

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM HORRY COUNTY

MAR 28 2017

Court of Common Pleas

SC Court of Appeals

Cynthia Graham Howe, Master-in-Equity Judge

Appellate Case No.: 2016-001550

Branch Banking and Trust CompanyRespondent

v.

Cindy B. Hunt; Willow Greens

Homeowners Association, Inc.;

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

Of Whom Cindy B. Hunt isAppellant

AMENDED INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

1. Did the lower court err in denying Hunt's 9/30/2014 Motion for Default Judgment under Rule 55 (a) and (b), SCRCP, etc against BBT? Page 14

2. Did the lower court err in granting BBT's 2nd MTD the FAC in the January 13, 2015 Order? Page 31

3. Did BBT engage in Forum Shopping and Vexatious Litigation? Page 32

4. Is Hunt entitled to attorney fees and costs? Page 35

STATEMENT OF THE CASE

This matter involving Hunt's banking relationship with BBT has been on going since about January 18, 2008. Before filing the first of four lawsuits Hunt reported BBT to the FDIC. Thereafter, the first lawsuit was filed by Hunt in the USDC on August 9, 2009 against BBT and several employee Defendants. The second lawsuit was filed by Hunt in the USDC on April 12, 2011 against BBT and several employee Defendants and dismissed on March 13, 2013 without prejudice. The foreclosure mortgage became delinquent on July 1, 2012. The third lawsuit was filed by Hunt in the State Court on July 9, 2012 against BBT. BBT **removed** lawsuit # 3 to the USDC on August 6, 2012 asserting that the amount in controversy was the delinquent mortgage. Hunt did not make a motion to remand lawsuit # 3. BBT made a motion to dismiss. Lawsuit # 3 was dismissed on March 13, 2013 without prejudice where the USDC did not rule on all of the defenses asserted by BBT in the motion to dismiss.

The fourth and current lawsuit was filed by BBT in State Court on April 16, 2013 against Hunt, Willow Greens Homeowners Association, Inc. and CJ Developers, LLC asserting foreclosure. Hunt has asserted counterclaims in lawsuit # 4 against BBT for the mishandling of Hunt's accounts; and BBT asserted motions to dismiss that included the

defenses that BBT included in its motion to dismiss from lawsuit # 3 that were not ruled on by the USDC.

A hearing was scheduled on October 14, 2014 for BBT's second motion to dismiss the first amended counterclaims (2nd MTD the FAC) and Hunt's motions, affidavits, etc as shown in the notice of hearing at exhibit # 105. At the October 14, 2014 hearing Hunt submitted a brief and resubmitted a brief. The lower court made oral rulings on BBT's 2nd MTD the FAC. Thereafter, the attorney for BBT exited the courtroom before Hunt gave oral arguments on Hunt's motions, affidavits, etc as shown in the notice of hearing at exhibit # 105. The lower court made a written Order on 9:04 am on October 28, 2014 as shown at exhibit # 94 against Hunt. On October 30, 2014 Hunt made a Motion to alter or amend [] (MTAOA) re three motions; this appeal involves only the motion as to the Order at exhibit # 94.

Hunt **removed** lawsuit # 4 to the USDC on November 10, 2014. BBT made a motion to remand on December 8, 2014. The State Court on January 13, 2015 filed an Order from the hearing that had been held on October 14, 2014 re BBT's 2nd MTD the FAC. The attorney for BBT received a copy of the January 13, 2015 Order in January 2015. The attorney for BBT did not provide the USDC with a copy of the January 13, 2015 Order. The USDC made a finding of personal jurisdiction over Hunt. Lawsuit # 4 was remanded to the State Court

on May 8, 2015. The certified Order of Remand was filed by the HC clerk of Court on May 11, 2015.

Thereafter, Hunt made a motion under Rule 41, SCRCF on May 27, 2014 requesting attorney fees and costs (MFAFC). Hunt did not request a hearing on the May 27, 2015 motion. And BBT did not make a written objection to the May 27, 2015 motion. The lower court denied the MFAFC in a written Order on June 3, 2015.

Hunt wrote to the HC Clerk of Court on July 27, 2015 for copies of Orders. Hunt received three orders from the clerk of court on August 10, 2015: the January 13, 2015 Order; the May 11, 2015 Order and the June 3, 2015 Order. Thereafter, on August 11, 2015 Hunt made two motions under Rule 59 and 60, SCRCF and lack of jurisdiction as to the January 13, 2015 Order; and the June 3, 2015 Order.

A hearing was held for three motions on November 10, 2015: the October 30, 2014 MTAOA and the two motions filed on August 11, 2015. At the November 10, 2015 hearing the lower court orally denied all three of Hunt's motions. The June 15, 2016 Order from the November 10, 2015 hearing is the reason for the notice of appeal.

Change in parties: WGHOA withdrew on November 5, 2013; and CJ Developers was dissolved on March 9, 2006 which is about seven

years prior to lawsuit # 4 being filed. CJ Developers has never filed any documents or made an appearance in this matter.

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 the attorney fees and costs are in excess of \$2, 668,905 plus legal interest, etc.

Relevant Facts

Lawsuit # 1: c/a 4:09-cv-2151-JMC-TER was filed on 8/13/2009 in the USDC by Hunt against several Defendants involving federal question jurisdiction. Hunt filed an amended complaint on 8/31/2009; and BBT filed a motion to dismiss (MTD) on 10/27/2009. Hunt filed a 2nd amended complaint on 5/20/2010. BBT filed a MTD the 2nd amended complaint on 5/29/2010. See the civil docket at exhibit # 47; and exhibit # 38 & exhibit # 49 entry # 16-2 & 16.

Prior to and around September/October 2010 Hunt was provided legal services by attorneys Valtorta and Ballard. Hunt became pro se around September/October 2010. See the civil docket at exhibit # 47 at page 7 of 14.

On 1/22/2011 BBT filed the affidavits of Chestnut and Teal¹ in response to Hunt's motion for partial summary judgment. See the civil docket at exhibit # 47 at pages 9-10. BBT (re)submitted the affidavits of Chestnut and Teal in lawsuit # 4 in opposition to the motion for summary judgment and at the 9/17/2014 hearing (MFS) where all of the attachments to the affidavits were no longer attached, etc.

On 2/3/2011 BBT filed a Response to the motion to stay and strike where BBT states at the bottom of page 2 at footnote 1 that all accounts of Hunt which are the subject of this action were closed in

early 2009 when events leading to this action occurred. See exhibit # 51.

On 3/23/2011 the USDC partially granted BBT's motion to dismiss under Rule 12(b)(6), FRCP: the federal causes of action were dismissed² and the court declined supplemental jurisdiction over the state law claims.³ On 4/20/2011 Hunt made a motion to alter and amend; and on 12/12/2011 Hunt filed a notice of appeal of lawsuit # 1 to the USCA.⁴ See the civil docket at exhibit # 47; and see exhibit #s 41, 39, 40. Hunt argues that res judicata and law of the case applies to law suit # 1.

Lawsuit # 2: c/a 4:11-cv-0870-MGL-TER was filed on 4/12/2011 in the USDC by Hunt against several Defendants involving federal question jurisdiction. On 5/10/2011 Hunt filed an amended complaint. On 6/19/2012 BBT filed a motion to dismiss pursuant to Rule 12(b)(2) and Rule 12(b)(5), FRCP. The USDC granted BBT's motion to dismiss. The 3/13/2013 final judgment of the USDC states: case dismissed without prejudice under Rule 4(m), FRCP. Law suit # 2 was not appealed. See the civil docket at exhibit # 48; and see exhibit # 49

¹ See exhibit # 50 – affidavit of Teal.

² The GLBA cause of action was not dismissed. See the Orders at exhibit #s 41 and 39.

³ The claims of lawsuit # 1 were included in lawsuit #s 2-4; and Hunt timely refiled the claims from lawsuit # 1 in lawsuit #s 2-4.

⁴ See case # c/a 4:09-cv-2151-JMC-TER where the USDC dismissed the federal causes of action and declined supplemental jurisdiction. Hunt made a timely motion to alter or amend. Hunt made a timely appeal and request for reconsideration to the USCA. Thereafter, Hunt timely filed law suit # 3.

entry # 15-8; exhibit # 48 entry # 34; and exhibit # 52. Hunt argues that res judicata and law of the case applies to law suit # 2.

Lawsuit # 3: Case No: 2012-CP-26-5264⁵ aka c/a 4:12-cv-02216-MGL-TER was filed on 7/9/2012⁶ with forty two exhibits in Horry County Court of Common Pleas by Hunt against BBT only. Hunt submitted a notice of withdrawal on 8/6/2012 at 10:46 am. See exhibit # 49 entry # 9-2. Thereafter, BBT submitted a Notice of Removal⁷ on 8/6/2012 at 13:49 pm based on diversity jurisdiction. See the 8/6/2012 NOR. Hunt did not file a motion to remand. BBT submitted a motion to dismiss under Rule 12(b)(6), FRCP on 8/9/2012 (see exhibit # 88 & exhibit # 49 entry # 9 & 9-3 and cf. exhibit # 89, 5/27/2014 email and exhibit # 90) based on withdrawal and several other grounds.

On 9/17/2012 Hunt filed a Response to BBT's 8/9/2012 MTD with the exhibits that are shown at exhibit # 49 entry # 9, 9-1 thru 9-3; exhibit # 49 entry # 14, 14-1 thru 14-6; exhibit # 49 entry # 15, 15-1 thru 15-7; and exhibit # 49 entry # 16-1 thru 16-4. See the civil docket of law suit # 3 at exhibit # 49 at pages 2-3. BBT did not object to these exhibits. See the civil docket of law suit # 3 at exhibit # 49

⁵ The causes of action in the 7/9/2012 Complaint was the same as the causes of action in lawsuit # 4 at the 8/2/2013 counterclaims. See the 10/16/2014 Brief in opposition to Plaintiff's [] at page 11 of 45.

⁶ BBT in its foreclosure complaint in lawsuit # 4 states that the mortgage became delinquent on 7/1/2012.

⁷ In its Notice of Removal for lawsuit # 3 in 8/2012 BBT cited to the already delinquent mortgage as the amount in controversy. BBT did not assert a claim for foreclosure in lawsuit #s 2-3.

at page 3 (8/9/2012 MTD); and see BBT's 8/9/2012 MTD at exhibit # 88; and see the FAC at page 20 at paragraph # 271 & 275.

On 3/6/2013 Hunt filed the affidavit of Hunt at exhibit # 46 where exhibit # 46 includes a request for attorney fees and costs, etc. Thereafter, exhibit # 46 has been submitted several times in this matter without objection by BBT.

The USDC on 3/13/2013 partially granted BBT's motion to dismiss. BBT did not file a motion to alter or amend the judgment to preserve the issues of the 8/9/2012 MTD that were not ruled on in the 3/13/2013 Order.⁸ Law suit # 3 was not appealed. See the civil docket at exhibit # 49. Lawsuit # 3 was dismissed without prejudice. See exhibit #s 61 & 43.⁹ Hunt argues that res judicata and law of the case applies to law suit # 3.

Lawsuit # 4: On **4/16/2013** BBT filed a foreclosure Complaint against Hunt, Willow Green Homeowners' Association, Inc. (WGHOA)¹⁰ and CJ Developers¹¹ in State Court about thirty three days after lawsuit #s 2-3 were dismissed at BBT's request as stated above. See

⁸ Cf. the 9/5/2013 MTD and the 6/25/2015 2nd MTD the FAC.

⁹ During lawsuit # 4 at the request of the lower court BBT submitted some of the documents from lawsuit #s 1-3 to the lower court.

¹⁰ WGHOA did not provide Hunt with a copy of its Answer. On 10/17/2013 Hunt filed a Motion to Strike the Answer of WGHOA. WGHOA filed a withdrawal in this matter on 11/05/2013. See exhibit #s 60 & 69.

¹¹ CJ Developers, LLC (the builder) was dissolved in 1996. CJ Developers has never filed any documents in this matter. See exhibit # 68.

the 4/16/2013 Complaint; and see Hunt's arguments herein at **Forum Shopping**. Lawsuit # 4 is on going.

On **8/2/2013** Hunt filed and served the counterclaims and defenses, an answer and exhibits and motion for summary judgment. See the 8/2/2013 Answer; and the 8/2/2013 Counterclaims. Cf. the 7/9/2012 Complaint and see the 10/16/2014 Brief in opposition to Plaintiff's [] at page 11 of 45 (... one and the same.).

On **8/12/2013** the lower court granted a second Order of Publication to BBT.

On **8/13/2013** Hunt filed and served a waiver of service of process.

On **9/5/2013** BBT filed its 6th motion to dismiss¹² under Rule 12(b)(6), SCRPC (exhibit # 89) in these four lawsuits where the 9/6/2013 motion to dismiss was not labeled as a REPLY - instead the motion was labeled: Plaintiff's Motion to dismiss Counterclaims of Cindy B. Hunt. See the 9/5/2013 MTD.

On **11/04/2013** the Court filed an Order of Reference to the Master in Equity.

¹² The arguments of BBT's 9/6/2013 motion to dismiss were the same as the arguments of the 8/9/2012 motion to dismiss.

4/21/2014 Hearing: On 4/21/2014 the Court heard and orally denied numerous motions (NMS) filed by Hunt. On 10/22/2014 the Court filed the Order denying these motions.

5/6/2014 Scheduling Order: On 2/6/2014 the Court heard BBT motion for a scheduling Order. The Court orally granted the motion at the hearing and on 5/6/2014 the Court filed the written scheduling Order.

5/20/2014 Hearing on 9/5/2013 MTD: on 5/20/2014, fourteen days after BBT was granted its motion for a scheduling Order, the court heard BBT's 1st MTD in this lawsuit and the 6th MTD in these four lawsuits involving Hunt's accounts at BBT. At the 5/20/2014 hearing Hunt submitted a brief. The Court orally granted BBT's 1st MTD in part and did not orally rule three issues from the 1st MTD. The Court never filed a written Order re its oral ruling from the hearing on 5/20/2014. Cf.: See the 1/13/2015 Order (exhibit # 84) at footnote 1 where the 5/20/2014 hearing is treated as though the lower court filed an Order.¹³

On **6/6/2014** Hunt filed and served the first amended counterclaims and defenses (FAC) where the counterclaims and defenses included citations to exhibit #s 1-70+ where exhibit #s 3, 6, 26, 46 and 70 are

affidavits.¹⁴ Hunt reasserted Hunt's answer to the foreclosure complaint.

On **6/6/2014** Hunt filed and served a motion for sanctions (MFS). BBT on **6/25/2014** submitted its 6th motion to dismiss under Rule 12(b)(6), SCRPC (exhibit # 90) in these four lawsuits where the 6/25/2014 motion to dismiss was not labeled as a REPLY - instead the motion was labeled: Plaintiff's notice of motion and motion to dismiss the first amended counterclaims of defendant Cindy B. Hunt. See the unpreserved issues from the MTD at exhibit # 88 & exhibit # 49 entry # **9 & 9-3**; and cf. exhibit # 89, 5/27/2014 email and exhibit # 90; and see Hunt's arguments herein at **Forum Shopping**.

Hunt on **7/15/2014** filed and served fourteen (14) affidavits of default; the affidavit of Hunt (exhibit # 46) and [] Response to Plaintiff's motion to dismiss the first amended counterclaims.¹⁵ BBT has never filed a motion to set aside the ministerial entry of default (EOD).

On **8/7/2014** Hunt filed and served the notice of hearing on the MFS where the possible sanctions included default judgment, etc.

¹³ The lower court made oral rulings on BBT's 9/5/2013 MTD (exhibit # 89) on May 20, 2014. However, the lower court never filed a written order from the May 20, 2014 hearing.

¹⁴ Footnote 4 of the FAC states: the counterclaims are verified. BBT has never objected to this statement. "Verified [counterclaims] by pro se [litigants] are to be considered as affidavits." *Kough v. Pack* (D.S.C., April 29, 2016).

¹⁵ The affidavit of Hunt re attorney fees, etc was also submitted on 7/15/2014.

09/17/2014 Hearing on the Motion for Sanctions (MFS): A hearing was had on Hunt's MFS on **9/17/2014**. Hunt submitted a Brief at the 9/17/2014 hearing.

On **9/30/2014** Hunt filed and served Entries of Default (40); the Motion for Default Judgment under SCRCP 55 (a) and (b) with exhibit # 46 - affidavit for attorney fees & costs; Affidavits of default and Response to Plaintiff's Motion to Dismiss the First Amended Counterclaims that include motion to strike, entry of default, Motion for Default Judgment /Application for Default Judgment (SCRCP 55(b)), etc. Herein after **MFDJ, etc.** See the Certificate of Service and Notice of Hearing at exhibit # 105.

On **9/30/2014** Hunt filed and served the notice of the 10/14/2014 hearing re the MFDJ, etc with the affidavit at exhibit # 46 requesting attorney fees and costs - on the attorneys for BBT and WGHOA; and CJ Developers. See exhibit # 105.

On **10/14/2014** a hearing was scheduled on Hunt's MFDJ, etc.: affidavits of default; response to 2nd MTD the FAC; MFDJ under SCRCP 55 (a) and (b); affidavit for attorney fees & costs, motion to strike, etc. See exhibit # 105.

And on **10/14/2014** a hearing was scheduled on BBT's Motion to Dismiss (2nd MTD the FAC).

During the **10/14/2014** hearing on BBT's 2nd MTD the FAC Hunt submitted to BBT and the Court - Hunt's Brief in opposition to the 2nd MTD the FAC / Brief in support of entry of default and default judgment.¹⁶ The Court stated during the hearing on BBT 2nd MTD on 10/14/2014 that it was going to file Hunt's Brief. BBT did not make any objections. (See the 10/14/2014 transcript at exhibit # 107 at page 77-78 at lines 17-3.).

On **10/14/2014** the court heard BBT's 2nd MTD the FAC and made oral rulings¹⁷ granting the motion to dismiss based on statute of limitations and no private right of action. After BBT's 2nd MTD the FAC was heard by the Court on 10/14/2014 the attorney for BBT exited the courtroom without being dismissed or excused before Hunt's MFDJ, etc was orally argued and before Hunt could say that the Brief also included Hunt's arguments in support of entry of default and default judgment. As a result BBT did not make any type of an objection to 1) Hunt's 9/30/2014 MFDJ, etc. See the Notice of Hearing at exhibit # 105 and see Rule 7(b)(1), SCRCPC; and 2) Hunt's Brief in opposition to the Plaintiff's 6/2[5]/2014 2nd MTD the FAC; Brief in support of entry of default and default judgment. See the 9/30/2014 MFDJ, etc at all pages; and see the 10/16/2014 Brief (last paged dated 10/14/2014)

¹⁶ The Court filed this Brief on 10/16/2014.

¹⁷ The court filed the written and signed Order on 1/13/2015 which was after removal to the USDC and prior to remand to the State Court.

which was filed by the lower court on 10/16/2014 at pages 41-45; see the 10/14/2014 transcript at all pages; see the 10/28/2014 Order at exhibit # 94; see the 10/30/2014 MTAOA at pages 11-14; see the 1/13/2015 Order at exhibit # 84; see the 11/10/2015 Brief at pages 20-40 and see the 11/10/2015 transcript at all pages.

On **10/15/2014** in an email to the clerk for the Master in Equity - Hunt requested that the Court reschedule the hearing on the motion for default and default judgment (MFDJ, etc.).

On **10/15/2014** in an email to the clerk for the Master in Equity - the attorney for BBT stated: Because Ms. Hunt's motion seeks a default judgment concerning the amended counterclaims that Judge Howe dismissed yesterday, I believe that the motion is now moot and a hearing no longer necessary.

On **10/15/2014** Hunt wrote another email stating among other things that BBT did not Reply to the amended counterclaims.

On **10/15/2014** a couple more emails where exchanged.

On **10/16/2014** the Court filed the briefs labeled: Brief in opposition to the 2nd MTD the FAC / Brief in support of entry of default and default judgment (dated 10/14/2014); and Brief in opposition to the motion to dismiss (dated 5/20/2014).

On **10/20/2014** the Court filed the Order that denied Hunt's 6/6/2014 MFS.

On **10/22/2014** the Court filed the Order that denied Hunt's NMS re the 8/2/2013 original counterclaims.

On **10/23/2014** Judge Howe sent an email to Hunt and the attorney for BBT. The Judge's email referenced Rule 12(a)(1), SCRCP.

The lower court on **10/28/2014 at 9:04** filed an Order that denied Hunt's MFDJ, etc. See exhibit # 94.

The proposed Order granting BBT 2nd MTD the FAC was submitted for the Judge's signature on **10/28/2014 at 5:58 pm** which was after the filed 9:04 am Order denying Hunt's MFDJ, etc.

On **10/30/2014** Hunt timely objected to three Orders: the 10/20/2014 Order denying the MFS; the 10/22/2014 Order denying numerous motions that were heard on 4/21/2014;¹⁸ and the 10/28/2014 Order at exhibit # 94 - by filing and serving the parties and the Judge motions under SCRCP 59(e). See the 10/30/2014 Motion to Alter or Amend ...[. (MTAOA).

On **11/10/2014** Hunt filed a Notice of Removal (NOR) at exhibit # 80.

¹⁸ The 10/20/2014 and 10/22/2014 Orders are not part of this appeal where hearing needs to be held in the lower court.

On **12/8/2014** BBT filed a motion to remand (MTR) at exhibit # 81.

On **12/22/2014** Hunt filed a response to BBT's MTR at exhibit # 82.

On **1/3/2015** BBT filed a Reply to Hunt's response at exhibit # 83.

The **Order** from the 10/14/2014 hearing orally granting BBT's 2nd MTD the FAC was filed on **1/13/2015** at exhibit # 84. 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 thru page 108 line 1; and see exhibit

97; and see the 11/10/2015 Brief at pages 10-13.

On **4/15/2015** the USDC filed its report and recommendation (exhibit # 85).

The USDC remanded this matter to the State Court on **5/08/2015**

(exhibit # 86). The Order of remand was filed by the HC clerk of court

on **5/11/2015** at exhibit # 87. See exhibit #s 80-87 and 97.

On **5/27/2015** Hunt filed and served a motion under SCRCP 41 for attorney fees and costs and to stay (MFAFC) the proceedings until BBT complied with the Order. See the 5/27/2015 Motion. The motion

under SCRCP 41 was based on BBT's requested and granted dismissals in lawsuit #s 1-3. Hunt did not request a hearing on the motion under Rule 41, SCRCP. BBT did not file any type of objections to the

5/27/2015 motion under Rule 41, SCRCP. Nonetheless, the Court on

6/3/2015 filed an Order dismissing the motion under Rule 41, SCRCP

for attorney fees and costs asserting that Hunt was pro se. See exhibit # 98.

On **7/27/2015** Hunt mailed a letter to the Horry County Clerk of Court requesting copies of any Orders filed during 2015.¹⁹ On 8/10/2015 Hunt received three Orders from the HC clerk of Court. See exhibit # 97; and see the 11/10/2015 Brief at pages 8-9.

On **8/11/2015** Hunt timely filed and served a motion under SCRCP 59, 60 and lack of jurisdiction re the 1/13/2015 Order. See the 8/11/2015 Motion; and exhibit # 96.

On **8/11/2015** Hunt timely filed and served a motion under SCRCP 59, 60 and lack of jurisdiction re the 6/3/2015 Order. See the 8/11/2015 Motion; and exhibit # 96.

On **8/27/2015** Hunt sent an email to the attorney for BBT about settling this matter where it had been ongoing at the time for eight years.

At the **11/10/2015** hearing the Court heard three motions under SCRCP 59, 60 and or lack of jurisdiction by Hunt that were filed on 10/30/2014 (re Hunt's MFDJ, etc),²⁰ 8/11/2015 (re BBT's 2nd MTD the FAC) and 8/11/2015 (re Hunt's MFAFC). See the 11/10/2015 Brief and transcript.

¹⁹ See exhibit # 97: 7/27/2015 Letter to HC clerk of court.

On **6/10/2016**, a Friday afternoon, via email the attorney for BBT submitted a proposed Order re the 11/10/2015 hearing.

On **6/15/2016** the lower court signed and filed the 6/10/2016 proposed Order that resulted from the 11/10/2015 hearing.

On **6/17/2016** Hunt submitted objections to the 6/10/2016 proposed Order. See Rule 6(a), SCRPC. Hunt had no knowledge that the lower court had filed the Order on 6/15/2016 until Hunt received a copy of the Order from BBT on 6/28/2016. See the 11/10/2015 transcript at page 106 at line 9 – page 108 line 23.

ARGUMENTS

Did the lower court err in denying Hunt's 9/30/2014 Motion for Default Judgment under Rule 55 (a) and (b), SCRPC, etc against BBT? Yes.

Hunt argues that the 6/15/2016 Order that denied Hunt's MFDJ, etc²¹ is the result of an abuse of discretion where: [a]n 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, 602 S.E.2d 99 (S.C. App., 2004).

²⁰ The 10/28/2014 motion under SCRPC 59(e) was based on three Orders. The hearing on 11/10/2015 was for one of the Orders. The hearing re the other two Orders will be held in the near future.

²¹ See the 9/30/2014 Notice of Hearing, 9/30/2014 Certificate of Service, 9/30/2014 Receipt for MFDJ and the 7/15/2014 Certificate of Service at exhibit # 105; and see the 7/15/2014 affidavits of default; see the 7/15/2014 Response to Plaintiff's []; see the 9/30/2014 entries of default; see the affidavit of Hunt at exhibit

On 6/6/2014 Hunt filed and served the first amended counterclaims and defenses. Thereafter, BBT on 6/25/2015 filed the Second motion to dismiss the first amended counterclaims (**Herein after referred to as 2nd MTD the FAC.**). Hunt argues that BBT responded to the 6/6/2014 FAC by submitting its 2nd, 3rd, 4th, 5th or 6th motion to dismiss²² in this matter (fourth lawsuit) where the 2nd, 3rd, 4th, 5th or 6th motion to dismiss at exhibit # 90 was not labeled as a REPLY, as required by Rule 12(g), 12(h)(2) and 7(a), SCRCF - instead the 2nd, 3rd, 4th, 5th or 6th motion to dismiss was labeled: Plaintiff's notice of motion and motion to dismiss the first amended counterclaims of defendant Cindy B. Hunt. See the 7/15/2014 affidavits of default; and the 10/16/2014 Brief in opposition to Plaintiff's [] at page 4 of 45. Hunt stated that the 6/6/2014 first amended counterclaims (FAC) do not include any new matter. See the 10/14/2014 Brief at page 10 of 45. The 10/14/2014 transcript shows that BBT does not object to this statement; and see *Stoffels ex rel., Sbc Concession v. Sbc Comm.*, 430 F.Supp.2d 642, 647 (W.D. Tex., 2006). BBT states that the factual basis of all of the FAC are almost identical to the factual basis of the original 8/2/2013 counterclaims. See the 10/14/2014 transcript at page 4 line 18 – page 5 line 5.

46; see the 9/30/2014 MFDJ; the 10/14/2014 Brief at pages 41-45 (filed on 10/16/2014); the 10/14/2014 transcript at all pages and the 5/20/2014 Brief at all pages (filed on 10/16/2014).

²² See the 10/16/2014 Brief in opposition to Plaintiff's [] (with last page date of 10/14/2014) where at page 4 Hunt shows that this is BBT's 6th MTD.

Affidavits of Default: Where BBT did not file a Reply – pursuant to Rule 55 (a), SCRCP Hunt on 7/15/2014 filed and served 1) fourteen (14) affidavits of default where Hunt asserted a failure to comply with the SCRCP; 2) the affidavit of Hunt at exhibit # 46 (requesting attorney fees and costs) and 3) a document titled Affidavits of Default and Response to Plaintiff's motion to dismiss the first amended counterclaims. See the 7/15/2015 Certificate of Service at exhibit # 105.

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

At paragraph 13 of the 7/15/2014 fourteen (14) affidavits of default Hunt states: Plaintiff BBT has not shown any good cause under SCRCP 6(b)(2) as to why BBT had not **replied** to the [amended] counterclaims.

Also, BBT did not make a reply as allowed under Rule 8(c), SCRCP to the document titled Affidavits of Default and Response to Plaintiff's motion to dismiss the first amended counterclaims.

Ministerial Entry of Default: The HC clerk of court did not make an entry of default upon the file book based on the 7/15/2014 affidavits of default. "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 [7/15/2014 affidavits of default] of the moving party." *Thynes v. Lloyd*, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (Ct. App. 1987). Hunt argues that through the 7/15/2014 affidavits of default that Hunt satisfied Rule 55(a), SCRPC; and that Hunt was entitled to a ministerial entry of default on 7/15/2014. See Rule 55(a), SCRPC and see Hunt's objections in Hunt's 6/17/2016 Order at page 5-6 objecting to the lower court's 6/15/2016 Order.

Liability Conceded: Hunt argues that "[b]y defaulting, a defendant forfeits his "right to answer or otherwise plead to the [FAC]." In essence, the defaulting defendant has conceded liability." *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 723 S.E.2d 597, 603 (S.C. App., 2012). See the 11/10/2015 Brief at page 22 at paragraph #s 22-24; see the 6/6/2014 FAC at all pages; see 10/16/2014 Brief (dated 5/20/2014) at pages 9-59; See the 10/14/2014 Brief in opposition to Plaintiff's [] at pages 41-45; see the 10/30/2014 MTAOA at pages 11-14; see Rule 8(d), SCRPC. Also, see other arguments below at **Did the lower court err in granting BBT's 2nd MTD the FAC in the January 13, 2015 Order?**

No Motion to Set Aside: Thereafter, BBT did not make a motion to set aside the ministerial entry of default as provided for under Rule 55(c), SCRPC.

Next, on **9/30/2014** Hunt filed and served a five page - Motion for Default Judgment (MFDJ). The office of the HC clerk of court refused to clock this document in but did mark it paid and gave Hunt a receipt. See the 9/30/2014 Certificate of Service and 9/30/2014 at exhibit # 105.

On **9/30/2014** at exhibit # 105 Hunt also filed and served notice of the 10/14/2014 hearing on the MFDJ where pages 1-2 of the notice states:

Please take notice that the below listed motions, applications, affidavits and response will be heard on October 14, 2014 at 2:00 pm [...].

This notice of hearing is supported by the seventy plus exhibits [...] in the file at the office of clerk of Horry County and the prior pleadings [...].

Affidavits of Default and Response to Plaintiff's Motion to Dismiss the first amended counterclaims (filed 7/15/2014) that include Motion to Strike,^[23] Entry of Default, Motion for

²³ See the 7/15/2014 [...] Response to Plaintiff's [...] at pages 3-4 at No appearance by Plaintiff BBT.

Default Judgment / Application for Default Judgment (SCRCP 55(b)), etc.

Motion for Default Judgment with exhibit # 46 – SCRCP 55 (a) and (b) (filed 9/30/2014). See the 9/30/2014 Certificate of Service and the 9/30/2014 Notice of Hearing at exhibit # 105.

On **10/14/2014** a hearing was scheduled on BBT's Motion to Dismiss (2nd MTD the FAC); and on **10/14/2014** a hearing was scheduled on Hunt's MFDJ, etc (affidavits of default; response to 2nd MTD the FAC; MFDJ under SCRCP 55 (a) and (b); affidavit for attorney fees & costs, motion to strike, etc). See the 10/14/2014 transcript at page 3 lines 11-16 (exhibit # 107); see exhibit # 105 certificate of service and notice of hearing; and see the 11/10/2015 Brief at page 16 at paragraph # 11.a.i-ii.

10/14/2014 Hearing:

1) Oral Ruling Not Binding and 1/13/2015 Order is Void and

Voidable: Hunt argues that at the time of the 10/14/2014 hearing as shown above BBT had already conceded liability where BBT did not make a motion to set aside the 7/15/2014 ministerial entry of default. At the 10/14/2014 hearing 1) BBT did not object to the ministerial entry of default; and 2) BBT did not put forth any arguments in support of setting aside the 7/15/2014 ministerial entry of default. See the 10/14/2014 transcript at all pages. Nonetheless, at the

10/14/2014 hearing BBT continued to ignore the ministerial entry of default where the lower court heard BBT's 2nd MTD the FAC and made oral rulings²⁴ granting the 2nd MTD the FAC based on statute of limitations and no private right of action. See the 1/13/2015 Order at exhibit # 84.

Hunt argues that the oral dismissal of the FAC on 10/14/2014 was not binding on the parties and as such did not render Hunt's "Motion for Entry of Default Judgment" moot. See Rule 58, SCRPC; and see *Bowman v. RICHLAND MEMORIAL HOSP.*, 515 S.E.2d 259, 335 S.C. 88, 92 (S.C. App., 1999); and see the 11/10/2015 Brief at pages 22-24 at paragraph #s 25.a.-h.

And Hunt argues that the written, signed and filed (dismissal of the FAC in the) 1/13/2015 Order²⁵ at exhibit # 84 from the 10/14/2014 hearing on BBT's 2nd MTD the FAC was void based on lack of subject matter jurisdiction and voidable based on conceded liability / forfeiture as a result of the ministerial entry of default where there had been no motion to set aside the ministerial entry of default. See *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 723 S.E.2d 597, 603 (S.C. App., 2012); and see the 8/11/2015 Motion: lack of jurisdiction, SCRPC 59 and SCRPC 60 re Order filed on 1/13/2015 at all pages (hearing on

²⁴ The court filed the written and signed Order on 1/13/2015 which was after removal to the USDC and prior to remand to the State Court. BBT did not provide the USDC with a copy of this Order.

11/10/2015); see the 11/10/2015 Brief at pages 15-20 and at page 22 at paragraph #s 22-24; and see Rule 60(b)(4), SCRCP; and see *Thomas & Howard Co., Inc. v. T.W. Graham and Co.*, 457 S.E.2d 340, 343, 318 S.C. 286 (S.C., 1995).

2) No Objections to two Briefs and Others: During the **10/14/2014** hearing on BBT's 2nd MTD the FAC Hunt submitted to BBT and the Court - Hunt's Brief in opposition to the 2nd MTD the FAC; Brief in support of entry of default and default judgment (dated 10/14/2014). The Court stated during the hearing on BBT 2nd MTD on 10/14/2014 that it was going to file Hunt's Brief. **BBT did not make any objections.** See the 10/14/2014 transcript at exhibit # 107 at page 77-78 at lines 17-3; and see exhibit # 105 and Rule 7(b)(1), SCRCP; and see the 10/14/2014 transcript at exhibit # 107 at all pages. The 10/16/2014 Brief in opposition to the 2nd MTD the FAC / Brief in support of entry of default and default judgment at page 8 states that Hunt reasserts all arguments put forth in the 5/20/2014 Brief. As such, the clerk for the lower court on 10/16/2014 also filed the Brief in opposition to the motion to dismiss (dated 5/20/2014).

Hunt argues that BBT can not make the admission of the evidence that was not objected to by BBT a ground on appeal. See *Mendelsohn v. Whitfield*, 430 S.E.2d 524, 530, 312 S.C. 17, 25 (S.C.

²⁵ See NOR at exhibit # 80 and see the Order of Remand at exhibit # 87.

App. 1993); and Hunt argues that BBT has failed to preserve any challenge to the evidence that was admitted without objections.

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

Early Exit: After BBT's 2nd MTD the FAC was heard by the Court on 10/14/2014 the attorney for BBT exited the courtroom before Hunt's MFDJ, etc was orally argued (and before Hunt could say that the 10/16/2014 Brief also included Hunt's arguments in support of entry of default and default judgment).

On **10/16/2014** the Court filed the briefs labeled: Brief in opposition to Plaintiff's 6/2[5]/2014 Second Motion to Dismiss the First amended Counterclaims; Brief in support of entry of default and default judgment (see where the last page is dated 10/14/2014). At page 8 of the 10/14/2014 Brief – Hunt reasserted the 5/20/2014 Brief in [...].

On **10/16/2014** the Court filed the brief labeled: Brief in opposition to the motion to dismiss (see where the last page is dated 5/20/2014).

On **10/28/2014** the lower court filed the Order at exhibit # 94 denying the "motion for entry of default judgment" as moot where BBT has never made a motion to set aside the 7/15/2014 ministerial entry of default; and where as of 10/28/2014 there was no event in the record that made it impossible to grant Hunt the requested relief pursuant to the 9/30/2014 MFDJ, etc.

On **10/30/2014** Hunt timely objected to three Orders: the 10/20/2014 Order denying the MFS; the 10/22/2014 Order denying numerous motions that were heard on 4/21/2014;²⁶ and the 10/28/2014 Order at exhibit # 94 - by filing and serving the parties and the Judge motions under SCRCP 59(e). See the 10/30/2014 Motion to Alter or Amend ...[.]. (MTAOA).

11/10/2015 Hearing: At the **11/10/2015** hearing the Court heard three motions under SCRCP 59, 60 and or lack of jurisdiction by Hunt that were filed on 10/30/2014 (re Hunt's MFDJ, etc),²⁷ 8/11/2015 (re BBT's 2nd MTD the FAC) and 8/11/2015 (re Hunt's MFAFC). See the 11/10/2015 Brief and transcript.

Hunt argues that Hunt was and is entitled to an Entry of Default and Default Judgment under Rule 55(a) & (b), SCRCP, etc where a hearing was held on 10/14/2014 under Rule 55 (a) & (b), SCRCP, etc where the attorney for BBT failed to appear. See Rule 55(a) and (b), SCRCP; see the 6/6/2014 FAC, 7/15/2014 affidavits of default; the 10/14/2014 transcript at all pages; see the 9/30/2014 Notice of Hearing at exhibit # 105 at pages 1-2; see Rule 7(b)(1), SCRCP; see the 7/15/2015 Affidavits of Default and Response to Plaintiff's [...] at page 4 of 18 at "Entry of Default"; see the 9/30/2014 MFDJ at page 3

²⁶ The 10/20/2014 and 10/22/2014 Orders are not part of this appeal where hearing needs to be held in the lower court.

of 5 at "SCRCP 55(a) Entry of Default"; see the 10/16/2014 Brief in opposition to Plaintiff's 6/23/2014 Second Motion To Dismiss the First amended Counterclaims; Brief in support of entry of default and default judgment at all pages; see the 10/14/2014 transcript at all pages; see the 11/10/2015 Brief at page 22 at paragraph #s 21-24; and see the 11/10/2015 transcript at all pages.

Hunt requested that the lower court / HC clerk enter BBT's default upon the calendar (file book). See the 7/15/2014 [] Response to Plaintiff's motion to dismiss the first amended counterclaims at page 4; and see the 11/10/2015 Brief at page 22 at paragraph # 22.

Included in the file of the HC clerk's office as of 11/10/2015 were the 7/15/2014 affidavits of default; the 9/30/2014 Motion for Default Judgment; the 9/30/2014 Notice of the Hearing at exhibit # 105 for the MFDJ, etc; and the 10/14/2014 transcript at exhibit # 107 showing a failure to appear by BBT at the 10/14/2014 hearing on the motion under Rule 55(a) & (b), SCRCP, etc.

Thereafter, Hunt argues that the **6/15/2016** Order 1) lacks evidentiary support and is based on an error of law; and 2) does not make a ruling on deficiencies by Hunt under Rule 55 (b)(1-3), SCRCP instead the 6/15/2016 Order (that was written by the attorney for BBT) continues to ignore the ministerial entry of default and the

²⁷ The 10/30/2014 motion under SCRCP 59(e) was based on three Orders. The hearing on 11/10/2015 was

resulting conceding of liability where Hunt argues that the ruling / assertions of the 6/15/2016 Order at page 3 should have been more appropriately raised in a motion to set aside the entry of default but were not.

Rule 55(b)(1), SCRPC: Liquidated Damages or Sum Certain

Amounts: As such, Hunt argues that Hunt is entitled to Judgment by Default under Rule 55 (b)(1), SCRPC where Hunt argues that Hunt has satisfied the requirements of Judgment by Default under Rule 55

(b)(1), SCRPC:

- (1) Hunt stated that Hunt was seeking a liquidated amount, a sum certain or a sum which by computation could be made certain. See the 9/30/2014 MFDJ at page 4 of 5; and see the 10/16/2014 Brief in opposition to Plaintiff's [] at pages 42-45; and see the 11/10/2015 Brief at pages 34-35. The transcript of the 10/14/2014 hearing show that BBT did not object to this statement.
- (2) Hunt made a motion to the court. See the 9/30/2014 MFDJ at all pages and see the 9/30/2014 Notice of Hearing and certificate of service at exhibit # 105 and see Rule 7(b)(1), SCRPC; and see the 10/14/2014 transcript; and see above at **No Objections to two Briefs and Others.**

for one of the Orders. The hearing re the other two Orders will be held in the near future.

- (3) Hunt has submitted affidavits of the amount due. See exhibit #s 3, 26, 46. See the 9/30/2014 MFDJ at page 4 of 5. The transcript of the 10/14/2014 hearing show that BBT did not object to the affidavits.
- (4) The verified pleadings contain information sufficient to determine or compute the sum certain. See the 6/6/2014 FAC at page 1 at footnote 4; and see the 9/30/2014 MFDJ at page 4 of 5. The transcript of the 10/14/2014 hearing show that BBT did not object to this statement.
- (5) BBT is not a minor or incompetent person. See the 9/30/2014 MFDJ at page 4 of 5. The transcript of the 10/14/2014 hearing show that BBT did not object to this statement.
- (6) BBT has been defaulted for failure to appear. See the 9/30/2014 MFDJ at all pages. The transcript of the 10/14/2014 hearing show that BBT did not object to this statement. See above at **Ministerial Entry of Default and Liability Conceded**; see the FAC at page 36 at paragraph 5.g; and see Rule 8(d), SCRC. See Rule 55(b)(1), SCRC; see the 9/30/2014 Notice of Hearing at exhibit # 105 at pages 1-2; see Rule 7(b)(1), SCRC; see the 7/15/2015 Affidavits of Default and Response to Plaintiff's [...] at page 4

of 18 at "Judgment by Default"; see the 9/30/2014 MFDJ at pages 4-5 of 5; see the 10/16/2014 Brief in opposition to Plaintiff's 6/2[5]/2014 Second Motion To Dismiss the First amended Counterclaims; Brief in support of entry of default and default judgment at pages 1-40 and at pages 41-45 (see herein at the Conclusion); see the 10/14/2014 transcript at exhibit # 107 at all pages; see the 10/20/2014 Order (re the MFS); see the 10/22/2014 Order (re Motions involving the 8/2/2013 Counterclaims); see the 10/28/2014 Order at exhibit # 94; see the 10/30/2014 MTAOA; see the 11/10/2015 Brief at pages 34-35; and see the 11/10/2015 transcript at all pages.

Rule 55(b)(2), SCRPC: All Other Cases: Hunt argues that Hunt is entitled to Judgment by Default under Rule 55 (b)(2), SCRPC where Hunt argues that Hunt has satisfied the requirements of Judgment by Default under Rule 55 (b)(2), SCRPC where

(1) Hunt applied to the court;

(2) BBT is not a minor or incompetent person. See the 9/30/2014 MFDJ at page 4 of 5. The transcript of the 10/14/2014 hearing shows that BBT did not object to this statement.

(3) The attorney for BBT appeared in the action on 10/14/2014. See the 10/14/2014 transcript at all pages.

(4) The attorney for BBT was served with written notice of the motion or application for judgment at least 3 days prior to the 10/14/2014 hearing on the application. See the 9/30/2014 Notice of Hearing and certificate of service at exhibit # 105; and see the 10/14/2014 transcript at all pages.

(5) Pursuant to Rule 5(a), SCRCP notice of the 10/14/2014 hearing on unliquidated damages was given to all parties by first class mail to the last known address. See the 9/30/2014 MFDJ at page 4 of 5; and see the 9/30/2014 Notice of Hearing and certificate of service at exhibit # 105. The transcript of the 10/14/2014 hearing shows that BBT did not object to this statement.

(6) The lower court and the attorney for BBT had the opportunity to take an account, determine the amount of damages, and establish the truth of any averment by evidence or to make an investigation and they did not do so at the 10/14/2014 hearing on the motion. See the 10/14/2014 transcript at exhibit # 107 at all pages; see Rule 55(b)(2), SCRCP; see the 9/30/2014 Certificate of Service at exhibit # 105; see the 9/30/2014 Notice of Hearing at exhibit # 105 at pages 1-2; see Rule 7(b)(1), SCRCP; see the 7/15/2015 Affidavits of Default and Response to Plaintiff's [...] at page 4 of 18 at "Judgment by Default"; see the 9/30/2014 MFDJ at pages 4-5 of 5; see the 10/16/2014 Brief in opposition to Plaintiff's 6/2[5]/2014 Second Motion To Dismiss the

First amended Counterclaims; Brief in support of entry of default and default judgment at pages 41-45 (see herein at the **Conclusion**); see the 10/20/2014 Order (re the MFS); see the 10/22/2014 Order (re Motions involving the 8/2/2013 Counterclaims); see the 10/28/2014 Order at exhibit # 94; see the 10/30/2014 MTAOA; see the 11/10/2015 Brief at pages 35-36; and see the 11/10/2015 transcript at all pages.

Rule 55(b)(3), SCRPC: Attorney Fees - see below at **Is Hunt entitled to attorney fees and costs?**

Damages: Hunt requests the liquidated and unliquidated damages and the attorney fees and costs as stated below at **Conclusion**.

Hunt argues that a damages hearing was held on 10/14/2014; and that BBT failed to appear at the hearing under Rule 55 (a) and (b), SCRPC, etc (the attorney for BBT was present for the hearing on the 2nd MTD the FAC). See the 9/30/2014 Certificate of Service at exhibit # 105; see the 9/30/2014 Notice of Hearing at exhibit # 105 at pages 1-2; see Rule 7(b)(1), SCRPC; see the 10/14/2014 transcript at all pages. As such, based on all of the above arguments Hunt argues that BBT has also conceded the **amount** of liability under Rule 55(b)(1-3) as set forth in the prayer for relief, affidavits, affidavits of default, entries of default, exhibits verified FAC, 9/30/2014 MFDJ, etc,

the two 10/16/2014 Briefs at all pages. See the 11/10/2015 Brief at pages 30-45.

No Ground on Appeal: Hunt argues that BBT can not make the admission of the evidence that was not objected to by BBT a ground on appeal. See *Mendelsohn v. Whitfield*, 430 S.E.2d 524, 530, 312 S.C. 17, 25 (S.C. App. 1993); and Hunt argues that BBT has failed to preserve any challenge to the evidence that was admitted without objections. *Austin v. Stokes-Craven Holding Corp.*, Opinion No. 26784 (S.C. 3/8/2010).

As such, Hunt argues that the conclusions of law at page 3 of the 6/15/2016 Order (that was written by the attorney for BBT) re Hunt's Motion for Default Judgment under Rule 55 (a) and (b), SCRCPP; etc (MFDJ, etc)²⁸ involves a challenge to evidence where BBT did not assert a motion to set aside the ministerial entry of default; that BBT did not object to at the 10/14/2014 hearing and that BBT is not allowed to put forth objections at Hunt's 11/10/2015 motions under Rule 59(e), SCRCPP hearing that could have been raised prior to judgment but were not. *Hickman v. Hickman*, 392 S.E.2d 481, 301 S.C. 455 (S.C. App., 1990). Cf. the 10/14/2014 transcript at all pages and the 11/10/2015 transcript at all pages.

²⁸ Cf. the 10/28/2014 Order at exhibit # 94 and see where the moot ruling of the 10/28/2014 Order is not supported by the record as argued in Hunt's 6/17/2016 Order/ Objections at pages 8-9.

For the above reasons Hunt requests that this Court reverse and vacate the 6/15/2016 Order re the 10/28/2014 Order that denied Hunt's 9/30/2014 Motion for Default Judgment under Rule 55 (a) and (b), SCRCJP; etc (MFDJ ,etc).

Did the lower court err in granting BBT's 2nd MTD the FAC in the January 13, 2015 Order? Yes.

Hunt argues that the 6/15/2016 Order that granted BBT's 2nd MTD the FAC is the result of an abuse of discretion where: [a]n 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, 602 S.E.2d 99 (S.C. App., 2004).

The 6/15/2016 Order makes a ruling that the 11/10/2014 Notice of Removal (NOR) did not deprive the Court of jurisdiction to enter the Order of January 13, 2015 based on *Pebble Creek Homes, LLC v. Upstream Images, LLC*, 547 F.Supp.2d 1214 (D. Utah, 2007).

Hunt argues that the conclusions of law at pages 3-5 of the 6/15/2016 Order (that was written by the attorney for BBT) ignores the fact that the chronology of events after the 6/6/2014 FAC was filed and at the filing and serving of the 11/10/2014 NOR (see above at Relevant Facts) resulted in the 1/13/2015 Order being void and voidable as

argued above at all pages of **Did the lower court err in denying Hunt's 9/30/2014 Motion for Default Judgment under Rule 55 (a) and (b), SCRPC, etc against BBT?**; and argued below at all pages of **Is Hunt entitled to attorney fees and costs?**; and argued here at **Forum Shopping and Vexatious Litigation.**

Forum Shopping and Vexatious Litigation:

BBT removed lawsuit # 3 to the USDC: Hunt filed lawsuit # 3 in State Court based on the Orders of the USDC in lawsuit # 1. BBT removed lawsuit # 3 from State Court to the USDC on 8/6/2012 based on diversity jurisdiction and Hunt delinquent mortgage. BBT made a motion to dismiss the complaint. BBT did not assert counter claim for the delinquent mortgage. Hunt did not make a motion to remand. See the Orders at exhibit #s 41, 39, and 40; see the 8/6/2012 NOR; see the MTD at exhibit # 49 entry # 9 and 9-3; and the civil docket at exhibit # 49.

BBT's MTD at exhibit # 49 entry # 9 was partially ruled on by the USDC on 3/13/2013. See exhibit #s 61 and 43. BBT did not preserve the defenses and objections of the 8/9/2012 MTD that were not ruled on by the USDC in lawsuit # 3 at exhibit #s 61 and 43. See the civil docket at exhibit # 49; and see *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 714 S.E.2d 537, 539-540 (S.C., 2011).

Lawsuit # 4: BBT filed the complaint of lawsuit # 4 in State Court on 4/16/2013 asserting mortgage foreclosure on the delinquent mortgage from lawsuit # 3 where BBT did not assert a counterclaim in lawsuit # 3. See the civil docket at exhibit # 49.

Hunt argues that BBT is able to assert the 4/16/2013 Complaint, the 2nd MTD the FAC, etc in lawsuit # 4 in State Court thirty three days after BBT was granted its requested dismissals in lawsuit #s 2-3 but for the fact that BBT and its attorneys: 1) filed a barred foreclosure complaint with the fraudulent joinder of Defendants WGHOA and CJ Developers;²⁹ and 2) intentionally filed the affidavit at exhibit # 104 with a false statement in support of its order of publication for service³⁰ on Hunt, in order to get Hunt into State Court, as a part of its forum shopping and vexatious litigation scheme to avoid the effects of the Orders and Judgments of the USDC from lawsuit # 3³¹ before Hunt could bring a fourth lawsuit against BBT in the USDC. See lawsuit # 1 (exhibit #s 41, 39 & 40); lawsuit # 2 (exhibit # 52); lawsuit # 3 (8/6/2012 NOR; exhibit # 49 entry # 9; and the 3/13/2013 dismissal at exhibit #s 61, 43); lawsuit # 4 (4/16/2013 Complaint³² and the

²⁹ See exhibit # 82 (Response to MTR) at page 3 – page 15 at paragraph 5.e.xviii; and see BBT's Reply at exhibit # 83. BBT did not object to these exhibits. See 11/10/2015 Brief at page 3; and see the 11/10/2015 transcript at page 8 line 1 – page 9 line 6.

³⁰ See exhibit #s 53, 54, 55, 56, 104 and cf. exhibit # 92.

³¹ BBT has asserted the barred foreclosure complaint. And BBT has responded to Hunt's FAC with the unpreserved defenses and objections from lawsuit # 3. See the MTD at exhibit # 49 entry # 9 and 9-3 cf. exhibit # 90.

³² See exhibit # 82 (Hunt's Response to MTR) at page 21 where Hunt argues that BBT's 4/16/2013 complaint is **not** well plead.

favorable State Court orders in the 12/19/2016 Designation of Matter (DOM) at pages 3-4); 11/10/2014 NOR (exhibit # 80); Hunt's Response (exhibit # 82); BBT's Reply (exhibit # 83); RR (exhibit # 85); Order of Remand (exhibit # 87); *Calvert v. Berg* (W.D. Wash. 2013) at pages 10-11; and see *Nash v. Tindall Corp.*, 650 S.E.2d 81, 375 S.C. 36 (S.C. App., 2007) (Forum shopping is against public policy).

Hunt argues that BBT has fared better in State Court than it would have in the USDC. See the list of favorable Orders in the 12/19/2016 DOM at pages 3-4; and see exhibit # 85 (RR) at page 2 at footnote 4; and see the adoption of the RR at exhibit #s 86 and 87.

Based on all of the above arguments here unlike in *Pebble Creek Homes, LLC v. Upstream Images, LLC*, 547 F.Supp.2d 1214 (D. Utah, 2007) – the signing and filing of the 1/13/2015 Order does affect the merits of the issues disputed by the parties in violation of 28 U.S.C.A. 1446(d). Furthermore, if this Court allowed the entry of the 1/13/2015 Order to stand then the 1/13/2015 Order would cause the case to proceed further during the removal period than it could proceed prior to the Notice of Removal. See 28 U.S.C.A. 1446(d); see Hunt's 6/17/2016 Order/Objections at page 15; and see the 11/10/2015 Brief at pages 15-22.

As such, Hunt argues that the conclusions of law at pages 3-5 of the 6/15/2016 Order (that was written by the attorney for BBT) involve a situation that is not allowed where “[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 [the South Carolina Rules of Civil Procedure] meaningless.” *Stark Truss Co. v. SUPERIOR CONST. CORP.*, 360 S.C. 503, 509, 602 S.E.2d 99 (S.C. App., 2004); and see the 7/15/2014 Affidavits of Default; and where BBT did not assert a motion to set aside the ministerial entry of default.

For the above reasons Hunt request that this Court reverse, vacate and void the 6/15/2016 Order re the Order that granted BBT’s 2nd MTD the FAC.

Is Hunt entitled to attorney fees and costs? Yes.

Hunt argues that the 6/15/2016 Order that denies attorney fees and cost to Hunt is an abuse of discretion where: [a]n 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, 602 S.E.2d 99 (S.C. App., 2004).

Hunt argues that Hunt is entitled to attorney fees and costs based on the FAC;³³ and Rule 55 (b)(1-3), SCRCP and Rule 41(d), SCRCP,³⁴ etc as follows:

(1) BBT's Complaint does not object to attorney fees and costs to Hunt based on Hunt being pro se or any of the other reasons stated in the 6/15/2016 Order at pages 5-6. See the 4/16/2013 Complaint.

(2) Prior to and until around September/October 2010 Hunt was provided legal services by attorneys Valtorta and Ballard. Hunt became pro se around September/October 2010. See the civil docket at exhibit # 47 at page 7 of 14. Hunt's then attorney filed a 2nd amended complaint in lawsuit # 1 on 5/20/2010. BBT filed a MTD the 2nd amended complaint on 5/29/2010. See the civil docket at exhibit # 47; and see exhibit # 38 & exhibit # 49 entry # 16-2 & 16. The same language that BBT used in the 5/29/2010 MTD at exhibit # 38, prior to Hunt becoming pro se in lawsuit # 1, about attorney fees and costs is also used in the 6/25/2014 2nd MTD the FAC. As such, Hunt argues that BBT's 2nd MTD the FAC does not object to attorney fees and costs to Hunt based on Hunt being pro se. See the 6/25/2014 2nd MTD the FAC at exhibit # 90. And Hunt continues to argue that BBT's

³³ See 10/16/2014 Brief in opposition to Plaintiff's [] at pages 38-39 of 45.

³⁴ See the 11/10/2015 Brief at pages 36-45. And cf the 6/15/2016 Order that states that Hunt relies solely upon Rule 41(d), SCRCP, for her claim to attorney fees and costs. Through this Order that was written by the attorney for BBT – Hunt argues that BBT is attempting to make another deal without consulting Hunt. See the 10/16/2014 Brief (dated 5/20/2014) at page 3 at The Deal; and see exhibit # 95. Hunt argues that

2nd MTD the FAC has been forfeited, etc; and Hunt argues that the 1/13/2015 Order at exhibit # 84 (re the 2nd MTD the FAC) does not object to attorney fees and costs to Hunt based on Hunt being pro se.

(3) The 10/14/2014 transcript at all pages show that BBT did not object to the requested attorney fees and costs that are stated at exhibit # 46 based on Hunt being pro se or any of the other reasons stated in the 6/15/2016 Order at pages 5-6.

(4) The 10/14/2014 transcript at all pages show that BBT did not object to the additional attorney fees and costs that were requested by Hunt based on Hunt being pro se or any of the other reasons stated in the 6/15/2016 Order at pages 5-6. See the 7/15/ 2014 [] Response to Plaintiff's motion to dismiss the first amended counterclaims at all pages and at pages 16-17; and see the 9/30/2014 Motion for Default Judgment with exhibit # 46 at page 5 of 5; and see the 10/16/2014 Brief in opposition to the 2nd MTD the FAC / Brief in support of entry of default and default judgment at pages 38-39 & 42; and see the 10/16/2014 Brief in opposition to the motion to dismiss at pages 57-58.

(5) Hunt's 12/19/2016 DOM at all pages show that BBT has never filed a motion to set aside the entry of default (EOD).

the current Deal suggested by BBT is insufficient where it does not include all of the other issues and people that are stated in the affidavit at exhibit # 46.

Based on all of the above arguments Hunt argues that Hunt is entitled to recover attorney fees (and costs) in connection with the default judgment under Rule 55 (b)(2-3), SCRPC which is supported by the FAC where no hearing is required where Hunt has satisfied the requirements of **Rule 55 (b)(3)(i-iii), SCRPC**. See Rule 55(b)(3)(i-iii), SCRPC; see the 9/30/2014 Certificate of Service and Notice of Hearing at exhibit # 105; see the 9/30/2014 MFDJ at page 5 of 5; see the 10/16/2014 Brief at page 42 of 45 (no objection within 10 days); see the 10/14/2014 transcript at all pages; see the affidavit at exhibit # 46; and see the verified pleadings and see the 11/10/2015 Brief at pages 34-40.

(6) Also, Hunt argues that Hunt is entitled to recover attorney fees and costs as requested in the 5/27/2015 MFAFC under **Rule 41, SCRPC** where Hunt did not request a hearing on this motion and BBT did not object in writing to the 5/27/2015 MFAFC. Rather the 6/3/2015 Order comes about as a result of the lower court raising sua sponte affirmative defenses on behalf of BBT. See the 8/11/2015 Motion re the 6/3/2015 Order at page 5 at paragraph 7; see exhibit # 96 (documents served on 8/11/2015) and see the 11/10/2015 transcript at all pages; and in *Mortgage Electronic Registration Systems, Inc. v. Parrott*, Opinion No. 2006-UP-00402 (S.C. App. 12/11/2006) (S.C. App., 2006) the Court states: "[a]s to the master raising sua sponte

affirmative defenses on behalf of the Respondents: *Heins v. Heins*, 344 S.C. 146, 152, 543 S.E.2d 224, 227 (Ct. App. 2001) ("It is well settled that ordinarily a party may not receive relief not contemplated in his or her pleadings."); *Collins Entertainment, Inc. v. White*, 363 S.C. 546, 563, 611 S.E.2d 262, 270 (Ct. App. 2005) ("[T]he failure to plead an affirmative defense is deemed a waiver of the right to assert it.").

Thereafter, the 11/10/2015 transcript at pages 75-99 shows objections by BBT for the first time in these four lawsuits to attorney fees to Hunt based on Hunt being pro se, etc. Hunt argues that waiver and equitable estoppel applies to these objections by BBT. See the 11/10/2015 Brief at pages 33-34 and pages 40-45. And that BBT is not allowed to put forth objections at Hunt's 11/10/2015 motions under Rule 59(e), SCRPC hearing that could have been raised prior to judgment but were not. *Hickman v. Hickman*, 392 S.E.2d 481, 301 S.C. 455 (S.C. App., 1990); cf. the 10/14/2014 transcript at all pages and the 11/10/2015 transcript at pages 75-99.

Furthermore, Hunt argues that the conclusions of law at pages 5-6 of the 6/15/2016 Order (that was written by the attorney for BBT) involves objections and defenses that BBT did not put forth at the 10/14/2014 hearing; and objections and defenses that BBT did not put forth in the 1/13/2015 Order (that was written by the attorney for BBT); and objections and defenses that BBT did not put forth when the

5/27/2015 MFAFC under Rule 41, SCRPC was filed; and Hunt argues that BBT has engaged in forum shopping and vexatious litigation. See the 10/14/2014 transcript; see the 11/10/2015 transcript at all pages and the 11/10/2015 Brief at pages 36-45; and see the 5/27/2015 MFAFC; the 8/11/2015 motion under Rule 59, SCRPC; Rule 60, SCRPC and lack of jurisdiction re the 6/3/2015 Order at page 5; and see herein at **Forum Shopping and Vexatious Litigation**; and see lawsuit # 1 (exhibit #s 41, 39 & 40); lawsuit # 2 (exhibit # 52); lawsuit # 3 (exhibit # 49 entry # 1 (complaint), exhibit #s 88 (MTD), 61 and 43) and see the FAC and exhibit # 90 (2nd MTD the FAC); and see *Davis v. Southpoint Condo. Ass'n, Inc.* (S.D. Fla., 2014);³⁵ and see Rule 41, SCRPC; see the affidavits at exhibit #s 3, 6, 12, 26, 46 and 70; and see the verified pleadings and see the 11/10/2015 Brief at pages 33-34 & 40-45.

Hunt argues that BBT can not make the admission of the evidence that was not objected to by BBT a ground on appeal. See *Mendelsohn v. Whitfield*, 430 S.E.2d 524, 530, 312 S.C. 17, 25 (S.C. App. 1993); and Hunt argues that BBT has failed to preserve any challenge to the evidence that was admitted without objections. *Austin v. Stokes-Craven Holding Corp., Opinion No. 26784 (S.C. 3/8/2010)*.

³⁵ In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules. See *Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498 (S.C., 2016).

For the above reasons, Hunt requests that this Court reverse and vacate the 6/15/2016 Order that denied Hunt's request for attorney fees and costs; and grant attorney fees and costs to Hunt for lawsuits 1-4 and this Appeal.

Conclusion:

For the above reasons, Hunt requests that this Court:

1. Reverses and vacates the 6/15/2016 Order and grants Hunt's 10/30/2014 Motion to alter or amend the Judgment / Orders of the Court under SCRCP 59(e) – [] re the [10/28/2014] Order. Hunt requests Entry of Default against BBT under Rule 55(a), SCRCP; and Judgment by Default under Rule 55 (b)(1-3), SCRCP to the: SC Bar Foundation, Allen, Davis, Sherman and Hunt as stated in the Prayer for Relief in the FAC, affidavits, and in the 10/16/2014 Brief in opposition to Plaintiff's 6/2[5]/2014 Second Motion to Dismiss the First amended Counterclaims; Brief in support of entry of default and default judgment at pages 41-45.

Hunt requests liquidated and unliquidated damages to the SC Bar Foundation:

Life deposits of IOLTA ³⁶	\$3, 000,000.00
UFTPA	\$ 9,000,000.00
Punitive Damages ³⁷	\$12,000,000.00
Sub-total:	24,000,000.00 plus
Prejudgment Interest	\$ 21,875.00 per month from 7/15/2014 to present.

Hunt requests liquidated and unliquidated damages to Davis:³⁸

See exhibit # 49 entry 15-3: Davis 2004 Mortgage

2004 Mortgage ³⁹	\$ 126,825.00
UFTPA	\$ 380,475.00
Punitive Damages	\$ 507,300.00
Sub-total:	\$ 1,014,600.00 plus
Prejudgment Interest	\$ 924.77 per month from 7/15/2014 to present.

Hunt requests liquidated and unliquidated damages to Sherman:

See exhibit # 49 entry 15-4: Sherman 2002 Mortgage⁴⁰

Sherman 2002 Mortgage ⁴¹	\$ 78,400.00
UFTPA	\$ 235,200.00
Punitive Damages	\$ 313,600.00
Total:	\$ 627,200.00 plus
Prejudgment Interest	\$ 571.66.per month from 7/15/2014 to present.

³⁶ See exhibit # 46 paragraphs 6 and 17.

³⁷ See exhibit # 46 at paragraph 9; and the 10/16/2014 Brief at page 44 of 45; and see Hunt's 6/17/2016 Order at page 12; and see exhibit # 42 (financial statement of BBT).

³⁸ Davis paid off her mortgage in 2007.

³⁹ See exhibit # 46 paragraphs 6.

⁴⁰ BBT to remove all mortgages and liens from the property of Hunt, Davis, Sherman and others.

⁴¹ See exhibit # 46 paragraphs 6.

Hunt requests liquidated and unliquidated damages to Allen:

See exhibit # 49 entry 15-6: 2002 Allen car note

2002 Allen Car:	⁴²	\$ 36,925.54
UFTPA		\$ 110,776.62
Punitive Damages		\$ 147,702.16
Total:		\$ 295,404.32 plus
Prejudgment Interest	\$	\$ 269.25 per month from 7/15/2014 to present.

Hunt requests liquidated and unliquidated damages to Hunt:

Coastal Banker Gold benefits ⁴³	\$ 160,000.00
Loss of future income ⁴⁴	\$7,866,670.00
All monies paid on the current mortgage ⁴⁵	\$ 90,000.00
2006 CD (See exhibit # 9) ⁴⁶	\$ 434,744.90
Mark mortgage title paid in full.	
Setoff monies (See exhibit #s 5 and 16) ⁴⁷	\$ 1,080.25
Life amount of monies deposited in the regular checking account, savings account and POD trust ⁴⁸ .	\$1,000,000.00.
Authorized Loans ⁴⁹ at exhibit # 10 ⁵⁰	\$ 347,200.00.
Davis mortgage ⁵¹ exhibit # 49 entry 15-3:	\$ 126,825.00.
Sherman mortgage ⁵² exhibit # 49 entry 15-4:	\$78,400.00

⁴² See exhibit # 46 paragraphs 6.

⁴³ At exhibit # 10 see page 4 of 7.

⁴⁴ See exhibit # 46 at paragraph 7.

⁴⁵ See exhibit # 46 at paragraph 12.

⁴⁶ See exhibit # 46 at paragraph 14.

⁴⁷ See exhibit # 46 at paragraph 15.

⁴⁸ See exhibit # 46 at paragraph 16.

⁴⁹ See exhibit # 46 at paragraph 18.

⁵⁰ \$26K auto (for title see exhibit # 49 entry 15-1) + 98K (exhibit # 49 entry 14-6 2003 mort) + \$147,200 (exhibit # 7 see 2007 mort) + 50K (commercial) + \$80,275 (exhibit # 49 entry 15-2).

⁵¹ See exhibit # 46 at paragraph 19.

Allen car note⁵³ exhibit # 49 entry 15-6: \$ 36,925.54

Life monies deposited in IOLTA account⁵⁴ \$3,000,000.00

	Actual:	\$ 13,141,889.69
UFTPA		\$ 15,825,659.00
Punitive Damages		\$ 21,100,878.00
Total:		\$ 50,068,427.00 plus
Prejudgment Interest	\$	\$ 95,826.28 per month from 7/15/2014 to present.

Total amount due for attorney fees and costs for lawsuit #s 1-3

are: \$ 2, 668, 905.00 million dollars. The costs in lawsuit #s 1-3 are:

\$ 3405.00.⁵⁵ And Hunt requests all the other damages, etc that are listed in the 6/6/2014 FAC (prayer for relief, etc); affidavits, affidavits of default and the 10/16/2014 Brief at pages 42-45.

2. Reverses and vacates the 6/15/2016 Order and grants Hunt's 8/11/2015 Motion: Lack of Jurisdiction, SCRPC 59 and SCRPC 60 re Order filed on 1/13/2015 to Void the 1/13/2015 Order.
3. Reverses and vacates the 6/15/2016 Order and grants Hunt's 8/11/2015 Motion: Lack of Jurisdiction, SCRPC 59 and SCRPC 60 [re Order filed on 6/3/2015] for attorney fees and costs to Hunt.

Respectfully Submitted,

C.B. Hunt
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Pro Se
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Date: March 27, 2017

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

⁵² See exhibit # 46 at paragraph 20.

⁵³ See exhibit # 46 at paragraph 21.

⁵⁴ See exhibit # 46 at paragraph 17.

⁵⁵ As of March 2013 as per the affidavit at exhibit # 46.

THE STATE OF SOUTH CAROLINA

In The 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 CompanyRespondent

v.

Cindy B. Hunt; Willow Greens

Homeowners Association, Inc.;

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

Of Whom Cindy B. Hunt isAppellant

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Appellate Case No. 2016-001550

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and Proof of Service.**

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Columbia, SC 29211

Sean Foerster
Rogers Townsend & Thomas, PC
PO Box 100200
Columbia, SC 29202

Thank You,



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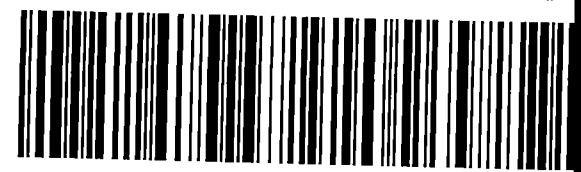
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