

# EXHIBIT A

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF SPARTANBURG ) Civil Action No.: 2017-CP-42-02834

PHILLIP FRANCIS LUKE HUGHES, on )  
behalf of the Estate of Jane K. Hughes, )

Plaintiff, )

vs. )

BANK OF AMERICA NATIONAL )  
ASSOCIATION, )

Defendant. )  
\_\_\_\_\_ )

**ORDER ON MOTION FOR SANCTIONS**

Hearing Date: June 1<sup>st</sup>, 2018  
Hearing Time: 9:30 a.m.  
Court Reporter: Pamela E. Green

This matter comes before the Court upon Defendant Bank of America, N.A.'s ("BANA") Motion for Sanctions against Plaintiff Phillip Frances Luke Hughes and his counsel, Mike Kelly Law Group, LLC, filed on March 29, 2018, pursuant to Rule 11 of the South Carolina Rules of Civil Procedure and the South Carolina Frivolous Civil Proceedings Sanctions Act ("FCPSA"). A hearing was held before me on Friday, June 1, 2018, at 9:30 a.m. in Spartanburg County, South Carolina, the Seventh Judicial Circuit. Present at the hearing were Brad D. Hewett, Esquire and D. Michael Kelly, Esquire of Mike Kelly Law Group, LLC, on behalf of the Plaintiff; and Robert A. Muckenfuss, Esquire and Elizabeth M. Z. Timmermans, Esquire of McGuire Woods, LLP on behalf of the Defendant. Having considered the motion and attachments, and all memoranda in support and in opposition, the law presented by the parties, and the arguments of counsel, I hereby deny Defendant's Motion for Sanctions.

## BACKGROUND & FINDINGS

1. The current matter is a survival action, filed by Plaintiff Hughes on behalf of the estate of Jane K. Hughes on August 15, 2017, alleging fraud and other fraud-based causes of action.

2. On December 21, 2017, Defendant moved to dismiss Plaintiff's case under the doctrines of *res judicata* and collateral estoppel, and the common law exception of fraud from S.C. Code Ann. § 15-5-90, South Carolina's survival statute.

3. On February 22, 2018, the Honorable R. Keith Kelly heard arguments by counsel for Plaintiff and Defendant on Defendant's Motion to Dismiss, and subsequently granted Defendant's motion, finding Plaintiff's actions barred by *res judicata*, the statute of limitations, and S.C. Code Ann. § 15-5-90.

4. Plaintiff timely filed a Notice of Appeal on March 27, 2018, and currently appeals Judge Kelly's Order of Dismissal. Plaintiff's appeal is pending before the South Carolina Court of Appeals.

5. On March 29, 2018, Defendant filed this Motion for Sanctions pursuant to SCRCP Rule 11 and S.C. Code Section 15-36-10 of the FCPSA, seeking sanctions against Plaintiff and his counsel for filing the August 15, 2017, survival action.

6. Defendant argued that Plaintiff and his counsel knew that the statute of limitations and *res judicata* barred the subject lawsuit; that no good faith or reasonable argument exists for the extension, modification, or reversal of South Carolina's survival statute as applied to an action for fraud; and that Plaintiff's claim under South Carolina Unfair Trade Practices Act ("SCUTPA") was barred by the plain terms of the SCUTPA statute. Defendant argued that, therefore, its costs and attorney's fees expended in defending the current action should be recovered under SCRCP Rule 11, and under the FCPSA per S.C. Code Ann. § 15-36-10(G).

7. Plaintiff and his counsel objected to the granting of Defendant's Motion for Sanctions, arguing, in part, that the Court, when presented with the opportunity to consider the same conduct for which Defendant presently seeks sanctions on a prior occasion, declined to award sanctions against Plaintiff or his counsel. The Defendant, before filing the current Motion for Sanctions, raised the same issues set forth in this motion to the Court, Judge Kelly, at the February 22, 2018, hearing on its Motion to Dismiss. Although Defendant raised the question of sanctions at that hearing, Judge Kelly did not impose sanctions against Plaintiff or his counsel at that time.

8. This matter is currently pending before the South Carolina Court of Appeals as Appellate Case Number: 2018-000568, and has not yet been fully adjudicated. Accordingly, Defendant's Motion for Sanctions is untimely and premature.

IT IS THEREFORE ORDERED:

Defendant's Motion for Sanctions is DENIED.

AND IT IS SO ORDERED.

Grace Gilchrist Knie  
The Honorable Grace Gilchrist Knie  
Presiding Judge, Circuit Court  
Seventh Judicial Circuit

July 3<sup>rd</sup>, 2018  
Spartanburg, SC



Spartanburg Common Pleas

**Case Caption:** Phillip Francis Luke Hughes , plaintiff, et al VS Bank Of America National Association  
**Case Number:** 2017CP4202834  
**Type:** Order/Sanctions

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760