THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Doyet A. Early III, Circuit Judge

Appellate Case No. 2018-002068

Wells Fargo Bank, N.A.,...Respondent,

v.

Michael G. Morgan; Margaret H. Fitch, M.D.; Eric J. Olig; South Carolina Department of Revenue; Linda Lawrence Bowen; Defendants,

Of whom Michael G. Morgan is the...Appellant.

FINAL REPLY BRIEF OF APPELLANT

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STATEMENT OF ISSUES

I. **Where the case had been referred to the master-in-equity and there were no matters pending before a circuit judge, is that circuit judge's order purporting to rule on an already adjudicated motion void?**

II. **Did the circuit court commit reversible error in dismissing Appellant's counterclaim for violation of S.C. Code Ann. § 37-10-102 coupled with unconscionability?**

III. **Did the circuit court commit reversible error in determining the statute of limitations in S.C. Code Ann. § 37-10-105(A) barred Appellant's counterclaim?**

IV. **Did the circuit judge commit reversible error in basing his decision to grant Respondent's motion to dismiss on unpublished opinions?**

V. **Did the circuit judge commit reversible error in applying the heightened pleading standard for fraud where Appellant did not, and was not attempting to, plead a fraud claim?**

VI. **Did the circuit court err in dismissing Appellant's counterclaim with prejudice and not allowing him an opportunity to amend?**

ARGUMENT

I. There is simply no procedure that allows for the November 2 order, and that order is a nullity.

The Respondent, Wells Fargo Bank, N.A. (hereinafter "Wells Fargo"), seems to imply that the November 2 order was issued under Rule 59(d), SCRCP. A look at the text of that rule reveals that it is impossible that the November 2 order fell within the scope of the rule.

> **(d) On Initiative of Court.** Not later than 10 days after entry of judgment, the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

Rule 59(d), SCRCP.

The applicable point in time concerning any action taken or argued to be taken in this case under Rule 59, SCRCP, is August 24, 2018, the date of the entry of the order that granted Wells Fargo's motion to dismiss. (R. pp. 1-10.) Notice of the entry of *that* order is what started the Rule 59 clock. All the applicable Rule 59 timelines in this case ran from that date.

Rule 59(d) – indeed, all of Rule 59, SCRCP – applies to motions directed at judgments. The timeframes of Rule 59 do not apply anew to a ruling on a Rule 59 motion, unless that ruling creates a new judgment. See Elam v. S.C. Dept. of Transp., 361 S.C. 9, 14-25, 602 S.E.2d 772 (2004). The August 24 order is the only order in this case that is a judgment, a "decree or order which dismisse[d] the action as to any party or finally determine[d] the rights of any party[,]" Rule 54(a), SCRCP, since it

rendered judgment against the Appellant (hereinafter "Morgan") on his counterclaim. Link v. Sch. Dist. of Pickens County, 302 S.C. 1, 4 fn. 2, 393 S.E.2d 176, 178 fn. 2 (1990) (order that ends one of several claims in a case but leaves other claims pending is a judgment); Lebovitz v. Mudd, 289 S.C. 476, 479, 347 S.E.2d 94, 96 (1986) (same); (R. pp. 1-10). The October 29 order granting Morgan's motion to reconsider was not a judgment – it did not finally determine any party's rights on any claim, in whole or in part; it just turned the grant of a motion to dismiss into the denial of one. Rule 54(a), SCRCP; Huntley v. Young, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995) (denial of motion to dismiss decides nothing); McLendon v. S.C. Dept. of Hwys. & Pub Transp., 313 S.C. 525, 443 S.E.2d 539 (1994) (same); Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 334-35, 426 S.E.2d 777, 780 (1993) (same); (R. pp. 11-16).

The October 29 order granting the motion to reconsider was *itself* an order ruling on a Rule 59 motion. (R. pp. 11-16.) The August 24 order granting Wells Fargo's motion to dismiss came down, and the judge who issued it let his ten days to modify it on his own initiative run without doing so. Rule 59(d), SCRCP; (R. pp. 1-10). The only person involved who timely made a Rule 59 motion was Morgan. (R. pp. 82-88.) When the judge acted on Morgan's Rule 59 motion by granting it, the Rule 59 proceedings were all over. (R. pp. 11-16.) There is no rule in our Rules of Civil Procedure that permits a judge to rule on the same Rule 59 motion twice, nor is there one that allows him to modify his ruling on a Rule 59 motion – not on the underlying order that rendered judgment – on his own initiative. Rule 59, SCRCP.

There is simply no procedure under our law that allows an order like the November 2 order in this case. As discussed above, there is no such procedure under Rule 59, SCRCP. The November 2 order does not fall within the scope of Rule 60(a), SCRCP, which only allows correction of a "clerical error" – "a mistake in writing or copying[,]" previously characterized in one of this court's opinions as a "typo" – *in* an order that renders judgment. Dion v. Ravenel, Eiserhardt Assocs., 316 S.C. 226, 230, 449 S.E.2d 251, 253 (Ct. App. 1994). Rule 60(a) does not permit a change to the substance of an order. Ex parte Strom, 343 S.C. 257, 264, 539 S.E.2d 699 (2000); Otten v. Otten, 287 S.C. 166, 167, 337 S.E.2d 207, 208 (1985); Ex parte S.C. Dept. of Revenue, 350 S.C. 404, 408 n. 1, 566 S.E.2d 196 (Ct. App. 2002); Dion, 316 S.C. at 229-30. Since the November 2 order reaches a completely different substantive decision from the October 29 order and does not even purport to correct a clerical error in the October 29 order, it cannot be an order issued under Rule 60(a). (R. pp. 11-17.) In addition, whether the November 2 order was filed during the same term of court as the October 29 order is simply of no moment. Whether a judge took action to change a ruling during the same term of court was important at one time, but now Rule 59(f), SCRCP, provides that "[t]he time within which to make the motions under this Rule shall not be affected by the ending of a term of court or departure of the judge from the circuit[.]"

There is just no procedure that allows for the November 2 order.

Wells Fargo also seems to contend that the Aiken County Clerk of Court erroneously filed the October 29 order. The Aiken County Clerk of Court did not do that. (R. pp. 16, 142.) As page 6 of that order itself shows, it was electronically signed

and filed by Judge Early. (R. p. 16); see Rule 6(a), South Carolina Electronic Filing Policies and Guidelines. The notice of electronic filing for the October 29 order also shows the order was filed by Judge Early. (R. p. 142.) The November 2 order, by contrast, was filed by one Shadell Parks. (R. p. 144.)

Wells Fargo contends that the November 2 order "reflected the will of the Circuit Court" (Respondent's Initial Brief p. 13); however, that is, at best, only an inference that Wells Fargo has drawn from an email message sent by the circuit judge's law clerk, not even by the circuit judge. (R. p. 145.) Under South Carolina law, though, an order is "construed like other written instruments[,]" and, "[i]f the language employed is plain and unambiguous, there is no room for construction or interpretation, and the effect thereof must be declared in the light of the literal meaning of the language used." Weil v. Weil, 299 S.C. 84, 90, 382 S.E.2d 471 (Ct. App. 1989) (quoting 46 Am.Jur.2d Judgments § 73 (1969); 49 C.J.S. Judgments § 436 (1947)). When an order's language is unambiguous, the inquiry about its meaning ends with the language of the order and does not extend to attempts to divine the issuing court's intent from other sources. Id.

The November 2 order is not ambiguous. (R. p. 17.) It simply states that the lower court was denying Morgan's motion to reconsider. (R. p. 17.) Nothing in the record – and certainly not in the November 2 order – contains any statement by the circuit judge, who had already referred the case to the master-in-equity, that he filed the October 29 order by mistake or that he at any point even intended to change the decision rendered in the October 29 order. (R. p. 17.)

Further, even if the circuit judge did file the October 29 order by mistake, that does not mean that it is not a valid order. The effect of an order is determined by the language of the filed order, Weil, 299 S.C. at 90, and, regardless of what he may have meant in his mind, the circuit judge signed and filed an order that granted Morgan's motion to reconsider and referred this case to the master-in-equity. (R. pp. 11-16.) Orders are construed like other written instruments. Weil, 299 S.C. at 90. The language of an unambiguous order declares its meaning, and the inquiry stops there. Id. One of the reasons that a court does not look beyond unambiguous language in an order is because litigants and the public need to be able to rely on what an order states, not what someone, even the judge, might have meant but did not express in the order. Cf. Dion, 316 S.C. at 229-31; Weil, 299 S.C. at 90. Indeed, this court has previously struck down an order made by a circuit judge after the Rule 59 time had expired that purported to change a previous order where the issuing judge believed he must have meant something different from what was in the previous order. Dion, 316 S.C. at 229-31. Because neither the October 29 order nor the November 2 order are ambiguous, "the court is not at liberty to consider [the circuit judge's] secret intentions." Lee v. Univ. of S.C., 407 S.C. 512, 757 S.E.2d 394, 397 (2014) (internal quotation marks omitted). If that means that Judge Early granted a motion to reconsider that he really meant to deny, then, for the health of the law, so be it. Cf. Dion, 316 S.C. at 229-31; Weil, 299 S.C. at 90.

Since the tenth day after the entry of the August 24 order that dismissed Morgan's counterclaim was September 3, Labor Day in 2018, the judge's Rule 59(d) time ran out at the end of the next day, September 4, 2018. Rule 6(a), SCRCP. The

November 2 order was not, as Wells Fargo contends, entered within the ten-day Rule 59(d) period. It was entered 59 days after that period ran. (R. pp. 1-10, 17.) No procedure exists that allows an order like the November 2 order. The November 2 order is just as much a nullity as was the order subject of the Supreme Court's opinion in Leviner v. Sonoco Products Company, 339 S.C. 492, 494, 530 S.E.2d 127 (2000).

II. Wells Fargo advocates an absurd reading of S.C. Code Ann. § 37-10-105(C).

Even while Wells Fargo argues that Morgan should bear full responsibility for his failure to meet the legal obligations of his mortgage, it argues vociferously for a double standard under which it bears no responsibility for its failure to meet its legal obligations to Morgan under S.C. Code Ann. § 37-10-102, the attorney preference statute. This has led Wells Fargo to make arguments that stretch beyond the credible, such as its argument that S.C. Code Ann. § 37-10-105(C) does not apply to violations of S.C. Code Ann. § 37-10-102. (Respondent's Initial brief pp. 10-12.) This argument ignores both the plain language of S.C. Code Ann. § 37-10-105 and legislative intent. The language of S.C. Code Ann. § 37-10-105 plainly states that S.C. Code Ann. § 37-10-105(C) applies, where there is unconscionability, to any violation of Chapter 10 of Title 37 of the South Carolina Code, and S.C. Code Ann. § 37-10-102 is in that chapter.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). When a court interprets a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Id. at 499. "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. If a statute's language is

plain, unambiguous, and conveys a clear meaning[,] the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 580 S.E.2d 100, 105 (2003) (internal citation and quotation marks omitted). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000).

Further, "[i]n construing a statute, [courts] will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature." Lancaster Cty. Bar Ass'n v. S.C. Comm'n on Indigent Defense, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008). South Carolina courts "will not construe a statute in a way which leads to an absurd result or renders it meaningless." Florence Cnty. Democratic Party v. Florence Cnty. Republican Party, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012).

"A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." In re: Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995). "A statute must receive such construction as will make all of its parts harmonize with each other and render them consistent with its general scope and object." Davis v. County of Greenville, 322 S.C. 73, 470 S.E.2d 94 (1996). "Our courts are constrained to avoid a statutory construction that would have the effect of reading a provision out of a statute." Protection & Advocacy for People with Disabilities, Inc. v. Buscemi, 417 S.C. 267, 274, 789 S.E.2d 756, 760 (Ct. App. 2016).

Consonantly, a court is not permitted "[t]o impute an exception that would require us to read language into [a] statute that is not there." First Citizens Bank & Trust Co., Inc. v. Blue Ox, LLC, 422 S.C. 461, 812 S.E.2d 418, 423 (Ct. App. 2018).

Wells Fargo contends that S.C. Code Ann. § 37-10-105(C) can *never* apply to a violation of the attorney preference statute and that "the exclusive remedy for a violation of the Attorney Preference Statute is contained in S.C. Code Ann. § 37-10-105(A)." (Respondent's Initial Brief p. 11.) This would carve out an exception that the General Assembly never wrote into the statute. What S.C. Code Ann. § 37-10-105(A) states, in pertinent part, is that "[n]o debtor may bring an action for a violation of this chapter more than three years after the violation occurred, *except as set forth in subsection (C)*." (Emphasis added.) Subsection C of S.C. Code Ann. § 37-10-105 states that it applies where "the court finds as a matter of law that the agreement or transaction is unconscionable pursuant to Section 37-5-108 at the time it was made, or was induced by unconscionable conduct[.]"

The logical reading of S.C. Code Ann. § 37-10-105(C) with respect to violations of S.C. Code Ann. § 37-10-102 is that, where there has been, say, a failure to ascertain the mortgage loan customer's preference as to his closing attorney, the enhanced remedies of S.C. Code Ann. § 37-10-105(C) apply if the loan being closed, i.e., the only "agreement or transaction" involved, was "unconscionable pursuant to Section 37-5-108 at the time it was made, or was induced by unconscionable conduct[.]" S.C. Code Ann. § 37-10-105(C). That logical, common-sense reading makes much more sense than the absurd, strained interpretation advocated by Wells Fargo. Wells Fargo's argument is that a remedies provision that explicitly applies to violations of Chapter 10

of Title 37 of the South Carolina Code does not apply to a violation of S.C. Code Ann. § 37-10-102, which is in Chapter 10 of Title 37. The General Assembly did not carve out S.C. Code Ann. § 37-10-102 from the applicability of S.C. Code Ann. § 37-10-105(C). To interpret S.C. Code Ann. 37-10-105 as Wells Fargo suggests would be "[t]o impute an exception that would require [this court] to read language into the statute that is not there." First Citizens, 812 S.E.2d at 423.

Wells Fargo's interpretation is not only at odds with the language of S.C. Code Ann. § 37-10-105 but is also at odds with the legislative intention behind the statute. The purpose of the Consumer Protection Code is to protect consumers, and its statutes "shall be liberally construed and applied to promote its underlying purposes and policies." S.C. Code Ann. § 37-1-102(1); accord King v. Am. Gen. Finance, Inc., 386 S.C. 82, 89, 90, 687 S.E.2d 321, 324-26 (2009); Davis v. Nationscredit Fin. Services Corp., 326 S.C. 83, 484 S.E.2d 471 (1997); Camp v. Springs Mtg. Corp., 310 S.C. 514, 426 S.E.2d 304 (1992). This is discussed in more depth in Morgan's appellant's brief. To adopt an interpretation that would read an unwritten exception into S.C. Code Ann. § 37-10-105 to take away a set of potential remedies for a violation of S.C. Code Ann. § 37-10-102 that was accompanied by unconscionability would not promote the Consumer Protection Code's purposes; it would run counter to them.

Wells Fargo's argument that attempts to make a distinction between Morgan's counterclaim and a matter of setoff or recoupment under S.C. Code Ann. § 37-10-105(A) (all an attempt to argue that something is time-barred that is not), is an argument that tries hard to make a distinction without a difference. In 1997, the Supreme Court,

quoting 20 Am.Jur.2d Counterclaim, Recoupment, & Setoff § 88 (1995), observed as follows:

> [T]he general rule concerning the effect of a setoff is that
>
> > a setoff . . . becomes part of a single controversy between the parties, requiring only one verdict and one judgment according to the facts. Generally, if an established setoff or counterclaim is less than the plaintiff's demand, the plaintiff has judgment for the residue only.

Brasington Tile Co. v. Worley, 327 S.C. 280, 286, 491 S.E.2d 244, 247 (1997). The important thing about this passage, for purposes of analyzing Wells Fargo's argument, is that the counterclaim is not treated as though it stops being a counterclaim simply because its effect may be only to reduce the amount of the judgment in favor of the plaintiff. Id.

In 2012, this court noted

> that an award for setoff may exceed the underlying claim. This is correct under Rule 13, SCRCP, which states "[a] counterclaim *may or may not* diminish or defeat the recovery sought by the opposing party. It *may* claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party." (emphasis added [by Court of Appeals]).

Wachovia Bank Nat'l. Ass'n. v. Beane, 397 S.C. 612, 619, 725 S.E.2d 715, 718 (Ct. App. 2012). Consistently with Rule 13, SCRCP, and this court's opinion in Beane, a counterclaim may diminish or defeat the plaintiff's recovery or it may not; however, regardless of whether success on the counterclaim ultimately produces only a setoff or produces a net judgment in favor of the defendant, it is still a counterclaim. Id.

Wells Fargo perhaps makes its least credible contention of all when it "disputes that a foreclosure . . . qualifies as 'debt collection' under S.C. Code Ann. § 37-10-

105(A)." (Respondent's Initial Brief p. 15 n. 6.) The cases of Bartles v. Livingston, 282 S.C. 448, 455, 319 S.E.2d 707 (Ct. App. 1984), and Perpetual Bldg. & Loan Assn. of Anderson v. Braun, 270 S.C. 338, 242 S.E.2d 407 (1978), discuss the creation of the modern South Carolina foreclosure action under Act of 1791 and later acts of the legislature, making a cause of action in which a judgment for the debt and foreclosure by sale of the landowner's equity of redemption are sought in the same suit. Perpetual, 270 S.C. at 341-42; Bartles, 282 S.C. at 455-61. Under this statutory rubric, personal money judgments for the deficiency between the debt amount and the foreclosure sale price are available in mortgage foreclosures. See Perpetual, 270 S.C. at 341-42; Bartles, 282 S.C. at 455-61. Indeed, Wells Fargo demands a deficiency judgment against Morgan in this case. (R. p. 29.) But what Wells Fargo seems to miss about a mortgage foreclosure is that *both* the enforcement of the mortgage to realize the proceeds of the collateral *and* the ability to obtain a personal judgment are *both* processes used to collect money and apply it to debt. See Perpetual, 270 S.C. at 341-42; Bartles, 282 S.C. at 455-61. In *two* ways, a foreclosure action is "an action to collect a debt[.]" S.C. Code Ann. § 37-10-105(A). Accordingly, Morgan and any other defendant who has one can always raise a claim based on a violation of the attorney preference statute in a mortgage foreclosure action as a matter of setoff or recoupment under S.C. Code Ann. § 37-10-105(A), regardless of how much time has passed since the violation occurred.

Morgan has never pled nor contended that the mere violation of the attorney preference statute, alone, constitutes something unconscionable. As much as Wells Fargo might not like it, Morgan pled facts that would support a determination of

unconscionability and of inducement by unconscionable conduct. Indeed, Morgan pled that "[t]he loan subject of the mortgage was induced by unconscionable conduct" and went on to describe the conduct. (R. p. 68.) "A determination whether a contract is unconscionable depends upon all the facts and circumstances of a particular case." Holler v. Holler, 364 S.C. 256, 269, 612 S.E.2d 469, 476 (Ct. App. 2005). Morgan set out facts tending to show unconscionability in his amended answer and counterclaim (R. p. 68), and the statement of facts in his appellant's brief simply rephrases them and states reasonable inferences that may be drawn from them.

III. This court should disregard Wells Fargo's arguments that cite unpublished opinions and should disregard its impermissibly mixed statement of the case/statement of facts.

Throughout Wells Fargo's brief, it cites, just as it did below, unpublished opinions. The South Carolina Appellate Court Rules expressly state that unpublished opinions "should not be cited except in proceedings in which they are directly involved." Rule 268(d)(2), SCACR. Wells Fargo also presents a mixed "statement of the case and facts[,]" weaving contested matters and its own subjective opinions into its statement of the case. (Respondent's Initial Brief pp. 2-3.) This is a rather transparent attempt to get this court to see Wells Fargo's contested contentions of fact as though they were undisputed. A respondent is not required to put a statement of the case in its brief, but, if it does, it must comply with the requirement that a statement of the case "shall not contain contested matters[.]" Rule 208(b)(1)(C)&(b)(2), SCACR. These are basic rules for the briefs in an appeal.

Wells Fargo is cheating.

Wells Fargo, trying to make it seem okay that the lower court relied on the unpublished opinions Wells Fargo treated as authority, writes that "both parties cited unpublished and trial court opinions in their arguments to the Circuit Court[.]" (Respondent's Initial Brief p. 6.) Wells Fargo ignores that Morgan only cited a trial-level unpublished opinion to the lower court after Wells Fargo had already done so and because Wells Fargo was relying heavily on such impermissible matter. (R. pp. 80, 123-26, 132.) When a party makes improper argument, the opposing party is permitted to make "an appropriate response" to it, even if the response would otherwise be impermissible. Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72 (2004); accord Bowman v. State, 809 S.E.2d 232, 243-44 (S.C. 2018) (same); Ellenburg v. State, 367 S.C. 66, 625 S.E.2d 224, 226 (2006) (same); Holston v. Jackson, 278 S.C. 137, 139, 292 S.E.2d 794, 795 (1982) (applying the principle). This is what is referred to as the "invited response" or "invited reply" doctrine. Bowman, 809 S.E.2d at 243; Vaughn, 362 S.C. at 169.

Wells Fargo has now taken its impermissible conduct to the next level, citing unpublished and trial-level opinions in its brief to this court and deliberately writing contested matters into its statement of the case. This court could strike Wells Fargo's brief for that. Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794 (1992). The most appropriate thing to do, however, is not to give Wells Fargo an opportunity to clean up its act and submit a brief in accordance with the rules. It is, instead, to disregard altogether Wells Fargo's mixed statement of the case and of facts and ignore its arguments that cite unpublished opinions. Anything else would just reward Wells Fargo for cheating.

IV. Morgan asked for the opportunity to amend at the right time.

Wells Fargo contends that Morgan's request to be allowed to amend his pleadings came too late and is unpreserved because he only made it after the lower court dismissed his counterclaim. (Respondent's Initial Brief pp. 15-16.) A recent Supreme Court decision, however, shows that he raised it at the right time. "Ordinarily, . . . the time for requesting leave to amend to correct a Rule 12(b)(6) pleading defect is after the trial court has determined the original pleading was deficient." Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 181, 826 S.E.2d 585, 588 (2019).

V. What Wells Fargo does not argue against.

Where a respondent fails to respond in its brief to an issue argued in the appellant's brief, the court may treat that failure to respond as a concession that the appellant is correct on that issue. First Union Nat. Bank v. FCVS Communications, 321 S.C. 496, 502, 469 S.E.2d 613, 617 (Ct. App. 1996).

Wells Fargo does not argue that Judge Early did not treat unpublished opinions as precedent and does not argue that his order granting Wells Fargo's motion to dismiss did not rely on such unpublished opinions as authority for its decision. One supposes that there is really no argument to make on that score.

Wells Fargo also never addresses the lack of subject matter jurisdiction with respect to the November 2 order, saying nothing – likely because there is nothing to say – about the fact that the November 2 order was filed after the circuit court had already entered an order that not only made a decision on the motion to reconsider but also vested subject matter jurisdiction in the master-in-equity – thus taking such jurisdiction away from the circuit court. Deep Keel, LLC v. Atl. Private Equity Grp.,

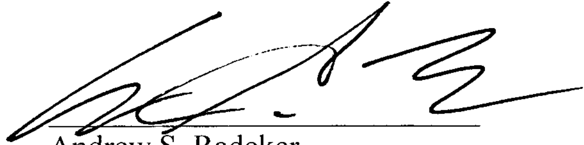
LLC, 413 S.C. 58, 75, 773 S.E.2d 607, 616 (Ct. App. 2015); Normandy Corp. v. S.C. Dept. of Transp., 386 S.C. 393, 688 S.E.2d 136, 142 (Ct. App. 2009); Smith Cos. of Greenville, Inc. v. Hayes, 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993); Bonney v. Granger, 292 S.C. 308, 322, 356 S.E.2d 138, 147 (Ct. App. 1987); (R. pp. 11-17).

CONCLUSION

So as not to reward Wells Fargo for cheating, this court should disregard Wells Fargo's mixed statement of the case and of facts and ignore its arguments that cite unpublished opinions.

The order purporting to deny Morgan's motion to reconsider is void. (R. p. 17.) The status of Morgan's counterclaim is that it is pending, as his motion to reconsider its dismissal was granted. (R. pp. 11-16.) This court should so state and then dismiss this appeal. In the alternative, the circuit court still committed reversible error in granting Wells Fargo's motion to dismiss, so, in the event this court does not determine the November 2 order to be void, this court should still reverse and remand because Morgan pled facts sufficient to constitute a cause of action. In the further alternative that this court believes that Morgan's pleading was not sufficient, he is entitled to amend it, and the court should reverse the dismissal with prejudice and remand this case for Morgan to have an opportunity to amend his pleading.

Respectfully submitted,



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January 13, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Doyet A. Early III, Circuit Judge

RECEIVED
JAN 13 2020
SC Court of Appeals

Appellate Case No. 2018-002068

Wells Fargo Bank, N.A.,..Respondent,

v.

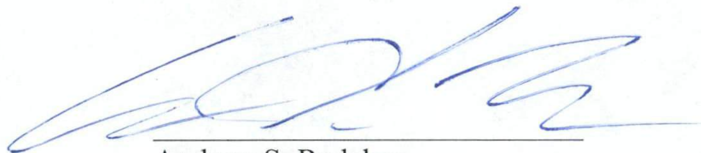
Michael G. Morgan; Margaret H. Fitch, M.D.; Eric J. Olig; South Carolina Department of Revenue; Linda Lawrence Bowen; Defendants,

Of whom Michael G. Morgan is the..Appellant.

CERTIFICATE OF COUNSEL
REGARDING COMPLIANCE WITH RULE 211(b), SCACR

I certify that the foregoing final brief complies with Rule 211(b), SCACR.

Respectfully submitted,



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