

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

OCT 25 2019

APPEAL FROM RICHLAND COUNTY S.C. SUPREME COURT
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Order, of the South Carolina Court of Appeals,
filed, April 4, 2019,
(Rehearing Denied, September 27, 2019)

Bernice Scott.....Petitioner,

v.

Wiremonkey, LLC.....Respondent.

APPENDIX

Richard L. Whitt, S.C. Bar #:62895
Jefferson D. Griffith, III, S.C. Bar #:2299
Whitt Law Firm, LLC
401 Western Lane, Suite E
Irmo, South Carolina 29063
(803) 995-7719
Attorneys for Petitioner

Other Counsel of Record:

Mr. Corey Willis,
Wiremonkey, LLC
2126 Woodtrail Drive
Columbia, South Carolina 29212,
Pro Se.

INDEX TO APPENDIX

Record on Appeal:

Because the Appeal was dismissed by the Court of Appeals on procedural grounds, there is no Record on Appeal.

Briefs:

Because the Appeal was dismissed by the Court of Appeals on procedural grounds, there were no Briefs presented.

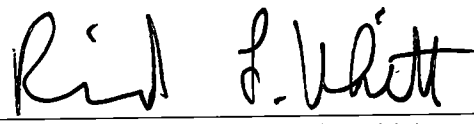
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WHITT LAW FIRM, LLC

By: 
Richard L. Whitt, S.C. Bar #:62895
Jefferson D. Griffith, III, S.C. Bar #:2299
Whitt Law Firm, LLC
401 Western Lane, Suite E
Irmo, South Carolina 29063
(803) 995-7719

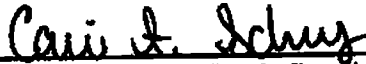
October 24, 2019
Irmo, South Carolina

AUSTIN & ROGERS, P.A.



Richard L. Whitt,
S.C. State Bar #62895
508 Hampton Street, Suite 203
Columbia, South Carolina 29201
(803) 256-4000 Telephone
(803) 252-3679 Facsimile
ATTORNEY FOR PLAINTIFF.

SWORN and subscribed to before me
this 2nd day of November, 2018.



Notary Public for South Carolina
My commission expires: 4-1-21

AFFIDAVIT OF SERVICE



State of South Carolina

County of Richland

Case Number: 2018-CP-40-03021

Plaintiff:
Bernice G. Scott

vs.

Defendant:
Wiremonkey, LLC

For:
Austin & Rogers, P.A.
508 Hampton Street, Suite 300
Columbia, SC 29201

Received by John Adams & Associates to be served on Wiremonkey, LLC, 2126 Woodtrail Drive, Columbia, SC 29212.

I, Thomas Galney, being duly sworn, depose and say that on the 19th day of July, 2018 at 7:00 am, I:

Substitute Served by leaving a true copy of this SUMMONS AND COMPLAINT with the date and hour of service endorsed thereon by me, at the within named person's usual place of business, to a person employed therein to wit: Corey Willis as Owner and informing said person of the contents thereof.

I certify that I am over the age of 18, have no interest in the above action, and am a Process Server, in good standing, in the judicial circuit in which the process was served.

Subscribed and Sworn to before me on the 21st day of July, 2018 by the affiant who is personally known to me.

NOTARY PUBLIC Exp. Date: 3/31/21

Thomas Galney
Process Server

John Adams & Associates
P.O. Box 1070
Elgin, SC 29045
(803) 600-7722

Our Job Serial Number: MCK-2018000299

ELECTRONICALLY FILED - 2018 Nov 05 9:35 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4003021
ELECTRONICALLY FILED - 2018 Jul 26 10:09 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4003021



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT FOR THE
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2018-CP-40-03021

Bernice G. Scott,

Plaintiff,

vs.

**COMPLAINT
(Jury Trial Demanded)**

Wiremonkey, LLC,

Defendant.

Now Comes the Plaintiff, Bernice G. Scott, (hereinafter as, "Ms. Scott"), complaining of the Defendant Wiremonkey, LLC (hereinafter as, "Wiremonkey" or "Defendant"), as follows:

PARTIES AND JURISDICTION

1. Plaintiff Ms. Scott is a citizen and resident of Richland County, South Carolina.
2. Defendant, Wiremonkey, LLC is a Limited Liability Company registered with the South Carolina Secretary of State's Office authorized to conduct business in the State of South Carolina, conducting business in Richland County, South Carolina.
3. The acts complained about herein, occurred in Richland County, South Carolina.
4. Therefore, venue and jurisdiction are proper in the Richland County Court of Common Pleas, for the Fifth Judicial Circuit.

COURSE AND PATTERN OF DEALINGS

5. Paragraphs one through four above, are re-alleged, as if set forth verbatim.
6. Plaintiff, Ms. Scott attempted to purchase services from the Defendant.
7. Plaintiff, Ms. Scott paid \$2,250.00, to Defendant as partial payment for the services to be delivered.
8. Defendant accepted the Plaintiff's payment of \$2,250.00, but Defendant failed to provide the services to Plaintiff, Ms. Scott. In fact, Defendant's representative damaged property of the Plaintiff, Ms. Scott and Defendant's representatives caused property of Ms. Scott to become inoperable. The partial work that was completed by Defendant was not done in a timely, workmanlike and commercially reasonable manner.

ELECTRONICALLY FILED - 2018 Nov 05 9:35 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4003021
ELECTRONICALLY FILED - 2018 Jun 08 12:46 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4003021

FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANT, WIREMONKEY, LLC
(Violation of Unfair Trade Practices Act)
(Section 39-5-10, *et seq.*)

9. Paragraphs one through eight are re-alleged here as if set forth verbatim.
10. The Acts alleged hereinabove, are in violation of the South Carolina Unfair Trade Practices Act.
11. The unfair and deceptive Acts of Defendant complained of herein, affected the public interest. The unfair and deceptive Acts of Defendant complained of herein, are unfair and deceptive and affect the trade and commerce of the State of South Carolina and the Company's procedures create a potential repetition of the unfair and deceptive acts alleged. Furthermore the deceptive Acts of Defendant caused Plaintiff Ms. Scott to suffer a monetary loss as a result of the Defendant's unfair and deceptive Acts. Specifically, Defendant, Wiremonkey, LLC's (i) failure to comply with South Carolina Code Section 39-5-10, *et seq.*, and (ii) failure to complete the services in a timely, workmanlike and commercially reasonable manner, which actions are violations of the Unfair Trade Practices Act.
12. Plaintiff, Ms. Scott was proximately damaged by Defendant's unlawful Acts and Plaintiff, Ms. Scott directly incurred an ascertainable loss of money as a result of Defendant's unfair trade practices and Plaintiff, Ms. Scott is entitled to recover under the Act and Plaintiff, Ms. Scott has suffered a loss of money and Plaintiff, Ms. Scott is entitled to direct damages, incidental damages, consequential damages and special damages including to (i) purchase replacement services (ii) incur the cost installation of the services, a second time and (iii) incur the expense of attorney's fees to remedy the Defendant's unlawful acts.
13. Plaintiff, Ms. Scott has suffered a loss of money and Plaintiff, Ms. Scott's damages are cognizable and ascertainable and Plaintiff, Ms. Scott was proximately damaged by the actions described hereinabove. Plaintiff, Ms. Scott is entitled to receive treble damages of three times Plaintiff, Ms. Scott's base damages of \$2,250.00, plus a reasonable attorney's fee of \$500.00, the filing fee of \$150.00 for a total damages to be received by Defendant of \$7,400.00.

DEMAND FOR JURY TRIAL

14. Paragraphs one through thirteen are re-alleged here as if set forth verbatim.
15. Plaintiff Ms. Scott demands that Plaintiff's claims, be tried before a jury.

PRAYER FOR DAMAGES

WHEREFORE, Plaintiff is entitled to actual, punitive and consequential damages and additional, special damages and a Judgment as follows:

FOR A FIRST CAUSE OF ACTION against Defendant Wiremonkey, LLC, Plaintiff, Ms. Scott is entitled to receive treble damages of three times Plaintiff, Ms. Scott's base damages of \$2,250.00, plus a reasonable attorney's fee of \$500.00, the filing fee of \$150.00 for a total damages to be received by Defendant of \$7,400.00.; and

**FOR SUCH OTHER AND FURTHER RELIEF AS THIS COURT DEEMS
JUST AND APPROPRIATE.**

AUSTIN & ROGERS, P.A.

/s/ Richard L. Whitt,
Richard L. Whitt, S.C. Bar 62895
Jefferson D. Griffith, III,
508 Hampton Street, Suite 203
Columbia, South Carolina 29201
(803) 251-7442
(803) 252-3679 facsimile
Attorneys for Plaintiff, Bernice G. Scott.

June 8, 2018
Columbia, South Carolina

Carrie Schurg

From: corey willis <wiremonkey29212@gmail.com>
Sent: Wednesday, October 17, 2018 3:06 PM
To: Carrie Schurg
Cc: Richard Whitt
Subject: Re: TIME SENSITIVE///Bernice Scott v. Wiremonkey- 2018-CP-40-03021

Yes, I accept.

On Wed, Oct 17, 2018 at 2:42 PM Carrie Schurg <caschurg@austinrogerspa.com> wrote:

This email was dictated by Richard Whitt:

Mr. Willis:

Your proposed payment plan is accepted. If you respond to this email and agree as set forth below. If you do not respond, we will not accept any more partial payments.

1. You bring a payment of \$500, to Austin & Rogers, P.A. by the close of business, Friday, October 19, 2018.
2. You respond and agree that you will pay the remaining balance of \$625.79, within thirty days of the Friday, October 19, 2018, payment.
3. You understand that there will be no further extensions of time to pay and you understand that we will go to the Circuit Court to collect the remaining balance.

Regards,
Richard Whitt.

From: corey willis [mailto:wiremonkey29212@gmail.com]
Sent: Tuesday, October 16, 2018 11:14 AM
To: Carrie Schurg <caschurg@AustinRogersPA.com>
Subject: Re: TIME SENSITIVE///Bernice Scott v. Wiremonkey- 2018-CP-40-03021

A \$500.00 PAYMENT will be provided to you by end of the week. Please advise if this is acceptable.

STATE OF SOUTH CAROLINA)	IN THE CIRCUIT COURT FOR THE
COUNTY OF RICHLAND)	FIFTH JUDICIAL CIRCUIT
)	
)	Civil Action No.: 2018-CP-40-03021
Bernice G. Scott,)	
)	NOTICE OF ENTRY OF DEFAULT
)	(Rule 55(a) SCRCP)
vs.)	
)	
Wiremonkey, LLC,)	
)	
)	
)	
)	

It appears from the Affidavit of Default by Counsel, with three Exhibits, and the Pleadings in this matter, that the Plaintiff's Summons and Complaint was properly served on Defendant and that no responsive pleading was filed by the Defendant. Plaintiff herein is therefore entitled, pursuant to Rule 55(a) of the South Carolina Rules of Civil Procedure, to an Entry of Default on Plaintiff's Complaint against the Defendant.

THEREFORE, IT IS ORDERED, that the Plaintiff receive an Entry of Default as to Plaintiff's Complaint against the Defendant.

AND IT IS SO ORDERED.

[Signature Page Follows]

Notice of Entry of Default
November 7, 2018
Page 2 of 2

The Honorable Robert E. Hood

November _____, 2018
_____, South Carolina

ELECTRONICALLY FILED - 2018 Nov 08 11:11 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4003021



Richland Common Pleas

Case Caption: Bernice G Scott vs Wiremonkey Llc
Case Number: 2018CP4003021
Type: Order/Entry of Default

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2018-11-08 10:35:38 page 3 of 3

Your Honor's Decision of December 5, 2018 - Case No. 2018CP4003021

Carrie Schurg </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9B42BC86DB9A433593A0CD9035749F7B-CASCHURG>

Thu 12/6/2018 11:26 AM

To: rhoodsc@sccourts.org <rhoodsc@sccourts.org>

Cc: Hood, Robert E. Law Clerk (Catherine Ortmann) <rhoodlc@sccourts.org>; corey willis <wiremonkey29212@gmail.com>

📎 1 attachments (40 KB)

form 4_2018120610555400.pdf;

This email was dictated by Richard Whitt:

Judge Hood:

1. I represent the Plaintiff, Bernice G. Scott in Case No. 2018-CP-40-03021. The Defendant is *pro se*, and is copied hereon.
2. Your Honor issued a decision yesterday in this case, (please see attached, for Your Honor's ready-reference).

"The amount claimed is within the concurrent jurisdiction of the Magistrate's Court under S.C. Code Ann. § 22-3-10 (damages claimed under \$7500).

Therefore, **this case is remanded to magistrate's court** for disposition and hereby removed from the common pleas docket." (emphasis not in original).

3. This case has never been in magistrate's court. Plaintiff, Ms. Scott paid the filing fee in Circuit Court and filed this action in Circuit Court. I have always understood that concurrent jurisdiction means a Plaintiff can file in the Court of his/her choice.
4. Procedurally, this case was at the last step in Circuit Court, the issuance of a Judgment by Default, because Your Honor had earlier issued an Order for Entry of Default on November 8, 2018.
5. I am not sure that magistrate's Court has the same procedure of Application for Entry of Default, Entry of Default, waiting period and Application for Judgment by Default. Also, if the magistrate's Court would charge us another filing fee, and/or understand the posture of the case.
6. Please advise if this information changes Your Honor's decision, and this email is,

Respectfully Submitted,
Richard L. Whitt,
As Counsel for Plaintiff, Bernice G. Scott.

RE: Your Honor's Decision of December 5, 2018 - Case No. 2018CP4003021

Hood, Robert E. Secretary (Jeanne-Marie Bolin) <rhoodsc@sccourts.org>

Thu 12/6/2018 12:44 PM

To: Carrie Schurg <caschurg@AustinRogersPA.com>

Cc: Hood, Robert E. Law Clerk (Catherine Ortmann) <rhoodlc@sccourts.org>; corey willis <wiremonkey29212@gmail.com>; GUNTER.PAUL@richlandcountysc.gov <GUNTER.PAUL@richlandcountysc.gov>

Good Afternoon,

The Order for Judgement by Default was filed for the damages amount of \$900. The case is remanded to Magistrate Court for the damages amount being under \$7,500. Richland County common pleas has removed it from the docket. There is no change is The Honor's decision. Thank you.

Jeanne-Marie S. Bolin

Jeanne-Marie S. Bolin
 Administrative Assistant
 Honorable Robert E. Hood
 SC Fifth Judicial Circuit
 Post Office Box 192
 1701 Main Street, Room 222
 Columbia, S.C. 29202-0192
 Phone: 803.576.1770
 Fax: 803.576.1772

From: Carrie Schurg <caschurg@AustinRogersPA.com>

Sent: Thursday, December 6, 2018 11:26 AM

To: Hood, Robert E. Secretary (Jeanne-Marie Bolin) <rhoodsc@sccourts.org>

Cc: Hood, Robert E. Law Clerk (Catherine Ortmann) <rhoodlc@sccourts.org>; corey willis <wiremonkey29212@gmail.com>

Subject: Your Honor's Decision of December 5, 2018 - Case No. 2018CP4003021

This email was dictated by Richard Whitt:

Judge Hood:

1. I represent the Plaintiff, Bernice G. Scott in Case No. 2018-CP-40-03021. The Defendant is *pro se*, and is copied hereon.
2. Your Honor issued a decision yesterday in this case, (please see attached, for Your Honor's ready-reference).

“The amount claimed is within the concurrent jurisdiction of the Magistrate's Court under S.C. Code Ann. § 22-3-10 (damages claimed under \$7500).

Therefore, **this case is remanded to magistrate's court** for disposition and hereby removed from the common pleas docket.” (emphasis not in original).

3. This case has never been in magistrate's court. Plaintiff, Ms. Scott paid the filing fee in Circuit Court and filed this action in Circuit Court. I have always understood that concurrent jurisdiction means a Plaintiff can file in the Court of his/her choice.

Appendix pg. 12

4. Procedurally, this case was at the last step in Circuit Court, the issuance of a Judgment by Default, because Your Honor had earlier issued an Order for Entry of Default on November 8, 2018.
5. I am not sure that magistrate's Court has the same procedure of Application for Entry of Default, Entry of Default, waiting period and Application for Judgment by Default. Also, if the magistrate's Court would charge us another filing fee, and/or understand the posture of the case.
6. Please advise if this information changes Your Honor's decision, and this email is,

Respectfully Submitted,
Richard L. Whitt,
As Counsel for Plaintiff, Bernice G. Scott.

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.



**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

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ELECTRONICALLY FILED - 2018 Dec 05 2:17 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4003021



**Richland Common Pleas**

**Case Caption:** Bernice G Scott vs Wiremonkey Llc  
**Case Number:** 2018CP4003021  
**Type:** Order/Electronic Form 4

**So Ordered**

**s/ R.E. Hood #2164**

Electronically signed on 2018-12-05 14:11:16 page 3 of 3

ELECTRONICALLY FILED - 2018 Dec 05 2:17 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4003021

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

---

Civil Action No. 2018-CP-40-03021

---

Bernice G. Scott.....Plaintiff/Appellant,

v.

Wiremonkey, LLC.....Defendant/Respondent.

---

**NOTICE OF APPEAL**

---

Plaintiff, Bernice G. Scott, appeals the Order of the Honorable Robert E. Hood and the Court's Order was received by the Plaintiff/Appellant on December 5, 2018, (Form "4" Order attached hereto as Exhibit "A").

The Court's Order was issued as a result of a procedural request and no Hearing was conducted and no Transcript will be ordered.

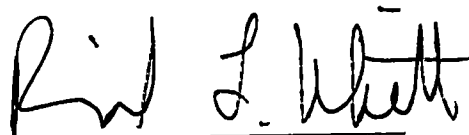
Based on date of the Plaintiff/Appellant's receipt of the Court's decision on December 5, 2018 Plaintiff/Appellant's Notice of Appeal is timely filed.

**[Signature Page Follows]**

**Other Counsel of Record:**

Mr. Corey Willis,  
Wiremonkey, LLC  
2126 Woodtrail Drive  
Columbia, South Carolina 29212  
*Pro Se*

**AUSTIN & ROGERS, P.A.**



Richard L. Whitt, S.C. Bar #: 62895  
Jefferson D. Griffith, III, S.C. Bar #: 2299

**AUSTIN & ROGERS, P.A.**

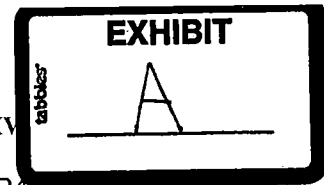
508 Hampton Street, Suite 203  
Columbia, South Carolina 29211

Phone: (803) 256-4000

Fax: (803) 252-3679

**As Counsel for Plaintiff/Appellant**

December 12, 2018  
Columbia, South Carolina



Bernice G Scott  
PLAINTIFF(S)

Wiremonkey Llc  
DEFENDANT(S)

**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
- STAYED DUE TO BANKRUPTCY**
- 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:

The amount claimed is within the concurrent jurisdiction of the Magistrate's Court under S.C. Code Ann. § 22-3-10 (damages claimed under \$7500). Therefore, this case is remanded to magistrate's court for disposition and hereby removed from the common pleas docket.

**ORDER INFORMATION**

This order  ends  does not end the case.

See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/05/2018 .

Wiremonkey Llc

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---



Richland Common Pleas

**Case Caption:** Bernice G Scott vs Wiremonkey Llc  
**Case Number:** 2018CP4003021  
**Type:** Order/Electronic Form 4

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2018-12-05 14:11:16 page 3 of 3

ELECTRONICALLY FILED - 2018 Dec 05 2:17 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4003021



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

December 21, 2018

Mr. Richard Lee Whitt, Esquire  
PO Box 11716  
Columbia SC 29211

Mr. Jeff D. Griffith, III, Esquire  
Austin Rogers  
PO Box 11716  
Columbia SC 29211

Wiremonkey, LLC  
Corey Willis  
2126 Woodtrail Drive  
Columbia SC 29212

Re: Bernice Scott v. Wiremonkey, LLC  
Appellate Case No. 2018-002198

Dear Counsel:

This Court has received your notice of appeal. A preliminary review of the order(s) challenged on appeal indicates it might not be immediately appealable.

Accordingly, it is requested that you serve and file a memorandum addressing the issue of appealability within ten (10) days of the date of this letter. The time limits for perfecting the appeal are held in abeyance pending the Court's consideration of the memoranda.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

---

Appellate Case No. 2018-002198

---

Bernice G. Scott.....Plaintiff/Appellant,

v.

Wiremonkey, LLC.....Defendant/Respondent.

---

PLAINTIFF/APPELLANT'S MEMORANDUM OF LAW

---

Richard L. Whitt, S.C. Bar #: 62895,  
Jefferson D. Griffith, III, S.C. Bar #: 2299,  
**AUSTIN & ROGERS, P.A.**  
508 Hampton Street, Suite 203  
Columbia, South Carolina 29201  
(803) 251-7442  
**Attorneys for Plaintiff/Appellant.**

**RECEIVED**

JAN 02 2019

**SC Court of Appeals**

**Other Counsel of Record:**

Mr. Corey Willis,  
Wiremonkey, LLC  
2126 Woodtrail Drive  
Columbia, South Carolina 29212  
*Pro Se*

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## TABLE OF AUTHORITIES

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| <u>Johnson v. Spartanburg County School D. 7</u> , 444 SE 2d 501 (1994).....     | 6 |
| <u>Lester v. Dawson</u> , 327 S.C. 263, 266, 491 S.E. 2d 240, 241<br>(1997)..... | 6 |
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### **OTHER AUTHORITY**

|                                                        |   |
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| Black's Law Dictionary (6 <sup>th</sup> Ed. 1990)..... | 6 |
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## INTRODUCTION

Plaintiff/Appellant's counsel received correspondence from the Honorable Jenny Abbott Kitchings, dated December 21, 2018, requesting that the parties in this Appeal serve and file a Memorandum addressing the issue of appealability. Plaintiff/Appellant's Memorandum of Law follows.

## FACTS

The Lower Court's Order was immediately appealable, because the Lower Court's Order affected the "mode and manner" of Trial for Plaintiff/Appellant. Plaintiff/Appellant's case was begun and filed in Circuit Court and after a Default by the Defendant/Respondent, Plaintiff/Appellant's counsel applied to the Lower Court Judge for a Judgment by Default to complete the Default process in Circuit Court. The same Lower Court Judge had previously granted Plaintiff/Appellant an "Entry of Default" in this action on November 8, 2018. After an appropriate delay to allow for the Defendant/Respondent to seek relief from that Entry of Default, which did not occur, Plaintiff/Appellant's counsel sought a Judgment by Default. The Lower Court Judge then, *sua sponte* issued an Order on December 5, 2018, "remanding" Plaintiff/Appellant's case to the Magistrate's Court, although the case had never been in Magistrate's Court, at any time. On December 6, 2018, Plaintiff/Appellant's counsel objected to the Lower Court's action and Plaintiff/Appellant was notified by the Lower Court's staff that the Plaintiff/Appellant's objection was denied on the same date. The Lower Court Judge then apparently sent Plaintiff/Appellant's case to Circuit Court to a random Magistrate's office, not located near the Plaintiff/Appellant's residence.

## LEGAL ARGUMENT

The Lower Court's *sua sponte* Order changed and affected the "mode and manner"<sup>1</sup> of Plaintiff/Appellant's Trial and affected a substantial right of Plaintiff/Appellant and therefore the Lower Court's Order was immediately appealable. Lester v. Dawson, 327 S.C. 263, 266, 491 S.E. 2d 240, 241 (1997); e.g., Foggie v. CSX Transp., Inc., 431 SE 2d 587 (1993), "Issues regarding mode of trial must be raised in the trial court at the first opportunity, and the order of the trial judge is immediately appealable." Foggie supra, at 590.

Not only was the Lower Court's Order immediately appealable, the Lower Court's Order was required by South Carolina Law to be immediately appealed. If Plaintiff/Appellant had not immediately appealed the Lower Court's Order, Plaintiff/Appellant's right to Appellate review, would have been barred forever. Cobb v. South Carolina Dept. of Transp., 618 SE 2d 299 (2005). Lester, 327 S.C. at 266, 491 S.E. 2d at 241 (citing Foggie, 313 S.C. at 103, 431 S.E.2d at 590).

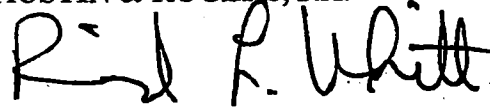
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<sup>1</sup>"Legislative words are to be given their plain and ordinary meaning. Smith v. Eagle Constr. Co., 282 S.C. 140, 318 S.E.2d 8 (1984). 'Manner' is defined as '[a] way, mode, method of doing anything, or mode of proceeding in any case or situation.' BLACK'S LAW DICTIONARY at 868. (6th Ed.1990).'" (Emphasis not in original). Dissent of Moore and Chandler JJ., Johnson v. Spartanburg County School D. 7, 444 SE 2d 501 (1994).

**CONCLUSION**

Because the Lower Court's sua sponte Order affected a substantial right of the Plaintiff/Appellant and the Lower Court's Order affected the "mode and manner" of Plaintiff/Appellant's case, the Lower Court's Order was immediately appealable and furthermore the Lower Court's Order was required to be immediately appealed.

**AUSTIN & ROGERS, P.A.**



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Jefferson D. Griffith, III, S.C. Bar #: 2299  
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**As Counsel for Plaintiff/Appellant.**

January 2, 2019  
Columbia, South Carolina

**RECEIVED**

**JAN 02 2019**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

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Appellate Case No. 2018-002198

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**RECEIVED**  
APR 15 2019  
SC Court of Appeals

Bernice G. Scott..... Appellant,

v.

Wiremonkey, LLC..... Respondent.

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**APPELLANT'S PETITION FOR REHEARING**

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*Pro Se*

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## INTRODUCTION

Appellant's counsel received correspondence from the Honorable Jenny Abbott Kitchings, dated December 21, 2018, requesting that the parties in this Appeal serve and file a Memoranda addressing the issue of appealability within 10 days of Ms. Kitchings' correspondence. Appellant's Memoranda of Law was filed and served on **January 2, 2019** and there was no Return from the Respondent. Thereafter, this Court issued its Order filed on April 4, 2019, finding that Appellant's Appeal was not immediately appealable. Appellant's Petition for Rehearing follows.

## FACTS

The Lower Court's Order was immediately appealable, because the Lower Court's Order affected the "mode and manner" of Trial for Plaintiff/Appellant. Plaintiff/Appellant's case was begun and filed in Circuit Court and after a Default by the Defendant/Respondent in Circuit Court, Plaintiff/Appellant's counsel applied to the Lower Court Judge for a Judgment by Default to complete the Default process in Circuit Court. The same Lower Court Judge had previously granted Plaintiff/Appellant an "Entry of Default" in this action on November 8, 2018. After an appropriate delay to allow for the Defendant/Respondent to seek relief from that Entry of Default, which did not occur, Plaintiff/Appellant's counsel sought a Judgment by Default. The Lower Court Judge then, *sua sponte* issued an Order on December 5, 2018, "remanding" Plaintiff/Appellant's case to the Magistrate's Court, although the case had never been in Magistrate's Court, at any time. On December 6, 2018, Plaintiff/Appellant's counsel objected to the Lower Court's action and Plaintiff/Appellant was notified by the Lower Court's staff that the Plaintiff/Appellant's objection was denied on the same date. The Lower Court Judge then apparently sent Plaintiff/Appellant's case to Circuit Court to a random Magistrate's office, not located near the Plaintiff/Appellant's residence.

## ARGUMENT FOR REHEARING

This Court overlooked or misapprehended the Law in South Carolina that an Order affecting “mood and manner” is immediately appealable and furthermore, that if an Order is immediate appealable, that Order must be immediately appealed or any right to appellate review, is barred forever.

Specifically, The Lower Court’s *sua sponte* Order changed and affected the “mode and manner”<sup>1</sup> of Plaintiff/Appellant’s Trial and affected a substantial right of Plaintiff/Appellant and therefore the Lower Court’s Order was immediately appealable. Lester v. Dawson, 327 S.C. 263, 266, 491 S.E. 2d 240, 241 (1997); e.g., Foggie v. CSX Transp., Inc., 431 SE 2d 587 (1993), “Issues regarding mode of trial **must be raised in the trial court at the first opportunity**, and the order of the trial judge is immediately appealable.” Foggie supra, at 590, (emphasis not in original).

Not only was the Lower Court’s Order immediately appealable, the Lower Court’s Order was required by South Carolina Law to be immediately appealed. If Plaintiff/Appellant had not immediately appealed the Lower Court’s Order, Plaintiff/Appellant’s right to Appellate review, would have been barred forever. Cobb v. South Carolina Dept. of Transp., 618 SE 2d 299 (2005). Lester, 327 S.C. at 266, 491 S.E. 2d at 241 (citing Foggie, 313 S.C. at 103, 431 S.E.2d at 590).

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<sup>1</sup>“Legislative words are to be given their plain and ordinary meaning. Smith v. Eagle Constr. Co., 282 S.C. 140, 318 S.E.2d 8 (1984). ‘Manner’ is defined as ‘[a] way, mode, method of doing anything, **or mode of proceeding in any case or situation.**’ BLACK’S LAW DICTIONARY at 868. (6th Ed.1990).” (Emphasis not in original). Dissent of Moore and Chandler JJ., Johnson v. Spartanburg County School D. 7, 444 SE 2d 501 (1994).

CONCLUSION

Based on the foregoing, this Court should rehear the issue of appealability and find that because (i) the Lower Court's *sua sponte* Order affected the "mode and manner" of Appellant's case, the Lower Court's Order was immediately appealable and (ii) furthermore, South Carolina Law requires that the Lower Court's Order be immediately appealed. Appellant's Appeal should proceed as originally filed.

**AUSTIN & ROGERS, P.A.**



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**As Counsel for Appellant/Petitioner.**

April 15, 2019  
Columbia, South Carolina

# The South Carolina Court of Appeals

Bernice Scott, Appellant,

v.

Wiremonkey, LLC, Respondent.

Appellate Case No. 2018-002198

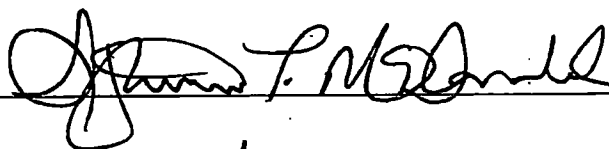
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## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

 J.

Columbia, South Carolina

cc:

Richard Lee Whitt, Esquire  
Jeff D. Griffith, III, Esquire  
Wiremonkey, LLC

**FILED**

September 27, 2019

# The South Carolina Court of Appeals

Bernice Scott, Appellant,

v.

Wiremonkey, LLC, Respondent.

Appellate Case No. 2018-002198

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## ORDER

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Appellant has served and filed a notice of appeal from an order of the circuit court remanding the case to the magistrate's court because the amount claimed was within the concurrent jurisdiction of the magistrate's court pursuant to S.C. Code Ann. § 22-3-10 (2007). Because the order on appeal is not immediately appealable, this appeal is dismissed. *See* S.C. Code Ann. § 14-3-330 (2017). The remittitur will be sent as required by Rule 221(b), SCACR.

  
FOR THE COURT

Columbia, South Carolina

cc:

Richard Lee Whitt, Esquire  
Jeff D. Griffith, III, Esquire  
Wiremonkey, LLC

**FILED**

April 4, 2019