

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

AUG 02 2019

SC Court of Appeals

CASE NO. 2009-CP-26-05915
APPEAL NO. 2019-001119

Plantation Federal Bank Respondent,

v.

Chester A. Crocket Appellant

and

C&C Development, LLC; Michael Chaffin; Bruce J. Ahmes;
S&D General Contractors, LLC; Col-Cor Industries, Inc.
d/b/a Active Glass and Mirror; First Electric, Inc.; Wallcraft
Construction, Inc. and Carolina Dirt Works, LLC..... Other Defendants.

REPLY IN SUPPORT OF
RESPONDENT'S MOTION TO DISMISS APPEAL
FOR LACK OF APPEALABILITY

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ATTORNEYS FOR RESPONDENT

Other Counsel:

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(843) 448-2400

Attorneys for the Appellant

This is an effort to collect a nine-year old mortgage foreclosure judgment which has long stood as the law of this case. Desperate to run out the judgment clock playing rope-a-dope,¹ Appellant-Debtor has responded to the Bank's Motion to Dismiss with a smoke screen of details regarding the original lender's business shortcomings as determined by the Office of Thrift Supervision.² Those shortcomings *might* provide the basis for a claim against that defunct bank's management by bank investors *but not* this bank borrower— now a judgment-debtor — bound by the law of this case.

No Legitimate Appealability

As a reminder, the Appellant-Debtor has identified three provisions of the trial court's post-judgment order for appeal: the Order of Reference (again, the Circuit Court sending the matter to a Referee for Supplemental Proceedings), the Order Protecting the Creditor Bank from Post-Judgment Discovery (again, the debtor fishing into the predecessor bank's business failure), and the Ministerial Substitution Order of the Successor Bank as Plaintiff (shown by uncontested affidavit).

¹ As foreshadowed and discussed in the Bank's Motion to Dismiss, footnote 2, Appellant has erroneously asserted the protection of the automatic stay found in SCACR 241 despite its literal non-applicability to money-judgments, SCACR 241(b)(1)(exception for "Money judgments as provided in S.C. Code Ann. § 18-9-130") , and its precedential non-applicability to post-judgment orders that leave the status-quo judgment in place. Stearns Bank v. Glenwood Falls, 375 S.C. 423, 653 S.E.2d 274 (2007). Thus, the trial court now has cross-motions to compel discovery (filed by the Bank) and to quash discovery as stayed (filed by the judgment-debtor Appellant). *Again, Respondent asks the Court to consider this motion expeditiously so as to effectuate SCACR 241 and its exceptions.*

² The named Respondent, Plantation Federal Bank ("Plantation Federal"), was the original lender to Appellant-Debtor. Collection of the underlying judgment debt is being pursued by South State Bank who is the successor in interest to Plantation Federal by virtue of asset purchases made after regulatory seizure (April 27, 2012) of Plantation Federal by the Federal Deposit Insurance Corporation. These asset purchases were shown to the trial court by uncontested affidavit — also filed in this Court as **Exhibit B** to the Motion to Dismiss.

Appellant's Very Belated and Contrived Counterclaim: "Bad Banking Made Me Do It."

Appellant-Debtor has hitched his wagon to the erroneous idea that he is entitled to a jury trial on a so-called counterclaim conceived years after judgment; this strategy is perhaps understandable because legitimate mode-of-trial questions are generally an immediately appealable issue. *This, however, is no legitimate counterclaim.*

The underlying merits here were determined years ago and are now the law of the case. Not only is the Appellant-Debtor's recently asserted (December 21, 2108) counterclaim contrived, it is years late, inconsistent with the alleged statutory (SCUTPA) basis,³ and simply procedurally barred.

Rule 12(b) of the South Carolina Rules of Civil Procedure provides that every defense to a cause of action in the Complaint, including a counterclaim, "shall be asserted in the responsive pleading thereto...." Rule 12(a) provides that the responsive pleading or Answer to a Complaint "shall" be served "within 30 days after the service of the Complaint...." In this case, those initial pleadings were made and served well over a decade ago. *Nothing in Rule 12 or Rule 13 allows for the assertion of a counterclaim in response to the limited scope of post-judgment supplemental proceedings.*

Even if Appellant had some evidence to support a claim that bad business practices by Plantation Federal somehow tainted his specific loan and the specific judgment in this case –

³ Appellant's counterclaim is purportedly based upon the South Carolina Unfair Trade Practices Act. S.C. Code § § 39-5-10 et. Seq. The SCUTPA itself provides that "Nothing in this article shall apply to . . . actions or transactions permitted by any other South Carolina State law." S.C. Code Ann. § 39-5-40(a). Supplemental Proceedings and foreclosure procedures are, of course, regulated by and permitted by specific statutes directly applicable to them thereby rendering any SCUTPA claim inconsistent. *Accord In State ex rel. McLeod v. Rhoades*, 275 S.C. 104, 267 S.E.2d 539 (1980) (applying SCUTPA regulatory exemption to regulated securities transaction) (modified with regard to "general activity" test by *Ward v. Dick Dyer and Associates, Inc.*, 403 S.E.2d 310, 304 S.C. 152 (1990)).

*which has not been shown – the remedy to address a judgment tainted by fraud, mistake, “or other misconduct” is Rule 60(b), not Rule 13.*⁴ Of course, Rule 60(b) also respects the finality of judgments with an express one-year deadline. In this case, no Rule 60 motion has been filed and Appellant’s *supposed* counterclaim, triggering his specious claim to a jury trial, was *not* filed within a year of the judgment and *not even* within one year of the Inspector General’s public report (August 15, 2016) referenced in Appellant’s motion response. Not until after the petition for supplemental proceedings did Appellant’s creative pleading get filed with the Court.

Moreover, contrary to Appellant’s suggestion that Plantation Federal’s history of poor banking practices was “not available to him” (page 1 of Appellant’s Motion Response), the FDIC public seizure of Plantation Federal Bank occurred April 27, 2012 – over six years before Appellant asserted that it might be the bank’s fault that he borrowed too much. Also contrary to this debtor’s suggestion that the South State Bank succession and other “activity” was not “known to Appellant until much later” (page 4 of Appellant’s Motion Response), the Appellant had been in regular email communication with representatives of the successor-in-interest South State Bank regarding *this* debt.⁵

Of course, Appellant’s denied request for discovery into the bad banking of Plantation Federal is inherently tied to the illegitimate counterclaim and was appropriately rejected for that reason. Moreover, as Respondent argued in its Motion to Dismiss, SCRCP 69 provides

⁴ Notably, Appellant’s counterclaim does not allege that the actual debt is unlawful; indeed, the actual debt was judicially determined some 9 years ago. Appellant’s SCUTPA counterclaim (attached hereto as **Exhibit A**), filed only some eight months ago, six and a half years after the public seizure of Plantation Federal Bank, alleges (¶¶ 10-11) in the most conclusory fashion, “Pursuit of this supplementary proceeding and debt collection against Defendant is an unfair or deceptive act or practice in the conduct of trade or commerce and is therefore unlawful.”

⁵ Three of these communications from Appellant in November of 2016 (the 15th, 16th, and 19th), retained as part of South State Bank’s business records, are attached hereto as **Exhibit B**.

discovery for judgment creditors not debtors (as does the statutory provisions for supplemental proceedings found at S.C. Code §15-39-310 (discovery of the debtor regarding property available to satisfy the judgment). Debtor's response suggests that the affirmative provision of discovery to creditors found in Rule 69 does not preclude parallel availability to debtors; this response ignores the maxim (and Rule of Construction) : *Expressio Unius Est Exclusio Alterius*. Our Courts and legislature could have included post-judgment discovery provisions for debtors had it made any sense to do so; they did not. Debtor's response fails to address the case law provided in Bank's Motion to Dismiss that rejects the immediate appealability of discovery orders.⁶

Successor Bank Interest Previously Recognized By Appellant

Appellant's response criticizes the form and substance of the heavily regulated transaction moving assets from the failed Plantation Federal to the successor South State Bank, but offers nothing to undermine the legitimacy of the transfer or to show the need for immediate appealability of this ministerial function. Of course, Appellant's critique of the asset transition from one bank to the other is belied by his previous communications with South State Bank inherently recognizing the legitimacy of their collection efforts.⁷

⁶ Debtor does cite to Ex Parte Wilson, 367 S.C. 7, 625 S.E.2d 205 (2005), discussed in Bank's Motion to Dismiss, on page 9 of his response following a cite to footnote 4 of Mid-State Distributors, Inc. v. Century Importers, Inc., 426 S.E.2d 777, 310 S.C. 330 (1993). The reason for these citations is not completely clear. Wilson, as Bank noted in its motion, rejected the appealability of an order quashing a subpoena *duces tecum* to a non-party. Likewise, Mid-State Distributors, Inc. dismissed an appeal from the pre-trial denial of a Rule 12(b)(2) SCRCF motion (challenging personal jurisdiction) as pre-mature or not immediately appealable under S.C.Code § 14-3-330. Mid-State is of no clear guidance since it deals with pre-trial and not post-judgment matters.

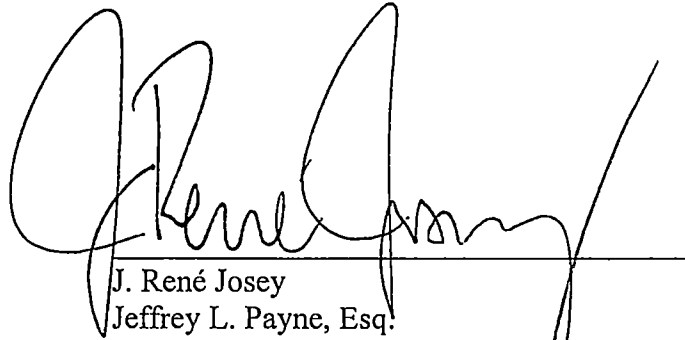
⁷ See Exhibit B referenced in footnote 5 above. As an example, in an email dated November 16, 2016 at 2 PM, the Appellant advises South State Bank representative Tiffany Boyd that he is

The Court below allowed the ministerial substitution of South State Bank for Plantation Federal as is contemplated by SCRCP 69 (allowing the successor in interest to a judgment creditor to examine the debtor). Unlike the substitutions that might deny a Plaintiff his or her choice of Defendants, *see Neeltec Enters., Inc. v. Long*, 397 S.C.563, 725 S.E.2d 926 (2012), this amendment was only done for Court clarity and convenience and has no impact upon any substantial right of the adjudicated debtor.

CONCLUSION

The Appellant's most recent notice of appeal from the trial court's Order or Reference, Order of Discovery, and Order of Substitution should be dismissed as not immediately appealable.

July 31ST, 2019



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ATTORNEYS FOR RESPONDENT

working on a personal financial statement and "Hardship Statement" because he "Would love to have some idea of what this looks like before we go to Disney for Thanksgiving."

EXHIBIT

A

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	C/A NO.: 2009-CP-26-05915
)	
Plantation Federal Bank,)	
)	
)	
Plaintiff,)	
)	
v.)	AMENDED RETURN AND
)	COUNTERCLAIM TO PETITION
)	(Jury Trial Demanded)
C & C Development, LLC, et al.)	
)	
Defendants.)	
)	

Defendant Chester A. Crockett (hereinafter "Crockett") through his undersigned counsel, with consent of Plaintiff's counsel, hereby answers and counterclaims to the Petition filed by Plaintiff herein.

FOR A FIRST DEFENSE

1. All allegations of the Petition not specifically admitted are denied and strict proof demanded thereof.

FOR A SECOND DEFENSE

2. Crockett denies paragraph 1 of the Petition as it is in error.
3. Crockett is without sufficient information to admit or deny paragraph 2.
4. Crockett denies paragraph 3.
5. Crockett denies paragraph 4 since no proof has been adduced of any such assets.

FOR A THIRD DEFENSE

6. As the Order attempting to refer this case to the Special Referee is void pursuant to statute, Crockett believes the Special Referee does not have properly have jurisdiction of this matter at this time.

FOR A FOURTH DEFENSE

7. Plaintiff is not the judgment holder and thus does not have standing or capacity to sue in this proceeding.

FOR A FIFTH DEFENSE

8. Plaintiff's wrongdoing and delay bars its recovery herein, through the doctrines of laches, waiver, estoppel, and unclean hands.

FOR A SIXTH DEFENSE

9. Plaintiff's claim should be dismissed for failure to state facts sufficient to constitute a cause of action under SCRPC 12(b)(6).

FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM

10. Defendant alleges that Plantation Federal and Plaintiff, in filing this supplementary proceeding and attempting to collect on debt against Defendant, are engaging in an unfair or deceptive trade practice in violation of the South Carolina Unfair Trade Practices Act. The independent act of pursuing this new action as a supplementary proceeding, with knowledge that it was found culpable by the federal government of wrongful acts in the lending process (including the one involved herein) resulting in its failure as a bank, is unfair and deceptive. Defendant has recently become aware of the Audit Report of the Office of Inspector General, Department of the Treasury, dated August 15, 2016 and identified as OIG-16-052 and entitled *Safety and Soundness: Analysis of Bank Failures Reviewed by the Department of the Treasury Office of Inspector General*. In that government audit, and in the timeframe applicable to the loan in question and many others, Plantation Federal was specifically found to have engaged in inadequate credit administration and risk

management (along with other wrongdoing) resulting in its failure. Having knowledge of this report and its conclusions, yet moving forward with this supplementary proceeding, is an unfair and deceptive trade practice.

11. Pursuit of this supplementary proceeding and debt collection against Defendant is an unfair or deceptive act or practice in the conduct of trade or commerce and is therefore unlawful. Defendant has suffered an ascertainable loss of money or property as a result of the use or employment by Plantation Federal and Plaintiff of this unfair or deceptive method, act or practice. Plantation Federal and Plaintiff have acted in willful or knowing violation of S.C. Code 39-5-20 and Defendant is thus entitled to treble damages, costs, and attorney's fees. The acts are capable of repetition and have great impact on the public interest.
12. Pursuant to Rules 38 and 53, SCRCP, Crockett demands a jury trial as to all factual issues, defenses and counterclaims and all other issues so triable and does not consent to any reference that would limit or defeat that demand in these proceedings.
13. Crockett reserves the right to amend this Return as additional matters come to light herein.

WHEREFORE, Crockett respectfully requests this Honorable Court vacate the prior Order of Reference to a special referee, order that his legal counterclaim be heard before a jury prior to any equitable action of Plaintiff going forward, refuse the relief sought by Plaintiff, grant actual and treble damages along with costs and attorney's fees, and dismiss the Petition with costs.

s/Robert S. Shelton

Robert S. Shelton, SC Bar 68543
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ATTORNEY FOR DEFENDANT
CHESTER A. CROCKETT

December 21, 2018

EXHIBIT

B

From: Chet Crockett
[mailto:chetcroc@aol.com] Sent:
Tuesday, November 15, 2016 4:35 PM
To: Tiffany Boyd
Tiffany.Boyd@southstatebank.com
Subject: Re: PFS [External] Tiffany, It
was a pleasure speaking with you
today and thank you for listening
about my experience with Plantation
Federal. Just so I am clear, am I
completing your statement as an
individual or as a joint. My wife has
nothing to do with this situation at
Plantation Federal, but our tax returns
are joint. Just want to be clear on the
process. Thanks. Chet

From: Chet
Crockett [mailto:chetcroc@aol.com]
Sent: Wednesday, November 16, 2016
2:00 PM To: Tiffany Boyd
Tiffany.Boyd@southstatebank.com
Subject: Personal Financial Statement
and Tax Returns [External] Tiffany, I
hope you are well. I spoke to my tax
guys and they will be emailing me the
2013 and 2014 tax returns. I do
extensions every year, so 2015 was
given an extension until March 2017,
by both the State and the Federal
guys because of the storm and
flooding. So, I will be sending 2013
and 2014 no later than tomorrow. I
will also have the Personal Financial
Statement completed by tomorrow
and sent to you. I also hope to
complete the Hardship Statement, as
well. But, I wanted to get the financial
in your hands ASAP. Is there anything
else you can think of that I should be
focusing on? Thanks so much and
please let me know if you have any
questions. Would love to have some
idea of what this looks like before we
go to Disney for Thanksgiving. This is
certainly weighing on my mind and I
would like to have some closure; or at
least an idea, of where this is going.
You have been much help and very
professional and I appreciate that.
Talk soon. Chet Crockett

From: chetcroc@aol.com
[mailto:chetcroc@aol.com] Sent:
Saturday, November 19, 2016 8:49
PM To: Tiffany Boyd

Tiffany.Boyd@southstatebank.com
Subject: RE: confidential [External]

This message was sent securely using ZixCorp. Tiffany, I hope this weekend finds you well and you are looking forward to a great Thanksgiving. I am attaching all documents that you have requested. Now, I have never done this before. So, I have relied on the advice and counseling of others to guide my responses. I was unfamiliar with most of the terms in your personal financial statement, so I had to have those defined and directed on how to respond. Please tell me if I am off the mark and/or you need more information. I am obviously providing you financials based on me only, and that was a little difficult to extrapolate. But, you did say lets just get this started so we can hopefully arrive at a equitable settlement. That is my hope. So, let me know if I gave you what you need and what else I can provide to make this quick and easy for both of us. Thanks again for your help and consideration and I look forward to hearing from you. Although I am on vacation next week, do not hesitate to call. I am available. Thanks again.

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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CASE NO. 2009-CP-26-05915
APPEAL NO. 2019-001119

Plantation Federal Bank Respondent,

v.

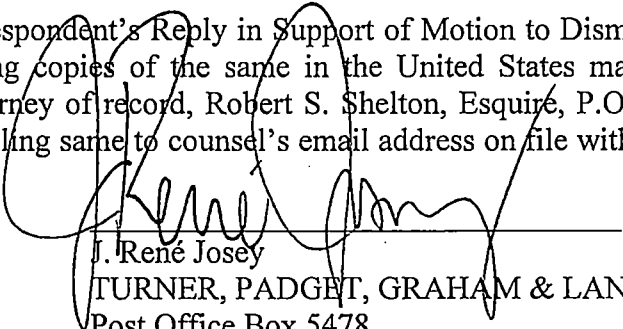
Chester A. Crocket Appellant

and

C&C Development, LLC; Michael Chaffin; Bruce J. Ahmes;
S&D General Contractors, LLC; Col-Cor Industries, Inc.
d/b/a Active Glass and Mirror; First Electric, Inc.; Wallcraft
Construction, Inc. and Carolina Dirt Works, LLC..... Other Defendants.

PROOF OF SERVICE

I certify that I have served Respondent's Reply in Support of Motion to Dismiss Appeal on Chester A. Crocket, by depositing copies of the same in the United States mail, postage prepaid, on July 31, 2019, to its attorney of record, Robert S. Shelton, Esquire, P.O. Box 357, Myrtle Beach, SC 29578 and by emailing same to counsel's email address on file with the South Carolina Bar.



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WRITER'S DIRECT FAX: (843) 413-5818

July 31, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
AUG 02 2019
SC Court of Appeals

Re: Plantation Federal Bank vs. C&C Development LLC
Case No.: 2009-CP-26-05915
Tracking No.: 2019-001119
TPGL File No.: 05930.00465

Dear Ms. Kitchings:

Pursuant to Rule 240(f) SCACR, enclosed for filing is a Respondent's Reply in Support of Motion to Dismiss this appeal presently pending in your court. In accordance with SCACR 240, I am enclosing the original (unbound) and 7 copies of our Reply with supporting exhibits; I ask that one copy be stamped as filed and returned to us in the self-addressed, stamped envelope.

Also enclosed you will find an original Certificate of Service and one additional copy; again I ask that the copy be stamped as filed and returned to us in the self-addressed, stamped envelope.

By copy of this letter to attorney Robert S. Shelton, we are serving Appellant's counsel with this motion, the exhibits, and the certificate of service.

Again, because the underlying judgment in this matter is over 9 years old, we would ask the court to consider this motion at its earliest convenience. We will be happy to appear for oral argument if the court deems that necessary. If anything additional is needed, please let us know.

Sincerely,

TURNER PADGET, GRAHAM & LANEY, P.A.

J. René Josey

JRJ:lp

Enclosures

Cc: Robert S. Shelton, Esquire (w/enclosures)

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Turner Padgett
179 Box 5478, Florence, SC 29502

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SCC

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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