

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case No. 2011-CP-40-05170R

RECEIVED

OCT 18 2012

SC Court of Appeals

Jerry Gadson and Sheila Gadson,..... Appellants,

v.

Caroline Deloatch and Bank of America,
Individually and Jointly,..... Respondents,

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Jerry Gadson and Sheila Gadson,)

Plaintiffs,)

vs.)

Caroline Deloatch and Bank of)
 America, Individually and Jointly,)

Defendants.)

Civil Action No. 2009-CP-40-3817

ORDER GRANTING MOTION TO
STRIKE CASE FROM DOCKET
PURSUANT TO
RULE 40(j)

2010 MAY 19 AM 9:02
 DEANE
 C. & G.S.
 M. McBRIDE

RICHLAND COUNTY
 FILED

This matter comes before the Court upon consent motion of both parties, pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. The parties seek to strike the above-captioned case from the Court's trial docket. In accordance with Rule 40(j), the parties agree that the case shall be stricken from the docket, and if the case is restored upon motion made within one year of the date stricken, the statute of limitations shall be tolled during the time the case is stricken. The parties further agree that any unexpired portion of the statute of limitations on the date the case is stricken shall remain and begin to run on the date the case is restored. The parties are hereby permitted to continue participating in discovery while this matter is stricken from the docket.

IT IS SO ORDERED.


 The Honorable ~~James R. Barber, III~~ *G. Thomas Cohen*
 Chief Administrative Judge, Fifth Judicial Circuit

Columbia, South Carolina

5-17, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Jerry Gadson and Sheila Gadson,)

Plaintiff,)

VS)

Caroline Deloatch and Bank of America,)
Individually and Jointly,)

Defendants,)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

**ORDER TO RESTORE PURSUANT
TO RULE 40(J), SCRCF**

DOCKET NO.: 2009-040-387

FILED
2011 MAR -8 PM 12:26
JEANETTE W. MCGRIDG
CLERK OF P. & C.S.

This action was dismissed pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure on or about May 17, 2010. Upon Motion To Restore, the Plaintiff moves before the court for the above action to be restored to the active trial docket pursuant to Rule 40(j),

IT IS HEREBY ORDERED upon payment of a filing fee of \$150.00 to the Clerk of Court this matter shall be restored to the jury trial docket at the end thereof and a new docket number shall be assigned.

AND IT IS SO ORDERED.



Presiding Judge
Fort the Fifth Judicial Circuit

Columbia, South Carolina

March 7, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2011CP4001570R

Jerry Gadson

Caroline Deloatch

Sheila Gadson

Bank of Amrica Indiv and Jointly

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 20 March 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Mary P Miles

Candace C. Jackson

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

Jerry Gadson and Sheila Gadson,)
) Civil Action No. 2011-CP-40-01570R

Plaintiffs,)

vs.)

ORDER

Caroline Deloatch and Bank of)
America, Individually and Jointly,)

Defendants.)

RICHLAND COUNTY
FILED
2012 MAR 20 AM 8:42
JEANETTE W. MCBRIDE
C.C.P. & G.S.

THIS MATTER COMES before the Court on Defendants Caroline Deloatch and Bank of America's ("Defendants") Amended Motion for Summary Judgment as to Plaintiffs Jerry Gadson and Sheila Gadson's ("Plaintiffs") causes of action for negligence (and/or assault and battery) and loss of consortium pursuant to Rule 36(a) and Rules 56(b) and (c) of the South Carolina Rules of Civil Procedure. The parties appeared before this Court for oral argument on February 29, 2012. Candace C. Jackson, Esquire, represented Defendants and Mary P. Miles, Esquire, represented Plaintiffs. Further, Plaintiffs had pending a Motion to Extend Time to Respond to the Defendants' Requests for Admission and/or Motion to Withdraw Admissions.

Having read and considered all the pleadings, the written memoranda from counsel, relevant case law, and arguments from counsel, Defendants' Amended Motion for Summary Judgment is hereby GRANTED, and Plaintiffs' Motion to Extend Time to Respond to the Defendants' Requests for Admission and/or Motion to Withdraw Admissions is hereby DENIED.

4
SCANNED

BACKGROUND

The record reflects that on May 27, 2009, the Plaintiffs commenced this action by filing a Complaint against the Defendants for negligence (and/or assault and battery) and loss of consortium. On July 2, 2009, the Defendants filed an Answer denying the Plaintiffs' claims. The Plaintiffs did not pursue this action any further. On April 9, 2010, the Defendants served their First Interrogatories, First Request to Produce, and First Requests for Admission to the Plaintiffs. The Plaintiffs' responses to these discovery requests were due on or before May 10, 2010. However, to date, the Plaintiffs have failed to serve any response to the Defendants' First Requests for Admission.

On May 17, 2010, the Defendants, with the consent of the Plaintiffs, moved to strike this case from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. On May 17, 2010, this Court granted the parties' motion. In May of 2011, the Defendants' counsel states that she contacted the Clerk of Court's office and it was told that this case was not restored and had been dismissed. However, on September 12, 2011, the Defendants received a letter from the Court inquiring about the status of the case. It was then that the Defendants learned that the case had been restored to the docket by the Clerk of Court by way of an Order filed March 8, 2011. The Defendants were neither served with the Plaintiffs' motion to restore the case nor did they receive a copy of the Order restoring the matter to the docket. At this time, Plaintiffs still had not responded to the Defendants' Requests for Admission. Further, Plaintiffs recently conceded that they did not respond to the Defendants' First Requests

for Admission. See Motion to Extend Time to Respond to Defendants' Request for Admission and/or Motion to Withdraw Admissions (filed on January 31, 2012).

DISCUSSION

Pursuant to Rule 36(a) of the South Carolina Rules of Civil Procedure, a failure to answer a request to admit within thirty days after service results in the request being deemed admitted without any further action by the court or proponent. S.C. R. Civ. P. 36(a); *Hatchell v. Jackson*, 290 S.C. 256, 258, 349 S.E.2d 407, 408 (Ct. App. 1986) (finding that when a litigant never responded to a request for admissions, those matters were deemed admitted); *Bakala v. Bakala*, 352 S.C. 612, 630, 576 S.E.2d 156, 166 (2003) (finding that because the Plaintiff did not respond to the Defendants' Request to Admit, the facts were deemed admitted under Rule 36(a), SCRPC); *Scott v. Greenville Housing Authority*, 353 S.C. 639, 645, 579 S.E.2d 151, 154 (Ct. App. 2003) ("South Carolina has long had the discovery rule that failure to respond to requests for admissions renders any matter listed in the request conclusively admitted for trial.").

Because the Plaintiffs failed to respond to the Defendants' Requests for Admission, the facts contained therein are deemed admitted under the authority of Rule 36(a), SCRPC. Subject to these requirements, the following facts are deemed admitted:

1. On March 9, 2009, Jerry Gadson visited the Polo Road Banking Center to seek refunds of service charges on his checking account, and on this same date, the Defendants refunded charges to his account.
2. At no time did Caroline Deloatch yell and scream abusive comments in Jerry Gadson's face.
3. The Plaintiffs have no evidence that at any time Caroline Deloatch intended to strike or cause bodily harm to Jerry Gadson.

4. At no time did Caroline Deloatch touch Jerry Gadson or put him in any apprehension that harmful or offensive bodily contact was imminent.
5. No hazard or dangerous condition (neither latent nor concealed) existed at the Polo Road Banking Center during the Plaintiffs' visit on March 9, 2009.
6. The Defendants did not breach any duty it may have owed to Jerry Gadson.
7. Jerry Gadson did not sustain any injuries as a result of any incident that occurred at the Polo Road Banking Center on March 9, 2009.
8. Sheila Gadson has not suffered loss of consortium, emotional stress, or any injuries as a result of any incident that occurred at the Polo Road Banking Center on March 9, 2009.

CONCLUSIONS OF LAW

Based on these admitted facts and the record of this case, the Court concludes that there is no evidence to support the Plaintiffs' claims for negligence (and/or assault and battery) and loss of consortium. Also, because Plaintiff Sheila Gadson is unable to prove the Defendants' liability for her husband's injuries, the loss of consortium claim cannot be maintained. *See Creighton v. Coligny Plaza*, 334 S.C. 96, 121, 512 S.E.2d 510, 523 (Ct. App. 1998) ("In order to prevail in an action for loss of consortium, a plaintiff must prove the defendant's liability for the spouse's injuries as well as damages to the plaintiff resulting from the spouse's injury.")

Pursuant to South Carolina Rule of Civil Procedure 56, relevant case law, and having reviewed the pleadings, the written memoranda from counsel, and considered the oral arguments made during the summary judgment hearing, it is hereby

ORDERED that the Defendants are entitled to summary judgment as to the Plaintiffs' negligence (and/or assault and battery) and loss of consortium claims on the grounds that there is no genuine issue as to any material fact and are entitled judgment in their favor as to the Plaintiffs' claims as a matter of law. It is therefore ORDERED that the Plaintiffs' claims of negligence (and/or assault and battery) and loss of consortium are dismissed *with prejudice*. It is further ORDERED that Plaintiffs' Motion to Extend Time to Respond to the Defendants' Requests for Admission and/or Motion to Withdraw Admissions is DENIED.

AND IT IS SO ORDERED.



The Honorable DeAndrea Gist Benjamin
Fifth Judicial Circuit

Columbia, South Carolina

3-15, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Jerry Gadson and Sheila Gadson

Plaintiff(s)

vs.

Caroline Deloatch and Bank of America,
Individually and jointly,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP-

2009CP4003817

FILED
2009 MAY 27 AM 8:34
RICHLAND COUNTY
JANETTE W. McBRIDE
C.C.P. & G.S.

(Please Print)

Submitted By: Mary P. Miles Law Firm

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SC Bar #: 14331

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Fax #: (803)-939-1000

Other:

E-mail: mileslawfirm@yahoo.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 Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | ☐ Notice/ File Med Mal (230) | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | ☐ Other (299) | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | | ☒ Personal Injury (350) | ☐ Possession (450) |
| | | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
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|--|---|---|--|
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture--Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Other (899) | ☐ Worker's Comp (960) |
| | ☐ Other (799) | | ☐ Zoning Board (970) |
| | | | ☐ Administrative Law Judge (980) |
| | | | ☐ Public Service Commission (990) |
| | | | ☐ Employment Security Comm (991) |
| | | | ☐ Other (999) |
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|--|---|
| Special/Complex /Other | |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) |
| ☐ Other (699) | ☐ Sexual Predator (510) |

Submitting Party Signature:

Mary P. Miles

Date:

5/26/09

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.

IN THE COURT OF COMMON PLEAS
THE FIFTH JUDICIAL CIRCUIT

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by: Mary P. Miles

Attorney at Law

3955 Southeastern Way, Suite 3A
West Columbia, South Carolina 29169
Attorney For Plaintiffs

Attorney For Plaintiffs

1

RICHLAND COUNTY
FILED

2009 MAY 27 AM 8:34

JEANETTE W. McBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA

Jerry Gadson and Sheila Gadson,

Defendant,

VS

Caroline Deloatch and Bank of America
individually and jointly,

) IN THE COURT OF COMMON PLEAS
) THE FIFTH JUDICIAL CIRCUIT

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COMPLAINT

JURY TRIAL REQUEST

DOCKET NO:

JEANETTE W. McBRIDE
C.C.P. & C.S.

2009 MAY 27 AM 8:34

RICHLAND COUNTY
FILED

COMES NOW Jerry Gadson, (hereinafter "Jerry") and Sheila Gadson, (hereinafter "Sheila") are (hereinafter "Plaintiffs") bring this action against Caroline Deloatch and Bank of America, (hereinafter Defendant parties are collectively referred to as "Defendants"), based on the allegations set forth below.

PARTIES AND JURISDICTION

1. That at all material times, Jerry and Sheila were citizens and residents of the County of Richland, State of South Carolina.

2. Upon information and belief, Defendant Bank of America is a corporation organized and existing under the laws of a state other than the State of South Carolina. Defendant Bank of America owns property and transacts significant business in the County of Richland, State of South Carolina.

3. Defendant Caroline Deloatch (hereinafter "Caroline"), upon information and belief, is and was the store manager of Polo Rd Banking Center Bank Of America located at 9732 Two Notch Rd., Columbia, South Carolina 29223 at all times relevant to this action. Caroline as an agent, servant and/or employee of Bank Of America, and was acting within the course and scope of her employment with Bank of America at all times relevant to the

Complaint. Bank of America is liable for Caroline's acts and/or omissions.

4. At all times relevant to this action, Caroline was employed as the bank manager of Polo Rd. Banking Center Bank of America and was responsible for its overall operations, together with Bank of America, and any and all duties set forth in connection with her job description, policies and procedures, guidelines, and/or general duties and standards of care owed to the Plaintiffs.

5. Pursuant to Bank of America policy, its employees must use due care to insure that persons on its premises are not injured by activities on the premises.

6. The Defendants owed a duty to comply with its policies and procedures.

7. The Defendants violated its policies and procedures.

8. As a result of this, the Plaintiff was injured.

9. This Court has jurisdiction over these matters based upon Article V of the South Carolina Constitution, S.C. Code Ann. §§ 36-2-802 and 36-2-803 (Law. Co-op. 1976) and its plenary powers. Venue is proper as the most substantial part of the alleged act or omission giving rise to this lawsuit occurred in this venue. Personal jurisdiction is also proper.

FACTS

10. On or about March 9, 2009, Jerry was present in the Polo Road Banking Center branch of Bank Of America, located at 9732 Two Notch Rd., Columbia, South Carolina 29223, for the purpose of transacting his business affairs with the bank's Assistant Manager.

11. As Jerry was sitting in the Assistant Manager's office in the bank on said date, Jerry was assaulted and battered by Defendant Caroline Deloatch.

12. Caroline came into the assistant manager's office and got up into Plaintiff's face yelling and screaming abusive comments with the intent to strike Jerry without probable cause.

13. By reason and in consequence of the aforesaid acts and/or omissions of the Caroline, Jerry sustained serious personal and mental injuries; his injuries were of such a nature as to require him and will in the future require him to expend monies for hospitalization, doctor's care, and other medical necessities; he has suffered permanent physical impairment to his body; that at all times since the incident, Jerry has suffered and will continue to suffer great pain and mental anguish.

14. At the time and place mentioned above, Defendants, willfully, maliciously, and without cause or provocation assaulted and battered Jerry.

FOR A FIRST CAUSE OF ACTION

**(Negligence)
(Assault and Battery)**

15. Plaintiffs incorporate all allegations of paragraphs 1 through 14 into this cause of action.

16. Jerry was an invitee of the Defendants' bank, having entered the premises upon a matter of advantage to the Defendants with an express or implied invitation in connection with the Defendants' business, and therefore the Defendants owed Jerry a duty to keep its customers reasonably safe condition including the foreseeable risk of criminal conduct by its employees and others.

17. On or about March 9, 2009, a dangerous condition existed in Defendants' bank in the form of Caroline's assault and battery against Jerry.

18. The Defendants were aware of or should have been aware of a dangerous condition and did not take any action to minimize or avoid danger to Jerry, which constitutes clear and convincing evidence of negligence, gross negligence, recklessness, willfulness, and wantonness, including not limited to in the following particulars:

- a. failing to exercise due care;
- b. failing to warn the Plaintiffs;
- c. failing to hire adequate personnel;
- d. failing to hire adequately trained personnel;
- e. failing to adequately train personnel;
- f. failing to adequately manage personnel;
- g. failing to develop adequate policies and procedures;
- h. failing to take actions to correct known problems;
- i. failing to do what a reasonable person or entity would have done under the circumstances; and
- n. any other acts of negligence, carelessness, recklessness, and gross negligence as the evidence gathered during discovery and presented at trial may show.

19. The Defendants' negligence, gross negligence, recklessness, willfulness, and wantonness created a hazard which proximately caused Jerry to sustain serious personal injuries; his injuries were of such a nature as to require him and will in the future require him to expend monies for hospitalization, doctor's care, and other medical necessities; he has suffered permanent impairment of health and bodily efficiency; that at all times since the incident, Jerry has suffered and will continue to suffer great pain and mental anguish; and such other and further particulars as may be found through discovery or trial.

20. Jerry had no knowledge or reason to suspect danger with regard to the concealed and latent danger contained on the premises. In addition, Jerry exercised ordinary and reasonable care at all times.

21. At all times while Caroline was up into Plaintiff's face yelling and screaming, Plaintiff believed that he was in intimate danger.

22. That Plaintiff is informed and believes that Caroline intent was to cause bodily harm to Plaintiff thereby inflicting severe and serious injury to his person.

23. That as a direct and proximate result of Caroline's assault and battery, Plaintiff sustained severe and serious injury to his person in which Plaintiff sort medical treatments for his heart condition, depression, and anxiety.

24. Plaintiff is informed and believes that he is entitled to compensation from Defendants for his medical care, treatment, incidental expenses, and pain and suffering as a direct result of Defendant Caroline Deloatch's conduct against Plaintiff.

25. Plaintiff is informed and believes that Caroline was hired as an employee as Defendant Bank Of America in the capacity of Branch Manager and that Caroline continued to be employed by Defendant Bank of America through and including March 9, 2009, and on March 9, 2009 was employed by Defendant Bank Of America in the capacity of Branch Manager.

26. On March 9, 2009, Caroline was incompetent and unfit to perform the work required as a Branch Manager, for Defendant Bank of America because she was of a malicious or violent nature.

27. Defendant Bank Of America knew or should have known that person in

Jerry's position as a customer would be subjected to an unreasonable risk of harm from Caroline, an employee of Defendant Bank of America.

28. Defendant Bank Of America, when it hired Caroline as an employee and in the scope of her employment, breached the duty it owed to Jerry to use reasonable care in hiring its employees by its failure to conduct a reasonable investigation into the background and character of Caroline prior to the time Caroline.

29. As a direct and proximate result of Defendant Bank Of America's breach of duty in hiring Caroline and providing a safe place for its customers to do business, Plaintiff sustained severe and serious injury to his person.

30. As a further direct and proximate result of the said assault and battery, Plaintiffs have incurred and will in the future incur substantial medical and hospital expenses. Further, Jerry is informed and believes that the actions of the Defendants were reckless, amounted to a conscious disregard for the safety of her husband and others and, as such, he is informed and believes that he is entitled to recover punitive damages.

FOR A SECOND CAUSE OF ACTION

(Consortium)

31. Plaintiffs incorporate all allegations of paragraphs 15 through 30 into this cause of action.

32. Sheila is informed and believes that she is entitled to a monetary verdict for the actual damages she sustained as a result of the Defendants' negligence in creating and allowing

the assault and battery to Jerry and allowing the harmful condition of the subject premises to exist which injured her husband.

33. Sheila is informed and believes that the actions of the Defendants were reckless, amounted to a conscious disregard for the safety of her husband and others and, as such, she is informed and believes that she is entitled to recover punitive damages.

34. Additionally, as a direct and proximate result of the negligent, careless, grossly negligent, reckless, willful and wanton acts and omissions of the Defendants in the manners specified above which caused Jerry 's injuries, Sheila also suffered emotional stress and depression injuries because she was deprived of the right of companionship, aid, society and services of her husband.

35. That as direct and proximate cause of said negligence, wantonness, recklessness and unlawfulness on the part of the Defendants, Sheila suffered loss of consortium in that her husband, Jerry, suffered serious and permanent damages and has, therefore not been able, and will never be able, to provide full support, services, and assistance around the home that Jerry, as a husband would normally be providing.

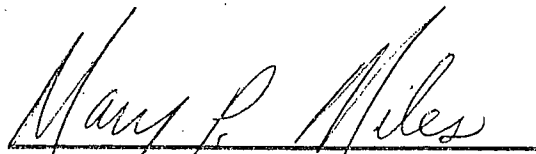
36. That as direct and proximate cause of said negligence, wantonness, recklessness and unlawfulness on the part of the Defendants, Sheila suffered general health and their enjoyment of life.

37. As a direct and proximate result of said negligence, wantonness, reckless and unlawfulness on the part of the Defendants, Plaintiffs have been damaged, as set forth fully above.

WHEREFORE, the Plaintiff prays as follows: (a) that the they recover a judgment against the Defendants in an amount sufficient to compensate them for their injuries

and damages as described above; (b) that they recover a judgment for an amount of punitive damages as authorized by law; (c) that they recover all costs associated with this action; and (d) that they recover such other relief as the Court may deem just and proper.

LAW OFFICE OF MARY P. MILES

A handwritten signature in cursive script, reading "Mary P. Miles", is written over a horizontal line.

MARY P. MILES
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Attorney for the Plaintiffs

May 26, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Jerry Gadson and Sheila Gadson,)
Plaintiffs,)

Civil Action No. 2009-CP-400-388

vs.

ANSWER

Caroline Deloatch and Bank of)
America, Individually and jointly,)
Defendants.)

Defendants Caroline Deloatch and Bank of America, N.A. Defendants
reserving all rights and defenses and waiving none of them, come before the Honorable
Court and answer Plaintiffs Jerry Gadson and Sheila Gadson's Complaint as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint is denied unless hereinafter admitted, qualified, or explained.
2. Defendants lack knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 1 of the Complaint, and therefore, deny the same and demand strict proof thereof.
3. Responding to the allegations contained in Paragraph 2 of the Complaint, Defendants state that Bank of America is a national bank doing business in South Carolina. Defendants deny the remaining allegations of Paragraph 2 as stated and demand strict proof thereof.
4. Responding to the allegations contained in Paragraph 3 of the Complaint, Defendants admit only that Defendant Caroline Deloatch is and was the banking center

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SCANNED

manager of the Polo Road Banking Center for Bank of America located at 9732 Two Notch Road, Columbia, South Carolina 29223 at all times relevant to this action, and that Ms. Deloatch is an employee of Bank of America. Defendants deny the remaining allegations of Paragraph 3 and demand strict proof thereof.

5. Responding to the allegations contained in Paragraph 4 of the Complaint, Defendants admit only that at all times relevant to this action, Ms. Deloatch was employed as the banking center manager of the Polo Road Banking Center. Defendants deny the remaining allegations of Paragraph 4 and demand strict proof thereof.

6. Upon information and belief, Paragraphs 5 and 6 state legal conclusions, and therefore, no response is required from Defendants. To the extent a response is required, Defendants deny the allegations of Paragraphs 5 and 6 and demand strict proof thereof.

7. Defendants deny the allegations of Paragraphs 7 and 8 of the Complaint and demand strict proof thereof.

8. Upon information and belief, Paragraph 9 states legal conclusions, and therefore, no response is required from Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 9 and demand strict proof thereof.

9. Responding to the allegations contained in Paragraph 10 of the Complaint, upon information and belief, Plaintiff Jerry Gadson was present in the Polo Road Banking Center for Bank of America located at 9732 Two Notch Road, Columbia, South Carolina 29223. Defendants lack knowledge and information

sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 10, and therefore, deny the same and demand strict proof thereof.

10. Defendants deny the allegations of Paragraphs 11, 12, 13, and 14 of the Complaint and demand strict proof thereof.

FOR A FIRST DEFENSE
TO THE FIRST CAUSE OF ACTION

11. Responding to Paragraph 15 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations in the preceding paragraphs of the Complaint.

12. Defendants deny the allegations of Paragraphs 16, 17, 18, and 19 of the Complaint, including all subparts, and demand strict proof thereof.

13. Defendants lack knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 20 of the Complaint as they purport Plaintiff Jerry Gadson's knowledge or reason, and therefore, Defendants deny the same and demand strict proof thereof. Defendants deny the remaining allegations of Paragraph 20 and demand strict proof thereof.

14. Defendants deny the allegations of Paragraphs 21, 22, 23, and 24 of the Complaint and demand strict proof thereof.

15. Responding to Paragraph 25 of the Complaint, Defendants admit that Ms. Deloatch is an employee of Bank of America and that Ms. Deloatch is the banking center manager.

16. Defendants deny the allegations of Paragraphs 26, 27, 28, 29, and 30 of the Complaint and demand strict proof thereof.

FOR A FIRST DEFENSE
TO THE SECOND CAUSE OF ACTION

17. Responding to Paragraph 31 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations in the preceding paragraphs of the Complaint.

18. Defendants deny the allegations of Paragraphs 32, 33, 34, 35, 36, and 37 of the Complaint and demand strict proof thereof.

FOR A FIRST DEFENSE
TO THE PRAYER FOR RELIEF

19. Defendants deny that Plaintiffs are entitled to the relief requested in the WHEREFORE clause following Paragraph 37 of the Complaint.

FOR A SECOND DEFENSE
(Failure to State a Claim)

20. Defendants would show that Plaintiffs have failed to state a claim upon which relief can be granted, and therefore, the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Unclean Hands)

21. Plaintiff Jerry Gadson's claims are barred by the doctrine of unclean hands.

FOR A FOURTH DEFENSE
(Plaintiff's Own Negligence)

22. Defendants would show that Plaintiff Jerry Gadson is contributorily negligent or comparatively negligent in a proportion greater than Defendants and, therefore, is barred from recovery. Defendants would also show that Plaintiff Jerry

Gadson's own negligence was the proximate cause of his alleged injuries, and that his negligence bars Plaintiff Sheila Gadson's claim for loss of consortium.

FOR A FIFTH DEFENSE
(Intervening Acts of Others)

23. Defendants would show that any damage allegedly sustained by Plaintiffs, which is denied, was only caused by the acts or omissions of persons other than Defendants, which acts or omissions constitute the intervening and superseding cause of Plaintiffs' alleged damages and bar the claims against Defendants.

FOR A SIXTH DEFENSE
(Self-Defense/Duress)

24. Defendants would show that to the extent Plaintiffs claim damages sustained due to an encounter with Defendant Caroline Deloatch, any actions taken by Ms. Deloatch were induced and a result of self-defense and duress, and Plaintiffs are therefore precluded from recovery against Defendants.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, the Defendants pray that the Complaint be dismissed, with prejudice, and for such other and further relief as the Court may deem just and proper.

SIGNATURE PAGE ATTACHED

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July 27, 2009

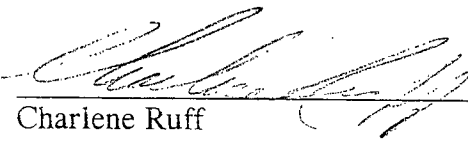
CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Bank of America, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: ANSWER

Counsel Served:

Mary P. Miles
Attorney at Law
LAW OFFICE OF MARY P. MILES
3955 Southeastern Way, Suite 3A
West Columbia, SC 29169


Charlene Ruff
Administrative Assistant

July 27, 2009

FILED
2011 MAR - 8 PM 12: 26
JEANETTE W. McBRIDE
C.C.P. & G.S.

FILED
2009 JUL 28 PM 2: 37
JEANETTE W. McBRIDE
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RICHLAND COUNTY

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

COURT OF COMMON PLEAS
2011-CP-40-01570R

Jerry Gadson and Sheila
Gadson,)

. Plaintiffs,)

vs.)

Caroline Deloatch and Bank of
America, Individually and
Jointly,)

Defendants.)

TRANSCRIPT OF RECORD

February 29, 2012
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

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

MARY P. MILES, ESQ.
Attorney for the Plaintiffs

CANDACE C. JACKSON, ESQ.
Attorney for the Defendants

DEBORAH M. McCURDY, RPR
Official Court Reporter

I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

FEBRUARY 29, 2012

THE COURT: Ms. Jackson, this is your motion?

MS. JACKSON: Yes.

THE COURT: If you can give me some background on the case.

MS. JACKSON: Sure.

THE COURT: So I have some idea.

MS. JACKSON: What is really going on? Okay.

Well, first, we are moving for summary judgment as to the Plaintiff's causes of action for negligence and/or assault and battery and loss of consortium.

The Plaintiffs failed to respond to the Defendant's requests for admissions, which Rule 36(a) and (b) deems those matters or those facts contained in the request admitted and conclusively established unless amended or withdrawn. And based on those admissions there is just no genuine issue of material fact at this point.

But to give you some background, Your Honor, I think this will be helpful, just so you can get an idea of what we are dealing with, what type of case this is, three years ago, back in 2009, May of 2009, Plaintiffs Jerry and Sheila Gadson brought an action against Defendant Bank of America and its

1 employee, Caroline Deloatch, claiming that on
2 March the 9th, 2009 Jerry Gadson visited Polo Road
3 Banking Center, and while inside of this bank, the
4 manager of the bank, Caroline Deloatch, a female,
5 who has about 20 years of bank managerial
6 experience, quote, got up into his face yelling and
7 screaming abusive comments with the intent to
8 strike him without probable cause.

9 And as a result of that, Your Honor, the
10 Plaintiff claimed that Jerry Gadson has suffered
11 serious personal and mental injuries requiring
12 hospitalization now and in the future; permanent
13 physical impairment to his body; and great pain;
14 and mental anguish. And this set of facts is where
15 the action comes from.

16 Now, based on these admissions, Your Honor, or
17 based on the Plaintiff's failure to respond to the
18 requests to admit, they have effectively admitted
19 the following. And I'm just going to go through
20 all seven of them.

21 That at no time did Caroline Deloatch yell and
22 scream abusive comments in Jerry Gadson's face;

23 That the Plaintiffs have no evidence that at
24 any time Caroline Deloatch intended to strike or
25 cause bodily harm to Jerry Gadson;

1 That at no time did Caroline Deloatch touch
2 Jerry Gadson or put him in any apprehension of
3 harmful or offensive bodily contact or that it was
4 imminent;

5 That no hazardous or dangerous condition
6 existed at that time;

7 That the Defendant did not breach any duty
8 that may have been owed to the Plaintiff, Jerry
9 Gadson;

10 That Jerry Gadson did not sustain any
11 injuries;

12 And that Sheila Gadson has not suffered loss
13 of consortium or any emotional injuries.

14 Now, based on these admissions, Your Honor,
15 which have now been conceded by the Plaintiffs,
16 there is just no, absolutely -- you know, there is
17 absolutely no evidentiary support for their
18 negligence, assault and battery, or loss of
19 consortium claims.

20 Now, I will just state briefly that the timing
21 of the Defendant's motion for summary judgment is
22 appropriate, not premature in any way, and that
23 South Carolina Courts, particularly the Court of
24 Appeals, have consistently found that unanswered
25 requests to admit are deemed admitted, granting

1 Defendant's summary judgment.

2 In fact, we cited a case in our reply that was
3 decided just a few months ago by the Court of
4 Appeals, Davidson versus City of Beaufort, same
5 type of facts: Negligence action; failure to
6 respond to requests to admit. Those matters were
7 deemed admitted. One admission said there was just
8 no duty on the part of the Plaintiff -- on the part
9 of the Defendant -- and the Court granted summary
10 judgment on that basis. That is one case.

11 Secondly, Your Honor, the summary judgment is
12 not premature because the Plaintiffs, you know,
13 respectfully just haven't been diligent in their
14 discovery efforts.

15 The case was filed May 27th, 2009. The
16 Plaintiffs did not pursue their case for an entire
17 year.

18 After that, the Defendant decided to try to
19 move this case along or to close it, rather, and so
20 we filed our discovery requests, requests for
21 admission. We even deposed -- you know, noticed
22 depositions of the Plaintiffs, but the Plaintiffs
23 never responded to those requests. They never
24 provided any documents or produced any documents,
25 and the depositions were canceled due to sudden

1 unavailability of the Plaintiff.

2 After that, Your Honor, the case was stricken
3 from the docket May 17th, 2010. Apparently the
4 case was restored March 8th, 2011. The Defendants
5 had no idea that the case was restored. Didn't
6 receive notice of a motion, which goes against Rule
7 40(j). Never received any notice of a hearing.
8 Apparently the hearing wasn't had. Never received
9 notice or a copy of the order restoring the case.
10 And since March 8th, 2011, the Plaintiffs still
11 have not engaged in any discovery that would
12 support their claims.

13 Now, Your Honor, we found out just last week
14 that this case is set for trial in just a couple of
15 weeks, March 12th, 2012.

16 And other than the bare allegations of the
17 Plaintiff, there is just no evidence, no
18 affidavits, no documents that would support their
19 claims.

20 So based on the these admissions, based on the
21 timing, summary judgment is entirely appropriate,
22 and the Plaintiff -- I mean, excuse me, the
23 Defendant asks this Court to grant the summary
24 judgment on those bases.

25 THE COURT: All right. Yes, ma'am? Thank

1 you.

2 MS. MILES: Thank you, Your Honor. Counsel.
3 I would like, Your Honor, to present to the Court
4 and to counsel some case law also.

5 Your Honor, you will find that there are
6 several case laws in which I will be addressing
7 today in response to the summary judgment.

8 Your Honor, I would like to present to the
9 Court a timeline. As Counsel Jackson mentioned,
10 that on May 26th, 2009, we filed a summons and
11 complaint in the court's record.

12 Your Honor, after that, on April 9th, 2010,
13 the Defendant's first set of requests for
14 admission. And that was when they sent their
15 discovery, which included interrogatories as well
16 as requests for production.

17 Your Honor, there was a motion to strike on
18 May 2010, and then the order granting a 40(j).

19 During that process of time, Your Honor, the
20 40(j) was discussed between the counsel, and
21 therefore there was not any mention at that time in
22 which we discussed anything about discovery;
23 although, there was I guess without verbally saying
24 that everything that had been 40(j)'d would have
25 been set aside for that time, because we had a year

1 in which that we could continue with the discovery.

2 Your Honor, in December of 2010, we answered
3 the Defendant's request for admissions,
4 interrogatories and production.

5 And as you can see, Your Honor, in their
6 amended complaint for summary judgment, they
7 changed their motion, which they said in the
8 footnote that they located in their file that we
9 did respond.

10 For some reason they didn't find apparently
11 our admissions, our response to admissions, because
12 we actually -- and I have a copy to present to the
13 Court at this time, requests to admit, the
14 Plaintiff's answers to the Defendant's request for
15 admissions. It was the same date in which that we
16 responded to their answer -- I mean, to their
17 request for production, as well as their
18 interrogatories.

19 And may I -- and they should have that in
20 their file, but, Your Honor, I would like to admit
21 this into evidence as our first exhibit to show the
22 Court that during the same time that we responded,
23 because all of it came together, and so therefore
24 we went ahead and we answered at that time.

25 And admittedly they are saying in their

1 footnote and their amendment that now they are no
2 longer talking about striking it because of failing
3 to pursue -- prosecute. And now they amended it in
4 terms of the dismissal.

5 Your Honor, that was done on November 1st,
6 2011, the Defendant's motion to dismiss for failure
7 to prosecute and motion for summary judgment.

8 But before that, Your Honor, the motion to
9 restore was in March 3rd, 2011. So this case, Your
10 Honor, was not restored until March the 7th, 2011.
11 That is when this case was restored. And during
12 the process of restoring it, discovery is
13 continuous.

14 Your Honor, on January 10th, 2012 is when the
15 Plaintiff responds to the Defendant's motion,
16 amended motion for summary judgment, because that
17 is when they made their amendment to file for
18 summary judgment.

19 And then after that, Your Honor, we in turn
20 filed our motion on January 30th, 2012 to extend
21 the time to respond to the Defendant's request.

22 So if -- even so, if they are claiming that we
23 did not answer, which we deny, then we are asking
24 the Court to give us time.

25 THE COURT: On the admissions?

1 MS. MILES: On the request for admissions.

2 THE COURT: You know, I don't think you can --
3 I know they can't extend the time. You can agree.
4 Let me look at the rule. But you can agree on
5 requests to admit to an extension.

6 MS. MILES: According to the case law, Your
7 Honor, if you look at --

8 THE COURT: I haven't looked at it.

9 MS. MILES: Under Rule 36(a) and (3) as well as
10 36(b), the Court may allow additional time to
11 respond.

12 THE COURT: The Court can?

13 MS. MILES: Right. And that is why we are
14 saying, although we deny the allegation that we
15 needed to respond, if you look at their footnote --
16 what footnote is that -- in which that they amend
17 their complaint --

18 (Pause.)

19 MS. MILES: It is in their footnote, Your
20 Honor. And I apologize to the Court for the delay.
21 I just read it, and now I'm looking for it, that
22 they said that in turn that they were amending the
23 complaint because they found the information that I
24 did send to them in reference to the request for
25 production, as well as the interrogatories.

1 However, they are still saying that they did not
2 find the admissions on which we are stating that we
3 did send it at the same time. It would seem very
4 strange that they could find the information that
5 we responded to the interrogatories and responded
6 to the request for production.

7 THE COURT: Do you have the certificate of
8 service?

9 MS. MILES: The certificate of service as far
10 as my secretary?

11 THE COURT: The certificate of service on the
12 Defendant for the --

13 MS. MILES: Interrogatories?

14 THE COURT: And the requests to admit?

15 MS. MILES: Your Honor --

16 THE COURT: I'm gathering that you are saying
17 that you sent it to them in December of 2010. They
18 are saying that they don't have it. They never
19 received it.

20 MS. MILES: Okay, Your Honor. I don't have
21 the certificate of service as far as my staff
22 signing a certificate of service. However, Your
23 Honor, they are admitting that it is received. And
24 I'm still looking for the footnote because it was
25 in their footnote.

1 THE COURT: Okay.

2 MS. MILES: In which that they said that they
3 are admitting that they received it. They are only
4 admitting to two things, that they only received an
5 answer to our -- to their interrogatories and
6 admitting that they got the documents as far as the
7 production.

8 THE COURT: So they are not saying that they
9 received a response back --

10 MS. MILES: That's what they are saying and
11 that is what they are using at summary judgment.

12 And I'm saying that even if they are saying
13 that they didn't receive it, there was not a motion
14 to compel. There was nothing done other than to
15 file the summary judgment stating that they did not
16 receive the admissions. I'm saying that we sent
17 the admissions in December 6th as our Exhibit 1
18 that I present to the Court, and I presented to the
19 Court our admission, in which that we -- and even
20 so, Your Honor, the law is very clear on this in
21 terms of -- if we can show that there is
22 considerable differences here where a jury can
23 find, because if what -- if you look at the
24 admissions, and you will find their admissions are
25 just a repeat of what we had in our complaint.

1 And so if you look at the Request for
2 Admission 2, 3, and 4, it is only saying, admit
3 that the Plaintiffs have no evidence at all in time
4 of Caroline Deloatch's intent to strike or cause
5 bodily harm to Jerry Gadson; admit that at no time
6 did Caroline Deloatch yell and scream abusively.

7 These are our allegations in the complaint.
8 Why wouldn't we have answered? And you notice that
9 all of it is -- of course we are going to -- there
10 is nothing out of the ordinary in which that there
11 is some -- would have been any apprehension on our
12 part in terms of answering those admissions because
13 those are the facts in which that we presented.

14 And it says because the Plaintiff did not
15 respond in time instead choose to get the case
16 dismissed. The Defendant is now claiming that the
17 Plaintiffs have now lost the right to bring this
18 case.

19 And according to the Defendants, the
20 Plaintiffs have admitted that they were assaulted
21 by the Defendant, Caroline Deloatch, and that no
22 point of time did Jerry Gadson suffer bodily
23 injury.

24 This is ridiculous, Your Honor. If this does
25 not subserve justice, nothing else would ever

1 assist the court in justice.

2 Rule 36(b) provides that the Court may permit
3 withdrawal of amendment when the presentation of
4 the merits of the action will be subverted thereby
5 and the party who obtained the admission fails to
6 satisfy the Court that withdrawal or amendment will
7 prejudice that.

8 And I don't think that nothing has been said
9 today that will prejudice the Defendant in
10 maintaining this action or a defense of the merits,
11 because it is just a repeat. And that is exactly
12 what I presented to the Court today, the case law
13 on Baughman versus AT&T.

14 They have attempted to distinguish Birmingham
15 by -- Baughman -- based on the factual difference
16 in their case. But the facts in this instant case,
17 Your Honor, the Defendants have not entirely
18 elected to respond to the basic principle held in
19 the case that I presented to the Court, Baughman.
20 It has two parts. There is a two-part test.

21 The first one says, does the amendment or
22 withdrawal subserve justice.

23 Yes, it does, in terms of what they are
24 saying.

25 And, two, does it prejudice the opposite

1 party.

2 No, it doesn't prejudice them.

3 This case was restored in 2011. In this case
4 if the Plaintiffs are allowed to withdraw their
5 deemed admissions, Your Honor, at best we will be
6 able to show that the Defendant assaulted Jerry
7 Gadson, which is why the Plaintiff brought this
8 case in the first place.

9 It cannot be asserted by reading the
10 Defendant's responses as to how the Defense would
11 be prejudiced if the Plaintiffs can establish that
12 the Defendant, Caroline Deloatch, assaulted Jerry
13 Gadson.

14 For the following reasons, Your Honor, we feel
15 that the Defendant's motion for summary judgment
16 should be denied and the Plaintiff's motion to
17 extend time with the liberty to withdraw admissions
18 should be granted.

19 What they are presenting in terms of saying
20 that we did not answer, we did answer. The
21 Defendants offer no explanation as to why
22 withdrawing the admissions would result in
23 prejudicing them. Nothing was stated today in
24 which to say that this case is coming up for trial.
25 However, the case was just restored in 2011, so we

1 still have time in which that if there is any
2 additional discovery that the Defendant wants to
3 have.

4 The Defendant's requests for admissions
5 basically seeks to negate the Plaintiff's entire
6 claim, which cannot be permitted, Your Honor, and
7 would defeat the purpose of Rule 36.

8 Your Honor, because the Plaintiffs have
9 presented enough reasons for the Court to grant
10 them permission to withdraw the admissions, we
11 strongly believe that the Defendant's motion for
12 summary judgment fails as a matter of law because,
13 Your Honor, the Court can grant, if -- like I said
14 earlier, Your Honor, really the questions are just
15 a repeat of what is actually in the Plaintiff's
16 complaint. There is nothing else that they ask
17 that would have made a difference as far as
18 admissions to help them in discovery of the case.
19 They did not do any depositions or none of those
20 things in which that to show that actually they
21 would be prejudiced if they did not get the
22 admissions. The admissions are just the same thing
23 as what we put in the summons and complaint.

24 And, Your Honor, I honestly would like to
25 just reemphasize this case law in which that I

1 presented the case to the Court, because even
2 looking under the other ones that I presented, Your
3 Honor, they are -- under Barber versus Hobbs, there
4 is no way in which that this -- a summary judgment
5 should just be based solely in this circumstance on
6 the alleged failure of the Plaintiff to not answer
7 the admissions when the admissions are the same as
8 what is in the complaint.

9 Your Honor, and I hope that this Court will be
10 more favorable to the non-moving party in this
11 action.

12 Thank you.

13 THE COURT: All right, thank you.

14 Yes, ma'am. And I don't have your reply
15 motion. It probably hasn't made it to the file
16 yet.

17 MS. JACKSON: Yes, let me provide you with it.
18 That would be very helpful.

19 If I may respond?

20 THE COURT: Yes, ma'am.

21 MS. JACKSON: We have a copy -- or I have a
22 copy of -- not a clean copy, unfortunately -- of
23 the amended motion for summary judgment, the
24 footnote that Ms. Miles kept trying to refer to, if
25 I can show it to you.

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1 THE COURT: Yes, ma'am.

2 MS. JACKSON: It states that: It remains that
3 the Plaintiffs have not responded to the
4 Defendant's requests for admission. No footnote.
5 No.

6 The Plaintiffs are presenting two inconsistent
7 arguments. First they are saying, we responded.
8 Then they are saying, well, can we extend the time
9 to respond?

10 Okay. Well, January 31st, the Plaintiffs
11 filed a motion to extend time. I don't know if you
12 received that. They filed a motion to extend time
13 and respond to the Defendant's requests for
14 admission and a motion to withdraw their
15 admissions.

16 In this motion, Your Honor, they state
17 repeatedly, we did not respond to the Defendant's
18 requests for admission.

19 I want to hand it to you, Your Honor. Yet not
20 a clean copy, I have highlighted parts.

21 THE COURT: Yes, ma'am.

22 MS. JACKSON: She stated: It can be seen that
23 the deemed admissions that effectively brought an
24 end to the Gadson's claims, because Gadson did not
25 respond to these and other such requests they are

1 now deemed admissions. By failing to respond to
2 requests for admissions, the Gadsons have
3 effectively surrendered their claims to the
4 Defendants.

5 The best that I can see, Your Honor, there is
6 really no dispute at this point about whether the
7 requests to admit were answered, responded to,
8 objected to or anything.

9 Let me state further, Your Honor, the
10 Plaintiffs are claiming that the admissions are
11 contrary to the complaint. They say that, this is
12 what we said on the complaint, why would we then
13 state otherwise.

14 Well, that doesn't really matter when it comes
15 to what we're dealing with. There is a case that
16 is very good on this whole issue, Scott versus
17 Greenville Housing Authority, a Court of Appeals
18 case.

19 THE COURT: I have it.

20 MS. JACKSON: Got it? This case just outright
21 says that -- well, let me say this. The South
22 Carolina Court of Appeals rejected and reversed the
23 trial court's decision, which found that the
24 ultimate issue in the case could not be determined
25 by admissions because it is contrary to the

1 pleadings.

2 And then they concluded, the Court of Appeals
3 did, that despite the party's pleadings, its
4 failure to respond to the opposing party's requests
5 to admit concerning those issues that were in the
6 pleadings was binding upon it.

7 Now, the Plaintiff wants the Court to find
8 consistent with the trial court's ruling that was
9 reversed. It doesn't matter if the admissions are
10 different from the pleadings. It is a procedural
11 issue. I mean, that is why it is in there, Your
12 Honor. So that doesn't matter.

13 What else did they cite to? The Baughman
14 versus AT&T case. The Plaintiffs are saying that,
15 yes, there are two parts to the test, to withdraw
16 admissions or extend time responding.

17 First, would the presentation of the merits be
18 subverted, and would there be prejudice to the
19 Defendant.

20 Well, the presentation of the merits, that is
21 the Plaintiff's burden to prove. And they haven't
22 even tried to subserve the presentation of the
23 merits.

24 The case has been going on for three years,
25 Your Honor. Yes, there was a time when the case

1 was stricken from the docket. But even since it
2 has been restored, they have done absolutely
3 nothing. We have heard nothing from them. And the
4 case is set for trial March 12th.

5 Is there prejudice to the Defendant?
6 Absolutely. This pretty much says to the
7 Defendant, you've got to engage in very sudden
8 discovery, restore facts from three years ago.
9 We've got an individual employee who is a
10 Defendant, been at the bank for 20 years. She
11 thinks the case is closed, Your Honor, because of
12 these admissions. It is severely prejudice.

13 We don't have any -- you know, we noticed
14 depositions of the Plaintiff. They canceled them.
15 We served discovery. They did respond to the
16 written ones, but they didn't produce any
17 documents.

18 So as far as we were concerned, all of the
19 facts were uncontested. We already had their
20 admissions, the case was closed.

21 So, Your Honor, there is extreme prejudice to
22 the Defendant at this stage. We have got two weeks
23 left for trial without anything other than the
24 Plaintiff's bare allegations that they have done
25 nothing to support their own case.

1 It is not up to the Defendant, Your Honor, to
2 try to produce something for the Plaintiff's case.

3 On that basis, Your Honor, the Defendant asks
4 for summary judgment to be granted.

5 Thank you.

6 THE COURT: All right. I'm going to read the
7 cases that Ms. Miles handed up. Also, I have to go
8 through these documents and the cases that you
9 cited.

10 Do you have a cite -- I was looking for the
11 cite for the case you said was recently decided.

12 MS. JACKSON: Davidson?

13 THE COURT: Is that cite in your -- oh, I have
14 it. Okay. Oh, it is unpublished. That's why I
15 don't have it. I tried to pull it up on Westlaw
16 and I couldn't. We'll take it. And I'll get you
17 all something back within the next week or so,
18 because I'm sure Judge Barber will be knocking at
19 my door if I haven't ruled on it yet.

20 MS. JACKSON: Is there a way that we can get
21 the trial continued pending the Court's decision on
22 that matter? The trial is set for March 12th. If
23 we are moving forward, we want to talk to the
24 Plaintiff today.

25 THE COURT: If I can't get you anything this

1 week, ill have to get it -- I'll talk to him to
2 take it off the docket, because next week we're in
3 a week-long trial, and I then I think the next week
4 is March 12th. So if I can't get something done on
5 it before the end of the week, then I will let
6 Judge Barber know that I have it under advisement
7 and I will more than likely not have a ruling
8 before the 12th.

9 All right. Thank you.

10 MS. MILES: Thank you, Your Honor.

11 MS. JACKSON: Thank you.

12 (WHEREUPON, the proceedings were concluded.)
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(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

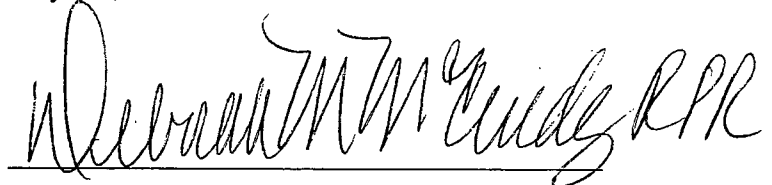
STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 29th day of February, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 3, 2012



Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Jerry Gadson and Sheila Gadson,	)	Civil Action No. 2009-CP-400-3817
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>CAROLINE DELOATCH AND BANK</u>
	)	<u>OF AMERICA'S FIRST SET OF</u>
Caroline Deloatch and Bank of	)	<u>REQUESTS FOR ADMISSION TO</u>
America, Individually and jointly,	)	<u>PLAINTIFFS</u>
	)	
Defendants.	)	
	)	

TO: MARY P. MILES, ATTORNEY FOR PLAINTIFFS ABOVE-NAMED:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the Defendants Caroline Deloatch and Bank of America, N.A. (hereinafter "Defendants") submit the following matters to the Plaintiffs and request that they be admitted or denied. If a response is not provided within thirty (30) days of service of these requests, the matters contained herein shall be deemed admitted.

REQUESTS TO ADMIT

1. Admit that on March 9, 2009, Jerry Gadson visited the Polo Road Banking Center to seek refunds of service charges on his checking account, and on this same date, the Defendants refunded charges to his account.
2. Admit that at no time did Caroline Deloatch yell and scream abusive comments in Jerry Gadson's face.
3. Admit that the Plaintiffs have no evidence that at any time Caroline Deloatch intended to strike or cause bodily harm to Jerry Gadson.

4. Admit that at no time did Caroline Deloatch touch Jerry Gadson or put him in any apprehension that harmful or offensive bodily contact was imminent.
5. Admit that no hazard or dangerous condition (neither latent nor concealed) existed at the Polo Road Banking Center during the Plaintiffs' visit on March 9, 2009.
6. Admit that the Defendants did not breach any duty it may have owed to Jerry Gadson.
7. Admit that Jerry Gadson did not sustain any injuries as a result of any incident that occurred at the Polo Road Banking Center on March 9, 2009.
8. Admit that Sheila Gadson has not suffered loss of consortium, emotional stress, or any injuries as a result of any incident that occurred at the Polo Road Banking Center on March 9, 2009.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Thad H. Westbrook
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Attorneys for Caroline Deloatch and Bank of America,
N.A.

Columbia, South Carolina

April 9, 2010

CERTIFICATE OF SERVICE

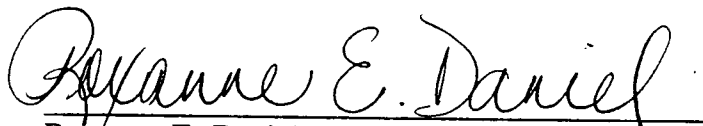
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Bank of America, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

CAROLINE DELOATCH AND BANK OF AMERICA'S
FIRST SET OF REQUESTS FOR ADMISSION TO
PLAINTIFFS

Counsel Served:

Mary P. Miles
Attorney at Law
LAW OFFICE OF MARY P. MILES
3955 Southeastern Way, Suite 3A
West Columbia, SC 29169



Roxanne E. Daniel
Administrative Assistant

April 9, 2010

Nelson Mullins

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April 9, 2010

Mary P. Miles, Esquire
LAW OFFICE OF MARY P. MILES
3955 Southeastern Way, Suite 3A
West Columbia, SC 29169

RE: Jerry Gadson and Sheila Gadson vs. Caroline Deloatch and Bank of America
C/A No. 2009-CP-40-03817
Our File No. 05100/02104

Dear Ms. Miles:

Enclosed herewith and served upon you please find:

- 1) Caroline Deloatch and Bank of America's First Requests for Production of Documents to Plaintiffs;
- 2) Caroline Deloatch and Bank of America's First Set of Requests for Admission to Plaintiffs; and
- 3) Caroline Deloatch and Bank of America's First Interrogatories to Plaintiffs

in the above-referenced matter. Please feel free to contact me should you have any questions or comments.

Very truly yours,



Candace C. Jackson

CCJ:red
Enclosures

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Jerry Gadson and Sheila Gadson,	)	Civil Action No. 2009-CP-400-3817
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>CAROLINE DELOATCH AND BANK</u>
	)	<u>OF AMERICA'S FIRST</u>
Caroline Deloatch and Bank of	)	<u>INTERROGATORIES TO</u>
America, Individually and jointly,	)	<u>PLAINTIFFS</u>
	)	
Defendants.	)	
	)	

TO: MARY P. MILES, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, Defendants Caroline Deloatch and Bank of America (hereinafter "Defendants"), propound the following Interrogatories to Plaintiffs Jerry Gadson and Sheila Gadson (hereinafter "Plaintiffs"), to which written responses shall be submitted in accordance with and in the time provided by said Rules. These Interrogatories are continuing in nature and should further responsive information come to the knowledge of Plaintiffs, then Plaintiffs are required to timely provide same by supplemental responses in accordance with Rule 26(e) of the South Carolina Rules of Civil Procedure.

GENERAL INSTRUCTIONS AND DEFINITIONS

1. As used herein, "Plaintiffs," "You," and "Your" mean Plaintiffs Jerry Gadson and Sheila Gadson, their attorneys, and all other persons acting or purporting to act on their behalf. Reference to the individual Plaintiffs will be made as relevant to the Interrogatory.

2. "Identify," when used in reference to a natural person, means to state the full name, telephone number, last known address, and the present or last known position or business affiliation and business address, of that person.

3. "Identify" or "Identification" when used in reference to a document, means to state the type of document or some other means of identifying it, including its date, its signer, its addressee, its general subject matter, its present location, and the name and address of its custodian, and if you wish to assert a claim of privilege, the basis of your claim of privilege with respect thereto.

4. "Document" means anything on which information has been recorded including, without limitation, information set down by letters, words, or numbers, or their equivalent, handwriting, typewriting, printing, e-mailing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

5. "Communications" refers to both oral and written communications and means all conversations, presentations, discussions, speeches, meetings, telephone calls, e-mails, Documents, writings and all other means by which information, data, language or Documents are transmitted, whether or not passed or otherwise conveyed from one or more persons or entities to one or more other persons or entities.

6. "Provide the complete factual basis" means to describe in detail all of the facts and events relating to the contention or response, including the identity of all persons having knowledge relevant to the contention or response, a description of the relevant knowledge possessed by each such person and the identity of all documents relating to the contention or response.

7. "State in detail" and "describe with specificity" mean to completely set forth, in as much detail as you are able, all knowledge and information in your possession, care, custody, or control that is responsive to the matter inquired about in an Interrogatory.

8. If, in answering these Interrogatories, you encounter any ambiguity in construing the meaning thereof, or a definition or instruction relevant to the inquiry contained therein, set forth the matter deemed "ambiguous" and set forth the construction chosen or used in answering the Interrogatory.

9. If any Interrogatory requires you identify any document or thing no longer in your custody or control, identify the document, state whether it is missing, lost, destroyed, transferred to others or otherwise disposed of, and identify any person who currently has custody or control of the document or who has knowledge of the contents of the document.

INTERROGATORIES

1. Identify any and all persons known by the Plaintiffs to have knowledge concerning the claims or defenses in this action, and for each such person provide a summary of such person's knowledge.

2. Identify all documents, correspondence, materials, and other tangible things known to the Plaintiffs that concern the claims or defenses in this action.

3. Identify each person you intend to call as a witness in the trial of this action and provide a summary of the subject matter upon which each person is expected to testify.

4. Identify each person whom you expect to call as an expert witness in the trial of this action, the subject matter upon which such expert is expected to testify, and a summary of the grounds for each opinion.

5. Describe with specificity each and every action on the part of Defendants that Plaintiffs contend is a violation of Bank of America's policies and procedures, as alleged in Paragraph 7 of the Complaint.

6. Describe with specificity the purpose(s) for which Plaintiff Jerry Gadson visited the Polo Road Banking Center on March 9, 2009.

7. State in detail the facts and circumstances concerning Plaintiffs' contention in Paragraph 11 of the Complaint that Plaintiff Jerry Gadson was "assaulted and battered" by Defendant Caroline Deloatch while sitting in the Assistant Manager's office," indicating:

- a. The name of the Assistant Manager in whose office Plaintiff Jerry Gadson was sitting at the time of the alleged assault and battery;
- b. All events that took place on March 9, 2009, prior to the time that Plaintiff Jerry Gadson was allegedly assaulted and battered by Defendant Carolina Deloatch;
- c. The time during which Plaintiff Jerry Gadson was allegedly assaulted and battered by Defendant Carolina Deloatch;
- d. The specific ways in which Plaintiff Jerry Gadson was allegedly assaulted and battered by Defendant Carolina Deloatch; and
- e. Any response from Plaintiff Jerry Gadson as a result of the alleged assault and battery.

8. State in detail the facts and circumstances concerning Plaintiffs' contention in Paragraph 12 of the Complaint that Defendant Caroline Deloatch "got up into Plaintiff's face yelling and screaming abusive comments with the intent to strike Jerry without probable cause," indicating:

- a. The date and time during which these comments were allegedly made;
- b. The way(s) in which Defendant Caroline Deloatch demonstrated an intent to strike Plaintiff Jerry Gadson;
- c. Facts indicating a lack of probable cause on the part of Defendant Carolina Deloatch; and
- d. The names of any persons who may have witnessed the alleged incident.

9. Describe with specificity the "serious personal injuries," "permanent impairment of health and bodily efficiency," and "great pain and mental anguish" which Plaintiffs contend Plaintiff Jerry Gadson sustained in Paragraph 19 of the Complaint.

10. Identify any written reports from physicians concerning Plaintiff Jerry Gadson's contention in Paragraph 19 of the Complaint that he has suffered "serious personal injuries," "permanent impairment of health and bodily efficiency," "great pain and mental anguish," and that "his injuries were of such a nature as to require him and will in the future require him to expend monies for hospitalization, doctor's care, and other medical necessities." Indicate each physician's name, the dates on which Plaintiff Jerry Gadson visited and/or was treated by such physician, and the cost of each visit or treatment.

11. Identify with specificity the dates and purposes of any and all types of hospital visits made by Plaintiff Jerry Gadson in relation to his contention in Paragraph 19 of the Complaint that he has suffered "serious personal injuries," "permanent impairment of health and bodily efficiency," "great pain and mental anguish," and that "his injuries were of such a nature as to require him and will in the future require him to expend monies for hospitalization, doctor's care, and other medical necessities."

12. Provide the complete factual basis for Plaintiffs' contention in Paragraph 20 of the Complaint that Plaintiff Jerry Gadson "exercised ordinary and reasonable care at all times."

13. Paragraph 26 of the Complaint states that Defendant Caroline Deloatch "was incompetent and unfit to perform the work required as a Branch Manager for Defendant Bank of America." State in detail the work Plaintiffs contend Defendant Caroline Deloatch was required to perform and in what ways you contend Defendant Caroline Deloatch failed to perform such work.

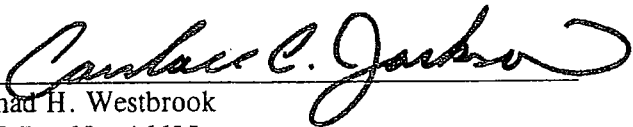
14. State in detail the facts and circumstances concerning Plaintiffs' contention in Paragraph 35 of the Complaint that Plaintiff Sheila Gadson suffered loss of consortium, indicating:

- a. The ways in which Plaintiff Jerry Gadson has "not been able, and will never be able, to provide full support, services, and assistance around the home" that he would normally provide as a husband; and
- b. The date and time at which Plaintiff Jerry Gadson lost his normal ability to provide full support, services, and assistance around the home.

15. State with specificity the nature of the relief sought by Plaintiffs with respect to each separate claim for relief, including the amount of damages sought by Plaintiffs and the calculation of the damages if money damages are sought.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:



Thad H. Westbrook

SC Bar No. 16635

E-Mail: thad.westbrook@nelsonmullins.com

Candace C. Jackson

SC Bar No. 75714

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Columbia, SC 29201

(803) 799-2000

Attorneys for Caroline Deloatch and Bank of America

Columbia, South Carolina

April 9, 2010

CERTIFICATE OF SERVICE

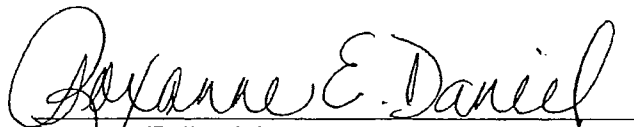
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Bank of America, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

CAROLINE DELOATCH AND BANK OF AMERICA'S
FIRST INTERROGATORIES TO PLAINTIFFS

Counsel Served:

Mary P. Miles
Attorney at Law
LAW OFFICE OF MARY P. MILES
3955 Southeastern Way, Suite 3A
West Columbia, SC 29169



Roxanne E. Daniel
Administrative Assistant

April 9, 2010

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Jerry Gadson and Sheila Gadson,	)	Civil Action No. 2009-CP-400-3817
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>CAROLINE DELOATCH AND BANK</u>
	)	<u>OF AMERICA'S FIRST REQUESTS</u>
Caroline Deloatch and Bank of	)	<u>FOR PRODUCTION OF</u>
America, Individually and jointly,	)	<u>DOCUMENTS TO PLAINTIFFS</u>
	)	
Defendants.	)	
	)	

TO: MARY P. MILES, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, Defendants Caroline Deloatch and Bank of America (hereinafter "Defendants"), hereby request that Plaintiffs Jerry Gadson and Sheila Gadson (hereinafter "Plaintiffs") produce and permit the undersigned, or someone acting on their behalf, to inspect and/or copy the following documents, materials at issue within thirty (30) days from the date of this request. This request shall be deemed continuing and to require supplemental responses if the Plaintiffs obtain further documents or materials between the time of production and the time of trial.

GENERAL INSTRUCTIONS AND DEFINITIONS

1. As used herein, "Plaintiffs," "You," and "Your" mean Plaintiffs Jerry Gadson and Sheila Gadson, their attorneys, and all other persons acting or purporting to act on their behalf. Reference to the individual Plaintiffs will be made as relevant to the Request.

2. The term "document" is used in its broadest sense and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed, punched, transcribed, taped or produced or reproduced by any means. The term "document" includes, but is not limited to, all records, e-mails, personal notes, cablegrams, telexes, telefaxes, studies, calendars, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records of meetings, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, work papers, statements, summaries, journals, billing records, and invoices. The term "document" also includes every other means by which information is recorded or transmitted, including, but not limited to, photographs, videotapes, tape recordings, microfilms, punch cards, computer programs, disks and diskettes, printouts, all recordings made through data processing techniques, and the written information necessary to understand and use such materials. The term "document" is further defined to mean the original, any drafts, and any nonidentical copies (i.e., those bearing notations or marks not found on the original).

3. The phrase "possession, custody or control," means a document in your physical custody; or, that you own in whole or in part; or, have a right by contract, statute or otherwise to use, inspect, examine or copy on any terms; or have an understanding, express or implied, that you may use, inspect, examine or copy on any terms; or you have, as a practical matter, the ability to use, inspect, examine or copy such document.

4. The terms "and" and "or" shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the request.

5. A document that is "related to" any given subject means any document that in whole or in part constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

6. To "produce" means to permit the inspection of originals, and to supply complete copies or to permit copying at a convenient facility.

7. The term "all" means any and all; the singular includes the plural, and vice versa.

8. If, in responding to any of these document requests, you encounter any ambiguity in construing either the request or a definition or instruction relevant to it, set forth the matter deemed ambiguous and the construction selected or used in responding to the request.

9. Where documents are requested of you, the request seeks all documents in your possession, custody, or control as well as all documents in the possession, custody, or control of your agents, representatives, and, unless privileged, attorneys.

10. Documents produced in response to this request should be organized and labeled to correspond with the categories in the request.

11. If you are aware of any document otherwise responsive to these requests which is no longer in your possession, custody, or control, identify the name and title of the author, the name and title of the addressee, the date of the document, the subject matter of the document, the last date on which the document was in your control, the person(s) or entity, if any, now in control of the document, the reasons for your

disposition or release of the document, all persons who have knowledge of the circumstances surrounding its disposition, and state what knowledge each such person has.

12. These requests are continuing in character so as to require you to produce documents promptly whenever you obtain additional documents responsive to these requests.

PRIVILEGE

Whenever a request calls for the production of a document claimed by you to be privileged, please supply sufficient factual detail to enable the Court to determine whether or not such document is entitled to a claim of privilege, including (1) the date of the document; (2) the name and position of each person who participated in the preparation of the document; (3) the name and position of each person to whom the document was addressed, and the name of each person to whom the document, or the contents thereof have been communicated by copy, exhibition, reading or oral conversation of any kind; (4) the general subject matter of the document; and (5) the basis or bases for the claim of privilege.

REQUESTS TO PRODUCE

1. All documents that you intend to introduce at the trial of this matter.
2. All documents in your possession, care, custody, or control that concern the claims or defenses in this action.
3. All documents identified in response to any Interrogatory served on Plaintiffs by Defendants in this matter.
4. All documents referred to in responding to any Interrogatory served on Plaintiffs by Defendants in this matter.

5. All written or recorded statements of witnesses regarding this case.
6. All reports prepared by any experts whom you expect to call as a witness in the trial of this matter.
7. All documents memorializing statements or conversations regarding the incidents or actions alleged in the Complaint.
8. All correspondence, disclosures, memoranda, and other documents evidencing, memorializing, or relating to communications between either Plaintiff and either Defendant.
9. The Plaintiffs' tax returns from 2007 to 2009.
10. Any and all documents or materials supporting any damages allegedly suffered by Plaintiffs as alleged in the Complaint.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
Thad H. Westbrook
SC Bar No. 16635
E-Mail: thad.westbrook@nelsonmullins.com
Candace C. Jackson
SC Bar No. 75714
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Attorneys for Caroline Deloatch and Bank of America

Columbia, South Carolina

April 9, 2010

CERTIFICATE OF SERVICE

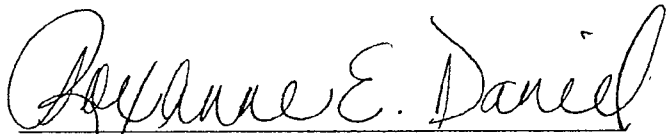
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Bank of America, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

CAROLINE DELOATCH AND BANK OF AMERICA'S
FIRST REQUESTS FOR PRODUCTION OF
DOCUMENTS TO PLAINTIFFS

Counsel Served:

Mary P. Miles
Attorney at Law
LAW OFFICE OF MARY P. MILES
3955 Southeastern Way, Suite 3A
West Columbia, SC 29169



Roxanne E. Daniel
Administrative Assistant

April 9, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Jerry Gadson and Sheila Gadson,)

Plaintiffs,)

vs.)

Caroline Deloatch and Bank of
America, Individually and Jointly,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No. 2009-CP-40-38

CONSENT MOTION STRIKING
CASE FROM DOCKET PURSUANT
TO RULE 40(j), S.C.R.

This matter comes before the Court upon motion of the Defendants Caroline Deloatch and Bank of America and consent of the Plaintiffs Jerry Gadson and Sheila Gadson (collectively "the Parties"), pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. The Parties seek to strike the above-captioned case from the docket. In accordance with Rule 40(j), the Parties agree that the case shall be stricken from the docket, that the Parties may have the case restored to the docket upon motion made within one year of the date stricken, that the statute of limitations shall be tolled during the time when the case is stricken from the docket, and that the striking of the case and its subsequent restoration to the docket shall not affect the status of the Parties with respect to the statute of limitations' effect on any claims asserted by either party. The Parties will continue participating in discovery and discuss settlement while this matter is stricken from the docket.

Signature Page Attached

WE SO MOVE:

NELSON MULLINS RILEY & SCARBOROUGH LLP

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SC Bar No. 16635
E-Mail: thad.westbrook@nelsonmullins.com
Candace C. Jackson
SC Bar No. 75714
E-Mail: candace.jackson@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Caroline Deloatch and Bank of America

Columbia, South Carolina

May 14, 2010

FILED
2010 MAY 17 PM 3:47
JEANETTE W. McBRIDE
C.C.P. & G.S.

WE SO CONSENT:

LAW OFFICE OF MARY P. MILES

By: Mary P. Miles

Mary P. Miles
440 Knox Abbott Drive, Suite 360
Cayce, SC 29033

Attorney for Jerry Gadson and Sheila Gadson

FILED
2011 MAR -8 PM 12:26
JEANETTE W. McBRIDE
C.C.P. & G.S.

Cayce, South Carolina

May 14, 2010

CERTIFICATE OF SERVICE

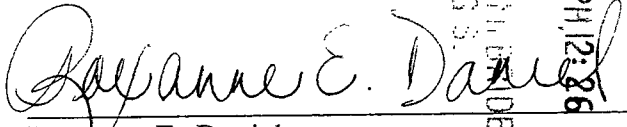
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Bank of America, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, the following address(es):

Pleadings:

CONSENT MOTION STRIKING CASE FROM
DOCKET PURSUANT TO RULE 40(j), SCRC

Counsel Served:

Mary P. Miles
Attorney at Law
LAW OFFICE OF MARY P. MILES
440 Knox Abbott Drive, Suite 360
Cayce, SC 29033


Roxanne E. Daniel
Administrative Assistant

May 17, 2010

FILED
CLAY COUNTY

2011 MAY 17 PM 3:47

JEANETTE W. MIDDLE
C.C.P. & G.S.

FILED

2011 MAR -8 PM 12:26

JEANETTE W. MIDDLE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JERRY GADSON AND SHELIA
GADSON,

Plaintiffs,

vs.

Caroline Deloatch and Bank of America,
Individually and Jointly,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-02-3817
40

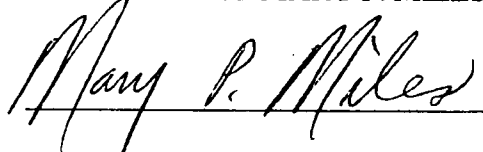
**MOTION TO RESTORE PURSUANT
TO RULE 40(J), SCRPC**

FILED
2011 MAR -8 PM 12:26
JANETTE M. HODGKINS
C.C.P. & G.S.

TO: THE ABOVE-NAMED DEFENDANTS AND THEIR ATTORNEY CANDACE C.
JACKSON, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that the undersigned will move before the
presiding Judge, Court of Common Pleas for Richland County, within ten (10) days or as soon
thereafter as counsel may be heard, for an Order restoring the aforementioned action to the jury
trial docket based upon the grounds this action was stricken pursuant to Rule 40(j), SCRPC by
order signed May 17, 2010 and filed May 19, 2010, a copy of which is attached hereto.

LAW OFFICE OF MARY P. MILES



Mary P. Miles, Esquire
S.C. Bar ID 14331
440 Knox Abbott Drive, Suite 360
Cayce, South Carolina 29033
Telephone (803) 939-1177
Facsimile (803) 939-1001
Email to: Law@marypmiles.com

Dated: March 3, 2011

Attorney for Plaintiffs

LAW OFFICE OF MARY P. MILES



December 6, 2010

Candace C. Jackson, Esquire
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Columbia, SC 29201

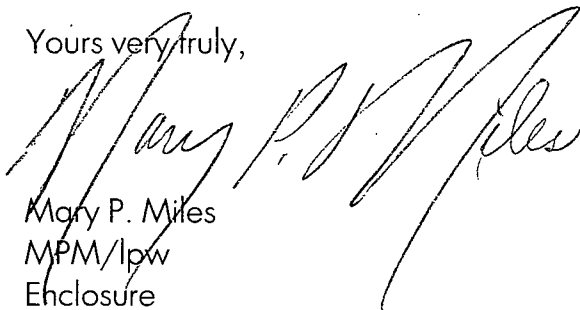
RE: *Jerry Gadson and Sheila Gadson vs. Caroline Deloatch and Bank of America*
C/A No. 2009-CP-40-03817

Dear Attorney Jackson:

Please find enclosed the Plaintiff's answers to Defendant's Admission in regards to the above referenced case. We have submitted the Plaintiff's answers to Defendant's Interrogatories and Production in a separate packet for your review.

Should you have any questions do not hesitate to contact us.

Yours very truly,


Mary P. Miles
MPM/lpw
Enclosure

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

Jerry Gadson and Sheila Gadson,

Plaintiffs,

vs.

Caroline Deloatch and Bank of
America, Individually and jointly,

Defendants.)

) Civil Action No. 2009-CP-400-3817

)

)

)

) PLAINTIFF'S ANSWERS TO
) DEFENDANT'S REQUESTS FOR
) ADMISSION

)

)

)

**TO: CANDACE C. JACKSON, ATTORNEY FOR DEFENDANTS ABOVE-
NAMED:**

REQUESTS TO ADMIT

1. Admit that on March 9, 2009, Jerry Gadson visited the Polo Road Banking Center to seek refunds of service charges on his checking account, and on this same date, the Defendants refunded charges to his account.

ANSWER: Plaintiff admits to this allegation.

2. Admit that at no time did Caroline Deloatch yell and scream abusive comments in Jerry Gadson's face.

ANSWER: Plaintiff denies this allegation.

3. Admit that the Plaintiffs have no evidence that at any time Caroline Deloatch intended to strike or cause bodily harm to Jerry Gadson.

ANSWER: Plaintiff denies this allegation.

4. Admit that at no time did Caroline Deloatch touch Jerry Gadson or put him in any apprehension that harmful or offensive bodily contact was imminent.

ANSWER: Plaintiff denies this allegation.

5. Admit that no hazard or dangerous condition (neither latent nor concealed) existed at the Polo Road Banking Center during the Plaintiffs' visit on March 9, 2009.

ANSWER: Plaintiff denies this allegation.

6. Admit that the Defendants did not breach any duty it may have owed to Jerry Gadson.

ANSWER: Plaintiff denies this allegation.

7. Admit that Jerry Gadson did not sustain any injuries as a result of any incident that occurred at the Polo Road Banking Center on March 9, 2009.

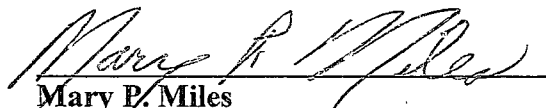
ANSWER: Plaintiff denies this allegation.

8. Admit that Sheila Gadson has not suffered loss of consortium, emotional stress, or any injuries as a result of any incident that occurred at the Polo Road Banking Center on March 9, 2009.

ANSWER: Plaintiffs denies this allegation.

Respectfully Submitted

LAW OFFICE OF MARY P. MILES



Mary P. Miles

440 Knox Abbott Drive, Ste. 360

Cayce, South Carolina 29033

Ph.: (803)939-1177; Fax: (803)939-1001

Email: mary@marypmiles.com

**Cayce, South Carolina
December 6, 2010**

LAW OFFICE OF MARY P. MILES



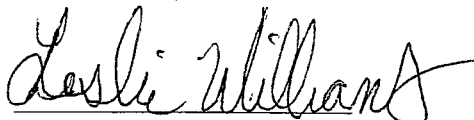
STATE OF SOUTH CAROLINA	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
Jerry Gadson and Sheila Gadson,	)	FIFTH JUDICIAL CIRCUIT
Plaintiffs,	)	
Vs	)	Civil Action No. 2009-CP-400-3817
Caroline Deloatch and Bank of America,	)	
Individually, and jointly,	)	
	)	
	)	CERTIFICATE OF SERVICE

The undersigned certifies that she is a Legal Assistant at the LAW FIRM OF MARY P. MILES, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by personally serving at the below address:

TO: Candace C. Jackson, Esquire
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Columbia, SC 29201

DOCUMENT: PLAINTIFF'S ANSWERS TO DEFENDANT'S ADMISSION

DATE OF MAIL: December 6, 2010


Leslie Williams

**CHIEF ADMINISTRATIVE JUDGE
FIFTH JUDICIAL CIRCUIT**

**Richland County Common Pleas
Richland County Judicial Center
1701 Main Street
Columbia, SC 29201**

September 8, 2011

**Mary P Miles
440 Knox Abbott Dr., Ste. 360

Cayce, SC 29033**

RE: 2011CP4001570R Jerry Gadson vs. Caroline Deloatch

Please be advised that the above captioned case has been filed for six months. In another six months this case will be added to the trial roster. If you believe that this case will not be ready for trial at the end of this one year period, you need to immediately schedule a status conference with this office to review this matter with the Court.

If I do not hear from you concerning this matter, I will assume that the case will be ready for trial. Barring any unusual circumstances, the case will be placed on the trial roster for trial and will not be continued.

Alison R. Lee
Chief Administrative Judge
FIFTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Jerry Gadson and Sheila Gadson,	)	Civil Action No. 2011-CP-40-1570
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>DEFENDANTS CAROLINE</u>
	)	<u>DELOATCH AND BANK OF</u>
Caroline Deloatch and Bank of	)	<u>AMERICA'S MOTION TO DISMISS</u>
America, Individually and jointly,	)	<u>FOR FAILURE TO PROSECUTE</u>
	)	<u>AND MOTION FOR SUMMARY</u>
Defendants.	)	<u>JUDGMENT</u>
	)	
	)	

Pursuant to Rules 36(a), 41(b) and 56(b) and (c) of the South Carolina Rules of Civil Procedure, Defendants Caroline Deloatch and Bank of America ("Defendants"), by and through their undersigned counsel, respectfully move the Court for an Order dismissing the claims asserted by Plaintiffs Jerry Gadson and Sheila Gadson ("Plaintiffs") for failure to prosecute. Alternatively, Defendants hereby move for summary judgment as to the Plaintiffs' claims on the grounds that there is no genuine issue as to any material fact and Defendants are entitled judgment in their favor as to the Plaintiffs' claims as a matter of law. In support of this motion, Defendants show the Court the following.

BACKGROUND

On May 27, 2009, the Plaintiffs commenced this action by filing a Complaint against the Defendants for negligence and loss of consortium. On July 2, 2009, the Defendants filed an Answer denying the Plaintiffs' claims. The Plaintiffs did not pursue this action any further.

On April 9, 2010, the Defendants served their First Requests for Admission, First Interrogatories, and First Requests to Produce to the Plaintiffs. The Plaintiffs' responses to these discovery requests were due on or before May 10, 2010. To date, the Plaintiffs have failed to serve any response whatsoever to these outstanding discovery requests.

On May 17, 2010, the Defendants, with the consent of the Plaintiffs, moved this Court to strike this case from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. On May 17, 2010, this Court granted the parties' motion. (See Order of the Honorable G. Thomas Cooper, Jr., dated May 17, 2010 and filed May 19, 2010, attached hereto as Exhibit A.)

In May of 2011, the Defendants' counsel contacted the Court and it was confirmed that this case had been dismissed. However, on September 12, 2011, the Defendants received a letter from the Court inquiring about the status of the case. It was then that the Defendants learned that the case had been restored to the docket by the Clerk of Court by way of an Order filed March 8, 2011. The Defendants, to date, have not been served notice of the Plaintiffs' motion to restore the case, nor have the Defendants received a copy of the Order restoring this matter to the docket. Nonetheless, the Plaintiffs still have not responded to the Defendants' Requests for Admission, First Interrogatories, and First Requests to Produce.

ARGUMENT

The Defendants move the Court for an Order dismissing the Plaintiff's claims, and alternatively for an Order for summary judgment as to the Plaintiffs' claims, on two grounds. First, the Plaintiffs have failed to prosecute their claims by failing to

respond to the Defendants' Requests for Admission, First Interrogatories, and First Requests to Produce. Secondly, because the Plaintiffs have failed to answer the Defendants' Requests for Admission, the Plaintiffs have admitted that there is no evidence to support their claims for negligence (and/or assault and battery) and loss of consortium. The Plaintiffs' claims, therefore, fail as a matter of law.

MOTION TO DISMISS FOR FAILURE TO PROSECUTE

The Plaintiffs' allegations of negligence and loss of consortium should be dismissed because the Plaintiffs have failed to prosecute their claims. Rule 41(b) of the South Carolina Rules of Civil Procedure provides that "[f]or failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against him." S.C. R. Civ. P. 41(b). As stated by the South Carolina Supreme Court, "The plaintiff has the burden of prosecuting his action, and the trial court may properly dismiss an action for plaintiff's unreasonable neglect in proceeding with his cause." *Don Shevey & Spires, Inc. v. American Motors Realty Corp.*, 301 S.E.2d 757, 758 (S.C. 1983); *McComas v. Ross*, 368 S.C. 59, 62, 626 S.E.2d 902, 904 (Ct. App. 2006). Likewise, when a case is pending for a lengthy period of time and no steps have been taken to prosecute, the failure to proceed is a ground for dismissal. *Collins v. Sigmon*, 299 S.C. 464, 469, 385 S.E.2d 835, 838 (1989).

The circumstances of this case warrant dismissal of the Plaintiffs' claims under Rule 41(b) for failure to prosecute their claims. The Plaintiffs originally brought this action on May 27, 2009. More than two years later, to date, the Plaintiffs have not taken any steps to prosecute their case. The Plaintiffs have not responded to the

Defendants' Requests for Admission, First Interrogatories, and First Requests to Produce, all of which were served in April of 2010. Without even the most basic information regarding the Plaintiffs' claims, the Defendants cannot formulate its defense in this case. Furthermore, Plaintiffs' failure to prosecute has caused prejudice to the Defendants in form of attorneys' fees and time spent on claims for which the Plaintiffs bear the burden of proving. Thus, the Defendants respectfully request that the Court grant its Motion and dismiss the Plaintiffs' claims *with prejudice* under Rule 41(b) on the grounds that the Plaintiffs have unreasonably failed to prosecute their claims.

MOTION FOR SUMMARY JUDGMENT

In the alternative, pursuant to Rules 56(b) and 56(c) of the South Carolina Rules of Civil Procedure, the Defendants move for summary judgment as to the Plaintiffs' causes of action for negligence (and/or assault and battery) and loss of consortium on the grounds that there is no genuine issue as to any material fact, and the Defendants are entitled judgment in its favor as to the Plaintiffs' claims as a matter of law. The grounds for this Motion for Summary Judgment are based on the record already before this Court and the Plaintiffs' failure to answer the Defendants' Requests for Admission, thereby admitting to facts contained in the Defendants' Requests for Admission. Pursuant to Rule 36(a) of the South Carolina Rules of Civil Procedure, a failure to answer a request within thirty days after service, plus an additional five days when service is made by mail, deems it admitted without any further action by the court or proponent. S.C. R. Civ. P. 36(a); *Hatchell v. Jackson*, 290 S.C. 256, 258, 349

S.E.2d 407, 408 (Ct. App. 1986) (finding that when a litigant never responded to a request for admissions, those matters were deemed admitted).

On April, 9, 2010, the Defendants served their First Requests for Admission on the Plaintiffs. (See Caroline Deloatch and Bank of America's First Set of Requests for Admission attached hereto as Exhibit B). To date, the Plaintiffs have not responded to the Defendants' Requests for Admission. Thus, pursuant to Rule 36(a) of the South Carolina Rules of Civil Procedure, the facts contained in the Defendants' Requests for Admission are deemed admitted. Subject to these requirements, the following facts are deemed admitted and form the basis for the Defendants' Motion for Summary Judgment:

1. On March 9, 2009, Jerry Gadson visited the Polo Road Banking Center to seek refunds of service charges on his checking account, and on this same date, the Defendants refunded charges to his account.
2. At no time did Caroline Deloatch yell and scream abusive comments in Jerry Gadson's face.
3. The Plaintiffs have no evidence that at any time Caroline Deloatch intended to strike or cause bodily harm to Jerry Gadson.
4. At no time did Caroline Deloatch touch Jerry Gadson or put him in any apprehension that harmful or offensive bodily contact was imminent.
5. No hazard or dangerous condition (neither latent nor concealed) existed at the Polo Road Banking Center during the Plaintiffs' visit on March 9, 2009.
6. The Defendants did not breach any duty it may have owed to Jerry Gadson.

7. Jerry Gadson did not sustain any injuries as a result of any incident that occurred at the Polo Road Banking Center on March 9, 2009.
8. Sheila Gadson has not suffered loss of consortium, emotional stress, or any injuries as a result of any incident that occurred at the Polo Road Banking Center on March 9, 2009.

(See Caroline Deloatch and Bank of America's First Set of Requests for Admission attached hereto as Exhibit B). Based on these admissions, there is no evidence to support the Plaintiffs' claims for negligence (and/or assault and battery) and loss of consortium. Moreover, because Plaintiff Sheila Gadson is unable to prove the Defendant's liability for her husband, Jerry Gadson's injuries, the loss of consortium claim cannot be maintained. *See Creighton v. Coligny Plaza*, 334 S.C. 96, 121, 512 S.E.2d 510, 523 (Ct. App. 1998) ("In order to prevail in an action for loss of consortium, a plaintiff must prove the defendant's liability *for the spouse's injuries* as well as damages to the plaintiff *resulting from the spouse's injury*.") (emphasis added). Thus, the Plaintiffs' claims, in their entirety, should be dismissed as a matter of law.

WHEREFORE, based on the foregoing, the Defendants respectfully request that this Court grant its Motion to Dismiss for Failure to Prosecute a Claim, or in the alternative the Motion for Summary Judgment as to the Plaintiffs' claims *with prejudice*.

[SIGNATURE PAGE ATTACHED]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Candace C. Jackson

Thad H. Westbrook

SC Bar No. 16635

E-Mail: thad.westbrook@nelsonmullins.com

Candace C. Jackson

SC Bar No. 75714

E-Mail: candace.jackson@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Caroline Deloatch and Bank of America

Columbia, South Carolina

November 1, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Jerry Gadson and Sheila Gadson,

Plaintiff,

vs.

Caroline Deloatch and Bank of America,
individually and jointly,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-40-01570R

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

RICHLAND COUNTY
FILED
2011 DEC 28 PM 3:58
JEANETTE W. MICHAELS
C.C.P. & J.C.P.

Plaintiff's Attorney:

Mary P. Miles, Bar No. _____

Address:

440 Knox Abbott Drive, Suite 360, Cayce, SC
29033

Phone: 803-939-1177 Fax 803-939-1001

E-mail: _____ Other: _____

Defendant's Attorney:

Candace C. Jackson, Bar No. 75714

Address:

1320 Main St., 17th Flr, Columbia, SC 29201

Phone: 803-255-9226 Fax 803-799-7508

E-mail:

candace.jackson@nelsonmullins.co

mOther: _____

☒ **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: Motion for Summary Judgment

Estimated Time Needed: 15 minutes

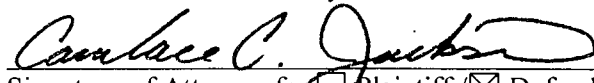
Court Reporter Needed: ☒ YES / ☐ NO

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

December 28, 2011

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$** _____

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ 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: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____

☐ **CONTESTED - AMOUNT DUE: \$** _____

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Jerry Gadson and Sheila Gadson,)
) Civil Action No. 2011-CP-40-01570R
Plaintiffs,)

vs.)

Caroline Deloatch and Bank of
America, Individually and jointly,)

Defendants.)

**DEFENDANTS CAROLINE
DELOATCH AND BANK OF
AMERICA'S AMENDED MOTION
FOR SUMMARY JUDGMENT**

FILED
RICHLAND COUNTY
JAN 28 PM 3:29
J. W. HUBBARD
CLERK OF COURT

NOW COME Defendants Caroline Deloatch and Bank of America ("Defendants"), by and through their undersigned counsel, to amend its motion to the Court filed on November 2, 2011, for an Order dismissing the claims asserted by Plaintiffs Jerry Gadson and Sheila Gadson ("Plaintiffs"). This amendment seeks to limit and maintain the Defendants' Motion for Summary Judgment, and remove from the record its Motion to Dismiss for Failure to Prosecute.¹ In all other respects, the motions remain identical.

On this basis, pursuant to Rules 36(a) and 56(b) and (c) of the South Carolina Rules of Civil Procedure, Defendants hereby move for summary judgment as to the Plaintiffs' claims on the grounds that there is no genuine issue as to any material fact and Defendants are entitled judgment in their favor as to the Plaintiffs' claims as a matter of law. In support of this motion, Defendants show the Court the following.

¹ On November 2, 2011, the Defendants filed a Motion to Dismiss for Failure to Prosecute and Motion for Summary Judgment. The Defendants now amend their Motion as limited to a Motion for Summary Judgment upon discovering the Plaintiffs have served written responses to the Defendants' First Interrogatories and Requests for Production, although the Plaintiffs have not produced any responsive documents. It remains that the Plaintiffs have not responded to the Defendants' Requests for Admission.

BACKGROUND

On May 27, 2009, the Plaintiffs commenced this action by filing a Complaint against the Defendants for negligence and loss of consortium. On July 2, 2009, the Defendants filed an Answer denying the Plaintiffs' claims. The Plaintiffs did not pursue this action any further. On April 9, 2010, the Defendants served their First Requests for Admission to the Plaintiffs. The Plaintiffs' responses to these discovery requests were due on or before May 10, 2010. To date, the Plaintiffs have failed to serve any response whatsoever to the Defendants' First Requests for Admission.

On May 17, 2010, the Defendants, with the consent of the Plaintiffs, moved this Court to strike this case from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. On May 17, 2010, this Court granted the parties' motion. (See Order of the Honorable G. Thomas Cooper, Jr., dated May 17, 2010 and filed May 19, 2010, attached hereto as Exhibit A.)

In May of 2011, the Defendants' counsel contacted the Court and it was confirmed that this case had been dismissed. However, on September 12, 2011, the Defendants received a letter from the Court inquiring about the status of the case. It was then that the Defendants learned that the case had been restored to the docket by the Clerk of Court by way of an Order filed March 8, 2011. The Defendants, to date, have not been served notice of the Plaintiffs' motion to restore the case, nor have the Defendants received a copy of the Order restoring this matter to the docket. Nonetheless, the Plaintiffs still have not responded to the Defendants' Requests for Admission.

MOTION FOR SUMMARY JUDGMENT

Pursuant to Rules 56(b) and 56(c) of the South Carolina Rules of Civil Procedure, the Defendants move for summary judgment as to the Plaintiffs' causes of action for negligence (and/or assault and battery) and loss of consortium on the grounds that there is no genuine issue as to any material fact, and the Defendants are entitled judgment in its favor as to the Plaintiffs' claims as a matter of law. The grounds for this Motion for Summary Judgment are based on the record already before this Court and the Plaintiffs' failure to answer the Defendants' Requests for Admission, thereby admitting to facts contained in the Defendants' Requests for Admission. Pursuant to Rule 36(a) of the South Carolina Rules of Civil Procedure, a failure to answer a request within thirty days after service, plus an additional five days when service is made by mail, deems it admitted without any further action by the court or proponent. S.C. R. Civ. P. 36(a); *Hatchell v. Jackson*, 290 S.C. 256, 258, 349 S.E.2d 407, 408 (Ct. App. 1986) (finding that when a litigant never responded to a request for admissions, those matters were deemed admitted).

On April, 9, 2010, the Defendants served their First Requests for Admission on the Plaintiffs. (See Caroline Deloatch and Bank of America's First Set of Requests for Admission attached hereto as Exhibit B). To date, the Plaintiffs have not responded to the Defendants' Requests for Admission. Thus, pursuant to Rule 36(a) of the South Carolina Rules of Civil Procedure, the facts contained in the Defendants' Requests for Admission are deemed admitted. Subject to these requirements, the following facts are deemed admitted and form the basis for the Defendants' Motion for Summary Judgment:

1. On March 9, 2009, Jerry Gadson visited the Polo Road Banking Center to seek refunds of service charges on his checking account, and on this same date, the Defendants refunded charges to his account.
2. At no time did Caroline Deloatch yell and scream abusive comments in Jerry Gadson's face.
3. The Plaintiffs have no evidence that at any time Caroline Deloatch intended to strike or cause bodily harm to Jerry Gadson.
4. At no time did Caroline Deloatch touch Jerry Gadson or put him in any apprehension that harmful or offensive bodily contact was imminent.
5. No hazard or dangerous condition (neither latent nor concealed) existed at the Polo Road Banking Center during the Plaintiffs' visit on March 9, 2009.
6. The Defendants did not breach any duty it may have owed to Jerry Gadson.
7. Jerry Gadson did not sustain any injuries as a result of any incident that occurred at the Polo Road Banking Center on March 9, 2009.
8. Sheila Gadson has not suffered loss of consortium, emotional stress, or any injuries as a result of any incident that occurred at the Polo Road Banking Center on March 9, 2009.

(See Caroline Deloatch and Bank of America's First Set of Requests for Admission attached hereto as Exhibit B). Based on these admissions, there is no evidence to support the Plaintiffs' claims for negligence (and/or assault and battery) and loss of consortium. Moreover, because Plaintiff Sheila Gadson is unable to prove the Defendant's liability for her husband, Jerry Gadson's injuries, the loss of consortium claim cannot be maintained. See *Creighton v. Coligny Plaza*, 334 S.C. 96, 121, 512 S.E.2d 510, 523 (Ct. App. 1998) ("In order to prevail in an action for loss of consortium, a plaintiff must prove the defendant's liability *for the spouse's injuries* as

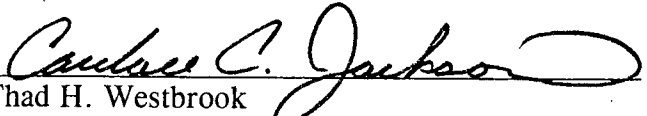
well as damages to the plaintiff *resulting from the spouse's injury.*") (emphasis added).

Thus, the Plaintiffs' claims, in their entirety, should be dismissed as a matter of law.

WHEREFORE, based on the foregoing, the Defendants respectfully request that this Court grant its Motion for Summary Judgment as to the Plaintiffs' claims *with prejudice.*

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:



Thad H. Westbrook

SC Bar No. 16635

E-Mail: thad.westbrook@nelsonmullins.com

Candace C. Jackson

SC Bar No. 75714

E-Mail: candace.jackson@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Caroline Deloatch and Bank of America

Columbia, South Carolina

December 28, 2011

CERTIFICATE OF SERVICE

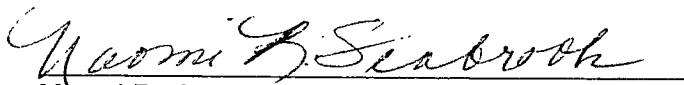
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Caroline Deloatch and Bank of America, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

DEFENANTS CAROLINE DELOATCH AND BANK OF AMERICA'S AMENDED MOTION FOR SUMMARY JUDGMENT

Counsel Served:

Mary P. Miles
Attorney at Law
LAW OFFICE OF MARY P. MILES
440 Knox Abbott Drive, Suite 360
Cayce, SC 29033


Naomi R. Seabrook
Administrative Assistant

December 28, 2011

FILED
RICHMOND COUNTY
2011 DEC 28 PM 3:29
JEANETTE W. C.C.P. & C. RIDGE

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Jerry Gadson and Sheila Gadson,

Plaintiffs,

Caroline Deloatch and Bank of America,
Individually and Jointly,

Defendants.

)
) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
)

) Civil Action No. 2011-CP-40-05170R
)

RICHLAND COUNTY
FILED
2012 JAN 10 AM 10:22
JENNIFER M. NORRIDE
CLERK, P. & G.S.

PLAINTIFFS' RESPONSE TO DEFENDANTS' AMENDED MOTION FOR SUMMARY JUDGMENT

Plaintiffs Jerry Gadson and Sheila Gadson (collectively as "Plaintiffs" or "the Gadsons") by their attorneys and pursuant to Rule 56 (c) of the South Carolina Rules of Civil Procedure ("SCRCP"), hereby submit their response to Defendants Caroline Deloatch and Bank of America ("Defendants") motion for summary judgment as to the Gadsons' claims with prejudice.

CHRONOLOGY OF EVENTS

1. Plaintiffs filed the Complaint against Defendants for negligence and loss of consortium on May 27, 2009.
2. On July 02, 2009, Defendants filed their Answer denying Plaintiffs' claims.
3. On April 09, 2010, Defendants served their First Request for Admission to Plaintiffs.
4. On May 17, 2010, both parties moved this Court to strike this case from the docket pursuant to SCRCP Rule 40, which was granted by this Court.
5. On December 06, 2010, Plaintiffs send their request to admission to Defendants' attorney Candace C. Jackson.

6. On March 08, 2011, Plaintiffs get the case restored to the docket by the Clerk of Court.
7. On November 01, 2011, Defendants file a motion to dismiss for failure to prosecute and motion for summary judgment.
8. On December 28, 2011, Defendants amend their motion for summary judgment limiting their argument to Plaintiffs' alleged failure to respond to their request for admission and to remove from record its motion to dismiss for failure to prosecute.

INTRODUCTION

Defendants' motion must be denied for sole reason that the Gadsons have responded to Defendants request for admission. Further, even if Gadsons failed to respond to request for admission, because Defendants did not renew their request after the case was restored, Defendants cannot now relate back to their previous request only for the purpose of motion for summary judgment. Accordingly, Defendants' motion for summary judgment must be denied.

SUMMARY JUDGMENT STANDARD

Summary judgment should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. At&T*, 306 S.C. 101, 112 (S.C. 1991); see also *Holloman v. McAllister*, 289 S.C. 183 (1986) ("an extreme remedy to be cautiously invoked"). This means that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Id.* Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for

discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. *Baughman* at 116.

ARGUMENT

1. Summary Judgment Is Inappropriate For Failure To Respond To Request For Admission.

The purpose of Rule 36 is to allow parties to narrow the issues and determine which facts do not need to be proven because they are admitted. *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 650 (S.C. Ct. App. 2003).¹ Rule 36(a) does not condition the binding effect of requests for admissions upon whether the requests address issues asserted or denied in the pleadings. *Id.* Whether a request to admit alters the pleadings depends on the language of the particular request to admit. *Id.* However, if the language of the request for admission specifically goes to an issue

¹ In *Greenville Housing*, father, on behalf of his son, sued housing authority in the Greenville County Circuit Court (South Carolina) for personal injury that was allegedly caused by grossly negligent and reckless acts. After the trial court permitted the housing authority to withdraw deemed admissions, the jury found in favor of the housing authority. The son burnt himself when he washed his hands in a sink in their home. The father claimed that the housing authority knew the hot water heater was improperly set. Because the housing authority failed to respond to requests for admissions, the requests for admissions were deemed admitted. However, the trial court permitted the housing authority to withdraw admissions because they conflicted with the housing authority's denials in its pleadings. The father contended that the trial court abused its discretion in allowing the housing authority to withdraw its deemed admissions. On appeal, the court found that the trial judge erred in finding the admissions made as a result of the housing authority's failure to respond to the father's requests for admissions were not binding, as the admissions would conflict with the housing authority's answers in its pleadings. Further, the housing authority continued to frustrate the father's ability to present his case by first denying the existence of the hot water heater records and then surprising the father with the records during the middle of trial. The trial court erred in failing to find that the father was prejudiced.

Admissions obtained via a failure to respond to a request to admit are just as binding on a party as answers in pleadings or stipulations, absent the grant of an amendment to the admissions. *Id.*

Efficacy of admissions is akin to the doctrine of judicial estoppel: an admission precludes the admitting party from arguing facts at trial contrary to its responses to a request to admit, absent an amendment to or revocation of the admission as allowed under the Rules of Civil Procedure. *Commerce Center of Greenville, Inc. v. W. Powers McElveen & Associates, Inc.*, 347 S.C. 545 (S.C. App. 2001). "Judicial estoppel" precludes a party from adopting a position in conflict with one earlier taken in the same litigation. *Id.*

in the pleadings, the admission resulting from a party's failure to respond to the request may override the pleadings. *Id.*

Moreover, a trial court "may allow a party to amend or withdraw its answers to a request to admit when: (1) the presentation of the merits is furthered by the amendment; and (2) the party who obtained the admission cannot demonstrate prejudice because of the amendment." *Commerce Ctr. of Greenville, Inc. v. W. Powers McElveen & Assocs., Inc.*, 347 S.C. 545, 557 (Ct. App. 2001); *see also Tuomey Reg'l Med. Ctr., Inc. v. McIntosh*, 315 S.C. 189, 191 (1985) ("Rule 36, SCRPC allows amendment of an admission in the discretion of the court when 'the merits of the action will be subserved thereby and the party who obtained the admissions fails to satisfy the court that withdrawal or amendment will prejudice him"). Federal Rule 36(b), FRCP, similarly provides that "the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits."

Because Plaintiffs responded to Defendants' request for admission, this motion must be denied as a matter of law.

2. Summary Judgment Motion Is Premature.

Because the admissions were never ordered to be admitted by the Court, Plaintiffs still have an opportunity to withdraw those admissions, and substitute in their place proper responses. Here, even assuming that Plaintiffs have failed to respond to request for admission, they still have an opportunity to withdraw them, and replace them. Because this Court had not ordered

that the tacit admissions of Plaintiffs were in fact admitted, Defendants would not be prejudiced, therefore, the summary judgment motion is premature.

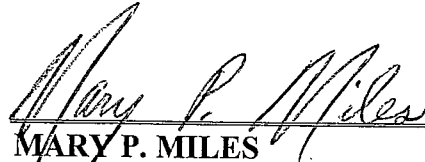
In *Baughman v. At&T*, 306 S.C. 101, 110 (1991), the Supreme Court of South Carolina held that a court may permit withdrawal or amendment when the presentation of the merits of the action will be subverted thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits.

Rule 36(b), SCRPC, sets forth a two-part test concerning the amendment of an admission: 1) is presentation of the merits furthered by the amendment; and 2) did the party who obtained the admission establish prejudice because of the amendment. *Barber v. Hobbs*, 313 S.C. 319, 321 (S.C. Ct. App. 1993). In this case, Defendants filed their request for admission on April 09, 2010, and immediately thereafter, *i.e.*, on May 17, 2010, both parties stipulated to get the case dismissed. In effect, as of May 17, 2010, the case came to an end. Subsequently, in December 2010, Plaintiffs responded to Defendants' request for admission, and then moved to restore this case pursuant to SCRPC 40(j). The case was restored in March 2011, and Defendants became aware of the restoration in September 2011. Defendants moved to dismiss the complaint, and also sought for summary judgment in November 2011, and in December 2011, they amended their motion to only seek summary judgment because Plaintiffs allegedly failed to respond to request for admission. At no point did this Court rule that Plaintiffs' failure to respond to Defendants' request for admission as an admission to Defendants' statements. Because Plaintiffs have an opportunity to amend their admission pursuant to SCRPC 36(b), this motion is premature, and therefore, must be dismissed.

Conclusion

For all the foregoing reasons, Defendants' motion for summary judgment must be dismissed.

ATTORNEY FOR PLAINTIFFS

A handwritten signature in cursive script, reading "Mary P. Miles", is written over a horizontal line.

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Jerry Gadson and Sheila Gadson,) Civil Action No. 2011-CP-40-01570R
)

Plaintiffs,)
)

vs.)

Caroline Deloatch and Bank of)
America, Individually and Jointly,)

Defendants.)
)
)

**DEFENDANTS CAROLINE
DELOATCH AND BANK OF
AMERICA'S REPLY TO
PLAINTIFFS' RESPONSE TO
SUMMARY JUDGMENT**

Defendants Caroline Deloatch and Bank of America ("Defendants"), and through their undersigned counsel, submit this Reply in support of Defendants' Amended Motion for Summary Judgment. Although Plaintiffs filed a response to the Amended Motion for Summary Judgment, their arguments in response fail to address or overcome the legal grounds supporting summary judgment in this matter. Further, Plaintiffs' arguments also fail on the additional three grounds: (1) the Defendants now concede in a separate motion, contrary to their initial response to this motion, that they *did not* respond to the Defendants' Request for Admission; (2) South Carolina Courts have found summary judgment appropriate based on factual admissions resulting from a party's failure to respond to Requests for Admission; and (3) and South Carolina case law provides no support for the Plaintiffs' argument that the Defendants' Motion for Summary Judgment is premature. Plaintiffs' arguments in their Response are wholly unsupported and provide no basis for denying summary judgment. For the reasons set

forth below, and based on the record before this Court, Defendants remain entitled to summary judgment in its favor as a matter of law.

I. Plaintiffs Have Conceded That They Never Responded to the Defendants' Requests for Admission; and Based on Their Failure to Respond, the Facts Contained in the Requests Are Deemed Admitted.

In their Response, filed on January 10, 2012, the Plaintiffs claimed that they responded to the Defendants' Requests for Admission. However, on January 31, 2012, the Plaintiffs' filed their Motion to Extend Time to Respond to Defendants' Request for Admission and/or Motion to Withdraw Admissions, in which they have conceded that they, in fact, *did not* respond to the Defendants' Requests for Admission. The Plaintiffs now concur with the Defendants' argument in the Amended Motion for Summary Judgment that the Defendants were never served with the Plaintiffs' Responses.

As demonstrated by the record before the Court, the Defendants served their First Requests for Admission on the Plaintiffs on April 9, 2010. The Plaintiffs' responses were due on or before May 10, 2010. Rule 36(a) of the South Carolina Rules of Civil Procedure specifically mandates that a failure to answer a request within thirty (30) days after service deems it admitted, particularly where neither the court has allowed, nor the parties stipulated to, a shorter or longer period of time. S.C. R. Civ. P. 36(a). Rule 36(b), SCRCP, further provides that “[a] matter admitted under this rule is *conclusively* established” (emphasis added). S.C. R. Civ. P. 36(b). Accordingly, such matters admitted are no longer issues in the case. *Parnell v. Farmer's Telephone Co-op*, 289 S.C. 112, 344 S.E.2d 883, 884 (Ct. App. 1986) (citing to Rule 36 predecessor, Rule 89).

South Carolina Courts have uniformly applied Rule 36(a) in cases where a party has failed to provide timely responses as set forth in the Rule. For example, in *Hatchell v. Jackson*, 290 S.C. 53, 349 S.E.2d 407, 408 (Ct. App. 1986), the Court of Appeals held that because Plaintiff Hatchell failed to serve timely responses to Defendant's Requests for Admissions, "each matter of which Jackson sought an admission was deemed admitted;" *see also Davidson v. City of Beaufort*, 2011 S.C. App. Unpub. LEXIS 241, at *5 (Ct. App. May 3, 2011) (finding that because the Plaintiffs did not submit a timely response to the Defendants' Requests to Admit, they were deemed admitted pursuant to Rule 36(a), SCRCPP); *Bakala v. Bakala*, 352 S.C. 612, 630, 576 S.E.2d 156, 166 (2003) (finding that because the Plaintiff did not respond to the Defendants' Request to Admit, the facts were deemed admitted under Rule 36(a), SCRCPP); *Scott v. Greenville Housing Authority*, 353 S.C. 639, 645, 579 S.E.2d 151, 154 (Ct. App. 2003) ("South Carolina has long had the discovery rule that failure to respond to requests for admissions renders any matter listed in the request conclusively admitted for trial.").

Rule 36(a) and interpretive case law unequivocally support the Defendants' position that their unanswered Requests for Admission are deemed to be conclusively admitted facts in this action.

II. South Carolina Courts Have Found Summary Judgment Appropriate Based on Admissions Resulting from a Party's Failure to Respond to Requests for Admission.

The Plaintiffs claim that summary judgment is inappropriate for failure to respond to requests for admission. The Plaintiffs have not provided any support for their claim. In fact, Plaintiffs' position is contrary to well-established South Carolina

Court decisions addressing this particular issue. For example, the South Carolina Court of Appeals has explicitly stated that, like the federal rule, admissions by way of Rule 36(a), SCRCPP, "often make summary judgment possible." *See Scott v. Greenville Housing Authority*, 353 S.C. 639, 649, 579 S.E.2d 151, 156 (Ct. App. 2003). A recent 2011 case, *Davidson v. City of Beaufort*, 2011 S.C. App. Unpub. LEXIS 241 (Ct. App. May 3, 2011), demonstrates the function of this rule, wherein the Court found that summary judgment was properly granted to the defendants based on the admissions of the plaintiffs resulting from a failure to submit timely responses to the defendants' requests to admit. *Id.* at *13-15.

In *Davidson*, the plaintiffs brought a negligence action against the defendants, claiming that the defendants breached their duty to provide sufficient lighting and security for their parking lot, which proximately caused the plaintiffs' abduction and injuries. *Id.* at *3. The defendants served requests to admit on the plaintiffs; however, the plaintiffs "did not submit a timely response to these Requests, and therefore, they were deemed admitted pursuant to Rule 36(a), SCRCPP." *Id.* at *4-5. The Court agreed that based on the plaintiffs' admissions, the plaintiffs could not be classified as invitees, and the defendants had no duty to the plaintiffs; thus there were no genuine issues of material fact and summary judgment was properly granted to the defendants on the plaintiffs' negligence action. *See Id.* at *6 and *13-15.

Similarly, in the present case, the Plaintiffs failed to submit any responses to the Defendants' Requests for Admission. Accordingly, the Plaintiffs have admitted the following:

- (1) at no time did Caroline Deloatch yell and scream abusive comments in Jerry Gadson's face;

- (2) the Plaintiffs have no evidence that at any time Caroline Deloatch intended to strike or cause bodily harm to Jerry Gadson;
- (3) at no time did Caroline Deloatch touch Jerry Gadson or put him in any apprehension that harmful or offensive bodily contact was imminent;
- (4) that no hazard or dangerous condition existed at the Polo Road Banking Center during the Plaintiffs' visit on March 9, 2009;
- (5) the Defendants did not breach any duty they may have owed to Jerry Gadson;
- (6) Jerry Gadson did not sustain any injuries; and
- (7) Sheila Gadson has not suffered loss of consortium, emotional stress, or any injuries.

Based on the foregoing admissions, the Defendants have conceded that they have no evidence to support their claims for negligence (and/or assault and battery) and loss of consortium, and that no acts on the part of the Defendants have proximately caused them any damages. Pursuant to Rule 36 and multiple South Carolina cases like *Davidson*, these requests are deemed admitted and can serve as bases of the Defendants' Amended Motion for Summary Judgment, as there are no genuine issues of material fact.

In their argument that summary judgment is inappropriate for failure to respond to Requests for Admission, the Plaintiffs, for unknown reasons, cite to *Scott v. Greenville Housing Authority*, 353 S.C. 639, 579 S.E.2d 151 (Ct. App. 2003). A simple reading of the case indicates that their citation to and reliance on this case is misplaced. Rather, the *Scott* case weakens the Plaintiffs' overall argument and strengthens Defendants' position in favor of summary judgment. In *Scott*, the South Carolina Court of Appeals rejected and reversed the trial court's finding that the ultimate issue in the case could not be determined by an admission because it was

superfluous or contrary to the pleadings. 353 S.C. at 650. The plaintiff brought a negligence action against the defendant because of injuries sustained from a hot water heater. *Id.* at 642. The plaintiff served the defendant with requests to admit that it was responsible and liable for the damages and that it had a duty to inspect the hot water heater. *Id.* The defendant did not respond to the requests to admit within thirty days. *Id.* The Court of Appeals found that the trial judge erred as a matter of law in finding the admissions made as a result of the defendant's failure to respond to the plaintiff's requests to admit were not binding because the admissions would conflict with the defendant's answers in its pleadings. *Id.* at 650. As stated by the Plaintiffs in the present case, the Court in *Scott* found that if the language of the request for admission specifically goes to an issue in the pleadings, the admission resulting from a party's failure to respond to the request may override the pleadings. *Id.* It was on *this* basis that the Court concluded that despite the defendant's denial of liability and negligence in its pleadings, its failure to respond to the plaintiff's requests to admit concerning these issues was, in fact, binding upon it. *Id.*

To the extent that the Plaintiffs in the present case are trying to argue that their admissions would have been contrary to the allegations in their Complaint, *Scott* establishes that this would not affect the binding nature of the Defendants' Requests for Admission. The language of the Defendants' Requests specifically applies to the issues in the pleadings and properly proves dispositive of the entire case. *See Id.* (adopting a federal holding that a Request for Admission under Rule 36, and a resultant admission, are not improper merely because they relate to an ultimate fact or prove dispositive of the entire case). Therefore, the admissions resulting from the Plaintiffs' failure to

respond to the Requests for Admission are binding and override the Plaintiffs' pleadings.¹

III. The Basis for which the Plaintiffs Argue that the Defendants' Motion for Summary Judgment is Premature is Not Supported by South Carolina Case Law.

The Plaintiffs' final contention is that the summary judgment motion is premature because they have an "opportunity" to withdraw their admissions, and since the Court has not ordered the admissions admitted, the Defendants would not be prejudiced. This argument is baseless, and the case cited by the Plaintiffs in support of their argument, *Baughman v. AT&T*, 306 S.C. 101, 410 S.E. 537 (1991), does not apply and is entirely distinct from the present case.

First, the Supreme Court in *Baughman* only found that summary judgment was premature because the plaintiffs demonstrated a likelihood that further discovery would uncover additional evidence relevant to the pertinent issue of causation in the case, and because the plaintiffs were diligent in pursuing an expert to substantiate their claims.

¹ In footnote 1 of the Plaintiffs' Response to the Defendants' Amended Motion for Summary Judgment, the Plaintiffs try to further argue that summary judgment is inappropriate for failure to respond to Requests for Admission because the "efficacy of admissions is akin to the doctrine of judicial estoppel." However, the Plaintiffs have misinterpreted the purpose and function of judicial estoppel. To protect the integrity of the judicial process or the integrity of the courts, judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation. *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 250, 489 S.E.2d 472, 477 (1997). This means that "when a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him." *Id.* at 252, 489 S.E.2d at 477. In other words, "although parties may vigorously assert their version of the facts, they may not misrepresent those facts in order to gain advantage in the process." *Id.* The Plaintiffs' argument does not match with the proper use of judicial estoppel. In fact, the Plaintiffs' argument conflicts with the whole basis for the discovery process. To clarify, South Carolina Courts have referred to judicial estoppel in the context of admissions under Rule 36(a) to conclude that in form and substance, a response to a request to admit is comparable to an admission in pleadings and can be regarded as a judicial admission, so that admissions are binding, even if the requests address issues asserted in the pleadings or override the pleadings. *See Scott*, 353 S.C. at 650, 579 S.E.2d at 157 (finding that despite the Defendant's denial of liability and negligence in its pleadings, its failure to respond to the Plaintiff's requests for admissions concerning these issues was binding upon it).

See 306 S.C. at 112-13. The prematurity of the summary judgment motion in *Baughman* had nothing to do with the requests to admit or any prejudice to the defendant, as the Plaintiffs in this matter have represented in their response. The question there was whether the plaintiffs were diligent in pursuing discovery. Moreover, the Plaintiffs here could not genuinely claim any diligence in pursuing discovery in this case, for after the action was brought on May 27, 2009, the Plaintiffs did not pursue this case any further for an entire year. In an attempt to bring the case to a close, the Defendants, on April 9, 2010, served upon the Plaintiffs their First Interrogatories, First Request for Production of Documents, and First Requests for Admission, to which the Plaintiffs have not responded to the Requests for Admission nor have they produced any documents in response the Defendants' Requests for Production. Also, since the case was restored to the docket on March 8, 2011, without notice to the Defendants, the Plaintiffs have not even attempted to engage in any further discovery. It would be implausible for the Plaintiffs to try to argue in this matter that summary judgment is premature on the basis of their discovery efforts.

Secondly, in *Baughman*, at issue was whether the plaintiffs' motion for protective order prevented the defendant's requests for admission from being deemed admitted even though the plaintiffs failed to respond to the requests. See *Id.* at 109-110. The Court held that a motion for protective order, when made in good faith, can prevent matters from being deemed admitted. *Id.* at 109. However, in the present case, the Plaintiffs never filed a motion for protective order or otherwise objected to the Defendants' Requests for Admission, and the *Baughman* decision is not applicable in this matter.

Lastly, the Court in *Baughman* concluded that the defendants were not prejudiced in this instance because the plaintiffs had filed their responses to the defendant's requests for admission before the requests were ordered admitted. *Id.* at 110. However, here, there is no dispute that the Plaintiffs never responded to the Defendants' Requests for Admission, and it has been established that the facts contained in the requests are automatically and conclusively deemed admitted without a need for an Order from the Court declaring that fact. Thus, the Plaintiffs' argument as to the prematurity of the Defendants' Amended Motion for Summary Judgment based somehow on a mere "opportunity" to withdraw or amend their admissions is unsupported.

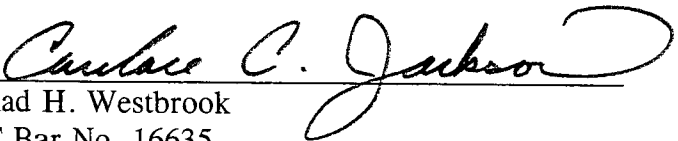
Therefore, the Defendants' motion for summary judgment is timely and remains appropriate on the grounds that the Plaintiffs never answered or otherwise objected to the Defendants' Requests for Admission, thereby admitting to the facts contained therein and requiring judgment be entered in favor of the Defendants as a matter of law.

CONCLUSION

For the reasons set forth above, and the record before the Court, the Defendants' Amended Motion for Summary Judgment must be granted, and the Plaintiffs' claims must be dismissed as a matter of law, with prejudice.

[SIGNATURE PAGE ATTACHED]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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Attorneys for Caroline Deloatch and Bank of America

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February 22, 2012

CERTIFICATE OF SERVICE

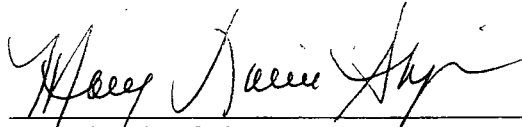
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for defendants, Caroline Deloatch and Bank of America, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

DEFENDANTS CAROLINE DELOATCH AND BANK
OF AMERICA'S REPLY TO PLAINTIFFS' RESPONSE
TO SUMMARY JUDGMENT

Counsel Served:

Mary P. Miles
Attorney at Law
LAW OFFICE OF MARY P. MILES
440 Knox Abbott Drive, Suite 360
Cayce, SC 29033



Mary Louise Snipes
Administrative Assistant

February 22, 2012

FILED
2012 FEB 22 PM 3:58
JEANE E. W. McBRIDE
Clerk of Court
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
)

IN THE ~~FAMILY~~ COURT
FIFTH JUDICIAL CIRCUIT

JERRY GADSON AND SHEILA
GADSON

MOTION AND ORDER INFORMATION

Plaintiff,)
)
)
)

FORM AND COVERSHEET

vs.)
)
)

Caroline Deloatch and Bank of America,
Individually and Jointly

Defendant.)

Docket No. ^{2011 40 1570} 2009-CP-02-3817

Plaintiff's Attorney:
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Defendant's Attorney:
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Phone: (803) 799-2000 Fax (803) 256-7500
E-mail: candace.jackson@nelsonmullins.
com 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: EXTENSION OF TIME

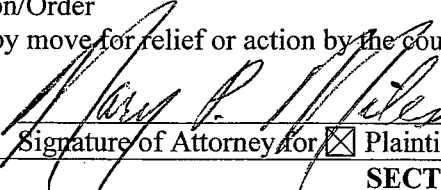
Estimated Time Needed: 15

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

JANUARY 30, 2012
Date submitted

SECTION III: Motion Fee

- ☒ **PAID - AMOUNT: \$** _____
☐ **EXEMPT:** (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ 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: _____

JUDGE'S SECTION

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

JUDGE CODE _____ Date: _____

Judge Signature: _____

RICHLAND COUNTY
FILED
2012 JAN 31 AM 11:31
JEANETTE W. McBRIDE
CLERK, C.P. & G.S.

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

Custodial Parent (if applicable): _____

SCCA 233F (12/2009)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Jerry Gadson and Sheila Gadson,

Plaintiffs,

Caroline Deloatch and Bank of America,
Individually and Jointly,

Defendants.

)
) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
)

) Civil Action No. 2011-CP-40-0340R
)

2012 JAN 31 AM 11:31
JANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

PLAINTIFFS' MOTION TO EXTEND TIME TO RESPOND TO DEFENDANTS'
REQUEST FOR ADMISSION AND/OR MOTION TO WITHDRAW ADMISSIONS

Plaintiffs Jerry Gadson and Sheila Gadson (collectively as "Plaintiffs" or "the Gadsons") by their attorneys and pursuant to Rule 36 (a) and (b) of the South Carolina Rules of Civil Procedure ("SCRCP"), hereby submit motion to extend time to respond to Defendants Caroline Deloatch and Bank of America's ("Defendants") request for admission and/or withdraw admissions.

CHRONOLOGY OF EVENTS

1. Plaintiffs filed the Complaint against Defendants for negligence and loss of consortium on May 27, 2009.
2. On July 02, 2009, Defendants filed their Answer denying Plaintiffs' claims.
3. On April 09, 2010, Defendants served their First Request for Admission to Plaintiffs.
4. On May 14, 2010, parties filed a motion to strike the case from records pursuant to SCRCP 40(j).

5. On May 17, 2010, the Court grants the parties motion to strike this case from the docket pursuant to SCRCR Rule 40, which was granted by this Court.
6. On December 06, 2010, Plaintiffs send their request to admission to Defendants' attorney Candace C. Jackson.
7. On March 08, 2011, Plaintiffs get the case restored to the docket by the Clerk of Court.
8. On November 01, 2011, Defendants file a motion to dismiss for failure to prosecute and motion for summary judgment.
9. On December 28, 2011, Defendants amend their motion for summary judgment limiting their argument to Plaintiffs' alleged failure to respond to their request for admission and to remove from record its motion to dismiss for failure to prosecute.

INTRODUCTION

Defendants served Gadsons with their request for admission on April 09, 2010, and then filed a consent motion to strike this case from docket on May 14, 2010, which was granted on May 17, 2010. As a result, Gadsons could not respond to Defendants request. Because no harm would be caused Defendants if Gadsons' filed their responses now, their motion to extend time should be granted.

In the alternative, if the Court were find that Gadsons' failure to respond within the 30 days after the Defendants' request as deemed admissions; Gadsons' motion to withdraw their admissions must be granted. This should be done for the same reason that Defendants cannot establish that they would inconvenienced with the withdrawal particularly when they consented for the case to be stricken from the docket.

ARGUMENT

1. Motion to Extend Time Is Not Detrimental to Defendants.

Because Defendants cannot establish that any harm would be caused to them if the Gadsons' motion were allowed, the Court should exercise its discretion¹ to extend time to respond to Defendants' request for admission. As argued in the next segment, it can be seen that the deemed admissions have effectively brought an end to the Gadsons' claims. The Gadsons would have responded to or would have at least sought to Defendants' request for admission if Defendants had not consented to strike the case from docket.

Here, Defendants served the Gadsons' their request for admission on April 09, 2010, and then jointly moved to strike the case from the docket pursuant to SCRCP 40(j) on May 14, 2010. SCRCP 36(a) provides that each request for admission is admitted unless it is responded within 30 days after the service of the request. The principle behind a SCRCP 40(j) motion is that parties who consent to strike a claim pursuant to Rule 40(j) agree not to challenge the statute of limitations for one year. *Maxwell v. Genez*, 356 S.C. 617 (2003). Here the case was restored within one year after the case was stricken from record. This effectively means that 36 days after

¹ SCRCP 36(a) in part provides that "Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as stipulated in writing by the parties pursuant to Rules 29 and 6(b), the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it."

Defendants served their request on Gadsons, Defendants consented to this case being stricken from the docket.

In the instant case, on March 08, 2011, Gadsons get the case restored to the docket by the Clerk of Court. On November 01, 2011, Defendants file a motion to dismiss for failure to prosecute and motion for summary judgment. On December 28, 2011, Defendants amend their motion for summary judgment limiting their argument to Plaintiffs' alleged failure to respond to their request for admission and to remove from record its motion to dismiss for failure to prosecute. Effectively, Defendants have not provided the Gadsons a breathing time to seek extension of time to file their response to request for admissions. In the absence of any detriment to Defendants, Gadsons' should be granted an extended time to respond to Defendants request for admission.

2. Allowing Gadsons To Withdraw Admissions Would Sub-serve The Presentation of Merits

Even if the Court were to find that granting an extension in time for the Gadsons to respond to Defendants request for admission, it must still allow them to withdraw those admissions.² SCRCP 36(b) provides that a court must grant withdrawal the admissions when: (1) it would promote the presentation of the merits of the action and (2) if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. *Commerce Ctr. of Greenville, Inc. v. W. Powers McElveen & Assocs.*, 347 S.C. 545, 557 (S.C. Ct. App. 2001); see also *Barber v. Hobbs*, 313 S.C. 319, 321 (S.C. Ct. App. 1993).

² It is well settled that the admission and rejection of testimony are matters largely within the trial court's sound discretion, the exercise of which will not be disturbed on appeal absent an abuse of that discretion. *Pike v. South Carolina Dep't of Transp.*, 343 S.C. 224 (2000).

Some of the allegations in the complaint include that Plaintiff Jerry Gadson yelled at, screamed at and assaulted by Defendant Caroline Deloatch, and that Jerry sustained serious personal and mental injuries (§§ 11, 13 Complaint). In the request for admissions, Defendants state that “[a]dmit that at no time did Caroline Deloatch yell and scream abusive comments in Jerry Gadson’s face; [a]dmit that Plaintiffs have no evidence that at any time Carolins Deloatch intended to strike or cause bodily harm to Jerry Gadson” (§§ 2, 3 Defendants request for admission). Because Gadsons did not respond to these and other such requests, they are now deemed admissions. The deemed admissions that Defendant Caroline Deloatch never abused Jerry or that Plaintiffs do not have evidence that Jerry was assaulted go to the heart of this matter. By failing to respond to request for admissions, the Gadsons have effectively surrendered their claims to Defendants. The reason behind Gadson’s failure to respond was because both parties consented to get this case struck from the docket, and not because Gadsons did not intend to respond to those admissions. As a court may permit withdrawal of admissions such as these as it would promote the presentation of the merits of the action, the Gadsons have established the first element of SCRCP 36(b). *Baughman v. At&T*, 306 S.C. 101, 110 (S.C. 1991) (permitting withdrawal of deemed admissions when the two elements of rule 36(b) were satisfied).

As to the second element, the Gadsons submit that the gist and gravamen of the discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game or one of ambush for either party.³ See *State Hwy. Dep’t v. Booker*, 260 S.C. 245, 195 S.E.2d 615

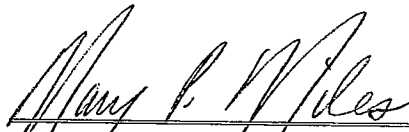
³ Essentially, the rights of discovery articulated by the rules give the attorney the means to prepare for trial. *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 651 (S.C. Ct. App. 2003). The purpose of S.C. R. C. P. 36 is to allow parties to narrow the issues and determine which facts do not need to be proven because they are admitted. *Id.* S.C. R. Civ. P. 36(a) does not condition the binding effect of requests for admissions upon whether the requests address issues asserted or denied in the pleadings. *Id.* Whether a request to admit alters the pleadings depends on the language of the particular request to admit. *Id.* However, if the language of the request for admission specifically

(1973); *Hodge v. Myers*, 255 S.C. 542, 180 S.E.2d 203 (1971). Defendants cannot establish that they would be prejudiced if the admissions are allowed to be withdrawn primarily because the case was in a state of suspended animation during the time it was stricken off, for which Defendants had given a consent. Because Defendants consented to the case being struck of 36 days after they requested admissions, they cannot establish prejudice. Accordingly, Gasdons must be allowed to withdraw the admissions.

CONCLUSION

For all the foregoing reasons, Plaintiffs' motion to extend time to respond to request for admissions or in the alternative withdraw deemed admissions must be granted.

ATTORNEY FOR PLAINTIFFS



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goes to an issue in the pleadings, the admission resulting from a party's failure to respond to the request may override the pleadings. *Id.* In this case however, the Gadsons' failure to respond was only because the parties stipulated to get the case struck from the docket.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Jerry Gadson and Sheila Gadson,) Civil Action No. 2011-CP-40-01570R
)

Plaintiffs,)

vs.)

Caroline Deloatch and Bank of)
America, Individually and Jointly,)

Defendants.)

**DEFENDANTS CAROLINE
DELOATCH AND BANK OF
AMERICA'S OPPOSITION TO
PLAINTIFFS' MOTION TO
EXTEND TIME TO RESPOND TO
DEFENDANTS' REQUEST FOR
ADMISSION AND/OR MOTION TO
WITHDRAW ADMISSIONS**

Defendants Caroline Deloatch and Bank of America ("Defendants"), by and through their undersigned counsel, submit this Opposition to the Plaintiffs' Motion to Extend Time to Respond to Defendants' Request for Admission and/or Motion to Withdraw Admissions. Plaintiffs submit their Motion almost two years after Defendants served Requests for Admission on them. The Plaintiffs' recent Motion to Extend Time or Withdraw Admissions is part of a flawed effort to avoid summary judgment in this matter, which should be granted on the grounds previously outlined by the Defendants.

The Plaintiffs' Motion fails for two primary reasons: (1) the Plaintiffs have had ample time to respond, or seek to respond, to the Defendants' Requests for Admission, such that any additional time would negate the purpose of Rule 36(a), SCRPC, and severely prejudice the Defendants; and (2) this case has been pending for nearly three years and the Plaintiffs have not produced any evidence or otherwise demonstrated that

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a withdrawal of the admissions would subserve the presentation of the merits of the action. Further, any such withdrawal would significantly prejudice the Defendants in this matter. Neither of the Plaintiffs' purported reasons for their Motion is substantiated, nor do they suffice, to extend time to respond to Defendants' Request for Admission or to withdraw the admissions. As set forth below, the Plaintiffs' Motion is unfounded and should be denied.

I. The Plaintiffs Have Had Ample Time to Respond, or Seek to Respond to the Defendants' Requests for Admission, and Any Additional Time Would Negate the Purpose of Rule 36(a), SCRPC, and Severely Prejudice the Defendants.

The Plaintiffs have made inconsistent arguments related to whether they ever served responses to Defendants' Requests for Admission in this matter. In the Plaintiffs' Response to the Defendants' Amended Motion for Summary Judgment, filed on January 10, 2012, they repeatedly professed that they responded to the Defendants' Request for Admission. (See Plaintiffs' Response to Defendants' Amended Motion for Summary Judgment, attached hereto as Exhibit A.). However, in that same response, Plaintiffs also assert alternative arguments based on the assumption that they failed to respond to the Requests for Admission. Next, in their present motion, the Plaintiffs now concede that they *would have* responded to, or would have at least *sought to* respond to, the Defendants' Requests for Admission if the Defendants had not consented to strike the case from the docket. Therefore, the Court can conclude that Plaintiffs have never served responses to Defendants' Requests for Admission.

Further, the time to respond to the Defendants' Requests for Admission had expired *before* the Defendants filed the parties' consent motion to strike the case from

the docket in May 2010. Specifically, the Defendants served their Requests for Admission on the Plaintiffs on April 9, 2010. The Plaintiffs' responses were due on or before May 10, 2010, in accordance with Rule 36(a), SCRCF. It was not until May 17, 2010, that the parties moved the Court to strike this case from the docket pursuant to Rule 40(j), SCRCF. At all times, absent any stipulation of the parties to an extension of time, the Plaintiffs were subject to Rule 36(a), SCRCF, which provides thirty (30) days to respond to Requests for Admission. *See* S.C. R. Civ. P. 36(a). Because the Plaintiffs failed to respond to the Requests for Admission, pursuant to Rule 36(a), the requests were automatically deemed admitted by the Plaintiffs. *See Hatchell v. Jackson*, 290 S.C. 53, 349 S.E.2d 407, 408 (Ct. App. 1986) (finding that because Plaintiff failed to serve timely responses to Defendant's Requests for Admissions, "each matter of which [the Defendant] sought an admission was deemed admitted."); *see also Scott v. Greenville Housing Authority*, 353 S.C. 639, 645, 579 S.E.2d 151, 154 (Ct. App. 2003) ("South Carolina has long had the discovery rule that failure to respond to requests for admissions renders any matter listed in the request conclusively admitted for trial.").

Therefore, even if the parties had not moved to strike this case from the docket, the Plaintiffs had already missed the deadline prescribed under the South Carolina Rules of Civil Procedure for responding or otherwise objecting to the Requests for Admission.¹ The Plaintiffs offer no explanation as to why they did not respond to the

¹ Note that the Plaintiffs consented to the May 17, 2010, Rule 40(j) motion to strike this case from the docket *after* the parties received notice that the case was set for trial on June 1, 2010. At this time, the Plaintiffs had done nothing to pursue their action since the filing of their Complaint on May 27, 2009. In an effort move the case along, the Defendants served their First Requests for Admission, First Interrogatories, and First Requests for Production upon the

Defendants' Requests for Admission within the thirty (30) day time frame.² Plaintiffs have not provided affidavits demonstrating, or even asserted, that there were facts and circumstances in April 2010 that prevented them from serving timely responses to Defendants' Requests for Admission. Moreover, despite the Plaintiffs' contention, their prior omission was not in any way impacted or affected by the limited tolling of the statute of limitations resulting from the Rule 40(j) Order.

Any additional extension of time for the Plaintiffs to respond to the Defendants' Requests for Admission would negate the purpose of Rule 36(a) and severely prejudice the Defendants. The purpose of Rule 36 is to promote both efficiency and economy in resolving disputes. *See Scott*, 353 S.C. at 649, 579 S.E.2d at 156. In this way, requests for admission are used to establish admission of facts about which there is no real dispute. *Id.* Because requests for admission are used to establish admission of facts about which there is no real dispute, South Carolina courts have established that "if a point is conceded, litigants need not expend effort in investigations concerning it nor incur expenses in presenting evidence to prove it." *See Id.* As a result, judicial administration is aided. *Id.*

At the time of Plaintiffs' present motion, this case has been restored on the docket for almost one year—precisely eleven months.³ An extension of time for the

Plaintiffs on April 9, 2010. The Plaintiffs did not provide any responses to the Defendants' discovery requests within the time period mandated under the South Carolina Rules of Civil Procedure, all of which preceded the parties' Rule 40(j) motion. Further, as noted above, the Plaintiffs have *never* served responses to Defendants' Requests for Admission.

² Plaintiffs also assert that the Defendants have not provided them "breathing time" to seek extension of time to file their response to the Request for Admission. However, Plaintiffs had thirty (30) days pursuant to Rule 36(a) in 2010 to seek an extension or serve their responses.

³ As reflected in the record before the Court, on May 17, 2010, this Court granted the parties' Rule 40(j) motion striking this case from the docket. In May of 2011, the Defendants' counsel

Plaintiffs to respond to the Defendants' Request for Admission would completely counteract and thwart the efficiency for which Rule 36(a) was designed to promote. Moreover, the parties have received notice that this case is set for trial on March 12, 2012. Thus, the Defendants would be severely prejudiced by a sudden need to engage in costly discovery for a case that is nearly three years old, and expend an inordinate amount of effort, to obtain evidence to prepare its defense, when the facts in their Requests for Admission are not contested. In addition, Defendant Deloatch is an individual employee of Defendant Bank of America, who would be especially prejudiced by a renewal of allegations which so long ago had been determined to be indisputably false based on the Plaintiffs' admissions. The Plaintiffs had ample time to respond to the Requests or seek an extension, like all other parties that litigate cases in state court, and any further extension of time to respond to the Defendants' Request for Admission would cause undue prejudice to the Defendants in this matter.

II. The Presentation of the Merits of the Action Would Not be Subverted and the Defendants Would Be Significantly Prejudiced if the Court Permitted a Withdrawal of the Plaintiffs' Admissions.

Pursuant to Rule 36(b) of the South Carolina Rules of Civil Procedure, the court may *only* permit withdrawal of admissions "when the presentation of the merits of the action will be subverted thereby *and* the party who obtained the admissions fails to satisfy the court that withdrawal . . . will prejudice him in maintaining his action or

contacted the Clerk of Court and it was confirmed that this case had been dismissed. However, on September 12, 2011, the Defendants received a letter from the Court inquiring about the status of the case. It was then that the Defendants learned that the case had been restored to the docket by the Clerk of Court by way of an Order filed March 8, 2011. The Clerk of Court informed the Defendants' counsel that no certificate of service accompanied the Plaintiffs' motion to restore the case. To date, the Defendants have not been served notice of the Plaintiffs' motion to restore the case, though required by Rule 40(j), SCRPC, nor have the Defendants received a copy of the Order restoring this matter to the docket.

defense on the merits." *Scott*, 353 S.C. at 651, 579 S.E.2d at 157 (emphasis added). If one of the two requirements is not addressed and met, a withdrawal of the admissions would be improper. *See Id.* at 651-52, 579 S.E.2d at 157-58 (finding the trial court committed an abuse of discretion in allowing the withdrawal of the admissions without addressing the prejudice that would be suffered by the party who obtained the admissions). As explained below, Plaintiffs fail to meet the standard for permitting withdrawal of the admissions and Defendants would be greatly prejudiced by any such withdrawal.

A. Presentation of the Merits of the Action Would Be Subverted If the Court Permitted Withdrawal of the Plaintiffs' Admissions

The presentation of the merits of this action would not be subverted if the Court permitted a withdrawal of the Plaintiffs' admissions. During the nearly three years this matter has been pending, Plaintiffs have failed to identify or develop any facts during discovery that support Mr. Gadsons' version of the events regarding his conversation with Ms. DeLoatch at Bank of America in 2009. As a result, Plaintiffs have offered no evidence or other support for their contention that the merits of the action would be subverted by permitting them to withdraw their admissions. Further, the Plaintiffs have not even produced documents in response to the Defendants' First Request for Production of Documents served on April 9, 2010, thus, the Defendants have not received any documents from the Plaintiffs supporting any denial of the matters which are the subject of the Requests for Admission.⁴ Finally, Plaintiffs have failed to demonstrate or even offer evidence of specific facts in their motion that would

⁴ The Court's Rule 40(j) Order stated that the parties were permitted to continue participating in discovery while this matter was stricken from the docket.

necessitate denial of the Requests for Admission. For these reasons, the Plaintiffs have failed to demonstrate, or even attempt to demonstrate, that the merits of this action would be subserved by a withdrawal of their admissions.

B. Defendants Would Be Significantly Prejudiced in Maintaining Their Defense on the Merits of the Action If the Plaintiffs Are Permitted to Withdraw Their Admissions

As to the second element of Rule 36(b), a withdrawal of the Plaintiffs' admissions would significantly prejudice the Defendants in maintaining their defense on the merits of the case. As discussed, the Plaintiffs have now moved for a withdrawal of their admissions nearly three years after they filed their complaint. Also, as of February 22, 2012, this case has now been set for trial on March 12, 2012. A withdrawal at this stage in the litigation would amplify the prejudice upon the Defendants, and unfairly and unreasonably create enormous difficulty on the Defendants in responding to a very sudden need to obtain evidence with respect to the questions previously answered by the admissions and where no evidence has been offered to support the Plaintiffs' allegations, other than the Plaintiffs' own statements. Engaging in discovery after such an extended period of time has passed would undoubtedly present the Defendants with insufficient time to obtain the necessary evidence to best prepare a defense on the merits of the case and on the basis of the matters addressed in the Defendants' Requests for Admission. The Defendants would also be prejudiced by incurring added expenses to engage in such discovery practices. Further, it would be highly detrimental to the Defendants to permit a withdrawal of the Plaintiffs' responses in this circumstance, and then require them to engage in factual discovery that is nearly three years old. If Plaintiffs had a concern about their

admissions and wanted to comply with Rule 36(b), they could have served a motion regarding the Requests for Admission back in 2010, well before the current motion that was filed in February 2012. However, the Plaintiffs failed to file and serve a timely motion to withdraw, and they should not be rewarded now for their lack of diligence in pursuing their claims or attempting to withdraw their admissions.

As the Court is aware, the South Carolina Court of Appeals has established that "discovery is the quintessence of preparation for trial and, when discovery rights are trampled, prejudice must be presumed." *Id.* at 652, 579 S.E.2d at 158. Throughout the course of this litigation, the Plaintiffs have simply not cooperated with the Defendants' discovery requests, which creates a presumption of prejudice upon the Defendants. In their present Motion, the Plaintiffs repeatedly admit that they never responded to the Defendants' Requests for Admission. *See Baughman v. AT&T*, 306 S.C. 101, 110, 410 S.E.2d 537, 542 (1991). Also, as previously stated, the Plaintiffs have not produced any documents in response to the Defendants' First Request for Production of Documents, which the Defendants need to prepare their defense in this case. *See Scott*, 353 S.C. at 652, 579 S.E.2d at 158 (finding that because the Defendant did not provide the Plaintiff with discovery records, which the Plaintiff needed to prove his case, the Plaintiff was prejudiced by the withdrawal of admissions). Moreover, since the Plaintiffs restored this case to the docket on March 8, 2011, the Plaintiffs have not engaged in any discovery at all.

Because the Plaintiffs failed to respond in any way to the Defendants' Requests for Admission, and have not been able to produce any documents or present any credible evidence supporting a denial of the matters admitted, the Defendants

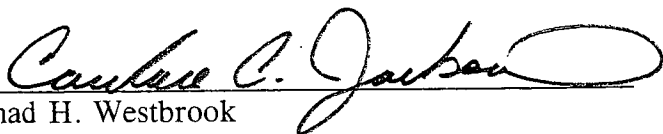
detrimentally and appropriately relied upon the Plaintiffs' admissions in not pursuing discovery and filing a Motion for Summary Judgment. Also, without an active discovery process, the Defendants have been hindered from fully preparing their defense for trial in this action. South Carolina Courts have found that such disregard of discovery by a party results in prejudice that is sufficient to prohibit the withdrawal of admissions. *See Scott*, 353 S.C. at 652, 579 S.E.2d at 158. Moreover, the Plaintiffs have not provided an affidavit or any other evidentiary support as to why a withdrawal of their admissions would be appropriate, and they have only made conclusory statements that the Defendants would not be prejudiced by the withdrawal.

Withdrawal of the Plaintiffs' admissions would not promote presentation of the merits of this action and would substantially prejudice the Defendants' ability to defend themselves on the merits. Thus, neither element one nor two of the test for withdrawal of admissions under Rule 36(b), SCRCF, has been satisfied.

CONCLUSION

The Plaintiffs have had ample time to respond, or seek to respond, to the Defendants' Requests for Admission, such that any additional time would negate the purpose of Rule 36(a), SCRCF, and severely prejudice the Defendants. Also, a presentation of the merits of this action would not be subserved, and a withdrawal of the Plaintiffs' admissions would significantly prejudice the Defendants in maintaining their defense on the merits of the case, if the Court permitted a withdrawal of the Plaintiffs' admissions. For these reasons, Defendants respectfully request that the Plaintiffs' Motion to Extend Time to Respond to Defendants' Request for Admission and/or Motion to Withdraw Admissions be denied.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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SC Bar No. 16635

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Candace C. Jackson

SC Bar No. 75714

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1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Caroline Deloatch and Bank of America

Columbia, South Carolina

February 22, 2012

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for defendants, Caroline Deloatch and Bank of America, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

DEFENDANTS CAROLINE DELOATCH AND BANK
OF AMERICA'S OPPOSITION TO PLAINTIFFS
MOTION TO EXTEND TIME TO RESPOND TO
DEFENDANTS' REQUEST FOR ADMISSION AND/OR
MOTION TO WITHDRAW ADMISSIONS

Counsel Served:

Mary P. Miles
Attorney at Law
LAW OFFICE OF MARY P. MILES
440 Knox Abbott Drive, Suite 360
Cayce, SC 29033



Mary Louise Snipes
Administrative Assistant

February 22, 2012

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FILED
CLERK OF COURT
JUDGE BRIDE

LAW OFFICE OF MARY P. MILES



December 6, 2010

Candace C. Jackson, Esquire
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Columbia, SC 29201

RE: Jerry Gadson and Sheila Gadson vs. Caroline Deloatch and Bank of America
C/A No. 2009-CP-40-03817

Dear Attorney Jackson:

Enclosed please find Plaintiff's answers and responses to Defendant's First Set of Interrogatories and Request for Production in the above matter.

Should you have any questions do not hesitate to contact us.

Yours very truly,

A handwritten signature in cursive script that reads "Mary P. Miles".

Mary P. Miles
MPM/lpw
Enclosure



LAW OFFICE OF MARY P. MILES

March 3, 2011

Richland County Clerk of Court
Attn: The Honorable Jeannette McBride
1701 Main Street
P.O. Box 192
Columbia, South Carolina 29201

RE: **Jerry Gadson and Sheila Gadson vs. Caroline Deloatch and
Bank of America, Individually and Jointly,**

Dear Ms. McBride:

Enclosed please find our original and (3) copies of the **Motion to Restore Pursuant to Rule 40(J), along with our check # 1150 in the amount of \$150.00** to be filed in the above referenced matter. Kindly file and return the file copies to our office in the self addressed stamped envelope provided.

Thank you in advance for your cooperation and consideration in this matter. Should you have any questions, please do not hesitate to contact our office.

Yours very truly,

Mary P. Miles
MPM/kms

Enclosures: (as noted)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case No. 2011-CP-40-05170R

Jerry Gadson and Sheila
Gadson,

Appellants,

v.

Caroline Deloatch and Bank
of America, Individually and
Jointly,

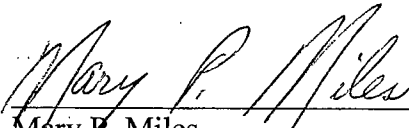
Respondents.

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APR 17 2012
SC Court of Appeals

NOTICE OF APPEAL

Jerry Gadson and Sheila Gadson appeal the judgment of the Honorable DeAndrea G. Benjamin, dated March 15, 2012. Appellants received written notice of entry of this judgment on April 12, 2012 that Appellants received by email from Judge Benjamin's assistant and Judge Benjamin's email dated April 13, 2012 denying request from Plaintiff to reconsider her signed Order, Amend signed Order, Reconsider Plaintiff's Motion for Extension to Answer Defendant's Admission, and/or Modify the signed Order dated March 15, 2012.

April 17, 2012


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Attorney for Appellant
Other Counsel of Record:

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Nelson Mullins Riley & Scarborough LLP
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1320 Main Street, Columbia, SC 29201
Telephone: (803) 255-9226
Fax: (803) 255-5929
Attorney for Respondent

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case No. 2011-CP-40-05170R

Jerry Gadson and Sheila
Gadson,

Appellants,

v.

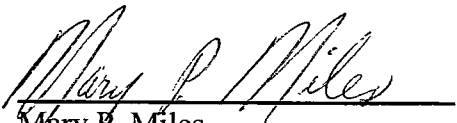
Caroline Deloatch and Bank
of America, Individually and
Jointly,

Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Caroline Deloatch and Bank of America, by depositing a copy of it in the United States Mail, postage prepaid, on April 17, 2012, addressed to his attorney of record, Candace C. Jackson, Nelson Mullins Riley & Scarborough LLP, Meridian, 17th Floor, 1320 Main Street, Columbia, SC 29201, on April 17, 2012.

April 17, 2012


Mary P. Miles
440 Knox Abbot Drive, Suite 360
Cayce, South Carolina 299033
Telephone: (803) 939-1177
Fax: (803) 939-1001
Attorney for Appellant

RECEIVED

APR 17 2012

SC Court of Appeals

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Jerry Gadson and Sheila Gadson,)
) Civil Action No. 2011-CP-40-01570R
Plaintiffs,)

vs.)

ORDER

Caroline Deloatch and Bank of)
America, Individually and Jointly,)
)
Defendants.)

RICHLAND COUNTY
FILED
2012 MAR 20 AM 8:42
JEANETTE W. McBRIDE
C.C.P. & G.S.

THIS MATTER COMES before the Court on Defendants Caroline Deloatch and Bank of America's ("Defendants") Amended Motion for Summary Judgment as to Plaintiffs Jerry Gadson and Sheila Gadson's ("Plaintiffs") causes of action for negligence (and/or assault and battery) and loss of consortium pursuant to Rule 36(a) and Rules 56(b) and (c) of the South Carolina Rules of Civil Procedure. The parties appeared before this Court for oral argument on February 29, 2012. Candace C. Jackson, Esquire, represented Defendants and Mary P. Miles, Esquire, represented Plaintiffs. Further, Plaintiffs had pending a Motion to Extend Time to Respond to the Defendants' Requests for Admission and/or Motion to Withdraw Admissions.

Having read and considered all the pleadings, the written memoranda from counsel, relevant case law, and arguments from counsel, Defendants' Amended Motion for Summary Judgment is hereby GRANTED, and Plaintiffs' Motion to Extend Time to Respond to the Defendants' Requests for Admission and/or Motion to Withdraw Admissions is hereby DENIED.

BACKGROUND

The record reflects that on May 27, 2009, the Plaintiffs commenced this action by filing a Complaint against the Defendants for negligence (and/or assault and battery) and loss of consortium. On July 2, 2009, the Defendants filed an Answer denying the Plaintiffs' claims. The Plaintiffs did not pursue this action any further. On April 9, 2010, the Defendants served their First Interrogatories, First Request to Produce, and First Requests for Admission to the Plaintiffs. The Plaintiffs' responses to these discovery requests were due on or before May 10, 2010. However, to date, the Plaintiffs have failed to serve any response to the Defendants' First Requests for Admission.

On May 17, 2010, the Defendants, with the consent of the Plaintiffs, moved to strike this case from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. On May 17, 2010, this Court granted the parties' motion. In May of 2011, the Defendants' counsel states that she contacted the Clerk of Court's office and it was told that this case was not restored and had been dismissed. However, on September 12, 2011, the Defendants received a letter from the Court inquiring about the status of the case. It was then that the Defendants learned that the case had been restored to the docket by the Clerk of Court by way of an Order filed March 8, 2011. The Defendants were neither served with the Plaintiffs' motion to restore the case nor did they receive a copy of the Order restoring the matter to the docket. At this time, Plaintiffs still had not responded to the Defendants' Requests for Admission. Further, Plaintiffs recently conceded that they did not respond to the Defendants' First Requests

for Admission. See Motion to Extend Time to Respond to Defendants' Request for Admission and/or Motion to Withdraw Admissions (filed on January 31, 2012).

DISCUSSION

Pursuant to Rule 36(a) of the South Carolina Rules of Civil Procedure, a failure to answer a request to admit within thirty days after service results in the request being deemed admitted without any further action by the court or proponent. S.C. R. Civ. P. 36(a); *Hatchell v. Jackson*, 290 S.C. 256, 258, 349 S.E.2d 407, 408 (Ct. App. 1986) (finding that when a litigant never responded to a request for admissions, those matters were deemed admitted); *Bakala v. Bakala*, 352 S.C. 612, 630, 576 S.E.2d 156, 166 (2003) (finding that because the Plaintiff did not respond to the Defendants' Request to Admit, the facts were deemed admitted under Rule 36(a), SCRPC); *Scott v. Greenville Housing Authority*, 353 S.C. 639, 645, 579 S.E.2d 151, 154 (Ct. App. 2003) ("South Carolina has long had the discovery rule that failure to respond to requests for admissions renders any matter listed in the request conclusively admitted for trial.").

Because the Plaintiffs failed to respond to the Defendants' Requests for Admission, the facts contained therein are deemed admitted under the authority of Rule 36(a), SCRPC. Subject to these requirements, the following facts are deemed admitted:

1. On March 9, 2009, Jerry Gadson visited the Polo Road Banking Center to seek refunds of service charges on his checking account, and on this same date, the Defendants refunded charges to his account.
2. At no time did Caroline Deloatch yell and scream abusive comments in Jerry Gadson's face.
3. The Plaintiffs have no evidence that at any time Caroline Deloatch intended to strike or cause bodily harm to Jerry Gadson.

4. At no time did Caroline Deloatch touch Jerry Gadson or put him in any apprehension that harmful or offensive bodily contact was imminent.
5. No hazard or dangerous condition (neither latent nor concealed) existed at the Polo Road Banking Center during the Plaintiffs' visit on March 9, 2009.
6. The Defendants did not breach any duty it may have owed to Jerry Gadson.
7. Jerry Gadson did not sustain any injuries as a result of any incident that occurred at the Polo Road Banking Center on March 9, 2009.
8. Sheila Gadson has not suffered loss of consortium, emotional stress, or any injuries as a result of any incident that occurred at the Polo Road Banking Center on March 9, 2009.

CONCLUSIONS OF LAW

Based on these admitted facts and the record of this case, the Court concludes that there is no evidence to support the Plaintiffs' claims for negligence (and/or assault and battery) and loss of consortium. Also, because Plaintiff Sheila Gadson is unable to prove the Defendants' liability for her husband's injuries, the loss of consortium claim cannot be maintained. *See Creighton v. Coligny Plaza*, 334 S.C. 96, 121, 512 S.E.2d 510, 523 (Ct. App. 1998) ("In order to prevail in an action for loss of consortium, a plaintiff must prove the defendant's liability for the spouse's injuries as well as damages to the plaintiff resulting from the spouse's injury.")

Pursuant to South Carolina Rule of Civil Procedure 56, relevant case law, and having reviewed the pleadings, the written memoranda from counsel, and considered the oral arguments made during the summary judgment hearing, it is hereby

ORDERED that the Defendants are entitled to summary judgment as to the Plaintiffs' negligence (and/or assault and battery) and loss of consortium claims on the grounds that there is no genuine issue as to any material fact and are entitled judgment in their favor as to the Plaintiffs' claims as a matter of law. It is therefore ORDERED that the Plaintiffs' claims of negligence (and/or assault and battery) and loss of consortium are dismissed *with prejudice*. It is further ORDERED that Plaintiffs' Motion to Extend Time to Respond to the Defendants' Requests for Admission and/or Motion to Withdraw Admissions is DENIED.

AND IT IS SO ORDERED.



The Honorable DeAndrea Gist Benjamin
Fifth Judicial Circuit

Columbia, South Carolina

3-15, 2012

Mary Miles

From: Mary Miles
Sent: Thursday, April 12, 2012 6:19 PM
To: 'dbenjaminj@sccourts.org'
Cc: 'candace.jackson@nelsonmullins.com'
Subject: Jerry Gadson vs. Bank of America et. al. (2011-CP-400157OR)

Dear Judge Benjamin:

I received your signed order today from your assistant, Ms. James. I was unaware that you had signed an order in the above matter. My client called me today to find out the status of your decision. I immediately called Attorney Jackson's office to find out if she had received a signed copy of an Order. Second, I called your secretary to find out whether there was a signed order. Third, I looked in my in box on my emails and I looked in my spam box and found a proposed order in my spam box that was sent on March 14, 2012 at 10:52 AM to you and I was copied on the email.

We appeared before you on March 12, 2012 on Defendant's Amended Motion for Summary Judgment. It appears from Attorney Jackson's email that you required Attorney Jackson to prepare an order because her Summary Judgment Motion was granted. According to Local Civil Rule 7.10 DSC, I had fourteen (14) days from receipt of the proposed order to comment on a proposed order. My comment may be provided by letter. I did not have the opportunity to review and comment on the proposed order before it was signed. According to your secretary, you signed the proposed order on March 15, 2012. Surely, I would not consent to this proposed order that accuses me of seriously hampering action or progress on the above matter. This proposed order implies that I deliberately, willfully, and intentionally hindered the progress of my client's case. This proposed order intrudes upon my ethical obligations to zealously represent my client. This proposed order offends my legal professional obligations to my client. I find that the proposed order is hateful and I dispute the suggestive conclusions of the proposed order and signed order.

I tried to contact Attorney Jackson and her assistant today to discuss this matter but was unsuccessful. I left voice messages. After reviewing the proposed order and the signed order today, I am absolutely displeased that such a blatant misrepresentation of the facts in this case was submitted by Attorney Jackson and signed by you. I am requesting that I be allowed to provide a competitive Amended Order and/or file a Motion for Reconsideration and/or file a Motion to Modify the signed Order.

I would appreciate your consideration of the bias and slanting of the proposed order that prejudiced my client and me. The proposed order and signed order is an unreasonable distortion of judgment. By copy of this email to Attorney Jackson, I am notifying her of my communication with you in regards to the above matter. I would appreciate your response as soon as possible. Thank you.

Mary P. Miles

Mary P. Miles, Esquire
Counselor & Attorney at Law

 **LAW OFFICE OF MARY P. MILES, ESQUIRE**

440 Knox Abbott Drive, Suite 360

Cayce, South Carolina 29033

Tel: (803) 939-1177

Fax: (803) 939-1001

MARY@MARYPMILES.COM

Mary Miles

From: Benjamin, DeAndrea G. [dbenjaminj@sccourts.org]
Sent: Friday, April 13, 2012 3:15 PM
To: Mary Miles; candace.jackson@nelsonmullins.com
Cc: Benjamin, DeAndrea G. Law Clerk (Aaron V. Wallace)
Subject: RE: 2011-CP-40-01570R (Gadson v. Deloatch)
Attachments: 145535.jpg; 145600.jpg; 145611.jpg; 2011CP4001570R_ORDER_379521.PDF

Dear Ms. Miles:

On February 29, 2012 oral arguments were heard in the above referenced case. On Monday, March 12, 2012 at 4:37 PM, my law clerk sent an email to your email address and to the email address of Candace Jackson, Esq. which indicated that Defendant's Motion for Summary Judgment had been granted and which instructed Ms. Jackson to prepare a proposed order. On Wed, March 14, 2012 at 10:52 AM, Ms. Jackson emailed her proposed order to my law clerk and copied you on the email. This proposed order was reviewed by my office and I signed the order granting Summary Judgment to the Defendants on March 15, 2012. The signed order was then filed on March 20, 2012 and the Clerk of Court's office mailed copies of the clocked order to your office on or about March 21, 2012. My signed order accurately reflects the findings of fact and rulings of this Court and is not an "unreasonable distortion of judgment" as you claim. Additionally, you indicate in your email that you appeared before this Court on March 12, 2012 for a hearing on Defendant's Motion for Summary Judgment. In fact, Defendant's Motion for Summary Judgment was not scheduled to be heard that week, but rather the case was supposed to be scheduled for trial during that week and was not scheduled because of my decision in this case. Furthermore, my decision was communicated during the roster meeting on the morning of March 12th.

You referred to Local Civil Rule 7.10 DSC in your email. This Court is governed by the South Carolina Rules of Civil Procedure. The rule which you referenced is a federal rule not applicable in this case. Moreover, even if Rule 7.10 applied to this action, you were not prejudiced in any way since, by your own admission; you didn't realize that you received a proposed order in this case until well after the 14 day period had expired. In your email to this Court on April 12, 2012 you state, "I looked in my in box on my emails and I looked in my spam box and found a proposed order in my spam box that was sent on March 14, 2012 at 10:52 AM to you and I was copied on the email." I have attached all of the correspondence received by my office related to this case to this email for your review. You were notified of both the decision of this Court and of my request for proposed orders at the same time Ms. Jackson was notified. You had the same opportunity to provide your input on this decision as did Ms. Jackson. I am not changing my Order in this case as it accurately reflects what transpired and the ruling of this court.

Sincerely,

DeAndrea G. Benjamin
Judge for 5th Judicial Circuit
PO Box 192
Columbia, SC 29202
OFFICE: (803) 576-1746
FAX: (803) 576-1777

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case No. 2011-CP-40-05170R

Jerry Gadson and Sheila Gadson,.....Appellants,

v.

Caroline Deloatch and Bank of America,
Individually and Jointly,.....Respondents,

CERTIFICATE OF COUNSEL

The undersigned certified that the Record of Appeal contains all matter proposed to be included by any of the parties and not any other material.

October 17, 2012

/s/ Mary P. Miles

Mary P. Miles
440 Knox Abbott Drive, Ste 360
Cayce, SC 29033
Telephone: (803) 939 1177
Fax: (803) 939 1001

SUPPLEMENT CERTIFICATE OF COUNSEL IN RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case No. 2011-CP-40-05170R

Jerry Gadson and
Sheila Gadson,

Appellants

V.

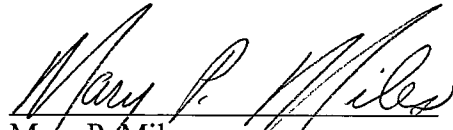
Caroline Deloatch and
Bank of America,
Individually and Jointly

Respondents

CERTIFICATE OF COUNSEL

The undersigned certified that this Record on Appeal contains all matter proposed to be included to be included by any of the parties and not any other material.

October 18, 2012.


Mary P. Miles
440 Knox Abbot Drive, Suite 360
Cayce, South Carolina 299033
Telephone: (803) 939-1177
Fax: (803) 939-1001
Attorney for Appellant

RECEIVED

NOV 16 2012

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case No. 2011-CP-40-05170R

Jerry Gadson and Sheila Gadson,..... Appellants,

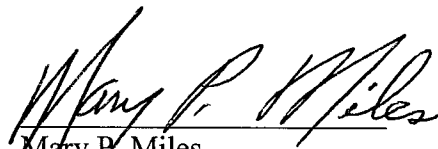
v.

Caroline Deloatch and Bank of America,
Individually and Jointly,..... Respondents,

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Caroline Deloatch and Bank of America by depositing a copy of it in the United States Mail, postage prepaid, on October 1, 2012, addressed to their attorneys of record, Michael J. Anezlmo and Thad H. Westbrook, 1320 Main Street, 17th Floor, Columbia, SC 29201.

October 18, 2012



Mary P. Miles
440 Knox Abbott Drive, Ste 360
Cayce, SC 29033
Telephone: (803) 939 1177
Fax: (803) 939 1001

RECEIVED

NOV 16 2012

SC Court of Appeals