

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
In the Court of Common Pleas

The Honorable Robin B. Stilwell

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Case No. 10-CP- 23 - 3793

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Mark Christianson ..... Appellant  
v.  
MBNA America Bank NA ..... Respondent

**Record on Appeal**

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**SC COURT OF APPEALS**

AUG 21 2012

**RECEIVED**

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ENTERED COMPUTER

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS )

COUNTY OF GREENVILLE )

THIRTEENTH JUDICIAL CIRCUIT )

Mark Christianson, )

CIVIL ACTION NUMBER: 10-CP-23-3793 )

Plaintiff, )

ORDER )

vs. )

GRANTING JUDGMENT )  
IN FAVOR OF DEFENDANT )

MBNA America Bank NA, )

Defendant. )

FILED - CLERK OF COURT  
GREENVILLE CO. S.C.

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The above-captioned matter is an action in equity pending before this Court involving an arbitration award relating to consumer debt owed to Defendant MBNA America Bank NA by Plaintiff Mark Christianson. It is a non-jury matter. For the reasons stated herein, this Court grants judgment in favor of Defendant.

FACTS/PROCEDURAL BACKGROUND

The case at bar possesses a lengthy procedural background. Defendant obtained an arbitration award for sums owed by Plaintiff relating to credit debt via an independent arbitration panel. Defendant thereafter served a Notice of Application to Confirm Arbitration Award on Plaintiff in South Carolina. The Circuit Court ultimately executed an Order, confirming the arbitration award.<sup>1</sup> The Order was docketed by the Clerk of Court in Greenville County on June 21, 2006. Plaintiff moved to vacate the Order via Rule 60(b), SCRPC on July 17, 2007 - more than a year after the Order was entered by the Clerk. The Circuit Court denied the motion on October 1, 2007, as untimely filed.

<sup>1</sup> Styled as MBNA America Bank v. Mark Christianson, 2006-CP-23-3740.

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Plaintiff appealed the Circuit Court's judgment to the Court of Appeals. The matter was ultimately transferred to the Supreme Court, which disposed of the matter.<sup>2</sup> Specifically, following oral argument, Plaintiff's appeal was disposed of via a one paragraph Rule 220(b)(1), SCACR Memorandum Order, which affirmed the Circuit Court's previous order.<sup>3</sup>

Following issuance of the Supreme Court's order, Plaintiff initiated a second action – the case sub judice – in the Court of Common Pleas in Greenville County. Since commencement of this new action on May 10, 2010, Plaintiff has not conducted any discovery, obtained any sworn testimony, or provided any other basis for demonstrating why the order of the Supreme Court should not govern the final adjudication of the parties' dispute.

The case at bar was originally placed on the jury trial roster. The parties thereafter stipulated to transfer the case on the non-jury roster. In lieu of trial, the parties agreed to file briefs with the Court, articulating their respective arguments supporting disposition in their favor. The parties were permitted the opportunity to attach/include any materials, affidavits, etc.

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<sup>2</sup> Defendant is represented in this action by Collins & Lacy, P.C. Collins & Lacy was retained by Defendant to argue the appeal in the previous action to the Supreme Court. However, the firm did not brief the case to the appellate court or handle any matters at the trial court level. Those matters were handled by a different firm.

<sup>3</sup> Rule 220(b)(1), SCACR states:

(1) The Supreme Court may file a memorandum opinion dismissing an appeal, affirming or reversing the judgment appealed from, or granting other appropriate relief when, in unanimous decision, the Supreme Court determines that a published opinion would have no precedential value and any one or more of the following circumstances exists and is dispositive of issues submitted to the Court for decision: (A) that a judgment of the trial court is based on findings of fact which are or are not clearly erroneous; (B) that the evidence to support a jury verdict is or is not insufficient; (C) that the order of an administrative agency is or is not supported by such quantum of evidence as prescribed by the statute or law under which judicial review is permitted; or (D) that no error of law appears.

(emphasis added).

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to their briefing in support of their respective positions. Both parties filed lengthy briefs with numerous attachments. The Court has reviewed the parties' submissions and, careful consideration, has determined judgment in Defendant's favor is appropriate.

### ISSUES PRESENTED TO THE COURT

- I. Whether Plaintiff's Rule 60(b), SCRPC Independent Action is Barred by Res Judicata?
- II. Whether Plaintiff's Rule 60(b), SCRPC Independent Action is Barred as Untimely?
- III. Whether Plaintiff's Second Through Fifth Causes of Action are Barred as Untimely?
- IV. Whether Plaintiff Has Proffered Sufficient Evidence to Support His Liability and/or Damages Averments in His Second Through Fifth Causes of Action?

### LAW/ANALYSIS

#### I. Res Judicata Precludes Plaintiff from Obtaining Relief Sought in His Independent Action

The instant case is premised upon Plaintiff's belief that he is entitled to bring a separate action at this stage via Rule 60, SCRPC known as an "Independent Action." Even if Plaintiff's interpretation of Rule 60, SCRPC is correct concerning his ability to now pursue relief by way of a separate independent action, the record clearly reveals Plaintiff has already sought relief via Rule 60(b), SCRPC and was unsuccessful. For this reason, Defendant asserts this Independent Action is merely successive in nature and is therefore precluded by virtue of res judica. This Court concurs.

Our case law concerning res judicata is quite clear. Specifically, the doctrine of res judicata acts prevents the re-litigation of issues previously litigated or which might have been litigated in the first action. See Mungo v. Rental Uniform Srv. of Florence, 383 S.C. 270, 284, 678 S.E.2d 825, 832 (Ct. App. 2009) (citing and quoting Estridge v. Joslyn Clark Controls, Inc.,

325 S.C. 532, 540, 482 S.E.2d 577, 581 (Ct. App. 1997). As explicated within Owenby v. Owens Corning Fiberglas, 313 S.C. 181, 437 S.E.2d 130 (Ct. App. 1993), this doctrine requires the satisfaction of three essential elements: (1) the judgment must be final, valid and on the merits; (2) the parties in the subsequent action must be identical to those in the first; and (3) the second action must involve matter properly included in the first action. Id. at 183, 437 S.E.2d at 131.

Applying the Owneby factors, it is inarguable that res judicata is applicable as a basis for dismissal of Plaintiff's Independent Action in the instant case. Plaintiff has previously attacked the validity of the Circuit Court's judgment and has already asserted its arguments regarding due process, etc. Plaintiff continued to assert its position to no avail to the Supreme Court. The case at bar is merely a reprisal of the prior litigation. Close comparison of Plaintiff's briefing to the appellate tribunal and Plaintiff's pleadings in the instant action reveal that circumstance to be true.

The issues and arguments possessed by Plaintiff have been argued and ruled upon by the court of last resort in South Carolina. Plaintiff is therefore not entitled to re-hash this dispute via brand new litigation. The matter has been ended with finality; accordingly, this Court holds this matter can not be reprised via the instant action. Thus, the matter must be dismissed.

## II. Plaintiff's Pursuit of Relief via Rule 60(b), SCRPC Independent Action is Untimely

Plaintiff seeks relief in the case at bar, asserting an entitlement to the same via Rule 60(b), SCRPC. This Court disagrees.

Rule 60, SCRPC states the following:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

4/13/13

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;**
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. **This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.** During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(emphasis added).

In the instant case, Plaintiff has commenced an "Independent Action" to seek relief from the Circuit Court's June 21, 2006, Order, which confirmed the arbitration award. However, it is not clear from the pleadings filed in the case at bar what particular ground found within the subsections of Rule 60(b), SCRCF is the basis for his pursuit. Plaintiff's identification with certainty which subsection(s) are implicated in his Independent Action was necessary and is paramount to this Court's analysis. Notwithstanding this failure, upon review of the pleadings, The Court believes Plaintiff appears to be asserting grounds relating to Rule 60(b)(3), SCRCF.

The language of the rule clearly contemplates that motions based on (b)(1) through (3) should be brought within a year of judgment. Plaintiff did not do that. Defendant therefore maintains that an Independent Action on any of these grounds at this point in time would be inequitable. The Court agrees. While there is no specified time limit for bringing an

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independent action for relief from judgment, this Court notes a party should not be able to avoid the one year time limit simply by commencing an independent action seeking the same relief. See Mt. Ivy Press, LP v. Defonseca, 937 N.E.2d 501, 508-09 (Mass. App. Ct. 2010) (reviewing timeliness of Rule 60(b) independent action).

Alternatively, assuming that Plaintiff has somehow asserted grounds that permit him to seek Rule 60(b), SCRCF relief after the one year time limit, his pursuit of such relief in 2010 was nevertheless untimely because of unreasonable and inexcusable delay. See Waller v. State Dep't of Health & Welfare, 192 P.3d 1058, 1063-64 (Idaho 2008) ("There is no express time limit for an independent action to relieve a party from judgment. The power of the courts to entertain such an action is inherent, and is not, therefore, subject to the time limitations imposed by I.R.C.P. 60(b). The independent action must, however be brought within a "reasonable time.") (internal citations omitted). Plaintiff commencement of an Independent Action four years after entry of the arbitration award was not within a "reasonable time" and there has been no showing to the contrary by Plaintiff to support a different holding by this Court.<sup>4</sup>

### III. Plaintiff's Second, Third, Fourth, and Fifth Causes of Action are Time-Barred

As noted in Section II of this Law/Analysis, the Circuit Court's previous judgment in this dispute was dated June 21, 2006. Plaintiff commenced the instant suit on May 13, 2010, which was almost 4 years after the arbitration entry judgment was rendered. In addition to asserting a Rule 60(b), SCRCF-based Independent Action, Plaintiff asserted 4 additional causes of action, which aver the following: violation of the South Carolina Uniform Trade Practices Act and

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<sup>4</sup> The fact that there was an appeal to the Court of Appeals/Supreme Court provides no safe harbor for Plaintiff. That is because as a rule, the time to pursue relief via Rule 60(b), SCRCF is not tolled or suspended by an appeal. E.g., King v. First Am. Investigations, Inc., 287 F.3d 91, 94 (2d Cir. 2002) (citing a multitude of cases supporting the holding that appeal does not toll the one-year limitations period for filing a Rule 60(b) motion).

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South Carolina Consumer Protection Code; Abuse of Process; and Negligence. Review of the pleadings indicates these additional claims clearly arise from Defendant's 2006 pursuit of the entry of the arbitration award. Therefore, treating June 21, 2006 as the trigger date for a subsequent action against Defendant on the above-described grounds,<sup>5</sup> it would appear such claims are time barred.<sup>6</sup> Thus, this Court dismisses these claims as untimely.

Additionally, Defendant further asserts there is an absence of credible and reliable<sup>7</sup> evidence proffered to this Court to support the elements of Plaintiff's claims and/or Plaintiff's alleged damages as it relates to the Second through Fifth Causes of Action. This Court concurs.

Defendant further maintains at briefing there is no testimony by any non self-serving witness to support Plaintiff's prosecution of these claims, which Defendant maintains is fatal to Plaintiff's case. As to this assertion, this Court also concurs.

#### IV. Additional Sustaining Ground

Pursuant to Rule 60 of the South Carolina Rules of Civil Procedure, a judgment may be set aside on the ground of fraud only if the fraud is extrinsic and not intrinsic. Hagy v. Pruitt,

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<sup>5</sup> Assuming, arguendo, Plaintiff's Second through Fifth Causes of Action are cognizable. This Court concludes there is nothing in the record to demonstrate they are in fact legally colorable in this matter. Other than making broad averments in his pleadings, Plaintiff has done nothing to actually prosecute these actions. It is axiomatic that a plaintiff must do more than just rest on his pleadings to survive an assault by a defendant seeking dismissal.

<sup>6</sup> The fact that Plaintiff filed a Rule 60(b), SCRCF motion in 2007 does not rescue him from Defendant's timeliness argument. The jurisprudence supports the proposition that Rule 60(b) does not operate to enable a plaintiff to toll the statute of limitations. See Benjamin v. Wilson, 1988 WL 113357 (E.D.Pa. 1988).

<sup>7</sup> Along with his Brief and the Supreme Court Record on Appeal, Plaintiff has apparently submitted a complaint filed in Minnesota in 2009 against the National Arbitration Forum et al as support for his pursuit of relief. The Minnesota defendants are not parties in the instant action. There was no corresponding order filed, which demonstrates a disposition that would be favorable to Plaintiff's arguments. Further, pleadings are obviously not proof of anything. Accordingly, this Court will not consider these Minnesota pleadings in its disposition of this matter.

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339 S.C. 425, 431 (2000). In the case at bar, the Plaintiff has failed to demonstrate extrinsic fraud which would warrant the overturn of the judgment.

CONCLUSION

For the reasons stated herein, this Court grants judgment in favor of Defendant. As articulated above, this Court bottoms and premises its determination in the instant case by virtue of: (1) the applicability of the doctrine of res judicata; (2) the untimeliness of Plaintiff's claims; and (3) absence of extrinsic fraud warranting an overturn of the judgment. This Court further concludes there is an absence of credible proof in the form of reliable testimony to support Plaintiff's liability and/or damages claims.

**IT IS ORDERED** that judgment be entered in favor of Defendant in the instant case.

**AND IT IS SO ORDERED.**



THE HONORABLE ROBIN B. STILWELL  
Judge of the Thirteenth Judicial Circuit

December 22, 2011  
Greenville, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13<sup>TH</sup> JUDICIAL CIRCUIT

Our file no. 237536

MBNA AMERICA BANK, N.A., )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
MARK CHRISTIANSON, )  
 )  
Defendant. )

Case No. 2006-CP-23-3740

FILED CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMR

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### ORDER OF COURT

THIS MATTER comes before the Court on the Defendant's Motion to Vacate Judgment. Due notice was given and the matter was called in court on Thursday, September 6, 2007. Attorney David C. Alford appeared for the Defendant. Attorney Edward E. Gilbert appeared for the Plaintiff.

The Court will treat this as a Motion for Relief From Judgment in accordance with Rule 60(b) of the South Carolina Rules of Civil Procedure. The motion is addressed to the sound discretion of the Court. Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 375 S.E.2<sup>nd</sup> 321 (Ct. App. 1988); Ammons v. Hood, 288 S.C. 278, 341 S.E.2<sup>nd</sup> 816 (Ct. App. 1986).

The Court makes the following findings:

1. A Notice of Application to Confirm Arbitration Award was personally served upon Mark Christianson according to the Affidavit of Deputy Sheriff Ronnie M. Petit on May 11, 2006.
2. On June 1, 2006 Attorney Alford attempted to file an Objection to Notice of Application to Confirm Arbitration Award but it was rejected by the Clerk because no case number had been assigned. Attorney Alford sent a copy of the Objection to Attorney Gilbert, which was received by him on June 5, 2006.
3. On June 2, 2006 Attorney Gilbert sent an Affidavit of Service, an Application for Confirmation of Arbitration Award, a Certificate of Service, a proposed Order of Court and the filing fee to the Clerk with a copy to Mark Christianson.

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*Euf*

4. On June 13, 2006 the Clerk docketed the Application and apparently routed it to Judge Welmaker. On June 16, 2006 Judge Welmaker signed an Order of Court confirming the arbitration award and the Order was docketed by the Clerk on June 21, 2006.
5. On March 5, 2007 Attorney Gilbert sent a letter to Attorney Alford in which he advised of the entry of the aforementioned Order of Court and enclosed a copy of the Order.
6. On July 17, 2007 Attorney Alford filed the present Motion to Vacate Judgment.

Based upon these findings, the Court expresses concerns regarding the lack of a uniform procedure for the filing of applications for confirmation of arbitration awards. Attorney Gilbert has advised the Court that there are no rules governing this procedure although he has brought the matter to the attention of Judge William L. Howard, Sr., the Chairman of the Commission on Alternative Dispute Resolution. The establishment of uniform procedures would serve to protect the parties' due process rights.

The procedure for the filing of applications for confirmation of arbitration awards is statutory. Section 15-48-170 of the South Carolina Code of Laws, "Application to court," provides that:

Except as otherwise provided, an application to the court under this chapter shall be by motion and shall be heard in the manner and upon notice as provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in a civil action.

To prevail on a Motion for Relief from Judgment under Rule 60(b) the Defendant must show to the Court a meritorious defense to the underlying claim and the motion must be timely filed. Bowers v. Bowers, 304 S.C. 65, 403 S.E.2<sup>nd</sup> 127 (Ct. App. 1991). While the court has concerns about the procedures for confirmation, the Court finds that the motion is not timely filed and therefore must be denied. It is therefore,

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ORDERED ADJUDGED AND DECREED that the Defendant's Motion to Vacate Judgment is denied and Judge Welmaker's Order of Court filed on June 21, 2006 remains in full force and effect.

BY THE COURT:

Edward W. Miller, J.  
Edward W. Miller  
Circuit Judge

Dated: 7/26/08

Gerrit SC

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13th JUDICIAL CIRCUIT

2006 JUN 21 A 8:46 File No. 237536

MBNA AMERICA BANK, N.A., )  
Plaintiff, )

-vs-

FILED-CLERK OF COURT Case No. 2006-CP-23- 3740  
GREENVILLE CO. S.C.  
PAUL B. WILKENSIN

MARK CHRISTIANSON, )  
Defendant(s). )  
\_\_\_\_\_ )

ORDER OF COURT

THIS MATTER comes before the Court on the Application of the Plaintiff, MBNA AMERICA BANK, N.A., to confirm an Arbitration Award according to the Uniform Arbitration Act, South Carolina Code of Laws §§15-48-10 et seq., and

IT APPEARING TO THE COURT that on August 29, 2005, the National Arbitration Forum entered an Award in favor of the Plaintiff (Claimant), MBNA America Bank, N.A., and against the Defendant(s) [Respondent(s)], Mark Christianson, in the total amount of \$11,141.33 and it further appearing that due notice of the Award and of this Application has been given to the Defendants according to the Uniform Arbitration Act, it is therefore

ORDERED, ADJUDGED AND DECREED that the Arbitration Award is confirmed and judgment shall be entered according to South Carolina Code of Laws §15-48-150.

IT IS SO ORDERED.

BY THE COURT:

Paul B. Wilkensin, J.

Dated: 6/16/06

A Certified Copy  
Paul B. Wilkensin  
Clerk of Court C.P. & G.S.  
Greenville County, SC  
Dated 6-21-06

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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF GREENVILLE ) C/A NO: 10-CP-23 - 3793  
Mark Christianson )  
Plaintiff )  
v. )  
MBNA America Bank NA ) Jury Trial Requested  
Defendant )

CLERK OF COURT  
FILED  
GREENVILLE CO. S.C.

COMES NOW THE PLAINTIFF complaining of the Defendant and would respectfully show unto this Honorable Court the following:

1. Plaintiff is a resident of Greenville County.
2. Upon information and belief, Defendant MBNA America Bank NA acquired the assets of Fleet.. Some of the conduct may have arisen under the name of Fleet, and some of the conduct did in fact occur in the name of bank of America. Bank of America has offices in Spartanburg County.

**FACTS**

3. Absent any Civil Cover Sheet, or caption assigned by the Clerk of Court, MBNA served a Notice of Application to Confirm Arbitration Award dated May 3, 2006, upon Defendant Christianson as shown by Affidavit of Service of the Greenville County Sheriff's Office. Service was effective May 16, 2006.
4. The service of process did not include any copy of the underlying arbitration award to be enrolled, or the underlying arbitration agreement. Further, the Notice of Application contained as its Caption the entry "File No. 237536." No CP number was assigned.
5. On June 1, 2006, Defendant, through his counsel, attempted to file an Objection to Notice of Application, with service upon Plaintiff through its counsel. Defendant's counsel David C Alford filed his affidavit with accompanying disclosure by the Office of the Clerk of Court for Greenville County that the filing was not recorded absent an assignment of case Number.

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6. Plaintiff was served with the Objection on June 1, 2006, as verified on the Certificate of Service.

7. Despite the Objection, Plaintiff then undertook the following action:

On June 13, 2006, Plaintiff filed its Application for Confirmation of Arbitration Award, with attendant Civil Action Cover Sheet and a certificate of service upon the Defendant, paid its \$150 filing fee,

Upon filing on June 13, 2006, the Clerk of Court assigned the Application the case number 2006-CP-23-3740.

Plaintiff never attached its arbitration agreement or the arbitration award to any of its filings.

8. This filing was assigned MBNA v Christlanson, 2006-CP-23-3740.

9. With the Application, Plaintiff then filed a Motion for enrollment of the arbitration award. On June 19, 2006, the Clerk of Court issued its form Notice of Non-Jury Hearing Date setting July 27, 2006, as the date for the hearing. This standard form includes the following language for adherence by Plaintiff:

IT IS THE MOVING PARTY'S RESPONSIBILITY TO NOTIFY ALL COUNSEL AND/OR PARTIES OF THE DATE AND TIME OF THIS MOTION HEARING.

9. Despite setting the hearing date, it is believed Plaintiff submitted a proposed order for the Court. This is substantiated by the Findings set out in the Order of Court by the Honorable Edward Miller dated 9/26/07, wherein the Findings in ¶ 3 include:

3. On June 2, 2006 Attorney Gilbert [Plaintiff's counsel] sent an Affidavit of Service, an Application for Confirmation of Arbitration Award, A Certificate of Service, a proposed Order of Court and a filing fee to the Clerk of Court with a copy to Mark Christianson.
  
10. No hearing was held. Instead, the Honorable GE Welmaker issued its Order of 6/16/06, enrolling a judgment obtained by Plaintiff in the National Arbitration Forum as against Defendant.
11. The enrollment of judgment was achieved absent any personal jurisdiction. Over Plaintiff.
12. Plaintiff filed to vacate the enrollment of the judgment on the basis of lack of subject matter jurisdiction pursuant to Rule 60. As determined by the SC Supreme Court, the Motion was not applicable as the Circuit Court had subject matter jurisdiction.
13. However, pursuant to Rule 60, and as noted by the Supreme Court during oral argument, Plaintiff is entitled to file this matter pursuant to Rule 60

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. **This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.** During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

14. As filed by the Attorney General of the State of Minnesota, the use of the arbitration forum, as in the case with Plaintiff, was conducted by the National Arbitration Forum (NAF). As set forth in the suit, the use of NAF is a biased and inherent fraud upon consumers in the alleged independence of the forum for arbitration awards. The use of NAF for arbitration filings, as in this situation, is a fraud upon consumers. It is inherently deceptive, biased and violates one or more protections afforded by our courts, and by the SC Consumer Protection Code.
15. SC Code 37-5-107 mandates that a consumer cannot waive any rights pursuant to the SC Consumer protection Code. SC Code 37-5-113 states that any deficiency shall be asserted by the creditor in the county of the consumer's residence. SC Code 37-1-201(10) prohibits Defendant from requiring a separate forum apply.
16. Plaintiff has been damaged by the entry of fraudulent judgment in case 2006-CP-23-3740

**CAUSES OF ACTION  
FOR A FIRST CAUSE OF ACTION**

**Vacation of the Judgment**

17. The above paragraphs are restated.
18. Defendant willfully and recklessly failed to properly obtain personal jurisdiction over Plaintiff, failed to inform the Court of the objection; and committed fraud upon the trial court in submitting its motion for enrollment.
19. Plaintiff seeks to vacate the underlying judgment, 2006-CP-23-3740, and for costs and fees .

**FOR A SECOND CAUSE OF ACTION**

**UTPA**

20. The above paragraphs are restated.

21. Defendant subverted the procedures for the filing of the suit, committed fraud upon the court.
22. Defendant violated one or more statutes of the SC Consumer Protection Code.
23. Defendant engaged the services of the NAF, a biased and unfair forum, to further its scheme..
24. The blatant unlawful process followed by Defendant, and the intentional fraud upon the trial court, can be and has the repetition for being repeated on other members of the public.
25. Plaintiff has been damaged by the knowing, willful and malicious conduct of Defendant.
26. The complained of conduct is a violation of SC Code 39-5-20.
27. Plaintiff seeks damages pursuant to SC Code 39-5-140 and costs and attorney's fees..

**FOR A THIRD CAUSE OF ACTION**

**ABUSE OF PROCESS**

28. The above paragraphs are restated.
29. The blatant unlawful consists of two elements: an ulterior purpose, and a willful act in the use of the that is not proper in the regular conduct of the proceeding. The ulterior purpose is to collect on a debt by the use of foreign arbitration that is biased, designed to harm consumers, followed by Defendant, and the intentional fraud upon the trial court, can be and has the repetition for being repeated on other members of the public.
30. Plaintiff has been damaged by the willful and wanton conduct of Defendant.
31. Plaintiff seeks actual and punitive damages..

**FOR A FOURTH CAUSE OF ACTION**

**NEGLIGENCE**

32. The above paragraphs are restated.
33. Defendant's violation of the Rules of Civil procedure, and the various statutes of the SC Consumer Protection Code, and the knowing use of NAF, breached duty to Plaintiff. The violation of statutes designed to protect persons such as Plaintiff constitutes per se negligence.
34. Plaintiff has been damaged by the willful and wanton conduct.
35. e blatant unlawful consists of two elements: an ulterior purpose, and a willful act in the use of the that is not proper in the regular conduct of the proceeding. The ulterior purpose is to collect on a debt by the use of foreign arbitration that is biased, designed to harm consumers, followed by Defendant, and the intentional fraud upon the trial court, can be and has the repetition for being repeated on other members of the public.
36. Plaintiff has been damaged by the willful and wanton conduct of Defendant.
37. Plaintiff seeks actual and punitive damages.

**FOR A FIFTH CAUSE OF ACTION**

**Violation of the SCCPC**

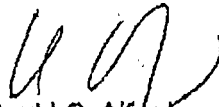
38. The above paragraphs are restated.
39. Defendant violated one or more the SCCPC statutes in mandating the foreign arbitration forum.
40. Plaintiff seeks damages for violation of one or more sections in the title pursuant to SC Code 37-5-203(8).

**Wherefore, Plaintiff prays for relief as follows:  
Vacating the judgment entered against Plaintiff;  
And the relief set forth above.**

And, such other relief as the Court may award at law or equity.

**JURY TRIAL REQUESTED**

**DAVID C. ALFORD, P.C.**



David C. Alford  
P.O. Box 6326  
Spartanburg, South Carolina 29304  
(864) 574-0870

Spartanburg, South Carolina  
May 10, 2010

**ATTORNEY FOR PLAINTIFFS**

10-CP-23-3793 ROA 19

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF GREENVILLE ) THIRTEENTH JUDICIAL CIRCUIT

Mark Christianson, 2010 JUL 20 AM 11:02 ) CIVIL ACTION NUMBER: 10-CP-23-3793

FILED - COURT OF COMMON PLEAS  
GREENVILLE, S.C.  
JUL 20 2010

Plaintiff )  
vs. ) ANSWER OF DEFENDANT  
MBNA America Bank NA, ) MBNA AMERICA BANK NA  
(General Denial)  
Defendant. ) (Jury Trial Requested)

Defendant MBNA America Bank NA answers the Complaint as follows:

**FOR A FIRST DEFENSE**

1. Defendant MBNA America Bank NA hereby answers the Complaint with a general denial by denying each and every allegation not specifically admitted and by demanding strict proof thereof.

**FOR A SECOND DEFENSE**

2. The Complaint fails to set forth sufficient facts to constitute a colorable cause of action and, therefore, should be dismissed pursuant to Rule 12(b)(6), SCRPC.

**FOR A THIRD DEFENSE**

3. Plaintiff's claims are barred by the doctrine(s) of res judicata and/or collateral estoppel. See MBNA America Bank NA v. Mark Christianson, Memorandum Opinion No. 2010-MO-003 (Feb. 1, 2010), wherein the South Carolina Supreme Court affirmed the decision of the Circuit Court pursuant to Rule 220(b)(1), SCACR, which disposed of the parties' dispute, as articulated within Plaintiff's May 13, 2010 Complaint.

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WHEREFORE, Defendant respectfully requests that:

- a. Plaintiff takes nothing by this action;
- b. A judgment of dismissal be entered in favor of Defendant;
- c. Defendant be awarded the costs of suit incurred; and
- d. Defendant be awarded such other and further relief as the Court deems proper.

Respectfully submitted,  
COLLINS & LACY, P.C.



By:

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ATTORNEYS FOR DEFENDANT

(Jury Trial Requested)

Columbia, South Carolina

19 July, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C/A NO: 10-CP- 23 - 3793
	)	
Mark Christianson	)	Plaintiff's Brief
Plaintiff	)	
v.	)	
MBNA America Bank NA	)	
Defendant	)	

---

**STATEMENT OF THE ISSUES**

Plaintiff originally filed a motion to vacate a judgment entered on a foreign arbitration award. MBNA v Christianson 2006-CP-23-3740. The Motion was denied by the trial court, and the issue was appealed. The SC Supreme Court heard the appeal, and denied the appeal. The Motion was filed under Rule 60, SCRPC, and the Motion, in itself, was not timely made. However, as pointed out by the Supreme Court, the Plaintiff has the right under Rule 60 to file a separate suit for relief. This suit followed.

Essentially, Plaintiff seeks to vacate the judgment. And, because of the conduct by MBNA in obtaining the judgment, Plaintiff seeks recovery of damages for the negligence, unfair trade practices and abuse of process., and SC Consumer Protection Code.

The Record on Appeal (ROA) from the appeal in the case 2006-CP-23-3740 is attached as the main Exhibits to be submitted. The below brief references the pages of the ROA. A filing by the Attorney General of Minnesota alleging deceptive practices involving the National Arbitration Association is attached, as referenced in the Complaint.

## HISTORY OF THE CASE

Absent any Civil Cover Sheet, or caption assigned by the Clerk of Court, MBNA served a Notice of Application to Confirm Arbitration Award dated May 3, 2006 (ROA 3), upon Defendant Christianson as shown by Affidavit of Service of the Greenville County Sheriff's Office (ROA 4). Service was effective May 16, 2006.

It is significant to note that this service did not include any copy of the underlying arbitration award to be enrolled, or the underlying arbitration agreement. Further, the Notice of Application contained as its Caption the entry "File No. 237536." No CP number was assigned.

On June 1, 2006, Defendant, through his counsel, attempted to file an Objection to Notice of Application (ROA 5), with service upon Plaintiff through its counsel. Defendant's counsel David C. Alford filed his affidavit with accompanying disclosure (ROA 8) by the Office of the Clerk of Court for Greenville County that the filing was not recorded absent an assignment of case Number.

Plaintiff was served with the Objection on June 1, 2006, as verified on the Certificate of Service (ROA 7).

Despite the Objection, Plaintiff then undertook the following action:

On June 13, 2006, Plaintiff filed its Application for Confirmation of Arbitration Award, with attendant Civil Action Cover Sheet and a certificate of service upon the Defendant (ROA 9); paid its \$150 filing fee,

Upon filing on June 13, 2006, the Clerk of Court assigned the Application the case number 2006-CP-23-3740.

Plaintiff never attached its arbitration agreement or the arbitration award to any of its filings.

With the Application, Plaintiff then filed a Motion for enrollment of the arbitration award (ROA 9). On June 19, 2006, the Clerk of Court issued its form Notice of Non-Jury Hearing Date (ROA 16) setting July 27, 2006, as the date for the hearing. This standard form includes the following language for adherence by Plaintiff:

**IT IS THE MOVING PARTY'S RESPONSIBILITY TO NOTIFY ALL COUNSEL AND/OR PARTIES OF THE DATE AND TIME OF THIS MOTION HEARING.**

Despite setting the hearing date, it is believed Plaintiff submitted a proposed order for the Court. This is substantiated by the Findings set out in the Order of Court by the Honorable Edward Miller dated 9/26/07 (ROA 1), wherein the Findings in ¶ 3 include:

3. On June 2, 2006 Attorney Gilbert [Plaintiff's counsel] sent an Affidavit of Service, an Application for Confirmation of Arbitration Award, A Certificate of Service, a proposed Order of Court and a filing fee to the Clerk of Court with a copy to Mark Christianson.

No hearing was held. Instead, the Honorable GE Welmaker issued its Order of 6/16/06 (ROA 2), enrolling a judgment obtained by Plaintiff in the National Arbitration Forum as against Defendant.

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Following the entry of the Order enrolling the judgment, on June 29, 2006, Plaintiff then clocked with the Clerk of Court its purported copy of the underlying arbitration agreement (ROA 17). It is significant to note that the filing was not served upon the Defendant, and was filed after the Court signed the proposed Order enrolling the judgment on June 16, 2006. Further, this filing is absent any supporting affidavit, or any other indicia showing the agreement even pertains to the Defendant.

As set out In Defendant Mark Christianson Affidavit(ROA 57), Appellant never received notice of the hearing or any other communication regarding the proposed Order or the entry of the Order, until he attempted to refinance his mortgage and was informed of the enrolled judgment.

Defendant filed his Motion to vacate the judgment (ROA 25). Defendant filed his Motion and supporting Memorandum (ROA 29), along with the supporting affidavit of Mark Christianson (ROA 57) and of his counsel David C. Alford (ROA 58).

In response to the Motion, Respondent filed its Memorandum of Law (ROA 42). With that Memorandum, Plaintiff attached its copy of the Award issued by the National Arbitration Forum. This is the first record of such Order issued by the Arbitration proceeding.

Also attached to MBNA's Memorandum is a letter addressed to Defendant's counsel, dated March 5, 2007 (ROA 24), concerning another matter that was before the Court of Appeals. This letter is from Plaintiff's counsel and addresses a Return to Respondents Motion to Dismiss an Appeal filed by this same Plaintiff in another matter (see MBNA v. Christianson, (Opinion No. 4349 Heard February

5, 2008 – Filed March 4, 2008)<sup>1</sup> dealing with an unsuccessful appeal by MBNA to overturn a trial court order denying enrollment of arbitration.

By Affidavit of Defendant's counsel David C. Alford (ROA 58), counsel denies receiving a copy of any hearing in this matter, nor the Order issued by the Court, nor the Order purportedly attached to the March 5 letter.

Following a hearing on September 6, 2007, the Honorable Edward Miller issued his Order on 9/26/07 (ROA 1) denying Defendant's Motion to vacate the judgment, and an Appeal followed, which was denied as not made timely as a Motion under Rule 60. However, Plaintiff retains the right to pursue a suit. This suit followed.

## ARGUMENT

### **Plaintiff was denied Procedural and Substantive Due process**

MBNA filed its Notice of Application [for enrollment of an arbitration award] on Defendant, with no caption, and absent any filing with the Clerk of Court. When Defendant attempted to file an Objection, the Objection could not be clocked into the record because of the absence of a Caption number. Then, despite being served with the Objection, MBNA failed to disclose to the court that it received an Objection. Later, MBNA clocks in a Civil Cover sheet, a Motion to enroll the judgment, but MBNA never sends a Notice of Hearing date as mandated by the Clerk's office. Instead, MBNA submits a form order for its enrollment of a judgment for the Court to sign, all the while failing to advise the Court of any Objection filed by the Defendant. See ROA 64 – 68; Tr. p. 3, l. 10 –p. 7, l. 13.

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<sup>1</sup> This referenced appeal involved the same parties, denying the enrollment of an arbitration award on another matter involving arbitration.

This procedural history turns the Rules of Civil Procedure, and any semblance to procedural or substantive due process, on its head.

The Trial Court properly recognized the troubling aspect of this history. As acknowledged by the Trial Court, this particular procedural history denies Mr. Christianson due process of law. He filed his objection [to the application to enroll the arbitration judgment]. He was not given an opportunity to be heard.

ROA 73; Tr. p. 14, l 19-22. See also the comments by the Trial Court ROA 71 p, 10, l. 9-13; ROA 73, p. 14, l. 15 – ROA 78, p. 19, l. 12; ROA 79, p. 21, l. 6 – ROA 80, p. 22, l. 19; See also Order of October 1, 2007 (ROA 1), page 2 (“express[ing] concern regarding the lack of a uniform procedure ... [and] [t]he establishment of uniform procedures would serve to protect the parties’ due process rights.”)

Finally, the Order of October 1, 2006, denies the motion under Rule 60(b) finding the motion was not timely filed. Order of October 1, 2006, at 2 (ROA 1). There was no discussion in the transcript concerning the meritorious defense, although the issue of lack of subject matter jurisdiction was raised in the Motion to vacate. The only notice relied upon by MBNA and the Court is a letter to Defendant’s counsel regarding another matter on appeal.

Rule 60(b), SCRCP, reads

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud, misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. **This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.** During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Emphasis added

This is the essence of the procedural and substantive due process that Appellant was denied.

The process for filing and serving an Application to enroll a foreign arbitration award is not precise. The SCRCP is not clear on whether the filing of such Application is a pleading. However, the Notice of Application filed by Plaintiff asserts the filing is made pursuant to the SC Uniform Arbitration Act, SC Code 15-48-10 et seq.

The SC UAA reads in pertinent section:

§ 15-48-170. Applications to court.

Except as otherwise provided, an application to the court under this chapter shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. ***Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.***

Emphasis added

Rule 3, SCRCP, governs the commencement of an action; and states the proceedings are commenced when the summons and complaint are filed with the Clerk of Court. Thus, there can be no service of the pleadings until the matter has been clocked with the Clerk. ***It is undisputed that the only notice to Defendant Appellant of the Application was the Notice of Application, which was never clocked with the Clerk of Court prior to service.***

In violation of SC Code 15-48-170, neither the Notice of Application nor the Application itself was clocked into the Clerk of Court's office until June 13, 2007. Both services, the Greenville Sheriff on May 11 (the Notice of Application) and the purported mailing on May 30 (the Application) were "served" prior to any filing with the Clerk of Court office.

As asserted in Defendant Appellant Memorandum (ROA 29):

The Certificate of Service completed by the Greenville County Sheriff Office contains "case No: 237536" This certificate shows service on May 11 and executed by the Sheriff's Office on May 16. The copy "clocked" in June 13, 2006 contains the stamped Clerk of Court caption 2006-CP-23-3740. The "case no 237536" referenced and reflecting the document served by the Sheriff's department is for a prior case MBNA v. Christianson 2005 -CP-23-7536.<sup>2</sup> This case denied the arbitration filing by MBNA (not sure if different accounts as nothing has been presented to differentiate this matter with the prior Christianson matter), which MBNA had on appeal at that time. The certificate is attached with the "case no" and caption circled.

MBNA failed to comply with any of the rules in enrolling its arbitration judgment, and failed to comply with any service requirement. This is a fatal flaw, and any enrollment should be vacated.

MBNA admits the lack of certainty in the filing of these type of foreign arbitration awards. See ROA 69, Tr. p. 8, l. 6- ROA 70, p. 9, l. 12. (admitting there are "no rules governing the application for confirmation" and that "the initial procedure of filing the application is not working.")

#### **MBNA failed to advise the Court of Plaintiff's Objection**

Attorneys are officers of the Court. Attorneys are subject to Rule 407, Rules of Professional Conduct, and specifically Rule 3.3(d), Candor Toward the Tribunal. Apparently, MBNA counsel acknowledged receiving the Objection served by Defendant, but failed to so inform the Court when it

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<sup>2</sup> As argued at the hearing, it is unclear whether this arbitration award is for the same award as in a prior matter between the parties, or for a different account. See Tr. 3, l.19-24.

decided to submit its proposed order for the judgment. MBNA counsel stated to the Trial Court

On June 5<sup>th</sup>, we received the objection to the notice of application. I assumed it had been filed with the Clerk. I only learned very recently that this was not the case. On June 16<sup>th</sup>, Judge Welmaker signed the order of court confirming the arbitration.

ROA 70, Tr. p. 9, l. 21-25.

Further, MBNA admits

And we had already sent the application for filing at that point [upon receiving the Objection]. There are some unfortunate timing issues in this case."

ROA 73, Tr. p. 14, l 2-4 (emphasis added).

It is interesting to question how counsel could "assume" it had been filed with the Clerk when MBNA never had filed anything with the Clerk's office until June 13. Obviously, counsel never informed the Court of the Objection it had received despite submitting a proposed order. But despite its admission to knowing of the Objection being filed, MBNA then dismisses the appearance of counsel or the Objection itself by arguing as follows:

Now, we sent the application to Mr. Christianson on June 2<sup>nd</sup> of last year. At that point Mr. Alford [Christianson's attorney] was not in the case. Judge Welmaker signed the order. It was sent to the Clerk for filing. It was distributed by the Clerk. I had nothing to do with that.

ROA 71, Tr. p. 10., l. 17-21.

MBNA had knowledge of the Objection and appearance by counsel, yet MBNA failed to provide any copy of the proposed order, or other documents, submitted to the Court to opposing counsel or the Defendant.

MBNA counsel acknowledges that the applications to enroll arbitration awards is in the "development stage." ROA 71, Tr. p. 10, l. 7-8. and further admits

Now, in some counties, when that order [referring to Judge Welmaker's order enrolling the judgment] is returned, they notify all parties. I found out recently that Greenville County does not so that. *This is one of the reasons we need rules governing this procedure.*

ROA 71, Tr. p. 10., l. 22-25 (emphasis added).

MBNA's defense to its shabby procedural process is to shrug off any concern as only "unfortunate timing issues"

MBNA places all burden on notification upon the Clerk of Court. However, its service on Defendant was prior to any filing with the Clerk. It submitted a proposed order for Judge Welmaker to sign then never bothered to inform the Trial Court it had received an Objection....abdicating its Rule of Professional Responsibility in hope the Clerk of Court would so inform the Trial Court.

Finally, even though MBNA admits the Clerk's office never served the Order enrolling the judgment, MBNA relies upon the inclusion in a letter to Defendant's counsel, concerning another matter on appeal, as notice of the enrolled Order.. See letter Exhibit to MBNA Memorandum of Law, letter dated March 5, 2007 from Edward Gilbert to David C. Alford (ROA 24, ROA 42). See also Affidavit of David C. Alford (ROA 58). However, as the Objection never could be clocked, counsel could not be counsel of record, and the Order was never served upon Christianson. Christianson was informed of the entry of the judgment when he attempted to refinance his residence. See Affidavit of Christianson (ROA 57).

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**MBNA Arbitration enrollment was defective**

A recent case is seminal with respect to the process involving enrollment of a foreign arbitration award, and specifically an award obtained by MBNA before the National Arbitration Forum. MBNA v. Christianson (Opinion No. 4349 Heard February 5, 2008 – Filed March 4, 2008)<sup>3</sup>

Before a circuit court confirms an arbitration award subject to the Federal Arbitration Act, there must be evidence of an arbitration agreement. 9 U.S.C.A. § 13 (1999).

At no time prior to the Trial Court signing the proposed order on June 16, 2006, did MBNA attach with the original filings any copy of the underlying arbitration agreement. Further, MBNA had not submitted the award.

Only after the Order of June 16, 2006 was signed, did MBNA submit to the clerk of court for filing a purported arbitration agreement (ROA 17). This "Agreement" is not signed, has no affidavit, and has no indicia that it even applies to this Defendant.

As set out in the procedural history, and as running afoul of the requirements recognized in Christianson, the failure to attach the underlying arbitration agreement and the arbitration award when first enrolling the application for enrollment of the award is fatal. Neither of these documents was attached. The arbitration agreement was submitted absent any affidavit or any other indicia that it was enforceable as against this Appellant, and after the order was signed by Judge Welmaker.

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<sup>3</sup> This referenced appeal involves the same parties, denied the enrollment of an arbitration award on another matter involving arbitration.

## The Judgment should be vacated

As allowed by Rule 60, this judgment should be vacated. MBNA's conduct in obtaining the judgment was essentially fraud upon the court, woefully absent in compliance with the rules to enroll an arbitration award, and failed to follow any of the rules of civil procedure.

### II. As to Negligence, Unfair Trade Practices and Abuse of Process.

The conduct of MBNA in enrolling an arbitration amounts to willful negligence as to adherence to the rules of civil procedure. The rules are designed, especially with respect to serving summons and complaints, to place defendants on notice of the suit. The rules are designed to protect persons such as Plaintiff.

Under the common law, violation of statutes, and rules, designed to protect persons such as plaintiff is negligence per se. The conduct is willful and wanton.

Plaintiff is entitled to damages, even if \$1 nominal, and an award of punitive damages.

MBNA does not argue that their conduct is limited to Plaintiff. The manner in which it enrolls foreign arbitration judgments is unfair and deceptive not only to Plaintiff, but to the judiciary system, and any person searching public records for judgments against persons such as Plaintiff.

Finally, denying Plaintiff an opportunity to challenge the arbitration award by its negligent enrollment action is an abuse of the process involving this civil court. Knowing Christianson objected to the other arbitration "award" and successfully defeating that enrollment, MBNA chose to twist the rules in this forum to obtain its end from the arbitration process.

MBNA's use of the arbitral forum violates SC Consumer Protection Code, specifically SC 37-5-113, which reads

**§37-5-113. Venue, complaint, stay of enforcement of or relief from default judgment**

An action by a creditor against a consumer arising from a consumer credit transaction shall be brought in the county of the consumer's residence [Section **37-1-201(6)**], unless an action is brought to enforce an interest in land securing the consumer's obligation, in which case the action may be brought in the county in which the land or a part thereof is located. If the county of the consumer's residence has changed, the consumer upon motion may have the action removed to the county of his current residence. If the residence of the consumer is not within this State, the action may be brought in the county in which the sale, lease or loan was made. If the initial papers offered for filing in the action on their face show noncompliance with this section, the clerk of court shall not accept them. The court may change the place of trial as otherwise provided by law.

Moreover, SC Code 37-1-201(10) would preclude the use of a foreign forum.

(10) Each of the following agreements or provisions of an agreement by a consumer who is a resident of this State at the time of a consumer credit transaction is invalid with respect to the transaction:

- (a) that the law of another jurisdiction apply;
- (b) that the consumer consents to be subject to the process of another jurisdiction;
- (c) that the consumer appoints an agent to receive service of process;
- (d) that fixes venue;

(e) that the consumer consents to the jurisdiction of the court that does not otherwise have jurisdiction

Finally, Plaintiff cannot waive these rights

**§ 37-1-107. Waiver; agreement to forego rights; settlement of claims**

(1) Except as otherwise provided in this title, a buyer, lessee, or debtor may not waive or agree to forego rights or benefits under this title.

It is a basic protection of the SC Consumer Protection Code that any deficiency asserted by MBNA had to be conducted in the county of Greenville. This was not done.

Plaintiff is entitled to damages pursuant to SC Code 37-5-202(8) which reads

(8) In an action in which it is found that a creditor has violated this title, the court shall award to the consumer the costs of the action and to his attorneys their reasonable fees. In determining attorney's fees, the amount of the recovery on behalf of the consumer is not controlling.

September 15, 2011

Respectfully submitted,



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David C. Alford, P.C.  
P. O. Box 6326  
Spartanburg, South Carolina 29304  
(864) 574-0870  
Counsel for Appellant Christianson

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13<sup>TH</sup> JUDICIAL CIRCUIT

Our file no. 237536

MBNA AMERICA BANK, N.A., )  
Plaintiff, )  
-vs- )  
MARK CHRISTIANSON, )  
Defendant. )

Case No. 2006-CP-23-3740

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENS/SHIR

2007 OCT -1 P 12:29

ORDER OF COURT

THIS MATTER comes before the Court on the Defendant's Motion to Vacate Judgment. Due notice was given and the matter was called in court on Thursday, September 6, 2007. Attorney David C. Alford appeared for the Defendant. Attorney Edward E. Gilbert appeared for the Plaintiff.

The Court will treat this as a Motion for Relief From Judgment in accordance with Rule 60(b) of the South Carolina Rules of Civil Procedure. The motion is addressed to the sound discretion of the Court. Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 375 S.E.2<sup>nd</sup> 321 (Ct. App. 1988); Ammons v. Hood, 288 S.C. 278, 341 S.E.2<sup>nd</sup> 816 (Ct. App. 1986).

The Court makes the following findings:

1. A Notice of Application to Confirm Arbitration Award was personally served upon Mark Christianson according to the Affidavit of Deputy Sheriff Ronnie M. Petit on May 11, 2006.
2. On June 1, 2006 Attorney Alford attempted to file an Objection to Notice of Application to Confirm Arbitration Award but it was rejected by the Clerk because no case number had been assigned. Attorney Alford sent a copy of the Objection to Attorney Gilbert, which was received by him on June 5, 2006.
3. On June 2, 2006 Attorney Gilbert sent an Affidavit of Service, an Application for Confirmation of Arbitration Award, a Certificate of Service, a proposed Order of Court and the filing fee to the Clerk with a copy to Mark Christianson.

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*EL*

4. On June 13, 2006 the Clerk docketed the Application and apparently routed it to Judge Welmaker. On June 16, 2006 Judge Welmaker signed an Order of Court confirming the arbitration award and the Order was docketed by the Clerk on June 21, 2006.
5. On March 5, 2007 Attorney Gilbert sent a letter to Attorney Alford in which he advised of the entry of the aforementioned Order of Court and enclosed a copy of the Order.
6. On July 17, 2007 Attorney Alford filed the present Motion to Vacate Judgment.

Based upon these findings, the Court expresses concerns regarding the lack of a uniform procedure for the filing of applications for confirmation of arbitration awards. Attorney Gilbert has advised the Court that there are no rules governing this procedure although he has brought the matter to the attention of Judge William L. Howard, Sr., the Chairman of the Commission on Alternative Dispute Resolution. The establishment of uniform procedures would serve to protect the parties' due process rights.

The procedure for the filing of applications for confirmation of arbitration awards is statutory. Section 15-48-170 of the South Carolina Code of Laws, "Application to court," provides that:

Except as otherwise provided, an application to the court under this chapter shall be by motion and shall be heard in the manner and upon notice as provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in a civil action.

To prevail on a Motion for Relief from Judgment under Rule 60(b) the Defendant must show to the Court a meritorious defense to the underlying claim and the motion must be timely filed. Bowers v. Bowers, 304 S.C. 65, 403 S.E.2<sup>nd</sup> 127 (Ct. App. 1991). While the court has concerns about the procedures for confirmation, the Court finds that the motion is not timely filed and therefore must be denied. It is therefore,

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EJ

ORDERED ADJUDGED AND DECREED that the Defendant's Motion to Vacate Judgment is denied and Judge Welmaker's Order of Court filed on June 21, 2006 remains in full force and effect.

BY THE COURT:

Edward W. Miller

Edward W. Miller  
Circuit Judge

Dated: 7/26/07

Gerrit SC

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13th JUDICIAL CIRCUIT

2006 JUN 21 A 8:46 File No. 237536

MBNA AMERICA BANK, N.A., )  
Plaintiff, )

-vs-

FILED-CLERK OF COURT Case No. 2006-CP-23- 3740  
GREENVILLE CO. S.C.  
PAUL B. WICKENHAUSEN

MARK CHRISTIANSON, )  
Defendant(s). )

**ORDER OF COURT**

THIS MATTER comes before the Court on the Application of the Plaintiff, MBNA AMERICA BANK, N.A., to confirm an Arbitration Award according to the Uniform Arbitration Act, South Carolina Code of Laws §§15-48-10 et seq., and

IT APPEARING TO THE COURT that on August 29, 2005, the National Arbitration Forum entered an Award in favor of the Plaintiff (Claimant), MBNA America Bank, N.A., and against the Defendant(s) [Respondent(s)], Mark Christianson, in the total amount of \$11,141.33 and it further appearing that due notice of the Award and of this Application has been given to the Defendants according to the Uniform Arbitration Act, it is therefore

ORDERED, ADJUDGED AND DECREED that the Arbitration Award is confirmed and judgment shall be entered according to South Carolina Code of Laws §15-48-150.

IT IS SO ORDERED.

BY THE COURT:

*Paul B. Wickenhausen*, J.

Dated: 6/16/06

A Certified Copy  
*Paul B. Wickenhausen*  
Clerk of Court C.P. & G.S.  
Greenville County, SC  
Dated 6-21-06

ROA- 2

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13<sup>TH</sup> JUDICIAL CIRCUIT

File no. 237536

MBNA AMERICA BANK, N.A. )  
Plaintiff, )  
-vs- )  
MARK CHRISTIANSON )  
Defendant(s). )

NOTICE OF APPLICATION  
TO CONFIRM ARBITRATION  
AWARD


To: Mark Christianson  
108 Muirwood Dr.  
Mauldin, SC 29662-2325

TAKE NOTICE that the Plaintiff herein has filed or will file an Application for Confirmation of the Arbitration Award entered on August 29, 2005, in accordance with the Uniform Arbitration Act, South Carolina Code of Laws §§15-48-10 et seq., it being more than ninety (90) days since the entry of the award and no application having been filed to vacate, modify or correct the award.

This notice is hereby served upon you in accordance with South Carolina Code of Laws §15-48-170.

Respectfully submitted,

ERIC M. BERMAN, P.C.

By:   
Edward E. Gilbert, SC Bar #71948  
5900 Core Avenue, Suite 402  
North Charleston, SC 29406  
(843) 414-5500

At North Charleston, South Carolina  
May 3, 2006

1000 MAY 11 A 11:27  
GREENVILLE COUNTY  
SHERIFF'S OFFICE  
CIVIL DIVISION  
ROA-3

10-CP-23-3793 ROA 43

Service of Process by:  
731340001

Court Date: .....



# Greenville County Sheriff's Office

## Civil Division

601 E. McBee Ave., Suite 210  
Greenville, South Carolina 29601  
Phone (864) 282-0008 Fax (864) 235-9171



Party Requesting Service

ERICM. BERMAN, P.C.  
Attn: Ms. Helen M. Breen  
5900 Core Road  
North Charleston, SC 29406

13 12:14

2006-CP-23-3740

FILED CLERK OF COURT  
GREENVILLE CO. SC

### AFFIDAVIT OF SERVICE Mark Christianson

MBNA America Bank, N.A., et. al., Plaintiff(s)

vs.

Mark Christianson, et. al., Defendant(s)

Case No: 237536

Name of Deputy: Ronnie M. Pettit, undersigned, being duly sworn, deposes and says that at time of service, s/he was over the age of twenty-one, was not a party to this action;

Date/Time of Service that on 11-May-2006 06:05 pm

Place of Service: at 108 Mulrwood Dr., City of Mauldin, State of SC

Documents Served: the undersigned served the documents described as:  
Notice of Application to Confirm Arbitration Award

Service of Process on, Person Served, and Method of Service: A true and correct copy of the aforesaid document(s) was served on:  
Mark Christianson

By personally delivering them into the hands of same.

Signature of Deputy: Subscribed and sworn to before me this 16th day of May, 2006.

Undersigned declares under penalty of perjury that the foregoing is true and correct.

*William H. Smith Jr.*  
Notary Public for South Carolina  
My Commission Expires: 10/27/2008

*Ronnie M. Pettit*  
Ronnie M. Pettit

10-CP-23-3793 ROA 44

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

MBNA America NA )

Plaintiff )

v. )

Mark Christianson )

Defendants )

IN THE COURT OF COMMON PLEAS

CA: 06-CP-23-No Number Assigned

File no 237536

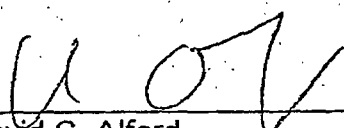
Objection to Notice of Application  
to Confirm Arbitration Award

Defendant was served by the Sheriff's Office with a copy of Exhibit 1 attached hereto. The Notice of Application states it is served in accordance with SC Code 15-48-170.

Defendant objects to the Notice and moves to deny the application. Moreover, service was insufficient, there is lack of subject matter jurisdiction, and the award was obtained by sham or non-existent proceedings.

Defendant moves to vacate the award pursuant to SC Code 15-48-130.

DAVID C. ALFORD, P.C.

  
David C. Alford  
P.O. Box 6326  
Spartanburg, South Carolina 29304  
(864) 574-0870

ATTORNEY FOR DEFENDANT

Spartanburg, South Carolina  
June 1, 2006

10-CP-23-3793 ROA 45

ROA- 5  
1

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13<sup>TH</sup> JUDICIAL CIRCUIT

File no. 237536

MBNA AMERICA BANK, N.A. )  
Plaintiff, )  
-vs- )  
MARK CHRISTIANSON )  
Defendant(s). )

NOTICE OF APPLICATION  
TO CONFIRM ARBITRATION  
AWARD


To: Mark Christianson  
108 Muirwood Dr.  
Mauldin, SC 29662-2325

TAKE NOTICE that the Plaintiff herein has filed or will file an Application for Confirmation of the Arbitration Award entered on August 29, 2005, in accordance with the Uniform Arbitration Act, South Carolina Code of Laws §§15-48-10 et seq., it being more than ninety (90) days since the entry of the award and no application having been filed to vacate, modify or correct the award.

This notice is hereby served upon you in accordance with South Carolina Code of Laws §15-48-170.

Respectfully submitted,

ERIC M. BERMAN, P.C.

By:   
Edward E. Gilbert, SC Bar #71948  
5900 Core Avenue, Suite 402  
North Charleston, SC 29406  
(843) 414-5500

At North Charleston, South Carolina  
May 3, 2006

1006 MAY 11 A 11:2  
GREENVILLE COUNTY  
SHERIFF'S OFFICE  
CIVIL DIVISION  
ROA- 6  
10-CP-23-3793 ROA 46

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE )

CA: 06-CP-23-No Number Assigned

MBNA America NA )

File no 237536

Plaintiff )

v. )

Certificate of Mailing

Mark Christianson )

Defendants. )

The undersigned does hereby certify that he has this date served Defendant's Objection to the Notice of Application upon the Plaintiff by depositing the same in the United States mail, with sufficient postage duly attached thereto, to the following address:

Edward E. Gilbert  
5900 Core Avenue Ste 402  
North Charleston, SC 29406

As attorney for Plaintiff

DAVID C. ALFORD, P.C.



David C. Alford  
P.O. Box 6326  
Spartanburg, South Carolina 29304  
(864) 574-0870

Spartanburg, South Carolina  
June 1, 2006

ATTORNEY FOR DEFENDANT

10-CP-23-3793 ROA 47

ROA- 7

1



Office of the Clerk of Court  
 Greenville, South Carolina  
 Paul B. Wickensimer  
 Clerk of Court

Circuit Court Division  
 Greenville County Courthouse  
 305 East North Street  
 Greenville, South Carolina 29601  
 (864) 467-8551 FAX (864) 467-8540

Family Court Division  
 301 University Ridge  
 Post Office Box 757  
 Greenville, South Carolina 29602  
 (864) 467-5800 FAX (864) 467-5856

To: \_\_\_\_\_

From: CLERK OF COURT, GREENVILLE

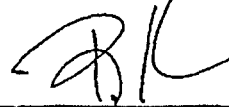
RE: \_\_\_\_\_

The above-referenced document is being returned for the following reason(s):

- (1)  Instrument not signed/dated.
- (2)  Must include Civil cover Sheet SCCA234 with all original pleadings.  
*Downloadable file available at [www.sccourts.org](http://www.sccourts.org) Select FORMS; Choose COMMON PLEAS, then SUBMIT*
- (3)  Motion Fee of \$25 is required for all Motions and proposed Orders (unless exemption claimed)
- (4)  Must have Motion and Order Information Form SCCA233 for all Motions and proposed Orders.  
*Downloadable file available at [www.sccourts.org](http://www.sccourts.org) Select FORMS; Choose COMMON PLEAS, then SUBMIT*
- (5)  Insufficient amount of filing fee. Correct amount fee: \_\_\_\_\_
- (6)  Copy. Must file original.
- (7)  Not a Greenville County Case.
- (8)  Venue change to: \_\_\_\_\_
- (9)  Check or money order must be payable to Greenville County Clerk of Court.
- (10)  Case ended: Date: \_\_\_\_\_ Reason ended: \_\_\_\_\_
- (11)  Check not signed.
- (12)  Case not found with this caption.

Other: Case number needed.

Please make the requested changes and return the documents to our office for filing. Thank you.

Staff signature  Date 6/14/06 ROA- 8

10-CP-23- 3793 ROA 48

**ERIC M. BERMAN, P.C.**

ATTORNEYS AT LAW

637 WYCKOFF AVENUE  
WYCKOFF, NEW JERSEY 07481

500 WEST MAIN STREET, SUITE 212  
BABYLON, NEW YORK 11702-3035

500 NORTH GULPH ROAD, SUITE 350  
KING OF PRUSSIA, PENNSYLVANIA 19406

2990 BETHESDA PLACE, SUITE 603D  
WINSTON-SALEM, NORTH CAROLINA 27103

TEL: 843.414.5500  
FAX: 843.414-5517  
TOLL FREE: 888-294-4490  
ERICBERMANPC.COM

5900 CORE ROAD, SUITE 402  
NORTH CHARLESTON, SOUTH CAROLINA 29406

PLEASE CONTACT OUR SOUTH CAROLINA OFFICE

EDWARD E. GILBERT, ESQUIRE

June 2, 2006

Honorable Paul B. Wickensimer  
Greenville County Clerk  
305 East North Street  
Greenville, SC 29601

In re: MBNA America Bank, N.A. v. Mark Christianson  
Our file no. 237536  
MBNA America Bank, N.A. v. Scott A. Hamilton  
Our file no. 249705  
MBNA America Bank, N.A. v. William D. Crippin  
Our file no. 243932

Dear Mister Clerk:

I have enclosed for filing an original and one (1) copy of an Affidavit of Service, Application for Confirmation of Arbitration Award, the \$150.00 filing fee and a business reply envelope for each of the above cases.

Thank you for your kind attention.

Very truly yours,

Helen M. Breen

HMB  
Enclosure

Exhibit 1

ROA- 9

10-CP-23-3793 ROA 49

COUNTY OF GREENVILLE

MBNA AMERICA BANK, N.A.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

2006 JUN 13 P 12: 23

2006 - CP - 23 - 3740

vs.

MARK CHRISTIANSON

Defendant(s) FILED - CLERK OF COURT GREENVILLE CO. S.C.

(Please Print)

Submitted By: Edward E. Gilbert
Address: 5900 Core Avenue, Suite 402
North Charleston, SC 29406

SC Bar #: 71948
Telephone #: 843-414-5500
Fax #: 843-414-5517
Other:
E-mail: egilbert@erichbermanpc.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Sexual Predator (510), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture (840), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Administrative Law Judge (980), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650)

Submitting Party Signature:

[Handwritten Signature]

Date: May 30, 2006

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

ROA- 10

10-CP-23- 3793 ROA 50

**FOR MANDATED ADR COUNTIES ONLY**  
Florence, Horry, Lexington, Richland, Greenville\*\*, and Anderson\*\*  
\*\* Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224<sup>th</sup> day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224<sup>th</sup> day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Cases which are appellate in nature such as appeals or writs of certiorari;
  - c. Post Conviction relief matters;
  - d. Contempt of Court proceedings;
  - e. Forfeiture proceedings brought by the State;
  - f. Cases involving mortgage foreclosures; and
  - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

**Please Note:** You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.

10-CP-23-3793 ROA 51

ROA- 11

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13th JUDICIAL CIRCUIT

MBNA AMERICA BANK, N.A.,  
Plaintiff,

-vs-

MARK CHRISTIANSON,  
Defendant(s).

2006 JUN 13

P 12: 23 File No. 237536

Case No. 2006-CP-23- 3740

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL E. WILSON

APPLICATION FOR CONFIRMATION  
OF ARBITRATION AWARD

AND NOW comes the Plaintiff, MBNA AMERICA BANK, N.A., by and through its counsel, ERIC M. BERMAN, P.C. and EDWARD E. GILBERT, ESQUIRE and moves the Honorable Court for Confirmation of an Arbitration Award in conformity with the Uniform Arbitration Act, South Carolina Code of Laws §§15-48-10 et seq. and would allege and show to the Honorable Court as follows:

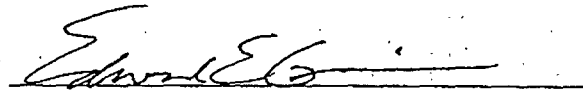
1. The Plaintiff is a National Association with offices at 1000 Samoset Drive, Wilmington, Delaware 19884-2332 doing business in South Carolina pursuant to the Federal Interstate Commerce Laws.
2. Upon information and belief, the Defendant(s), Mark Christianson, (is) (are) (an) adult individual(s) currently residing at 108 Muirwood Dr., Mauldin, SC 29662-2325.
3. On August 29, 2005 the National Arbitration Forum entered its Award in favor of Plaintiff (Claimant), MBNA America Bank, N.A., and against Defendant(s) [Respondent(s)], Mark Christianson, in the total amount \$11,141.33. A certified copy of the Arbitration Award is attached hereto as Exhibit "A" and incorporated by reference.
4. On the same date, a copy of the Award was duly served on the parties hereto.
5. More than ninety (90) days have elapsed and no action has been taken to vacate, modify or correct the arbitration award.

10-CP-23- 3793 ROA 52

6. Notice of this Application was duly served on the Defendant(s) on May 11, 2006 according to the Affidavit of the Deputy Sheriff.

WHEREFORE, the Plaintiff, MBNA America Bank, N.A., hereby moves the Honorable Court for confirmation of the award in conformity with the Uniform Arbitration Act, South Carolina Code of Laws §§15-48-10 et seq.

Respectfully submitted:



ERIC M. BERMAN, P.C.

Counsel for Plaintiff

By: Edward E. Gilbert, Esquire

S.C. Bar #71948

5900 Core Avenue, Suite 402

North Charleston, SC 29406

(843) 414-5500

fax: (843) 414-5517

At North Charleston, South Carolina  
May 30, 2006

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that he served or caused to be served a true and correct copy of the foregoing Application for Confirmation of Arbitration Award by first class United States mail, postage prepaid and addressed as follows:

Mark Christianson  
108 Muirwood Dr.  
Mauldin, SC 29662-2325

Respectfully submitted,



Edward E. Gilbert, SC Bar #71948  
Counsel for the Plaintiff

At North Charleston, South Carolina  
May 30, 2006

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL R. WOLFENBARGER

2006 JUN 13 P 12:23

10-CP-23-3793 ROA 54

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

MBNA AMERICA BANK, N.A.

Plaintiff

IN THE COURT OF COMMON PLEAS

CASE NO.

2006-CP-23-3740

13 12:15

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Mark Christianson

Defendant.

FILED - CLERK OF COURT  
GREENVILLE CO. S.C.  
JUL 20 2006

Plaintiff's Attorney: Edward E. Gilbert, Bar No. 71948 Address: 5900 Core Ave, Suite 402, N. Charleston, SC 29406 phone: (843) 414-5500 fax: (843) 414-5517 e-mail: egilbert@ericbermanpc.com other:	Defendant's Attorney: Pro Se, Bar No. Address: phone: fax: e-mail: other:
---	---

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

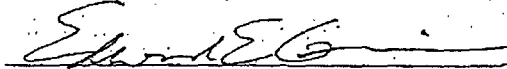
Nature of Motion:

Estimated Time Needed: Court Reporter Needed:  YES /  NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

  
Signature of Attorney for  Plaintiff /  Defendant

5-30-06  
Date submitted.

SECTION III: Motion Fee

- PAID - AMOUNT:
- EXEMPT:
  - Rule to Show Cause in Child or Spousal Support
  - (check reason)  Domestic Abuse or Abuse and Neglect
  - Indigent Status  State Agency v. Indigent Party
  - Sexually Violent Predator Act  Post-Conviction Relief
  - Motion for Stay in Bankruptcy
  - Motion for Publication  Motion for Execution (Rule 69, SCRCP)
  - Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

Other: Confirm Arbitration Award

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
- Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: Dale Jones

Date Filed:

- MOTION FEE COLLECTED: \$25.00
- CONTESTED - AMOUNT DUE:

10-CP-23-3793 ROA-55

ROA-15

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

NOTICE OF NON-JURY MOTION  
HEARING DATE

Greenville County Clerk of Court  
Paul B. Wickensimer  
305 East North Street  
Greenville County Courthouse  
Greenville, SC 29601-2120  
(864) 467-8546 Fax (864) 467-8519

19 JUNE 2006 2:53 PM

FILED - CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER

June 19, 2006

ENTERED COMPUTER

Edward E Gilbert  
Eric M. Berman, P.C.  
5900 Core Ave, Suite 402  
North Charleston, SC 29406

Case Number: 2006CP2303740

Case Caption: Mbna America Bank Na vs. Mark Christianson

A Confirmation of Arbitration Award in the above captioned case has been set for a hearing on July 27, 2006 @ 11:30 AM, before the presiding Circuit Court Judge This MOTION HEARING will be held at the Greenville County Courthouse, 305 East North Street, Greenville, South Carolina.

IT IS THE MOVING PARTY'S RESPONSIBILITY TO NOTIFY ALL COUNSEL AND/OR PARTIES OF THE DATE AND TIME OF THIS MOTION HEARING.

Date: June 19, 2006

Thank you,

Paul B. Wickensimer  
Greenville County Clerk of Court

10-CP-23- 3793 ROA 56

Scanned  
ROA- 16

ERIC M. BERMAN, P.C.

ATTORNEYS AT LAW

637 WYCKOFF AVENUE  
WYCKOFF, NEW JERSEY 07481

500 WEST MAIN STREET, SUITE 212  
BABYLON, NEW YORK 11702-3035

500 NORTH GULPH ROAD, SUITE 350  
KING OF PRUSSIA, PENNSYLVANIA 19406

299 BETHESDA PLACE, SUITE 603D  
WILMINGTON-SALEM, NORTH CAROLINA 27103

TEL: 843.414.5500  
FAX: 843.414.5517  
TOLL FREE: 888-294-4490  
ERICBERMANPC.COM

5900 CORE ROAD, SUITE 402  
NORTH CHARLESTON, SOUTH CAROLINA 29406

PLEASE CONTACT OUR SOUTH CAROLINA OFFICE

EDWARD E. GILBERT, ESQUIRE

June 26, 2006

Honorable Paul B. Wickensimer  
Greenville County Clerk  
305 East North Street  
Greenville, SC 29601

In re: MBNA America Bank, N.A. v. Mark Christainson  
Case no. 06-CP-23-3740  
Our file no. 237536

Dear Mister Clerk:

I have enclosed for filing an original copy of the MBNA America Bank, N.A. Credit Card Agreement and Additional Terms and Conditions.

Thank you for your kind attention.

Very truly yours,



Helen M. Breen

HMB  
Enclosure

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER

2006 JUN 29 A 10:11

10-CP-23-3793 ROA 57

Scanned

ROA-17

Credit Card Agreement  
Additional Terms and Conditions

MBNA

**Selected Sections**

- Privacy Notice.....1
- Accuracy of Information Furnished to  
Credit Reporting Agencies.....4
- How to Use Your Account.....4
- Payments on Your Account.....5
- We May Amend This Agreement.....8
- What Law Applies.....9
- Arbitration and Litigation.....9

NEXT9

10-CP-23-3793 ROA 58

## Your Contract With Us

Your Credit Card Agreement with us consists of these Additional Terms and Conditions and the document called the Required Federal Disclosures or the Initial Disclosure. You agree to the terms and conditions of this Agreement. For the purpose of the Privacy Notice, we will use the definition contained in the third paragraph of the Privacy Notice. For the remainder of the Agreement, we will use the definitions described under the section heading *Words Used Often in This Agreement*.

## Privacy Notice

Your privacy is important to us: At MBNA, we are committed to providing you with the finest financial products and services backed by consistently top-quality service. And while information about you is fundamental to our ability to do this, we fully recognize the importance of keeping personal and account information secure.

To offer you the widest range of products and services, MBNA may share information about you both within MBNA and outside of MBNA with other companies. This allows us to offer you products and services that may interest you and best meet your needs, whether they are available directly from MBNA or through our relationships with other companies. We want you to understand our information safeguards, what information we collect, what information we share, and the benefits you receive when we share information about you.

This notice describes the privacy practices of MBNA Corporation and all MBNA affiliates, including MBNA America Bank, N.A., MBNA America (Delaware), N.A., Palladian Travel Services, Inc., MBNA Hallmark Information Services, Inc., MBNA Marketing Systems, Inc., and MBNA Insurance Agency, Inc. (collectively, "MBNA"), for financial products and services governed by the laws of the United States of America. This notice explains MBNA's information collection and sharing practices and lets you choose whether or not MBNA may share certain information about you, either within MBNA or outside of MBNA with other companies.

**Our Security Procedures:** MBNA understands the importance of protecting and securing information and using it appropriately. Access to information about you is restricted to the people of MBNA who require it to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal standards for the security of information.

When MBNA shares information about you with companies outside of MBNA, we require them to impose safeguards, use it only for a permitted purpose and to return it to us or destroy it once that purpose is served. We limit the amount of information shared to what is appropriate to offer a product or service efficiently. MBNA requires any company receiving information from MBNA to sign a Confidentiality Agreement containing these requirements and obligating that company to protect the information as we would.

**Information We Collect:** MBNA collects and uses nonpublic personal information about you to conduct our business and to consistently deliver the top-quality Customer service you expect from us. Sources of this information include the following:

- Information we receive from you on applications and other forms or through your correspondence or communication with us including through the mail, by telephone, or over the Internet;
- Information we receive from third parties, such as consumer reporting agencies, to verify statements you've made to us, or regarding your employment, credit, or other relationships; and
- Information about your transactions with MBNA and with other companies outside of MBNA.

**Information We Share Within MBNA:** We may share all of the information we collect about you with financial service companies within MBNA to offer additional products or services that may interest you and best meet your needs. We believe this is convenient for you and may save you both time and money. To do so, we share identification information (such as name and address), transaction and experience information (such as purchases and payments), credit eligibility information (such as credit reports and applications), and other information. The decision to purchase any such products or services is yours alone. You may tell us not to share credit eligibility information about you within MBNA, but please understand this does not prohibit us from offering you additional products and services or from sharing transaction and experience, identification, and other information within MBNA.

**Information We Share With Others:** From time to time, we may allow companies outside of MBNA to offer you their products and services that may interest you. These products and services may be offered by financial service providers (such as banks, loan brokers, account aggregators, insurance agents, insurance companies, mortgage bankers, and securities broker-dealers), by nonfinancial companies (such as retailers, direct marketers, communications companies, Internet service providers, manufacturers, service companies, travel agents, cruise lines, car rental agencies, hotels, airlines, publishers, and organizations endorsing MBNA financial products or services), and others (such as nonprofit organizations). Subject to applicable law, we may share all the information we collect with these companies outside of MBNA, unless you tell us not to.

Additionally, we may share all the information we collect with companies that perform marketing or other services on our behalf or to other financial institutions with which we have joint marketing agreements. We are also permitted by law to share information about you with other companies in certain circumstances. For instance, we may share all of the information we collect with companies assisting us in servicing your loan or account, with companies that endorse our products and services through affinity agreements, with government entities in response to subpoenas or

regulatory requirements, and with consumer reporting agencies. If you tell us not to share information with companies outside of MBNA that wish to offer you their products and services, as described above, please understand that we will continue to share information in these additional circumstances.

**Important Information About Your Choice:** We're dedicated to serving your needs - and to respecting your choices related to privacy. You may tell us not to share credit eligibility information within MBNA, and you may tell us not to share information with companies outside of MBNA that wish to offer you their products and services as described above. If you wish to opt out of such information sharing, please call toll-free 1-866-751-1255. We will ask you to verify your identity and the specific accounts to which the opt out applies, so please have all your account, membership, or reference numbers and your Social Security number or Taxpayer Identification number for deposit accounts available when you call.

MBNA applies opt outs at the account level, not by individual Customer. When any person listed with others on an account opts out (for example, a co-applicant, joint account holder, or authorized user), we will list the entire account as having opted out. MBNA will continue to adhere to its disclosed privacy practices for an account even if it becomes inactive or is closed.

An opt out from information sharing on an account as described above, either within MBNA and/or with companies outside of MBNA, remains effective unless revoked in writing. Federal regulations require us to provide this notice on an annual basis, whether or not an account has previously opted out from either type of information sharing. Please remember when you receive our subsequent notices that an account previously opted out from either or both types of information sharing (and not revoked in writing) does not need to be opted out again.

This notice updates and replaces any previous notices from MBNA about the privacy, security, and protection of information. For additional information regarding MBNA's privacy practices concerning the Internet, and to view the most recent version of this privacy notice, please go to [www.mbna.com](http://www.mbna.com) and click on "Privacy Notice." You may have other privacy protections under state laws. We may amend this privacy notice at any time, and we will inform you of changes as required by law.

### Words Used Often in This Agreement

"Agreement" or "Credit Card Agreement" means these Additional Terms and Conditions and the Required Federal Disclosures (or the Initial Disclosure) and any changes we make to those documents from time to time.

"You" and "your" mean each and all of the persons who are granted, accept, or use an account we hold. "You" and "your" also mean any other person who has guaranteed payment of this account, when used in the sections entitled *We May Monitor and Record Telephone Calls and Arbitration and Litigation* and when used in each of the sections relating to payment of this account

(*Your Promise to Pay and How We Allocate Your Payments*, for example)

"We," "us," "our", and "MBNA America" mean MBNA America Bank, N.A.

"Card" means all the credit cards we issue to you and to any other person with authorization to use this account pursuant to this Agreement.

"Access check" means an access check we provide to you to make a Check Cash Advance on your account.

If we use a capitalized term in this document but do not define the term in this document, the term has the meaning given in the Required Federal Disclosures or the Initial Disclosure or as used in your monthly statement.

We use section headings (such as *Words Used Often in This Agreement*) to organize this Agreement. The actual terms of this Agreement are in the sentences that follow and not the headings.

### Sign Your Card

You should sign your card before you use it.

### We May Monitor and Record Telephone Calls

You consent to and authorize MBNA America, any of its affiliates, or its marketing associates to monitor and/or record any of your telephone conversations with our representatives or the representatives of any of those companies.

### Credit Reporting Agencies

You authorize MBNA America to collect information about you, including credit reports from consumer reporting agencies

If you believe we have furnished inaccurate or incomplete information about you or your account to a credit reporting agency, write us at: MBNA, Credit Reporting Agencies, P.O. Box 17054, Wilmington, DE 19884-7054. Please include your name, address, home phone number, and account number, and explain what you believe is inaccurate or incomplete.

### How to Use Your Account

You may obtain credit in the form of Purchases and Cash Advances by using your cards, access checks, account number, or other credit devices. Please refer to your Required Federal Disclosures or Initial Disclosure to determine what transactions constitute Purchases and Cash Advances and how you may obtain them.

### Transaction Date for Certain Cash Advances

The transaction date for Check Cash Advances and Balance Transfers done by check is the date you or the person to whom the check is made payable first deposits or cashes the check. The transaction date for a returned payment (which will then be classified as a Bank Cash Advance) is the date that the corresponding payment posted to your account.

### Purposes for Using Your Account

You may use your account for personal, family, or household purposes. You may not use your account for business or commercial purposes. You may not use a Check Cash Advance, or any other Cash Advance, to make a payment on this or any other credit account with us. You may not use or permit your account to be used to make any illegal transaction.

### Persons Using Your Account

If you permit any person to use your card, access check, account number, or other credit device with the authorization to obtain credit on your account, you may be liable for a

transactions made by that person, including transactions for which you may not have intended to be liable, even if the amount of those transactions causes your credit limit to be exceeded. Authorized users of this account may have the same access to information about the account and its users as the account holders.

### **How You May Stop Payment on an Access Check**

You may request a stop payment on an access check by providing us with the access check number, dollar amount, and payee exactly as they appear on the access check. Oral and written stop payment requests on an access check are effective for six months from the day that we place the stop payment.

### **You May Not Postdate an Access Check**

You may not issue a postdated access check on your account. If you do postdate an access check, we may elect to honor it upon presentment or return it unpaid to the person who presented it to us for payment, without, in either case, waiting for the date shown on the access check. We are not liable to you for any loss or expense incurred by you arising out of the action we elect to take.

### **Your Promise to Pay**

You promise to pay us the amounts of all credit you obtain, which includes all Purchases and Cash Advances. You also promise to pay us all the amounts of finance charges, fees, and any other transactions we charge against your account.

### **Payments on Your Account**

You must pay each month at least the Total Minimum Payment Due shown on your monthly statement by your Payment Due Date. You may pay the entire amount you owe us at any time. Payments made in any billing cycle that are greater than the Total Minimum Payment Due will not affect your obligation to make the next Total Minimum Payment Due. If you overpay or if there is a credit balance on your account, we will not pay interest on such amounts. We will reject payments that are not drawn in U.S. dollars and those drawn on financial institutions located outside the United States. Payment of your Total Minimum Payment Due may not avoid the assessment of Overlimit Fees.

### **When Your Payment Will Be Credited to Your Account**

We credit payments as of the date received, if the payment is (1) received by 2 p.m. (Eastern Time); (2) received at the address shown in the upper left-hand corner of the front of your monthly statement; (3) paid with a check drawn in U.S. dollars on a U.S. financial institution or a U.S. dollar money order; and (4) sent in the return envelope with only the top portion of your statement accompanying it. Payments received after 2 p.m. on any day, including the Payment Due Date, but that otherwise meet the above requirements, will be credited as of the next day. Credit for any other payments may be delayed up to five days.

### **How We Allocate Your Payments**

We will allocate your payments in the manner we determine. In most instances, we will allocate your payments to balances (including new transactions) with lower APRs before balances with higher APRs. This will result in new balances with lower APRs (such as those with promotional APR offers) being paid

before any other existing balances.

### **Promise to Pay Applies to All Persons**

All persons who initially or subsequently request, accept, guarantee, or use the account are individually and together responsible for any total outstanding balance. We may refuse to release from liability any person who is responsible to pay any total outstanding balance, until all of the cards, access checks, and other credit devices outstanding under the account have been returned to us and any such person or persons repays us the total outstanding balance owed to us at any time under the terms of this Agreement.

### **Default**

You will be in default of this Agreement if: (1) you fail to make any required Total Minimum Payment Due by its Payment Due Date; (2) your total outstanding balance exceeds your credit limit; or (3) you fail to abide by any other term of this Agreement. Solely for the purposes of determining eligibility and premium payment obligations for the optional credit insurance purchased through MBNA, you will be deemed in default or delinquent if you fail to make a payment within 90 days of your Payment Due Date. Our failure to exercise any of our rights when you default does not mean that we are unable to exercise those rights upon later default.

### **When We May Require Immediate Payment**

If you are in default, we can require immediate payment of your total outstanding balance and, unless prohibited by applicable law and except as otherwise provided under the Arbitration and Litigation section of this Agreement, we can also require you to pay the costs we incur in any collection proceeding, as well as reasonable attorneys' fees if we refer your account for collection to an attorney who is not our salaried employee.

### **Other Payment Terms**

We can accept late payments, partial payments, or payments with any restrictive writing without losing any of our rights under this Agreement. This means that no payment, including those marked with "Paid in full" or with any other restrictive words, shall operate as an accord and satisfaction without the prior written approval of one of our senior officers. You may not use a postdated check to make a payment. If you do postdate a payment check, we may elect to honor it upon presentment or return it uncredited to the person who presented it, without, in either case, waiting for the date shown on the check. We are not liable to you for any loss or expense incurred by you arising out of the action we elect to

### **Payment Holidays**

We may allow you, from time to time, to omit a month payment. We will notify you when this option is available. If you omit a payment, finance charges and any applicable will accrue on your account in accordance with this Agreement. You must resume making your Total Minimum Payment Due each month following a payment holiday.

### **Transactions Made in Foreign Currency**

If you make a transaction in a foreign currency, the transaction will be converted by Visa International or MasterCard International, depending on which card you use, into a U.S. dollar amount in accordance with the operating regulatory conversion procedures in effect at the time that the transaction is processed. Currently, those regulations and procedures provide that the currency conversion rate to be used is

(1) a wholesale market rate or (2) a government-mandated rate in effect one day prior to the processing date, increased by one percent in each case. Visa or MasterCard retains this one percent as compensation for performing the currency conversion service. The currency conversion rate in effect on the processing date may differ from the rate in effect on the transaction date or the posting date.

### Billing Cycle

Your billing cycle ends each month on a Closing Date determined by us. Each billing cycle begins on the day after the Closing Date of the previous billing cycle. Each statement reflects a single billing cycle.

### Account Fees and Charges

**Account Fees:** The following fees, which are set forth in your Required Federal Disclosures or Initial Disclosure, are charged as Purchases in the billing cycle in which the fees accrue:

- (1) a Late Fee if the Total Minimum Payment Due shown on your monthly statement is not received by us on or before its Payment Due Date;
- (2) an Overlimit Fee if your New Balance Total exceeds your credit limit on the last day of a billing cycle, even if fees or finance charges charged by us cause your New Balance Total to exceed your credit limit; an Overlimit Fee is charged to your account as of the day in the billing cycle that the total outstanding balance on your account exceeds your credit limit;
- (3) a Returned Payment Fee if a payment on your account is returned for insufficient funds or for any other reason, even if it is paid upon subsequent presentment;
- (4) a Returned Cash Advance Check Fee if we return an access check unpaid for any reason, even if the access check is paid upon subsequent presentment;
- (5) a Copy Fee for each copy of a monthly statement or sales draft, except that the six most recent monthly statements and six sales drafts will be provided for free; and
- (6) an Annual Fee if your account is open or if you maintain an account balance, whether you have active charging privileges or not.

**Abandoned-Property Charges:** Unless prohibited by applicable law, we will charge your account, as a Purchase, for any costs incurred by us associated with complying with state abandoned-property laws.

Please review your Required Federal Disclosures or Initial Disclosure for additional fees and charges that may apply to your account.

### Benefits

We may offer you certain benefits and services with your account. Unless expressly made a part of this Agreement, any such benefits or services are not a part of this Agreement but are subject to the terms and restrictions outlined in the benefits brochure and other official documents provided to you from time to time by or on behalf of MBNA America. We may adjust, add, or delete benefits and services at any time and without notice to you.

### Refusal to Honor Your Account

We are not liable for any refusal to honor your account. This can include a refusal to honor your card or account number or any check written on your account. We are not liable for any retention of your card by us, any other bank, or any provider of goods or services.

### We May Suspend or Close Your Account

We may suspend or close your account or otherwise terminate your right to use your account. We may do this at any time and for any reason. Your obligations under this Agreement continue even after we have done this. You must destroy all cards, access checks, and other credit devices on the account when we request that you do so.

### You May Close Your Account

You may close your account by notifying us in writing or by telephone and destroying all cards, access checks, and other credit devices on the account. Your obligations under this Agreement continue even after you have done this.

### Transactions After Your Account Is Closed

When your account is closed, you must contact anyone authorized to charge transactions to your account, such as Internet service providers, health clubs, or insurance companies. These transactions may continue to be charged to your account until you change the billing. Also, if we believe you have authorized a transaction or are attempting to use your account after you have requested to close the account, we may allow the transaction to be charged to your account.

### We May Amend This Agreement

We may amend this Agreement at any time. We may amend it by adding, deleting, or changing provisions of this Agreement. When we amend this Agreement, we will comply with the applicable notice requirements of federal and Delaware law that are in effect at that time. If an amendment gives you the opportunity to reject the change, and if you reject the change in the manner provided in such amendment, we may terminate your right to receive credit and may ask you to return all credit devices as a condition of your rejection. The amended Agreement (including any higher-rate or other higher charges or fees) will apply to the total outstanding balance, including the balance existing before the amendment became effective. We may replace your card with another card at any time.

### We May Sell Your Account

We may at any time, and without notice to you, sell, assign, or transfer your account, any sums due on your account, this Agreement, or our rights or obligations under your account to this Agreement to any person or entity. The person or entity to whom we make any such sale, assignment or transfer shall be entitled to all of our rights and/or obligations under this Agreement to the extent sold, assigned or transferred.

### Your Credit Limit

Your credit limit is disclosed to you when you receive your card and, generally, on each monthly statement. We may change your credit limit from time to time.

The amount shown on your monthly statement as Cash or Credit Available does not take into account any Purchases, Cash Advances, finance charges, fees, any other transactions, or credits that post to your account after the Closing Date of that monthly statement. Such transactions could result in your credit limit being exceeded and result in the assessment of Overlimit Fees.

### What We May Do if You Attempt to Exceed Your Credit Limit

The total outstanding balance on your account plus authorizations at any time must not be more than your credit limit. If you

attempt a transaction that results in your total outstanding balance (plus authorizations) exceeding your credit limit, we may (1) permit the transaction without raising your credit limit; (2) permit the transaction and treat the amount of the transaction that is more than the credit limit as immediately due; or (3) refuse to permit the transaction.

If we refuse to permit the transaction, we may advise the person who attempted the transaction that it has been refused. If we refuse to permit a Check Cash Advance or Balance Transfer, we may do so by advising the person presenting the Check Cash Advance or Balance Transfer that credit has been refused, that there are insufficient funds to pay the Check Cash Advance or Balance Transfer, or in any other manner.

If we have previously permitted you to exceed your credit limit, it does not mean that we will permit you to exceed your credit limit again. If we decide to permit you to exceed your credit limit, we may charge an Overlimit Fee as provided in this Agreement.

### **Unauthorized Use of Your Card**

Please notify us immediately of the loss, theft, or possible unauthorized use of your account at 1-800-789-6701.

### **You Must Notify Us When You Change Your Address**

We strive to keep accurate records for your benefit and ours. The post office and others may notify us of a change to your address. When you change your address, you must notify us promptly of your new address.

### **What Law Applies**

This Agreement is made in Delaware, and we extend credit to you from Delaware. This Agreement is governed by the laws of the State of Delaware (without regard to its conflict of laws principles) and by any applicable federal laws.

### **The Provisions of This Agreement Are Severable**

If any provision of this Agreement is found to be invalid, the remaining provisions will continue to be effective.

### **Our Rights Continue**

Our failure or delay in exercising any of our rights under this Agreement does not mean that we are unable to exercise those rights later.

### **Arbitration and Litigation**

This Arbitration and Litigation provision applies to you, unless you were given the opportunity to reject the Arbitration and Litigation provisions and you did so reject them, in the manner and timeframe required. If you did reject effectively such a provision, you agreed that any litigation brought by you against us regarding this account or this Agreement shall be brought in a court located in the State of Delaware.

Any claim or dispute ("Claim") by either you or us against the other, or against the employees, agents, or assigns of the other, arising from or relating in any way to this Agreement or any prior Agreement or your account (whether under a statute, in contract, tort, or otherwise and whether for money damages, penalties, or declaratory or equitable relief), including Claims regarding the applicability of this Arbitration and Litigation section or the validity of the entire Agreement or any prior Agreement, shall be resolved by binding arbitration.

The arbitration shall be conducted by the National Arbitration

Forum ("NAF") under the Code of Procedure in effect at the time the Claim is filed. Rules and forms of the National Arbitration Forum may be obtained and Claims may be filed at any National Arbitration Forum office, [www.arb-forum.com](http://www.arb-forum.com), or P.O. Box 50191, Minneapolis, Minnesota 55405, telephone 1-800-474-2371.

If the NAF is unable or unwilling to act as arbitrator, we may substitute another nationally recognized, independent arbitration organization that uses a similar code of procedure. At your written request, we will advance any arbitration filing fee, or administrative and hearing fees that you are required to pay to pursue a Claim in arbitration. The arbitrator will decide who will be ultimately responsible for paying those fees. In no event will you be required to reimburse us for any arbitration filing, administrative, or hearing fees in an amount greater than what your court costs would have been if the Claim had been resolved in a state court with jurisdiction. Any arbitration hearing at which you appear will take place within the federal judicial district that includes your billing address at the time the Claim is filed. This arbitration agreement is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA"). Judgment upon any arbitration award may be entered in any court having jurisdiction. The arbitrator shall follow existing substantive law to the extent consistent with the FAA and applicable statutes of limitations and shall honor any claims or privilege recognized by law. If any party requests, the arbitrator shall write an opinion containing the reasons for the award.

No Claim submitted to arbitration is heard by a jury, and no Claim may be brought as a class action or as a private attorney general. You do not have the right to act as a class representative or participate as a member of a class of claimants with respect to any Claim. This Arbitration and Litigation section applies to all Claims now in existence or that may arise in the future.

This Arbitration and Litigation section shall survive the termination of your account with us as well as any voluntary payment of the debt in full by you, any bankruptcy by you, or sale of the debt by us.

For the purposes of this Arbitration and Litigation section, "we" and "us" means MBNA America Bank, N.A., its parent, subsidiaries, affiliates, licensees, predecessors, successors, assigns, any purchaser of your account, and all of their officers, directors, employees, agents, and assigns or any and all of them. Additionally, "we" or "us" shall mean any third party providing benefits, services, or products in connection with the account (including but not limited to credit bureaus, merchants that accept any credit device issued under the account, rewards or enrollment services, credit insurance companies, debt collectors, and all of their officers, directors, employees and agents) if, and only if, such a third party is named by you as a codefendant in any Claim you assert against us.

If any part of this Arbitration and Litigation section is found to be invalid or unenforceable under any law or statute consistent with the FAA, the remainder of this Arbitration and Litigation section shall be enforceable without regard to such invalidity or unenforceability.

THE RESULT OF THIS ARBITRATION AGREEMENT IS THAT, EXCEPT AS PROVIDED ABOVE, CLAIMS CANNOT BE LITIGATED IN COURT, INCLUDING SOME CLAIMS THAT COULD HAVE BEEN TRIED BEFORE A JURY, AS CLASS ACTIONS, OR AS PRIVATE ATTORNEY GENERAL ACTIONS.

**ERIC M. BERMAN, P.C.**  
ATTORNEYS AT LAW

500 WEST MAIN STREET, SUITE 212  
BABYLON, NEW YORK 11702-3035

5900 CORE AVENUE, SUITE 402  
NORTH CHARLESTON, SC 29406

500 NORTH GULPH ROAD, SUITE 350  
KING OF PRUSSIA, PA 19406

2990 BETHESDA PLACE, SUITE 603D  
WINSTON-SALEM, NORTH CAROLINA 27103

TEL: 843-414-5500  
FAX: 843-414-5517  
TOLL FREE: 888-294-4490  
ERICBERMANPC.COM

637 WYCKOFF AVENUE  
WYCKOFF, NEW JERSEY 07481

PLEASE CONTACT OUR SOUTH CAROLINA OFFICE

Edward E. Gilbert, Esquire

March 5, 2007

David C. Alford, Esquire  
Post Office Box 6326  
Spartanburg, SC 29304

In re: MBNA America Bank v. Mark Christianson  
Case No. 2005-CP-23-7546  
Our file no. 231690

Dear Mr. Alford:

I have enclosed a copy of Appellant's Return to Respondent's Motion to Dismiss Appeal or Extend Time to File Final Brief.

As you know, a judgment was entered against your client on his other account, Case No. 2006-CP-23-3740, on June 21, 2006 by Order of Judge Welmaker on June 16, 2006. A copy is enclosed. This is, of course, a final judgment and I am preparing a Writ of Execution unless your client wants to make arrangements to satisfy it.

Thank you for your kind attention.

Very truly yours,

Edward E. Gilbert

EEG/ms  
Enclosures

10-CP-23-3793 ROA 64

Exhibit 3

ROA- 24

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

MBNA America NA

CASE NO.

Plaintiff

JUL 23 A 9:25

06-CP-23-3740

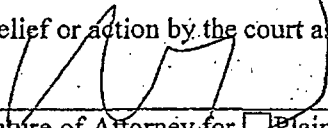
v.

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Mark Christianson

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER

Defendant.

Plaintiff's Attorney: Edward E. Gilbert, Bar No. Address: 5900 Core Avenue, Ste 402 North Charleston, SC 29406 phone: 843-414-5500 fax: 843-414-5517 e-mail: egilbert@ericbermanpc.com other:	Defendant's Attorney: David C. Alford, Bar No. 11010 Address: P.O. Box 6326 Spartanburg, SC 29304 phone: 864-574-0870 fax: 864-574-0871 e-mail: office@alfordlaw.com other:
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: To Vacate Judgment Estimated Time Needed: 15 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	July 17, 2007 Date submitted
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: <u>Dale Oprea</u>	Date Filed: _____
<input checked="" type="checkbox"/> MOTION FEE COLLECTED: <u>\$25.00</u> <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

16-CP-23-3793-ROA-65

ROA-25

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF GREENVILLE JUL 23 A CA206-CP-23-3740  
 )  
 MBNA America NA )  
 ) Plaintiff  
 v. ) FILED-CLERK OF COURT  
 Mark Christianson ) GREENVILLE CO. S.C.  
 ) PAUL B. WICKENSIMER  
 ) Defendants )  
 ) Motion to Vacate

Defendant moves to vacate this judgment pursuant to Rule 60.

The pleadings were served absent the filing of the Summons and Complaint with the Clerk of Court pursuant to Rule 3(a). An attempt was made to clock an Objection to the original pleadings, with the filing of the Objection being refused by the Clerk due to the failure in having the suit filed. Absent the requisite caption number, the Objection could not be filed by the Clerk's office. The Objection, with notice of the absence of the caption number, was served upon Plaintiff's counsel.

No communication has been received since by either Defendant or his attorney. Nothing has been received by Defendant, nor his counsel, concerning any court matter in this proceeding. A judgment was entered.

Upon information and belief, Plaintiff failed to notice Defendant or his attorney in any manner, nor in any timely manner in accordance with the Rules dealing with notice of court proceedings. Further, it is believed Plaintiff procured the judgment on false and misleading representations concerning notice to Defendant and his attorney as to these proceedings.

Defendant attempted to refinance his home. His mortgage broker informed him of this judgment. Defendant immediately moved to set aside the entry of the judgment.

Plaintiff moves to vacate the judgment.

10-CP-23-3793 ROA 66

RESPECTFULLY SUBMITTED  
DAVID C. ALFORD, P.C.



David C. Alford  
P.O. Box 6326  
Spartanburg, South Carolina 29304  
(864) 574-0870

Spartanburg, South Carolina  
July 17, 2007.

ATTORNEY FOR DEFENDANT

10-CP-23- 3793 ROA 67

ROA- 27

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE ) 2007 JUL 23 A 9: 26  
CA: 06-CP-23-3740

MBNA America NA

Plaintiff

v.

Mark Christianson

Defendants

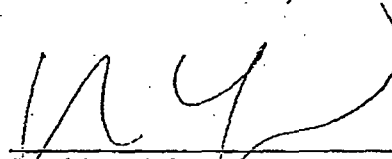
FILED - CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL P. WICK Certificate of Mailing

The undersigned does hereby certify that he has this date served Defendant's Motion to vacate Judgment upon the Plaintiff by depositing the same in the United States mail, with sufficient postage duly attached thereto, to the following address:

Edward E. Gilbert  
5900 Core Avenue Ste 402  
North Charleston, SC 29406

As attorney for Plaintiff

DAVID C. ALFORD, P.C.



David C. Alford  
P.O. Box 6326  
Spartanburg, South Carolina 29304  
(864) 574-0870

Spartanburg, South Carolina  
July 17, 2007

ATTORNEY FOR DEFENDANT

10-CP-23-3793 ROA 68

ROA- 28



*Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.*

Emphasis added

Rule 3 governs the commencement of an action, and states the proceedings are commenced when the summons and complaint are filed with the Clerk of Court. Thus, there can be no service of the pleadings until the matter has been clocked with the Clerk.

In violation of SC Code 15-48-170, neither the Notice of Application nor the Application itself were clocked into the Clerk of Court's office until June 13, 2007. Both services, the Greenville Sheriff on May 11 (the Notice of Application) and the purported mailing on May 30 (the Application) were "served" prior to any filing with the Clerk of Court office.

The Certificate of Service completed by the Greenville County Sheriff Office contains "case No: 237536". This certificate shows service on May 11 and executed by the Sheriff's Office on May 16. The copy "clocked" in June 13, 2006 contains the stamped Clerk of Court caption 2006-CP-23-3740. The "case no 237536" referenced and reflecting the document served by the Sheriff's department is for a prior case MBNA v. Christianson 2005 -CP-23-7536. This case denied the arbitration filing by MBNA (not sure if different accounts), which MBNA has on appeal. The certificate is attached with the "case no" and caption circled.

**Plaintiff's counsel failed to disclose  
Defendant's Objection to the Court**

Plaintiff failed to inform the Court of the Objection filed by Defendant. The Objection was unable to be clocked, because no caption number had been assigned. The matter had never been initiated in the Clerk of Court office when the Application was served. Defendant's Objection and Certificate of Service of same are attached as an Exhibit.

In Plaintiff's Memorandum, Plaintiff counsel concedes it received the Objection for the Defendant. Despite this notice of appearance by Defendant's counsel, none of the subsequent court proceedings were served upon Defendant or his counsel. Moreover, Plaintiff failed to include Defendant's counsel on the

10-CP-23-3793 ROA 70

Motion sheet filed with the Court, nor did Plaintiff bother to notify Defendant or his counsel as to the hearing date.

This conduct violates Rule 5, SCRPC.

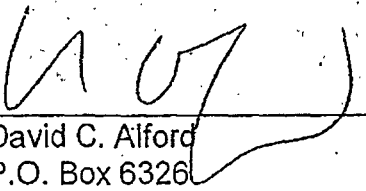
It is unclear from the court file how Plaintiff certified to the Court that Defendant or his counsel had been notified of the scheduled hearing on July 27, 2006. Moreover, Plaintiff's counsel obviously failed to inform the Court that the Defendant had served an Objection.

For notice, Plaintiff's counsel relies upon a paragraph inserted into a letter concerning an Appeal on a different case. This "notice" informs counsel of an judgment. However, this "notice" fails to satisfy the requirements of Rule 5. By attached affidavit, the Order of the Court purportedly attached to the letter was not attached. A search of the appeal file in case 05-CP-23-7536 yields the letter but no Order.

Besides violating the SC Uniform Arbitration Act, Plaintiff's counsel violated the various Rules set forth in the SCRPC. The conduct of Plaintiff's counsel in this matter raises questions as to appropriate candor to the Court..

For these reasons, the Order for entering the judgment should be vacated and the arbitration dismissed with prejudice.

RESPECTFULLY SUBMITTED  
DAVID C. ALFORD, P.C.

  
\_\_\_\_\_  
David C. Alford  
P.O. Box 6326  
Spartanburg, South Carolina 29304  
(864) 574-0870

Spartanburg, South Carolina  
August 29, 2007

ATTORNEY FOR DEFENDANT

10-CP-23- 3793 ROA 71

ROA- 31

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13<sup>TH</sup> JUDICIAL CIRCUIT

File no. 237536

MBNA AMERICA BANK, N.A. )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
MARK CHRISTIANSON )  
 )  
Defendant(s). )

NOTICE OF APPLICATION  
TO CONFIRM ARBITRATION  
AWARD


To: Mark Christianson  
108 Muirwood Dr.  
Mauldin, SC 29662-2325

TAKE NOTICE that the Plaintiff herein has filed or will file an Application for Confirmation of the Arbitration Award entered on August 29, 2005, in accordance with the Uniform Arbitration Act, South Carolina Code of Laws §§15-48-10 et seq., it being more than ninety (90) days since the entry of the award and no application having been filed to vacate, modify or correct the award.

This notice is hereby served upon you in accordance with South Carolina Code of Laws §15-48-170.

Respectfully submitted,

ERIC M. BERMAN, P.C.

By:   
Edward E. Gilbert, SC Bar #71948  
5900 Core Avenue, Suite 402  
North Charleston, SC 29406  
(843) 414-5500

At North Charleston, South Carolina  
May 3, 2006

10-CP-23-3793 ROA 72  
GREENVILLE COUNTY  
SHERIFF'S OFFICE  
CIVIL DIVISION  
MAY 11 A 11:2  
ROA-32

# Greenville County Sheriff's Office

## Civil Division

601 E. McBee Ave., Suite 210  
Greenville, South Carolina 29601  
Phone (864) 282-0008 Fax (864) 235-9171



Party Requesting Service

ERIC M. BERMAN, P.C.  
Attn: Ms. Helen M. Breen  
5900 Core Road  
North Charleston, SC 29406

13 P 12:14  
2006-CP-23-3740

### AFFIDAVIT OF SERVICE

Mark Christianson

MBNA America Bank, N.A., et. al., Plaintiff(s)

vs.

Mark Christianson, et. al., Defendant(s)

Case No: 237536

Name of Deputy: Ronnie M. Pettit, undersigned, being duly sworn, deposes and says that at time of service, s/he was over the age of twenty-one, was not a party to this action;

Date/Time of Service that on 11-May-2006 06:05 pm

Place of Service: at 108 Muirwood Dr., City of Mauldin, State of SC

Documents Served: the undersigned served the documents described as:  
Notice of Application to Confirm Arbitration Award

Service of Process on, Person Served, and Method of Service: A true and correct copy of the aforesaid document(s) was served on:  
Mark Christianson  
By personally delivering them into the hands of same.

Signature of Deputy: Subscribed and sworn to before me this 16<sup>th</sup> day of May, 2006.

*William H. Smith Jr.*  
Notary Public for South Carolina  
My Commission Expires: 10/27/2008

Undersigned declares under penalty of perjury that the foregoing is true and correct.

*Ronnie M. Pettit*  
Ronnie M. Pettit

10-CP-23-3793 ROA 73

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13th JUDICIAL CIRCUIT

JUN 13 P 12:13 File No. 237536

MBNA AMERICA BANK, N.A., )  
Plaintiff, )

-vs-

Case No. 2006-CP-23-3140

FILED: CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. W. HENNING

MARK CHRISTIANSON, )  
Defendant(s). )

**APPLICATION FOR CONFIRMATION  
OF ARBITRATION AWARD**

COMPUTER

AND NOW comes the Plaintiff, MBNA AMERICA BANK, N.A., by and through its counsel, ERIC M. BERMAN, P.C. and EDWARD E. GILBERT, ESQUIRE and moves the Honorable Court for Confirmation of an Arbitration Award in conformity with the Uniform Arbitration Act, South Carolina Code of Laws §§15-48-10 et seq. and would allege and show to the Honorable Court as follows:

1. The Plaintiff is a National Association with offices at 1000 Samoset Drive, Wilmington, Delaware 19884-2332 doing business in South Carolina pursuant to the Federal Interstate Commerce Laws.
2. Upon information and belief, the Defendant(s), Mark Christianson, (is) (are) (an) adult individual(s) currently residing at 108 Muirwood Dr., Mauldin, SC 29662-2325.
3. On August 29, 2005 the National Arbitration Forum entered its Award in favor of Plaintiff (Claimant), MBNA America Bank, N.A., and against Defendant(s) [Respondent(s)], Mark Christianson, in the total amount \$11,141.33. A certified copy of the Arbitration Award is attached hereto as Exhibit "A" and incorporated by reference.
4. On the same date, a copy of the Award was duly served on the parties hereto.
5. More than ninety (90) days have elapsed and no action has been taken to vacate, modify or correct the arbitration award.

Scanned  
ROA- 34

10-CP-23- 3793 ROA 74

6. Notice of this Application was duly served on the Defendant(s) on May 11, 2006 according to the Affidavit of the Deputy Sheriff.

WHEREFORE, the Plaintiff, MBNA America Bank, N.A., hereby moves the Honorable Court for confirmation of the award in conformity with the Uniform Arbitration Act, South Carolina Code of Laws §§15-48-10 et seq.

Respectfully submitted:



ERIC M. BERMAN, P.C.

Counsel for Plaintiff

By: Edward E. Gilbert, Esquire

S.C. Bar #71948

5900 Core Avenue, Suite 402

North Charleston, SC 29406

(843) 414-5500

fax: (843) 414-5517

At North Charleston, South Carolina  
May 30, 2006

10-CP-23-3793 ROA 75

ROA- 35

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that he served or caused to be served a true and correct copy of the foregoing Application for Confirmation of Arbitration Award by first class United States mail, postage prepaid and addressed as follows:

Mark Christianson  
108 Muirwood Dr.  
Mauldin, SC 29662-2325

Respectfully submitted,



Edward E. Gilbert, SC Bar #71948  
Counsel for the Plaintiff

At North Charleston, South Carolina  
May 30, 2006

FILED-CLERK OF COURT  
GREENVILLE CO. S. C.  
PAUL W. WILSON, JR.

JUN 13 P 12:21

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

MBNA AMERICA BANK, N.A. )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s) ) 13 P 12:13

2006 - CP - 23 - 3740

vs. )

MARK CHRISTIANSON )

ENTERED COMPUTER

Defendant(s) )

(Please Print)  
Submitted By: Edward E. Gilbert  
Address: 5900 Core Avenue, Suite 402  
North Charleston, SC 29406

SC Bar #: 71948  
Telephone #: 843-414-5500  
Fax #: 843-414-5517  
Other:  
E-mail: egilbert@ericbermanpc.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- |  |  |  |  |
|--|--|--|--|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> Employment (120)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Other (199)</li> </ul> | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299)</li> </ul>  | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Assault/Slander/Libel (300)</li> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Other (399)</li> </ul> | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499)</li> </ul>  |
| <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Sexual Predator (510)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599)</li> </ul>   | <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input checked="" type="checkbox"/> Other (799)</li> </ul> <p><u>Confirmation of Arbitration Award</u></p> | <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Driver's License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture (840)</li> <li><input type="checkbox"/> Other (899)</li> </ul>   | <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Administrative Law Judge (980)</li> <li><input type="checkbox"/> Public Service Commission (990)</li> <li><input type="checkbox"/> Employment Security Commission (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
| <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699)</li> </ul>  | <ul style="list-style-type: none"> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> <li><input type="checkbox"/> Out-of State Depositions (650)</li> </ul>   |  |  |

Submitting Party Signature: 

Date: May 30, 2006

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

ROA- 37

0-CP-23-3793 REA 7

**FOR MANDATED ADR COUNTIES ONLY**

Florence, Hc , Lexington, Richland, Greenville\*\*, & Anderson\*\*

\*\* Contact Respective County Clerk of Court for modified ADR Program Rules

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

**You are required to take the following action(s):**

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224<sup>th</sup> day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224<sup>th</sup> day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Cases which are appellate in nature such as appeals or writs of certiorari;
  - c. Post Conviction relief matters;
  - d. Contempt of Court proceedings;
  - e. Forfeiture proceedings brought by the State;
  - f. Cases involving mortgage foreclosures; and
  - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.**

10-CP-23-3793 ROA 78

**ROA- 38**

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

MBNA AMERICA BANK, N.A.

Plaintiff

v.

Mark Christianson

Defendant

IN THE COURT OF COMMON PLEAS

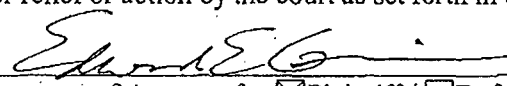
CASE NO.

2006-CP-23-3140

FILED 13 P 12:15

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

FILED CLERK OF COURT  
GREENVILLE CO. S.C.  
STATE WORK CENTER

Plaintiff's Attorney: Edward E. Gilbert, Bar No. 71948 Address: 5900 Core Ave, Suite 402, N. Charleston, SC 29406 phone: (843) 414-5500 fax: (843) 414-5517 e-mail: egilbert@ericbermanpc.com other:	Defendant's Attorney: Pro Se, Bar No. Address:  phone: fax: e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
	
Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	Date submitted: 5-30-06
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input checked="" type="checkbox"/> Other: Confirm Arbitration Award	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE  CODE: Date:
<b>CLERK'S VERIFICATION</b>	
Collected by: Dale Jones	Date Filed:
<input checked="" type="checkbox"/> MOTION FEE COLLECTED: \$25.00 <input type="checkbox"/> CONTESTED - AMOUNT DUE:	

10-CP-23-3793 ROA 79

ROA- 39



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13th JUDICIAL CIRCUIT

File No. 237536

MBNA AMERICA BANK, N.A.,  
Plaintiff,

-vs-

MARK CHRISTIANSON,  
Defendant(s).

Case No. 2006-CP-23- 3740

ENTERED COMPUTER

ORDER OF COURT

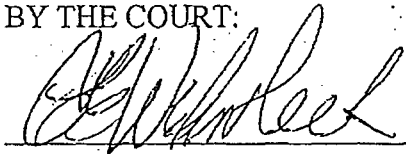
THIS MATTER comes before the Court on the Application of the Plaintiff, MBNA AMERICA BANK, N.A., to confirm an Arbitration Award according to the Uniform Arbitration Act, South Carolina Code of Laws §§15-48-10 et seq., and

IT APPEARING TO THE COURT that on August 29, 2005, the National Arbitration Forum entered an Award in favor of the Plaintiff (Claimant), MBNA America Bank, N.A., and against the Defendant(s) [Respondent(s)], Mark Christianson, in the total amount of \$11,141.33 and it further appearing that due notice of the Award and of this Application has been given to the Defendants according to the Uniform Arbitration Act, it is therefore

ORDERED, ADJUDGED AND DECREED that the Arbitration Award is confirmed and judgment shall be entered according to South Carolina Code of Laws §15-48-150.

IT IS SO ORDERED.

BY THE COURT:

 J.

Dated: 6/16/06

Scanned

10-CP-23-3793 ROA 81

Verified

ROA- 41

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13<sup>TH</sup> JUDICIAL CIRCUIT

Our file no. 237536

MBNA AMERICA BANK, N.A., )  
Plaintiff, )  
-vs- )  
MARK CHRISTIANSON, )  
Defendant. )

Case No. 2006-CP-23-3740

PLAINTIFF'S MEMORANDUM OF LAW IN  
RESPONSE TO MOTION TO VACATE JUDGMENT

AND NOW comes the Plaintiff, MBNA AMERICA BANK, N.A., by and through its counsel, ERIC M. BERMAN, P.C. and EDWARD E. GILBERT, ESQUIRE and presents the following Memorandum of Law in Response to a Motion to Vacate Judgment:

I History of the Case

On May 11, 2006 Sheriff's Deputy Ronnie M. Petit personally served upon Defendant Mark Christianson a Notice of Application to Confirm Arbitration Award. It should be noted that Mr. Christianson has been through this procedure once before at case number 2005-CP-23-7546. Upon receipt of the Affidavit of Service counsel sent it to the Clerk for filing along with the Application, Certificate of Service, proposed Order of Court and filing fee. That was mailed on June 2, 2006 with a copy to the Defendant. *Exhibit 1.*

On June 5, 2006 counsel received an Objection to Notice of Application to Confirm Arbitration Award. *Exhibit 2.* We assumed this was filed with the Clerk. On June 16, 2006 Judge Welmaker signed an Order of Court confirming the arbitration award and the Order was filed with the Clerk on June 21, 2006. On March 5, 2007 counsel mailed a copy of that Order to Attorney Alford. *Exhibit 3.* It should be noted that Mr. Alford never actually entered an appearance in this action.

On or about July 17, 2007 Attorney Alford filed the present Motion to Vacate the Judgment.

## II. Argument

An Application for Confirmation of an Arbitration Award is statutory. *South Carolina Code of Laws §§15-48-10 et seq.* Procedure is established according to Section 15-48-170, "Applications to court" as follows:

Except as otherwise provided, an application to the court under this chapter shall be by motion and shall be heard in the manner and upon notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in a civil action.

Plaintiff adhered to the statutory procedure to the letter. Mr. Christianson was personally served with a Notice of Application and was further served with a copy of the Application and proposed Order of Court by mail. It is apparent that Mr. Christianson and his attorney were aware of the pending action because they made an objection. Mr. Christianson and his counsel had been through this procedure before with respect to another credit account on which Mr. Christianson had defaulted and they should have been aware of the statutory procedures.

Relief from judgment under Rule 60(b) is addressed to the sound discretion of the trial judge and will not be disturbed on appeal absent a clear abuse of that discretion. Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 375 S.E.2<sup>nd</sup> 321 (Ct. App. 1988); Ammons v. Hood, 288 S.C. 278, 341 S.E.2<sup>nd</sup> 816 (Ct. App. 1986). In considering the motion the threshold matter is whether the movant has demonstrated the existence of a meritorious defense. Mitchell, supra and Bowers v. Bowers, 304 S.C. 65, 403 S.E.2<sup>nd</sup> 127 (Ct. App. 1991). The Defendant has failed to utter a defense, meritorious or otherwise.

Defendant's assertion that he was unaware of the action is simply untrue. He was served with the Notice and the Application as set forth in the Act, he tried to object to the

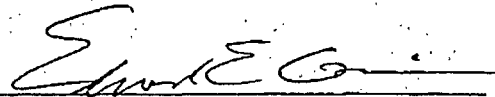
application but was apparently unaware of the statutory procedures, and his counsel was provided with a copy of the Order of Court more than five months ago. The Motion to Vacate is not timely and must be denied.

III. Conclusion

For the foregoing reasons, the Plaintiff respectfully requests that the Motion to Vacate be denied.

Respectfully submitted,

ERIC M. BERMAN, P.C.

By: 

Edward E. Gilbert, SC Bar #71948  
5900 Core Avenue, Suite 402  
North Charleston, SC 29406-6069  
Tel: (843) 414-5500  
Fax: (843) 414-5517

At North Charleston, South Carolina  
August 15, 2007

10-CP-23-3793 ROA 84

**ERIC M. BERMAN, P.C.**

ATTORNEYS AT LAW

637 WYCKOFF AVENUE  
WYCKOFF, NEW JERSEY 07481

500 WEST MAIN STREET, SUITE 212  
BABYLON, NEW YORK 11702-3035

500 NORTH GULPH ROAD, SUITE 350  
KING OF PRUSSIA, PENNSYLVANIA 19406

2990 BETHESDA PLACE, SUITE 603D  
WINSTON-SALEM, NORTH CAROLINA 27103

TEL: 843.414.5500  
FAX: 843.414-5517  
TOLL FREE: 888-294-4490  
ERICBERMANPC.COM

5900 CORE ROAD, SUITE 402  
NORTH CHARLESTON, SOUTH CAROLINA 29406

PLEASE CONTACT OUR SOUTH CAROLINA OFFICE

EDWARD E. GILBERT, ESQUIRE

June 2, 2006

Honorable Paul B. Wickensimer  
Greenville County Clerk  
305 East North Street  
Greenville, SC 29601

In re: MBNA America Bank, N.A. v. Mark Christianson  
Our file no. 237536  
MBNA America Bank, N.A. v. Scott A. Hamilton  
Our file no. 249705  
MBNA America Bank, N.A. v. William D. Crippin  
Our file no. 243932

Dear Mister Clerk:

I have enclosed for filing an original and one (1) copy of an Affidavit of Service, Application for Confirmation of Arbitration Award, the \$150.00 filing fee and a business reply envelope for each of the above cases.

Thank you for your kind attention.

Very truly yours,

Helen M. Breen

HMB  
Enclosure

10-CP-23-3793 ROA 85

Exhibit 1

ROA- 45

Plaintiff(s)

2006 JUN 13 P 12: 23

2006 - CP - 23 - 3740

vs.

MARK CHRISTIANSON

Defendant(s) FILED - CLERK OF COURT GREENVILLE CO. S.C.

(Please Print)

Submitted By: Edward E. Gilbert
Address: 5900 Core Avenue, Suite 402
North Charleston, SC 29406

SC Bar #: 71948
Telephone #: 843-414-5500
Fax #: 843-414-5517
Other:
E-mail: egilbert@erichbermanpc.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Sexual Predator (510), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture (840), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Administrative Law Judge (980), Public Service Commission (990), Employment Security Comm (999), Other (999)
Special/Complex/Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650)

Submitting Party Signature:

[Handwritten Signature]

Date: May 30, 2006

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

ROA- 46

10-CP-23-3793 ROA 86

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224<sup>th</sup> day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224<sup>th</sup> day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Cases which are appellate in nature such as appeals or writs of certiorari;
  - c. Post Conviction relief matters;
  - d. Contempt of Court proceedings;
  - e. Forfeiture proceedings brought by the State;
  - f. Cases involving mortgage foreclosures; and
  - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

**Please Note:** You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13th JUDICIAL CIRCUIT

MBNA AMERICA BANK, N.A.,  
Plaintiff,

-vs-

MARK CHRISTIANSON,  
Defendant(s).

2006 JUN 13 P 12: 23 File No. 237536

Case No. 2006-CP-23-6740

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL E. WILSON

APPLICATION FOR CONFIRMATION  
OF ARBITRATION AWARD

AND NOW comes the Plaintiff, MBNA AMERICA BANK, N.A., by and through its counsel, ERIC M. BERMAN, P.C. and EDWARD E. GILBERT, ESQUIRE and moves the Honorable Court for Confirmation of an Arbitration Award in conformity with the Uniform Arbitration Act, South Carolina Code of Laws §§15-48-10 et seq. and would allege and show to the Honorable Court as follows:


1. The Plaintiff is a National Association with offices at 1000 Samoset Drive, Wilmington, Delaware 19884-2332 doing business in South Carolina pursuant to the Federal Interstate Commerce Laws.
2. Upon information and belief, the Defendant(s), Mark Christianson, (is) (are) (an) adult individual(s) currently residing at 108 Muirwood Dr., Mauldin, SC 29662-2325.
3. On August 29, 2005 the National Arbitration Forum entered its Award in favor of Plaintiff (Claimant), MBNA America Bank, N.A., and against Defendant(s) [Respondent(s)], Mark Christianson, in the total amount \$11,141.33. A certified copy of the Arbitration Award is attached hereto as Exhibit "A" and incorporated by reference.
4. On the same date, a copy of the Award was duly served on the parties hereto.
5. More than ninety (90) days have elapsed and no action has been taken to vacate, modify or correct the arbitration award.

10-CP-23-3793 ROA 88

6. Notice of this Application was duly served on the Defendant(s) on May 11, 2006 according to the Affidavit of the Deputy Sheriff.

WHEREFORE, the Plaintiff, MBNA America Bank, N.A., hereby moves the Honorable Court for confirmation of the award in conformity with the Uniform Arbitration Act, South Carolina Code of Laws §§15-48-10 et seq.

Respectfully submitted:



ERIC M. BERMAN, P.C.

Counsel for Plaintiff

By: Edward E. Gilbert, Esquire

S.C. Bar #71948

5900 Core Avenue, Suite 402

North Charleston, SC 29406

(843) 414-5500

fax: (843) 414-5517

At North Charleston, South Carolina  
May 30, 2006

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that he served or caused to be served a true and correct copy of the foregoing Application for Confirmation of Arbitration Award by first class United States mail, postage prepaid and addressed as follows:

Mark Christianson  
108 Muirwood Dr.  
Mauldin, SC 29662-2325

Respectfully submitted,



Edward E. Gilbert, SC Bar #71948  
Counsel for the Plaintiff

At North Charleston, South Carolina  
May 30, 2006

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL A. WICKENS

2006 JUN 13 P 12:23

10-CP-23-3793 ROA 90



NATIONAL  
ARBITRATION  
FORUM®

MBNA America Bank, N.A.  
c/o Wolpoff & Abramson, L.L.P.  
Attorneys in the Practice of Debt Collection  
702 King Farm Blvd, Two Irvington Centre  
Rockville, MD 20850-5775

CLAIMANT(s),

AWARD

RE: MBNA America Bank, N.A. v Mark Christianson  
File Number: FA0504000464239  
Claimant File Number: 5490992997737741

Mark Christianson  
108 Muirwood Dr  
Mauldin, SC 29662-2325

RESPONDENT(s).

The undersigned Arbitrator in this case FINDS:

1. That no known conflict of interest exists.
2. That on or before 04/14/2005 the Parties entered into an agreement providing that this matter shall be resolved through binding arbitration in accordance with the Forum Code of Procedure.
3. That the Claimant has filed a Claim with the Forum and served it on the Respondent in accordance with Rule 6.
4. That the Respondent has filed a Response with the Forum and served it on the Claimant.
5. That the matter has proceeded in accord with the applicable Forum Code of Procedure.
6. The Parties have had the opportunity to present all evidence and information to the Arbitrator.
7. That the Arbitrator has reviewed all evidence and information submitted in this case.
8. That the information and evidence submitted supports the issuance of an Award as stated.

Therefore, the Arbitrator ISSUES:

An Award in favor of the Claimant, for a total amount of \$11,141.33.

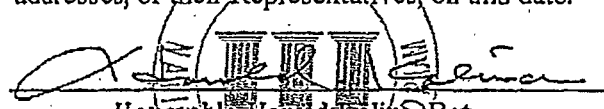
Entered and Affirmed in the State of South  
Carolina

  
Thomas L. Stephenson, Esq.  
Arbitrator

Date: 08/29/2005

ACKNOWLEDGEMENT AND CERTIFICATE  
OF SERVICE

This Award was duly entered and the Forum hereby certifies that a copy of this Award was sent by first class mail postage prepaid to the Parties at the above referenced addresses, or their Representatives, on this date.

  
Honorable Harold Kallio, Ret.  
Director  
ROA-51

10-CP-23- 3793 ROA 91

EXHIBIT "A"



NATIONAL  
ARBITRATION  
FORUM®

August 29, 2005

Mark Christianson  
108 Muirwood Dr  
Mauldin, SC 29662-2325

MBNA America Bank, N.A.  
c/o Wolpoff & Abramson, L.L.P.  
Paralegal Department  
Attorneys in the Practice of Debt Collection  
702 King Farm Blvd.  
Two Irvington Centre  
Rockville, MD 20850-5775

RE: MBNA America Bank, N.A. v Mark Christianson  
File Number: FA0504000464239  
Claimant Reference Number: 0128241163

Dear Parties:

Enclosed and served upon you by United States Mail is a copy of the Award, which has been entered in this matter.

This case is now closed with the National Arbitration Forum. All future inquiries regarding this case should be directed to the opposing Party.

Sincerely,

*Mary Trocinski*

Mary B. Trocinski  
Case Coordinator  
Enclosure

10-CP-23-3793 ROA 92

ROA- 52

Rec 6/5/06

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
MBNA America NA )  
 ) Plaintiff )  
 ) v. )  
Mark Christianson )  
 ) Defendants )

IN THE COURT OF COMMON PLEAS  
CA: 06-CP-23-No Number Assigned  
File no 237536  
Objection to Notice of Application  
to Confirm Arbitration Award

Defendant was served by the Sheriff's Office with a copy of Exhibit 1 attached hereto. The Notice of Application states it is served in accordance with SC Code 15-48-170.

Defendant objects to the Notice and moves to deny the application. Moreover, service was insufficient, there is lack of subject matter jurisdiction, and the award was obtained by sham or non-existent proceedings.

Defendant moves to vacate the award pursuant to SC Code 15-48-130.

DAVID C. ALFORD, P.C.



David C. Alford  
P.O. Box 6326  
Spartanburg, South Carolina 29304  
(864) 574-0870

Spartanburg, South Carolina  
June 1, 2006

ATTORNEY FOR DEFENDANT

10-CP-23-3793 ROA 93

**ERIC M. BERMAN, P.C.**

ATTORNEYS AT LAW

500 WEST MAIN STREET, SUITE 212  
BABYLON, NEW YORK 11702-3035

5900 CORE AVENUE, SUITE 402  
NORTH CHARLESTON, SC 29406

500 NORTH GULPH ROAD, SUITE 350  
KING OF PRUSSIA, PA 19406

2990 BETHESDA PLACE, SUITE 603D  
WINSTON-SALEM, NORTH CAROLINA 27103

TEL: 843-414-5500  
FAX: 843-414-5517  
TOLL FREE: 888-294-4490  
ERICBERMANPC.COM

637 WYCKOFF AVENUE  
WYCKOFF, NEW JERSEY 07481

PLEASE CONTACT OUR SOUTH CAROLINA OFFICE

Edward E. Gilbert, Esquire

March 5, 2007

David C. Alford, Esquire  
Post Office Box 6326  
Spartanburg, SC 29304

In re: MBNA America Bank v. Mark Christianson  
Case No. 2005-CP-23-7546  
Our file no. 231690

Dear Mr. Alford:

I have enclosed a copy of Appellant's Return to Respondent's Motion to Dismiss Appeal or Extend Time to File Final Brief.

As you know, a judgment was entered against your client on his other account, Case No. 2006-CP-23-3740, on June 21, 2006 by Order of Judge Welmaker on June 16, 2006. A copy is enclosed. This is, of course, a final judgment and I am preparing a Writ of Execution unless your client wants to make arrangements to satisfy it.

Thank you for your kind attention.

Very truly yours,

Edward E. Gilbert

EEG/ms  
Enclosures

10-CP-23-3793 ROA 94

Exhibit 3

ROA- 54

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13th JUDICIAL CIRCUIT

2006 JUN 21 A 8:46 File No. 237536

MBNA AMERICA BANK, N.A., )  
Plaintiff, )

-vs-

FILED-CLERK OF COURT Case No. 2006-CP-23- 3740  
GREENVILLE CO. S.C.  
PAUL B. WILSON

MARK CHRISTIANSON, )  
Defendant(s). )

**ORDER OF COURT**

THIS MATTER comes before the Court on the Application of the Plaintiff, MBNA AMERICA BANK, N.A., to confirm an Arbitration Award according to the Uniform Arbitration Act, South Carolina Code of Laws §§15-48-10 et seq., and

IT APPEARING TO THE COURT that on August 29, 2005, the National Arbitration Forum entered an Award in favor of the Plaintiff (Claimant), MBNA America Bank, N.A., and against the Defendant(s) [Respondent(s)], Mark Christianson, in the total amount of \$11,141.33 and it further appearing that due notice of the Award and of this Application has been given to the Defendants according to the Uniform Arbitration Act, it is therefore

ORDERED, ADJUDGED AND DECREED that the Arbitration Award is confirmed and judgment shall be entered according to South Carolina Code of Laws §15-48-150.

IT IS SO ORDERED.

BY THE COURT:

Paul B. Wilson, J.

Dated: 6/16/06

A Certified Copy  
Paul B. Wilson  
Clerk of Court C.P. & G.S.  
Greenville County, SC  
Dated 6-21-06

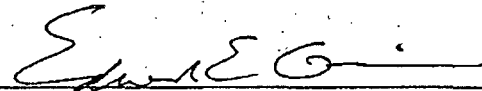
ROA- 55

10-CP-23- 3793 ROA 95

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 15<sup>th</sup> day of August, 2007 he served or caused to be served a true and correct copy of the foregoing MEMORANDUM OF LAW IN RESPONSE TO MOTION TO VACATE by first class United States mail, postage prepaid and addressed as follows:

David C. Alford, Esquire  
Post Office Box 6326  
Spartanburg, SC 29304



Edward E. Gilbert  
Counsel for the Plaintiff

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE ) CA: 06-CP-23-3740

MBNA America NA

Plaintiff

v.

Mark Christianson

Defendants

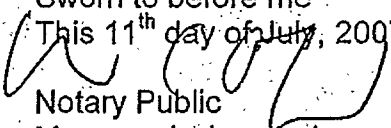
Affidavit of Mark Christianson

FILED - CLERK OF COURT  
GREENVILLE CO. S.C.  
JUL 11 2007

I received a Notice of Application served by the Sheriff's Department.  
My attorney David C. Alford attempted to file an Objection  
The Objection could not be filed because there was no case number assigned.  
My attorney queried the Clerk of Court and was informed there was no case on file.  
Since that original service, I have not received any correspondence relating to this suit.  
I was informed as to the existence of the in this suit judgment when I attempted to refinance my home on or about 6-20-07.

So sayeth the Affiant.

  
Mark Christianson

Sworn to before me  
This 11<sup>th</sup> day of July, 2007  
  
Notary Public  
My commission expires

10-CP-23-3793 ROA 97

411.046

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
MBNA America NA )  
 ) Plaintiff )  
 ) v. )  
Mark Christianson )  
 ) Defendants )

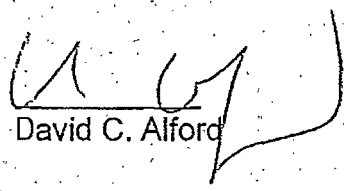
IN THE COURT OF COMMON PLEAS  
CA: 06-CP-23-3740  
Affidavit of David C. Alford

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
AUG 28 2007  
2007 SEP -5 A 10:59

I, the undersigned, affirm as follows:

1. Defendant provided me a copy of the Notice of Application served by the Greenville County Sheriff's Department.
2. An Objection and Certificate of mailing was served.
3. I personally went to the Clerk of Court office in Greenville County to ascertain the correct caption number, which was missing from the filing. The Clerk of Court staff informed me no filing had been clocked, and no caption number had been assigned.
4. I denoted my copies to clearly show the absence of a Caption.
5. My office never received any notice of hearing in this matter, nor any other court filings or correspondence until Defendant alerted me to the judgment on his credit report.
6. Upon receipt of Plaintiff's Memorandum, a search was made of the appeal file in the case 05-CP-23-7536. The referenced letter from Plaintiff's counsel was found. However, no Order was attached.

So sayeth the Affiant

  
David C. Alford

Sworn to before me  
This 30<sup>th</sup> day of August, 2007

Notary Public *Mary M. Hall*  
My commission expires *12.10.11*

10-CP-23-3793 ROA 98



# Office of the Clerk of Court

Greenville, South Carolina

Paul B. Wickensimer

Clerk of Court

Circuit Court Division  
Greenville County Courthouse  
305 East North Street  
Greenville, South Carolina 29601  
(864) 467-8551 FAX (864) 467-8540

Family Court Division  
301 University Ridge  
Post Office Box 757  
Greenville, South Carolina 29602  
(864) 467-5800 FAX (864) 467-5856

To: \_\_\_\_\_

From: CLERK OF COURT, GREENVILLE

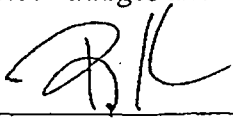
RE: \_\_\_\_\_

The above-referenced document is being returned for the following reason(s):

- (1)  Instrument not signed/dated.
- (2)  Must include Civil cover Sheet SCCA234 with all original pleadings.  
*Downloadable file available at [www.sccourts.org](http://www.sccourts.org) Select FORMS; Choose COMMON PLEAS, then SUBMIT*
- (3)  Motion Fee of \$25 is required for all Motions and proposed Orders (unless exemption claimed)
- (4)  Must have Motion and Order Information Form SCCA233 for all Motions and proposed Orders.  
*Downloadable file available at [www.sccourts.org](http://www.sccourts.org) Select FORMS; Choose COMMON PLEAS, then SUBMIT*
- (5)  Insufficient amount of filing fee. Correct amount fee: \_\_\_\_\_
- (6)  Copy. Must file original.
- (7)  Not a Greenville County Case.
- (8)  Venue change to: \_\_\_\_\_
- (9)  Check or money order must be payable to Greenville County Clerk of Court.
- (10)  Case ended: Date: \_\_\_\_\_ Reason ended: \_\_\_\_\_
- (11)  Check not signed.
- (12)  Case not found with this caption.

Other: Case number needed.

Please make the requested changes and return the documents to our office for filing. Thank you.

Staff signature  Date 6/14/06 ROA-59

10-CP-23-3793 ROA 99

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS )

COUNTY OF GREENVILLE )

CA: 06-CP-23-No Number Assigned )

MBNA America NA )

File no 237536 )

Plaintiff )

v. )

Certificate of Mailing )

Mark Christianson )

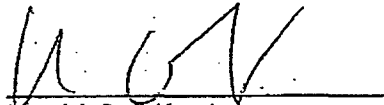
Defendants )

The undersigned does hereby certify that he has this date served Defendant's Objection to the Notice of Application upon the Plaintiff by depositing the same in the United States mail, with sufficient postage duly attached thereto, to the following address:

Edward E. Gilbert  
5900 Core Avenue Ste 402  
North Charleston, SC 29406

As attorney for Plaintiff

DAVID C. ALFORD, P.C.



David C. Alford  
P.O. Box 6326  
Spartanburg, South Carolina 29304  
(864) 574-0870

Spartanburg, South Carolina  
June 1, 2006

ATTORNEY FOR DEFENDANT

10-CP-23-3793 ROA 100

ROA- 60  
1

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

MBNA America NA )

Plaintiff )

v. )

Mark Christianson )

Defendants )

IN THE COURT OF COMMON PLEAS

CA: 06-CP-23-No Number Assigned

File no 237536

Objection to Notice of Application  
to Confirm Arbitration Award

Defendant was served by the Sheriff's Office with a copy of Exhibit 1 attached hereto. The Notice of Application states it is served in accordance with SC Code 15-48-170.

Defendant objects to the Notice and moves to deny the application. Moreover, service was insufficient, there is lack of subject matter jurisdiction, and the award was obtained by sham or non-existent proceedings.

Defendant moves to vacate the award pursuant to SC Code 15-48-130.

DAVID C. ALFORD, P.C.



David C. Alford  
P.O. Box 6326  
Spartanburg, South Carolina 29304  
(864) 574-0870

Spartanburg, South Carolina  
June 1, 2006

ATTORNEY FOR DEFENDANT

10-CP-23-3793 ROA 101

ROA- 61  
1

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

COURT OF COMMON PLEAS  
2006-CP-23-3740

MBNA AMERICA BANK NA,  
PLAINTIFF,

vs.

TRANSCRIPT OF RECORD

MARK CHRISTIANSON,  
DEFENDANT.

**ORIGINAL**

September 6, 2007  
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE.

A P P E A R A N C E S:

EDWARD E. GILBERT, ESQ.  
Attorney for the Plaintiff

DAVID C. ALFORD, ESQ.  
Attorney for the Defendant

HOLLIE M. JENKINS  
Circuit Court Reporter

10-CP-23-3793 ROA 102

ROA- 62

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

10-CP-23-3793 ROA 103

ROA-63

P R O C E E D I N G S

1  
2  
3 THE COURT: Mr. Alford, I think you're the moving  
4 party, aren't you?

5 MR. ALFORD: Yes, sir, I am.

6 THE COURT: Okay.

7 MR. ALFORD: Your Honor, the Court should have  
8 received and you should have received our memorandum.

9 THE COURT: I got it.

10 MR. ALFORD: Essentially, this case, apparently,  
11 started -- and I tried to set that out in my memorandum.  
12 I apologize if I repeat. But, apparently, my client, Mark  
13 Christianson, was served a notice of application on May  
14 11th. That notice is attached as an exhibit to my  
15 memorandum. At that time -- and what is important, I  
16 think, also is the pattern of MBNA trying to enroll a  
17 foreign arbitration judgment that was under litigation, at  
18 that time, between Christianson and MBNA in another case.

19 Now, to this day, I don't know if they relate to the  
20 same account or not. But let's assume they're different  
21 accounts. He brought me that. I filed a notice of  
22 objection to the enrollment and served it on Mr. Gilbert.  
23 And that objection and service should be attached also to  
24 the memorandum.

25 Now, what is interesting is we filed that on June the

10-CP-23-3793 ROA 104

1 5th. You will notice -- and I tried to circle my exhibit  
2 at that time --

3 THE COURT: Let me catch up. Which exhibit are you  
4 referring to?

5 MR. ALFORD: Let me make sure I have them in here.

6 The very first one attached to the memorandum should  
7 be the notice of application.

8 THE COURT: Okay. I've got that.

9 MR. ALFORD: Okay. And if you notice on that,  
10 there's a file number at the top of this notice. I will  
11 approach the Court and point --

12 THE COURT: I've got it.

13 MR. ALFORD: Okay. That file number is also the same  
14 one -- and I happened to attach it on the certificate of  
15 service from the Sheriff's Department.

16 Our notice -- our objection could not be filed  
17 because, at that time, it had not been clocked in to the  
18 courts. And attached to my affidavit, I hand up -- and I  
19 have the originals. This is what we received back from  
20 the office of the clerk here. They could not clock my  
21 certificate and notice in because they said, Case number  
22 needed.

23 And I represented in my affidavit that I came to the  
24 Clerk of Court's Office to verify with the staff that  
25 there were no cases out there, you know, for caption

10-CP-23-3793 ROA 105

1 number. I happened to be down here. The only one on  
2 file, at that time, was this other one, the 05-CP-23-7536,  
3 which is on appeal.

4 Okay. We sent that off. We then waited. We heard  
5 nothing. My client, by his affidavit -- it should also be  
6 in the file -- goes to get his mortgage refinanced about a  
7 month and a half ago, two months ago, and finds the other  
8 judgment in this case, 3740, on record. Well, he didn't  
9 know, but it was a judgment. We came down. We pulled  
10 that file. And attached to the memorandum is the  
11 pertinent copies of what was contained in the file on  
12 record here.

13 The best we can determine, this notice was served on  
14 my client on May 11. The civil action cover sheet and the  
15 application signed by Plaintiff's counsel was not done  
16 until May 30th. And then, it was not clocked into the  
17 Clerk's Office until June 13. Apparently, there was a  
18 notice of hearing to be scheduled sometime in July, which  
19 we never received. And it looks like the Court signed a  
20 form order submitted for which we were not copied on.  
21 Mr. Gilbert, in the Plaintiff's memorandum, acknowledges  
22 having received our notice of objection.

23 For various reasons set out in the memo, we're moving  
24 to vacate the judgment as not complying with the rules.  
25 First of all, we put in there the improper filing of the

10-CP-23-3793 ROA 106

1 application and improper service of process. And I've set  
2 it out because our rules aren't very clear, at least, the  
3 civil -- the rules of civil procedure don't address  
4 enrollment of a foreign arbitration. They do talk about a  
5 foreign judgment by statute.

6 However, in the notice, Plaintiff puts in there that  
7 its filing is subject to the South Carolina Uniform  
8 Arbitration Act 1548. And I believe it's 170 is the  
9 applicable statute I copied in the applicable part. It  
10 talks about it all has to be done similar to a summons.  
11 Well, I read that by parallel looking at our rules of  
12 civil procedure to start the action, you take your  
13 summons, you go clock it in, and then you go serve it. In  
14 this case, that was not done.

15 So taking their claim to the South Carolina Uniform  
16 Arbitration Act, unfortunately, they got the cart before  
17 the horse. I think there's a number of cases out there  
18 that say that the summons and complaint would not be valid  
19 if served absent the clocking in with the Clerk of Court.

20 We also put in there the second part of this that we  
21 filed the objection. We made an appearance. The only  
22 notice that Plaintiff asserts they gave us was the second  
23 paragraph of a letter I received in March of this year  
24 where we were receiving a response on an appeal issue.  
25 And this is that other case, that 7540 case that's on

10-CP-23-3793 ROA 107

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appeal.

Now, that particular case, same set of arbitration. The arbitration was denied. MBNA has it up on appeal. So he gives me that in the second paragraph. I also put in my affidavit -- we pulled that appeal file. I found the letter that he references in his exhibit. We have no copy of any judgment being provided to us. Our first notice was also when the client came to my office asking about this other MBNA judgment.

We're asking that this arbitration filing be vacated. More importantly, because of just the rampant failure to comply with any of the rules that they would be deemed dismissed with prejudice.

Thank you, Your Honor.

THE COURT: All right. Thank you, Mr. Alford.

Yes, sir, Mr. Gilbert.

MR. GILBERT: Your Honor, Edward Gilbert for the Plaintiff.

THE COURT: Yes, sir.

MR. GILBERT: The motion for relief from judgment under Rule 60(b) has to be timely. Our first point is that this motion is rather tardy under the circumstances. But, more importantly, as a threshold matter, the Defense has to show a meritorious defense to the underlying claim. They've not presented any defense.

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1           Mr. Christianson used his credit card. He owes the  
2 money. If we open this judgment, all we have to do is sue  
3 him and we'll be back before the Court on a motion for  
4 summary judgment before the end of the year. And it's  
5 just a waste of everyones time.

6           I would like to talk about the procedures. Because I  
7 have been filing applications for confirmation of  
8 arbitration awards under both the state and federal acts  
9 for about four years. The Uniform Arbitration Act was  
10 adopted in South Carolina in 2003. We began doing these  
11 at the beginning of 2004. We've used various procedures  
12 over the past four years. The initial procedure of filing  
13 the application was not working. Because the application  
14 is governed under motions procedures. No hearing is  
15 required. All the Court needs to do is determine that  
16 there was an arbitration award entered more than 90 days  
17 ago.

18           If we have those two elements, then the Court  
19 confirms the award under the act and it's entered. We  
20 were finding out initially that by the time the sheriff  
21 served notice on the Defendant, the case was already over.  
22 I had been working with Judge Keesley and Judge Howard on  
23 this for a couple of years. The procedure that we follow  
24 now satisfies the statute. There are no rules governing  
25 the application for confirmation. Judge Howard is the

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1 chairman of the commission on civil rules. And we're also  
2 working on developing that.

3 When we started filing these, the Clerk's Offices  
4 around the State didn't know what they were. They didn't  
5 know what to do with them. And every time we would file  
6 one, we would get a call, Is this an automobile  
7 arbitration? What am I supposed to do? Well, the  
8 procedure is that as soon as the application is filed, it  
9 is routed to the judge for review. If everything is in  
10 order, then the order is signed and the case is over.  
11 There's no hearing requested in this case. No hearing is  
12 required.

13 In this case, what we did was -- and this is the  
14 standard procedure across the State until rules are  
15 adopted to tell us otherwise -- we serve a notice of  
16 application, which was done on May 11. When the affidavit  
17 of service is returned, we file the application with the  
18 affidavit of service. That was mailed to the Clerk on  
19 June 2nd. These are attached as exhibits to my  
20 memorandum.

21 On June 5th, we received the objection to the notice  
22 of application. I assumed it had been filed with the  
23 Clerk. I only learned very recently that that was not the  
24 case. On June 16th, Judge Welmaker signed the order of  
25 court confirming the arbitration. And, at that point, the

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1 case was over. I did serve a copy of the application on  
2 Mr. Christianson in a mailing on June 2nd. And there's a  
3 certificate of service attached to the application. On  
4 March 5th, I sent a letter to Mr. Alford with a copy of  
5 the order. And this motion was filed on July 17th, 13  
6 months after the award was confirmed.

7 Your Honor, we're still in the development stage on  
8 what to do with these applications. I would like to read --

9 THE COURT: Well, I'm a little concerned about the --  
10 I mean, Mr. Alford objected, sent it to you, tried to file  
11 it, you know, maybe -- if I grant the relief, maybe  
12 exactly what you said will happen. But it would also  
13 ensure that his client got due process.

14 MR. GILBERT: Well, Your Honor, you can't grant the  
15 relief if there's no meritorious defense to the underlying  
16 claim, and if the motion is not timely filed.

17 Now, we sent the application to Mr. Christianson on  
18 June 2nd of last year. At that point, Mr. Alford was not  
19 in the case. Judge Welmaker signed the order. It was  
20 sent to the Clerk for filing. It was distributed by the  
21 Clerk. I had nothing to do with that.

22 Now, in some counties, when that order is returned,  
23 they notify all parties. I found out recently that  
24 Greenville County does not do that. This is one of the  
25 reasons that we need rules governing this procedure.

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1 THE COURT: Okay.

2 MR. GILBERT: And we had already sent the application  
3 for filing at that point. There are some unfortunate  
4 timing issues in this case.

5 MR. ALFORD: May I ask the cite on the case that  
6 counsel was referencing?

7 THE COURT: Yes.

8 MR. ALFORD: Do you have the SC number?

9 MR. GILBERT: 428, SE2d 736.

10 Your Honor, our position is there is no defense to  
11 the underlying claim, to the claim on the credit card  
12 bill. The arbitration award was entered and absolute by  
13 the time we filed the application. There's just no  
14 grounds for this.

15 THE COURT: That's a pretty strong statement. And if  
16 I go along with your -- I mean, this is a new area of law;  
17 right?

18 MR. GILBERT: It is, Your Honor.

19 THE COURT: And if I go along with that, it denies  
20 Mr. Christianson due process of law. He filed his  
21 objection. He was not given an opportunity to be heard on  
22 that.

23 MR. GILBERT: Your Honor, he's not denied due process  
24 because the arbitration was noticed. The arbitration  
25 award was provided to him --

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1 THE COURT: Well, I know what you're saying. But you  
2 can't go back and attack the underlying arbitration award;  
3 right?

4 That's -- is that what you're trying to tell me?

5 MR. GILBERT: He has the right to move to vacate that  
6 within 90 days.

7 THE COURT: Okay. I understand that.

8 MR. GILBERT: And he didn't do that.

9 THE COURT: I understand that.

10 MR. GILBERT: He's not allowed to rest on his rights  
11 and then come back two years later and claim absence of  
12 due process.

13 THE COURT: That's not what I'm referring to.

14 I'm referring to his right to due process to contest  
15 the filing of the arbitration award here in South  
16 Carolina. If I go along with what you're telling me, it's  
17 once the arbitration award is entered and 90 days have  
18 passed, he's out of it. He's got nothing else he can say.  
19 Your client can just do whatever they want with the award  
20 and he can't participate. That's what I'm hearing. It  
21 doesn't make any difference if he files objections --

22 MR. GILBERT: That's the law in South Carolina as it  
23 presently stands.

24 THE COURT: So how would somebody -- hypothetically,  
25 let's say there are irregularities in the application

1       itself or some part of the motion and you're -- the moving  
2       parties application to file the arbitration award here,  
3       you're saying that a party who would be aggrieved by that  
4       can't contest it?

5               MR. GILBERT: They can't contest the underlying  
6       reward.

7               THE COURT: That's not what I'm talking about. I'm  
8       talking about having it filed here. What you're saying is  
9       that once the 90 days have passed, it doesn't matter what  
10      that person wants. Any --

11              MR. GILBERT: Well, no. That's not true.

12              The statute says that we have to give him notice of  
13      the application, which we did. It has to be personally  
14      served on him the same way a summons is served. We did  
15      that.

16              THE COURT: Okay. That's due process; right?

17              MR. GILBERT: Our procedure is that once we get the  
18      affidavit of service of the notice, then we file the  
19      application. And when we do that, we provide the  
20      Defendant with a copy of the application itself as sent to  
21      the Clerk. There's a certificate of service that's filed  
22      with that because that's under motions procedures.

23              THE COURT: Okay. And so what I'm saying is if  
24      somebody files an objection to the way that process  
25      worked, if I adopt your argument, it doesn't matter what

1 they object to. What if it's improper service? It  
2 wouldn't matter, according to what you're telling me; is  
3 that right?

4 MR. GILBERT: I think it does matter.

5 We had some problems initially when we started doing  
6 these four years ago. Because, as I described, the notice  
7 was getting to the Defendant after the case was already  
8 over, which was not good. So we decided -- in talking to  
9 Judge Howard and Judge Keesley, we decided, at that point,  
10 that we would reverse the process, notice them first, and  
11 then file the application. So they had notice that we  
12 were filing it. And he got notice when we did file it, so.

13 THE COURT: Okay. And the purpose of that?

14 MR. GILBERT: Is to give them notice that we're  
15 before the Court.

16 THE COURT: Right. So that they can participate in a  
17 proceeding which will impact them.

18 MR. GILBERT: Right.

19 THE COURT: And in this particular case -- and I'm  
20 not going to the merits of it -- he filed an objection.  
21 And is it contested?

22 I mean, I'm -- I think we're all kind of on the same  
23 page here. He filed a notice of application, which they  
24 didn't allow him to -- they didn't file because it had no  
25 number.

1 MR. GILBERT: I thought it was filed.

2 THE COURT: Well, I understand that, but it wasn't.

3 So the Court signed it without -- Judge Welmaker, as  
4 administrative judge at that time, signed the order  
5 granting the relief requested by your client without  
6 notice to a party who was objecting, whether or not he had  
7 valid grounds or not, and noticed you that he had. And,  
8 now, I'm not saying you did anything wrong. But, I mean,  
9 he filed -- he attempted to file his application.

10 I mean, do you have any doubt that what Mr. Alford  
11 has said with respect to his filing of the objection to  
12 the notice of application is incorrect?

13 MR. GILBERT: No, sir. He sent me that.

14 I'm just not sure that it really matters. Because  
15 the Court's duty, under the statute, is to determine that  
16 there's an arbitration award and it's been more than 90  
17 days.

18 THE COURT: Yes. And I'm more concerned with the  
19 Constitution that provides due process. And so maybe this  
20 statute -- you know, just because it's a developing area  
21 of law, the statute does not trump the Constitution.  
22 Whether or not he's right or wrong, I mean, whether or not  
23 he's got a leg to stand on if he's -- you noticed him  
24 properly, you did what you're supposed to do, he said, I  
25 don't agree with you. And then the Court, because of the

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1 way this thing worked, they don't know there's an objection.

2 MR. GILBERT: I think it's an odd procedure. I kind  
3 of view this as domesticating a foreign judgment. It  
4 works kind of the same way.

5 THE COURT: Yes. And people can contest those.

6 MR. GILBERT: I know.

7 THE COURT: And what I'm saying is he intended to  
8 contest it. And he made -- I think properly if I'm  
9 reviewing the records right. He properly did it. And  
10 through no fault of his own, he was denied that right to  
11 contest it. I mean, he might be spitting in the wind, but  
12 he's given that right to do. I mean, that's --

13 MR. GILBERT: But then we get back to the tardiness  
14 issue. If he had notice of this months ago, it's late.  
15 It's very late.

16 THE COURT: No. I'm not talking about fighting the  
17 underlying arbitration award. That's what you're  
18 referring to.

19 MR. GILBERT: A motion for relief from judgment under  
20 Rule 60(b) has to be timely. This isn't timely.

21 THE COURT: Well, he didn't get --

22 Well, why did you wait so long? What's the problem  
23 with that?

24 MR. ALFORD: Because we didn't know about it.

25 THE COURT: You didn't know about --

1 There was no staple mark in it. So I know it wasn't  
2 attached with a staple.

3 MR. GILBERT: Your Honor, I can testify that I put  
4 the letter and the order in an envelope and sent them. He  
5 has the letter, so he has to have the order.

6 THE COURT: As an aside, Mr. Gilbert, what are they  
7 doing to correct these procedural problems? Is there some  
8 sort of uniform --

9 MR. GILBERT: I wrote to Judge Howard sometime ago  
10 asking about promulgation of rules by the Civil Rules  
11 Commission. He responded and thanked me for my input and  
12 we're working on the rules. We've had some communications  
13 over the past few months about procedures that we've been  
14 following. I've received calls from two other firms  
15 regarding the procedures, because the clerks tell them  
16 that we do it and they're doing it, too.

17 So this is accepted practice. Like I said, I've  
18 filed these arbitration awards 1,600 times over the last  
19 four years. And we very rarely have a problem.

20 THE COURT: How many objections do you get?

21 MR. GILBERT: I've had three.

22 THE COURT: What happened with the other two?

23 MR. GILBERT: Mr. Christianson's first case is up on  
24 appeal.

25 THE COURT: What did I do in that?

1 MR. GILBERT: We're all involved in that one.

2 MR. ALFORD: It goes to the issue of having a  
3 meritorious defense to this enrollment of a foreign  
4 arbitration that there were issues raised that it was not  
5 done in compliance with the rules.

6 THE COURT: Okay.

7 MR. GILBERT: The third case settled with a discount.

8 MR. ALFORD: I will also raise to this Court that I  
9 had an MBNA case with a similar set of facts. The Corn  
10 Law Firm brought it. We had it -- I've forgotten if it  
11 was -- I think it was Judge Couch ruled against MBNA's  
12 enrollment. That case was not appealed.

13 So to make a statement that this is a slam dunk on  
14 behalf of MBNA is, clearly, erroneous.

15 MR. GILBERT: Your Honor, I didn't say that.

16 I understand the area of law in flux and we've been  
17 wrestling with this for a long time.

18 THE COURT: All right. Apparently, I've got a 50/50  
19 chance to get my name in the books again.

20 What is your meritorious defense, Mr. Alford?

21 MR. ALFORD: The same one we had on the others and it  
22 may be -- it may also be -- we don't know if this is -- if  
23 this involves two accounts or similar accounts.

24 MR. GILBERT: There are two, Your Honor.

25 MR. ALFORD: Well, we don't have any information.

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE ) THIRTEENTH JUDICIAL CIRCUIT

Mark Christianson, ) CIVIL ACTION NUMBER: 10-CP-23-3793

Plaintiff, )

vs. )

MBNA America Bank NA, )

Defendant. )

DEFENDANT'S BRIEF

The above-captioned matter is an action in equity pending before this Court. Stated simply, Plaintiff Mark Christianson seeks a second bite at the apple in this litigation, which has already been disposed of by the Supreme Court. See Exhibit 1, Memorandum Opinion, 2010-MO-003. Since commencement of the case sub judice in 2010, Plaintiff has not conducted any discovery, obtained any sworn testimony, or provided any other basis for demonstrating why the order of the Supreme Court should not govern the final adjudication of the parties' dispute. Accordingly, Defendant MBNA America Bank NA respectfully requests this Court dismiss the case.

#### FACTS/PROCEDURAL BACKGROUND

Defendant obtained an arbitration award for sums owed by Plaintiff relating to credit debt via an independent arbitration panel. Defendant thereafter served a Notice of Application to Confirm Arbitration Award on Plaintiff in South Carolina. The Circuit Court ultimately executed an Order, confirming the arbitration award.<sup>1</sup> The Order was docketed by the Clerk of Court in Greenville County on June 21, 2006. Plaintiff moved to vacate the Order via Rule

<sup>1</sup> Styled as MBNA America Bank v. Mark Christianson, 2006-CP-23-3740.

60(b), SCRCF on July 17, 2007 - more than a year after the Order was entered by the Clerk. The Circuit Court denied the motion on October 1, 2007, as untimely filed.

Plaintiff appealed the Circuit Court's judgment to the Court of Appeals. The matter was ultimately transferred to the Supreme Court, which disposed of the matter.<sup>2</sup> Specifically, following oral argument, Plaintiff's appeal was disposed of via a one paragraph Rule 220(b)(1), SCACR Memorandum Order, which affirmed the Circuit Court's previous order. Rule 220(b)(1), SCACR states:

(1) The Supreme Court may file a memorandum opinion dismissing an appeal, affirming or reversing the judgment appealed from, or granting other appropriate relief when, in unanimous decision, the Supreme Court determines that a published opinion would have no precedential value and any one or more of the following circumstances exists and is dispositive of issues submitted to the Court for decision: (A) that a judgment of the trial court is based on findings of fact which are or are not clearly erroneous; (B) that the evidence to support a jury verdict is or is not insufficient; (C) that the order of an administrative agency is or is not supported by such quantum of evidence as prescribed by the statute or law under which judicial review is permitted; or (D) that no error of law appears.

(emphasis added).

### ISSUES

- I. Whether Plaintiff's Rule 60(b), SCRCF Independent Action is Barred by Res Judicata?
- II. Whether Plaintiff's Rule 60(b), SCRCF Independent Action is Barred as Untimely?
- III. Whether Plaintiff's Second Through Fifth Causes of Action are Barred as Untimely?
- IV. Whether Plaintiff Has Proffered Sufficient Evidence to Support His Liability and/or Damages Averments in His Second Through Fifth Causes of Action?

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<sup>2</sup> Defendant is represented in this action by Collins & Lacy, P.C. Collins & Lacy was retained by Defendant to argue the appeal in the previous action to the Supreme Court. However, the firm did not brief the case to the appellate court or handle any matters at the trial court level. Those matters were handled by a different firm.

## LAW/ANALYSIS

### I. Res Judicata Precludes Plaintiff from Obtaining Relief Sought in His Independent Action

The instant case is premised upon Plaintiff's belief that he is entitled to bring a separate action at this stage via Rule 60, SCRPC known as an "Independent Action." Even if Plaintiff's interpretation of Rule 60, SCRPC is correct concerning his ability to now pursue relief by way of a separate independent action, the record clearly reveals Plaintiff has already sought relief via Rule 60(b), SCRPC and was unsuccessful. See Exhibit 1. For this reason, Defendant asserts this Independent Action is merely successive in nature and is therefore precluded by virtue of res judica.

Our case law concerning res judicata is quite clear. Specifically, the doctrine of res judicata acts prevents the re-litigation of issues previously litigated or which might have been litigated in the first action. See Mungo v. Rental Uniform Srv. of Florence, 383 S.C. 270, 284, 678 S.E.2d 825, 832 (Ct. App. 2009) (citing and quoting Estridge v. Joslyn Clark Controls, Inc., 325 S.C. 532, 540, 482 S.E.2d 577, 581 (Ct. App. 1997). As explicated within Owenby v. Owens Corning Fiberglas, 313 S.C. 181, 437 S.E.2d 130 (Ct. App. 1993), this doctrine requires the satisfaction of three essential elements: (1) the judgment must be final, valid and on the merits; (2) the parties in the subsequent action must be identical to those in the first; and (3) the second action must involve matter properly included in the first action. Id. at 183, 437 S.E.2d at 131.

Applying the Owneby factors, it is inarguable that res judicata is applicable as a basis for dismissal of Plaintiff's Independent Action in the instant case. Plaintiff has previously attacked the validity of the Circuit Court's judgment and has already asserted its arguments regarding due process, etc. Plaintiff continued to assert its position to no avail to the Supreme Court. The case

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at bar is merely a reprisal of the prior litigation. Close comparison of Plaintiff's briefing to the appellate tribunal and Plaintiff's pleadings in the instant action reveal that circumstance to be true. See Exhibit 2, Plaintiff's Initial (Appellate) Brief.

The issues and arguments possessed by Plaintiff have been argued and ruled upon by the court of last resort in South Carolina. Plaintiff is not entitled to re-hash this dispute via brand new litigation. The matter has been ended with finality; accordingly, this Court should not permit the matter to be reprised.

## II. Plaintiff's Pursuit of Relief via Rule 60(b), SCRCF Independent Action is Untimely

Rule 60, SCRCF states the following:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(emphasis added).

In the instant case, Plaintiff has commenced an "Independent Action" to seek relief from the Circuit Court's June 21, 2006, Order, which confirmed the arbitration award. However, it not clear from the pleadings filed in the case at bar what particular ground found within the subsections of Rule 60(b), SCRCF is the basis for his pursuit. Plaintiff's identification with certainty which subsection(s) are implicated in his Independent Action was necessary and is paramount to this Court's analysis. Notwithstanding this failure, upon review of the pleadings, Defendant believes Plaintiff is asserting grounds relating to Rule 60(b)(3), SCRCF.

The language of the rule clearly contemplates that motions based on (b)(1) through (3) should be brought within a year of judgment. Plaintiff did not do that. Defendant therefore maintains that an Independent Action on any of these grounds at this point in time would be inequitable. While there is no specified time limit for bringing an independent action for relief from judgment, a party should not be able to avoid the one year time limit simply by commencing an independent action seeking the same relief. Mt. Ivy Press, LP v. Defonseca, 937 N.E.2d 501, 508-09 (Mass. App. Ct. 2010) (reviewing timeliness of Rule 60(b) independent action).

Alternatively, assuming that Plaintiff has somehow asserted grounds that permit him to seek Rule 60(b), SCRCF relief after the one year time limit, his pursuit of such relief in 2010 was nevertheless untimely because of unreasonable and inexcusable delay. See Waller v. State Dep't of Health & Welfare, 192 P.3d 1058, 1063-64 (Idaho 2008) ("There is no express time limit for an independent action to relieve a party from judgment. The power of the courts to entertain such an action is inherent, and is not, therefore, subject to the time limitations imposed by I.R.C.P. 60(b). The independent action must, however be brought within a "reasonable time.") (internal citations omitted). Plaintiff commencement of an Independent Action four

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years after entry of the arbitration award was not within a “reasonable time” and there has been no showing to the contrary by Plaintiff to support a different holding by this Court.<sup>3</sup>

### III. Plaintiff’s Second, Third, Fourth, and Fifth Causes of Action are Time-Barred

As noted in Section II of this Law/Analysis, the Circuit Court’s judgment in this action was dated June 21, 2006. Plaintiff commenced the instant suit on May 13, 2010, which was almost 4 years after the arbitration entry judgment was rendered. In addition to asserting a Rule 60(b), SCRCF-based Independent Action, Plaintiff asserted 4 additional causes of action, which aver the following: violation of the South Carolina Uniform Trade Practices Act and South Carolina Consumer Protection Code; Abuse of Process; and Negligence. Review of the pleadings indicates these additional claims clearly arise from Defendant’s 2006 pursuit of the entry of the arbitration award. Therefore, treating June 21, 2006 as the trigger date for a subsequent action against Defendant on the above-described grounds,<sup>4</sup> it would appear such claims are time barred.<sup>5</sup> Thus, this Court should dismiss these claims as untimely.

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<sup>3</sup> The fact that there was an appeal to the Court of Appeals/Supreme Court provides no safe harbor. That is because as a rule, the time to pursue relief via Rule 60(b), SCRCF is not tolled or suspended by an appeal. E.g., King v. First Am. Investigations, Inc., 287 F.3d 91, 94 (2d Cir. 2002) (citing a multitude of cases supporting the holding that appeal does not toll the one-year limitations period for filing a Rule 60(b) motion).

<sup>4</sup> Assuming, arguendo, Plaintiff’s Second through Fifth Causes of Action are cognizable. Defendant does not concede or otherwise consent that Plaintiff’s additional causes of action are in fact legally colorable in this matter. Further, other than make broad averments in his pleadings, Plaintiff has done nothing to actually prosecute these actions. It is axiomatic that a plaintiff must do more than just rest on his pleadings to survive an assault by a defendant seeking dismissal.

<sup>5</sup> The fact that Plaintiff filed a Rule 60(b), SCRCF motion in 2007 does not rescue him from Defendant’s timeliness argument. The jurisprudence supports the proposition that Rule 60(b) does not operate to enable a plaintiff to toll the statute of limitations. See Benjamin v. Wilson, 1988 WL 113357 (E.D.Pa. 1988).

Defendant further asserts there is an absence of credible and reliable<sup>6</sup> evidence proffered to this Court to support the elements of Plaintiff's claims and/or Plaintiff's alleged damages as it relates to the Second through Fifth Causes of Action.

Defendant additionally notes there is no testimony by any non self-serving witness to support Plaintiff's prosecution of these claims, which Defendant maintains is fatal to Plaintiff's case.

### CONCLUSION

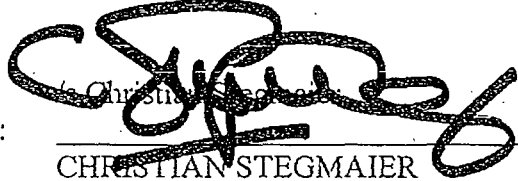
For the reasons stated herein, Defendant respectfully requests this Court dismiss the instant case by virtue: (1) the doctrine of res judicata; (2) the untimeliness of Plaintiff's claims. Defendant further avers there is an absence of credible proof in the form of reliable testimony to support Plaintiff's liability and/or damages claims.

[SIGNATURE PAGE ATTACHED]

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<sup>6</sup> Along with his Brief and the Supreme Court Record on Appeal, Plaintiff has apparently submitted a complaint filed in Minnesota in 2009 against the National Arbitration Forum et al as support for his pursuit of relief. The Minnesota defendants are not parties in the instant action. There was no corresponding order filed, which demonstrates a disposition that would be favorable to Plaintiff's arguments. Further, pleadings are obviously not proof of anything. Accordingly, Defendant asserts the Minnesota complaint should be disregarded by this Court.

Respectfully submitted,  
COLLINS & LACY, P.C.



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Columbia, South Carolina  
September 19, 2011

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STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS )

COUNTY OF GREENVILLE )

THIRTEENTH JUDICIAL CIRCUIT )

Mark Christianson, )

CIVIL ACTION NUMBER: 10-CP-23-3793 )

Plaintiff, )

vs. )

CERTIFICATE OF SERVICE )

MBNA America Bank NA, )

Defendant. )

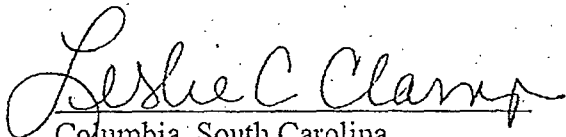
The undersigned employee of Collins & Lacy, P.C., Attorneys at Law, 1330 Lady Street, Sixth Floor, Post Office Box 12487, Columbia, South Carolina, 29211, does hereby certify that the following named individual(s) were served with a copy of the pleading(s) indicated below by mailing a copy of same to said person(s) in the United States Postal Service, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

COUNSEL SERVED:

David C. Alford, Esquire  
David C. Alford, P.C.  
PO Box 6326  
Spartanburg, SC 29304

PLEADINGS:

• DEFENDANT'S BRIEF



Columbia, South Carolina  
September 21, 2010

10-CP-23- 3793 ROA 128

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

\_\_\_\_\_  
MBNA America Bank, N.A.,            Respondent,

v.

Mark Christianson,                    Appellant.

\_\_\_\_\_  
Appeal from Greenville County  
Edward W. Miller, Circuit Court Judge

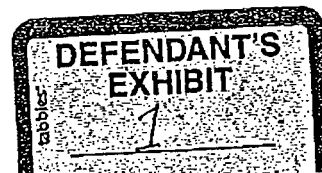
\_\_\_\_\_  
Memorandum Opinion No. 2010-MO-003  
Heard January 5, 2010 – Filed February 1, 2010

\_\_\_\_\_  
**AFFIRMED**

\_\_\_\_\_  
David Charles Alford, of Spartanburg, for Appellant.

Christian Stegmaier, of Collins & Lacy, of Columbia, for Respondent.

10-CP-23-3793 ROA 129



**PER CURIAM:** The decision of the circuit court is affirmed pursuant to Rule 220(b)(1) of the South Carolina Appellate Court Rules and the following authority: K&A Acquisition Group, L.L.C. v. Island Pointe, L.L.C., 383 S.C. 563, 682 S.E.2d 252 (2009) (issues must be ruled upon to be preserved for appellate review); Metts v. Mims, 384 S.C. 491, 682 S.E.2d 813 (2009) (subject matter jurisdiction refers to the court's "power to hear and determine cases of the general class to which the proceedings in question belong").

**AFFIRMED.**

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.**

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10-CP-23-3793 ROA 130

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

---

Case No. 2006-CP-23-3740

---

MBNA America Bank, N.A. .... Respondent

v.

Mark Christianson ..... Appellant

---

INITIAL BRIEF OF APPELLANT

---

David C. Alford  
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Attorney for Appellant

793 ROA 131

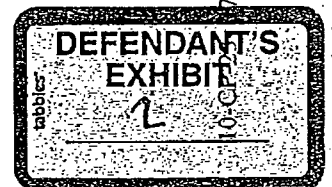


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## STATEMENT OF THE ISSUES

- I. The Trial Court erred in denying Appellant Defendant's Motion for relief from judgment.
- II. The Trial Court erred in upholding the judgment as the enrollment of the foreign judgment was improper in the initial filing of the Application for the foreign judgment and service was improper.
- III. The Trial Court erred in denying Defendant's motion as Plaintiff failed to properly advise the Court of the Objection filed by Defendant to the Application.
- IV. The Trial Court erred as lack of subject matter jurisdiction, which would sustain Defendant's Motion, can be raised at any time, and the Trial Court failed to consider Appellant Defendant's arguments.

## STATEMENT OF THE CASE

Absent any Civil Cover Sheet, or caption assigned by the Clerk of Court, MBNA served a Notice of Application to Confirm Arbitration Award dated May 3, 2006, upon Defendant Christianson as shown by Affidavit of Service of the Greenville County Sheriff's Office. Service was effective May 16, 2006.

It is significant to note that this service did not include any copy of the underlying arbitration award to be enrolled, or the underlying arbitration agreement. Further, the Notice of Application contained as its Caption the entry "File No. 237536." No CP number was assigned.

On June 1, 2006, Defendant, through his counsel, attempted to file an Objection to Notice of Application, with service upon Plaintiff through its counsel. Defendant's counsel David C Alford filed his affidavit with accompanying disclosure by the Office of the Clerk of Court for Greenville County that the filing was not recorded absent an assignment of case Number.

Plaintiff was served with the Objection on June 1, 2006, as verified on the Certificate of Service.

Despite the Objection, Plaintiff then undertook the following action:

On June 13, 2006, Plaintiff filed its Application for Confirmation of Arbitration Award, with attendant Civil Action Cover Sheet and a certificate of service upon the Defendant, paid its \$150 filing fee;

Upon filing on June 13, 2006, the Clerk of Court assigned the Application the case number 2006-CP-23-3740.

Plaintiff never attached its arbitration agreement or the arbitration award to any of its filings.

With the Application, Plaintiff then filed a Motion for enrollment of the arbitration award. On June 19, 2006, the Clerk of Court issued its form Notice of Non-Jury Hearing Date setting July 27, 2006, as the date for the hearing. This standard form includes the following language for adherence by Plaintiff:

IT IS THE MOVING PARTY'S RESPONSIBILITY TO NOTIFY ALL COUNSEL AND/OR PARTIES OF THE DATE AND TIME OF THIS MOTION HEARING.

Despite setting the hearing date, it is believed Plaintiff submitted a proposed order for the Court. This is substantiated by the Findings set out in the Order of Court by the Honorable Edward Miller dated 9/26/07, wherein the Findings in ¶ 3 include:

3. On June 2, 2006 Attorney Gilbert [Plaintiff's counsel] sent an Affidavit of Service, an Application for Confirmation of Arbitration Award, A Certificate of Service, a proposed Order of Court and a filing fee to the Clerk of Court with a copy to Mark Christianson.

No hearing was held. Instead, the Honorable GE Welmaker issued its Order of 6/16/06, enrolling a judgment obtained by Plaintiff in the National Arbitration Forum as against Defendant.

Following the entry of the Order enrolling the judgment, on June 29, 2006, Plaintiff then clocked with the Clerk of Court its purported copy of the underlying arbitration agreement. It is significant to note that the filing was not served upon the Defendant, and was filed after the Court signed the proposed Order enrolling the judgment on June 16, 2006. Further, this filing is absent any supporting affidavit, or any other indicia showing the agreement even pertains to the Defendant.

As set out In Defendant Mark Christianson Affidavit, Appellant never received notice of the hearing or any other communication regarding the proposed Order or the entry of the Order, until he attempted to refinance his mortgage and was informed of the enrolled judgment.

Defendant filed his Motion to vacate the judgment. Defendant filed his Motion and supporting Memorandum, along with the supporting affidavit of Mark Christianson and of his counsel David C. Alford.

In response to the Motion, Respondent filed its Memorandum of Law. With that Memorandum, Plaintiff attached its copy of the Award issued by the National Arbitration Forum. This is the first record of such Order issued by the Arbitration proceeding.

Also attached to MBNA's Memorandum is a letter addressed to Defendant's counsel, dated March 5, 2007, concerning another matter that was before the Court of Appeals. This letter is from Plaintiff's counsel and addresses a Return to Respondents Motion to Dismiss an Appeal filed by this same Plaintiff in another matter (see MBNA v. Christianson, (Opinion No. 4349 Heard February 5, 2008 – Filed March 4, 2008) <sup>1</sup> dealing with an unsuccessful appeal by MBNA to overturn a trial court order denying enrollment of arbitration.

By Affidavit of Defendant's counsel David C. Alford, counsel denies receiving a copy of any hearing in this matter, nor the Order issued by the Court, nor the Order purportedly attached to the March 5 letter.

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<sup>1</sup> This referenced appeal involved the same parties, denying the enrollment of an arbitration award on another matter involving arbitration.

Following a hearing on September 6, 2007, the Honorable Edward Miller issued his Order on 9/26/07 denying Defendant's Motion to vacate the judgment, and this Appeal followed.

## ARGUMENT

I. The Trial Court erred in denying Appellant Defendant's Motion for relief from judgment.

In summary, MBNA filed its Notice of Application [for enrollment of an arbitration award] on Defendant, with no caption, and absent any filing with the Clerk of Court. When Defendant attempted to file an Objection, the Objection could not be clocked into the record because of the absence of a Caption number. Then, despite being served with the Objection, MBNA failed to disclose to the court that it received an Objection. Later, MBNA clocks in a Civil Cover sheet, a Motion to enroll the judgment, but MBNA never sends a Notice of Hearing date as mandated by the Clerk's office. Instead, MBNA submits a form order for its enrollment of a judgment for the Court to sign, all the while failing to advise the Court of any Objection filed by the Defendant. See Tr. p. 3, l. 10 -p. 7, l. 13.

This procedural history turns the Rules of Civil Procedure, and any semblance to procedural or substantive due process, on its head.

The Trial Court properly recognized the troubling aspect of this history. Despite recognizing this troubling aspect, the Trial Court erred as a matter of law in denying to vacate the enrollment of the arbitration award. As acknowledged by the Trial Court, this particular procedural history denies Mr. Christianson due process of law. He filed his objection [to the application to enroll the arbitration judgment]. He was not given an opportunity to be heard.

Tr. p. 14, l. 19-22. See also the comments by the Trial Court p, 10, l. 9-13; p. 14, l. 15 – p. 19, l. 12; p. 21, l. 6 – p. 22, l. 19; See also Order of October 1, 2007, page 2 (“express[ing] concern regarding the lack of a uniform procedure ....[and] [t]he establishment of uniform procedures would serve to protect the parties’ due process rights.”)

More troubling, the Trial Court recognized that this matter would be appealed, commenting “[a]pparently, I’ve got a 50/50 chance to get my name in the books again.” Tr. P. 22, l. 18-19 See discussion in the entire Transcript, as to the procedural aspects that trouble the Trial Court.

Finally, the Order of October 1, 2006, denies the motion under Rule 60(b) finding the motion was not timely filed. Order of October 1, 2006, at 2. There was no discussion in the transcript concerning the meritorious defense, although the issue of lack of subject matter jurisdiction was raised in the Motion to vacate. The only notice relied upon by MBNA and the Court is a letter to Defendant’s counsel regarding another matter on appeal.

Rule 60(b), SCRCP, reads

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Defendant was never served with the Order of June 16, 2006. Moreover, raising lack of subject matter jurisdiction would render the judgment void, and this basis is not subject to the one year constraint.

This is the essence of the procedural and substantive due process that Appellant was denied.

II. The Trial Court erred in vacating the judgment as the enrollment of the foreign judgment was improper in the initial filing of the Application for the foreign judgment and service was improper.

The process for filing and serving an Application to enroll a foreign arbitration award is not precise. The SCRCP is not clear on whether the filing of such Application is a pleading. However, the Notice of Application filed by Plaintiff asserts the filing is made pursuant to the SC Uniform Arbitration Act, SC Code 15-48-10 et seq.

The SC UAA reads in pertinent section:

§ 15-48-170. Applications to court.

Except as otherwise provided, an application to the court under this chapter shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. *Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.*

Emphasis added

Rule 3, SCRCP, governs the commencement of an action, and states the proceedings are commenced when the summons and complaint are filed with the Clerk of Court. Thus, there can be no service of the pleadings until the matter has been clocked with the Clerk. *It is undisputed that the only notice to Defendant Appellant of the Application was the Notice of Application, which was never clocked with the Clerk of Court prior to service.*

In violation of SC Code 15-48-170, neither the Notice of Application nor the Application itself was clocked into the Clerk of Court's office until June 13, 2007.

Both services, the Greenville Sheriff on May 11 (the Notice of Application) and the purported mailing on May 30 (the Application) were "served" prior to any filing with the Clerk of Court office.

As asserted in Defendant Appellant Memorandum:

The Certificate of Service completed by the Greenville County Sheriff Office contains "case No: 237536" This certificate shows service on May 11 and executed by the Sheriff's Office on May 16. The copy "clocked" in June 13, 2006 contains the stamped Clerk of Court caption 2006-CP-23-3740. The "case no 237536" referenced and reflecting the document served by the Sheriff's department is for a prior case MBNA v. Christianson 2005 -CP-23-7536.<sup>2</sup> This case denied the arbitration filing by MBNA (not sure if different accounts as nothing has been presented to differentiate this matter with the prior Christianson matter), which MBNA had on appeal at that time. The certificate is attached with the "case no" and caption circled.

MBNA failed to comply with any of the rules in enrolling its arbitration judgment, and failed to comply with any service requirement. This is a fatal flaw, and any enrollment should be denied.

MBNA admits the lack of certainty in the filing of these type of foreign arbitration awards. See Tr. p. 8, l. 6- p. 9, l. 12. (admitting there are "no rules governing the application for confirmation" and that "the initial procedure of filing the application is not working.")

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<sup>2</sup> As argued at the hearing, it is unclear whether this arbitration award is for the same award as in a prior matter between the parties, or for a different account. See Tr. 3, l.19-24.

III. The Trial Court erred in denying Defendant's motion as Plaintiff failed to properly advise the Court of the Objection filed by Defendant to the Application.

Attorneys are officers of the Court. Attorneys are subject to Rule 407, Rules of Professional Conduct, and specifically Rule 3.3(d), Candor Toward the Tribunal. Apparently, MBNA counsel acknowledged receiving the Objection served by Defendant, but failed to so inform the Court when it decided to submit its proposed order for the judgment. MBNA counsel stated to the Trial Court

On June 5<sup>th</sup>, we received the objection to the notice of application. I assumed it had been filed with the Clerk. I only learned very recently that this was not the case. On June 16<sup>th</sup>, Judge Welmaker signed the order of court confirming the arbitration.

Tr. p. 9, l. 21-25.

Further, MBNA admits

And we had already sent the application for filing at that point [upon receiving the Objection]. There are some unfortunate timing issues in this case.

Tr. p. 14, l 2-4 (emphasis added).

It is interesting to question how counsel could "assume" it had been filed with the Clerk when MBNA never had filed anything with the Clerk's office until June 13. Obviously, counsel never informed the Court of the Objection it had received despite submitting a proposed order. But despite its admission to knowing of the Objection being filed, MBNA then dismisses the appearance of counsel or the Objection itself by arguing as follows:

Now, we sent the application to Mr. Christianson on June 2<sup>nd</sup> of last year. At that point Mr. Alford [Christianson's attorney] was not in the case. Judge Welmaker signed the order. It was sent to the Clerk for filing. It was distributed by the Clerk. I had nothing to do with that.

Tr. p. 10., l. 17-21.

MBNA had knowledge of the Objection and appearance by counsel, yet MBNA failed to provide any copy of the proposed order, or other documents, submitted to the Court to opposing counsel or the Defendant.

MBNA counsel acknowledges that the applications to enroll arbitration awards is in the "development stage." Tr. p. 10, l. 7-8. and further admits

Now, in some counties, when that order [referring to Judge Welmaker's order enrolling the judgment] is returned, they notify all parties. I found out recently that Greenville County does not so that.

*This is one of the reasons we need rules governing this procedure.*

Tr. p. 10., l. 22-25 (emphasis added).

MBNA's defense to its shabby procedural process is to shrug off any concern as only "unfortunate timing issues"

MBNA places all burden on notification upon the Clerk of Court. However, its service on Defendant was prior to any filing with the Clerk. It submitted a proposed order for Judge Welmaker to sign then never bothered to inform the Trial Court it had received an Objection....abdicating its Rule of Professional Responsibility in hope the Clerk of Court would so inform the Trial Court.

Finally, even though MBNA admits the Clerk's office never served the Order enrolling the judgment, MBNA relies upon the inclusion in a letter to Defendant's counsel, concerning another matter on appeal, as notice of the

enrolled Order.. See letter Exhibit to MBNA Memorandum of Law, letter dated March 5, 2007 from Edward Gilbert to David C. Alford. See also Affidavit of David C. Alford. However, as the Objection never could be clocked, counsel could not be counsel of record, and the Order was never served upon Christianson. Christianson was informed of the entry of the judgment when he attempted to refinance his residence. See Affidavit of Christianson.

This is a sham proceeding and the Trial Court erred in denying Appellant's Motion to vacate.

IV. The Trial Court erred as lack of subject matter jurisdiction, which would sustain Defendant's Motion, can be raised at any time, and the Court failed to consider Appellant Defendant's arguments.

A recent case is seminal with respect to the process involving enrollment of a foreign arbitration award, and specifically an award obtained by MBNA before the National Arbitration Forum. MBNA v. Christianson (Opinion No. 4349 Heard February 5, 2008 – Filed March 4, 2008)<sup>3</sup>

Before a circuit court confirms an arbitration award subject to the Federal Arbitration Act, there must be evidence of an arbitration agreement. 9 U.S.C.A. § 13 (1999).

At no time prior to the Trial Court signing the proposed order on June 16, 2006, did MBNA attach with the original filings any copy of the underlying arbitration agreement. Further, MBNA had not submitted the award.

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<sup>3</sup> This referenced appeal involves the same parties, denied the enrollment of an arbitration award on another matter involving arbitration.

Only after the Order of June 16, 2006 was signed, did MBNA submit to the clerk of court for filing a purported arbitration agreement. This "Agreement" is not signed, has no affidavit, and has no indicia that it even applies to this Defendant.

This issue is one of first impression. The Christianson case cited was recently issued by this Court of Appeals. While not specifically argued before the Trial Court, but raised in his Objection to the enrollment of the award, Appellant attempted to raise lack of subject matter jurisdiction as a basis to object to the enrollment of the award. This issue was never reached by the Trial Court.

As set out in the procedural history, and as running afoul of the requirements recognized in Christianson, the failure to attach the underlying arbitration agreement and the arbitration award when first enrolling the application for enrollment of the award is fatal. Neither of these documents was attached. The arbitration agreement was submitted absent any affidavit or any other indicia that it was enforceable as against this Appellant, and after the order was signed by Judge Welmaker.

Defendant Appellant properly raised lack of subject matter jurisdiction, which was not addressed by the Trial Court. For this reason alone, in considering Christianson, it is enough to reverse the Trial Court in its order denying the vacation of the order enrolling judgment.

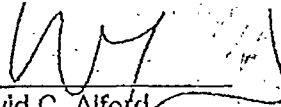
#### Conclusion

The Trial Court made an error of law in denying Appellant's Motion to vacate the Judgment, acknowledging this area is untested and fraught with perils

jeopardizing a debtor's procedural and substantive due process rights. The Trial Court acknowledged its "50/50 chance" in getting this ruling right. In recognizing this procedural uncertainty, the Trial Court should have allowed Appellant to set out its objections subject to an informed and considered hearing.

This issue of confirming arbitration awards absent the existence of proof of arbitration, and ignoring the debtor's objection to any arbitration agreement, appears to be the coming wave if MBNA's position is supported. MBNA hides behind the sanctity of a foreign arbitration forum to allow it to abuse the system. This travesty was brought to this Court's attention in the first Christianson appeal, and this Court rightfully upheld the principles of due process.

Respectfully submitted,

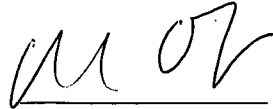


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I certify that the Record on Appeal contains all matter proposed to be included by any of the parties and not any other material.

July 31, 2012



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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM GREENVILLE COUNTY  
In the Court of Common Pleas

The Honorable Robin B. Stilwell

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Case No. **10-CP- 23 - 3793**

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Mark Christianson.....Appellant

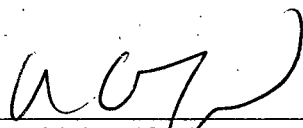
v.

MBNA America Bank NA..... Respondent

Certificate of Mailing

I certify that I have served the Reply Brief of Appellant, Brief of Appellant and Record on Appeal upon the Respondent by depositing a copy of same in the United States Mail, postage prepaid, on August 20, 2012, addressed to its attorney of record, Christian Stegmaier, PO Box 12487, Columbia, SC 29211

August 20, 2012

  
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AUG 27 2012  
S.C. SUPREME COURT

**RECEIVED**  
AUG 28 2012  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
In the Court of Common Pleas

The Honorable Robin B. Stilwell

Case No. 10-CP- 23 - 3793

Mark Christianson ..... Appellant

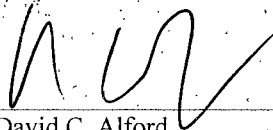
v.

MBNA America Bank NA ..... Respondent

**Certificate of Mailing**

I certify that I have served the Record on Appeal the Respondent by depositing a copy of same in the United States Mail, postage prepaid, on August 1, 2012, addressed to its attorney of record, Christian Stegmaier, PO Box 12487, Columbia, SC 29211

August 1, 2012



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**SC Court of Appeals**