

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

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Case No. 2012-CP-36-00484

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Discover Bank,

Respondent,

v.

Samantha P. Hendrix,

Appellant.

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REPLY BRIEF OF APPELLANT

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**RECEIVED**

AUG 13 2014

**SC Court of Appeals**

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## ARGUMENT

### I. Reply to Discover's First Argument

Discover's argument "Plaintiff Discover Bank followed the S. C. R. C. P. by serving process on defendant's last known address, reported as the defendant's address by defendant, and by credit reporting inquiry, to a person over the age of 18 years, then living in the residence, and related to the defendant" detracts nothing from the disputed issue of fact as argued by Hendrix. Hendrix's argument is that the Trial Court erred granting summary judgment to Discover because a material issue of fact existed as to whether Discover established personal jurisdiction over Hendrix. Therefore, the Court should remand for a factual finding before the Trier of fact.

### II. Reply to Discover's Second Argument

Discover's argument "Defendant timely answered the complaint, making appearance, said appearance in timely answering the complaint, in accordance with Rule 4(d) of the S.C.R.C.P. as described on the notes therein such voluntary appearance is equivalent to personal service", must fail. This argument understood to be that the responsive pleading, namely the answer, waived objection to service or that a special appearance was necessary to assert objection as to personal jurisdiction, is directly addressed in the S.C. Rules of Civil Procedure and is accordingly without merit.

The answer's first defense [R. p. 10] was a S.C.R. Civ. P. 12(b)(2) objection. S.C.R. Civ.

P. 12 provides, *inter alia*, no defense or objection is waived by being joined with one or more defenses or objections and responsive pleading or motion. This is further clarified in the Note to the S.C.R. Civ. P. 12 that provides this important Rule 12(b) enables a party to: (1) raise by motion or answer all of the defense is now raised by demurrer, and (2) eliminates the necessity of the awkward “special appearance subject to jurisdiction” under present state practice. Accordingly, any argument that the appearance by answer that included the objection waived the objection cannot be sustained. Therefore, the court should remand for a factual finding before the Trier of fact.

**III. Reply to Discover’s Third Argument**

Discover’s argument “the trial court did not err in granting summary judgment to Discover because defendant’s answer admitted all the allegations as to the debt and no material issue of fact existed as to whether Defendant owed Discover the amount of the judgment” ignores the material issue of fact as to personal jurisdiction by failure of service of process. While Hendrix does not deny but rather admits the debt is due, the gravamen of Hendrix’s argument is that she denies that the court has jurisdiction to enter judgment that may be executed on by the sheriff because there is no personal jurisdiction since there was not service of process. Therefore, the court should remand for a factual finding before the Trier of fact.

**CONCLUSION**

Discover’s three arguments to sustain the trial court are as follows:

1. Discover served defendant;
2. That even if Discover's service failed to confer jurisdiction, the answer, which included the objection as to personal jurisdiction, waived the objection to personal jurisdiction by failure of service of process on Hendrix; and
3. Hendrix's admission that the debt is due waives any objection to the court's personal jurisdiction.

These three arguments must all fail because:

1. There is a disputed issue of fact as to service of process on Hendrix to confer personal jurisdiction on the court.
2. An objection to jurisdiction is not waived when filed with an answer; and
3. That the due is due does not in and of itself confer jurisdiction on the court.

Therefore, the court should remand to the trial court on the material issue of service of process for personal jurisdiction.

Respectfully submitted,



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May 8, 2014

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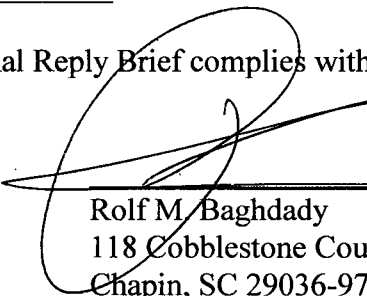
Samantha P. Hendrix,

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief complies with Rule 211(b), SCACR.

August 12, 2014

  
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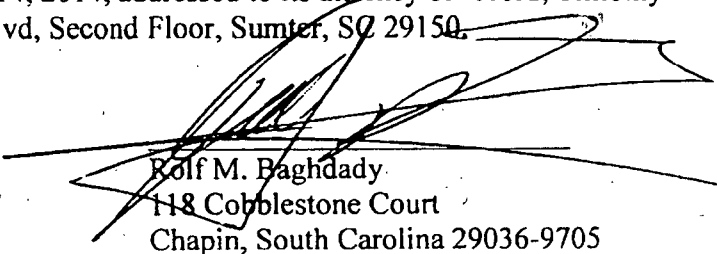
Discover Bank

Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the Brief of Appellant and the Reply Brief of Appellant, on Respondent Discover Bank by depositing a copy of it in the United States Mail, postage prepared, on May 14, 2014, addressed to its attorney of record, Timothy Lee Griffith, 360 W Wesmark Blvd, Second Floor, Sumter, SC 29150.

May 14, 2014

  
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