

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

FINAL BRIEF OF THE APPELLANT

Cindy B. Hunt, Pro Se, SC Bar # 65408.
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843 488-1131

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Table of Content

Table of Cases	Page No.
<i>Austin v. Stokes-Craven Holding Corp., Opinion No. 26784 (S.C. 3/8/2010)</i>	24, 32, 45
<i>Bowman v. RICHLAND MEMORIAL HOSP., 515 S.E.2d 259, 335 S.C. 88, 92 (S.C. App., 1999)</i>	22
<i>Calvert v. Berg (W.D. Wash. 2013)</i>	37
<i>Cole Vision Corp. v. Hobbs, 394 S.C. 144, 714 S.E.2d 537, 539-540 (S.C., 2011)</i>	36
<i>Collins Entertainment, Inc. v. White, 363 S.C. 546, 563, 611 S.E.2d 262, 270 (Ct. App. 2005)</i>	43
<i>Davis v. Southpoint Condo. Ass'n, Inc. (S.D. Fla., 2014)</i>	45
<i>Heins v. Heins, 344 S.C. 146, 152, 543 S.E.2d 224, 227 (Ct. App. 2001)</i>	43
<i>Hickman v. Hickman, 392 S.E.2d 481, 301 S.C. 455 (S.C. App., 1990)</i>	33, 44
<i>Kough v. Pack (D.S.C., April 29, 2016)</i>	8
<i>Maybank v. BB&T Corp., 416 S.C. 541, 787 S.E.2d 498 (S.C., 2016)</i>	45
<i>Mendelsohn v. Whitfield, 430 S.E.2d 524, 530, 312 S.C. 17, 25 (S.C. App. 1993)</i>	24, 32, 45
<i>Mortgage Electronic Registration Systems, Inc. v. Parrott, Opinion No. 2006-UP-00402 (S.C. App. 12/11/2006) (S.C. App., 2006)</i>	43
<i>Nash v. Tindall Corp., 650 S.E.2d 81, 375 S.C. 36 (S.C. App., 2007)</i>	37
<i>Pebble Creek Homes, LLC v. Upstream Images, LLC, 547 F.Supp.2d 1214 (D. Utah, 2007)</i>	34, 38

Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 723 S.E.2d 597,
603 (S.C. App., 2012) 19, 23

Stark Truss Co. v. SUPERIOR CONST. CORP., 360 S.C. 503, 602
S.E.2d 99 (S.C. App., 2004) 16, 34, 38, 39

Stoffels ex rel., Sbc Concession v. Sbc Comm., 430 F.Supp.2d 642,
647 (W.D. Tex., 2006) 16

Thomas & Howard Co., Inc. v. T.W. Graham and Co., 457 S.E.2d 340,
343, 318 S.C. 286 (S.C., 1995) 23

Thynes v. Lloyd, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (Ct. App.
1987) 18

Table of Statutes

State Statutes

Page No.

Rule 5(a), SCRCP	31
Rule 6(a) SCRCP	15
Rule 6(b)(2) SCRCP	18
Rule 7(a) SCRCP	16
Rule 7(b)(1), SCRCP	10, 23, 24, 29-32
Rule 8(c), SCRCP	18
Rule 8(d), SCRCP	20, 30
Rule 12(a)(1), SCRCP	12
Rule 12(b)(6), SCRCP	6, 7
Rule 12(g), SCRCP	16
Rule 12(h)(2), SCRCP	16
Rule 41, SCRCP	13, 43, 45

Rule 41(d), SCRCPP	40
Rule 55 (a), SCRCPP	9, 15, 17, 21, 26-28, 32-33, 35, 38, 46
Rule 55 (b), SCRCPP	9, 15, 21, 26-28, 32-33, 35
Rule 55(b)(1), SCRCPP	28-30
Rule 55(b)(2), SCRCPP	30-31
Rule 55(b)(3), SCRCPP	32
Rule 55(b)(1-3), SCRCPP	28, 32, 40, 42, 46
Rule 55(b)(3)(i-iii)	42
Rule 55(c), SCRCPP	20
Rule 58, SCRCPP	22
Rule 59, SCRCPP	14, 26, 49
Rule 59(e), SCRCPP	12, 14, 25, 26, 33, 44, 46
Rule 60, SCRCPP	14, 26, 49
Rule 60(b)(4), SCRCPP	23

SC Code

Federal Statutes

Rule 4(m), FRCP	3
Rule 12(b)(2), FRCP	2
Rule 12(b)(5), FRCP	2
Rule 12(b)(6), FRCP	2, 3
28 U.S.C.A. § 1446(d)	38

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 15
2. Did the lower court err in granting BBT’s 2nd MTD the FAC in the January 13, 2015 Order? Page 34
3. Did BBT engage in Forum Shopping and Vexatious Litigation?Page 35
4. Is Hunt entitled to attorney fees and costs? Page 39

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. (R. pp. 545-546) 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. (R. pp. 433-546, pp. 829-958) The lower court made a written Order at 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. (R. pp. 85-90)

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, 201[5] 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 # 1:¹ 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. (R. pp. 1587-1591). Hunt filed an amended complaint on 8/31/2009; and BBT filed a motion to dismiss (MTD) on 10/27/2009. (R. pp. 147-154; R. pp. 339-354).² Hunt filed a 2nd amended complaint on 5/20/2010. (R. pp. 155-164). BBT filed a MTD the 2nd amended complaint on 5/29/2010. (R. pp. 355-380).

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 (R. p. 548 lines 19-21, R. p. 552 lines 8-15 and R. pp. 1260-1261).

On 1/22/2011 BBT filed the affidavits of Chestnut and Teal in response to Hunt's motion for partial summary judgment. See (R. pp. 1595-1596). 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

¹ (R. pp. 1407-1410, pp. 1297-1372, pp. 1279-1288, pp. 1463-1468)

² See R. pp. 1188-1190; and R. pp. 490-491.

accounts of Hunt which are the subject of this action were closed in early 2009 when events leading to this action occurred. See (R. pp. 1779-1781).

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 dismissed³ and the court declined supplemental jurisdiction over the state law claims.⁴ 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.⁵ (R. p. 1597, R. pp. 1598-1599). Hunt argues that res judicata and law of the case applies to law suit # 1. (R. pp. 1-28, p. 1089, p. 1096, pp. 1101-1102 and p. 1228).

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. (R. pp. 1673-1678). On 5/10/2011 Hunt filed an amended complaint.⁶ (R. **pp. 165-232**, pp. 1271-1559, pp. 1683-1778) On 6/19/2012 BBT filed a motion to dismiss pursuant to Rule 12(b)(2) and Rule 12(b)(5), FRCP. (R. pp. 381-382 & pp. 383-390) The USDC granted BBT's motion to dismiss. The 3/13/2013 final

³ The GLBA cause of action was not dismissed. (R. pp. 1431-1436, R. pp. 155-164, R. pp. 1-28) cf. (R. pp. 165-232, pp. 29-58)..

⁴ 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. (R. pp. 147-260; R. pp. 277-338)

⁵ See case # c/a 4:09-cv-2151-JMC-TER where the USDC dismissed the federal causes of action and declined supplemental jurisdiction. (R. pp. 1-28, pp. 1587-1600) Hunt made a timely motion to alter or amend. Hunt made a timely appeal

judgment of the USDC states: case dismissed without prejudice under Rule 4(m), FRCP. (R. pp. 29-44) Law suit # 2 was not appealed. See (R. pp. 1673-1678). Hunt argues that res judicata and law of the case applies to law suit # 2. (R. pp. 165-232, pp. 381-390; pp. 29-44; p. 1089, p. 1096, pp. 1101-1102 and p. 1228)).

Lawsuit # 3: Case No: 2012-CP-26-5264⁷ aka c/a 4:12-cv-02216-MGL-TER was filed on 7/9/2012⁸ with forty two exhibits in Horry County Court of Common Pleas by Hunt against BBT only. (R. pp. 233-260 & pp. 1271-1530 & pp. 155-164 & pp. 1-28) Hunt submitted a notice of withdrawal on 8/6/2012 at 10:46 am. See (R. pp. 1936-1938). Thereafter, BBT submitted a Notice of Removal⁹ on 8/6/2012 at 13:49 pm based on diversity jurisdiction. See (R. pp. 233-260, pp. 1107-1109; pp. 259-260: 1271-1530 & pp. 155-164 & pp. 1-28). Hunt did not file a motion to remand. BBT submitted a motion to dismiss under Rule 12(b)(6), FRCP on 8/9/2012 based on withdrawal and several other grounds. (R. pp. 391-422 & pp. 1933-1938).

and request for reconsideration to the USCA. Thereafter, Hunt timely filed law suit # 3. (R. pp. 1-28 and R. pp. 233-260).

⁶ (R. pp. 1279-1288)

⁷ 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. (R. pp. 1189)

⁸ BBT in its foreclosure complaint in lawsuit # 4 states that the mortgage became delinquent on 7/1/2012. (R. pp. 261-272)

⁹ In its Notice of Removal for lawsuit # 3 in 8/2012 BBT cited to the already delinquent mortgage as the amount in controversy. (R. pp. 1107-1109) BBT did not assert a claim for foreclosure in lawsuit #s 2-3. (R. pp. 1673-1678, pp. 1679-1682)

On 9/17/2012 Hunt filed a Response (R. pp. 1679-1682) to BBT's 8/9/2012 MTD with the exhibits that are shown at (R. pp. 1107-1109, pp. 1683-1778, pp. 1531-1576, **pp. 165-232**, pp. 339-380, pp. 1-28). BBT did not object to these exhibits. (R. (pp. 165-232, pp. 381-390); pp. 29-44). [(R. (pp. 233-260, (pp. 391-422 & pp. 1933-1938)); (**pp. 165-232**, pp.); pp. 45-58)]. See (R. pp. 1681-1682); (R. (p. 1089, p. 1096, pp. 1188-1190, pp. 119-120)); and see the FAC at page 20 at paragraph # 271 & 275: R. pp. 318-319, pp. 1742-1775)

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. (R. p. 1682 & pp. 1577-1586). Thereafter, exhibit # 46 has been submitted several times in this matter without objection by BBT. (R. p. 477, p. 533, p. 541, p. 542, pp. 545-546, p. 1087, p. 966 line 1- p. 967 line 18, pp. 829-1072).

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.¹⁰ Law suit # 3 was not appealed. Lawsuit # 3 was dismissed without prejudice.¹¹ Hunt argues that res judicata and law

¹⁰ Cf. the 9/5/2013 MTD and the 6/25/2015 2nd MTD the FAC. (R. pp. 423-428 & pp. 429-432).

¹¹ 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.

of the case applies to law suit # 3. (R. (pp. 233-260, pp. 391-422 & pp. 1933-1938); (pp. 165-232, pp.), pp. 45-58)). (R. pp. 1679-1682). (R. (p. 1089, pp. 1188-1190, pp. 119-120, p. 1096, pp. 1101-1102 and p. 1228))

Lawsuit # 4: On **4/16/2013** BBT filed a foreclosure Complaint against Hunt, Willow Green Homeowners' Association, Inc. (WGHOA)¹² and CJ Developers¹³ in State Court about thirty three days after lawsuit #s 2-3 were dismissed at BBT's request as stated above. See the 4/16/2013 Complaint (R. pp. 261-272); and see Hunt's arguments herein at **Forum Shopping [and Vexatious Litigation]**. 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 (R. pp. 273-276); and the 8/2/2013 Counterclaims (R. pp. 277-298, pp. 165-232). Cf. the 7/9/2012 Complaint (R. pp. 233-258) and (R. p. 1189) (... one and the same.). (R. pp. 1188-1190).

On **8/12/2013** the lower court granted a second Order of Publication to BBT. (R. pp. 1795-1798)

¹² 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 (R. pp. 1809-1816 & pp. 1829-1834).

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

On **9/5/2013** BBT filed its 6th motion to dismiss¹⁴ under Rule 12(b)(6), SCRPC (R. pp. 423-428) in these four lawsuits where the 9/5/2013 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. (R. pp. 423-428).

On **11/04/2013** the Court filed an Order of Reference to the Master in Equity. (R. pp. 59-62)

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. (R. pp. 71-84).

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. (R. pp. 63-66).

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 5th MTD in these four lawsuits involving Hunt's accounts at BBT. At the 5/20/2014 hearing

¹³ CJ Developers, LLC (the builder) was dissolved in 1996. CJ Developers has never filed any documents in this matter. See exhibit # 68. (R. pp. 1825-1828).

Hunt submitted a brief. (R. p. 560 line 24-p. 561 line 4; pp. 1119-1178) The Court orally granted BBT's 1st MTD in part and did not orally rule on three issues from the 1st MTD. (R. pp. 277-298, pp. 423-428, pp. 1119-1125, p. 1126, pp. 1127-1178 & pp. 557-828). 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 (R. pp. 98-112) at footnote 1 where the 5/20/2014 hearing is treated as though the lower court filed an Order.¹⁵ (R. p. 1188, pp. 1179-1224, pp. 1095-1100) On **6/6/2014** Hunt filed and served the first amended counterclaims and defenses (FAC) (R. pp. 299-338) where the counterclaims and defenses included citations to exhibit #s 1-70+ (R. pp. 1271-1838 & pp. 1-58 & pp. 155-260 & pp. 339-380 & pp. 547-556 & pp. 1939-1942) where exhibit #s 3, 6, 12, 26, 46 and 70 are affidavits.¹⁶ (R. pp. 1279-1288, pp. 1297-1372, pp. 1407-1410, pp. 1463-1468, pp. 1577-1586, pp. 1835-1838) Hunt reasserted Hunt's answer to the foreclosure complaint. (R. pp. 273-276) 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 (R. pp. 429-432)

¹⁴ The arguments of BBT's 9/5/2013 motion to dismiss were the same as the arguments of the 8/9/2012 motion to dismiss. (R. pp. 423-428 & pp. 391-422).

¹⁵ The lower court made oral rulings on BBT's 9/5/2013 MTD (exhibit # 89) on May 20, 2014. (R. pp. 423-428, pp. 557-828) However, the lower court never filed a written order from the May 20, 2014 hearing. (R. pp. 1-1942)

¹⁶ 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

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: (R. pp. 1107-1109); ((R. pp. 233-260, **pp. 391-422 & pp. 1933-1938**); (R. pp. 165-232, pp.); R. pp. 45-58). (R. p. 1096). (R. (pp. 261-272, p. 1126, pp. 1847-1870)). (R. pp. 299-338 cf. R. pp. 165-232). (R. **pp. 429-432**). (R. pp. 1188-1190, pp. 119-120, p. 1096, pp. 1101-1102 and p. 1228); and see Hunt's arguments herein at **Forum Shopping [and Vexatious Litigation]**.

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.¹⁷ BBT has never filed a motion to set aside the ministerial entry of default (EOD). (R. pp. 433-492, pp. 1577-1586, pp. 1-1942)

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

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.

considered as affidavits." *Kough v. Pack* (D.S.C., April 29, 2016). (R. p. 299 & pp. 829-1072).

¹⁷ The affidavit of Hunt re attorney fees, etc was also submitted on 7/15/2014.

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. (R. pp. 493-546 & pp. 1577-1586)

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 (R. pp. 542-546 & pp. 1577-1586).

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. (R. pp. 545-546)

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.¹⁸ 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. (R. p. 905 line 17 – p. 906 line 6)

On **10/14/2014** the court heard BBT's 2nd MTD the FAC and made oral rulings¹⁹ 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. (R. pp. 829-958 & pp. 1218-1224) 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 (R. pp. 545-546 & p. 542-543) and see Rule 7(b)(1), SCRCP; 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. (R. pp. 433-538, pp. 1179-1217, pp. 1218-1224, pp. 1119-1178, pp. 829-958, pp. 85-90, pp. 1073-1075 & pp. 1083-1086, (pp. 1110-1118, pp. 98-112), pp. 1225-1270, pp. 959-1072)

¹⁸ The Court filed this Brief on 10/16/2014. (R. pp. 1179-1224 & pp. 1119-1178)

¹⁹ 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. (R. pp. 1110-1118, pp. 1839-1880, pp. 98-135, pp. 1887-1891)

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.). (R. pp. 1901)

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. (R. pp. 1901)

On **10/15/2014** Hunt wrote another email stating among other things that BBT did not Reply to the amended counterclaims. (R. pp. 1901)

On **10/15/2014** a couple more emails were 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). (R. pp. 1119-1224)

On **10/20/2014** the Court filed the Order that denied Hunt's 6/6/2014 MFS. (R. pp. 67-70)

On **10/22/2014** the Court filed the Order that denied Hunt's NMS re the 8/2/2013 original counterclaims. (R. pp. 71-84)

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), SCRCF. (R. p. 1903, p. 1086, pp. 165-232, pp. 299-338, pp. 433-474, pp. 1188-1190)

The lower court on **10/28/2014 at 9:04** filed an Order that denied Hunt's MFDJ, etc. (R. pp. 85-90)

The proposed Order granting BBT 2nd MTD the FAC was submitted for the Judge's signature on **10/28/2014 at 9:38 pm** which was after the filed 9:04 am Order denying Hunt's MFDJ, etc. (R. pp. 1904 & pp. 85-90 & pp. 98-112 & p. 1931)

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;²⁰ and the 10/28/2014 Order at (R. pp. 85-90) - by filing and serving the parties and the Judge motions under SCRCF 59(e). See the 10/30/2014 Motion to Alter or Amend ...[.]. (MTAOA). (R. pp. 1073-1086)

On **11/10/2014** Hunt filed a Notice of Removal (NOR) at exhibit # 80. (R. pp. 1110-1118)

On **12/8/2014** BBT filed a motion to remand (MTR) at exhibit # 81. (R. pp. 1839-1846) On **12/22/2014** Hunt filed a response to BBT's MTR at exhibit # 82. (R. pp. 1847-1870)

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

(R. pp. 1871-1880)

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 (R. pp. 98-112).

BBT received a copy of the 1/13/2015 Order in 1/2015. (R. pp. 1887-1891, pp. 1225-1239, p. 1065 line 2 – p. 1066 line 5, **pp.1847-1870**)

On **4/15/2015** the USDC filed its report and recommendation (R. pp. 113-121).

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

(R. pp. 122-129). The Order of remand was filed by the HC clerk of court on **5/11/2015** at (R. pp. 130-135). See (R. pp. 1110-1118, pp. 1839-1880, pp. 98-135, pp. 1887-1891).

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. (R. pp. 1087-1094) The motion under SCRCP 41 was based on BBT's requested and granted dismissals in lawsuit #s 1-3. (R. pp. 147-260, pp. 339-422 & pp. 1933-1938, pp. 1-58). 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 denying the motion under Rule 41,

²⁰ The 10/20/2014 and 10/22/2014 Orders are not apart of this appeal where a

SCRCP for attorney fees and costs asserting that Hunt was pro se.

See (R. pp. 136-138)

On **7/27/2015** Hunt mailed a letter to the Horry County Clerk of Court requesting copies of any Orders filed during 2015.²¹ On

8/10/2015 Hunt received three Orders from the HC clerk of Court.

See (R. pp. 98-112, pp. 130-135, pp. 136-138, pp. 1232-1237).

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 (R. pp.

98-112, pp. 1095-1100)

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. (R. pp. 136-

138, pp. 1101-1106)

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. (R. pp. 1885-1886)

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),²² 8/11/2015 (re BBT's 2nd MTD the

FAC) and 8/11/2015 (re Hunt's MFAFC). See the 11/10/2015 Brief

hearing needs to be held in the lower court. (R. pp. 67-84)

²¹ See exhibit # 97: 7/27/2015 Letter to HC clerk of court. (R. pp. 1887-1891)

²² The 10/30/2014 motion under SCRCP 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.

and transcript. (R. pp. 1225-1233, (pp. 1234-1237, pp. 1892-1898, pp. 91-97), pp. 1238-1270) & pp. 959-1072)

On **6/10/2016**, a Friday afternoon, via email the attorney for BBT submitted a proposed Order re the 11/10/2015 hearing. (R. pp. 139-146, pp. 1906-1928)

On **6/15/2016** the lower court signed and filed the 6/10/2016 proposed Order that resulted from the 11/10/2015 hearing. (R. pp. 139-146)

On **6/17/2016** Hunt submitted objections to the 6/10/2016 proposed Order. See Rule 6(a), SCRCF. 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 (R. pp. 1906-1928, pp. 1064 line 9-p. 1066 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), SCRCF, etc against BBT? Yes.

Hunt argues that the 6/15/2016 Order that denied Hunt's MFDJ, etc²³ is the result of an abuse of discretion where: [a]n abuse of discretion

²³ 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; (R. pp. 539-546) 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; (R. pp. 433-532) see the affidavit of Hunt at exhibit # 46; (R. pp. 1577-1586) see the 9/30/2014 MFDJ; (R.

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).

On 6/6/2014 Hunt filed and served the first amended counterclaims and defenses. (R. pp. 299-338) Thereafter, BBT on 6/25/2014 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 dismiss²⁴ in this matter (fourth lawsuit) where the 2nd, 3rd, 4th, 5th or 6th motion to dismiss at (R. pp. 429-432) was not labeled as a REPLY, as required by Rule 12(g), 12(h)(2) and 7(a), SCRPC - 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. (R. pp. 429-432, pp. 433-532, pp. 545-546)

Hunt stated that the 6/6/2014 first amended counterclaims (FAC) do not include any new matter. See (R. p. 1188) The 10/14/2014 transcript shows that BBT does not object to this statement; (R. pp. 829-958) 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

pp. 533-538) the 10/14/2014 Brief at pages 41-45 (filed on 10/16/2014); (R. pp. 1179-1224) the 10/14/2014 transcript at all pages (R. pp. 829-958) and the 5/20/2014 Brief at all pages (filed on 10/16/2014). (R. pp. 1119-1178)

basis of all of the FAC are almost identical to the factual basis of the original 8/2/2013 counterclaims. See (R. p. 832 line 12-p. 833 line 8); (R. (pp. 147-154, pp. 339-354), (155-164, pp. 355-380), (pp. 1-16)). (R. pp. 165-232); (R. pp. 17-19, pp. 20-27); (R. pp. 381-390). (R. p. 28). [(R. pp. 233-260), (pp. 1107-1109), (pp. 391-422 & pp. 1933-1938); (R. **pp. 165-232**), (R. pp.)²⁵]. (R. pp. 45-49, pp. 29-44, pp. 50-58). **(R. pp. 261-272)**.²⁶ (R. pp. 273-276). [(R. (**pp. 277-298**, cf. pp. 165-232), (pp. 423-428)); [(R. pp. **299-338**, cf. pp. 165-232), (pp. 429-432)].

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 7/15/2014 Certificate of Service. (R. (pp. 433-492, pp. 1577-1586, pp. 539-546))

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

²⁴ 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. (R. 1182)

²⁵ (R. pp. 1679-1682)

the attorney for BBT did not respond to Hunt's email and two calls.

(R. pp. 433-474 & p. 1901 & 1885-1886)

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. (R. pp. 433-474, pp. 155-260, pp. 277-338)

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. (R. pp. 475-492)

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). (R. p. 1912). Hunt argues that through the 7/15/2014 affidavits of default that Hunt satisfied Rule 55 (a), SCRCP; and that Hunt was entitled to a ministerial entry of default on 7/15/2014. See Rule 55(a), SCRCP 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.

²⁶ [(R. p. 1126, pp. 1847-1870); (R. (p. 1089, p. 1096, pp. 1188-1190, pp. 119 -

See (R. pp. 299-338²⁷, pp. 165-232); (**R. pp. 429-432**: pp. 433-532, pp. 1577-1586, pp. 539-546²⁸); (**R. pp. 533-546**: pp. 1119-1224), (R. pp. 829-958, R. p. 1075, pp. 1929-1932, pp. 139-146, pp. 1906-1928).

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). (R. (pp. 147-154, pp. 339-354), (155-164, pp. 355-380), (pp. 1-16)). (R. pp. **165-232**); (R. pp. 17-19, pp. 20-27); (R. pp. 381-390). (R. p. 28). ((R. pp. 233-258), (pp. **1107-1109**, pp. 259-260, pp. 1271-1530), (pp. 391-422 & pp. 1933-1938)); (R. pp. **165-232**, pp.)²⁹ (R. pp. 45-49, pp. **29-44**, pp. 50-58). (**R. pp. 261-272**).³⁰ (R. pp. 273-276). ((R. (pp. 277-298, cf. pp. 165-232), (pp. 423-428)). (R. p. 1191). ((R. pp. **299-338**, cf. pp. 165-232), (pp. 429-432)). (R. pp. 433-546). (R. (p. 1089, pp. 1188-1190, pp. 119-120, p. 1096, pp. 1101-1102 and p. 1228))

120, p. 1096, pp. 1101-1102 and p. 1228))].

²⁷ See (R. p. 299-300: pp. 1271-1838, pp. 155-260, pp. 1-58, pp. 339-432, pp. 547-556, pp. 1933-1942)

²⁸ See (R. p. 546: pp. 1271-1838, pp. 155-260, pp. 1-58, pp. 339-432, pp. 547-556, pp. 1933-1942)

²⁹ (R. pp. 1679-1682, (R. pp. 1683-1778, pp. 1531-1576))

³⁰ [(R. p. 1126, pp. 1847-1870); (R. (p. 1089, pp. 1188-1190, pp. 119 -120, p. 1096, pp. 1101-1102 and p. 1228))].

See the 11/10/2015 Brief at page 22 at paragraph #s 22-24 (R. pp. 1125-1224, pp. 85-90, pp. 829-958, (pp. 1073-1075 & 1083-1086), pp. 1225-1270); see Rule 8(d), SCRCP. (R. pp. 433-532, pp. 1188-1190) 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), SCRCP. (cf. R. pp. 829-958)

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. (R. pp. 533-546).

On **9/30/2014** 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,^[31] Entry of Default, Motion for 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. (R. pp. 539-546).

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 (R. pp. 831 lines 11-16, pp. 1577-1586); see certificate of service and notice of hearing; (R. pp. 539-546) and see the 11/10/2015 Brief at page 16 at paragraph # 11.a.i-ii. (R. pp. 1240-1241)

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

³¹ See the 7/15/2014 [...] Response to Plaintiff's [...] at pages 3-4 at No appearance by Plaintiff BBT. (R. pp. 477-478, pp. 1906-1928)

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 (R. pp. 829-958). 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 rulings³² granting the 2nd MTD the FAC based on statute of limitations and no private right of action. (R. pp. 98-112)

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, SCRCPC; 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. (R. pp. 165-232, pp. 29-58, pp. 433-546, pp. 1188-1190, pp. 85-90, pp. 1110-1118, pp. 98-112, pp. 1246-1248). And Hunt argues that the written, signed and filed (dismissal of the FAC in the) 1/13/2015 Order³³ at exhibit # 84 (R. pp. 98-112) from the 10/14/2014 hearing on BBT's 2nd MTD the FAC was void

³² 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.

³³ See NOR at exhibit # 80 (R. pp. 1110-1118) and see the Order of Remand at exhibit # 87. (R. pp. 130-135)

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 (R. pp. 261-272³⁴; pp. 299-338, pp. 165-232); (R. pp. 429-432), (R. **pp. 433-532, pp. 545-546**)³⁵; (R. **pp. 533-546**: pp. 1119-1224), (R. pp. 829-958); and see (R. pp. 85-90, pp. 1110-1118, pp. 98-112, pp. 1240-1249) 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). (R. pp. 831 lines 11-16, pp. 1179-1224). 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; (R. p. 905 line 3 – p. 906 line 9); and see

³⁴ See (R. pp. 1-58, p. 1126, pp. 1787-1790, pp. 1899-1900, pp. 1791-1794, pp. 1795-1798, pp. 1881-1884, (pp. 1821-1824, pp. 1583-1586); pp. 1825-1828; pp. 1814-1816, pp. 1799-1802, pp. 1803-1808, pp. 1809-1813, pp. 1829-1834, pp. 1847-1870)

³⁵ See (R. p. 546: pp. 1271-1838, pp. 155-260, pp. 1-58, pp. 339-432, pp. 547-556, pp. 1933-1942)

(R. pp. 539-546³⁶: pp. 433-532, pp. 533-538, **pp. 1119-1224**) and Rule 7(b)(1), SCRCP; and see the 10/14/2014 transcript. (R. pp. 829-958). 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. (R. p. 1186) 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). (R. pp. 1119-1178)

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); (R. p. 1255) 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). (R. p. 1257, pp. 829-958, pp. 959-1072)

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). (R. pp.429-432, pp. 829-958; pp. 433-546, pp. 1179-1224, pp. 1119-1178, pp. 1901-1903)

³⁶ See (R. p. 546: pp. 1271-1838, pp. 147-260, pp. 1-58, pp. 339-432, pp. 547-556,

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 [...]. (R. p. 1186, pp. 1179-1224)

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). (R. pp. 1119-1178)

On **10/28/2014** the lower court filed the Order at exhibit # 94 (R. pp. 85-90) 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. (R. pp. 1-84). (R. pp. 165-232; R. (pp. 233-260, pp. 391-422 & pp. 1933-1938); (R. pp. 165-232, (pp.)); (pp. 45-58). (R. pp. 1679-1682). (R. pp. 261-272))³⁷

On **10/30/2014** Hunt timely objected to three Orders: the 10/20/2014 Order denying the MFS; the 10/22/2014 Order denying

pp. 1933-1942)

³⁷ (R. (p. 1089, pp. 1188-1190, pp. 119-120, p. 1096, pp. 1101-1102, p. 1228, pp. 1847-1870))

numerous motions that were heard on 4/21/2014;³⁸ and the 10/28/2014 Order at exhibit # 94 - by filing and serving the parties and the Judge motions under SCRCP 59(e). See (R. pp. 67-90, pp. 1073-1086); (R. pp. 1110-1118).

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),³⁹ 8/11/2015 (re BBT's 2nd MTD the FAC) and 8/11/2015 (re Hunt's MFAFC). (R. pp. 1238-1239): (R. pp. 433-532, pp. 533-546⁴⁰), pp. 429-432, pp. 829-958). (R. pp. 433-532, pp. 533-546⁴¹, pp. 1119-1224, pp. 85-90, **(pp. 1073-1075 & pp. 1083-1086)**). (R. pp. 1110-1118, pp. 1839-1880). (R. pp. 98-112, pp. 1887-1891, p. 1064 line 9 – p. 1068 line 2, pp. 1234-1237). (R. pp. 113-135). (R. pp. 1087-1094, pp. 136-138). (R. pp. **1095-1100**). (R. pp. **1101-1106**). See the 11/10/2015 Brief and transcript. (R. pp. 1225-1270, pp. 959-1072)

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

³⁸ The 10/20/2014 and 10/22/2014 Orders are not apart of this appeal where hearings need to be held in the lower court. (R. pp. 67-84)

³⁹ The 10/30/2014 motion under SCRCP 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. (R. pp. 1073-1086, pp. 67-84)

⁴⁰ See (R. p. 546: pp. 1271-1838, pp. 155-260, pp. 1-58, pp. 339-432, pp. 547-556, pp. 1933-1942)

where the attorney for BBT failed to appear. See Rule 55(a) and (b), SCRCPP; see the 6/6/2014 FAC (R. pp. 299-338), 7/15/2014 affidavits of default (R. pp. 433-544); the 10/14/2014 transcript (R. pp. 829-958); see the 9/30/2014 Notice of Hearing at pages 1-2 (R. pp. 545-546); see Rule 7(b)(1), SCRCPP; see the 7/15/2015 Affidavits of Default and Response to Plaintiff's [...] at page 4 of 18 at "Entry of Default" (R. p. 478); see the 9/30/2014 MFDJ at page 3 of 5 at "SCRCPP 55(a) Entry of Default" (R. pp.535); 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(R. pp. 1179-1224); see the 10/14/2014 transcript at all pages (R. pp. 829-958); see the 11/10/2015 Brief at (R. pp. 1245-1246); and see the 11/10/2015 transcript at all pages. (R. pp. 959-1072)

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; (R. pp. 478) and see the 11/10/2015 Brief at page 22 at paragraph # 22. (R. pp. 1245-1246)

Included in the file of the HC clerk's office as of 11/10/2015 were the 7/15/2014 affidavits of default; (R. pp. 433-532) the

⁴¹ See (R. p. 546: pp. 1271-1838, pp. 155-260, pp. 1-58, pp. 339-432, pp. 547-

9/30/2014 Motion for Default Judgment; (R. pp. 533-538) the 9/30/2014 Notice of the Hearing at exhibit # 105 for the MFDJ, etc; (R. pp. 539-546) 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), SCRCF, etc. (R. pp. 1-138, 147-556, 829-958, 1073-1905, 1933-1942) cf. (R. pp. 429-432, pp. 829-958, pp. 1250).

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), SCRCF instead the 6/15/2016 Order (that was written by the attorney for BBT)⁴² continues to ignore the ministerial entry of default and the 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. (R. pp. 433-546, pp. 829-958, pp. 85-90, pp.1929-1932, pp. 139-146)

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

Amounts: As such, Hunt argues that Hunt is entitled to Judgment by Default under Rule 55 (b)(1), SCRCF where Hunt argues that Hunt has

556, pp. 1933-1942)
⁴² (R. p. 1075, pp. 1929-1932)

satisfied the requirements of Judgment by Default under Rule 55

(b)(1), SCRCP:

- (1) Hunt stated that Hunt was seeking a liquidated amount, a sum certain or a sum which by computation could be made certain. See (R. p. 536, (p.334, pp. 477-478, pp. 545-546), pp. 1220-1223, pp. 1258-1259). The transcript of the 10/14/2014 hearing show that BBT did not object to this statement. (R. pp. 829-958)
- (2) Hunt made a motion to the court. (R. pp. 533-538); and see Rule 7(b)(1), SCRCP; and see (R. pp. 829-958); and see above at **No Objections to two Briefs and Others.**
- (3) Hunt has submitted affidavits of the amount due. (R. pp. 1463-1468, pp. 1577-1582, p. 536) The transcript of the 10/14/2014 hearing show that BBT did not object to the affidavits. (R. pp. 829-958)
- (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. (R. pp. 299-338, p. 536) The transcript of the 10/14/2014 hearing show that BBT did not object to this statement. (R. pp. 829-958)

(5) BBT is not a minor or incompetent person. See (R. p. 536).

The transcript of the 10/14/2014 hearing show that BBT did not object to this statement. (R. pp. 829-958)

(6) BBT has been defaulted for failure to appear. (R. pp. 433-

546, (p. 1105: pp. 1087-1094)). The transcript of the

10/14/2014 hearing show that BBT did not object to this

statement. (R. pp. 829-958, p. 1250). See above at

Ministerial Entry of Default and Liability Conceded; see

the FAC at page 36 at paragraph 5.g; (R. p. 334: pp. 477-

478, p. 535) and see Rule 8(d), SCRCPP; see Rule 55(b)(1),

SCRCPP; see Rule 7(b)(1), SCRCPP see (R. pp. 545-546, pp.

539-544); see the 7/15/2015 Affidavits of Default and

Response to Plaintiff's [...] at page 4 of 18 at "Judgment by

Default" (**R. p. 478**: pp. 536-537); see (R. pp. 1179-1224 &

pp. 1119-1178 (see herein at the **Conclusion**); (R. pp. 829-

958); (R. pp. 85-90, pp. 1073-1075 & pp. 1083-1086); see

(R. pp. 1258-1259); and see (R. pp. 1225-1270).

Rule 55(b)(2), SCRCPP: All Other Cases: Hunt argues that Hunt is

entitled to Judgment by Default under Rule 55 (b)(2), SCRCPP where

Hunt argues that Hunt has satisfied the requirements of Judgment by

Default under Rule 55 (b)(2), SCRCPP where

(1) Hunt applied to the court; (R. pp. 533-538);

(2) BBT is not a minor or incompetent person. See (R. p. 536) The transcript of the 10/14/2014 hearing shows that BBT did not object to this statement. (R. pp. 829-958)

(3) The attorney for BBT appeared in the action on 10/14/2014. See (R. pp. 261-272, pp. 423-432, pp. 829-958, pp. 959-1072)

(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 (R. pp. 542-546, cf. pp. 829-958).

(5) Pursuant to Rule 5(a), SCRCPP notice of the 10/14/2014 hearing on unliquidated damages was given to all parties by first class mail to the last known address. (R. p. 536, pp. 542-543, pp. 545-546) The transcript of the 10/14/2014 hearing shows that BBT did not object to this statement. (R. pp. 829-958)

(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 (Rule 55(b)(2), SCRCPP; see Rule 7(b)(1), SCRCPP; (R. pp. 539-546); see (R. pp. 433-532, pp. 533-538); (R. pp. 165-232, 299-338); see (R. pp. 1179-1224, pp. 1119-1178, pp. 1225-1270, pp. 1847-1870); (R. pp. 829-958); see (R. p. 1105: pp. 1087-1094); see (R. pp. 1259-1260); R pp. 959-1072); (see herein at the **Conclusion**).

Rule 55(b)(3), SCRCP: 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**.

(R. pp. 229-231, 334-336, 1467, 1580-1582)

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), SCRCP, etc (the attorney for BBT was present for the hearing on the 2nd MTD the FAC). See (R. pp. 542-546⁴³); see Rule 7(b)(1), SCRCP; see (R. pp. 829-958). 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 (R. pp. 334-336); (pp. 1463-1468, pp. 1577-1582; pp. 433-546⁴⁴, pp. 165-232, pp. 299-338, pp. 1119-1224); (pp. 1254-1270).

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

⁴³ See (R. p. 546: pp. 1271-1838, pp. 155-260, pp. 1-58, pp. 339-432, pp. 547-556, pp. 1933-1942)

⁴⁴ See (R. p. 546: pp. 1271-1838, pp. 155-260, pp. 1-58, pp. 339-432, pp. 547-556, pp. 1933-1942)

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)⁴⁵ re Hunt's Motion for Default Judgment under Rule 55 (a) and (b), SCRCP; etc (MFDJ, etc)⁴⁶ 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), SCRCP 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). (R. (p. 1250, pp. 829-958), cf. pp. 959-1072)

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), SCRCP; etc (MFDJ ,etc). (R. pp. 85-90, pp. 98-112, pp. 136-138, p. 1075, pp. 1929-1932, pp. 139-146)

⁴⁵ (R. pp. 1929-1932)

⁴⁶ Cf. the 10/28/2014 Order at exhibit # 94 (R. pp. 85-90) 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. (R. pp. 1914-1915)

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). (R. pp. 139-146, pp. 1110-1118 & pp. 98-112).

Hunt argues that the conclusions of law of the 6/15/2016 Order (R. pp. 98-112 & pp. 139-146) (that was written by the attorney for BBT)⁴⁷ ignores the fact that the chronology of events after the 6/6/2014 FAC (R. pp. 299-338) was filed and at the filing and serving of the 11/10/2014 NOR (R. pp. 1110-1118) (see above at Relevant Facts) resulted in the 1/13/2015 Order (R. pp. 98-112) 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**

⁴⁷ See (R. pp. 1929-1932).

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. (R. (pp. 1279-1476, pp. 1508-1518, pp. 1477-1507, pp. 1817-1819, p. 1781, p. 1273, (pp. 1-27), pp. 1519-1526, p. 28, pp. 233-258, pp. 1271-1530)) BBT removed lawsuit # 3 from State Court to the USDC on 8/6/2012 based on diversity jurisdiction and Hunt's delinquent mortgage. (R. pp. 1107-1109, pp. 233-260, pp. 1271-1530) BBT made a motion to dismiss the complaint. (R. pp. 391-422, pp. 1933-1938) BBT did not assert a counter claim for the delinquent mortgage.⁴⁸ ((R. **pp. 165-232**), (R. pp.)).⁴⁹ (R. (pp. 45-49, pp. 29-44⁵⁰, pp. 50-58) cf. pp. 1-28). (R. pp. 1188-1190). (R. pp. 1169-1176, pp. 1263-1264), (R. p. 1096, pp. 1101-1102, p. 1228, p. 1089, p. 119-135) Hunt did not make a motion to remand. (R. pp. 1679-1682)

BBT's MTD (R. pp. 391-422, pp. 1933-1938) was partially ruled on by the USDC on 3/13/2013. (R. pp. 233-260, pp. 1271-1530), (pp.

⁴⁸ (R. pp. 1679-1682)

⁴⁹ (R. pp. 1681-1682)

⁵⁰ (R. pp. 165-232, pp. 381-390)

1107-1109), (pp. 391-422 & pp. 1933-1938); pp. 45-49; pp. 29-44, pp. 50-58). 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 (R. (pp. 391-397⁵¹, & pp. 398-422 & pp. 1933-1938), pp. 45-58 & p. 1089). See the civil docket at (R. pp. 1679-1682); and see *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 714 S.E.2d 537, 539-540 (S.C., 2011). (R. (pp. 147-154, pp. 339-354), (155-164, pp. 355-380), (pp. 1-16)). (R. **pp. 165-232**); (R. pp. 17-19, pp. 20-27); (R. pp. 381-390). (R. p. 28). [(R. pp. **233-258**, pp. 1271-1530), (pp. **1107-1109**, pp. 1680-1682, pp. **233-258**, 259-260, pp. 1271-1530), (pp. 391-422 & pp. 1933-1938); ((R. **pp. 165-232**⁵², p. 1191, pp. 1683-1778), (R. pp.))]. (R. pp. 45-49, pp. 29-42, pp. 43-44, pp. 50-58).

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 (R. pp. 1679-1682).

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

⁵¹ Cf. (R. pp. 423-428 & pp. 429-432)

⁵² (R. pp. 1681-1682, pp. 1188-1190)

complaint (R. pp. 1781, **(R. pp. 261-272)**,⁵³ p. 1228, p. 1089, p. 1096, pp. 119-135) with the fraudulent joinder of Defendants WGHOA and CJ Developers;⁵⁴ and 2) intentionally filed the affidavit at exhibit # 104 (R. p. 1900) with a false statement in support of its order of publication for service⁵⁵ 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 # 3⁵⁶ before Hunt could bring a fourth lawsuit against BBT in the USDC. *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.⁵⁷ See the list of favorable Orders in the

⁵³ (R. p. 1126, (pp. 1073-1075, pp. 1083-1086), pp. 1087-1094, p. 1227, pp. 1847-1870); (R. (p. 1089, pp. 1188-1190, pp. 119 -135, p. 1096, pp. 1101-1102 and p. 1228)).

⁵⁴ See exhibit # 82 (Response to MTR) at page 3 – page 15 at paragraph 5.e.xviii; (R. pp. 1850-1862) and see BBT's Reply at (R. pp. 1871-1880). BBT did not object to these exhibits. See 11/10/2015 Brief at page 3; (R. p. 1227) and see the 11/10/2015 transcript at (R. p. 966 line 1 – p. 967 line 6.

⁵⁵ See exhibit #s 53, 54, 55, 56, 104 and cf. exhibit # 92. (R. p. 1790, pp. 1791-1798, p. 1900) cf. (pp. 1881-1884, pp. 1821-1824, p. 1581, pp. 1584-1586)

⁵⁶ 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. (R. pp. 299-338; ((pp. 391-397, pp. 45-58, pp. 1850-1853, p. 1089) cf. pp. 429-432))

⁵⁷ (R. pp. 155-164, pp.355-380 & pp.1-28); (R. pp. **165-232**, pp. 381-390 & pp. 29-44); (R. (pp. 233-260); 8/6/2012 NOR (pp. 1107-1109); & (pp. 391-422 & pp. 1933-1938); (R. pp. 1681-1682, (R. **pp. 165-232**), (R. pp.)), (R. pp.

(R pp. 85-90, **pp. 98-112**⁵⁸, pp. 136-138 & pp. 139-146); cf. (R. pp. 1879-1880, pp. 113-135)).

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 (R. pp. 98-112) would cause the case to proceed further during the removal period than it could proceed prior to the Notice of Removal. (R. pp. 1110-1118) See 28 U.S.C.A. 1446(d). (R. pp. 1239-1249, pp. 1919-1921) As such, Hunt argues that the conclusions of law at pages 3-5 of the 6/15/2016 Order (that were written by the attorney for BBT)⁵⁹ 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 8/6/2012 NOR (R. pp. 1107-1109); & (R. pp. 391-422 & pp. 1933-

1188-1190; pp. 29-44, pp. 45-58). (R. pp. 261-272, p. 1126, pp. 273-276, pp. 299-338, pp. 429-432, pp. **433-546**)

⁵⁸ (R. **pp. 29-44, pp. 45-58**); (R. (pp. 1110-1118), pp. **98-112**, pp. 1887-1891, pp. 1234-1237, (p. 1065 line 2 – p. 1068 line 2)).

1938); (R. pp. 1681-1682, (R. **pp. 165-232**), (R. pp.))
(R. 29-44, pp. 45-58). (R. pp. 261-272, p. 1126⁶⁰, pp. 273-276, pp.
299-338, pp. 429-432, pp. **433-546**, pp. 1179-1224, pp. 1119-1178,
pp. 85-90, (pp. 1073-1075, pp. 1083-1086), pp. **1110-1118**, pp. 98-
112, pp. 113-135) 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. (R. pp. 85-90, pp. 98-112, pp. 136-138, pp. 1929-1932, pp.
139-146)

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).

⁵⁹ See (R. pp. 85-90, pp. 1904, p. 1075, pp. 98-112, pp. 1929-1932).

⁶⁰ (R. p. 1116, pp. 1087-1094, p.1227, pp. 1847-1870, p. 966 line 1 – p. 966 line 24)

Hunt argues that Hunt is entitled to attorney fees and costs based on the FAC;⁶¹ and Rule 55 (b)(1-3), SCRCF and Rule 41(d), SCRCF,⁶² 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. (R. pp. 264-267, pp. 139-146)

(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. (R. pp. 1593, p. 548 & p. 552 lines 6-20)

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. (R. pp. 155-164, pp. 355-380). The same language that BBT used in the 5/29/2010 MTD 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. (R. p. 357, p. 431). As such, Hunt

⁶¹ See the FAC. (R. pp. 299-337 & pp. 433-546 & pp. 1073-1075 & 1083-1086 & 1095-1106); and see 10/16/2014 Brief in opposition to Plaintiff's [] at pages 38-39 of 45. (R. pp. 1216-1217).

⁶² See the 11/10/2015 Brief at pages 36-45. (R. pp. 1257-1269, pp. 1188-1190, pp.1216-1217). And cf the 6/15/2016 Order that states that Hunt relies solely upon Rule 41(d), SCRCF, for her claim to attorney fees and costs. (R. pp. 143). Through this Order that was written by the attorney for BBT (R. pp. 1929-1932) – Hunt argues that BBT is attempting to make another deal without consulting Hunt. (R. pp. 139-144); and see the 10/16/2014 Brief (dated 5/20/2014) at page 3 at The Deal. (R. pp. 1121); and see (R. pp. 1885-1886). Hunt argues that the current Deal suggested by BBT is insufficient where it does not include all of the other issues and

argues that BBT's 2nd MTD the FAC does not object to attorney fees and costs to Hunt based on Hunt being pro se. (R. pp. 429-432, pp. 829-958, p. 1250). And Hunt continues to argue that BBT's 2nd MTD the FAC has been forfeited, etc; (R. (pp. 165-232, pp. 381-390); pp. 29-44). (R. (pp. 233-260, pp. 1107-1109, pp. 391-422 & pp. 1933-1938); (R. pp. 165-232, pp.); pp. 45-58). (R. (p. 1089, pp. 119-120, p. 1096, pp. 1188-1190,)); see (R. pp. 1681-1682, pp. 45-58. (R. pp. 261-272). [(R. (pp. 277-298, (423-428)))). (R. (pp. 299-338⁶³, pp. 165-232), (R. pp. 429-432), R. pp. 433-532, pp. 539-546⁶⁴, pp. 1188-1190, p. 1246, pp. 829-958)] and Hunt argues that the 1/13/2015 Order (re the 2nd MTD the FAC) does not object to attorney fees and costs to Hunt based on Hunt being pro se. (R. pp. 98-112, (p. 357, p. 431), p. 1250, cf. pp. 139-146)

(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. (R. pp. 1577-1586, pp. 829-958, p. 1250, p. 1075, pp. 1929-1932, cf. pp. 139-146)

people that are stated in the affidavit at exhibit # 46. (R. pp. 433-546, pp. 1577-1586).

⁶³ See (R. pp. 299-300: pp. 1271-1838, pp. 155-260, pp. 1-58, pp. 339-432, pp. 547-556, pp. 1933-1942)

⁶⁴ See (R. p. 546: pp. 1271-1838, pp. 155-260, pp. 1-58, pp. 339-432, pp. 547-556, pp. 1933-1942)

(4) The 10/14/2014 transcript 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. (R. pp. 490-491, pp. 229-232, pp. 829-958, cf. pp. 139-146); and see (R. pp. 533-538, pp. 539-546 and pp. 1577-1582); 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 (R. pp. 1216-1217 and p. 1220); and see the 10/16/2014 Brief in opposition to the motion to dismiss (R. pp. 1175-1176).

(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). (R. pp. 1-1942) 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)([1]-3), SCRCF which is supported by the FAC (R. , pp. 299-338⁶⁵, (pp. 165-232, pp. 1188-190, pp. 29-58)) where no hearing is required where Hunt has satisfied the requirements of **Rule 55 (b)(3)(i-iii), SCRCF**. See Rule 55(b)(3)(i-iii); SCRCF; [(R. pp. 533-538); affidavit at exhibit # 46 (R. pp. 1577-1582); (R. pp. 542-546⁶⁶); (no objection [filed] within 10 days) (R. pp.

⁶⁵ See (R. pp. 299-300: pp. 1271-1838, pp. 155-260, pp. 1-58, pp. 339-432, pp. 547-556, pp. 1933-1942)

⁶⁶ See (R. p. 546: pp. 1271-1838, pp. 155-260, pp. 1-58, pp. 339-432, pp. 547-556, pp. 1933-1942)

1220); and see (R. p. 1250, pp. 1254-1270)] cf. (R. pp. 429-432, pp. 829-958).

(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, SCRCP** where Hunt did not request a hearing on this motion and BBT did not object in writing to the 5/27/2015 MFAFC. (R. pp. 1087-1094).

Rather the 6/3/2015 Order comes about as a result of the lower court raising sua sponte affirmative defenses on behalf of BBT. (R. pp. 136-138). See the 8/11/2015 Motion re the 6/3/2015 Order at page 5 at paragraph 7 (R. pp. 1101-1106); 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.”).R. pp. 1187-1190.

[(R. (pp. 147-154, pp. 339-354); (pp. 155-164, pp. 355-380); pp. 1-28). (R. (pp. 165-232, pp. 381-390); pp. 29-44). (R. (pp. 233-260, pp. 391-422 & pp. 1933-1938); (pp. 165-232, pp.)];

pp. 45-58). (R. (p. 1089, pp. 1188-1190, pp. 119-120)); see (R. pp. 1681-1682, pp. 45-58. (R. pp. 261-272). (R. (pp. 277-298, (423-428))). (R. pp. 299-338, (pp. 429-432), pp. 433-532, pp. 539-546, pp. 1188-1190, p. 1246, pp. 829-958). (R. p. 1089, p. 1126, pp. 119-120)] cf. (R. pp. 85-90, pp. 98-112, pp. 136-138 and pp. 139-146)

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. (R. p. 1033 line 9 – p. 1057 line 2). Hunt argues that waiver and equitable estoppel applies to these objections by BBT. See (R. pp. 1188-1190, pp. 1257-1258, pp. 1260-1269) And that BBT is not allowed to put forth objections at Hunt's 11/10/2015 motions under Rule 59(e), SCRCP 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); (R. p. 1250). 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)⁶⁷ involves objections and defenses that BBT did not put forth at the 10/14/2014 hearing; (R. pp. 429-432, pp. 829-958) and objections and defenses that BBT did not put forth in the 1/13/2015 Order (that was written by the attorney for BBT); (R. pp. 98-112) and objections and defenses that BBT did not put forth when the

5/27/2015 MFAFC under Rule 41, SCRCP was filed; (R. p. 1105: pp. 1087-1094) and Hunt argues that BBT has engaged in forum shopping and vexatious litigation. and see herein at **Forum Shopping and Vexatious Litigation** - and see *Davis v. Southpoint Condo. Ass'n, Inc.* (S.D. Fla., 2014);⁶⁸ and see Rule 41, SCRCP.

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)*.

For the above reasons, Hunt requests that this Court reverse and vacate the 6/15/2016 Order (R. pp. 85-90 & pp. 98-112 & pp. 136-138, pp. 139-146) 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.

⁶⁷ See R. pp. 1931.

⁶⁸ 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).

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. (R. (pp. 85-90 and pp. 139-146)). 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 (R. (p. 1086, p. 1099, p. 1106, p. 1269, pp. 229-231, pp. 334-336, pp. 433-474, pp. 493-532, pp. 533-538, pp. 545-546, pp. 1219-1223, pp. 1463-1468, pp. 1577-1582 and pp. 1915-1919)).

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

Life deposits of IOLTA ⁶⁹	\$3, 000,000.00
UFTPA ⁷⁰	\$ 9,000,000.00
Punitive Damages ⁷¹	\$12,000,000.00
Sub-total:	24,000,000.00 plus
Prejudgment Interest ⁷²	\$ 21,875.00 per month from 7/15/2014 to present.

Hunt requests liquidated and unliquidated damages to Davis:⁷³

⁶⁹ See (R. pp. 229-231, 334-336, 1467, 1580-1582)

⁷⁰ See (R. pp. 223-224, 329-331, 229-231, 334-336)

⁷¹ See (R. pp. 229-231, 334-336, pp. 1581, pp. 1222, pp. 1918 & pp. 1527-1530).

⁷² See (R. pp. 229-231, 334-336, 1580-1582, 1919)

⁷³ Davis paid off her mortgage in 2007.

See R. pp. 1742-1758: Davis 2004 Mortgage⁷⁴

2004 Mortgage ⁷⁵	\$ 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 R. pp. 1759-1771: Sherman 2002 Mortgage

Sherman 2002 Mortgage ⁷⁶	\$ 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.

Hunt requests liquidated and unliquidated damages to Allen:

See R. pp. 1772-1775: 2002 Allen car note

2002 Allen Car: ⁷⁷	\$ 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:

⁷⁴ BBT to remove all mortgages and liens from the property of Hunt, Davis, Sherman and others. (R. pp. 1683-1775, 229-231, 334-336, 1580-1582).

⁷⁵ See (R. pp. 229-231, 334-336, 1467, 1580-1582)

⁷⁶ See exhibit # 46 paragraph 6. (R. pp. 229-231, 334-336, 1467, 1580-1582)

⁷⁷ See exhibit # 46 paragraphs 6. (R. pp. 229-231, 334-336, 1467, 1580-1582)

Coastal Banker Gold benefits ⁷⁸	\$ 160,000.00
Loss of future income ⁷⁹	\$7,866,670.00
All monies paid on the current mortgage ⁸⁰	\$ 90,000.00
2006 CD (R. pp. 1384-1387) ⁸¹	\$ 434,744.90
Mark mortgage title paid in full. (R. pp. 1500-1507, pp. 1477-1499, pp. 1519-1526)	
Setoff monies (See (R. pp. 1293-1296 & pp. 1424-1429)) ⁸²	\$ 1,080.25
Life amount of monies deposited in the regular checking account, savings account and POD trust ⁸³ .	\$1,000,000.00.
Authorized Loans ⁸⁴ at (R. pp. 1390) ⁸⁵	\$ 347,200.00.
Davis mortgage ⁸⁶ (R. pp. 1742-1758):	\$ 126,825.00.
Sherman mortgage ⁸⁷ (R. pp. 1759-1771):	\$78,400.00
Allen car note ⁸⁸ (R. pp. 1772-1775):	\$ 36,925.54
Life monies deposited in IOLTA account ⁸⁹	\$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

⁷⁸ See (R. p. 1392 & p. 1507); See (R. pp. 229-231, 334-336, 1467, 1580-1582)

⁷⁹ See exhibit # 46 at paragraph 7. (R. pp. 229-231, 334-336, 1580-1582)

⁸⁰ See exhibit # 46 at paragraph 12. (R. pp. 229-231, 334-336, 1580-1582, 1507)

⁸¹ See exhibit # 46 at paragraph 14. (R. pp. 229-231, 334-336, 1467, 1580-1582)

⁸² See exhibit # 46 at paragraph 15. (R. pp. 229-231, 334-336, 1467, 1580-1582)

⁸³ See exhibit # 46 at paragraph 16. (R. pp. 229-231, 334-336, 1507, 1580-1582)

⁸⁴ See exhibit # 46 at paragraph 18. (R. pp. 229-231, 334-336, 1467, 1580-1582)

⁸⁵ \$26K auto (for title see (R. pp. 1732-1733)) + 98K (2003 mort (R. pp. 1708-1726)) + \$147,200 (see 2007 mort (R. pp. 1373-1380 & pp. 1690-1704)) + 50K (commercial) + \$80,275 (R. pp. 1734-1741). (R. pp. 229-231, 334-336, 1467, 1580-1582)

⁸⁶ See exhibit # 46 at paragraph 19. (R. pp. 229-231, 334-336, 1467, 1580-1582)

⁸⁷ See exhibit # 46 at paragraph 20. (R. pp. 229-231, 334-336, 1467, 1580-1582)

⁸⁸ See exhibit # 46 at paragraph 21. (R. pp. 229-231, 334-336, 1467, 1580-1582)

⁸⁹ See exhibit # 46 at paragraph 17. (R. pp. 229-231, 334-336, 1580-1582, 1507).

Prejudgment Interest \$ \$ 95,826.28 per month from 7/15/2014 to present.

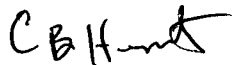
Total amount due for attorney fees and costs for lawsuit #s 1-3

are: \$ 2, 668, 905.00 million dollars. The costs in lawsuit #s 1-3 are: \$ 3405.00.⁹⁰ 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. (R. pp. 334-336, pp. 1463-1468, pp. 1577-1586, pp. 433-474, pp. 493-532, pp. 1219-1223, pp. 1260-1264).

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. (R. (pp. 98-112 and pp. 139-146)).

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. (R. (pp. 136-138 and pp. 139-146)).

Respectfully Submitted,



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Date: August 11, 2017

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⁹⁰ As of March 2013 as per the affidavit at exhibit # 46. R. pp. 229-231, 334-336, 1467, 1580-1582)