 shows that BBT did request a dismissal with prejudice. However, at the 10/14/2014 hearing on the 2<sup>nd</sup> MTD the word prejudice was used four times. Each time the word prejudice was used at the hearing it was used by the attorney for BBT. At the 10/14/2014 hearing the lower court never said that the counterclaims were dismissed with prejudice.<sup>33</sup> See the 10/14/2014 Brief at all pages; and see both of the 8/11/2015 Motions at all pages and see Rule 60(b), SCRCPP.

Hunt requests attorney fees and costs plus legal interest for all four lawsuits based on statutes<sup>34</sup> and *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 204, 723 S.E.2d 597, 603 (S.C. App., 2012). See the 11/10/2015 Brief at pages 36-40 and 42-45; and see above at - **did BBT admit evidence into the record without an objection** - at all subparts and in particular at **6/6/2014 FAC**.

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<sup>32</sup> At the 11/10/2015 hearing the lower court argued for BBT that Rule 41, SCRCPP was not a statute and did not allow for attorney fees and costs. Hunt begged to differ. *Shipp v. Richardson Corporation of South Carolina*, 285 S.C. 460, 330 S.E.2d 291 (1985).

<sup>33</sup> The Order from the 10/14/2014 hearing on the 2<sup>nd</sup> MTD was filed on 1/13/2015. The Order filed on 1/13/2015 was written by the attorney for BBT. The Order filed on 1/13/2015 was signed and filed by the lower court after removal and prior to remand.

**Conclusion:** See below at conclusion.

**C. Did the lower court err when it denied attorney fees and costs to Hunt under the MFDJ, etc (Rule 55(b)(3), SCRPC)? Yes.**

In SC attorney fees are recoverable for services rendered if provided for by contract or statute. *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750, 759 (S.C., 1997).

See herein at – (1) **Did BBT admit evidence into the record without an objection** - at all subparts and in particular at **6/6/2014 FAC** and at **9/30/2014 MFDJ, etc;** (2) **Was the HC Clerk of Court required to make an entry of default against BBT upon receipt of the fourteen affidavits of default;** and (3) See the 11/10/2015 Brief at pages 33 – 40 and 42-45 where Hunt puts forth arguments for attorney fees and costs under Rule 55(b)(3) where BBT did not object. See the 11/10/2015 Transcript at pages 75 – 99 for first time objections to attorney fees and costs to Hunt by BBT.

**Conclusion:** See below.

**5. Verified: Are the 6/6/2014 first amended counterclaims (FAC) and exhibit #s 1-42 verified? Yes.**

Verified [counterclaims] by pro se [litigants] are to be considered as affidavits. *Kough v. Pack* (D.S.C., April 29, 2016).

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<sup>34</sup> See more statutes in the 11/10/2015 Brief at pages 37-40.

Hunt is pro se. Hunt at exhibit # 49 entry # 1 filed a complaint in this matter on 7/9/2012 in State Court with 42 exhibits. The attorney for BBT on 8/6/2012 removed the 7/9/2012 pro se complaint and 42 exhibits to the USDC. Hunt argues that this action by the attorney for BBT made the complaint and the 42 exhibits verified. Rule 11, SCRPC and FRCP. See the 8/6/2012 NOR entry # 1 with electronic signature; and see exhibit # 49 entry # 1; and see exhibit # 49 entry # 14-1 at pages 2-3 of 11.

Thereafter, on 8/2/2013 Hunt filed the 7/9/2012 complaint and 42 exhibits in State Court and labeled them as the 8/2/2013 Counterclaims; and on 6/6/2014 Hunt did amend the counterclaims by adding information from the 42 verified exhibits into the counterclaims where at page 1 at footnote 3 Hunt indicates that the FAC are verified. Of course Hunt did not make any changes to the 42 verified exhibits. BBT has never objected to this statement by Hunt. "If a party does not object to the admission of evidence when it is offered, he cannot make its admission a ground of appeal." *Mendelsohn v. Whitfield*, 430 S.E.2d 524, 530, 312 S.C. 17, 25 (S.C. App., 1993). "[BBT's] failure to make an objection at the time evidence [was] offered constitutes a waiver of the right to object." *Austin v. Stokes-Craven Holding Corp.*, Opinion No. 26784 (S.C. 3/8/2010) (S.C., 2010).

Also, in the 1/13/2015 Order at page 3 at footnote 2 BBT requested the lower to take judicial notice to the footnotes in the FAC. BBT at no time has objected to Hunt's assertion that the counterclaims /FAC are verified. The issue of verified counterclaims and exhibits has been ignored by the lower court. However, Hunt argues that the issue of verified counterclaims and exhibits has been preserved through all three of the motions: 10/30/2014 MTAOA at all pages, 8/11/2015 motion re the 1/13/2015 Order at all pages and the 8/11/2015 re the 6/3/2015 Order at all pages. *Pye v. Estate of Fox*, 633 S.E.2d 505, 510, 369 S.C. 555 (S.C., 2006).

**Conclusion:** See below.

## **6. Should BBT's SOL defense be tolled? Yes.**

Deliberate acts of deception by [BBT] calculated to conceal from a potential plaintiff Hunt that [s]he has a cause of action toll the statute of limitations. *Strong v. University of South Carolina School of Medicine*, 316 S.C. 189, 191, 447 S.E.2d 850, 852 (1994).

These counterclaims are to recover for a massive fraud and conversion of Hunts' accounts perpetrated upon her by BBT, principally through a loan scheme and concealment of the loan scheme from Hunt, FDIC and the Horry County Police Department (HCPD). See the verified 7/9/2012 complaint at exhibit # 49 entry # 1 at page 1 at

paragraph 1; and see the verified 8/2/2013 counterclaims at page 1 at paragraph 1; and see the verified 6/6/2014 FAC at page 2 at paragraph 1.<sup>35</sup>

Hunt argues that BBT and Hunt are in a fiduciary relationship. See the verified 7/9/2012 complaint at exhibit # 49 entry # 1 at page 1 at paragraphs 9-13; and see the verified 8/2/2013 counterclaims at page 2 at paragraphs 9-13; and see the verified 6/6/2014 FAC at page 3 at paragraphs 21-26.

The 4/16/2013 complaint states that Hunt's mortgage at BBT is delinquent as of 7/1/2012. As such, Hunt argues the SOL has not expired where BBT's duty to disclose continues to present day where Hunt continues to have a banking relationship with BBT. See Strong, *supra* at 191; and see the 6/6/2014 FAC at page 3.

Hunt argues that the issue of tolling has been preserved as follows: Hunt argued tolling in the 5/20/2014 Brief at pages 7-8;<sup>36</sup> and in the 10/14/2014 Brief at pages 8 & at pages 10-11 Hunt argues that any omitted defense or objection in the 9/5/2013 and the 6/2[5]/2014 motions to dismiss are waived and admitted; and see the 10/30/2014

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<sup>35</sup> See the verified exhibit #s 28-33 where Hunt reported BBT to the Horry County Police Department (HCPD) in Sept. 2010 and at exhibit # 32 BBT refused to cooperate with the HCPD.

<sup>36</sup> See the 10/14/2014 Brief at page 8.

MTAOA at pages 11-14. *Pye v. Estate of Fox*, 633 S.E.2d 505, 510, 369 S.C. 555 (S.C., 2006).

The 1/13/2015 Order at exhibit #84 at page 5 shows that BBT argued the discovery rule. However, the civil docket at exhibit # 47 shows that November of 2009 occurred in the middle of lawsuit # 1; and the records shows that through out these four lawsuits that Hunt has never had discovery in this matter where BBT has served multiple motions to dismiss that have been granted;<sup>37</sup> and see the 9/2010 exhibit #s 28-29 and compare to the 1/20/2011 affidavit of Shonda Chestnut and the 1/21/2011 affidavit of Judy Teal where the affidavit of Teal (exhibit # 50)<sup>38</sup> discusses Hunt's accounts at BBT but is silent on the 2007 mortgage.

Hunt argues that the 6/6/2014 FAC (and defenses) were and are timely filed based on the statute of limitation periods asserted by BBT in the 1/13/2015 Order; and that the allegations and causes of action in the 6/6/2014 FAC at pages 3, 10 & 15 – 18 include fraud and mortgage fraud involving the 2007 mortgage where BBT is asserting

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<sup>37</sup> The TAC at exhibit # 47 entry # 105-1 was filed on 2/23/2011 and included a claim for mortgage fraud at pages 10-11 and 34-35. However, the USDC jumped into action on 3/23/2011 and dismissed Hunt's federal causes of action pursuant to Hunt's SAC (exhibit # 38) and declined supplemental jurisdiction at exhibit # 41. Hunt appealed and the USCA affirmed in an unpublished decision. See exhibit # 40. Lawsuit # 2 at exhibit # 48 of the civil docket was filed on 4/12/2011 which was before the USCA affirmed at exhibit # 40 and subsequently filed a mandate. As such, Hunt filed lawsuit # 3 in state court on 7/9/2012. BBT removed the complaint and 42 exhibits of lawsuit # 3 to the USDC on 8/6/2012 at exhibit # 49 entry # 1. The USDC dismissed lawsuit # 3 and through exhibit #s 61 and 43 in Hunt's opinion the USDC told BBT if you come back looking for help you will not find it. And the lower has never filed an order from the 5/20/2014 hearing on BBT's 9/5/2013 MTD. Hunt is still waiting to be treated fairly as provided for under the law.

that the mortgage became delinquent as of 7/1/2012. See *Strong supra* at 191.

And see at **did BBT admit evidence into the record without an objection** where Hunt argues that BBT has admitted to fraud, constructive fraud, fraud in the inducement;<sup>39</sup> and fraudulent concealment and mortgage fraud,<sup>40</sup> etc.

**Conclusion:** See below.

**7. Did the 6/6/2014 first amended counterclaims (FAC) constitute a new pleading? No.**

The submission of an amended [counterclaim] does not constitute a new pleading if the amended [counterclaims] repeated the essential allegation. *Stoffels ex rel., Sbc Concession v. Sbc Comm.*, 430 F.Supp.2d 642, 647 (W.D. Tex., 2006).<sup>41</sup>

The complaint at exhibit # 49 entry # 1 was filed on 7/9/2012 in State Court and consisted of twenty two pages and forty two exhibits. In lawsuit # 3 the 7/9/2012 complaint and the forty two exhibits were removed to the USDC by the attorney for BBT on 8/6/2012. The USDC dismissed lawsuit # 3 on 3/13/2013. The verified 7/9/2012 complaint and 42 verified exhibits from lawsuit # 3 were submitted in lawsuit #

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<sup>38</sup> At the MFS hearing Hunt argued that the Teal and Chestnut affidavits were defective.

<sup>39</sup> See the 5/20/2014 Brief at pages 13-17; and see Rule 8(d), SCRCP.

<sup>40</sup> See Rule 8(d), SCRCP.

<sup>41</sup> In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules. *Maybank v. BB&T CORPORATION*,

4 as the 8/2/2013 counterclaims and exhibits. And the 6/6/2014 FAC consisted of thirty eight pages where Hunt cited to the verified facts from the forty two exhibits. As such, Hunt argues that the increase in the number of pages does not involve new matter.

Listed below are three ways that show that the FAC repeated the essential allegations of the 8/2/2013 counterclaims.

First, the 1/13/2015 Order dismisses seven of the FAC based on Statute of Limitations (SOL) and no private right of action (NPROA).

As such, Hunt argues that a comparison of Hunt **8/2/2013 Counterclaims** at all pages and at page 4 at paragraph #s 45-49 (SOL) and at pages 14-16 at paragraph #s 195- 221 (SCPC vs. NPROA); and BBT's **9/5/2013 MTD** at exhibit # 89 at paragraph #s 1 and 7 and the **5/27/2014** email from the attorney for BBT; **versus** Hunt' **6/6/2014 FAC** at all pages and at pages 10-11 at paragraph #s 130-134 (SOL) and at pages 27-30 at paragraph #s 359-414 (SCPC vs. NPROA); and BBT's **6/25/2014 2<sup>nd</sup> MTD the FAC** at exhibit # 90 at paragraph #s 2 and 7 - shows that the verified FAC repeated the essential allegations. The 1/13/2015 Order looks like it came from the 5/27/2014 Email where the 5/27/2014 email was written nine days before Hunt filed the 6/6/2014 FAC. Such that the

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Opinion No. 27640 (S.C. June 3, 2016) citing *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991).

6/6/2014 FAC either repeated the essential allegations of the 8/2/2013 Counterclaims or that BBT did not care what was said in the 6/6/2014 FAC.

Second, BBT has answered yes to the question of 'repeated the essential allegation' in the following three ways:

(1) BBT in the transcript from the 10/14/2014 hearing on BBT's 2<sup>nd</sup> MTD the FAC – at page 4 line 18 –page 5 line 5 walks the lower court through the claims that it sees as included in the FAC. And BBT also states that there are one or two new ones; and

(2) BBT in the transcript from the 10/14/2014 hearing on BBT's 2<sup>nd</sup> MTD the FAC – BBT states at page 4 line 12 –page 5 line 8 that “the factual basis of all of these counterclaims are almost identical to the factual basis of her first 11 counterclaims [from the 8/2/2013 original counterclaims]” and

(3) Also, a comparison of the 10/22/2014 Order (from the 4/21/2014 hearing where the 9/5/2013 MTD was applicable) that was written by the attorney for BBT and the 1/13/2015 Order (from the 10/14/2014 hearing where the 6/25/2014 2<sup>nd</sup> MTD the FAC was applied) that was

written by the attorney for BBT shows that it is the position of BBT that the issues fall into the same three categories.<sup>42</sup>

Third, Hunt has answered yes to the question of 'repeated the essential allegation' in the following two ways:

(1) Hunt states in the 10/14/2014 Brief at the top of page 11: "**Note that:** the 7/9/2012 complaint (lawsuit # 3 - removed by BBT to the USDC) and the 8/2/2013 original counterclaims and exhibits [of lawsuit # 4] are one and the same."

(2) Hunt states in the 10/14/2014 Brief at the bottom of page 10: "The entire contents of all thirty eight pages of the 6/6/2014 first amended counterclaims does not include any new matter where the contents were included in all the prior complaints and counterclaims [and exhibits] that were submitted in this matter." The transcript of the 10/14/2014 hearing shows that BBT did not object to either of the above statements.

"Consequently, it is clear that [BBT] could have argued in their initial 12(b)(6) motion [at exhibit # 89] what they argued in their second 12(b)(6) motion [at exhibit # 90]." As such, Hunt argues that (the 8/2/2013 original counterclaims and) the 6/6/2014 FAC did not constitute a new pleading. *Stoffels*, supra at page 647.

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<sup>42</sup> However, Hunt disagrees with the position by BBT that the issues fall into three categories as stated in the 10/30/2014 motion to alter or amend [...] at page 10 at paragraph 22.

"It is equally clear that Rule 12(h)(2) does not provide an exception to Rule 12(g)'s bar against successive 12(b)(6) pre-answer motions. Rule 12(h)(2) applies only to arguments that are raised under Rule 7(a), SCRCP by motion for judgment on the pleadings, or at trial. Defendants' second 12(b)(6) motion simply does not fall into any of these three categories.

[T]he filing of [the 6/6/2014 FAC] will not revive the right to present by motion defenses that were available but were not asserted in timely fashion **prior** to the [6/6/2014] amendment of the pleading." 5C Wright & Miller. Fed. Prac. & Proc. § 1388.

Accordingly, Rule 12(g) applies even when [Hunt] voluntarily serves [the 6/6/2014 first amended counterclaims (FAC)], as long as the defense was available when the first 12(b)(6) motion was made."" *Stoffels ex rel., Sbc Concession v. Sbc Comm.*, 430 F.Supp.2d 642, 647-648 (W.D. Tex., 2006).<sup>43</sup>

**Conclusion:** See below.

**8. Did BBT admit evidence into the record without an objection? Yes.**

"If a party does not object to the admission of evidence when it is offered, he cannot make its admission a ground of appeal."

*Mendelsohn v. Whitfield*, 430 S.E.2d 524, 530, 312 S.C. 17, 25

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<sup>43</sup> In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules. *Maybank v. BB&T CORPORATION*,

(S.C. App., 1993). "[BBT's] failure to make an objection at the time evidence [was] offered constitutes a waiver of the right to object." *Austin v. Stokes-Craven Holding Corp.*, Opinion No. 26784 (S.C. 3/8/2010) (S.C., 2010).<sup>44</sup>

**Effect of Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided. Rule 8 (d), SCRPC.

(1) **6/6/2014 FAC:** Hunt filed and served the FAC and the motion for sanctions on 6/6/2014.<sup>45</sup> In the 6/6/2014 FAC on page 2 at the top Hunt states that the exhibits (1-73) are already in the file. Instead of replying to the 6/6/2014 FAC - BBT filed the 6/25/2014 2<sup>nd</sup> MTD the FAC. Hunt argues that the FAC included allegations and causes of actions beyond the seven that are listed in the 6/25/2014 2<sup>nd</sup> MTD the FAC where those allegations and claims include but is not limited to: Violations of Privacy, Fraud, Fraud in the Inducement, fraudulent concealment, Negligent Misrepresentation, Negligence, Gross Negligence, Breach of Breach of Trust, Mortgage Loan Fraud,

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Opinion No. 27640 (S.C. June 3, 2016) citing *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991).

<sup>44</sup> See waiver and equitable estoppel in the 11/10/2015 Brief at pages 33-34.

<sup>45</sup> See the 11/10/2015 Brief at pages 13 where Hunt argues that BBT received the 6/6/2014 FAC on 6/6/2014.

Defamation, and Slander of all Titles; and Breach of Contract. Rule 8(d), SCRPC

A hearing was held on the 2<sup>nd</sup> MTD the FAC on 10/14/2014. Hunt argues that BBT's 2<sup>nd</sup> MTD the FAC was not a reply and that it was filed late. As such, Hunt argues that BBT did not deny the verified FAC and that the FAC were admitted pursuant to Rule 8(d), SCRPC and that BBT failed to plead or otherwise defend the FAC pursuant to Rule 55(a), SCRPC. Also, Hunt argues that the FAC included allegations and causes of actions that were not subject to BBT's SOL arguments in the 2<sup>nd</sup> MTD;<sup>46</sup> and that private rights may be asserted pursuant to the SC Probate Code. See above at **Verified**; and see the allegations / causes of action in the FAC that provide for attorney fees and costs: Breach of Fiduciary Duty against BBT involving SC Code 62-7-1002 thru 62-7-1004 and 62-7-1001(b) at paragraphs 288-358; Violation of UNFAIR TRADE PRACTICES Act: SC Code 39-5-10 thru 39-5-170 at paragraphs 415-455; Breach of Contract/Slander of Title at paragraphs 456-506; and see the 7/15/2014 affidavits at all pages and see below at **7/15/2014 Documents**; and see below at **9/30/2014 MFDJ, etc**; and see the 10/14/2014 Brief at page 11; and see below **At the 10/14/2014 hearing**; and see the 10/30/2014 MTAOA at pages 11-14; and see the 1/13/2015 Order at all pages; and see the two

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<sup>46</sup> See the 6/6/2014 FAC at pages 10-15.

motions that were filed on 8/11/2015 pursuant to Rule 59 & 60, SCRPC and lack of jurisdiction at all pages; and see the 11/10/2015 Brief at all pages and in particular at pages 1-40.

At the time that the 6/6/2014 FAC and exhibit #s 1-73 were offered BBT did not object and the evidence has been admitted into evidence and BBT can not make its admission a ground on appeal.

**(2) 7/15/2014 Documents (limitations on successive motions to dismiss):** Hunt filed and served the following on 7/15/2014:

(fourteen) Affidavits of Default, Hunt's affidavit at exhibit # 46, and the 7/15/2014 [] Response to Plaintiff's motion to dismiss the first amended counterclaims. **At the time that this evidence was**

**offered BBT did not object orally or in writing.** See the

10/14/2014 Brief at pages 1-40 and in particular at pages 1-12; and

see the 10/28/2014 Order; and see the 10/30/2014 MTAOA at pages

11-14; and see the two motions that were filed on 8/11/2015 pursuant

to Rule 59 & 60, SCRPC and lack of jurisdiction at all pages; and see

the 1/13/2015 Order; and see the 11/10/2015 Brief at pages 6-15.

And no objections were made by BBT in the 10/14/2014 nor the

11/10/2015 transcripts in opposition to Hunt's asserting that BBT's 2<sup>nd</sup>

MTD the FAC was subject to limitations on successive motions to

dismiss.

At the time that the above 7/15/2014 evidence was offered BBT did not object and the evidence has been admitted into evidence and BBT can not make its admission a ground on appeal.

(3) A hearing on Hunt's motion for sanctions (**MFS**) was held on 9/17/2014. At the hearing BBT submitted two affidavits. BBT did not file the affidavits. And at the hearing Hunt objected to the two affidavits on several grounds. The Order from the hearing on the MFS was filed on 10/20/2014. Hunt timely made a motion under Rule 59(e), SCRPC - the 10/30/2014 MTAOA. See the 10/30/2014 MTAOA at all pages. Hunt argues that the two affidavits were not a reply, submitted late as to all pleadings and documents that are listed above and below; and that after the two affidavits were signed that the attorney for BBT submitted a verified complaint and 42 verified exhibits to the USDC on 8/9/2012 where BBT's attorney did not answer the 7/9/2012 complaint.

This appeal does not include the MFS.

(4) **9/30/2014 MFDJ, etc:** Hunt filed (Clerk of Court refused to clock in) and served on 9/30/2014 the motion for default judgment under Rule 55(a) and (b) - (MFDJ, etc) with Hunt's affidavit at exhibit # 46 requesting attorney fees and costs. A hearing on the MFDJ, etc was scheduled for 10/14/2014. Hunt submitted a brief at the 10/14/2014 hearing. At the 10/14/2014 hearing BBT did not object to the

evidence offered in the 9/30/2014 MFDJ, etc or the 10/14/2014 Brief. BBT exited the courtroom without being excused or dismissed prior to Hunt giving oral arguments on the 9/30/2014 MFDJ, etc.

**See** above at **6/6/2014 FAC**; and see the 9/30/2014 MFDJ, etc. at all pages; and see below **At the 10/14/2014 hearing**; See the 10/14/2014 Brief at all pages and in particular at pages 40-45; and see the 5/20/2014 Brief at all pages; and see the 10/28/2014 Order at exhibit # 94; and see the 10/30/2014 MTAOA at pages 11-14; and see the 1/13/2015 Order at exhibit # 84; and see below at **5/27/2015 MFAFC**; and see the two motions that were filed on 8/11/2015 pursuant to Rule 59 & 60, SCRPC and lack of jurisdiction at all pages; and see the 11/10/2015 Brief at all pages and in particular at pages 20-45. See the too late objections of BBT and the lower court in the 11/10/2015 transcript at pages 75 -99.

At the time that the above evidence was offered BBT did not object and the evidence has been admitted into evidence and BBT can not make its admission a ground on appeal.

(5) **At the 10/14/2014 hearing** on the 2<sup>nd</sup> MTD the FAC and the MFDJ, etc - Hunt gave the attorney for BBT and the Judge a copy of the 10/14/2014 Brief where at page 8 Hunt reasserted the 5/20/2014 Brief that had been given to BBT and the lower court - at the

5/20/2014 hearing.<sup>47</sup> In the 10/14/2014 Brief at page 11 - Hunt argued that all the allegations that made up the 8/2/2013 counterclaims and the 6/6/2014 FAC had been admitted. See above at Verified; and see above at 6/6/2014 FAC. See the 7/15/2014 affidavits at all paragraphs; and see the 10/14/2014 Brief at all pages and in particular at pages 1-12 and at pages 40-45; and see the 10/28/2014 Order; and see the 10/30/2014 MTAOA at pages 11-14; and see the two motions that were filed on 8/11/2015 pursuant to Rule 59 & 60, SCRCP and lack of jurisdiction at all pages; and see the 11/10/2015 Brief at all pages and in particular at pages 15-40. See the too late objections of BBT to attorney fees in the 11/10/2015 transcript at pages 75-99.

At the time that the above evidence was offered BBT did not object and the evidence has been admitted into evidence and BBT can not make its admission a ground on appeal.

(6) **11/10/2014 NOR:** Hunt submitted the affidavit at exhibit # 46 where among other things Hunt was requesting attorney fees and costs during the 11/10/2014 - 5/11/2015 Removal to the USDC. The attorney for BBT did not object to exhibit # 46 or in any other way to Hunt being pro se. And the attorney for BBT asked that Hunt be treated like an attorney. See the following exhibit #s: 82-83, 85. .

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<sup>47</sup> The lower court filed the 5/20/2014 Brief and the 10/14/2014 Brief on 10/16/2014.

At the time that the above evidence was offered BBT did not object and the evidence has been admitted into evidence and BBT can not make its admission a ground on appeal.

(7) **5/27/2015 MFAFC**: During lawsuit # 3 BBT encouraged<sup>48</sup> the USDC to dismiss this matter based on prior withdrawal under Rule 41(a)(1), SCRPC. BBT in lawsuit # 3 did not object to the 3/6/2013 affidavit at exhibit # 46 where Hunt requested attorney fees and costs, etc.<sup>49</sup> Also, BBT did not appeal the final Order at exhibit # 43 which adopted the RR where at page 1 at footnote 1 the USDC states that Hunt is pro se and is a licensed attorney in the State of South Carolina.

In the 5/27/2015 motion for attorney fees and costs (MFAFC) under Rule 41, SCRPC Hunt requested attorney fees and costs as asserted in the affidavits at exhibit #s 26 and 46.<sup>50</sup> Hunt did not request a hearing on this motion; and BBT did not object in writing. None the less, where BBT had requested and been granted three prior

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<sup>48</sup> BBT in its 8/9/2012 MTD at page 1 requested dismissal based on prior withdrawal; Hunt objected in the 9/17/2012 Response in opposition to the MTD; and in its 9/26/2012 Reply to the Response to the motion to dismiss at pages 5-6 BBT requested dismissal based on prior withdrawal. The 1/25/2013 RR at exhibit # 61 at page 4 was based on withdrawal under Rule 41 (a)(1), SCRPC. Hunt objected in the 2/8/2013 Objection to RR where Hunt attached a copy of Rule 41, SCRPC. On 2/22/2013 BBT made a Reply where at pages 4 and 32-33 BBT argues that the RR correctly dismissed based on withdrawal where BBT referred to Hunt as a licensed attorney; on 3/6/2013 Hunt made a Reply where Hunt attached the affidavit at exhibit # 46 where Hunt requested attorney fees, costs, legal interest, etc. BBT made no objections to the documents filed on 3/6/2013. On 3/13/2013 the USDC filed the Order at exhibit # 43 where the USDC states in the Order on page 1 at footnote 1 that Hunt is pro se and is a licensed attorney in the State of South Carolina.

<sup>49</sup> Cf. The 11/10/2015 transcript and the 6/15/2016 Order at all pages.

<sup>50</sup> Both of these exhibits were submitted in lawsuit # 3 without objections by BBT.

dismissals the lower court, in this fourth and vexatious litigation that was filed by BBT, in the 6/3/2015 Form 4 Order at exhibit # 98 without an objection from BBT has denied Hunt's 5/27/2015 motion under Rule 41, SCRPC requesting costs (attorney fees and costs) based on Hunt being pro se, etc. Hunt received a copy of this Order after request to the HC Clerk of Court.

At the time that the above evidence (5/27/2015 MFAFC) was offered - BBT did not object and the evidence has been admitted into evidence and BBT can not make its admission a ground on appeal.<sup>51</sup>

(8) **6/15/2016 Order on Appeal:** The attorney for BBT wrote the 6/15/2016 Order where the Judge ignored Hunt's objection to the attorney for BBT writing this and other Orders. See the 10/30/2014 MTAOA at page 3.

**Conclusion:** See below.

**9. Was the 8/11/2015 motion as to the 1/13/2015 Order untimely pursuant to Rule 59(e), SCRPC? No.**

"An abuse of discretion occurs when the order was controlled by an error of law or when the order is without evidentiary support."

Stark Truss Co. v. SUPERIOR CONST. CORP., 360 S.C. 503, 508, 602 S.E.2d 99 (S.C. App., 2004).

The transcript of the 11/10/2015 hearing show at page 111 lines 10-17 that BBT argued that to the extent the 8/11/2015 motion re the

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<sup>51</sup> At page 4 of 5 of exhibit # 83 entry # 13 (BBT's Reply) BBT asked that Hunt be treated like an attorney. Is BBT playing games with the Court. See the 6/15/2016 Order that was written by the attorney for BBT.

1/13/2015 Order was pursuant to a Rule 59(e), SCRCF motion that it was untimely. However, the 6/15/2016 Order is silent on this issue. Hunt argues that to the extent the 6/15/2016 Order is based on the 8/11/2015 motion as being untimely then: Hunt argues that (1) arguments based on altering and amending the 1/13/2015 Order also has been argued under the 10/30/2014 MTAOA pursuant to Rule 59(e), SCRCF which is timely and was filed two days after the 10/28/2014 Order where the 10/28/2014 Order at exhibit # 94 is tied to the 1/13/2015 Order at exhibit # 84; (2) the 8/11/2015 motion as to the 6/3/2015 Order was timely and Hunt argued 28 USC 1446(d) in both Orders and

(3) the 8/11/2015 motion as to the 1/13/2015 Order was timely as to Rule 59(e) and 60, SCRCF for the following reasons:

(a) See arguments herein that the 1/13/2015 Order is void where the State Court had not received a certified Order of Remand on both the 8/6/2012 and 11/10/2014 NOR; (b) The attorney for BBT has access (read and write) to the HC Clerk of Court database. See 11/10/2015 Brief at pages 10-15. Hunt does not have access to the Clerk's database; (c) The attorney for BBT received a copy of the 1/13/2015 Order in 1/2015. See the 11/10/2015 transcript at page 107 at line 2 - page 108 line 5; (d) The attorney for BBT did not provide the USDC with a copy of the 1/13/2015 Order that was entered prior to remand;

(e) On 1/3/2015 at exhibit # 83 entry # 13 at page 4 of 5 the attorney for BBT stated that: Hunt has failed to disclose to the USDC that the Master in Equity recently dismissed all of her counterclaims in this action **with prejudice**;<sup>52</sup>.(f) The attorney for BBT wrote at exhibit # 84 (1/13/2015 Order) that the FAC were dismissed with prejudice; however the 10/14/2014 transcript shows that the Judge never said that the FAC were dismissed with prejudice.

(g) Hunt alleges that the attorney for BBT failed to disclose the 1/13/2015 Order to the USDC for more than three months from 1/2015 -5/8/2015. See the 11/10/2015 transcript at page 107 at line 2 - page 108 line 5.

(h) The face of the 9/30/2014 MFDJ, etc shows that the HC clerk of Court refused to clock in the 9/30/2014 MFDJ, etc.

(i) And the attorney for BBT on 10/14/2014 at the hearing on the 9/30/2013 MFDJ, etc received a copy of the 10/14/2014 Brief prior to Hunt doing oral arguments on the 9/30/2014 MFDJ, etc.; and thereafter without being excused or dismissed the attorney for BBT exited the courtroom after the hearing on BBT's 2<sup>nd</sup> MTD the FAC. See the 11/10/2015 Brief at pages 6-7.

(j) Hunt at exhibit # 97 had to write to the clerk of Court to get a copy of the 1/13/2015 Order where Hunt was not able to print the

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<sup>52</sup> Hunt denies this allegation. See the NOR at exhibit # 80 at all pages.

1/13/2015 Order from the computer of the HC Clerk's office; and Hunt was surprised to receive two other Orders from the HC Clerk's office – the certified Order of Remand and the 6/3/2015 Order; (k) Hunt received all three of these Orders from the HC Clerk of Court on 8/10/2015; and (l) on 8/11/2015 Hunt made the motion under Rule 59, 60, SCRPC and lack of jurisdiction re the 1/13/2015 and 6/3/2015 Orders. See the 11/10/2015 Brief at pages 5-15. It is Hunt's position that the above described events reek of misconduct rooted in depriving Hunt of a timely motion to set aside/void the 1/13/2015 Order. Based on all the arguments herein and conduct described herein Hunt argues that both of the 8/11/2015 motions were timely. *Stark Truss Co. v. SUPERIOR CONST. CORP.*, 360 S.C. 503, 508, 602 S.E.2d 99 (S.C. App., 2004).

**Conclusion:** See below.

**10. Do all the FAC remain after application of the 6/25/2014 2<sup>nd</sup> MTD the FAC? Yes.**

A motion to dismiss a counterclaim must be based solely on the allegations set forth in the counterclaim. See Rule 12(b)(6), SCRPC; *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).

"A Rule 12(b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the [complainant] to any relief on any theory of the case." *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602-3 (1995).

The question is whether in the light most favorable to the complainant, and with every doubt resolved on his behalf, the counterclaim states any valid claim for relief. *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). The counterclaim should not be dismissed merely because the trial court doubts the complainant will prevail in the action. *Id.*

At the 10/14/2014 hearing on the 2<sup>nd</sup> MTD the FAC the lower court wanted to hear only the arguments and defenses from the 9/5/2013 MTD at exhibit # 89 that the lower court did not make oral rulings on at the 5/20/2014 hearing:<sup>53</sup> statute of limitations; no private right of action for violations of the SC Probate Code; and breach of fiduciary duty.

Hunt argues that If the lower court had applied the above standard of law to the 2<sup>nd</sup> MTD the FAC then the lower court would have found as stated by the attorney for BBT that: "the factual basis of all of these counterclaims are almost identical to the factual basis of her first 11 counterclaims [from the 8/2/2013 original counterclaims]." See the transcript from the 10/14/2014 hearing on BBT's 2<sup>nd</sup> MTD the FAC – at page 4 line 12 –page 5 line 8.

Hunt continues to assert all the arguments as seen above at - **did BBT admit evidence into the record without an objection;** and herein. As such, Hunt argues that all the allegations in the

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<sup>53</sup> The lower court has never made a written Order based on the 5/20/2014 hearing.

6/6/2014 FAC support all the counterclaims that were stated in the 8/2/2013 counterclaims and other claims except intentional destruction of evidence<sup>54</sup> and that all of those claims in the 6/6/2014 FAC have been admitted. See the 5/20/2014 Brief at pages 1-9 & 9-59; and the 10/14/2014 Brief at pages 1-12; and 10/30/2014 MTAOA at pages 3 & 11-14.

**Conclusion:** See below.

**11. Did the Court err in denying Hunt's Motion for Default Judgment (MFDJ, etc) against BBT? Yes.**

**a. Is the MFDJ, etc moot?**

The 10/28/2014 Form 4 Order denying Hunt' 9/30/2014 MFDJ, etc is at exhibit # 94.

"An abuse of discretion occurs when the order was controlled by an error of law or when the order is without evidentiary support."

*Stark Truss Co. v. SUPERIOR CONST. CORP.*, 360 S.C. 503, 508, 602 S.E.2d 99 (S.C. App., 2004).

"A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for reviewing Court to grant effectual relief." *Mathis v. South Carolina State Highway Dept.*, 195 S.E.2d 713, 714, 260 S.C. 344,345 (S.C., 1973). See the 11/10/2015 Brief at pages 22-24 at paragraph 25.

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<sup>54</sup> The 9/17/2014 Motion For Sanctions (MFS) was based on the intentional destruction of evidence.

Hunt argues that the 10/28/2014 Order was controlled by an error of law and that the order is without evidentiary support such that the 10/28/2014 Order was not and is not moot as follows:

(1) The Order at exhibit # 94 does not cite to any law; and the lower court at the 11/10/2015 Brief at pages 7 refused to allow Hunt to give oral arguments on the MFDJ, etc.

(2) In the 6/15/2016 Order (that was written by the attorney for BBT and) that is being appealed at page 3 for the first time ever in these proceedings the lower court/BBT makes rulings under the heading: The Court did not err in denying Hunt's Motion for Default Judgment against BB&T. Hunt made several requests for entry of default and default judgment: see the 6/6/2014 FAC at page 36; and see the 7/15/2014 affidavits of default, 7/15/2014 [ ] Response to [ ] at all pages; exhibit # 46; and see the 9/30/2014 MFDJ, etc at all pages; and see the 10/14/2014 Brief at all pages; and see the 10/30/2014 MTAOA at pages 11-14; and see the 11/10/2015 Brief at pages 22, 25, 35.

However, prior to the 6/15/2016 Order BBT has never objected to an entry of default or default judgment based on the 7/15/2014 affidavits of default. See herein at **did BBT admit evidence into the record without an objection.**

(3) BBT in the 6/15/2016 Order cites to *Holden v. Cribb*, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002) and states that: *the courts dismissal of Hunt's amended counterclaims at the hearing on October 14, 2014 rendered her motion for a default judgment on those claims moot.* See the 11/10/2015 Brief at pages 20-25 where Hunt argues that an oral ruling is not binding and that when the 1/13/2015 Order was signed that the lack of a certified Order of Remand precluded jurisdiction from revesting in the State Court.

(4) BBT in the 6/15/2016 Order states that: *"Even if her motion had not been mooted, the Court would have still denied Hunt's motion for default judgment because the rules of civil procedure permitted BB&T to file the a motion to dismiss the amended counterclaims in lieu of a responsive pleading, despite having earlier filed a previous motion to dismiss her original counterclaims."* See herein at did the 6/6/2014 FAC constitute a new pleading where Hunt argues that the SCRCP does not allow BBT to file the 7<sup>th</sup> MTD overall and a 2<sup>nd</sup> MTD the FAC where the 6/6/2014 first amended counterclaims (FAC) did not constitute a new pleading. See above at - **Did the 6/6/2014 first amended counterclaims (FAC) constitute a new pleading?**

*Stoffels ex rel., Sbc Concession v. Sbc Comm.*, 430 F.Supp.2d 642, 647 (W.D. Tex., 2006).

(5) BBT states in the 1/13/2015 Order at exhibit # 84 [as to the 9/5/2013 MTD] at footnote one: At a hearing on May 20, 2014, the Court dismissed those counterclaims without prejudice, but gave Hunt leave to amend them.

Thereafter, the record shows that Hunt filed the 6/6/2015 FAC. And that BBT did not file a reply. Instead, BBT filed the 6/25/2014 2<sup>nd</sup> MTD the FAC which is the 7<sup>th</sup> MTD overall and the 2<sup>nd</sup> MTD the FAC in lawsuit # 4. See the 10/14/2014 Brief at page 4.

BBT states that: *Rule 12(a), SCRCP ("The service of a motion permitted under this rule alters these periods of time as follows ... if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 15 days after notice of the Court's action ...").*<sup>55</sup>

Hunt in 7/15/2015 documents, the MFDJ, etc, and the 10/14/2014 Brief argue that the 2<sup>nd</sup> MTD the FAC is not permitted. And thereafter Hunt's 10/30/2014 MTAOA at page 14 states:

**SCRCP 12(a) not applicable:** Hunt argues that SCRCP 12(a) is not applicable to these FAC such that BBT would not be entitled to additional time to reply to any cause of action of the FAC. Hunt also argues that if SCRCP 12(a) is applicable to these FAC such that BBT is entitled to addition time to reply to the FAC then that SCRCP 12(a) has been rendered moot where BBT has admitted to the FAC and or

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<sup>55</sup> Whether or not Rule 12(a), SCRCP would have permitted the 7<sup>th</sup> MTD overall in this matter and the 2<sup>nd</sup> MTD in this current lawsuit would have been more timely determined as argued at: Was the clerk of court required to make an entry of default (EOD) against BBT upon receipt of the fourteen affidavits of default?

waived/abandoned all objections to the FAC. **See above at did BBT admit evidence into the record without an objection?**

(5) BBT states in the 1/13/2015 Order: Rules 12(g) and 12(h) were inapplicable to BBT's motion to dismiss the amended counterclaims. Hunt argues "*permitted under this rule*" requires an analysis of Rule 12(g) and 12(h), SCRPC where Rule 12(g), SCRPC deals with consolidation of defenses in motion. See **did BBT admit evidence into the record without an objection; see did the 6/6/2014 first amended counterclaims (FAC) constitute a new pleading?**

Conclusion: See below.

(6)  
**b. Exceptions to mootness doctrine are applicable.**

**"In the civil context, there are three general exceptions to the mootness doctrine.**

First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review." Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001); see also Byrd, 321 S.C. at 431-32, 468 S.E.2d at 864 (clarifying that South Carolina recognizes an exception to the mootness doctrine allowing the court to retain jurisdiction when an issue is capable of repetition, yet evading review).

"Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." Curtis, 345 S.C. at 568, 549 S.E.2d at 596.

Hunt argues that the first and second exceptions are applicable here where this matter involves Hunt's IOLTA and where BBT is engaged in businesses that affect the public interest and these issues as stated in the 6/6/2014 FAC are capable of repetition and evading review. See the 5/20/2014 Brief at pages 35-40.

"Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case." *Id. Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (S.C. App., 2002)

Hunt argues that the third exception is applicable here where Hunt still has one or two motions that need to be heard in the lower court as per the 10/30/2014 MTAOA at pages 1-11; and the foreclosure issue needs to be resolved.

**Conclusion:** See below.

**c. Was the HC Clerk of Court required to make an entry of default against BBT upon receipt of the fourteen affidavits of default? Yes.**

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book). Rule 55(a), SCRPC.

A plain reading of Rule 55(a) allows entry of default when a pleading or defense is asserted in a manner noncompliant with the Rules of Civil

Procedure. To hold otherwise would render the requirements in Rule [7(a) and 15](a), SCRCP, meaningless. *Stark Truss Co. v. SUPERIOR CONST. CORP.*, 360 S.C. 503, 602 S.E.2d 99 (S.C. App., 2004).

On 6/6/2014 Hunt filed and served the verified first amended counterclaims and defenses<sup>56</sup> (FAC) and a motion for sanctions (MFS).<sup>57</sup> BBT did not file a reply. Instead, BBT on 6/25/2014 responded to the FAC by submitting its 7<sup>th</sup> motion to dismiss in this matter (four lawsuits) where the 7<sup>th</sup> motion to dismiss was not labeled as a REPLY. See Rule 7(a), SCRCP; and exhibit # 90 The MTD filed on 6/25/2014 by BBT at exhibit # 90 did not admit or deny any of the allegations in the thirty-eight pages that made up the verified 6/6/2014 FAC. As such, Hunt on 7/15/2014 submitted the following: fourteen (14) affidavits of default, affidavit of Hunt at exhibit # 46 requesting attorney fees and costs, etc; and [] Response to Plaintiff's motion to dismiss the first amended counterclaims.

Paragraph 11 of the fourteen (14) affidavits submitted by Hunt on 7/15/2014 shows that Hunt contacted the attorney for BBT three times about REPLYING to the FAC where the attorney for BBT did not respond to Hunt's email and two calls.

The documents filed on 7/15/2014; and the 9/30/2014 MFDJ, etc; and the 10/14/2014 Brief and the 10/30/2014 MTAOA show Hunts

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<sup>56</sup> Hunt reasserted Hunt answer to the foreclosure complaint.

arguments on limitations on successive Rule 12(b)(6), SCRPC motions. However, two years after Hunt's objections re limitations on successive Rule 12(b)(6), SCRPC motions - at "[t]he Court did not err in denying Hunt's Motion for default Judgment against BBT" in the 6/15/2016 Order (that was written by the attorney for BBT) the lower court / BBT makes a ruling.

"If a party does not object to the admission of evidence when it is offered, he cannot make its admission a ground of appeal."

*Mendelsohn v. Whitfield*, 430 S.E.2d 524, 530, 312 S.C. 17, 25 (S.C. App., 1993). "[BBT's] failure to make an objection at the time evidence [was] offered constitutes a waiver of the right to object."

*Austin v. Stokes-Craven Holding Corp.*, Opinion No. 26784 (S.C. 3/8/2010) (S.C., 2010).<sup>58</sup>

In **Stark Truss Co. v. SUPERIOR CONST. CORP.**, 360 S.C. 503, 602 S.E.2d 99 (S.C. App., 2004) the [a]ppellants point to cases from other jurisdictions holding that entry of default is improper if even a late answer is filed prior to entry of default. See, e.g., *Moore v. Sullivan*, 123 N.C.App. 647, 473 S.E.2d 659, 660 (1996) ("After an answer has been filed, even if the answer is untimely filed, a default may not be entered."). **That is not the current law in this state.** Further, filing a late answer would not

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<sup>57</sup> It is Hunt's position that BBT was served on 6/6/2014. See the 11/10/2015 Brief at page 13 at paragraph 3. At no point during the 11/10/2015 hearing did BBT deny that it had read and print access.

alter the fact that Appellants were in default, especially if entering default is a ministerial act to be automatically performed once an affidavit shows the defendant has failed to comply with the requirements of the rules. *Thynes*, 294 S.C. at 153-54, 363 S.E.2d at 123.

"Although [BBT's 2<sup>nd</sup> MTD the FAC] amounted to a "[document]" filed prior to entry of default, it did not comply with the [] requirements of Rule 7(a) and 15(a) SCRPC. [BBT] clearly failed to file a [reply within fifteen days of service of the [FAC] upon them and they were technically in default. Thus, [BBT's 2<sup>nd</sup> MTD the FAC] was not a valid pleading or defense "as provided by" the Rules of Civil Procedure. A plain reading of Rule 55(a) allows entry of default when a pleading or defense is asserted in a manner noncompliant with the Rules of Civil Procedure. To hold otherwise would render the requirements in Rule [7(a) and 15](a), SCRPC, meaningless. *Stark Truss Co. v. SUPERIOR CONST. CORP.*, 360 S.C. 503, 602 S.E.2d 99 (S.C. App., 2004).

As such, the Horry County Clerk of Court was required to make an entry of default against BBT on 7/15/2014 once the default was made to appear by the affidavit[s].

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<sup>58</sup> See waiver and equitable estoppel in the 11/10/2015 Brief at pages 33-34.

Here, “[i]t does not appear that the clerk actually entered default in the instant case. However, whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit[s of Hunt].” *Thynes v. Lloyd*, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (Ct. App. 1987)

**Conclusion:** See below.

**d. Did the lower court err when it denied Hunt’s MFDJ, etc under Rule 55 (b)(1-2), SCRCP? Yes.**

Hunt argues that BBT has conceded the amount of liability of liquidated and un-liquidated damages. See the 11/10/2015 Brief at pages 25 – 36.

At the 10/14/2014 hearing on Hunt’s 9/30/2014 MFDJ, etc Hunt was stunned when Hunt looked over and saw that BBT had left the courtroom without being excused or dismissed before Hunt had a chance to argue her 9/30/2014 MFDJ, etc.

Hunt argues that some planning went into this matter to try and deprive Hunt of due process in this matter involving Hunt’s home and so that the 1/13/2015 Order could avoid the eyes of the USDC and this Court where the lower court stated in the 11/10/2015 transcript at page 57 lines 17-24 that Hunt’s 6/6/2014 FAC were not legal. Hunt disagrees with the lower court.

Hunt reminds this Court that Hunt did not file this 4<sup>th</sup> lawsuit. And in this 4<sup>th</sup> lawsuit Hunt argues that BBT went forum shopping and has engaged in vexatious litigation and is asserting mortgage foreclosure on an account that BBT said was closed at exhibit # 51 at footnote 1. And Hunt argues that BBT choose to file seven motions to dismiss and thereafter not follow Rule 12(g), 12(h)(2), 8 and 7(a), SCRPC; and not return Hunts calls and email; and not object to numerous arguments including limitations on successive motions to dismiss; and where Hunt submitted the 10/14/2014 Brief to the lower court and thereafter the attorney for BBT exited the courtroom before Hunt made oral arguments on the MFDJ, etc.

As such, Hunt argues that BBT has conceded the amount of liability under Rule 55(b)(1-3), SCRPC where Hunt sent notice of the hearing on the 9/30/2014 MFDJ, etc; a hearing was held on 10/14/2014; BBT and Hunt were present; Hunt submitted the 10/14/2014 Brief to the lower court and the attorney for BBT at the 10/14/2014 hearing; BBT exited the courtroom on 10/14/2014 without being excused or dismissed; and BBT objected to the rescheduling of oral arguments on the 9/30/2014 MFDJ, etc. See the 11/10/2015 Brief at pages 6-9 & 25-36; see the 9/30/2014 MFDJ, etc; see the 10/14/2014 Brief at pages 40-45; **see the 10/14/2014 transcript**; and see the 10/30/2014 MTAOA at pages 11-14.

**Conclusion:** see below at conclusion.

**e. Did the lower court err when it denied Hunt's MFDJ, etc under Rule 55 (b)(3), SCRCF? Yes**

See above at Is Hunt entitled to attorney fees and costs, etc.

**Denied:** Hunt argues that anything not objected to is denied.

**Conclusion:**

(1) Hunt request that this Court makes an Order finding that the attorneys for BBT have engaged in improper forum shopping; and that those attorneys be sanctioned in the amount of \$ 2,668,905; plus Hunt's attorney fees and costs for lawsuit # 4, plus legal interest since 3/13/2013; plus satisfaction of the 2007 mortgage; and

(2) Hunt requests that this Court find that (1) all of the State Court proceedings in lawsuit # 4 are void and vacated as the lack of a certified Remand Order pursuant to the 8/6/2012 NOR precluded the State Court from resuming jurisdiction over the cases and vacate all of the State Court proceedings in lawsuit # 4; or (2) that all of the State Court proceedings in lawsuit # 4 prior to the certified Order of Remand being received by the State Court on 5/11/2015 are void as the lack of a certified Remand Order pursuant to the 8/6/2012 NOR and 11/10/2014 NOR precluded the State Court from resuming jurisdiction over the cases; and vacate all of the State Court proceedings prior to the certified Remand Order being filed on 5/11/2015; and

(3) Hunt requests that this Court sanction BBT and its attorneys for this conduct (false statement in affidavit) in the amount of 2,668,905 plus legal interest; plus attorney fees and costs for lawsuit # 4 and legal interest on all since 3/13/2013; and

**(4)** Hunt requests that the Court makes a finding that BBT be sanctioned for engaging in forum shopping and vexatious litigation; and that the Court makes an Order voiding all the Orders in lawsuit # 4 the 6/15/2016 Order, the 6/3/2015 Order, the 1/13/2015 Order and the 10/28/2014 Order; and granting attorney fees and costs to Hunt and for the two attorneys retained by Hunt in the amount of \$ 2, 668, 905.00 for lawsuit #s 1-3, plus legal interest since 3/13/2013; and attorney fees and costs for lawsuit # 4 plus legal interest; and the 2007 mortgage;<sup>59</sup> and all of the liquidated damages in the 10/14/2014 Brief at pages 42-45; and stay the case until BBT has complied with the Order; and

**(5)** Hunt requests that this Court makes a finding that the 7/9/2012 complaint, 8/2/2013 counterclaims and the 6/6/2014 FAC and the 42 exhibits are verified; and treat them like an affidavit; and

**(6)** Hunt requests that this Court makes an Order finding that the SOL has not expired and that the SOL has been tolled based on concealment; and

**(7)** Hunt request that the Court make an Order finding that 6/6/2014 FAC repeated the essential allegations of the 8/2/2013 counterclaims; and that BBT was not permitted to respond with the 6/25/2014 2<sup>nd</sup> MTD the FAC at exhibit # 90; and

**(8)** Hunt request that this Court makes an Order stating that waiver and estoppel are applicable to the positions by the lower court in the 6/15/2016 Order; and that BBT has admitted all of the claims in the 6/6/2014 FAC under Rule 8(d), SCRCPP; and

**(9)** Hunt requests that the Court makes an Order finding that all the 6/6/2014 FAC remain after the application of the 2<sup>nd</sup> MTD the FAC; and that the 1/13/2015 Order is reversed based on an error of law or where the Order is based on conclusions that are without evidentiary support; and

**(11)** Hunt request that this Court makes an Order finding that the 9/30/2014 MFDJ, etc is not moot; and

**(12)** Hunt request that this Court of Appeals make an Order finding the Orders of this appeal satisfies one or more of the exceptions to the mootness doctrine; and this Court issues an Order as to the questions presented by this appeal; and

**(13)** Hunt requests that this Court make an Order with a finding of default; and an entry of default against BBT and that the entry of default is to be entered on the book at the Horry County Clerk of

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<sup>59</sup> Hunt argues that judicial estoppel applies to the 2007 mortgage. See exhibit # 51 and exhibit # 82

Court's Office; and that this Court treats the entry of default as a ministerial act; and

Hunt requests that this Court make an Order

- (14) BBT to remove all negative status from the credit reporting agencies on Hunt, Davis and others.<sup>60</sup> Plus interest on the judgment at the legal rate since 3/13/2013 until the judgment is satisfied; and
- (15)** For an Order granting Punitive Damages; and Treble Damages under the Unfair Trade Practices Act; and
- (16)** For an Order granting Prejudgment Interest: Hunt requests an award of prejudgment interest based on actual damages under SC Code 34-31-20(A) where the sums are certain as stated above and required by SC Code 34-31-20(A); and
- (17) For an Order granting entry of default and default judgment as stated in the 7/15/2014 (14) Affidavits of Default; and the forty entries of default; and the 9/30/2014 MFDJ, etc at all pages; and the 6/6/2014 FAC prayer for relief at pages 36-38; and the affidavit at exhibit # 46; and the 10/14/2014 Brief at pages 41-45;

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(Response to MTR) at pages 3-6; also See exhibit # 85 and exhibit # 87.

- (18) For an Order granting loss wages to Hunt in the amount of \$ 7,866,670.00.
- (19) For an Order granting attorney fees and costs to Hunt in the amount of \$2,668, 905 plus attorney fees and costs for lawsuit # 4 plus interest since 3/13/2013; and
- (20) For an Order granting \$100,000 each to Davis, Allen and Sherman plus interest since 3/13/2013; and
- (21) For an Order granting \$3,000,000 to the SC BAR plus interest since 3/13/2013; and
- (22) For an Order granting satisfaction of the mortgages on the Hunt and Sherman mortgages; and free of any encumbrances; and
- (23) For an Order staying these proceedings until the Orders are satisfied.

Respectfully submitted,



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(843) 488-1131/(843) 347-7230

DATE: December 16, 2016

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<sup>60</sup> See exhibit # 46 at paragraph 11.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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**SC Court of Appeals**

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Cynthia Graham Howe, Master-in-Equity Judge

Appellate Case No.: 2016-001550

Branch Banking and Trust Company, .....Respondent

v.

Cindy B. Hunt; Willow Greens

Homeowners Association, Inc.;

CJ Developers, LLC,.....Defendant(s),

Of Whom Cindy B. Hunt is .....Appellant

PROOF OF SERVICE

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Appellate Case No. 2016-001550

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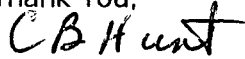
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