

BRIEF OF APPELLANT*

THE STATE OF SOUTH CAROLINA
In The Court of Appeal

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H Gravely, Circuit Court Judge

Case No. 2018-CP-00-1716

RECEIVED
OCT 05 2018
SC Court of Appeals

Sabrina D Davis,

Respondent,

v.

Bankers Life And Casualty
Company,

Appellant.

[INITIAL] BRIEF OF APPELLANT

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* Under Rule 267(e), SCACR, the cover of the final briefs should be the following colors: brief of appellant - blue; brief of respondent - red; reply brief - gray; and amicus curiae or intervenor - green.

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2. SOUTH CAROLINA CODE 15-9-3B ESTABLISHES THAT 120 DAYS MUST BE GIVEN TO PERFECT SERVICE AND ATTEMPTS BY THE COURT TO REDUCE THIS TIME VIOLATES A FUNDAMENTAL RIGHT OF DUE PROCESS2

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR BY DECIDING TO RULE THAT FEDERAL COURTS HAVE THE JURISDICTION TO REVIEW DECISIONS ISSUED BY STATE COURTS?
2. DID THE TRIAL COURT ERR IN IGNORING THE LAWS PASSED TO ALLOW LITIGANTS 120 DAYS TO SERVE DEFENDANTS ONCE THE SUMMONS AND COMPLAINT IS FILED WITH THE COURT?

STATEMENT OF THE CASE

A motion to vacate the dismissal issued in Case# 2014CP2300815 was submitted on September 3, 2018 because it was discovered that Judge Lee granted a dismissal for insufficient service before the 120 days to serve had expired.

The complaint against Bankers Life And Casualty Company (hereafter Bankers Life) was filed on February 14, 2014 and the summons was filed April 6, 2014. Defendant filed a motion to dismiss for insufficient service on March 24, 2014 and the motion was granted on May 28, 2014. A request for reconsideration was made June 20, 2014 and denied on July 29, 2014. The issue was presented to the South Carolina Court of Appeals on August 12, 2014 and ruled as an unappealable order on June 29, 2016

Jurisdiction was given back to the trial court by remitter issued July 15, 2016(Appeals#2014-001867). The motion to vacate was denied due to order stating matter was not properly before the court and it should be resolved by the federal courts.

Notice of Appeal filed September 24, 2018

STANDARD OF REVIEW

Jurisdiction Argument

28 USC § 1257

Rooker Feldman Doctrine

120 Days for Service Argument

SC Code 15-9-3B

SCRCP Rule 3(1) &(2)

ARGUMENTS

- I. ACCORDING TO THE ROOKER FELDMAN DOCTRINE BECAUSE FEDERAL COURT ARE COURTS OF ORIGINAL JURISDICTION, THESE COURTS CANNOT SIT IN REVIEW OF STATE COURT DECISIONS AND THE ONLY FEDERAL COURT THAT MAKE REVIEW A STATE COURT RULING IS THE US SUPREME COURT AFTER THE CASE HAS PROCEEDED TO THE HIGHEST COURT IN THAT STATE.

Rooker- Feldman clearly states federal courts are without jurisdiction to hear direct appeals from the judgments of state courts because federal courts have original jurisdiction not appellate jurisdiction. The doctrine will not only prohibit the Plaintiff from litigating the de facto appeal, but also any issue that is "inextricably intertwined" with the state court's judgment. If the relief requested in federal court requires a determination that the state court decision is wrong or if it would void the state court ruling, then the issues are "inextricably intertwined" and the district court has no jurisdiction to hear the suit. Rooker-Feldman doctrine is concerned with finality and in ensuring that once a claim has been adjudicated in the state system, a disappointed litigant shall not also have access to the entire federal court system. Even more significant, the Rooker-Feldman doctrine is broader than res judicata and collateral estoppel in that it does not depend on a final judgment on the merits. The Rooker-Feldman doctrine is based upon 28 U.S.C. §1257 and the separate principal that only the U.S. Supreme Court has appellate jurisdiction over the civil judgments of state courts

- II. SOUTH CAROLINA CODE 15-9-3B AND SCRPC 3(1) & (2) MAKES IT VERY CLEAR THAT ONCE A LITIGANT HAS FILED THE SUMMON AND COMPLAINT THAT ACTUAL SERVICE MUST BE ACHIEVED 120 DAYS.

While a judge may have the option of following procedural rules, a law does not provide the same option. A judge does not have the license to shorten the time to serve a defendant the complaint and summons. In Hooper v. Ebenezer Senior Services, Mims V. Babcock Center and Holmes v. Haynsworth, Sinkler & Boyd the issue in these cases is that service was not provided until the 120 days had expired. In my case, the 120 days has not expired. I cannot find one case in the state of South Carolina that supports the circuit court premature dismissal for insufficient service when the 120 days has not expired. The Circuit Court violated state law, court rules, and my due process rights by granting the dismissal for insufficient service before the 120 days had passed, therefore the court did not give me proper time to serve Bankers Life And Casualty Company. It now falls upon this court to eliminate the appearance of an arbitrary dismissal and correct the error visited upon my case. I had to pay an additional \$150 filing fee for a refiled case which resulted in a statute of limitation defense in Bankers Life And Casualty Company favor. I should be granted the time to serve as allowed by the court rules and the law.

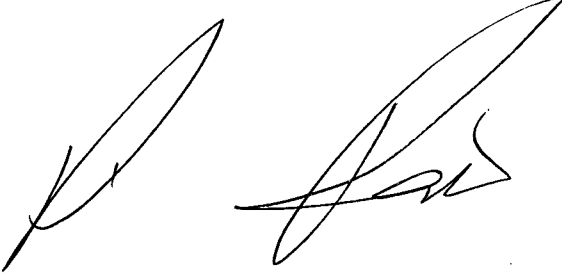

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

September 23, 2018

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The South Carolina Court of Appeals

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September 24, 2018

Sabrina D. Davis
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Re: Sabrina Davis v. Bankers Life (2)
Appellate Case No. 2018-001716

Dear Ms. Davis:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.