

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No.: 2019-001941

RECEIVED

Aug 24 2020

SC Court of Appeals

Bank of America, N.A.....Respondent,

v.

Janie C. Southern.....Appellant.

INITIAL REPLY BRIEF OF APPELLANT

Susan Ingles, S.C. Bar No.4577
Consumer Law Unit Head
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Greenville, South Carolina 29601
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ARGUMENT IN REPLY

RESPONDENT IGNORES THE PARTICULAR STANDARD OF REVIEW THAT CONTROLS THE APPELLATE COURT'S REVIEW OF THE NOVEL QUESTION OF SOUTH CAROLINA LAW PRESENTED IN THIS APPEAL

In this consumer debt collection case, Appellant Janie Southern asks this Court to decide a novel question of South Carolina law. Specifically, can Bank of America, N.A. pursue a credit card collection action against Southern, a South Carolina consumer, by pleading one, archaic claim, "Accounted Stated," a cause of action that has not been addressed by a South Carolina appellate court in the context of consumer debt collection?

In its brief, Respondent does not deny the question is a novel one and ignores the particular and well-settled Standard of Review that controls the appellate court's review of a novel question of South Carolina law. (**Resp. Br. 8**). Respondent fails to acknowledge when "a case contains a novel question of law, the appellate court is free to decide the question with no particular deference to the lower court." Toal, Jean Hoefler; Walker, Amelia Waring; and Baker, Margaret E., Appellate Practice in South Carolina (3rd ed. South Carolina Bar 2016) See also Thomerson v, DeVito, SC Supreme Court Opn. # 27972 (May 27, 2020) (*quoting* Shaw v. Psychomedics Corp., 426 S.C. 194, 197, 826 S.E.2d 281, 282 (2019) (citation omitted)): "In answering a certified question raising a novel question of law, this Court is free to decide the

question based on its assessment of which answer and reasoning would best comport with the law and public policies of the state as well as the Court's sense of law, justice, and right." Id. at 3.

In *State v. Barnes*, COA Opinion # 5749 (July 22, 2020), the South Carolina Court of Appeals stated: "When addressing [a] novel question of law, the appellate court is free to decide the question based on its assessment of which answer and reasoning would best comport with the law and public policies of this state and the court's sense of law, justice, and right." (Quoting *State v. Sweat*, 379 S.C. 367, 373, 665 S.E.2d 645, 649 (Ct. App. 2008)).

In *I'ON, L.L.C. v. Town of Mt. Pleasant*, the South Carolina Supreme Court, addressing a novel question of law, asserted:

We are free to decide this question of law with no particular deference to the lower court. See S.C. Const. art. V, §§ 5 and 9; S.C.Code Ann. §§ 14-3-320 and -330 (1976 & Supp.1998); S.C.Code Ann. § 14-8-200 (Supp.1998) (granting Supreme Court and Court of Appeals the jurisdiction to correct errors of law in both law and equity actions).

338 S.C. 406, 411-12; 526 S.E.2d 716, 718-19 (2000). See also *Osprey, Inc. v. Cabana Ltd. Partnership*, 340 S.C. 367, 372, 532 S.E.2d 274 (S.C. 2000) ("This case raises a novel question of law. We are free to decide a question of law with no particular deference to the lower court."); *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (S.C.2000); *Capital U-Drive-It, Inc.*

v. Beaver, 369 S.C. 1, 6; 630 S.E.2d 464 (S.C. 2006); *Hagood v. Sommerville*, 362 S.C. 191, 194; 607 S.E.2d 707 (S.C. 2005).

Respondent improperly proposes the standard of review for a non-jury breach of contract case that addresses a settled question of law. Respondent asserts the proper standard of review for this novel question of law extends only to errors of law and Respondent contends the trial judge's findings of fact should not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. See Electro Lab of Aiken V. Sharp Const., 357 S.C. 363, 593 S.E.2d 170 (Ct. App. 2004). (**Resp. Br. 8**). Respondent clearly misapprehends the particular Standard of Review applicable to deciding the novel question of law now before the Court.

Alternatively, Respondent now asks the Court to affirm under Rule 220(c), SCACR on the basis of a separate, distinct and unpled cause of action which, although not argued at trial, it now contends could be proven from the record. To do so would avoid answering the important novel question set forth in this appeal; i.e., does South Carolina law recognize an action for “account stated” in the context of a bank attempting to collect an alleged consumer credit case balance — a balance that continued to change from the filing of the complaint through the end of trial.

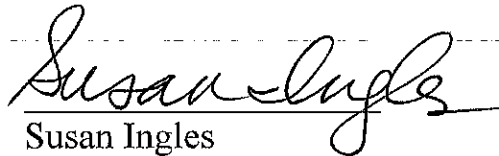
CONCLUSION

The fundamental starting point of an appeal is to determine the Standard of Review. Under the applicable Standard of Review for a novel question of law, the appellate court has the freedom to decide the issue based on its own determination of whether the Court should extend an action for “account stated” to consumer credit card collection cases.

For the foregoing reasons as well as those stated in Appellant's Brief, Appellant respectfully submits the trial court erred in finding for the Plaintiff and requests that this Court reverse the trial court's grant of judgement to the Respondent.

Respectfully submitted,

August 24, 2020


Susan Ingles
Attorney for Appellant

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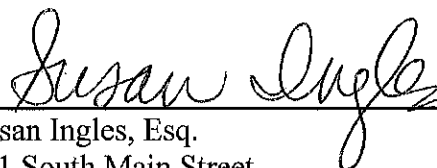
SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the following document on Bank of America, N.A. by depositing a copy in the United States Mail, postage prepaid, on August 24, 2020, addressed to its attorney S. Louis Schiappa, Cooling & Winter, LLC, 220 N. Main St., Suite 500 Greenville, South Carolina 29601:

INITIAL REPLY BRIEF OF APPELLANT

August 24, 2020



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August 24, 2020

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201-3726
VIA FACSIMILE ONLY: (803)734-1839

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SC Court of Appeals

RE: Bank of America, N.A., Respondent v. Janie C. Southern, Appellant
Appellate Case No. 2019-001941

Dear Ms. Kitchings:

Enclosed for filing in the above referenced case is the following:

- 1) Initial Reply Brief of the Appellant with Proof of Service

In addition, pursuant to Rule 208(b)(7), SCACR, I request the allowance of a supplemental citation as shown below to be included in the Final Brief of Appellant. The citation was inadvertently omitted from the Initial Brief of Appellant in footnote 7 on Page 15:

Miller Constr. Co. v. PC Constr. of Greenwood, Inc., 418 S.C. 186, 791 S.E.2d 321-(S.C.Ct. App. 2016)

Thank you for your consideration.

Sincerely,

Susan Ingles

Encl.

cc: S. Louis Schiappa via email

