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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY  
In The Circuit Court

Brian Gibbons, Circuit Court Judge  
William C. Tindal, Special Referee

Appellate Case No. 2018-001823

**RECEIVED**

JUL 31 2019

SC Court of Appeals

First Citizens Bank & Trust Company,

Respondent,

v.

Linda P. Faulkner a/k/a Linda Faulkner,  
Founders Federal Credit Union, and  
CACH, LLC,  
of whom Linda P. Faulkner is the

Appellant.

MOTION TO CLARIFY OR AMEND  
ORDER OF JULY 19, 2019  
and FOR EXTENSION OF TIME

John Martin Foster  
Post Office Box 106  
Rock Hill, South Carolina 29731  
(803) 324-8100  
Attorney for Appellant

The Court of Appeals has granted the Motion of the Respondent moves to strike from the Designation of Matter, and thus from the Record on Appeal, those listed items relating to the Respondent's earlier foreclosure action against the Appellant. (Exhibits B, C, D and E as listed in the Respondents' Motion).

The Appellant's Answer and Counterclaim, her Memorandum on the hearing before the Circuit Court, and her argument of the Rule 59 Motion to allow a jury trial on September 25, 2018, cited the existence and effect of the earlier, dismissed foreclosure action of the Respondent as the basis for her claim of Express and Implied waiver. She sought to include that earlier pleading in the Record on Appeal.

The Order of the Court of Appeals dismisses the Appellant's position that the Circuit Court both can and should have taken judicial notice of the earlier action in reaching its decision. In its specific ruling, it states in relevant part:

Appellant shall not include the stricken matters in the record on appeal and shall not cite to the matters in her final brief.

[Order filed July 19, 2019.]

WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY (1983) defines the word "cite" as follows:

**Definition of *cite***

transitive verb

1 : to call upon officially or authoritatively to appear (as before a court)

2 : to quote by way of example, authority, or proof cites several noteworthy authors

3a : to refer to especially : to mention formally in commendation or praise She was *cited* for bravery.

b : to name in a citation *cited* by the trustees for his work in public health

4 : to bring forward or call to another's attention especially as an example, proof, or precedent *cited* the weather as a reason for canceling the picnic *cited* several studies that support his theory

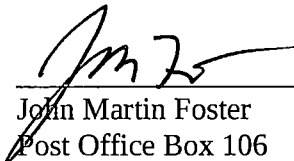
By the definition of the term quoted above, the Order of the Court of Appeals can be read as not merely prohibiting the inclusion of the earlier pleadings in the Record on Appeal, but any mention thereof – either from the unchallenged portions of the Record or from the transcript of argument below.

It is the assumption of the Movant that it is not the intent of the Court of Appeals to so limit the Appellant. If it is the intent of the Order of July 19<sup>th</sup> to so limit the Appellant, the Order is improper insofar as it precludes an argument before the Appellant is allowed to make that argument in formal order before this Court.

The Appellant would also argue that the proper disposition of this question is akin to that used in the Trial Courts upon submission of excluded evidence. As this Court held in *Ellison v. Parts Distributors, Inc.*, 302 S.C. 299, \_\_\_, 395 S.E.2d 740, 741 (Ct.App. 1990): "Unless a party includes an offer of proof in the record, there is nothing for us to review." The request to take judicial notice was made: reference existed in the Answer in this matter, in the Memorandum and argument before the Circuit Court. The Appellate Court has the duty to view the pleadings that form the basis of one of the Appellant's defenses and for her appeal.

Pursuant to Rules 240 and 263(b), S.C.A.C.R., the Appellant, by her counsel herein, also moves this Court for an order granting her an extension of time as to her Reply Brief for a reasonable period after disposition of this Motion.

Respectfully submitted,

  
\_\_\_\_\_  
John Martin Foster  
Post Office Box 106  
Rock Hill, SC 29731-6109  
(803) 324-8100  
Attorney for Appellant

July 29, 2019

Rock Hill, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LANCASTER COUNTY  
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CACH, LLC,  
of whom Linda P. Faulkner is the

Appellant.

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CERTIFICATE OF SERVICE

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I certify that, on the date below, I have served her Motion to Clarify or Amend the Order filed July 17, 2019, and for Extension of Time, on the following counsel of record:

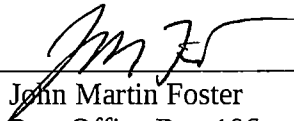
J. Kershaw Spong  
Mary McDonald Campolong  
Robinson Gray Stepp & Lafitte, LLC  
Post Office Box 11449  
Columbia. SC 29211  
Attorneys for Respondent

by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a

conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. all pursuant to Rule 262, S.C.A.C.R.

July 29, 2019

  
\_\_\_\_\_  
John Martin Foster  
Post Office Box 106  
Rock Hill, South Carolina 29731  
(803) 324-8100  
Attorney for Appellant

**JOHN MARTIN FOSTER**

*Attorney at law*

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The Guardian Building	PO Box 106	803 324 8100
223 East Main Street Suite 520	Rock Hill SC	803 324 8109 Fax
Rock Hill South Carolina 29730	29731-6106	jmfoster@comporium.net

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July 29, 2019

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

**RECEIVED**

JUL 31 2019

SC Court of Appeals

Re: First Citizens Bank & Trust Company, Respondent  
v. Linda P. Faulkner a/k/a Linda Faulkner,  
Founders Federal Credit Union, and CACH, LLC,  
of whom Linda P. Faulkner is the Appellant  
Appeal Case No. 2018-001823

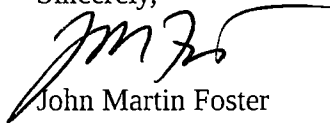
Dear Ms. Kitchings:

In accordance with Rules 240 and 263(a), S.C.A.C.R., enclosed herewith please find the original and seven (7) copies of the Appellant's Motion to Clarify or Amend Order of July 19, 2019 and For Extension of Time, together with Certificate of Service for the same in the above referenced case. I also enclose our check for the Motion fee of \$50.00.

By copy of this letter, I am serving the attorney for the Respondent with copies of the said Motion, as evidenced by the Certificate of Service.

Please return the extra conformed copy to my office in the enclosed self-addressed, stamped envelope. As always, thank you, and your staff, for your assistance in these matters.

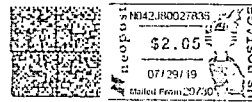
Sincerely,



John Martin Foster  
Post Office Box 106  
Rock Hill, South Carolina 29731  
803 324-8100  
Attorney for Appellant

jmf/  
enclosures

cc: J. Kershaw Spong  
Mary McDonald Campolong  
Robinson Gray Stepp & Lafitte, LLC  
Attorneys for Plaintiff  
Post Office Box 11449  
Columbia, SC 29211  
803 929-1400



**John Martin Foster Attorney**  
223 East Main St Suite 520  
Post Office Box 106  
Rock Hill SC 29731-6106

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**TO:**

THE HONORABLE JENNY ABBOTT KITCHINGS  
CLERK OF THE COURT OF APPEALS  
POST OFFICE BOX 11629  
COLUMBIA, S.C. 29211

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JUL 31 2019  
SC Court of Appeals

