THE STATE OF SOUTH CAROLINA
in the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

MASTER-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity Law Judge

Case No. 2016-001201

Allen Livingston,.....Respondent.

v.

Harold Simmons Jr.,.....Appellant,

BRIEF OF APPELLANT REPLY TO RESPONDENT

Harold Simmons Jr.,Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694
Attorney for Appellant

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STATEMENT OF THE CASE

Appellant Harold Simmons is a disabled business man of Charleston County. Respondent, Allen Livingston, is a business man of Charleston County. On March 11, 2014 the Respondent filed a Lis Pendens concerning a property that was in contract between the respondent and the Appellant. On April 23, 2014 the Appellant filed an answer and requested a jury trial at that time. The respondent filed on April 28, 2014 an affidavit of default, on May 22, 2014 a motion to refer to master in equity. The hearing was scheduled and set forth to take place on November 3, 2014 at 10am. From the first hearing date on or around November 2014 through December 7, 2014 Judge Mikell Scarborough has denied the Appellant any and all due process along with ignoring and not accepting prior orders by Judge Nicholson and the fact that the respondent legal counsel false testified about a hearing and presented documents based on the false hearing and further refuse to take in consideration the Respondent perjury and falsification of documents in prior court proceedings under Judge Nicholson. Judge Mikell Scarborough has constantly denied the Appellant a jury trial, change of venue, and counter claim during the entire process and refuse to Dismiss the Respondent claim and Grant Appellant the counterclaim. This Appeal followed.

No court has the lawful right to strike a jury trial according to Rule 53 the Appellant is entitled to a Jury trial and no Rule exist that states a jury trial can be strike. The original Judge Nicholson Order was not upheld based on the denial of the relief set by Judge Nicholson for the Appellant so the original agreement of the parties be in effect and the advance monthly payments be honored. This was not upheld long with the frivolous and mock default hearing held without notifying and serving the appellant. This default hearing in April 2014 by Judge Dennis was unscheduled and is not on the court record. But yet the Master in Equity courts decided to utilize it against the appellant.

Note: Case Filed March 11, 2014

Note: Appellant Service Complaint April 4, 2014 - Appell answer April 24, 2014

Note: Default Hearing Held April 28, 2014

ARGUMENT

I. THE MASTER IN EQUITY DID NOT HEAR THE TESTIMONY AND EVIDENCE OF THE CASE, AND IS NOT IN COMPLIANCE WITH THE TRIER OF FACTS, AND DID WRONGLY RULE IN FAVOR OF PLAINTIFF.

Black's Law Dictionary, Sixth Edition, page 500

Due process of law.

Law in its regular course of administration through courts of justice. Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution- that is. by the law of its creation-to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of t he defendant, he must be brought with in its jurisdiction by service of process within the state, or his voluntary appearance. Pennoyer v. Neff 95 U.S. 733, 24 L.Ed. 565.

Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law.

An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. Kazubowski v. Kazubowski, 45 DJ.2d 405, 259 N.E.2d 282. 290.

Phrase means that no person shall be deprived of life. liberty, property or of any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and it forbids condemnation without a hearing. Pettit v. Penn, La.App., 180 So.2d 66, 69.

The concept of "due process of law" as it is embodied in Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. U. S. v. Smith, D.C.Iowa, 249 F.Supp. 515. 516.

Fundamental requisite of "due process" is the opportunity to be heard, to be aware that a matter is pending. to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. Trinity Episcopal Corp. v. Romney, D.C.N.Y., 387 F.Supp. 1044, 1084.

The Fifth Ammendment is every US citizens right and the Appellant is no different in this case.

The Fifth Ammendment states the following:

The Fifth Amendment says to the **federal** government that no one shall be "deprived of life, liberty or property without **due process** of **law**." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the **Due Process** Clause, to describe a **legal** obligation of all states. Former Section 22-3-230 was entitled "Right to jury trial" and was derived from 1962 Code Section 43-93; 1952 Code Section 43-93; 1942 Code Section 3710; 1932 Code Section 3710; Civ. C. '22 Section 2244; Civ. C. '12 Section 1394; Civ. C. '02 Section 986; G.S. 841; R.S. 884; 1868 (14) 100.

RULE **38**
JURY TRIAL OF RIGHT

(a) Right Preserved. The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

(c) Same: Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may

order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties, except where an opposing party is in default under Rule 55(a).

Note:

This Rule 38 is substantially the Federal Rule. The last sentence is added to Paragraph 38(a) to preserve the language of Code § 15-23-60. Paragraph 38(e) of the Federal Rule, referring to admiralty and maritime claims, is inapplicable to State practice.

No consideration was provided for "Due Process" or "Jury Trial of Right." Appellant believe that the Below court and Judge of the said court intended to violate the due process and jury trial of right according to the sections quoted above. Had it not been intended to violate the due process and jury trial of right, it would have been necessary for the inclusion of specific evidences and prior Judge court order to be reviewed and considered in the dismissal of the Lis Pendens and counterclaim granted.

NOTE:

II. THE MASTER IN EQUITY DID ERR IN NOT ALLOWING A JURY TRIAL AND INSTEAD HAD A UNSCHEDULED DEFAULT HEARING WHERE THE APPELANT WAS NOT SERVED NOR INFORMED.

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The Appellant was never in a legal position to warrant a foreclosure on any property that was in an installment contract and therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order.

RULE 53
MASTERS AND SPECIAL REFEREES

(a) Master and Special Referee Defined. The term "master" means the master-in-equity for the county. The term "special referee" means a member of the South Carolina Bar to whom a matter has been referred under S.C. Code Ann. § 14-11-60.

(b) References. In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case. Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court. A case shall not be referred to a master or special referee for the purpose of making a report to the circuit court. The clerk shall promptly provide the master or special referee with a copy of the order of reference.

(c) Powers. Once referred, the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.

(d) Compensation of Special Referees. The compensation of the special referee shall be paid by the parties in such amount as shall be set by the special referee, subject to review by the circuit court upon objection by any party within ten (10) days of receipt of the order.

(e) Appeals. When a matter has been referred, any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Note:

This Rule 53 follows the Federal Rule as to form but is considerably modified to conform to State practice and needs. References in Federal Courts are rare, but absolutely necessary in State Courts, particularly to handle a large volume of State litigation such as foreclosures, partitions, and other equity matters. The State practice allowing judgment to be entered on the master's report in appropriate cases is preserved, as is the allowance of 10 days to file exceptions to the report. Other post-trial motions, such as a motion to amend judgment under Rule 52(b), would apply when the order of reference directs that judgment be entered on the master's report, just as they apply in actions tried by the court.

Note to 1986 Amendment:

Rule 53(c) is amended to make clear that the master has the same powers as a court sitting without a jury unless the order of reference limits his authority. Changes in that

paragraph as well as Rule 53(d) leave the scheduling of the time and place of the hearings to the master. Rule 53(e)(1) is amended to remove the need for filing the transcript of proceedings if one has not been prepared, but Rule 53(e)(2) allows any party to obtain the transcript of proceedings before any hearing on exceptions to the master's report. Rule 53(e)(5) now authorizes the master to request briefs or proposed orders from counsel.

Note to 1994 Amendment:

This Rule 53(b) amendment clarifies the authority of the clerk of court to issue orders of reference in default cases and where all the parties consent.

Note to 1999 Amendment:

This amendment substantially revises this rule. It eliminates the practice of referring a matter for the purpose of making a report to the circuit court. Under the revised rule, the master or special referee will enter final judgment on any matter which is referred and any appeal from a decision of the master or special referee is to the Court of Appeals or the Supreme Court as provided by the South Carolina Appellate Court Rules. The detailed discussion of the powers of masters and special referees, and the procedure to be followed in matters pending before them, has been eliminated as unnecessary since the master or special referee has all the powers that a circuit court judge sitting without a jury would have in the matter and the procedure is that provided by the South Carolina Rules of Civil Procedure.

Note to 2001 Amendment:

Rule 53(d) is amended to provide that fees for special referees are set by the special referee subject to review by the circuit court if a party timely objects.

Note to 2002 Amendment

The 2002 amendment permits referral of foreclosure cases to the master-in-equity by order of the clerk of court. If there are counterclaims requiring a jury trial, any party may file a demand for a jury under Rule 38 and the case will be returned to the circuit court.

Last Amended by Order effective September 1, 2002.

RULE 103
RULINGS ON EVIDENCE

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context.

(b) Record of Offer and Ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

Note:

This rule is identical to the federal rule with the exception of the omission of subsection (d) relating to plain error. The rule of plain error contained in the federal rule is inconsistent with the law in South Carolina. Cf. State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (abolishing in favorem vitae review in capital cases and holding that error must be preserved by contemporaneous objection in the trial court). It should be noted that the Supreme Court has recognized a very few limited circumstances in which it will review issues raised for the first time on appeal. Cf. Toyota of Florence, Inc. v. Lynch, 314 S.C. 257, 442 S.E.2d 611 (1994) (challenge to abhorrent and outrageous argument raised for first time on appeal); State v. Pace, 316 S.C. 71, 447 S.E.2d 186 (1994) (failure to make contemporaneous objection to judge's comments excused where judge's tone and tenor made it clear that any objection would have been futile). Further, the failure to adopt a rule of plain error in no way limits the authority of trial judges to raise evidentiary issues on their own motion.

Subsection (a) means that reversal on appeal is only required where a substantial right of a party has been affected; error which is harmless does not affect a substantial right. Graham, Handbook of Federal Evidence, § 103.1 (3rd ed. 1981). This is equivalent to South Carolina law holding that reversal is not required unless an error is prejudicial and not harmless. State v. Sosebee, 284 S.C. 411, 326 S.E.2d 654 (1985) (probable prejudice must be shown); State v. Gaskins, 284 S.C. 105, 326 S.E.2d 132 (1985) (a new trial is not required for harmless error), cert. denied, 471 U.S. 1120, 105 S.Ct. 2368, 86 L.Ed.2d 266 (1985), overruled on other grounds, State v. Torrence, 305 S.C. 45, 406 S.E.2d 315

(1991); Watts v. Bell Oil Co., 266 S.C. 61, 221 S.E.2d 529 (1976) (prejudice must be shown).

Subsection (a)(1) is generally in accord with prior South Carolina law which required a contemporaneous objection with specific grounds to preserve an error for review. State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994) (contemporaneous objection); White v. Wilbanks, 298 S.C. 225, 379 S.E.2d 298 (Ct. App.1989) (contemporaneous objection), rev'd on other grounds, 301 S.C. 560, 393 S.E.2d 182 (1990); State v. Bailey, 253 S.C. 304, 170 S.E.2d 376 (1969) (specific grounds required; general objection preserves nothing). It does somewhat relax the requirement of stating specific grounds where the grounds are apparent from the context. The better practice, however, is for counsel to always give, and the court always to require, specific grounds for an objection; this will avoid later disputes regarding what was apparent from the context. It should be noted that Rule 43(i), SCRCP, Rule 18, SCRCrimP, and Rule 9(b), SCRFC, do not prevent counsel from stating the grounds for an objection, but merely control argument on the grounds for the objection. This rule does not alter the prior practice regarding motions in limine, which allowed the motion to exclude evidence to be made at the pretrial stage, State v. Glenn, 285 S.C. 384, 330 S.E.2d 285 (1985), but required a contemporaneous objection when the evidence is actually offered into evidence at the trial to preserve the issue for review. State v. Schumpert, ____ S.C. ____, 435 S.E.2d 859 (1993); Parr v. Gaines, 309 S.C. 477, 424 S.E.2d 515 (Ct. App.1992).

Subsection (a)(2) is the federal rule modified to require the grounds for admission to be stated. As modified, this rule is consistent with South Carolina law which requires a proffer of the excluded evidence and the grounds for admission to be stated to preserve the trial court's ruling for review. State v. Cabbagestalk, 281 S.C. 35, 314 S.E.2d 10 (1984); State v. Cox, 258 S.C. 114, 187 S.E.2d 525 (1972); Legrande v. Legrande, 178 S.C. 230, 182 S.E. 432 (1935); Gold Kist, Inc. v. Citizens & Southern Nat'l Bank, 286 S.C. 272, 333 S.E.2d 67 (Ct. App.1985). The rule does change South Carolina law by dispensing with the requirement of a proffer and a statement of the grounds for admissibility where the substance of the evidence and the grounds are apparent from the context. The prior law only dispensed with the requirement of a proffer where the judge refused to allow a proffer. State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986). To avoid later disputes over what was apparent from the context, however, the better practice is for a proffer and a statement of the grounds to always be made.

The first sentence of subsection (b) is similar to language contained in former Rule 43(c), SCRCP. Although no specific South Carolina case can be found to support the second sentence, requiring an offer to be made in question and answer form is within the discretion of the judge.

Subsection (c) is in accord with prior South Carolina law. Chandler v. People's Nat'l Bank, 140 S.C. 433, 138 S.E. 888 (1927); Rule 43(c), SCRCP.

NOTE:

III. T THE MASTER IN EQUITY DID ERR BY NOT UPHOLDING THE ORDER OF JUDGE NICHOLSON AND ADDED AN ORDER AS TO REWRITE JUDGE NICHOLSON ORDER. THE COURT ERRED IN IGNORING THE FALSIFICATION OF DOCUMENTS AND REWRITING OF CONTRACT BY THE RESPONDENT THAT WAS STATED IN THE ORDER FROM NICHOLSON.

The court never look or considered addressing the Prior court order of the back taxes and payments which would have clearly shown the Appellant was not in jeopardy of foreclosure laws, therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order. Along with acting as the respondent attorney and not a judge showing favoritism and denied the advance monthly payments and original agreement as stated by Judge Nicholson in order of the relief.

See the above notation of Rule 53 and 103

The court never look or considered addressing the if the prior court order signed by Judge Dennis was valid or the hearing scheduling of such proceeding was verified to be a valid hearing and proper notice was given to Appellant, therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order. This is in direct violation according to case Cook v. Taylor, 272 S.C. 536, 538, 252 S.E.2d. Which brings up questions such as the following:

(1) "Whether One Circuit Court Judge Can Vacate An Order Of Reference Made By Another Circuit Court Judge?" and

(2) "Whether The Pleadings Herein Stated An Equitable Cause Of Action And Requested Equitable Relief, Thereby Requiring The Reference To The Master In Equity?"

See the above notation of Rule 53 and 103

RULE 10
TRIAL DATE; NOTICE; FAILURE TO ANSWER

(a) Upon the filing of an answer by the defendant, the magistrate shall set the date of trial and deliver notice of the trial date to both parties in a manner provided for in Rule 8.

(b) If the defendant has failed to answer within the time period specified by these rules, the magistrate shall set a hearing date and shall deliver notice of the hearing date to both parties in a manner provided for in Rule 8 when the hearing is necessary for the entering of a default judgment in a manner consistent with Rule 11. At the default hearing, the defendant may participate only by cross-examining witnesses and objecting to evidence.

RULE 5
SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a)Service: When Required. Unless otherwise ordered by the court because of numerous defendants or other reasons, all (1) written orders; (2) pleadings subsequent to the original summons and complaint, which includes answers, counterclaims, cross claims, replies and amended complaints; (3) written motions, other than ones which may be heard ex parte; (4) written notices; (5) discovery requests and responses; (6) appearances; (7) demands; (8) offers of judgment; (9) designations of record or case; (10) grounds or exceptions on appeal; and (11) other similar papers shall be served upon each of the parties of record. No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for serving of summons in Rule 4, and notice of any trial or hearing on unliquidated damages shall also be given to parties in default.

Note:

This Rule 5(a) is substantially the same as Federal Rule, and restates Code §§ 15-9-910 and 15-9-970 with no change in practice.

Note to 2005 Amendment:

This amendment to subsection (a) makes explicit that all major documents and papers, including, but not limited to, pleadings and amended pleadings, discovery requests and responses, motions and similar papers are to be served on every party of record. The amendment also adds the word "grounds" in subsection (a)(10).

(b)(1) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the

attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.

(b)(2) Service on Sunday. Civil process may be served on Sundays, provided that no person may be served going to or from or attending a regularly or specially scheduled church or religious service on Sunday.

Note:

This Rule 5(b)(1) is the same as Federal Rule 5(b) and substantially restates Code §§ 15-9-920, 15-9-930, 15-9-980 and 15-9-990; with no resulting change in State practice. Rule 5(b)(2) is the same as Code § 15-9-1010, except permitting subpoenas to be served on Sunday.

Note to 2001 Amendment:

Rule 5(b)(2) is rewritten to reflect the enactment of S.C. Code Ann. § 15-9-17, 2000 S.C. Acts No. 360, which allows for the service of process on Sundays with the stated exceptions.

(b)(3) Service of Proposed Orders and Other Papers. Any party providing a proposed order, proposed findings of fact or conclusions of law, or proposed judgment or other paper to the court for its consideration in any pending matter shall serve the same on all counsel of record at the same time and by the same means.

Note to 1994 Amendment:

Rule 5(b)(3) clarifies the intent of Rule 5(a) and requires that proposed orders, findings of fact and conclusions of law and other materials provided to the court are to be served on all counsel of record. The material is to be provided to all other counsel at the same time and by the same means as they are provided to the court. Thus opposing counsel will have the opportunity to review and comment on the proposed order before it is signed. The rule does not require the court to delay entering any proposed order.

(c) Same: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as

between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleadings and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

Note:

This Rule 5(c) is the same as the Federal Rule. It has no parallel in State practice, but is a needed addition.

(d) Filing. All papers required to be served upon a party except as provided in Rule 26(g)(1), shall be filed with the court within five (5) days after service thereof. The summons and complaint shall be filed before service. Proof of service shall be filed within ten (10) days after service of the summons and complaint. Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party. Upon failure of a party to file other pleadings, motions, or papers, the court may permit filing or proceed as though the same had not been served.

Note:

This Rule 5(d) encompasses present Circuit Rule 68 and former Rule 75, as well as Code § 15-9-1000. It is a more concise statement, and provides more specific sanctions in the court's discretion.

Note to 1993 Amendment:

Rule 5(d) was amended to add language permitting the court to dismiss an action on its own initiative if it has been filed but not served upon the defendant. The prior rule required a motion by a party.

(e) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk. Upon any trial or hearing, the clerk shall furnish the original record in the action to the judge, who shall return same to the clerk immediately upon completion of such trial or hearing. Copies of the record may be furnished instead of the original by permission of the judge. Upon change of venue the original record shall be transferred to the clerk of court to which the action is transferred.

Note:

This Rule 5(e) is the same as the Federal Rule. It restates and clarifies present Circuit Rules 32 and 67.

Last amended by order dated April 27, 2005

The court never look or considered addressing the Prior court order documenting the falsification and rewriting of the contract by the Respondent which would have clearly shown the Lis Pendens should be dismissed and the counter claim granted, therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order.

See the above notation of Rule 53 and 103

SECTION 16-9-10. Perjury and subornation of perjury.

(A)(1) It is unlawful for a person to wilfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.

(2) It is unlawful for a person to wilfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

(B)(1) A person who violates the provisions of subsection (A)(1) is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

(2) A person who violates the provisions of subsection (A)(2) is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not less than one hundred dollars, or both.

(C) A person may be convicted under this section if he induces, procures, or persuades another person to commit perjury or if he commits perjury by his own act, consent, or agreement.

HISTORY: 1962 Code Section 16-201; 1952 Code Section 16-201; 1942 Code Section 1397; 1932 Code Section 1397; Cr. C. '22 Section 332; Cr. C. '12 Section 340; Cr. C. '02 Section 253; G. S. 2531; R. S. 217; 1712 (2) 487; 1993 Act No. 184, Section 89.

SECTION 16-9-20. Subornation of perjury in civil actions.

(A) It is unlawful for a person to:

(1) wilfully induce, procure, or persuade another person by any means to commit perjury in initiating a civil action or proceeding; or

(2) wilfully induce, procure, or persuade another person to give false, misleading, or incomplete testimony while under oath in a civil action or proceeding.

(B) A person who violates the provision of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months and fined not less than two hundred dollars.

HISTORY: 1962 Code Section 16-202; 1952 Code Section 16-202; 1942 Code Section 1398; 1932 Code Section 1398; Cr. C. '22 Section 333; Cr. C. '12 Section 341; Cr. C. '02 Section 254; G. S. 2532; R. S. 218; 1712 (2) 487; 1993 Act No. 184, Section 90.

SECTION 16-9-30. False swearing before persons authorized to administer oaths.

It is unlawful for a person to wilfully and knowingly swear falsely in taking any oath required by law that is administered by a person directed or permitted by law to administer such oath.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

HISTORY: 1962 Code Section 16-203; 1952 Code Section 16-203; 1942 Code Section 1400; 1932 Code Section 1400; Cr. C. '22 Section 335; Cr. C. '12 Section 343; Cr. C. '02 Section 256; G. S. 2534; R. S. 220; 1833 (2) 485; 1993 Act No. 184, Section 166.

The court never look or considered addressing the Prior court order documenting the falsification and rewriting of the contract by the Respondent which would have clearly shown the Lis Pendens should be dismissed and the counter claim granted, therefore the ruling was erred. This is based on the prior order of Judge Nicholson in which the court did not take into consideration and therefore ignored the prior Judge order.

See the above notation of Rule 53 and 103

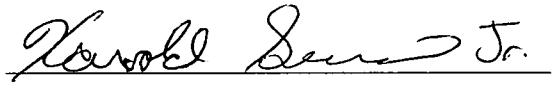
NOTE:

CONCLUSION

The court below erred in ruling that the denial of defendant's motion to alter and amend order, the master's sale on the forclosure of the installment sales contract should take place, and in and all pursuant terms and conditions of the May 18, 2016 order as well. Grant of Order on May 18, 2016 was in error. This court should conduct its on review of the procedures and prior Judge Nicholson orders and all documents requested by Appellant. Reverse all of the rulings of the court below and remand the case for reconsideration of appellants' motion for counterclaim and dismiss of respondent Lis Pendens case filing in light of the violation of due process and denial of jury trial amongst all the other arguments presented in this appeal.

The court erred in denying a jury trial by striking it and the Judge acted as the attorney and judge at same time. The court erred in holding a frivolous unscheduled and off the court record default hearing without serving the Appellant. The court further erred in not considering the advance payments and original agreement and relief order by Judge Nicholson along with the fact that perjury and document falsification had occurred and was ruled and ordered on by Judge Nicholson. The Appellant due process has been denied.

Respectfully submitted,



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January 21, 2019

THE STATE OF SOUTH CAROLINA
in the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

MASTER-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity Law Judge

Case No. 2016-001201

Allen Livingston,.....Respondent.

v.

Harold Simmons Jr.,.....Appellant,

CERTIFICATE OF SERVICE

I, Harold Simmons Jr, Pro Se, hereby certify that I have, on date indicated below, served counsel below with a Appellants' brief and designation of matter to be included in Record on Appeal by mailing a copy of same via Certified US Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

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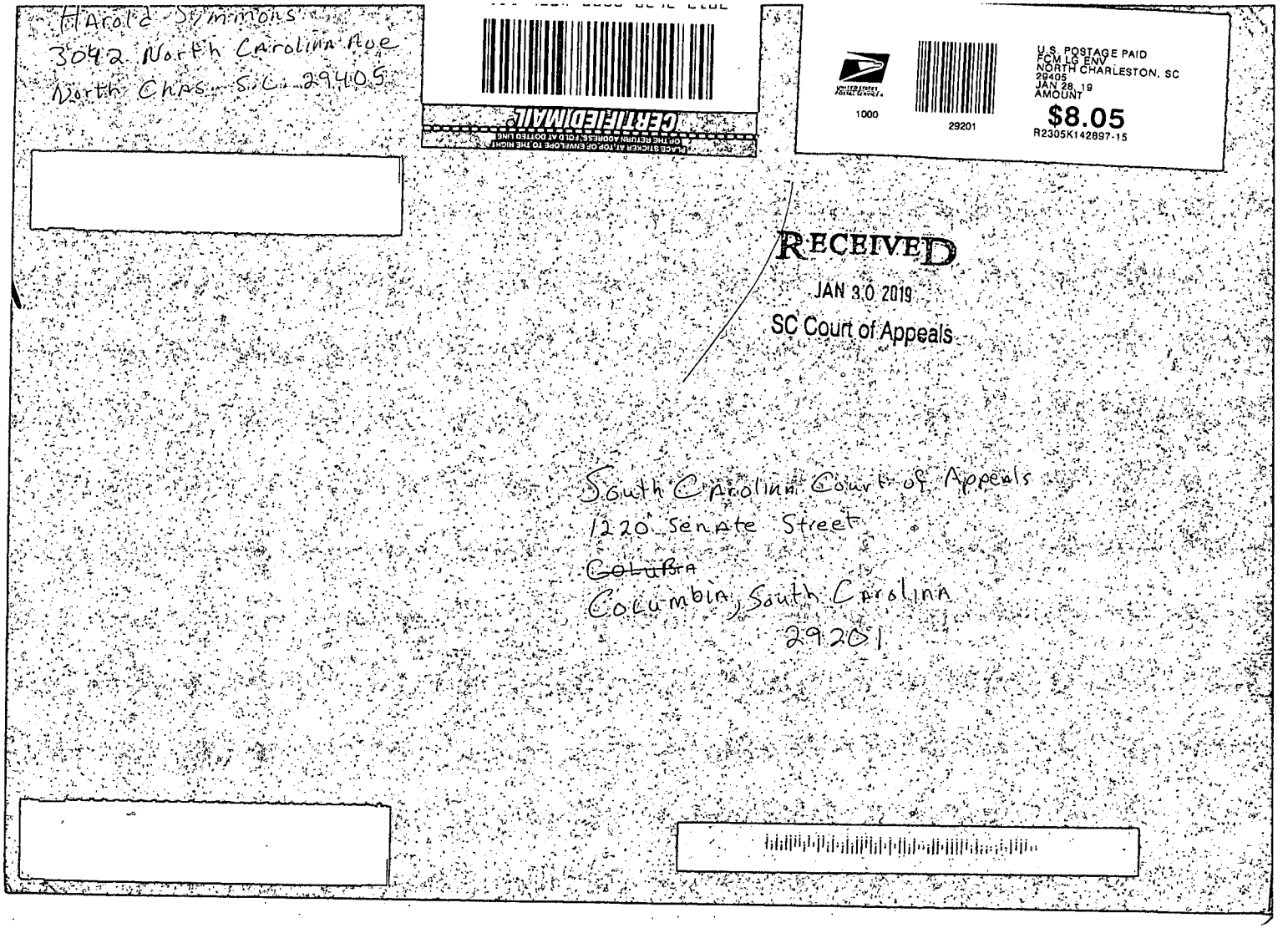
January 27, 2019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