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SC Court of Appeals

STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
H.W. Funderburk, Jr. Administrative Law Judge

Case No.: 20-ALJ-22-0070-AP

Appellate Case No. 2020-000981

Robert M. Ardis,

Appellant,

v.

South Carolina Department of Employment and Workforce and Sykes Enterprises, Inc.,

Respondents,

APPELLANT'S MOTION TO STRIKE AND TO IMPOSE SANCTIONS AND FOR OTHER RELIEF

COMES NOW, the Appellant, Robert M. (Mike) Ardis, on his own behalf[1] and

[1] See *Erickson v. Pardus* 551 U.S. 89, 127 S. Ct. 2197 U.S., 2007.A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal leadings drafted by lawyers. Pleadings in this case are being filed by the Petitioner *in propria persona,* wherein pleadings are to be considered without regard to technicalities. *Propria* pleadings are not to be held to the same high standards of perfection as practicing lawyers. See *Haines v. Kerner* 92 S. Ct. 594, also See *Powell v. Lennon,* 914 F2d 1459 (11th Cir 1990).

respectfully files this **Motion to Strike and to Impose Sanctions and for Other Relief.** It is respectfully submitted to this Honorable Court that I am not an attorney, and I will be speaking in a first person, narrative form in order to make my points to the Court. I categorically **DENY** and **REFUTE** all defamatory, unfounded allegations made by SCDEW in its recent pleading.

1. I am going on the Record making this Court aware that I hate, loathe and despise everything concerning the South Carolina Department of Employment and Workforce. Hereinafter referred to as SCDEW. It, and its Senior Administrators, are especially repugnant and offensive. This firmly held opinion will be borne out in this pleading and in the attached **Appendixes A-J.**

2. Case in point, their Return to Appellant's Motion to Expedite, dated August 17, 2020, and received by me on August 22, 2020. The sole purpose of this unethical filing was their feeble brained attempt to prejudice this Court against me. One thing I did not mention in my confidential email is that I have had three attorneys Sanctioned in the state of Florida, and one attorney Sanctioned in the state of South Carolina. It appears that I shall now add to the total in South Carolina. Never mind that they violated their ethical duties with the inclusion of a **confidential email** that they have labeled as **Exhibit A.** I am of the firm belief that the Office of Disciplinary Counsel will be interested in these matters, regardless of what actions this Court does or does not take against them.

3. As clearly indicated in their **Exhibit A,** I clearly and unequivocally stated, as follows: "**. . *.pursuant to the law of this state, consider this email a "settlement negotiation." Here is the applicable law on such matters and nothing in this email can be used in any court proceeding or pleading."*** Then I included the specific link as indicated in their **Exhibit A.** This meant

absolutely nothing to SCDEW. Their actions, with the inclusion of **Settlement Negotiations**, in a Court Pleading, is beyond reprehensible, and should be indicative to this Court of the exceptionally low and infamous caliber of "attorneys" and "public servants" that it is now dealing with. I would say they should be ashamed, but having dealt with this rogue, state agency, since December of 2019, I am of the firm belief that they have **no shame**. One must have morals in order to feel shame, and from the top (Dan Ellzey) down, this Agency is disgusting and unscrupulous.

4. I respectfully move this Honorable Court to hold SCDEW to account for its unethical actions, in contradiction of the Court Rules, the SC Bar Model Rules of Professional Conduct, and also in contradiction of the Decisional Law of this very Court, with their Return to Appellant's Motion to Expedite.

5. I am moving this Court to **Strike** the Respondent's Return to Appellant's Motion to Expedite, and am also requesting the Court to Impose **Sanctions** for SCDEW's brazenly unethical, immoral, and indecent behaviors. This Court must act, unlike the Administrative Law Court, a Court that I call into question for even existing.

ARGUMENT AND AUTHORITY

Standard of Review

6. "In ruling on a [Motion to Strike], a Court decides whether a party should be allowed to plead a defense or other matter, not whether there are facts supporting what has been pleaded." *Alladin Plastics, Inc. v. Wintenna, Inc.*, 301 S.C. 90, 93, 390 S.E.2d 370, 372 (Ct.App.190). "In a

motion to strike as irrelevant, immaterial or redundant, only the pleadings may be considered." *Lancaster v. Sweat*, 239 S.C. 120, 124, 121 S.E.2d 444, 446 (1961).

7. "It is recognized that striking a pleading is a severe remedy and should be resorted to only in cases palpably requiring it for the administration of justice. The remedy will be granted only when the defect is plain, for where there is a semblance of a cause of action or defense set up in the pleading, its sufficiency cannot be determined on motion to strike out." 41. *Archambault v. Sprouse*, 215 S.C. 336, 343, 55 S.E.2d 70, 73 (1949) *citing* Am.Jur.,Sec. 354, Page 532.

8. "Any objections to impertinent or scandalous matters in a pleading are properly raised by a party in a motion to strike." *Doe v. Doe*, 324 S.C. 492, 499, 478 S.E.2d 854, 857 (Ct.App.1996). "A motion to strike that challenges a theory of recovery in the pleading is in the nature of a motion to dismiss under Rule 12(b)(6), SCRCP." *McCormick v. England*, 328 S.C. 627, 632, 494 S.E.2d 431, 433 (Ct.App.1997).

9. The law and rules are clear. I clearly, and without any room for interpretation, clarified and stipulated that my July 31, 2020, email, included as their **Exhibit A,** and discussed at length in their Return to Appellant's Motion to Expedite, was a **Settlement Negotiation**. Regardless of what they thought, they were Obligated to treat it as such. This forms a partial basis of my forthcoming Complaint to the Office of Disciplinary Counsel. The Model Rules regarding Fairness to Opposing Parties, and Fairness to Unrepresented Persons, etc., among other arguments, will be detailed at length. Again, if they had any ethics, they should be ashamed. But they do not.

10. In an ironic twist, this very Court has been crystal clear in such matters. Attached as my **Appendix A,** is this Court's Decision in *Fesmire v. Digh,* 385 S.C. 296 (S.C. Ct. App. 2009) 683 S.E.2d 803, held in part, as follows:

> **Evidence** of (1) furnishing or offering or promising to furnish, or (2) accepting or **offering or promising** to accept, a valuable **consideration** in compromising or attempting **to compromise** a claim which was disputed as to either validity or amount, **is not admissible to prove liability** for or invalidity of the claim or its amount. **Evidence of conduct or statements made in compromise negotiations is likewise not admissible.**

11. The emphasis that is notable above, in this Court's Decision (**Appendix A**), was not added by me, but rather, was added by this Court.

12. **However, this Court went further on this subject, and wrote the following, concerning precisely what the Respondents did, contrary to this Court's Decision in *Fesmire v. Digh***

This rule contemplates that the parties need to feel free to make certain assumptions for the purpose of settlement *308 negotiations and that those statements are assumed by the author to be true only for the purpose of compromise negotiations. The rule codifies the longstanding principle that evidence of conduct or statements made in compromise negotiations is **not admissible**. *See QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 209, 600 S.E.2d 105, 111 (Ct.App. 2004) ("Because the law favors compromises, our appellate courts have long held that testimony as to negotiations and **offers to compromise are inadmissible** for proving liability."); *Commerce Ctr. of Greenville, Inc. v. W. Powers McElveen Assocs., Inc.*, 347 S.C. 545, 558, 556 S.E.2d 718, 725 (Ct.App. 2001) ("The courts favor compromise; accordingly, evidence relating to settlements is generally not admissible to prove liability."); *Hunter v. Hyder*, 236 S.C. 378, 387, 114 S.E.2d 493, 497 (1960) ("[C]ompromises are favored and evidence of an offer or attempt to compromise or settle a matter in dispute cannot be given in evidence

against the party by whom such offer or attempt was made."). 308 **(emphasis added)**

13. This is not an oversight by an inexperienced attorney. Mr. Jordan, the attorney for SCDEW, from his own AVVO page, relates the following about himself:

About Steven

Steven Jordan practices out of Columbia, SC and has been licensed for 9 years. This attorney attended University of South Carolina School of Law and handles cases in Internet, Construction & Development, Appeals.

Practice areas

1. Appeals 34%
2. Construction and development 33%
3. Internet 33%

14. An attorney licensed for nearly a decade, who states that he devotes over 1/3 of his case work to Appeals, most certainly was/is aware that what I wrote was a **Settlement Negotiation.** Whether or not the Respondents questioned the "legitimacy" of my **Settlement Negotiation** email is of no moment. I clearly clarified it as such. However, I submit to this Honorable Court that SCDEW is scared. They are scared that they have repeatedly violated the laws, rules, and even the Constitution of South Carolina, for a least over a decade now, and counting. And they

desperately do not want this to come out. But come out it will. I have made it my mission that it will.

15. What SCDEW and its "attorneys' thought of my July 31, 2020, email is immaterial and of no moment. The fact remains that I submitted it to them under the cloak of protection afforded to me as a **Settlement Negotiation**. This Honorable Court must **not** reward such despicable conduct. Accordingly this Court should Strike the Respondent's Return to Appellant's Motion to Expedite.

Request for Sanctions

16. In the next section I intend to demonstrate to this Court the complete lack of oversight, management, and adherence to the laws of this State, as practiced by SCDEW. It is truly a repugnant and lawless State Agency. Sadly, because it rests within the Governor's Cabinet, the Office of the Governor, which is responsible for its lawlessness, refuses to take corrective actions regarding it. I should know as my repeated Complaints to that Office are regularly ignored.

17. This Court recently issued a Decision in the case of *Harwell v. Harwell,* Appellate Case No. 2017-002290 (S.C. Ct. App. Apr. 8, 2020), wherein, in part, this Court wrote the following:

> **Pursuant to Rule 11, a court may impose sanctions on a party or a party's attorney for filing a frivolous pleading, motion, or other paper**. *Id.; see also Ex parte Gregory,* 378 S.C. at 437, 663 S.E.2d at 50. "The party and/or attorney **may also be sanctioned**

for filing a pleading, motion, or other paper in **bad faith** whether or not there is good ground to support it." *Ex parte Gregory*, 378 S.C. at 437, 663 S.E.2d at 50. "The sanction may include an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith . . . ." *Id.* at 437-38, 663 S.E.2d at 50. **"Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith."** *Id.* at 438, 663 S.E.2d at 50. **"(emphasis added)**

18. The cretins at SCDEW have the nerve to allege that my case does not warrant being expedited. How dare they?! I have a 78 year old Mother who is suffering from Stage 4 Bone Cancer, that I am caring for, and we are facing eviction from our home. If there was ever a case more deserving of expedition, I would appreciate it if they would direct me to it.

19. I am respectfully requesting that this Court enters monetary **Sanctions** against SCDEW, awarded to me, **in the amount of $8,150.00.** The amount I am due from SCDEW for the unemployment compensation that it has illegally kept from me and my family since December of 2019. This Honorable Court has the discretion, jurisdiction, and ability to make this award.

Egregious, Unethical and Illegal Acts of SCDEW

20. I would respectfully submit to the Court that these matters between myself and SCDEW is personal and ugly. Not on my part, but on the part of SCDEW. They have flagrantly violated the laws of this State for over a decade. Attached as **Appendix B** is **South Carolina Code 1976 § 41-35-760, Publication of department regulations on electronic website. Effective: March 30, 2010.**

21. This is but one issue that has developed into animosity between myself and SCDEW. I am inviting this Court to research the complete SCDEW Website. Look for SCDEW's compliance with **South Carolina Code 1976 § 41-35-760, Publication of department regulations on electronic website.** I will save the Court the time. It will **not** find compliance with this law passed **over ten (10) years ago! That is over a decade ago**. And, in a demonstration of its collective, passive aggressive behavior, SCDEW has repeatedly violated the laws, regulations, rules, and even the South Carolina Constitution, in its denial of my unemployment compensation. This is what I have been up against going on a year now. When you point out their abject failure to comply with a ten year old law, they get very recalcitrant and disagreeable. It is not my fault they are a grossly

incompetent Agency. It is the fault of whoever is doing the hiring over there.

22. In consideration of judicial brevity, I will **not** attempt to **"reinvent the wheel"** in this pleading. Rather, I will be including some previously filed pleadings, motions, emails, etc., and would ask that this Court takes **Compulsory Judicial Notice** of the following, which are self-explanatory.

23. In accordance with Rule 201 of the **South Carolina Rules of Civil Procedure.** Specifically, **Rule 201(b)** and **Rule 201 (d),** which read as follows:

> **(b) Kinds of Facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
>
> **(d) When Mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.

I am requesting **Compulsory Judicial Notice** of **Appendix A** and **Appendix B**, and of the following:[2]

Appendix C April 20, 2020, Memorandum of Law (minus attachments)[3]

> **8. The Appellant/Claimant avers that he has been Retaliated against, by SC DEW, for pointing out that that Agency has never complied with South Carolina Code**

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[2] I am taking the liberty of excerpting portions of each document below its listing for added emphasis on the true nature of these proceedings.

[3] I have not included the attachments, for any of the Appendixes, out of a sense of brevity. The attachments are part of the Record in the lower tribunal. However, I will provide them should the Court request it.

1976 § 41-35-760, which mandatorily requires the following:

(A) The department must promulgate all regulations described in this chapter and regulations governing procedures at all proceedings, hearings, and appeals before the department or any member or employee of the department, including claims for benefit determinations, and all appeals of determinations regarding those claims, and publish all regulations on an electronic website.(emphasis added)

Appendix D April 29, 2020, Emergency Motion for Summary Judgment and Other Relief (minus attachments)

30. Taking each subsection of **S.C. Code Ann. § 1-23-380(5)),** individually, the undersigned at all times is referencing what is contained above, and in all his prior pleadings before the Court:

Did the Respondents take actions in *(a) in violation of constitutional or statutory provisions?*

The answer is a resounding yes. Please see their noncompliance and violations of **Article I, § 22,** of the S.C. Constitution; their noncompliance and violations of **S.C. Code of Regulations R. 47-51**; and their noncompliance, cited repeatedly by the undersigned, with **S.C. Code Ann. § 41-35-760**; along with multiple other violations not being cited for purposes of brevity;

Did the Respondents take actions in *(b) in excess of the statutory authority of the agency?*

The answer is a resounding yes. Besides the violations cited immediately above, the Respondents never conducted an evidentiary hearing; the Respondents openly violated the **S.C. Freedom of Information Act**; the Respondents reviewed and considered and incorporated the undersigned's Official Complaint emails, ***ex parte***, directed to the Administration of the Respondents, which is simply further conclusive proof that the Respondents have **never** complied with **S.C. Code Ann. § 41-35-760,** in the more than ten (10) years since it became law;

Did the Respondents take actions in *(c) made upon unlawful procedure?*

The answer is a resounding yes. Where to begin? Making decisions without interviewing the undersigned's witnesses; not holding evidentiary hearings; changing hearing officers without Notice; reviewing and considering Complaint emails; violating numerous statutes, rules, and even the S.C. Constitution; the undersigned could turn this into a dissertation if time permitted;

Did the Respondents take actions in *(d) affected by other error of law;*

The answer is a resounding yes. Please reference each and everything listed above, and each and every pleading filed by the Appellant/Claimant in this cause;

Did the Respondents take actions in *(e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record?*

The answer is a resounding yes. The Appellant/Claimant is verifying this **Emergency Motion** and he stands behind everything he has pled. The Respondents are an inept, lazy, incompetent agency. I am sorry, but they just are. There is no Record, because there has **never** been an evidentiary hearing. The Respondents have retaliated against the undersigned because he has pointed out that the Respondents have never, ever Complied with **S.C. Code Ann. § 41-35-760.** The Respondents, by simply having a link on their website, which has a copy of the law, is **not** Compliance. They should be ashamed of themselves.

Did the Respondents take actions in an *(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.*

The answer is a resounding yes. The undersigned would respectfully request that the Court reviews everything he has filed in this cause. There has been rampant, multiple arbitrary, capricious actions, and not just an abuse of discretion, but a perversion of discretion. It sickens me that a state agency would behave in such a disgusting manner. And, the undersigned would ask the Court to take **Judicial Notice** of the fact that the Respondents, have **never, ever, not once,** attempted to deny the allegations of the undersigned. Respectfully, this Honorable Court should not require anything further.

Appendix E **May 26, 2020, Emergency Motion to Vacate Order of Dismissal and to Schedule Emergency Contested Hearing, and for Other Relief (minus attachments)**

10. Both Executive Branch Agencies, the Administrative Law Court and the South Carolina Department of Employment and Workforce, have been **ORDERED** by the Governor, in **Executive Order 2020-10**, to:

Section 3. I hereby authorize **and direct *any agency*** within the undersigned's Cabinet or any other department within the Executive Branch, as defined by **section 1-30-10 of the South Carolina Code of Laws**, as amended, through its respective director or secretary, to **waive or "suspend provisions of existing regulations prescribing procedures** for conduct of state business if strict compliance with the provisions thereof would **in any way** prevent, hinder, or delay necessary action in coping with the emergency," in accordance with **section 25-1-440 of the South Carolina Code of Laws** and other applicable law. **(emphasis supplied)**

Appendix F **June 15, 2020, Second Emergency Motion for Reconsideration, and to Schedule Emergency Contested Hearing and for Other Relief (minus attachments)**

Appendix G **South Carolina Code 1976 § 41-35-610. Procedures must be pursuant to department regulations; duties of employers. Effective: March 30, 2010**[4]

Appendix H **Friday, August 7, 2020, email to senior administrators of SCDEW**[5]

Appendix I **Monday, August 10, 2020, email to senior administrators of SCDEW**

Appendix J **Copies of various Certified Mail Receipts. These represent the only way that SCDEW will admit to actually receiving something that I have sent them. I am sick and tired of dealing with such a duplicitious organization. This Court should exact tough Sanctions upon these rogues, in accordance with its discretion and jurisdiction.**

24. I am respectfully requesting that this Court completely and fully reads and reviews what is contained in **Appendixes A- J.** A complete review of these Appendixes will fully apprise this Honorable Court of the reprehensible "state agency" with which it has been my unfortunate to deal with for nearly a year.

25. I am respectfully requesting that this Honorable Court views this pleading, and everything I have filed, in a light most favorable to me. In the case of *Erickson v. Pardus*, 551 U.S. 89, 127 S. Ct. 2197 U.S., 2007, regarding the lenenicy given to *pro se* filings, the Supreme Court held:

> The Court of Appeals' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more pronounced in

[4] Here again, this is laughable seeing as how SCDEW has **never** with **Appendix B is South Carolina Code 1976 § 41-35-760,**

[5] These two emails are further evidence of SCDEW violating its very own policies and procedures in a defiant act of **Retaliation** against me for daring to point out their failures to comply with the Laws of South Carolina. These represent more recent, open violations of the law, committed by SCDEW.

this particular case because petitioner has been proceeding, from the litigation's outset, without counsel. A document filed pro se is "to be liberally construed," Estelle, 429 U.S., at 106, 97 S. Ct. 285, and "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," ibid. (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice").

WHEREFORE, the Appellant Prays for the following Relief on an **Emergency Basis:**

a) That this Honorable Court gives these matters **Emergency** attention, in the interests of justice since the undersigned and his family have been without any income since November of 2019;

b) That pursuant to **Rule 201(b)** and **Rule 201 (d), South Carolina Rules of Civil Procedure,** that the Court takes **Compulsory Judicial Notice** of everything the Appellant has filed in this matter, including all pleadings and Motions from the lower tribunal, and the attached **Appendix A** through **Appendix J;**

c) What SCDEW and its "attorneys' thought of my July 31, 2020, email is immaterial and of no moment. The fact remains that I submitted it to them under the cloak of protection afforded to me as a **Settlement Negotiation**. This Honorable Court must not reward such despicable conduct. Accordingly this Court should **Strike** the Respondent's Return to Appellant's Motion to Expedite, in accordance with the Court Rules and Model Rules of Professional Conduct;

d) Pursuant to **Rule 12(f), South Carolina Rules of Civil Procedure,** I am respectfully requesting that this Court issues an **ORDER** which **STRIKES** the Respondent's Return to Appellant's Motion to Expedite, for all the reasons set forth herein;

e) This Court recently issued a Decision in the case of *Harwell v. Harwell*, Appellate Case No. 2017-002290 (S.C. Ct. App. Apr. 8, 2020), where this Court held in part:

Pursuant to Rule 11, a court may impose sanctions on

a party or a party's attorney for filing a frivolous pleading, motion, or other paper. **(emphasis supplied)**

f) In accodance with this Honorable Court's Decision *Harwell v. Harwell,* I am respectfully requesting that this Court Impose **SANCTIONS**, against the South Carolina Department of Employment and Workforce, and its attorney Mr. Steven A. Jordan, Jr., based upon everything contained in this pleading, and as detailed in the attached **Appendixes A-J**. I am respectfully requesting that the Court assesses **monetary damages against the Respondents** in the amount of **$8,150.00**, in accordance with this Court's holding in *Harwell v. Harwell;*

g) That this Honorable Court ORDERS the attorney for the Respondents, Steven A Jordan, Jr., to self-report his unethical Conduct to the S.C. Supreme Court's Office of Disciplinary Counsel;

h) That this Honorable Court, in **ORDERS** SCDEW to immediately begin following the provisions of **House Bill 4014, Labor and Employment Law, South Carolina Laws Act 203**, which requires **all decisions** reached by SC DEW, must be done in accordance with the **South Carolina Rules of Civil Procedure** and the **South Carolina Administrative Procedures Act;**

i) That this Honorable Court ORDERS SCDEW to implement the legal provisions specified in **Appendix B, South Carolina Code 1976 § 41-35-760, Publication of department regulations on electronic website. Effective: March 30, 2010.** As clearly set forth in this and other pleadings I have filed in the lower tribunal, SCDEW has NEVER implemented the provisions of this Codified Law, for well over a full decade. There should be consequences for this because countless thousands of fellow South Carolinians have been negatively impacted by should grossly incompetent and illegal actions;

j) Any and all other Relief the Court deems just, proper, and in the interests of justice;

Respectfully submitted on August 31, 2020

/s/ Robert Michael Ardis
Robert Michael Ardis, Appellant
105 North Guignard Drive
Sumter, S.C. 29150
(803) 236-0859
michael.ardis2001@gmail.com

VERIFICATION

COMES NOW the Appellant, ROBERT MICHAEL ARDIS, who, under penalty of perjury and under the laws of the United States of America and the state of South Carolina, does hereby declare that I have read the foregoing, and that the facts alleged therein are true and correct to the best of my knowledge and belief. I understand that a false statement in this verification, and above in Paragraphs 1-25, will subject me to penalties of perjury.

/s/ Robert Michael Ardis
Robert Michael Ardis, Appellant
105 North Guignard Drive
Sumter, SC 29150
michael.ardis2001@gmail.com
(803) 236-0859

APPENDIX A

No. 4549
Court of Appeals of South Carolina

Fesmire v. Digh

385 S.C. 296 (S.C. Ct. App. 2009) · 683 S.E.2d 803
Decided May 20, 2009

No. 4549.

Heard February 19, 2009.

297 Decided May 20, 2009. *297

Appeal from the Circuit Court, Horry County, J. 298 Stanton Cross, Jr. *298

J. Dwight Hudson and Mary Anne Graham, both of Myrtle Beach, for Appellant.

Otis Allen Jeffcoat, III, of Myrtle Beach, Ezizze Davis Foxworth, of Loris, and James B. Richardson, Jr., of Columbia, for Respondents. 300 *300

299 *299

GEATHERS, J.

This is an appeal from an order granting specific performance of an alleged oral contract for the sale of Appellant George Digh's interest in a condominium to Respondents Larry Fesmire, Jr., and Teresa Fesmire. We reverse the master's order and remand the case for an accounting and partition by sale.

FACTS/PROCEDURAL HISTORY

In 1990, the parties to this action, along with Shelley Digh, jointly purchased a Myrtle Beach condominium from Shelley's employer, B.W. Miller. Shelley, who is now deceased, was the wife of George Digh. The two couples were longtime friends who took trips together. They executed a promissory note to Miller in the amount of $85,000 and a mortgage on the property to secure the note. They also entered into a written agreement among themselves setting forth their understanding of their respective ownership interests in the property, the division of the property's income and expenses, and the disposition of their respective interests in the property in the event of a future sale. They intended to use the condominium as rental property and also for their occasional personal use.

Shelley, who was an accountant, kept the financial records on the property. From July 1990 through April 1996, she sent mortgage payments to Miller. On a quarterly basis, she determined the amount of income collected and total expenses for the property and notified Larry Fesmire if any funds were due from him at that time.

In February 1994, Shelley was diagnosed with acute myeloblastic leukemia. From that point forward, the Dighs' personal use of the condominium significantly diminished. The leukemia went into remission, and Shelley had a bone marrow transplant; but in January 1996, the Dighs learned that the leukemia had returned. When they were about to exhaust health insurance coverage for Shelley's medical expenses, the Dighs learned that they would have to raise $250,000 for a second bone marrow transplant. Among their options for fund-raising was a proposal for the Fesmires to purchase the Dighs' interest in the Myrtle Beach condominium. George Digh's understanding of the proposal was 301 that both couples *301 would agree on a value of $140,000 for the condominium, with $70,000 attributable to each couple's interest in the

property, provided that the sale closed within thirty days. According to George, the Dighs wanted to impose a thirty-day deadline because time was of the essence in raising funds for the bone marrow transplant. George understood that the amount due, after subtracting the Fesmires' share of the existing debt on the property, was approximately $37,000. However, no formal closing ever occurred.

According to Larry Fesmire, the proposal that Shelley submitted to him was for a net amount due of $20,000 for the Dighs' interest in the property. Larry Fesmire's account of events includes his payment of $20,000 in cash to Shelley during a visit to the Dighs' home in April 1996. He allegedly used a cigar box to carry the $20,000 in $100 denominations to Shelley's bedroom where she was lying ill, and he allegedly placed the box on Shelley's dresser.

Shelley's last mortgage payment was the April 1996 payment. In May 1996, the Fesmires took over the mortgage payments and started paving for all of the other expenses associated with the property. In July 1996, Shelley died.

In April 1998, George Digh wrote a letter to Larry Fesmire indicating his impression that Fesmire had never completed the purchase of Digh's interest in the Myrtle Beach condominium. Digh expressed his desire for Fesmire to complete the purchase of his interest or for the condominium to be placed on the market for sale. A few days later, Fesmire responded to the letter with two alternative proposals: (1) complete the "original agreement of March 1996" by paving what Fesmire considered to be the balance due on the net purchase price — $70,000 less the $20,000 "down payment paid in March of 1996," less Fesmire's share of the debt on the property as of March 1996 ($33,000), for a net amount due of $17,000; or (2) place the condominium on the market. Fesmire indicated his preference for the option of buying out Digh's interest. Digh responded with confusion over Fesmire's mention of a $20,000 payment.

The parties engaged in several unsuccessful efforts to resolve the matter, and the Fesmires eventually stopped making the mortgage payments on the 302 Myrtle Beach condominium; *302 therefore, Digh had to take up payments on the mortgage to prevent foreclosure.[1] The Fesmires later filed an action against Digh seeking specific performance of an alleged oral contract for the sale of the Dighs' interest in the condominium for $20,000. The Fesmires alleged that before Shelley's death, they had entered into an oral contract with George and Shelley Digh for the sale of the Dighs' interest in the condominium. The complaint also requested the alternative remedies of a partition and sale of the property and an accounting. Digh filed a counterclaim seeking damages for conversion and seeking an accounting. The matter was referred to the master-in-equity, who conducted a bench trial and later issued an order granting specific performance of the alleged oral contract. Digh filed a motion for reconsideration, but the master denied the motion. This appeal followed.

[1] Larry Fesmire testified that he abandoned the mortgage payments so that the property would go into foreclosure and he could then buy the property at a foreclosure sale.

ISSUES ON APPEAL

I. Did the master err in admitting into evidence redacted versions of two letters authored by counsel for the purpose of settlement negotiations?

II. Did the master err in granting specific performance of the alleged oral contract in violation of the Statute of Frauds, S.C. Code Ann. § 32-3-10(4) (2007)?

III. Did the master err in failing to grant the parties' requests for a partition and an accounting?

STANDARD OF REVIEW

This Court reviews all questions of law de novo. *E.g., Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 564, 658 S.E.2d 80, 90 (2008). Review of the trial court's factual findings, however, depends on the whether the underlying action is an action at law or an action in equity. *See Townes Assocs. Ltd. v. City of Greenville*, 266 S.C. 81, 85-86, 221 S.E.2d 773, 775-76 (1976) (setting forth standards of review to apply in actions at law and actions in equity). *303

In an action at law, the trial court's factual findings will not be disturbed upon appeal unless found to be without evidence which reasonably supports the trial court's findings. *Townes*, 266 S.C. at 86, 221 S.E.2d at 775. In an action in equity, the appellate court may resolve questions of fact in accordance with its own view of the preponderance of the evidence. *See Wilder Corp. v. Wilke*, 324 S.C. 570, 577, 479 S.E.2d 510, 513 (Ct.App. 1996) (citing *Townes*, 266 S.C. at 86, 221 S.E.2d at 775) (holding that because the master-in-equity heard the action, which was equitable in nature, without appeal to the circuit court, the appellate court could find the facts on appeal in accordance with its own view of the preponderance of the evidence). However, this broad scope of review does not require this Court to disregard the findings at trial or to ignore the fact that the master was in a better position to assess the credibility of the witnesses. *Laughon v. O'Braitis*, 360 S.C. 520, 524-25, 602 S.E.2d 108, 111 (Ct.App. 2004).

To determine whether an action is legal or equitable, this Court must look to the action's main purpose as reflected by the nature of the pleadings, evidence, and character of the relief sought. *Ex parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 836, 839 (Ct.App. 2009). Here, the Fesmires have asserted causes of action for specific performance of an alleged oral contract, a partition, and an accounting.[2] Our appellate courts have traditionally viewed the main purpose of each of these causes of action as the pursuit of equitable relief and thus have found these causes of action to be equitable in nature. *See Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 290-91 (2000) (applying the equitable standard of review to the trial court's findings of fact in a specific performance action); *Lowcountry Open Land Trust v. Charleston S. Univ.*, 376 S.C. 399, 406, 656 S.E.2d 775, 779 (Ct.App. 2008) (holding that an action for specific performance lies in equity); *Laughon*, 360 S.C. at 524, 602 S.E.2d at 110 (holding that a partition action as well as an action for accounting is an action in equity); *Settlemeyer v. McCluney*, 359 S.C. 317, 320, 596 S.E.2d 514, 516 (Ct.App. 2004) (applying equitable standard of *304 review to action for specific performance of an alleged oral contract for the conveyance of land); *Parker v. Shecut*, 340 S.C. 460, 478, 531 S.E.2d 546, 556 (Ct.App. 2000), *rev'd on other grounds*, 349 S.C. 226, 562 S.E.2d 620 (2002), (holding that an action for specific performance lies in equity). Therefore, this Court may review the factual findings in the instant case in accordance with its own view of the preponderance of the evidence.

2 Digh has asserted counterclaims for conversion, breach of contract, and an accounting. However, there are no issues on appeal involving Digh's conversion and breach of contract claims.

This case is distinguishable from *McGill v. Moore*, 381 S.C. 179, 672 S.E.2d 571 (2009), in which our Supreme Court applied the legal standard of review to the trial court's findings of fact in an action for specific performance of three written contracts for the sale of land. Because the contracts were in writing, their existence was not in dispute and the statute of frauds was not raised as a defense. Rather, before determining the suitability of specific performance as a remedy, the Court was required to **interpret** the **written provisions** of the contracts. Therefore, the Court determined that the action was an **action to construe a contract** and that such an action was an action at law. *Id.* at 185, 672 S.E.2d at 574. Here, Digh disputed the very existence of a

contract with the specific terms asserted by the Fesmires, and he raised the statute of frauds as a defense. Therefore, the instant action cannot be construed as an action to construe a contract.

Rather, the circumstances of the instant action are virtually identical to those in *Settlemeyer*, which involved an action for specific performance of an alleged oral contract for the conveyance of land. In its opinion in *Settlemeyer*, this Court set forth the standard of review as follows: "In an action in equity, tried by the judge alone[] . . . this Court has jurisdiction to find facts in accordance with its views of the preponderance of the evidence." *Settlemeyer*, 359 S.C. at 320, 596 S.E.2d at 516.

As in the instant case, the plaintiff in *Settlemeyer* alleged that his part performance of the alleged oral contract removed it from the statute of frauds. The Court treated the existence of the alleged oral contract as a question of fact rather than a question of law and stated, "Based on **our review of the evidence** contained in the record, we hold *Settlemeyer* did not present clear evidence of an oral agreement between the *305 parties." *Id.* at 321, 596 S.E.2d at 516 (emphasis added). The Court cited *Gibson v. Hrysikos*, 293 S.C. 8, 13-14, 358 S.E.2d 173, 176 (Ct.App. 1987) for the proposition that a court must find, among other things, clear evidence of the existence of an oral agreement for part performance to remove the contract from the statute of frauds. *Id.* Likewise, in the instant case, this Court's review of the master's factual findings on the existence of a contract, with the terms asserted by the Fesmires, is governed by this Court's own view of the evidence.[3]

[3] During oral arguments, counsel for the parties agreed that an equitable standard of review is proper.

LAW/ANALYSIS

I. *Redacted Letters*

At trial, Fesmire introduced into evidence redacted versions of two letters written by the parties' attorneys during settlement negotiations. Digh argues that the master erred in admitting these letters into evidence because their introduction violates Rule 408, SCRE, which prohibits the introduction of statements made in compromise negotiations. Digh also argues that the master exacerbated the prejudice to him by allowing Fesmire to redact most of the contents of the letters because the redaction resulted in a false interpretation of statements taken out of context. We agree.

Plaintiffs Exhibit # 16 is a redacted version of a letter dated June 18, 2001, authored by Digh's former counsel and addressed to Larry Fesmire. The redacted version presented to the master reads as follows:

> Dear Mr. Fesmire:
>
> . . . .
>
> $20,000.00 previously given to Digh from Fesmire.

However, the unredacted version of the letter clearly indicates that the isolated phrase presented in the redacted version was an assumption made for the purpose of negotiating a settlement of the terms of a buyout and that it was inextricably linked to the offer of settlement. Notably, the following words appeared at the top of the letter: " ***FOR SETTLEMENT PURPOSES ONLY.*** " Further, the isolated phrase in the redacted version was prefaced by the following language: *306

> [W]e would offer the following settlement:
>
> . . .
>
> OUT of Dighs [sic] $92,000.00 we will subtract the following reimbursements to Fesmire:

Moreover, the letter also states the following:

> Please note that I have used the numbers you gave me as to the expenses being deducted from Mr. Digh. If this matter can not [sic] be settled as stated, I will need proof of payments, mortgage history, tax returns for 1996-2000 and Homeowner Association invoices etc.

Plaintiffs Exhibit # 17 is the redacted version of a second letter dated August 23, 2001, also authored by Digh's former counsel and addressed to Larry Fesmire. The redacted version presented to the master reads as follows:

> Dear Mr. Fesmire:
>
> Please be advised that Forquer Green does indeed represent the interest of Mr. George Digh in the above-referenced matter.
>
> . . .
>
> $20,000.00 previously given to Digh from Fesmire.
>
> Please note that if this matter is not settled, Digh will contest that the $20,000.00 was to be applied to this transaction.

However, the unredacted version of the letter indicates that the isolated phrases presented in the redacted version were assumptions made for the purpose of negotiating a settlement and that they were inextricably linked to the offer of settlement. The isolated phrases in the redacted version were prefaced by the following language:

> I have reviewed the information you sent me in response to the initial proposal and have incorporated your numbers into my calculations.
>
> . . .
>
> Following the June 18th letter format out of Dighs [sic] $86,500.00 we will subtract the following reimbursements to Fesmire:

Once again, the settlement letter also states the following:

> [P]lease note this is Mr. Digh's final attempt to settle this matter. If this should fail, I will have no choice but to *307 follow Mr. Digh's instructions and file a Partition Action at which time I will be requesting many financial documents from you. . . .

Clearly, in both letters, the request of Digh's attorney for documentary proof of Fesmire's financial contributions to the property, including the alleged $20,000 payment for the Dighs' interest in the property, indicated that the statements made in the letters were assumptions for settlement purposes only.

The master concluded that the redacted versions of these letters were admissible because they were admissions of fact and therefore were not privileged as statements made in connection with settlement negotiations. The master also set forth the following additional grounds for the admissibility of the redacted letters: (1) the material did not constitute hearsay because it was not offered for the truth of the matter asserted; (2) the material was not hearsay because it qualified as an admission of a party-opponent; and (3) the material qualified as a prior inconsistent statement of a witness under Rule 613(b), SCRE. The master then concluded that the letters could be used to (1) impeach Digh's testimony that he did not know about Fesmire's alleged payment of $20,000; and (2) satisfy the writing requirement of the Statute of Frauds.

Rule 408, SCRE provides as follows:

> **Evidence** of (1) furnishing or offering or promising to furnish, or (2) accepting or **offering or promising** to accept, a valuable **consideration** in compromising or attempting **to compromise** a claim which was disputed as to either validity or amount, **is not admissible to prove liability** for or invalidity of the claim or its amount. **Evidence of conduct or statements made in compromise negotiations is likewise not admissible.** This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

(emphasis added).

This rule contemplates that the parties need to feel free to make certain assumptions for the purpose of settlement *308 negotiations and that those statements are assumed by the author to be true only for the purpose of compromise negotiations. The rule codifies the longstanding principle that evidence of conduct or statements made in compromise negotiations is not admissible. *See QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 209, 600 S.E.2d 105, 111 (Ct.App. 2004) ("Because the law favors compromises, our appellate courts have long held that testimony as to negotiations and offers to compromise are inadmissible for proving liability."); *Commerce Ctr. of Greenville, Inc. v. W. Powers McElveen Assocs., Inc.*, 347 S.C. 545, 558, 556 S.E.2d 718, 725 (Ct.App. 2001) ("The courts favor compromise; accordingly, evidence relating to settlements is generally not admissible to prove liability."); *Hunter v. Hyder*, 236 S.C. 378, 387, 114 S.E.2d 493, 497 (1960) ("[C]ompromises are favored and evidence of an offer or attempt to compromise or settle a matter in dispute cannot be given in evidence against the party by whom such offer or attempt was made.").

The statements highlighted in the redacted versions of the settlement letters admitted into evidence in this case were undoubtedly "statements made in compromise negotiations." When these respective statements are viewed in the context of the unredacted version of the letters, it is clear that the references to the alleged $20,000 payment were assumptions made for purposes of negotiating a compromise settlement. The references were inextricably linked to the offer of settlement.

Further, the master's citation to *McCormick on Evidence* in Conclusion of Law # 6 is incomplete. In this conclusion, the master cites the treatise for the proposition that an admission of fact in the course of negotiations is not privileged. However, the McCormick treatise significantly qualifies that proposition. 2 *McCormick on Evidence* § 266 (6th ed. 2006) (discussing the trend to extend the protection to all statements made in compromise negotiations and discouraging the use of inconsistent statements made in compromise negotiations for general impeachment of the testimony). Therefore, the master's reliance on this treatise excerpt to support the admission of the redacted settlement letters into evidence is misplaced. *309

In fact, the master's use of the redacted letters exhibits the very danger highlighted in the McCormick treatise because it constitutes a misuse of allegedly "prior inconsistent statements" to prove liability.[4] The master's order uses the material from the redacted letters under the guise of impeachment of Digh's credibility to bolster Fesmire's version of the parties' contract. Therefore, the admission of these letters into evidence violated Rule 408, SCRE, as they were offered in compromise negotiations.

4 Notably, the federal rule's prohibition against using evidence of settlement negotiations for impeachment through a prior inconsistent statement is explicit Rule 408, FRE, provides as follows:

> **(a) Prohibited uses. — Evidence of the following is not admissible** on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, **or to Impeach through a prior inconsistent statement or contradiction:**
>
> (1) furnishing or offering or promising to furnish — or accepting or offering or promising to accept — a valuable consideration in compromising or attempting to compromise the claim; and
>
> (2) conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a public office or agency in the exercise of regulatory, investigative, or enforcement authority.

(emphasis added).

Additionally, regardless of whether the master used the redacted letters for impeachment purposes or to satisfy the writing requirement of the Statute of Frauds, the statements in the letters were undoubtedly offered for the truth of the matter asserted because they were offered to show that Larry Fesmire paid $20,000 to the Dighs for their interest in the condominium. Further, the statements in the settlement letters were not admissions of a party-opponent because they were assumptions made for the purpose of negotiating a compromise settlement. Therefore, contrary to the master's conclusion, the disputed material constituted inadmissible hearsay. *See* Rule 802, SCRE..

Moreover, the admission of the redacted letters into evidence clearly prejudiced Digh because the master used this evidence to support his conclusion that the alleged oral contract asserted by the Fesmires satisfied the Statute of Frauds. This undoubtedly affected the outcome of the case. *310

Based on the foregoing, the master committed prejudicial error in admitting the redacted settlement letters into evidence.

II. *Specific Performance*

Digh argues that the master erred in granting specific performance of the alleged oral contract because the Fesmires' action is barred by the Statute of Frauds, S.C. Code Ann. § 32-3-10(4) (2007). We agree.

Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties. *Ingram*, 340 S.C. at 105-06, 531 S.E.2d at 291. Here, the master concluded that the settlement correspondence of Digh's counsel was sufficient to satisfy the writing requirement of the Statute of Frauds. In the alternative, the master concluded that even if there was not a writing that was sufficient to satisfy the Statute of Frauds, the Fesmires' part performance of the contract took it out of the purview of the Statute of Frauds. Digh argues that the master erred in making these conclusions. We agree.

The Statute of Frauds provides, in pertinent part, as follows:

> No action shall be brought whereby:
>
> . . .

> (4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them . . .
>
> Unless the agreement upon which such action shall be brought or some **memorandum** or **note** thereof **shall be in writing** and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.

S.C. Code Ann. § 32-3-10(4) (2007) (emphasis added).

A. *Settlement correspondence*

The settlement correspondence of Digh's counsel could not satisfy the writing requirement of the Statute of Frauds because the very admission of those letters into evidence violated Rule 408, SCRE, which prohibits the admission of statements made in compromise negotiations, and 311 violated *311 Rule 802, SCRE, which generally prohibits the admission of hearsay evidence.

B. *Part Performance*

Further, when there is no writing, but part performance is alleged to remove an oral contract from the Statute of Frauds, a court of equity must find the following factors before it may compel specific performance of the oral contract: 1) clear evidence of an oral contract; 2) the contract had been partially executed; and 3) the party who requested performance had completed or was willing to complete his part of the oral contract. *Settlemeyer*, 359 S.C. at 320, 596 S.E.2d at 516. In *Scurry v. Edwards*, 232 S.C. 53, 61, 100 S.E.2d 812, 816-17 (1957), the Court explained the nature of the part performance exception to the Statute of Frauds:

> [T]he courts [will] require specific performance of an oral contract for the conveyance of land, where the terms of the contract are clear, definite and certain and are established by competent and satisfactory proof, and where the party seeking to rescue it from the statute shows such acts of performance or part performance on his part, **clearly and unequivocally referable to such agreement**, as would render application of the statute unconscionable. **Payment of the purchase price in whole or part is not of itself regarded as such part performance** as will take the contract out of the statute and the fact that no part of the purchase price has been paid does not necessarily require application of the statute. **Mere change of possession is not necessarily sufficient to avoid the consequences of the statute;** like payment of the purchase price, it is a fact to be considered in connection with the other facts and circumstances of the transaction in determining whether or not there has been such performance or part performance as warrants relief from the statute. Likewise, the fact that improvements have been made on the property after possession, while strong evidence of part performance, is neither conclusive of that issue nor indispensable proof of it.

Scurry, 232 S.C. at 61, 100 S.E.2d at 816-17 312 (internal citations omitted) (emphasis added). *312

1. *No clear evidence*

Initially, there is no clear evidence of a contract with the specific terms asserted by the Fesmires. Therefore, specific performance is not an appropriate remedy because the Fesmires have not satisfied the first prong of the part performance exception to the Statute of Frauds. *See Settlemeyer*, 359 S.C. at 320, 596 S.E.2d at 516 (holding that to compel specific performance of an

oral agreement where part performance is alleged to remove the contract from the Statute of Frauds, a court of equity must find: 1) clear evidence of an oral agreement; 2) the agreement had been partially executed; and 3) the party who requested performance had completed or was willing to complete his part of the oral agreement).

The testimony concerning the terms of the alleged oral contract was very contradictory, and the Fesmires' evidence of the existence of a contract with the specific terms asserted by them rested on the following questionable evidence: (1) improperly admitted statements taken out of the context of settlement negotiations; and (2) the self-serving testimony of Larry Fesmire regarding alleged statements of Shelley Digh, a woman who died before the Fesmires brought this action. Assuming, without deciding, that the Dead Man's Statute, S.C. Code Ann. § 19-11-20 (1985), did not render Fesmire incompetent to testify as to any transaction with Shelley Digh, this statute addresses merely the competency of the witness and not the weight that should be given to such testimony in any particular case. Here, we view the testimony as suspect and do not accord it much weight.

In sum, the Fesmires have not satisfied the first prong of the standard for compelling specific performance where part performance is alleged to remove an oral agreement from the Statute of Frauds because they have not presented clear evidence of an oral agreement.

2. *No partial execution*

As to the second prong of the standard for compelling specific performance where part performance is alleged to remove an oral agreement from the Statute of Frauds, the evidence does not indicate that the Fesmires partially executed the alleged agreement. There is 313 no clear evidence that the *313 Fesmires paid $20,000 to the Dighs.[5] Further, the Fesmires' mortgage payments, possession of the condominium, and any alleged improvements to the condominium were not necessarily indicators of part performance because their existing partial ownership interest in the condominium already provided them with a reason to take those actions. *See Scurry*, 232 S.C. at 61, 100 S.E.2d at 816-17 (requiring that the party seeking to rescue an alleged oral contract from the Statute of Frauds show such acts of performance or part performance that are "clearly and unequivocally referable to such agreement" and that would render application of the statute unconscionable).

[5] The only evidence of the Fesmires' payment is Larry Fesmire's testimony that he took $20,000 in cash to Shelley Digh. Larry Fesmire's wife, who accompanied him on that visit, could not even corroborate this testimony. This testimony hardly rises to the level justifying specific performance. *See Pennington v. Pennington*, 89 S.C. 277, 279, 71 S.E. 825, 825 (1911) (holding that in an action of specific performance of an alleged oral contract for the conveyance of land, the burden was on the plaintiffs to prove payment of the purchase money in full before they could ask that the defendant be required to convey).

Moreover, these actions could have been consistent with Digh's version of the parties' contract and subsequent events, despite the expiration of the thirty-day deadline for closing the sale.[6] Therefore, these actions are not probative of the specific contract terms alleged by the Fesmires.

[6] Digh understood that the Fesmires were to pay the Dighs $37,000 to purchase their interest and that the closing was to take place within 30 days. Digh indicated in later correspondence that he was not aware of a $20,000 payment, and he testified that no closing ever took place. He also indicated that he continued to allow the Fesmires to make the mortgage payments because of their existing interest in the condominium.

3. *No evidence of willingness to complete*

The Fesmires also failed to satisfy the third prong of the standard for compelling specific performance where part performance is alleged to remove an oral agreement from the Statute of Frauds because the evidence does not indicate that Larry Fesmire was willing to complete his part of the alleged agreement. He stopped making mortgage payments in July 2002, forcing Digh to take over the mortgage payments and to pay off the balance of the debt secured by the mortgage. In fact, Larry Fesmire admitted that he abandoned 314 the mortgage *314 payments so that he could purchase the property at a foreclosure sale. We find that Larry Fesmire's behavior is inconsistent with a good faith intent to complete his part of the alleged agreement.

Based on the foregoing, the master erred in granting specific performance of the alleged oral contract.

III. *Partition and Accounting*

Digh argues that the master should have granted the parties' requests for a partition and accounting.[7] We agree.

> [7] In their complaint, the Fesmires requested partition as an alternative remedy. Digh's answer stated that he agreed that the property should be partitioned but that the proceeds should not be distributed as suggested by the Fesmires. Digh also interposed a counterclaim for an accounting. Digh's motion to alter or amend the master's order included the argument that the master erred in failing to rule on the alternative remedy of a partition and that partition should be granted.

The remedy of partition is provided in S.C. Code Ann. § 15-61-10 (2005):

> All joint tenants and tenants in common who hold, jointly or in common, for a term of life or years or of whom one has an estate for a term of life or years with the other that has an estate of inheritance or freehold in any lands, tenements or hereditaments shall be compellable to make severance and partition of all such lands, tenements and hereditaments.

Further, section 15-61-50 of the South Carolina Code (2005) provides for partition by sale when partition in kind is not practical:

> The court of common pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment to one or more of the parties upon their accounting to the other parties in interest for their respective shares or, in case partition in kind or by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the sale of the property and the division of the proceeds according to the rights of the parties.

"Ordinarily, partition is compellable among cotenants as a matter of right . . . and is not 315 suspended by an interest in *315 or a right to use the property." *Thompson v. Brunson*, 283 S.C. 221, 225, 321 S.E.2d 622, 624 (Ct.App. 1984) (internal citations quotations omitted).[8]

> [8] In *Smith v. Cutler*, 366 S.C. 546, 550, 623 S.E.2d 644, 647 (2005), our Supreme Court held that the deed in that case created a tenancy in common with a right of survivorship and that the survivorship rights between the tenants created true future interests in the entire estate that could not be destroyed by the unilateral act of one tenant through an act such as partition. Here, however, the language in the deed to the Dighs and the Fesmires does not indicate any special right of survivorship. The grantor conveyed the

condominium to "George B. Digh, Shelley K. Digh, Larry L. Fesmire, Jr. and Teresa Fesmire, their heirs and assigns, forever. . . ."

Here, the Fesmires did not clearly establish the specific terms of their alleged contract for the purchase of the Dighs' interest in the condominium. Because they did not satisfy the Statute of Frauds, specific performance was not an appropriate remedy. Further, the Fesmires requested partition as an alternative remedy and Digh also requested partition, a remedy to which the parties are entitled under sections 15-61-10 and -50.[9] Therefore, the master erred in failing to grant a partition and accounting.

9 The parties' agreement as to their respective rights in the property does not conflict with the statutory remedy of partition. The agreement includes a right of first refusal provision: "In the event that one couple wishes to get out of this venture the other couple has the first right of refusal [sic] to purchase the other's interest for whatever the cash basis is in the property." The agreement also provides, "In the event of death of any of the four people, the remaining spouse can continue to own the ½ share unless she/he wishes to sell, where the remaining couple will have the first right of refusal [sic] and can purchase said interest for the cash basis in the property."

CONCLUSION

Accordingly, the master's order granting specific performance is **REVERSED** and the case is **REMANDED** to the master for an accounting and partition by sale.[10]

10 In view of our disposition of the foregoing issues, we decline to address Digh's remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating that the appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

WILLIAMS and PIEPER, JJ., concur.

316 *316

casetext

APPENDIX B

Code of Laws of South Carolina 1976 Annotated
Title 41. Labor and Employment
Chapter 35. Employment and Workforce--Benefits and Claims Therefor (Refs & Annos)
Article 5. Allowance of Claims

Code 1976 § 41-35-760

§ 41-35-760. Publication of department regulations on electronic website.

Effective: March 30, 2010

Currentness

(A) The department **must promulgate all regulations** described in this chapter and regulations governing procedures at all proceedings, hearings, and appeals before the department or any member or employee of the department, including claims for benefit determinations, and all appeals of determinations regarding those claims, and **publish all regulations on an electronic website.**

(B) **Regulations governing procedures at hearings** and appeals before the department **shall include, at a minimum:**

-

(1) procedures for seeking a hearing, review, or appeal;

(2) procedures for notifying parties;

(3**) evidentiary rules;** (emphasis added)

(4) procedures for making findings of fact and conclusions of law;

(5) procedures for making and maintaining an appropriate record of interviews and proceedings before the department; and

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(6) procedures for seeking review or appeal of the department's decision.

(C) All regulations must be promulgated in accordance with the provisions of Chapter 23, Title 1 of the South Carolina Code of Laws.

Credits

HISTORY: 2010 Act No. 146, § 99, eff March 30, 2010.

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Code 1976 § 41-35-760, SC ST § 41-35-760
Current through the 2019 session, subject to technical revisions by the Code Commissioner as authorized by law before official publication.

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APPENDIX C

SOUTH CAROLINA ADMINISTRATIVE LAW COURT

ROBERT M. ARDIS

Appellant/Claimant,

Lower Tribunal: SC Dept. of Emp. & Workforce
Appellate Panel No: 20-HA-000142
Appeal Tribunal No: 19-LA-0200031

vs.

SYKES ENTERPRISES, INC.

Appellee/Respondent,

_____________________________/

MEMORANDUM OF LAW
AND
EMERGENCY MOTION FOR LEAVE TO PRESENT ADDITIONAL EVIDENCE

COMES NOW, the Appellant/Claimant, ROBERT M. ARDIS, on his own behalf,[1] and respectfully files this **Memorandum of Law and Emergency Motion**

[1] See *Erickson v. Pardus* 551 U.S. 89, 127 S. Ct. 2197 U.S., 2007.A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal leadings drafted by lawyers. Pleadings in this case are being filed by the Petitioner *in propria persona,* wherein pleadings are to be considered without regard to technicalities. *Propria* pleadings are not to be held to the same high standards of perfection as practicing lawyers. See *Haines v. Kerner* 92 S. Ct. 594, also See *Powell v. Lennon,* 914 F2d 1459 (11th Cir 1990).

for Leave to Present Additional Evidence. This **Emergency Motion** is being filed pursuant to **South Carolina Code of Laws § 1-23-380,** which reads in relevant part as follows:

> *(3) If a timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court.*

It is respectfully submitted that this Honorable Court should immediately **ORDER,** SC DEW to immediately hold a hearing, since one has never been heard, and the Appellant/Claimant has never been heard, in accordance with the South Carolina Constitution, and numerous laws and regulations of this state.

In accordance with **South Carolina Code of Laws § 41-35-760. Publication of department regulations on electronic website,** a copy of which was included with the undersigned's March 16, 2020, filings with this Court, the undersigned is asking this Court to **REMAND** these matters, immediately to SC DEW, so the undersigned can be heard. I am making such a request, pursuant to

the provisions found in **South Carolina Code 1976 § 1-23-380(1),** and also found in **South Carolina Code 1976 § 1-23-380(3).**

1. The Appellant/Claimant is requesting that this Court to **REMAND** this case back to SC DEW and **ORDER** that Agency to hold an evidentiary hearing. Such a hearing has never been held. The undersigned is not pursuing an Appeal, but is pursuing a **REMAND.**

2. It is respectfully submitted that in my opinion, SC DEW is a grossly mismanaged, State Agency, which lacks oversight and accountability. I have been involved in a terse, adversarial relationship with that Agency, because it does **not** follow the law.

3. The South Carolina Department of Employment and Workforce, SC DEW, is **not** in Compliance with several laws passed by the General Assembly and signed by the Governor. With some of those laws have been enacted a full decade ago. For the sake of judicial economy and brevity, the Appellant/Claimant is not duplicating the production of those previously filed Appendixes. The Appellant/Claimant would respectfully request that the Court reviews his March 16, 2020, filing, and that the Court takes Judicial Notice of the following:

Appendix A: March 9, 2020, email serving as follow-up **SC FOIA Request**

Appendix B: **South Carolina Code 1976 § 41-35-760**

Appendix C: **South Carolina Code 1976 § 1-23-380**

Appendix D: **South Carolina Code 1976 § 41-35-750**

Appendix E: **South Carolina Code 1976 § 41-35-750**

Appendix F: **South Carolina Code 1976 § 41-29-300**

Appendix G: **S.C. Code of Regulations R. 47-2**

Appendix H: **Rule 59, S.C. Rules of Civil Procedure**

Appendix I: **January 29, 2020 "Decision" of Appeals Tribunal**

Appendix J: **February 26, 2020, "Decision" of Appellate Panel**

Appendix K: **March 6, 2020, "Decision" of Appellate Panel in response to March 3, 2020, Emergency Motion to Strike and Emergency Motion for Reconsideration**

Appendix L: **March 3, 2020, Emergency Motion to Strike and Emergency Motion for Reconsideration**

Appendix M: **History and Overview of Work Environment**

Appendix N: **Selected Bibliography of Sykes Lawsuit History**

Appendix O: **Petition for *writ of mandamus*, filed in Sumter County Circuit Court on January 22, 2020 (minus attachments)**

4. The Appellant/Claimant is respectfully requesting that the Court takes **Compulsory Judicial Notice** of **Appendix A** through **Appendix O,** in accordance with **Rule 201 of the South Carolina Rules of Civil Procedure**. Specifically. **Rule 201(b)** and **Rule 201 (d),** which read as follows:

> **(b) Kinds of Facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
>
> **(d) When Mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.

REASONS TO INVOKE THE PROVISIONS OF SOUTH CAROLINA CODE 1976 § 1-23-380

5. The Appellant/Claimant is respectfully invoking **South Carolina Code 1976 § 1-23-380(3),** which reads as follows:

> (3) If a timely **application** is made to the court for **leave to present additional evidence,** and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, **the court may order that the additional evidence be taken before the agency upon conditions determined by the court**. The agency may modify its findings and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court. **(emphasis added)**

6. The Appellant/Claimant is asking this Honorable Court to **REMAND** these matters back to the SC DEW Appeals Tribunal, in order to conduct an actual hearing, with sworn testimony and evidence. Since there has never been a hearing held. I would also request that this Court takes such actions on an Expedited basis, in the interests of justice, because my family has been suffering, for months, due to the inactions, and illegal activity of SC DEW. I am requesting an **in-person, Appeals Hearing**.

7. The Appellant/Claimant avers that this should be done because SC DEW has **never** complied with **South Carolina Code 1976 § 41-35-760.** This Court is a reviewing Court and can consider these matters in reaching a decision pursuant to **South Carolina Code 1976 § 1-23-380(3).** I would respectfully request that this Honorable Court searches the website of SC DEW, as it relates to **§ 41-35-760,** in an attempt to locate any of the following:

> **(B) Regulations governing procedures at hearings and appeals before the department shall include, at a minimum:**
>
> **(1) procedures for seeking a hearing, review, or appeal;**
>
> **(2) procedures for notifying parties;**
>
> **(3) evidentiary rules;**

(4) procedures for making findings of fact and conclusions of law;

(5) procedures for making and maintaining an appropriate record of interviews and proceedings before the department; and

(6) procedures for seeking review or appeal of the department's decision.

(C) All regulations must be promulgated in accordance with the provisions of Chapter 23, Title 1 of the South Carolina Code of Laws.

8. The Appellant/Claimant avers that he has been **Retaliated against**, by SC DEW, for pointing out that that Agency has never complied with **South Carolina Code 1976 § 41-35-760,** which mandatorily requires the following:

(A) The department must promulgate all regulations described in this chapter and regulations governing procedures at all proceedings, hearings, and appeals before the department or any member or employee of the department, including claims for benefit determinations, and all appeals of determinations regarding those claims, and publish all regulations on an electronic website.(emphasis added)

9. For these reasons, alone, this Honorable Court should **REMAND** these matters to the SC DEW Appeals Tribunal, and **ORDER** that Tribunal to actually hold an **in-person, Appeals Hearing**, in accordance with the attached laws. This has never been done, and, without such an Appeals Hearing being held, then my

family and I will continue to suffer the unjust, illegal consequences of the arbitrary and mean-spirited actions of SC DEW. Without a **REMAND** of these matters then I will not be able to Appeal matters to this Honorable Court because there is not, and will not, be a Record of the proceedings.

10. Because of SC DEW's actions and failures and violations of the attached laws, the Appellant/Claimant has been forced to do the following:

forced to take out a high interest title loan against my vehicle

forced to sell my burial plot in my family plot

go to the Salvation Army for food donations

go to United Ministries for food donations and assistance with our utility bills

Because of DEW's violations of the law, I have been forced to take such actions to put food on my family's table, and to keep the lights and other utilities turned on. I moved back to South Carolina from Florida, to care for my 78 year old Mother who is suffering from Stage 4 Bone Cancer. Because of the complete lack of professionalism from SC DEW, I was also forced to take the actions immediately above to help defray the costs of her chemotherapy and radiation treatments. No one should ever have to take such drastic actions. Unemployment compensation is a safety net that is put there to help us when we are in need and my family is in

need. And I am respectfully requesting that this Honorable Court takes immediate action, and **REMANDS** these matters to the SC DEW Appeals Tribunal, and **ORDER** the Tribunal to immediately call up an Appeals Hearing without any further delay. My family has been without any income since November and we are hurting, terribly. We cannot wait any longer.

11. The Appellate Panel is bound by the **Code of Judicial Conduct**, and other controlling legal authorities, yet in its "Decision" (**Appendixes J & K**) it completely violated not only the **Code of Judicial Conduct**, but several other legal authorities. **South Carolina Code 1976 § 41-29-300**, reads in pertinent part as follows:

> **(F)(1)** A panelist is **bound by the Code of Judicial Conduct**, as contained in Rule 501 of the South Carolina Appellate Court Rules, and the State Ethics Commission is responsible for enforcement and administration of Rule 501 pursuant to Section 8-13-320. A panelist also must comply with the applicable requirements of Chapter 13, Title 8.**(emphasis added)**

12. I would respectfully direct the Court to **Appendix L,** which is my **March 3, 2020, Emergency Motion to Strike and Emergency Motion for Reconsideration.** Specifically, with the filing of **Appendix L,** I requested that SC DEW issue an Order **STRIKING** both **Appendix I** and **Appendix J,** and that SC DEW actually call up and conduct an Appeal Hearing, which is something that Agency has never done. Here is a microcosm of what is contained in **Appendix L.**

13. There has **never** been an Appeal Hearing held in accordance with the laws of South Carolina. Accordingly, the "Decisions" of the SC DEW Appeals Tribunal, and Appellate Panel, cannot stand. Both "Decisions" are based exclusively on "hearsay" and the law and regulations are clear on this point. **South Carolina Code of Regulations, R. 47-51,** reads as follows:

> **S.C. Code of Regulations R. 47-51**
>
> **C(3)** Evidence will not be excluded solely because it may be hearsay. Hearsay, including information provided to the Department through telephone conversations and written statements, may be considered. However, findings of fact **cannot be based exclusively on hearsay evidence** unless that evidence is admissible under the South Carolina Rules of Evidence. **(emphasis added)**

14. Without ever giving me the benefit of a Hearing, and without the submission of evidence and testimony, SC DEW has violated my rights and the rights of my family. Specifically, **South Carolina Code of Regulations, R. 47-2,** reads as follows:

> **S.C. Code of Regulations R. 47-2**
>
> The Department may designate by written authorization any of its employees as its representatives **to administer oaths and affirmations,** issue subpoenas for the production of books, papers, correspondence, and other memoranda deemed necessary by it as evidence **in connection with**

disputed or contested claims, or in the administration of the South Carolina Employment Security Law.

15. The Appellant/Claimant was so emphatic and serious about my Appeal Hearing before SC DEW, that he took the extraordinary step of actually filing an **Emergency Petition for *writ of mandamus*,** in the Sumter County Circuit Court, in an effort to have the Circuit Court, **ORDER** SC DEW to hold an Appeals Hearing without any further delay. Please see **Appendix O,** which was filed on January 22, 2020, and provided to this Court on March 16, 2020. I am providing the **Emergency Petition for *writ of mandamus*,** minus its attachments for the review of the Court.

16. The Appellant/Claimant is filing this **Memorandum of Law,** under the provisions of **South Carolina Code 1976 § 1-23-380, Judicial review upon exhaustion of administrative remedies**, which reads in part:

> **A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article** and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. Except as otherwise provided by law, an appeal is to the court of appeals. **(emphasis added)**
>
> (1) Proceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered. Copies of the notice of appeal must be served upon the agency and all parties of record.

> (3) If a timely application is made to the court for **leave to present additional evidence**, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, **the court may order that the additional evidence be taken before the agency upon conditions determined by the court.** The agency may modify its findings and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court. **(emphasis added)**
>
> (4) The review must be conducted by the court and must be confined to the record. In cases of alleged irregularities in procedure before the agency, **not shown in the record,** and established by proof satisfactory to the court, the case may **be remanded** to the agency for action as the court considers appropriate. **(emphasis added)**

17. The actual facts that I wanted to present, and still want to present, to SC DEW, so I can receive the unemployment compensation my family desperately needs can be found in **Appendix M** and **Appendix N,** provided to this Court on March 16, 2020.

18. Even after SC DEW had taken such actions, in a demonstration of good faith on the part of the Appellant/Claimant, before bringing matters before this Court, the undersigned presented SC DEW with the opportunity to correct its grave errors of law, by **Striking** the "Decisions" of both the Appeals Tribunal **(Appendix I),** and the Appellate Panel **(Appendix J),** all to no avail. Following the filing of his **March 3, 2020, Emergency Motion to Strike and Emergency Motion for Reconsideration,** **Appendix L,** SC DEW instead choose to ignore its legally required duties, under the law, and issued a letter denying my **Emergency Motion,**

Appendix L, with their **Appendix K.** A very sad and telling example of what is wrong with SC DEW.

19. I am respectfully requesting that this Honorable Court takes action on an **Emergency Basis,** pursuant to **South Carolina Code 1976 § 1-23-380,** based upon the facts set forth herein, and especially what is contained in **Appendix L.** I am respectfully incorporating, by reference as if quoted verbatim herein, everything contained within my **Appendix L,** my **March 3, 2020, Emergency Motion to Strike and Emergency Motion for Reconsideration.**

20. The bottom line is that SC DEW has never complied with the laws passed by the South Carolina Legislature and signed by the Governor. So for SC DEW to argue that this Court should Dismiss the undersigned's case, when DEW has neglected its required duty to comply with the law, for over a decade now, smacks of a slippery slop and a blatant, double standard. For example, **South Carolina Code of Laws § 41-35-760. Publication of department regulations on electronic website,** states in part the following:

> (A) The department must promulgate all regulations described in this chapter and regulations governing procedures at all proceedings, hearings, and appeals before the department or any member or employee of the department, including claims for benefit determinations, and all appeals of determinations regarding those claims, and **publish all regulations on an electronic website**.
>
> (B) Regulations governing procedures at hearings and appeals before the department shall include, at a minimum:

(1) **procedures for seeking a hearing, review, or appeal**;

(2) **procedures for notifying parties**;

(3) **evidentiary rules;**

(4) **procedures for making findings of fact and conclusions of law;**

(5) procedures for making and maintaining an appropriate record of interviews and proceedings before the department; and

(6) procedures for seeking review or appeal of the department's decision.

(C) All regulations must be promulgated in accordance with the provisions of **Chapter 23, Title 1 of the South Carolina Code of Laws. (emphasis added)**

21. SC DEW did **not**, and has **not**, ever complied with **§ 41-35-760**. Not only has SC DEW never complied with the aforementioned law, which is ten years old, furthermore, when I pointed this out to SC DEW, that Agency actually **Retaliated** against me causing dire and extreme harm to me and my family. It is because of such dire, exigent circumstances, that I am pleading with this Honorable Court to invoke the provisions of **South Carolina Code 1976 § 1-23-380,** and immediate **REMAND** these matters back to the SC DEW Appeals Tribunal, specifying and **ORDERING** that a neutral and detached hearing officer be assigned, and that an Emergency, in-person Appeals Hearing be called up, without any further delay.

22. It is axiomatic that an Appeals Hearing has never been conducted by SC DEW in these matters, and the preposterous assertion by the Appeals Tribunal that I "abandoned" my Appeal is belied by the fact that I took the extraordinary

measure of filing an **Emergency Petition for *writ of mandamus*,** with the Sumter County Circuit Court in an effort to Compel SC DEW to hold an Appeals Hearing in these matters. The only reason I backed off the ***mandamus petition*** was that when I received notification from the Appellate Panel it stated that I had a **Right to Oral Argument**, before that Panel. However, contrary to the law, the Appellate Panel refused to allow me to have **Oral Argument**, and that is what has brought these matters before this Court.

23. Since there has never been an Appeals Hearing, and since no one has ever been put under Oath pursuant to **S.C. Code of Regulations R. 47-2,** then everything contained in the "Decisions" of SC DEW is hearsay, that this is strictly prohibited by **S.C. Code of Regulations R. 47-51**

> **C(3)** Evidence will not be excluded solely because it may be hearsay. Hearsay, including information provided to the Department through telephone conversations and written statements, may be considered. However, findings of fact **cannot be based exclusively on hearsay evidence** unless that evidence is admissible under the South Carolina Rules of Evidence. **(emphasis added)**

24. **South Carolina Code of Laws § 1-23-360**, states that members or employees of an agency "assigned to ***render a decision or to make findings of fact and conclusions of law in a contested case*** shall **not** communicate, **directly or indirectly**, in connection with **any issue of fact**, with any person or party, nor, in

connection with **any issue of law,** with any party or its representative, except upon notice and opportunity for **all parties** to participate." **(emphasis added)** This law is crystal clear and unambiguous, and was **not** followed by the Appeals Tribunal and subsequently **not** followed by the Appellate Panel. Here again this Honorable Court must invoke **South Carolina Code 1976 § 1-23-380,** and **REMAND** these matters to the Appeals Tribunal so a hearing can be held.

25. Pursuant to **Rule 12(f), South Carolina Rules of Civil Procedure,** I am respectfully requesting that this Court issues an **ORDER** which **STRIKES** the attached "Decision" of the Appeals Tribunal, **Appendix I,** and the "Decision" of the Appellate Panel, **Appendix J,** for all the reasons set forth herein.

26. The **South Carolina Constitution Article I, § 22** was added to the 1895 Constitution in 1970 "as a safeguard for the protection of liberty and property of citizens." Final Report of the Committee to Make a Study of the South Carolina Constitution of 1895, p. 21 (1969). **Article I, § 22** provides, in part:

> No person ***shall* be finally bound** by a judicial or quasijudicial decision of an administrative agency affecting private rights except on ***due notice* and an *opportunity to be heard***; nor shall he be subject to the same person for both prosecution and adjudication; . . .**(emphasis added)**

27. The South Carolina Administrative Procedures Act (the APA) sets forth the standard for judicial review of decisions by the Commission." (citing § 1-23-380)); Hutson, 399 S.C. at 387, 732 S.E.2d at 503. Under this standard, the Administrative Law Court can reverse or modify the decision if the claimant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

28. First, there has never been any hearing held. The Appellant/Claimant is entitled to due process and has a Right to be heard. This has never happened as far as SC DEW is concerned. See _Sloan v. South Carolina Board of Physical Therapy Examiners_, 636 S.E.2d 598 (S.C. 2006):

Holding that in order to prove a denial of due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law

29. Pursuant to section 1-23-380(5), the reviewing court may reverse or modify the agency's decision ***"if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are . . . clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record."***

30. In *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304, the Court recognized that judicial review of Industrial Commission decisions would be governed by the Administrative Procedures Act, Section 1-23-380(g), Code of Laws, (1976 Cum. Supp.). That section permits judicial review and reversal where "administrative findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions... (4) affected by other error of law... (5) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record...."

31. This Court should assert jurisdiction because the Appellant/Claimant, hand-delivered the Appeal documents, in person, to the Court, over a month ago. There is no Record below, and a hearing has never been held. As the South Carolina Supreme Court held in, *Bone v. U.S. Food Serv.,* 744 S.E.2d 552 (S.C. 2013)

> Stating " '[a]n agency decision which does not decide the merits of a contested case' " is not a final decision under section 1–23–380 (quoting S.C. Baptist Hosp. v. S.C. Dep't of Health & Envtl. Control, 291 S.C. 267, 270, 353 S.E.2d 277, 279 (1987))

32. Below is a brief sampling of email communications between the Appellant/Claimant, and the Defendants, SC DEW. It is clear from these emails,

which serve as a microcosm of the interactions of the undersigned, and SC DEW. At best, it is disingenuous of SC DEW to argue that hey did not receive service of the Appeal documents on March 16, 2020, when **Rule 4, of the South Carolina Rules of Civil Procedure** is styled as **4. E-Filing and E-Service.** And, it further lacks Candor Towards the Tribunal when SC DEW has provided Service, upon the Appellant/Claimant, via email Service on many occassions. Simply put, SC DEW cannot have it both ways, which is what they are attempting to do. Email Service emails from SC DEW, to the undersigned, are as follows:

EMAIL EXAMPLE #1

Appeals Help <AppealsHelp@dew.sc.gov>

Wed, Jan 22, 1:31 PM

to me

Mr. Ardis,

We received your message dated today at 12:39 p.m. indicating you are unable to attend the above hearing scheduled for 1:30 p.m. today.

EMAIL EXAMPLE #2

Appeals Help <AppealsHelp@dew.sc.gov>

Attachments

Fri, Jan 17, 4:56 PM

to me

Attached is the subpoenaed documentation that was received from the employer.

EMAIL EXAMPLE #3

Appeals Help <AppealsHelp@dew.sc.gov>

Thu, Jan 9, 1:54 PM

to me

Mr. Ardis,

Due to your statement below that you are experiencing a medical emergency, your hearing scheduled for today at 2:30 pm is postponed.

33. Moreover, to assuage and negate the baseless arguments of SC DEW, the undersigned went to great lengths to make additional copies of the Appeals documents, and personally delivered them to the Assistant Executive Director of SC DEW, Mr. Brian Urban, on April 16, 2020. After waiting for a half hour for Mr. Urban to appear, he finally came out of the building and stated, and the Appellant/Claimant is quoting:

"..I am the Deputy Assistant Executive Director, and you're talking to the right man. You don't need to give those to me, just use the email address on that card, and email them to me, and I'll make sure they get to the right person."

34. This Court has the inherent authority, and jurisdiction, to make a credibility determination in these matters. As the Appellate Court held in _Lee v. Bondex, Inc._, 406 S.C. 97 (S.C. Ct. App. 2013), it is within the sound discretion of the Court to make such a "credibility determination" as it relates to the service of the Notice of Appeal.

35. As the Appellate Court held in _Peake v. Dept. of Motor_, 375 S.C. 589 (S.C. Ct. App. 2007), this Court should not consider a particular clause in a statute in isolation, but should read it in conjunction with the purpose of the entire statute. And, since email Service is recognized in Rule 4, and SC DEW have never denied

receiving said email Service, along with Serving the undersigned via email, in conjunction with the very own words of Assistant Executive Director of SC DEW, Mr. Urban, Service has been effectuated upon DEW.

36. SC DEW has been "dragging" these matters out since December of 2019, nearly half a year. During this period the Appellant/Claimant has had no income, and his family is hurting. The stated goal and purpose of SC DEW is to aid and assist citizens in need, not prolong litigation. As the South Carolina Supreme Court held in *Russell v. Wal-Mart Stores, Inc.*, 426 S.C. 281 (S.C. 2019), the goal in these matters should be:

> **Refocusing the commission on its "primary" role in avoiding "complicated and protracted litigation" (emphasis added)**

37. The Administrative Procedures Act limits the role of the judicial branch of government in meeting the goal of **quick decisions in limited litigation** by restricting appeals to final decisions in most cases. See S.C. Code Ann. § 1-23-380 (Supp. 2018) ("A party ... who is aggrieved by a final decision ... is entitled to judicial review...."); *Spalt v. S.C. Dep't of Motor Vehicles*, 423 S.C. 576, 583, 816 S.E.2d 579, 583 (2018) (stating "the Administrative Procedures Act permits an

appeal only from 'a final decision ...' " (quoting Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control , 387 S.C. 265, 266, 692 S.E.2d 894 (2010))). It is clear, based upon the South Carolina Constitution, as cited herein, and a host of other controlling legal authorities, that the Appellant/Claimant has never had due process and has never been heard.

38. As the South Carolina Supreme Court held in *Russell v. Wal-Mart*, 27875 (S.C. 2019):

> ***Ultimately, we denied an immediate appeal and permitted a remand for a new hearing***, 404 S.C. at 84, 744 S.E.2d at 562,

This is precisely what the Appellant/Claimant is requesting of this Honorable Court pursuant to **South Carolina Code 1976 § 1-23-380(3),**

39. The attorney who has been drafting the legal pleadings for SC DEW is a young attorney, who has been licensed for 7 years, only graduating law school in 2012. Mr. Jordan's AVVO Profile, online, lists his expertise as one third each of the following, Internet, Construction & Development, Appeals law. Accordingly, Mr. Jordan should make it a point to be versed in **Rule 4, South Carolina Rules of Civil Procedure** which reads as follows:

4. E-Filing and E-Service

(a) Electronic Filing. The electronic transmission of a document to the E-Filing System in accordance with these Policies and Procedures and the Filer Interface User Guide constitutes the filing of that document in accordance with Rule 5(e), SCRCP. Any required filing fees and/or technology fees must be paid for by credit card at the time of submission.

This Rule 5(e) is the same as the Federal Rule. It restates and clarifies present Circuit Rules 32 and 67.

40. Besides the fact that constructive email service is specifically cited in the Rules, the fact that Mr. Jordan's Superior, Mr. Brian A. Urban, directly contradicts the arguments averred by Mr. Jordan, in his pleadings, when Mr. Urban stated on April 16, 2020:

". . I am the Deputy Assistant Executive Director, and you're talking to the right man. You don't need to give those to me, just use the email address on that card, and email them to me, and I'll make sure they get to the right person."

41. Mr. Urban is Mr. Jordan's superior at SC DEW. If a citizen cannot take the word of the Assistant Executive Director of a State Agency, then the public's trust in the system is irretrievably destroyed.

42. The Appellant/Claimant is not an attorney. He made this point clear in his first filings with the Court. However, the undersigned has labored to take all actions in good faith, and that is what sound matter. In _Haines v. Kerner_, 404 U.S. 519 (1972), the United States Supreme Court held:

pro se complaint seeking to recover damages for claimed physical injuries and deprivation of rights in imposing disciplinary confinement should not have been dismissed without affording him the opportunity to present evidence on his claims.

43. As in _Haines v. Kerner_, the undersigned has not been permitted to put for any evidence, none at all, by SC DEW. **REMAND** is necessary because of this.

44. In _Powell v. Lennon_, 914 F.2d 1459, 1463 (11th Cir. 1990), regarding motions to dismiss, the High Court held as follows:

A motion to dismiss will be denied unless it appears beyond all doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to relief. quoting _Luckey_, 860 F.2d at 1016.

Again, SC DEW has never permitted the undersigned to present anything in support of his claims.

45. In the case of a *pro se* action, moreover, the court should construe the complaint more liberally than it would formal pleadings drafted by lawyers. Hughes v. Rowe, 449 U.S. 5, 9, 101 S.Ct. 173, 175, 66 L.Ed.2d 163 (1980) (per curiam).

46. In the case of *Erickson v. Pardus* , 551 U.S. 89, 127 S. Ct. 2197 U.S., 2007, regarding the lenenicy given to pro se filings, the Supreme Court held:

The Court of Appeals' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more pronounced in this particular case because petitioner has been proceeding, from the litigation's outset, without counsel. A document filed pro se is "to be liberally construed," Estelle, 429 U.S., at 106, 97 S. Ct. 285, and "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," ibid. (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice").

CONCLUSION

47. Pursuant to all the legal arguments set forth before this Honorable Court, and especially set for in **South Carolina Code 1976 § 1-23-380(1),** the Appellant/Claimant is seeking an immediate, **Emergency Rehearing** before the

SC DEW Appeals Tribunal. I am making this request because there is no Record from which this Honorable Court could render any Decision.

48. Pursuant to **South Carolina Code 1976 § 1-23-380(1),** this Honorable Court needs to immediately **REMAND** these matters back to the SC DEW Appeals Tribunal, and **ORDER** that Tribunal to immediately schedule an in-person Appeals Hearing, with all deliberate speed since my family has been suffering immensely since November of 2019. Additionally, the Court needs to ORDER that such an in-person Appeals Hearing needs to be held before a hearing officer who has no prior knowledge of any aspect of this case.

49. The Appellant/Claimant is making this request, before this Honorable

Court pursuant to **South Carolina Code 1976 § 1-23-380(3),** which specifically authorizes the **Emergency Rehearing** sought by the undersigned. I am making this Emergency Motion before the **South Carolina Administrative Law Court**, and cites to **South Carolina Code 1976 § 1-23-380(3),** which reads as follows:

> (3) If a timely application is made to the court for **leave to present additional evidence,** and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, **the court may order that the additional evidence be taken before the agency** upon conditions determined by the court. The agency may modify its findings and **decision by reason of the additional evidence and shall file the evidence and**

modifications, new findings, or decisions with the reviewing court.

50. In closing, and on a personal note, my family has been inflicted numerous hardships on account of the violations of the laws of South Carolina by SC DEW. The fact that that Agency is so flippant and arrogant is disgusting when it is supposed to be an Agency that helps people during their time of need. I made the "mistake" of pointing out to SC DEW that it was not in Compliance with the laws of South Carolina. And my "reward" for being a consciousness citizen was to be belittled and **Retaliated** against by SC DEW. I have filed numerous Complaints against this rogue Agency and have also filed a **Notice of Claim** against them.

51. However, all I am seeking is due process of law, and the Appeals Hearing and the unemployment compensation to which I am entitled.

52. I would respectfully submit to the Court that further proof that SC DEW has never complied with **South Carolina Code of Laws § 41-35-760,** can be deduced from the fact that its hearing officers read and considered my Complaint emails to SC DEW Senior Administrators. This is indicative of the fact that DEW has never implemented or promulgated the rules, policies, procedures, etc., that are specifically cited in **Appendix B, South Carolina Code of Laws § 41-35-760.**

53. I am seeking the **Emergency assistance** of this Honorable Court, in the interests of justice. The following is taken from the website of this Honorable Court, and I am pleading for this Honorable Court's immediate assistance:

Mission of the Administrative Law Court

The mission of the Administrative Law Court is to provide a neutral forum for fair, prompt and objective hearings for any person affected by an action or proposed action of certain agencies of the State of South Carolina.

54. It is respectfully submitted to this Honorable Court, that no citizen should be put through what the undersigned has endured at the hands of a non-responsive, State Agency.

WHEREFORE, the Appellant/Claimant Prays for the following Relief on an **Emergency Basis:**

a) That this Honorable Court gives these matters **Emergency** attention, in the interests of justice since the undersigned and his family have been without any income since November of 2019;

b) That pursuant to **Rule 201(b)** and **Rule 201 (d), South Carolina Rules of Civil Procedure,** that the Court takes **Compulsory Judicial Notice** of everything the Appellant has filed in this matter, including all pleadings and

Motions, and the attached **Appendix A** through **Appendix O,** filed on March 16, 2020;

c) Pursuant to everything contained herein, and in the attached Appendixes, that this Court invokes the provisions of **South Carolina Code 1976 § 1-23-380,** and in doings so that the Court **REMANDS** these matters to the SC DEW Appeals Tribunal and **ORDERS** the Tribunal to immediate call up and hear an in-person Appeals Hearing, without any further delay;

d) In the alternative, pursuant to everything contained herein, and in the attached Appendixes, that this Court invokes the provisions of **South Carolina Code 1976 § 1-23-380,** and in doings so that the Court **REMANDS** these matters to the SC DEW Appeals Tribunal and **ORDERS** the Tribunal to immediate call up and hear a telephonic Appeals Hearing, without any further delay. My first choice is to have an in-person Appeals Hearing, but at this point my family is hurting badly, and we desperately need the unemployment compensation that I am entitled to without any further delay;

e) That this Honorable Court, in **ORDERING** the SC DEW Appeals Tribunal to immediately hold an in-person Appeals Hearing that the Court **ORDERS** the Tribunal to specifically follow the provisions of **House Bill 4014, Labor and Employment Law, South Carolina Laws Act 203,** which requires **<u>all decisions</u>** reached by SC DEW, must be done in accordance with the **South**

Carolina Rules of Civil Procedure and the **South Carolina Administrative Procedures Act;**

f) Pursuant to **Rule 12(f), South Carolina Rules of Civil Procedure,** I am respectfully requesting that this Court issues an **ORDER** which **STRIKES** the "Decision" of the Appeals Tribunal, **Appendix I,** and the "Decision" of the Appellate Panel, **Appendix J,** for all the reasons set forth herein;

g) In the alternative, and only if possible, I would prefer to have nothing to do with SC DEW if this Honorable Court is empowered to call up an **Emergency Hearing** and permit me to make my arguments to this Court, pursuant to **South Carolina Code of Laws § 1-23-380(5);**

h) Additionally, if this Honorable Court is empowered with the authority, and jurisdiction to **ORDER** SC DEW, to immediately Release all of the unemployment compensation owed to me, I would ask the Court to do so. My family is suffering extreme, dire situations, and we desperately need the unemployment compensation that I am owed;

i) Any and all other Relief the Court deems just, proper, and in the interests of justice;

Respectfully submitted on this 20th day of April 2020.

Mike Ardis

Mike Ardis, Appellant/Claimant
105 North Guignard Drive
Sumter, SC 29150
(803) 236-0859
michael.ardis2001@gmail.com

VERIFICATION

I HEREBY CERTIFY that, under penalty of perjury, that everything contained within this **Emergency Motion** is the absolute truth. The Appellant/Claimant is Verifying this **Emergency Motion** in that this is a crucially important issue to the undersigned, and he desires to impart its importance to the tribunal via this Verification.

Mike Ardis

Mike Ardis, Appellant/Claimant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a copy of this **Emergency Motion,** and its **Appendixes,** have been provided to the South Carolina Department of Employment and Workforce on this 20th day of April 2020.

Mike Ardis

Mike Ardis, Appellant/Claimant

APPENDIX D

SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Robert M. Ardis

Appellant/Claimant, **DOCKET NO. 20-ALJ-22-0070-AP**

Lower Tribunal: SC Dept. of Emp. & Workforce

vs.

South Carolina Department of Employment and Workforce and Sykes Enterprises, Inc.

Appellees/Respondents,

______________________________/

EMERGENCY MOTION FOR SUMMARY JUDGMENT AND OTHER RELIEF

Pursuant to **South Carolina Rule of Civil Procedure, Rule 56,** Plaintiff[1] Robert Michael Ardis moves this Honorable Court to **GRANT** Summary Judgment in favor of the Appellant/Claimant, and **GRANT** the Appellant/Claimant the other

[1] See *Erickson v. Pardus* 551 U.S. 89, 127 S. Ct. 2197 U.S., 2007.A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers. Pleadings in this case are being filed by the Petitioner *in propria persona*, wherein pleadings are to be considered without regard to technicalities. *Propria* pleadings are not to be held to the same high standards of perfection as practicing lawyers. See *Haines v. Kerner* 92 S. Ct. 594, also See *Powell v. Lennon,* 914 F2d 1459 (11th Cir 1990).

Emergency Relief he is seeking in his Prayer for Relief. In support thereof the Appellant/Claimant would show the Court as follows:

1. The Appellant/Claimant, hereby incorporates, by reference each and every Notice, Motion, Pleading, and document, previously filed with the Court, as if quoted verbatim herein.

2. The unemployment benefits the Appellant/Claimant is seeking do **not** belong to the Respondents, South Carolina Department of Employment and Workforce (SC DEW). Those unemployment benefits were paid in, by the undersigned, based upon the Appellant/Claimant's tireless work, sometimes 60-70 hours per week. It is not fair, nor is it in good faith, on the part of the Respondents, to play "legalistic games" is order to harm the Appellant/Claimant's family. The Appellant/Claimant and his family are suffering and this Court must act.

3. **S.C. Code Ann. § 1-23-570,** is sufficiently and absolutely clear as a matter of law. Based upon this law, this Court entered a **Notice of Assignment.**

4. In this Court's **NOTICE OF ASSIGNMENT** entered and Docketed on March 26, 2020, the Court wrote in part:

FURTHER, NOTICE IS GIVEN that the parties are **required** to meet the following deadlines, unless otherwise **ordered** by the assigned Administrative Law Judge. **(emphasis added)**

Record on Appeal Due within twenty (20) days of the date of this Notice **(to be filed by the agency)**

5. It is respectfully submitted that the Respondents, SC DEW, were required by the Order of this Court, to meet a deadline of twenty (20) days, to provide the Record to the Court. The Appellant/Claimant has not been provided the Record nor has the Court been provided the Record. In point of fact, since the Respondents have never conducted an evidentiary hearing, there is no Record, other than the impermissible hearsay incorporated in their "decisions."

6. This **Emergency Motion** is being filed on April 27, 2020. This accounts for a period of 32 days. The inaction of the Respondents was not due to a further Order of this Court. In addition to the Respondent's violation of this Court's Order, additionally, they did not seek an extension of time. Accordingly, the Appellant/Claimant seeks Summary Judgment.

7. Summary judgment is proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is

entitled to a judgment as a matter of law." Rule 56(c), SCRCP ; see also ALC Rule 68 (stating the South Carolina Rules of Civil Procedure may be applied in proceedings before the ALC to resolve questions not addressed by the ALC rules). The question of statutory interpretation is one of law for the court to decide. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 73, 716 S.E.2d 877, 881 (2011).

8. Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002).

Undisputed Material Facts

9. The undisputed facts are as follows. This Honorable Court issued its **Notice of Assignment** on March 26, 2020, Ordering the parties to meet certain Deadlines set by the Court. Please see the attached **Appendix A.**

10. In this Court's **NOTICE OF ASSIGNMENT** entered and Docketed on March 26, 2020, **Appendix A,** the Court wrote in part:

> FURTHER, NOTICE IS GIVEN that the parties are **required** to meet the following deadlines, unless otherwise **ordered** by the assigned

Administrative Law Judge. **(emphasis added)**

Record on Appeal Due within twenty (20) days of the date of this Notice **(to be filed by the agency)**

11. The Appellant/Claimant has not been provided with the Record on Appeal by the Respondents, and likewise, neither has the Court been provided with the Record on Appeal. Again, it is impossible for the Respondents to present this Court with a "Record" which consists only of impermissible hearsay.

12. To the best of the undersigned's knowledge and belief the Respondents have not transferred and filed the Record on Appeal, to this Honorable Court, as Ordered. In point of fact, based on his prior pleadings and motions in this cause, the undersigned has informed the Court that there is not a Record due to the actions of the Respondents.

13. Notwithstanding such facts the Court should still **GRANT** Summary Judgment against the Respondents, and in favor of the Appellant/Claimant.

14. Through no fault of his own, the undersigned has been unemployed and without any income for himself and his family, since November 8, 2019. And now, due to the Covid-19 crisis, the economy is in such shambles, that the unemployment compensation owed to the undersigned may be his only source of

income for the foreseeable future.

15. Attached as **Appendix B,** is the detailed work history of the Appellant/Claimant, when he worked for Sykes Enterprises. The undersigned was an excellent employee who always excelled at the highest possible level of performance, earning overtime, monthly and quarterly bonuses.

16. The Appellant/Claimant was specifically targeted by his employer because he is a white, male, over 40 and his excellent work performance was perceived as a threat by his manager. Out of approximately 700 employees who work at the Sumter Sykes location, approximately 680 are African Americans, while only approximately 20 are Caucasian Americans. It should be noted that Sumter County is a majority Caucasian American County.

17. Investigations are currently underway against Sykes Enterprises for racial, gender, and age discrimination, against the undersigned, by the South Carolina Human Affairs Commission, and the United States Equal Employment Opportunity Commission.

18. Sykes Enterprises has a long and infamous history of litigation. Attached as **Appendix C** is a Selected Bibliography of the Federal Lawsuits, brought against Sykes Enterprises, in just the last few years. As the Court will see from its review

of **Appendix C,** Sykes has been the Defendant in over thirty (30) Federal Lawsuits recently. The Appellant/Claimant has not researched the state level lawsuits brought against Sykes, but would venture a guess that it could be in the hundreds, if not higher.

19. Attached as **Appendix D,** is the December 18, 2019, Discrimination Charges, proffered against Sykes Enterprises by the South Carolina Human Affairs Commission. The Appellant/Claimant is working closely with SCHAC, to make sure Sykes is held accountable for its atrocious behaviors.

20. However, even supposing, *arguendo* that these matters were not ripe for Summary Judgment (but they are), the fact remains that even if this Court were to **REMAND** these matters back to the Respondents, SC DEW, it would be to the detriment of the Appellant/Claimant and his Rights.

21. Attached as **Appendix E,** is a copy of **S.C. Code Ann. § 41-35-760,** which was passed and signed into law in March of 2010. Notwithstanding such facts, the Respondents, SC DEW, have **never** complied with **Appendix E.** A synopsis of the undisputed facts/examples to this effect are as follows:

a statutorily required Evidentiary Hearing has **never** been held for the

Appellant/Claimant

both the Appeals Tribunal and Appellate Panel for the Respondents, considered, and incorporated, the undersigned's Complaint emails to SC DEW in their "decisions" such actions equate to impermissible ***ex parte*** consideration and violations of the Judicial Canons

the above cited consideration of ***ex parte,*** hearsay, is a direct violation of the Judicial Canons and **S.C. Code Ann. § 41-29-300**

the "decisions" of the Respondents' Appeals Tribunal and Appellate Panel, were based exclusively on impermissible hearsay. No one was ever sworn. Such actions are direct violations of **S.C. Code of Regulations R. 47-51** which states in part, findings of fact **cannot be based exclusively on hearsay evidence**(**emphasis added)**

the no hearing for the undersigned by the Respondents violates the South Carolina Constitution which reads in part at **Article I, § 22,** No person ***shall* be finally bound** by a judicial or quasijudicial decision of an administrative agency affecting private rights except on ***due notice* and an *opportunity to be heard***; **(emphasis added)**

For months the Respondents have refused to Comply several **South Carolina Freedom of Information Act Requests**, related to **S.C. Code Ann. § 41-35-760.**

the Appellant/Claimant filed an **Emergency Petition for *writ of mandamus*,** in the Sumter County Circuit Court, against the Respondents in an effort to

Compel them to hold a hearing.

the Appellant/Claimant has been forced to take out a high interest title loan against his vehicle; has been forced to sell his burial plot in my family plot; has been forced to go to the Salvation Army for food donations and forced to go to United Ministries for food donations and assistance with our utility bills; he has done all of this due to the illegal actions of the Respondents

22. The Appellant/Claimant could continue to list specific violations of his Rights, committed by the Respondents. However, any one of the above is more than sufficient for the Court to **GRANT** the requested Summary Judgment and the other **Emergency Relief** being sought by the undersigned. Now, coupled with all of the above, the undersigned and his 78 year old Mother, who is a Stage 4 Bone Cancer patient are facing eviction and being in the street, due to the bad faith actions of the Respondents. The Appellant/Claimant, and his family have waited and suffered long enough.

23. All of the above, and everything contained in all prior Pleadings in this matter, by the undersigned, conclusively proves that the Respondents have **never** Complied with **S.C. Code Ann. § 41-35-760.** If the Respondents had complied with **S.C. Code Ann. § 41-35-760,** then the actions and violations committed by the Respondents, cited herein, to which the undersigned is swearing to, would **not** be possible. If the Court were to REMAND this matter back to the Respondents, this

would only prolong the undersigned's suffering and he would be back before this Court in 3-4 months. By that time irreparable harm would be done to him and his family.

24. Based upon what is contained within all of the undersigned's Pleadings and Exhibits to this Honorable Court, if the Respondents have not complied with **S.C. Code Ann. § 41-35-760,** from March of 2010, through April 27, 2020, the filing of this **Emergency Motion,** it is extremely unlikely that they will comply anytime soon.

25. The Respondents have also failed to Comply with the numerous other laws, regulations, and Constitutional guarantees, previously cited, in the prior pleadings of the undersigned.

26. The unemployment compensation earned and owed to the undersigned is derived from Federal income taxes. As such, these funds are **not** something the Respondents must be permitted to hold hostage to the detriment of the undersigned and his family.

27. Generally, a court must apply the rules of statutory interpretation to resolve the ambiguity and discover the intent of the legislature. *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 348, 549 S.E.2d 243, 247 (2001). However, "[i]n the enforcement of tax statutes, the **taxpayer should receive the benefit in cases of doubt."** *S.C. Nat'l Bank v. S.C. Tax Comm'n*, 297 S.C. 279, 281, 376 S.E.2d 512, 513

(1989) (citing *Cooper River Bridge, Inc. v. S.C. Tax Comm'n,* 182 S.C. 72, 188 S.E. 508 (1936) **). (emphasis added)**

28. "[W]here the language relied upon to bring a particular person within a tax law is ambiguous or is reasonably susceptible of an interpretation that will exclude such person, then the person will be excluded, **any substantial doubt being resolved in his favor**." *Cooper River Bridge, Inc.,* 182 S.C. at 76, 188 S.E. at 509–510; see also *SCANA Corp. v. S.C. Dep't of Revenue,* 384 S.C. 388, 394 n. 3, 683 S.E.2d 468, 471 (2009) (Beatty, J., dissenting) (noting general rule that where substantial doubt exists as to the construction of tax statutes, **the doubt must be resolved against the government).(emphasis added)**

29. This Court is empowered to **GRANT** the requested **Emergency Relief** sought by the Appellant/Claimant pursuant to **S.C. Code Ann. § 1-23-380(5)).** That section states:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2019).

30. Taking each subsection of **S.C. Code Ann. § 1-23-380(5)),** individually, the undersigned at all times is referencing what is contained above, and in all his prior pleadings before the Court:

Did the Respondents take actions in *(a) in violation of constitutional or statutory provisions?*

The answer is a resounding yes. Please see their noncompliance and violations of **Article I, § 22,** of the S.C. Constitution; their noncompliance and violations of **S.C. Code of Regulations R. 47-51**; and their noncompliance, cited repeatedly by the undersigned, with **S.C. Code Ann. § 41-35-760**; along with multiple other violations not being cited for purposes of brevity;

Did the Respondents take actions in *(b) in excess of the statutory authority of the agency?*

The answer is a resounding yes. Besides the violations cited immediately above, the Respondents never conducted an evidentiary hearing; the Respondents openly violated the **S.C. Freedom of Information Act**; the Respondents reviewed and considered and incorporated the undersigned's Official Complaint emails; ***ex parte***, directed to the Administration of the Respondents, which is simply further conclusive proof that the Respondents have **never** complied with **S.C. Code Ann. § 41-35-760**, in the more than ten (10) years since it became law;

Did the Respondents take actions in *(c) made upon unlawful procedure?*

The answer is a resounding yes. Where to begin? Making decisions without interviewing the undersigned's witnesses; not holding evidentiary hearings; changing hearing officers without Notice; reviewing and considering Complaint emails; violating numerous statutes, rules, and even the S.C. Constitution; the undersigned could turn this into a dissertation if time permitted;

Did the Respondents take actions in *(d) affected by other error of law;*

The answer is a resounding yes. Please reference each and everything listed above, and each and every pleading filed by the Appellant/Claimant in this cause;

Did the Respondents take actions in *(e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record?*

The answer is a resounding yes. The Appellant/Claimant is verifying this **Emergency Motion** and he stands behind everything he has pled. The Respondents are an inept, lazy, incompetent agency. I am sorry, but they just are. There is no Record, because there has **never** been an evidentiary

hearing. The Respondents have retaliated against the undersigned because he has pointed out that the Respondents have never, ever Complied with **S.C. Code Ann. § 41-35-760.** The Respondents, by simply having a link on their website, which has a copy of the law, is **not** Compliance. They should be ashamed of themselves.

Did the Respondents take actions in an *(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.*

The answer is a resounding yes. The undersigned would respectfully request that the Court reviews everything he has filed in this cause. There has been rampant, multiple arbitrary, capricious actions, and not just an abuse of discretion, but a perversion of discretion. It sickens me that a state agency would behave in such a disgusting manner. And, the undersigned would ask the Court to take **Judicial Notice** of the fact that the Respondents, have **never, ever, not once**, attempted to deny the allegations of the undersigned. Respectfully, this Honorable Court should not require anything further.

CONCLUSION

31. The Appellant/Claimant performed at the highest level of professionalism while working at Sykes. See **Appendix B.** However, Sykes elected to continue their illegal pattern of Discrimination, see **Appendix D.**

32. The undersigned, due to his excellent work performance and working

regularly 60-70 hours each week, has earned the maximum of his Federal Unemployment Benefits.

33. The undersigned has been illegally unemployed since November 8, 2019, through the filing of this **Emergency Motion**, on April 27, 2020. The undersigned is entitled to $326 per week, for a period of 25 weeks, for a total amount owed to the Appellant/Claimant of $8,150. The Appellant/Claimant is respectfully requesting the Court to Award him $8,150, from the Respondents, without any further delay. The undersigned and his Mother will become homeless if this Court does not **GRANT** the requested, **Emergency Relief.** It is respectfully submitted that this Honorable Court has never been presented with such dire, emergency matters, as the ones presented in the instant case.

34. Currently, the undersigned's rent has not been paid and eviction is imminent; the only food at the undersigned's home consists of random can goods; the undersigned is unable to get another food donation for two months.

35. It is respectfully submitted that if the Court does not **GRANT** the **Emergency Relief** being sought by the Appellant/Claimant, he will be prejudiced in such a way that no future actions, by any Court, will ever make him whole.

36. It is respectfully submitted that the Appellant/Claimant has been waiting

for his unemployment compensation since November 8, 2019. This is too long. The immense hardships suffered by the Appellant/Claimant, and his family, are beyond the pale. Again, the Respondents should be ashamed of themselves.

37. This Honorable Court should **GRANT** the requested Summary Judgment and the other **Emergency Relief** sought by the undersigned, without further delay.

WHEREFORE, the Appellant/Claimant Prays for the following Relief, on an Expedited, Emergency basis:

a) that the Court **GRANTS** Summary Judgment for the Appellant/Claimant and against the Respondents;

b) that the Court **ORDERS** the Respondent to immediately, and without delay, release and compensate the undersigned for the twenty-five weeks of unemployment benefits he is owed at $326 per week, for a total of $8,150;

c) in the alternative that this Court, on an Emergency Basis, schedules a **Contested Hearing,** for this week and that this Court makes a determination since the Respondents have never Complied with **S.C. Code Ann. § 41-35-760;**

d) that the Court **GRANTS** any and all further Relief the Court deems, in its

sound discretion, meets the ends of fairness and justice;

Respectfully submitted on April 29, 2020

<u>/s/ Robert Michael Ardis</u>
Robert Michael Ardis, Appellant/Claimant
105 North Guignard Drive
Sumter, S.C. 29150
(803) 236-0859
michael.ardis2001@gmail.com

VERIFICATION

COMES NOW the Appellant/Claimant, ROBERT MICHAEL ARDIS, who, under penalty of perjury and under the laws of the United States of America and the state of South Carolina, does hereby declare that I have read the foregoing, and that the facts alleged therein are true and correct to the best of my knowledge and belief. I understand that a false statement in this verification, and above in Paragraphs 1-37, will subject me to penalties of perjury.

<u>/s/ Robert Michael Ardis</u>
Robert Michael Ardis, Appellant/Claimant
105 North Guignard Drive
Sumter, SC 29150
michael.ardis2001@gmail.com
(803) 236-0859

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a copy of this **Emergency Motion,** and its **Appendixes,** have been provided to the Court via hand-delivery and the South Carolina Department of Employment and Workforce, via Eservice pursuant to Rule 4, South Carolina Rules of Civil Procedure on this 29th day of April 2020, and via U.S. Mail.

/s/ Robert Michael Ardis
Robert Michael Ardis, Appellant/Claimant

SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Robert Michael Ardis

Appellant/Claimant,

DOCKET NO. 20-ALJ-22-0070-AP

Lower Tribunal: SC Dept. of Emp. & Workforce

vs.

South Carolina Department of Employment and Workforce and Sykes Enterprises, Inc.

Appellees/Respondents,

______________________________/

EMERGENCY MOTION TO VACATE ORDER OF DISMISSAL, AND TO SCHEDULE EMERGENCY CONTESTED HEARING, AND FOR OTHER RELIEF

COMES NOW, the Appellant/Claimant on his own behalf[1] and files this Emergency Motion to Vacate Order of Dismissal and to Schedule Emergency

[1] See *Erickson v. Pardus* 551 U.S. 89, 127 S. Ct. 2197 U.S., 2007. A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers. Pleadings in this case are being filed by the Petitioner *in propria persona*, wherein pleadings are to be considered without regard to technicalities. *Propria* pleadings are not to be held to the same high standards of perfection as practicing lawyers. See *Haines v. Kerner* 92 S. Ct. 594, also See *Powell v. Lennon,* 914 F2d 1459 (11th Cir 1990).

Contested Hearing, and for Other Relief. In support thereof the Appellant/Claimant would show the Court the following:

1. Henry McMaster currently serves as His Excellency, the 117th and current Governor of South Carolina. Article IV, Executive Department, Section I of the South Carolina Constitution reads as follows:

> **SECTION 1.** Chief Magistrate.
>
> The **supreme executive authority** of this State shall be vested in a Chief Magistrate, who shall be styled "The Governor of the State of South Carolina." (1972 (57) 3171; 1973 (58) 48.) **(emphasis added)**

2. According to the **South Carolina Constitution**, what follows are some of the more important duties and responsibilities of His Excellency, the Governor of South Carolina:

According to the South Carolina Constitution, the Governor:

- Exercises **"supreme executive authority."** (Article IV, South Carolina Constitution) **(emphasis added)**
- Appoints directors to 14 cabinet agencies
- Serves as the commander-in-chief of the South Carolina National Guard.
- Serves as the commander-in-chief of the South Carolina State Guard, which is an auxiliary of the National Guard organized for in-state homeland defense.
- Commutes death sentences to life imprisonment.
- Calls the General Assembly to an extra session in "extraordinary circumstances."
- Adjourns the General Assembly as he shall think proper.

- Exercises veto and a Line-item veto power on bills.
- Declares a **state of emergency** and oversees relief in the event of a disaster. **(emphasis added)**
- **Oversees all state departments. (emphasis added)**
- Serves as the ex officio chair of the board of trustees of all state universities.
- Submits a budget proposal to the General Assembly every January.
- Delivers a state of the state address, "from time to time," to the General Assembly; this is usually done in January.
- Appoints United States senators in cases of vacancy to serve until the next election.
- Appoints (or suspends) county sheriffs in cases of vacancy to serve until the next election.

3. On March 17, 2020,[2] Governor McMaster entered his **Executive Order 2020-10,**[3] which is included with this **Emergency Motion** as **Appendix A.** Contained within **Executive Order 2020-10,** vested in him by the People of South Carolina, and the South Carolina Constitution, Governor McMaster wrote, in part, the following:

> Section 3. I hereby authorize **and direct** ***any agency*** within the undersigned's Cabinet or any other department within the Executive Branch, as defined by **section 1-30-10 of the South Carolina Code of Laws**, as amended, through its respective director or secretary, to **waive or "suspend provisions of existing regulations prescribing procedures** for conduct of state business if strict compliance with the provisions thereof would **in any way** prevent, hinder, or delay necessary action in coping with the emergency," in accordance with **section 25-1-440 of the South Carolina Code of Laws** and other applicable law. **(emphasis supplied)**

[2] With the entry of **Executive Order 2020-10,** on **March 17, 2020**, all deadlines, timetables, etc., were officially ***"suspended"*** and ***"waived"*** as the same deadlines and timetables were/are applicable to the Administrative Law Court and the South Carolina Department of Employment and Workforce, both of which are subordinate to the Executive Supremacy of the Governor.

[3] The Court cites to an Administrative Order of the Chief Administrative Law Judge in its Dismissal Order, however, being subordinate to the Office of the Governor, **Executive Order 2020-10,** supersedes and controls over said Administrative Order of the Administrative Law Court.

4. The Appellant/Claimant can cite to a plethora of Decisional Law, wherein when the language of an **Executive Order,** is clear and unambiguous, as is the case here, that there is no need to resort to interpretation or to apply arbitrary constructs. Such citations should not be necessary in that this is a straightforward and simplistic matter. The following words and phrases are of particular importance in these matters:

> ***Waive or suspend provisions of existing regulations prescribing procedures in any way prevent, hinder, or delay necessary action***[4]

5. The application of the rule of construction known as "***expressio unius est exclusio alterius,***" meaning "***to express or include one thing implies the exclusion of another, or of the alternative,***" found in the Supreme Court Case of *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (quoting Black's Law Dictionary 602 (7th ed. 1999)), which also dealt with an Executive Order of the Governor, held that an Executive Order, of the Governor, is the **Supreme Executive Authority** and is beyond being questioned.

---

[4] Keeping the Appellant/Claimant and his 78 year old Mother from being evicted from their home; and keeping the electricity and other utilities turned on; and keeping food in the refrigerator and in the cabinets; and being able to pay for his 78 year old Mother's Stage 4 Bone Cancer Treatments, are, most definitely, "**necessary action(s)**", for this Citizen of South Carolina and his family.

6. The following information was taken directly from the website of the South Carolina Administrative Law Court, which is found at: https://scalc.net/

> The Administrative Law Court is **an agency within the executive branch** of state government. **(emphasis supplied)**

7. The Executive Order of the Governor of South Carolina, supersedes any Administrative Order, of any Agency, **which is subordinate** to the Chief Executive of the State of South Carolina.

8. This Court, the Administrative Law Court of South Carolina, is a **subordinate agency to the Executive Branch**, or to His Excellency, Governor McMaster.

9. Governor McMaster's **Executive Order 2020-10,** is not only applicable to this Court. Furthermore, pursuant to Governor McMaster's **Executive Order 2020-10,** the South Carolina Department of Employment and Workforce is also bound by the Executive Order of the Governor in that SC DEW **is a subordinate state agency**, to the authority of the Governor, as defined by **section 1-30-10 of the South Carolina Code of Laws.**

10. Both Executive Branch Agencies, the Administrative Law Court and the South Carolina Department of Employment and Workforce, have been **ORDERED** by the Governor, in **Executive Order 2020-10**, to:

> Section 3. I hereby authorize **and direct** ***any agency*** within the undersigned's Cabinet or any other department within the Executive Branch, as defined by **section 1-30-10 of the South Carolina Code of Laws**, as amended, through its respective director or secretary, to **waive or "suspend provisions of existing regulations prescribing procedures** for conduct of state business if strict compliance with the provisions thereof would **in any way** prevent, hinder, or delay necessary action in coping with the emergency," in accordance with **section 25-1-440 of the South Carolina Code of Laws** and other applicable law. **(emphasis supplied)**

11. Accordingly, due to mandatory Stay at Home Orders issued by the Governor, along with other legal restrictions put in place, the undersigned could not meet the "*technical*" guidelines of "*Service*" of the Notice of Appeal due to the Covid-19 State of Emergency. Said State of Emergency was Declared by both Governor McMaster, and President Trump. The Appellant/Claimant did provide said Notice of Appeal, to the Respondents via email, as they had been providing legal documents to him for months. And, for the Respondents to "*argue*" that they were not served is disingenuous, as well as insulting to common sense.

12. But those matters are irrelevant to the point at issue, which is Governor McMaster's Executive Authority over **both** the Administrative Law Court and SC

DEW, coupled with His Excellency's issuance of **Executive Order 2020-10,** included as **Appendix A.** Such "*technical*" requirements like in-person or mailing of a Notice of Appeal, were "***waived***" and "***suspended***" as ***"provisions of existing regulations prescribing procedures for conduct of state business"*** because such "*technical*" requirements, most certainly were and are, directly adverse to the Appellant/Claimant because ***"strict compliance with the provisions thereof would in any (every) way prevent, hinder, or delay necessary action"*** as desperately needed by the Appellant/Claimant and his family.

13. Both the Administrative Law Court and the South Carolina Department of Employment and Workforce, were **ORDERED** by the Governor to "***Waive or suspend provisions of existing regulations prescribing procedures ..... in any way prevent, hinder, or delay necessary action"*** in **Executive Order 2020-10.**

14. However, it readily appears the only individual who has followed Governor McMaster's **Executive Order 2020-10,** is Mr. Bruce Urban, the Assistant Executive Director of the South Carolina Department of Employment and Workforce. It was Mr. Urban, himself, who told the Appellant/Claimant, in front of several witnesses, that to effectuate the "Service" of an Appeal, with SC DEW, that all the undersigned

was required to do was email those documents to his attention. Mr. Urban, obviously acting in Compliance with **Executive Order 2020-10,** even boastfully told the undersigned, ***"you are talking to the right man"*** when Mr. Urban, speaking as the Assistant Executive Director of SC DEW, directed the undersigned to email his Notice of Appeal, to him, Mr. Urban, directly.

15. It is respectfully submitted that Judge Funderburk must **VACATE** his recent Dismissal Order in accordance with the provisions of Governor McMaster's **Executive Order 2020-10**. It is the undersigned's sincere hope that the letter, spirit, and intent of the Governor's Order will be honored by both State Agencies in these matters, and the mean-spirited "*legal gamesmanship*" will immediately cease. The Appellant/Claimant has been waiting on **Due Process of Law**, and his **Right to be heard**, since November of 2019. Enough is enough.

16. **Appendix A** is the Order of the Governor of this State. In accordance with the Order of the Governor, and the **VACATING** of this Court's recent Order, the undersigned resubmits his **Emergency Request for a Contested Hearing,** and his **Right to Due Process of Law**, and his **Right to be Heard**, and his **Right to call witnesses**. The Appellant/Claimant respectfully requests that the Court takes such actions on an **Expedited, Emergency Basis.**

17. In the alternative, and this is preferable, the undersigned would respectfully request this Honorable Court to put this farce to rest, once and for all, and **GRANT** his **Motion for Summary Judgment,** and **ORDER** the South Carolina Department of Employment and Workforce to immediately provide the Appellant/Claimant with the $8,150 in unemployment compensation that he is legally entitled to, **without any further delay.**

WHEREFORE, the Appellant/Claimant Prays for the following **Emergency Relief,** on an **Expedited, Emergency basis:**

a) that based upon **Appendix A,** Governor McMaster's **Executive Order 2020-10,** that the Court immediately **VACATES** its Dismissal Order in these matters;

b) that the Court immediately **GRANTS** the undersigned's **Motion for Summary Judgment,** previously filed with the Court, and that the Court further **ORDERS** the Respondents to immediately, and without delay, release and compensate the undersigned for the twenty-five weeks of unemployment benefits he is owed at $326 per week, for a total of $8,150;

c) in the alternative that this Court, on an **Emergency Basis,** schedules a **Contested Hearing,** for this week and that this Court makes a determination since the Respondents have never Complied with **S.C. Code Ann. § 41-35-760** and numerous other **South Carolina Laws, Regulations,** and **Constitutional Provisions;**

d) the Appellant/Claimant respectfully informs the Court that this is the first in a series of **Emergency Motions** that he has drafted. It is hoped that this **Emergency Motion** is all that is required and the other drafts will not need to be filed. In reality, this should be the case given the incontrovertible nature of **Executive Order 2020-10;**

e) that the Court **GRANTS** any and all further Relief the Court deems, in its sound discretion, meets the ends of fairness and justice;

Respectfully submitted on May 26, 2020

/s/ Robert Michael Ardis
Robert Michael Ardis, Appellant/Claimant
105 North Guignard Drive
Sumter, S.C. 29150
(803) 236-0859
michael.ardis2001@gmail.com

VERIFICATION

COMES NOW the Appellant/Claimant, ROBERT MICHAEL ARDIS, who, under penalty of perjury and under the laws of the United States of America and the state of South Carolina, does hereby declare that I have read the foregoing, and that the facts alleged therein are true and correct to the best of my knowledge and belief. I understand that a false statement in this verification, and above in Paragraphs 1-17, will subject me to penalties of perjury.

/s/ Robert Michael Ardis
Robert Michael Ardis, Appellant/Claimant
105 North Guignard Drive
Sumter, SC 29150
michael.ardis2001@gmail.com
(803) 236-0859

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a copy of this **Emergency Motion**, and its **Appendixes,** have been provided to the Court via hand-delivery and the South Carolina Department of Employment and Workforce, via Eservice pursuant to Rule 4, South Carolina Rules of Civil Procedure on this 26th day of May 2020, and via U.S. Mail.

/s/ Robert Michael Ardis
Robert Michael Ardis, Appellant/Claimant

APPENDIX F

SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Robert Michael Ardis

Appellant/Claimant,

DOCKET NO. 20-ALJ-22-0070-AP

Lower Tribunal: SC Dept. of Emp. & Workforce

vs.

South Carolina Department of Employment and Workforce and Sykes Enterprises, Inc.

Appellees/Respondents,

______________________________/

SECOND AMENDED EMERGENCY MOTION FOR RECONSIDERATION, AND TO SCHEDULE EMERGENCY CONTESTED HEARING, AND FOR OTHER RELIEF

COMES NOW, the Appellant/Claimant on his own behalf[1] and files this his Second Amended Emergency Motion for Reconsideration and to Schedule

[1] See *Erickson v. Pardus* 551 U.S. 89, 127 S. Ct. 2197 U.S., 2007. A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers. Pleadings in this case are being filed by the Petitioner *in propria persona*, wherein pleadings are to be considered without regard to technicalities. *Propria* pleadings are not to be held to the same high standards of perfection as practicing lawyers. See *Haines v. Kerner* 92 S. Ct. 594, also See *Powell v. Lennon,* 914 F2d 1459 (11th Cir 1990).

Emergency Contested Hearing, and for Other Relief. In support thereof the Appellant/Claimant would show the Court the following:

1. Simultaneously with the instant **Emergency Motion** the Appellant/Claimant is filing his Emergency Motion to Vacate Order of Dismissal and to Schedule Emergency Contested Hearing, and for Other Relief. Many of the arguments found in the Emergency Motion to Vacate will dovetail with the arguments in the instant Emergency Motion in that said arguments are similar. However, the undersigned is Amending and adding to the instant **Emergency Motion** for the review and consideration of the Court.

2. Henry McMaster currently serves as His Excellency, the 117th and current Governor of South Carolina. Article IV, Executive Department, Section I of the South Carolina Constitution reads as follows:

> **SECTION 1.** Chief Magistrate.
>
> The **supreme executive authority** of this State shall be vested in a Chief Magistrate, who shall be styled "The Governor of the State of South Carolina." (1972 (57) 3171; 1973 (58) 48.) **(emphasis added)**

3. According to the **South Carolina Constitution,** what follows are some of the more important duties and responsibilities of His Excellency, the Governor of South Carolina:

According to the South Carolina Constitution, the Governor:

- Exercises **"supreme executive authority."** (Article IV, South Carolina Constitution) **(emphasis added)**
- Appoints directors to 14 cabinet agencies
- Serves as the commander-in-chief of the South Carolina National Guard.
- Serves as the commander-in-chief of the South Carolina State Guard, which is an auxiliary of the National Guard organized for in-state homeland defense.
- Commutes death sentences to life imprisonment.
- Calls the General Assembly to an extra session in "extraordinary circumstances."
- Adjourns the General Assembly as he shall think proper.
- Exercises veto and a Line-item veto power on bills.
- Declares a **state of emergency** and oversees relief in the event of a disaster. **(emphasis added)**
- **Oversees all state departments. (emphasis added)**
- Serves as the ex officio chair of the board of trustees of all state universities.
- Submits a budget proposal to the General Assembly every January.
- Delivers a state of the state address, "from time to time," to the General Assembly; this is usually done in January.
- Appoints United States senators in cases of vacancy to serve until the next election.
- Appoints (or suspends) county sheriffs in cases of vacancy to serve until the next election.

4. On March 17, 2020,[2] Governor McMaster entered his **Executive Order 2020-10,**[3] which is included with this **Emergency Motion** as **Appendix A.** Contained

[2] With the entry of **Executive Order 2020-10,** on March 17, 2020, all deadlines, timetables, etc., were officially ***"suspended"*** and ***"waived"*** as the same deadlines and timetables were/are applicable to the Administrative Law Court and the South Carolina Department of Employment and Workforce, both of which are subordinate to the Executive Supremacy of the Governor.
[3] The Court cites to an Administrative Order of the Chief Administrative Law Judge in its Dismissal Order, however, being subordinate to the Office of the Governor, **Executive Order 2020-10,** supersedes and controls over said Administrative Order of the Administrative Law Court.

within **Executive Order 2020-10,** vested in him by the People of South Carolina, and the South Carolina Constitution, Governor McMaster wrote, in part, the following:

> Section 3. I hereby authorize **and direct** ***any agency*** within the undersigned's Cabinet or any other department within the Executive Branch, as defined by **section 1-30-10 of the South Carolina Code of Laws,** as amended, through its respective director or secretary, to **waive or "suspend provisions of existing regulations prescribing procedures** for conduct of state business if strict compliance with the provisions thereof would **in any way** prevent, hinder, or delay necessary action in coping with the emergency," in accordance with **section 25-1-440 of the South Carolina Code of Laws** and other applicable law. **(emphasis supplied)**

5. The Appellant/Claimant can cite to a plethora of Decisional Law, wherein when the language of an **Executive Order,** is clear and unambiguous, as is the case here, that there is no need to resort to interpretation or to apply arbitrary constructs. Such citations should not be necessary in that this is a straightforward and simplistic matter. The following words and phrases are of particular importance in these matters:

Waive or suspend provisions of existing regulations prescribing procedures

in any way prevent, hinder, or delay necessary action[4]

---

[4] Keeping the Appellant/Claimant and his 78 year old Mother from being evicted from their home; and keeping the electricity and other utilities turned on; and keeping food in the refrigerator and in the cabinets; and being able to pay for his 78 year old Mother's Stage 4 Bone Cancer Treatments, are, most definitely, **"necessary action(s)"**, for this Citizen of South Carolina and his family.

6. The application of the rule of construction known as "***expressio unius est exclusio alterius,***" meaning "***to express or include one thing implies the exclusion of another, or of the alternative,***" found in the Supreme Court Case of _Hodges v. Rainey,_ 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (quoting Black's Law Dictionary 602 (7th ed. 1999)), which also dealt with an Executive Order of the Governor, held that an Executive Order, of the Governor, is the **Supreme Executive Authority** and is beyond being questioned.

7. The following information was taken directly from the website of the South Carolina Administrative Law Court, which is found at: https://scalc.net/

> The Administrative Law Court is **an agency within the executive branch** of state government. **(emphasis supplied)**

8. The Executive Order of the Governor of South Carolina, supersedes any Administrative Order, of any Agency, **which is subordinate** to the Chief Executive of the State of South Carolina.

9. This Court, the Administrative Law Court of South Carolina, is a **subordinate agency to the Executive Branch**, or to His Excellency, Governor McMaster.

10. Governor McMaster's **Executive Order 2020-10,** is **not** only applicable to this Court. Furthermore, pursuant to Governor McMaster's **Executive Order 2020-10,** the South Carolina Department of Employment and Workforce is also bound by the Executive Order of the Governor in that SC DEW **is a subordinate state agency**, to the authority of the Governor, as defined by **section 1-30-10 of the South Carolina Code of Laws.**

11. Both Executive Branch Agencies, the Administrative Law Court and the South Carolina Department of Employment and Workforce, have been **ORDERED** by the Governor, in **Executive Order 2020-10,** to:

> Section 3. I hereby authorize **and direct** ***any agency*** within the undersigned's Cabinet or any other department within the Executive Branch, as defined by **section 1-30-10 of the South Carolina Code of Laws,** as amended, through its respective director or secretary, to **waive or "suspend provisions of existing regulations prescribing procedures** for conduct of state business if strict compliance with the provisions thereof would **in any way** prevent, hinder, or delay necessary action in coping with the emergency," in accordance with **section 25-1-440 of the South Carolina Code of Laws** and other applicable law. **(emphasis supplied)**

12. Accordingly, due to mandatory Stay at Home Orders issued by the Governor, along with other legal restrictions put in place, the undersigned could not meet the "*technical*" guidelines of "*Service*" of the Notice of Appeal due to the Covid-19 State of Emergency. Said State of Emergency was Declared by both Governor McMaster, and President Trump. The Appellant/Claimant did provide said Notice of Appeal, to the Respondents via email, as they had been providing legal documents to him for months. And, for the Respondents to "*argue*" that they were not served is disingenuous, as well as insulting to common sense. Additional arguments on this matter is presented in greater detail below.

13. But those matters are irrelevant to the point at issue, which is Governor McMaster's Executive Authority over **both** the Administrative Law Court and SC DEW, coupled with His Excellency's issuance of **Executive Order 2020-10,** included as **Appendix A.** Such "*technical*" requirements like in-person or mailing of a Notice of Appeal, were ***"waived"*** and ***"suspended"*** as ***"provisions of existing regulations prescribing procedures for conduct of state business"*** because such "*technical*" requirements, most certainly were and are, directly adverse to the Appellant/Claimant because ***"strict compliance with the provisions thereof would in any (every) way prevent, hinder, or delay necessary action"*** as desperately needed by the Appellant/Claimant and his family.

14. Both the Administrative Law Court and the South Carolina Department of Employment and Workforce, were **ORDERED** by the Governor to ***"Waive or suspend provisions of existing regulations prescribing procedures ..... in any way prevent, hinder, or delay necessary action"*** in **Executive Order 2020-10.**

15. However, it readily appears the only individual who has followed Governor McMaster's **Executive Order 2020-10,** is Mr. Bruce Urban, the Assistant Executive Director of the South Carolina Department of Employment and Workforce. It was Mr. Urban, himself, who told the Appellant/Claimant, in front of several witnesses, that to effectuate the "Service" of an Appeal, with SC DEW, that all the undersigned was required to do was email those documents to his attention. Mr. Urban, obviously acting in Compliance with **Executive Order 2020-10,** even boastfully told the undersigned, ***"you are talking to the right man"*** when Mr. Urban, speaking as the Assistant Executive Director of SC DEW, directed the undersigned to email his Notice of Appeal, to him, Mr. Urban, directly.

16. It is respectfully submitted that Judge Funderburk must **VACATE** his recent Dismissal Order in accordance with the provisions of Governor McMaster's **Executive**

Order 2020-10. It is the undersigned's sincere hope that the letter, spirit, and intent of the Governor's Order will be honored by both State Agencies in these matters, and the mean-spirited "*legal gamesmanship*" will immediately cease. The Appellant/Claimant has been waiting on **Due Process of Law**, and his **Right to be heard**, since November of 2019. Enough is enough.

17. **Appendix A** is the Order of the Governor of this State. In accordance with the Order of the Governor, and the **VACATING** of this Court's recent Order, the undersigned resubmits his **Emergency Request for a Contested Hearing,** and his **Right to Due Process of Law**, and his **Right to be Heard**, and his **Right to call witnesses.** The Appellant/Claimant respectfully requests that the Court takes such actions on an **Expedited, Emergency Basis.**

18. In the alternative, and this is preferable, the undersigned would respectfully request this Honorable Court to put this farce to rest, once and for all, and **GRANT** his **Motion for Summary Judgment,** and **ORDER** the South Carolina Department of Employment and Workforce to immediately provide the Appellant/Claimant with the $8,150 in unemployment compensation that he is legally entitled to, **without any further delay.**

CONFLICT IN ADMINISTRATIVE LAW COURT RULES

Due Process Required

19. The Appellant/Claimant moves the Court to Reconsider its Dismissal Order on several grounds as set forth above. The undersigned now moves for Reconsideration based upon **Due Process of Law** provisions found in both the United States and South Carolina Constitutions. The following passages have been excerpted from the ALC Rules:

> **I. GENERAL PROVISIONS**
>
> **Authority and Applicability.** The promulgation of these Rules is authorized by S.C. Code Ann. §1-23-650 (1976) (as amended). These Rules shall govern all proceedings before the Administrative Law Court, in which the right to a hearing (a) is provided by the Administrative Procedures Act; (b) is specifically required by other statutes or regulations; **or (c) is required by due process under the South Carolina or United States Constitutions.** As provided in S.C. Code Ann. § 1-23-650(C), these Rules apply exclusively in all proceedings before the Administrative Law Court. These Rules should be cited "SCALC Rule ____." **(emphasis added)**
>
> **2. Definitions.**
>
> **E. Contested Case** is defined in Section 1-23-505. It is a case for which a hearing is conducted pursuant to Article 3, Chapter 23 of Title 1, the South Carolina Administrative Procedures Act, and includes hearings conducted by the Administrative Law Court pursuant to Section 1-23-600(A), **hearings required by due process under the South Carolina or United States Constitutions, or as otherwise provided by law. (emphasis added)**

20. The Appellant/Claimant has never been heard and has never had his day in Court. Such actions by the Respondents are violations of multiple laws, regulations and Constitutional provisions. The United States Constitution specifically references

Due Process of Law in the 5th and 14th Amendments. And the **South Carolina Constitution Article I, § 22** was added to the 1895 Constitution in 1970 "as a safeguard for the protection of liberty and property of citizens." Final Report of the Committee to Make a Study of the South Carolina Constitution of 1895, p. 21 (1969). **Article I, § 22** provides, in part:

> No person ***shall* be finally bound** by a judicial or quasijudicial decision of an administrative agency affecting private rights except on ***due notice* and an *opportunity to be heard***; nor shall he be subject to the same person for both prosecution and adjudication; . . .**(emphasis added)**

21. The **South Carolina ALC Rule 1** and **Rule 2(E),** both specifically carve out exceptions and such exceptions are noted at the beginning of the ALC Rules. The fact that Due Process exceptions are **"required"** based upon both Rules dovetails with the specific, unambiguous **Constitutional Requirements** of **Article I, § 22** as set forth above.

22. There are so very many violations of laws, rules, regulations and Constitutional Provisions, in the instant case, that whether it is resolved by this Court, or another Court, SC DEW is going to be held to account. The present situation, in the instant case, unless this Court **GRANTS** Reconsideration, is a direct violation of South **Carolina Code of Regulations, R. 47-51,** which reads as follows:

S.C. Code of Regulations R. 47-51

C(3) Evidence will not be excluded solely because it may be hearsay. Hearsay, including information provided to the Department through telephone conversations and written statements, may be considered. <u>However, findings of fact **cannot be based exclusively on hearsay evidence**</u> unless that evidence is admissible under the South Carolina Rules of Evidence. **(emphasis added)**

23. The present situation in the instant case is a violation of Governor McMaster's **Executive Order 2020-10**; a violation of **Article I, § 22,** of the **South Carolina Constitution**; a violation of the **Due Process <u>Requirements</u>** of **ALC Rule 1** and **Rule 2(E);** a violation of **S.C. Code of Regulations R. 47-51;** and other violations which are too numerous to list here.

24. Accordingly, notwithstanding the implications associated with Governor McMaster's **Executive Order 2020-10**, which most certainly controls, this Court is required to Reconsider its Dismissal Order based upon **ALC Rule 1** and **Rule 2(E),** as set forth herein. The Court's Dismissal Order must be **VACATED** and a **Contested Hearing** must be scheduled or in the alternative, **Summary Judgment** must be **GRANTED** in favor of the Appellant/Claimant.

<u>Service By Email</u>

25. Governor McMaster's **Executive Order 2020-10**, both ***"waived"*** and ***"suspended"*** the time requirements set forth in the Dismissal Order of the Court, which warrants both **Reconsideration** and the **VACATING** of the Dismissal Order.

26. Even assuming, *arguendo*, that **Executive Order 2020-10** was not controlling (**but it is**), the Appellant/Claimant avers that he effectuated proper Service upon the Respondents. **ALC Rule 3(C)** reads as follows:

> **3. Time.**
>
> **C. Service By Mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period <u>**after the service of a notice or other paper** upon him and the notice or paper is served upon him by mail, **by e-mail**,</u> or upon a person designated by statute to accept service, five days shall be added to the prescribed period. **(emphasis added)**

27. **ALC Rule 3(C)** specifically cites to ***"service of a notice or other paper"*** then continues on the say that the ***"notice or paper is served upon him by mail, by e-mail, or upon a person designated by statute to accept service. . ."*** There is no ambiguity here, but rather it presents a conflict in the **ALC Rules. ALC Rule 3(C)** appears before the other referenced Rules in the Dismissal Order and since it appears first, deference must be shown to it.

28. This Court is designed to reach fair and just solutions. The Appellant/Claimant is simply reciting the text of **ALC Rule 3(C)**, and this Rule is clear and unambiguous. The present situation in the instant case is neither just, nor fair, nor in the interests of justice.

29. In the endnotes to the **ALC Rules**, the following is found:

> **2014 Revised Notes**
> In all cases involving pro se litigants or those without substantial knowledge and experience in administrative matters, the administrative law judge may make reasonable efforts to assure fairness.

30. Accordingly, notwithstanding the implications associated with Governor McMaster's **Executive Order 2020-10**, which most certainly controls, this Court is required to Reconsider its Dismissal Order based upon **ALC Rule 1** and **Rule 2(E)**, and **ALC Rule 3(C)** and the endnotes to the **ALC Rules**, as set forth herein. The Court's Dismissal Order must be **VACATED** and a **Contested Hearing** must be scheduled or in the alternative, **Summary Judgment** must be **GRANTED** in favor of the Appellant/Claimant.

Stay of the Proceedings

31. Governor McMaster's **Executive Order 2020-10,** both "***waived***" and "***suspended***" the time requirements set forth in the Dismissal Order of the Court, which warrants both the **Reconsideration** and the **VACATING** of the Dismissal Order.

32. Even assuming, *arguendo,* that **Executive Order 2020-10** was not controlling **(but it is)**, the Appellant/Claimant avers that the Respondents effectuated a **Stay of the Proceedings** when they filed their Motion to Dismiss.

33. **ALC Rule 34(B),** clearly stays the time limits for perfecting an Appeal when an opposing party files a Motion to Dismiss.

> **B. Effect of Motions upon Time Limits.** Unless otherwise ordered by the presiding administrative law judge, the filing of a motion or petition shall not stay the time limits imposed by these Rules. A motion to dismiss an appeal or a motion to relieve counsel **shall**, however, **automatically stay** the time limits for **perfecting** the appeal **until** the motion **is decided**. The time limits shall resume from the date of an order deciding the motion. **(emphasis added)**

34. Merriam-Webster defines a stay as "***a stopping or suspension of procedure or execution by judicial or executive order.***" Merriam-Webster further defines

perfecting as "***being entirely without fault or defect.***" These definitions are of crucial importance when juxtaposed with **ALC Rule 34(B).**

35. The Appellant/Claimant maintains he effectuated proper service upon the Respondents based upon all the positions set forth above. Even assuming, *arguendo*, that the undersigned did not effectuate proper service (**but he did**), the reading of **ALC Rule 34(B),** and the specific provisions it contains, were invoked when the Respondents filed their Motion to Dismiss.

36. Even though the undersigned effectuated service upon the Respondents with his emailed **Notice of Appeal** on March 16, 2020, (see **ALC Rule 1** and **Rule 2(E),** and **ALC Rule 3(C)** and the endnotes to the **ALC Rules),** the Appellant/Claimant completed a <u>second service</u> directly upon the Assistant Executive Director of SC DEW, Mr. Bruce Urban, on April 16, 2020. As the Appellant/Claimant has informed this Court, through Verified Pleadings, Mr. Urban is the second in charge of SC DEW. Mr. Urban informed the undersigned, in front of several witnesses, that all the undersigned had to do was email him (Mr. Urban) copies of the Appeal documents in order to effectuate service upon SC DEW. If a citizen cannot trust the Assistant Executive Director, of a State level cabinet agency, then who can a citizen trust?

37. The Appellant/Claimant believes the precise wording of **ALC Rule 34(B),** was made so specific so as to preclude the technical dismissal of an Appeal, if such a dismissal would not serve the interests of justice.

38. Once the Respondents filed their Motion to Dismiss the instant case, the Respondents thereby invoked <u>all the provisions</u> of **ALC Rule 34(B).** And, in doing so, the Respondents gave the Appellant/Claimant time for ***"perfecting"*** his Appeal. Again, based upon the arguments above, the undersigned avers he perfected his Appeal via email service, on March 16, 2020. Notwithstanding such facts, the Respondents invoked **ALC Rule 34(B),** and the undersigned provided a second service, on Assistant Executive Director Bruce Urban, on April 16, 2020.

39. Pursuant to the wording of **ALC Rule 34(B)** not only was stay invoked by the Respondents with the filing of their Motion to Dismiss, but that <u>stay remained in effect</u> until the Court entered its Dismissal Order on May 18, 2020, and received by the undersigned on May 20, 2020. However, based upon the inherent safeguarding provisions of **Rule 34(B),** the undersigned succeeded in ***"perfecting"*** his Appeal with a second service on Mr. Bruce Urban on April 16, 2020. The stay ceased to exist when the Court entered its Dismissal Order on May 18, 2020, but, again, this

point is moot because the undersigned completed a second service upon Mr. Bruce Urban on April 16, 2020, while the official stay was in effect. There was no Dismissal in place when the undersigned effectuated his April 16, 2020, second service upon Mr. Urban. Accordingly the undersigned followed the provisions of **Rule 34(B),** and perfected his Appeal.

40. Accordingly, notwithstanding the implications associated with Governor McMaster's **Executive Order 2020-10,** which most certainly controls, this Court is required to Reconsider its Dismissal Order based upon **ALC Rule 1** and **Rule 2(E),** and **ALC Rule 3(C)** and **ALC Rule 34(B),** and the endnotes to the **ALC Rules,** as set forth herein. The Court's Dismissal Order must be **VACATED** and a **Contested Hearing** must be scheduled or in the alternative, **Summary Judgment** must be **GRANTED** in favor of the Appellant/Claimant.

CONCLUSION

41. Pursuant to **ALC Rule 29(D),** the Appellant/Claimant hereby moves the Court for Reconsideration of its Dismissal Order. Pursuant to **Rule 29(D)(1),** this **Emergency Motion** is being filed, it is within ten (10) days of the notice of the Order of Dismissal, and the undersigned has not yet filed a Notice of Appeal of said

Dismissal Order. Also, pursuant to **ALC Rule 29(D)(4),** this **Emergency Motion** stays the time to file a Notice of Appeal of the Court's Dismissal Order should the Court not **GRANT** the Relief sought herein.

42. Accordingly, in conclusion and notwithstanding the implications associated with Governor McMaster's **Executive Order 2020-10, Appendix A,** which most certainly controls, this Court is required to Reconsider its Dismissal Order based upon **ALC Rule 1** and **Rule 2(E),** and **ALC Rule 3(C)** and **ALC Rule 34(B),** and the endnotes to the **ALC Rules,** as set forth herein. The Court's Dismissal Order must be **VACATED** and a **Contested Hearing** must be scheduled or in the alternative, **Summary Judgment** must be **GRANTED** in favor of the Appellant/Claimant.

WHEREFORE, the Appellant/Claimant Prays for the following **Emergency Relief,** on an **Expedited, Emergency basis:**

a) that based upon **Appendix A,** Governor McMaster's **Executive Order 2020-10,** that the Court immediately **VACATES** its Dismissal Order in these matters;

b) notwithstanding the implications associated with Governor McMaster's **Executive Order 2020-10, Appendix A,** which most certainly controls, that this

Court Reconsiders its Dismissal Order based upon **ALC Rule 1** and **Rule 2(E)**, and **ALC Rule 3(C)** and **ALC Rule 34(B)**, and the endnotes to the **ALC Rules**, as set forth herein. The Court's Dismissal Order must be **VACATED;**

c) that the Court immediately **GRANTS** the undersigned's **Motion for Summary Judgment**, previously filed with the Court, and that the Court further **ORDERS** the Respondents to immediately, and without delay, release and compensate the undersigned for the twenty-five weeks of unemployment benefits he is owed at $326 per week, for a total of $8,150;

d) in the alternative that this Court, on an **Emergency Basis**, schedules a **Contested Hearing**, for this week and that this Court makes a determination since the Respondents have **never** Complied with **S.C. Code Ann. § 41-35-760** and numerous other **South Carolina Laws, Regulations,** and **Constitutional Provisions;**

e) the Appellant/Claimant respectfully informs the Court that this is the first in a series of **Emergency Motions** that he has drafted. It is hoped that this **Emergency Motion** is all that is required and the other drafts will not need to be filed. In reality, this should be the case given the incontrovertible nature of **Executive Order 2020-10** and the other controlling legal authorities cited herein;

f) Respectfully, if the Administrative Law Judge, currently assigned to this matter, will not take actions to correct the blatant errors that are present, in accordance with the legal authorities cited, which are necessary to serve due process and justice, then the undersigned is left with no choice but to respectfully requests that said Judge Disqualifies and/or Recuses himself from these matters, immediately;

g) that the Court **GRANTS** any and all further Relief the Court deems, in its sound discretion, meets the ends of fairness and justice;

Respectfully submitted on June 15, 2020

/s/ Robert Michael Ardis
Robert Michael Ardis, Appellant/Claimant

105 North Guignard Drive
Sumter, S.C. 29150
(803) 236-0859
michael.ardis2001@gmail.com

VERIFICATION

COMES NOW the Appellant/Claimant, ROBERT MICHAEL ARDIS, who, under penalty of perjury and under the laws of the United States of America and the state of South Carolina, does hereby declare that I have read the foregoing, and that the facts alleged therein are true and correct to the best of my knowledge and belief. I understand that a false statement in this verification, and above in Paragraphs 1-42, will subject me to penalties of perjury.

/s/ Robert Michael Ardis
Robert Michael Ardis, Appellant/Claimant
105 North Guignard Drive
Sumter, SC 29150
michael.ardis2001@gmail.com
(803) 236-0859

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a copy of this **Emergency Motion,** and its **Appendixes,** have been provided to the Court via hand-delivery and the South Carolina Department of Employment and Workforce, via Eservice pursuant to Rule 4, South Carolina Rules of Civil Procedure on this 15th day of June 2020, and via U.S. Mail.

/s/ Robert Michael Ardis

Robert Michael Ardis, Appellant/Claimant

APPENDIX G

Code of Laws of South Carolina 1976 Annotated
Title 41. Labor and Employment
Chapter 35. Employment and Workforce--Benefits and Claims Therefor (Refs & Annos)
Article 5. Allowance of Claims

Code 1976 § 41-35-610

§ 41-35-610. Procedures must be pursuant to department regulations; duties of employers.

Effective: March 30, 2010

Currentness

A request for determination of insured status, a request for initiation of a claim series in a benefit year, a notice of unemployment, a certification for waiting-week credit, and **a claim for benefits must be made pursuant to regulations the department promulgates**. An employer must post and maintain in places readily accessible to individuals in his service printed statements concerning regulations or related matters the department prescribes by regulation. An employer must supply those individuals copies of the printed statements or materials the department prescribes by regulation. These statements or materials must be supplied by the department to an employer without cost to the employer.**(EMPHASIS ADDED)**

Credits

HISTORY: 1962 Code § 68-151; 1952 Code § 68-151; 1942 Code § 7035-86; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1955 (49) 480; 1972 (57) 2309; 2010 Act No. 146, § 87, eff March 30, 2010.

Notes of Decisions (1)

COPYRIGHT (C) 2019 BY THE STATE OF SOUTH CAROLINA
Code 1976 § 41-35-610, SC ST § 41-35-610
Current through the 2019 session, subject to technical revisions by the Code Commissioner as authorized by law before official publication.

End of Document © 2019 Thomson Reuters. No claim to original U.S. Government Works.

APPEAL AND RECONSIDERATION

mike ardis <michael.ardis2001@gmail.com> Fri, Aug 7, 11:03 PM (22 hours ago)

to Appeals, Dan, burban, mhendrick, Tudy, Carole

SC DEW

I'd like an explanation of how SC DEW can so easily violate the laws of this State and your very own Policies and Procedures. First,regarding my recent unlawful termination, which was a violation of the **Employment Contract,** that I have with my former employer, should never have become an issue. As I have repeatedly stated, and have copies of all my emails communication to SC DEW, I Objected to Roger Dickerson's participation in those matters. I have the emails I wrote to him Objecting, and asking him to have his Supervisor contact me. No Supervisor ever did. This is simply a case of **Retaliation**, plain and simple. The "decision" reached by Dickerson **violated** SC DEW's very own Policies and Procedures. I have provided you with the documentation and proof, but you continue to refuse to correct Dickerson's unlawful acts.

Then, I requested that SC DEW act in accordance with the State Law, **S.C. Code 1976 § 41-35-640, Reconsideration of Determinations.** It was/is clear that Dickerson's "decision" violated your written Policies. However, as usual, no one from your Agency would get back to me, so I filed an Appeal of the "decision" on July 30, 2020, and kept getting kicked off your website. So I supplemented my filed Appeal on July 31, 2020. However, nothing has been done. No action has been taken. There has been no affirmation of me filing for **Reconsideration** nor for the **Appeal.** And, when I go to your website, and look at my Claimant Homepage, it reads my Appeal is "***void.***" Void for what? I have **not** withdrawn my Appeal. I find your Agency's actions most offensive.

1. First, and follow along with me. I was fired from my job on June 19, 2020, **IN CLEAR VIOLATION OF MY EMPLOYMENT CONTRACT.** I filed for unemployment benifits on June 21, 2020, and did not hear anything from your Agency, for weeks.

2. Second, after not hearing anything from DEW for weeks, I called SC DEW on July 15, 2020. I learned during that phone call that my former employer, **DID NOT FILE**

AN ANSWER TO YOUR INQUIRY FOR AT LEAST 25 DAYS. Such actions were/are more than 2 weeks past the cut off date, according to SC DEW written Policy, which is included below. According to DEW Policies and SC State Law, that should have been the end of things. But, as I have learned from my dealings with SC DEW< it most certainly was not the end.

3. Third, I Objected to the agent assigned, Roger Dickerson and asked to speak to his Supervisor, in several voicemail and email messages to him. And no Supervisor ever got in contact with me. And, Dickerson entered a "decision" that was/is **CLEARLY IN VIOLATION OF YOUR VERY OWN POLICIES.**

4. Fourth, I honestly thought when I presented this to SC DEW, given the clear, unambiguous **WRITTEN POLICIES of SC DEW,** coupled with **S.C. Code 1976 § 41-35-640, Reconsideration of Determinations** (which is attached), that this would be a very simple fix for SC DEW. I specifically requested **Reconsideration** in accordance with the attached law and SC DEW Policies, which I am including at the end of this email (Again). I **NEVER** heard anything from SC DEW, even though each of you know I made contact with you pursuant to **S.C. Code 1976 § 41-35-640, Reconsideration of Determinations,** and there is another SC Law which states notifications must be made in such matters.

5. Fifth, since SC DEW **REFUSED** to act in accordance with State Law and its very own written Policies and Procedures, I filed for an Appeal of the "decision" on July 30, 2020, complete with several documents, and your website kept kicking me off. Then, on July 31, 2020, I went back to your website and filed an addendum to my Appeal. Again, I never heard anything from DEW.

6. Sixth, after not hearing back from anyone from SC DEW I went on your website and it says my Appeal is ***"void".*** I've included a screenshot of the Appeal screen. I have **not** withdrawn my Appeal. I have **not** received anything in the mail acknowledging my Appeal. No hearing date has been set, no hearing officer has been appointed. This is beyond belief.

Again, this is Retaliation against me, pure and simple. The actions of SC DEW, in these matters, is reminiscent of the state of
Assistant U.S. Atty. Eric Rosen, the Federal Prosecutor in the College/University cheating scandal. He said of the Defendants and their actions, demonstrated ***"an astonishing degree of self-entitlement and moral insularity."*** As a citizen of this State it is clear to me, crystal clear, that the South Carolina Department of Employment and Workforce actually believes it is above the law, just like the Defendants referenced above my Prosecutor Rosen.

Rather than do what is right, and pay me the unemployment benefits I am legally entitled to, SC DEW has demonstrated that it will violate the laws of this State; violate the Regulations of this along with provisions of the SC Constitution. And even violate its very own written Policies and Procedures, which is included below.

Rather, than pay me the few thousand dollars I am legally entitled to. SC DEW has actually gone outside of its own ranks and hired a well-heeled law firm which has probably already, many times over, billed the citizens of the State of South Carolina, more in legal costs and legal fees than it would have been to simply pay me the unemployment benefits I am entitled to. And, this well-heeled law firm, made the arguments that I expected them to make, which are easily refuted. In fact, I filed the attached Motion in response to their recent filing, and will be drafting a comprehensive Motion to Rebuttal to their/your Dismissal Motion. Further, I will actually be Amending my Complaint to include additional causes of action, such as DEW's violations of the SC Freedom of Information Act, and its violations of the Americans WIth Disabilities Act. I will also be adding new Defendants as well. And, I will, most certainly, as detailed in this email, be making the Circuit Court aware of the petty, selective discrimination, and Retaliation, clearly aimed at me, by SC DEW. These matters are so clear that I believe any Judge who is presented with such actions will be appalled. And rightfully so.

Again, I did **NOT** withdraw my Request for Reconsideration in accordance with the attached law, and I was **NOT** notified of any "decision" regarding Reconsideration in accordance with the law on notification of decisions. Similarly, I did **NOT** withdraw my Appeal, of Roger Dickerson's "decision" and I Object to DEW's listing my Appeal as ***"void."*** It most certainly **NOT** void and I want my Reconsideration and Appeal heard. Seriously, based upon the specifics I have set forth in this email there is no one, outside of SC DEW who would view these matters against me. I am officially seeking a Reply to this email concerning my request for Reconsideration and my request for Appeal.

Sincerely,
Robert M(Mike) Ardis
(803) 236-0859

bout 14,900,000 results (0.61 seconds)

Search Results
Featured snippet from the web

within 10 calendar days

You **must respond** to the department within 10 calendar days of receiving the notification in order to prevent a former employee from wrongfully receiving UI **benefits**. I**f the department does not receive a response, DEW assumes the individual in unemployed through no fault of their own**.**(emphasis added)**

Employer Separation Response - SC DEW - SC.gov

ROBERT M ARDIS CLAIMANT ID: 10382369

- Customer Menu
- Claimant Homepage
- Change Personal Info
- Change Security Pref
- Confirmation History
- Debit Card Website
- Determination History
- Appeal Information
- My Documents

ADVISEMENT: Please do not use your Internet browser "Back" buttons. In the event you need to return to a previous page, please utilize the navigation buttons or the menu links above.

105 N GUIGNARD DR, SUMTER SC 29150 -4540 michael.ardis2001@gmail.com

Appeals History

	Appeal ID	Appeal Date	Claimant	Employer	Status	Level
◉	175862	07/30/2020	ROBERT ARDIS	WATER SPECIALISTS INC	Void	Appellate
○	126105	02/04/2020	ROBERT ARDIS	SYKES ENTERPRISES INC	Closed	Board of Review
○	122388	12/18/2019	ROBERT ARDIS	SYKES ENTERPRISES INC	Closed	Appellate

Hearing History

	Hearing ID	Docket#	Hearing Method	Location	Hearing Date	Hearing Time	Hearing Official
○							

Schedule Details

Hearing Method : **Hearing Location :** **Hearing Official :**

Hearing Date : **Scheduled Start Time :**

Hearing Issues

Issues	Status	Appellant

Subpoena Requests

Name	Type	Method

Uploaded Documents for Appeal

Document Name	Date Created
REASONS FOR APPEAL	07/31/2020

Additional documents for a Hearing must be received prior to one business day before the hearing is scheduled to occur.

2 Attachments

REJECTION OF SCDEW's VIOLATION OF SOUTH CAROLINA LAW, AND NOTICE OF APPEAL, AND REAFFIRMATION OF NOTICE TO PRESERVE EVIDENCE AND NOTICE TO AVOID SPOILAGE OF EVIDENCE

mike ardis <michael.ardis2001@gmail.com> Mon, Aug 10, 11:21 PM (8 days ago)

to Appeals, Dan, Tudy, mhendrick, Carole, burban

SC DEW

Today, August 10, 2020, I received a Notice of Redetermination in the mail wherein you stood by the "decision" of Roger Dickerson. The same initial DEW employee, that I Objected to via several emails and several voicemails left on his voicemail. I repeatedly requested that he not take any further action and that he have his Supervisor contact me. No Supervisor ever contacted me. Please be advised the previously provided **Notice to Preserve and Notice to Avoid Spoilage of Evidence** is and has been, ongoing. It is attached to this email, and explained below.

Below, as indicated by **Roman Number I**, is the clear, unequivocal **Policy** of the South Carolina Department of Employment and Workforce, as it concerns the **Employer Separation Notice. It is clearly displayed on the SCDEW Website.** There was, at a minimum, over a 25 day time period from the time of my initial claim until my former employer, who violated the Employment Contract I had/have with them, responded to your Notice. Your, written, clear **Policy**, held/holds, regarding my unlawful termination, ". . . If the department does **not** receive a response, ***DEW assumes the individual in [SIC] unemployed through no fault of their own.*** " I have added emphasis to the **Policy**, as well as pointed out your grammatical errors.

Below, under **Roman Numeral II**, is **South Carolina Code § 41-35-640. Reconsideration of determinations**. **§ 41-35-640** is a South Carolina Law, which supercedes the Policies and Procedures of SC DEW. Notwithstanding such a fact, SC DEW elected to stand by its unlawful, initial "decision." I do not acquiesce nor do I agree, nor do I consent to the

"Redetermination" of SCDEW in these matters. Your website, does not provide me the opportunity to Appeal, so consider this email as my Notice of Appeal, and my **OFFICIAL COMPLAINT AGAINST THE SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE FOR VIOLATING THE LAWS OF THE STATE OF SOUTH CAROLINA.**

Below, you will find **Roman Numeral III**, which is an excerpt of **South Carolina Code 1976 § 41-35-610. Procedures must be pursuant to department regulations; duties of employers.** This forms my prima facie arguments that SCDEW has violated its own, written Policies, and multiple South Carolina Laws.

A request for determination of insured status, a request for initiation of a claim series in a benefit year, a notice of unemployment, a certification for waiting-week credit, and a claim for benefits **must be made pursuant to regulations the department promulgates. (emphasis added)**

Below, you will find **Roman Numeral IV,** which is an excerpt of **South Carolina Code 1976 § 1-23-380.** Besides SCDEW "Appellate" Procedures, I am making you, duly aware, that I intend to document these matters, in exquisite detail, and include them in a detailed pleading, in **Case No.: 2020 CP 4003026,** and seek **Relief on an Emergency Basis.** So, it is very, very important that everything be maintained by SCDEW. As previously mentioned, I have already served SCDEW with a **Notice of Preserve Evidence and Notice to Avoid Spoilage of Evidence,** on December 13, 2019. All of the evidence that you have been stalling on producing, and have been violating the **South Carolina Freedom of Information Act,** can and will be produced in the Common Pleas Court Case through Mandatory Discovery. Please understand that the attached **Notice of Preserve Evidence and Notice to Avoid Spoilage of Evidence,** was served upon SCDEW via Certified Mail, Return Receipt. It has never been retracted, and it has been ongoing from the time it was served upon you.

Again, even though your website does not permit it, **I AM PUTTING SCDEW ON NOTICE THAT I DO NOT ACCEPT, AND I DO HEREBY APPEAL ITS "REDETERMINATION" "DECISION" THAT I RECEIVED VIA U.S. MAIL ON AUGUST 10, 2020.** I am looking for Official Acknowledgment of my **Notice of Appeal** from SC DEW.

Please advise.

Robert M(Mike) Ardis

(803) 236-0859

I - Employer Separation Response

When a former employee files for UI benefits, you have the opportunity to supply information to DEW regarding the reason the individual is now unemployed.

You **must** respond to the department **within 10 calendar days** of receiving the notification in order to prevent a former employee from wrongfully receiving UI benefits.

If the department does **not** receive a response, **DEW assumes the individual in [SIC] unemployed through no fault of their own**.

https://dew.sc.gov/employers/ui-benefits/employer-separation-response#:~:text=You%20must%20respond%20to%20the,no%20fault%20of%20their%20own.

II - South Carolina Code § 41-35-640. Reconsideration of determinations

(B) An initial determination **must be reconsidered** when the department finds an error in computation or of a similar character has occurred in connection with it or that wages of the claimant pertinent to the determination, but **not considered** in connection with it, have been newly discovered. **(emphasis added)**

III - South Carolina Code 1976 § 41-35-610. Procedures must be pursuant to department regulations; duties of employers.

A request for determination of insured status, a request for initiation of a claim series in a benefit year, a notice of unemployment, a certification for waiting-week credit, and a claim for benefits **must be made pursuant to regulations the department promulgates. (emphasis added)**

IV - South Carolina Code 1976 § 1-23-380

This section does **<u>not</u>** limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law.

Attachments area

APPENDIX J

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

7019 1640 0000 5705 0894

Certified Mail Fee
$
Extra Services & Fees (check box, add fee as appropriate)
- [ ] Return Receipt (hardcopy) $
- [ ] Return Receipt (electronic) $
- [ ] Certified Mail Restricted Delivery $
- [ ] Adult Signature Required $
- [ ] Adult Signature Restricted Delivery $

Postage
$
Total Postage and Fees
$

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SUMTER SC 29150
AUG 19 2020
USPS

Sent To: SCDEW
Street and Apt. No., or PO Box No. 1550 Gadsden
City, State, ZIP+4® Cola SC 29201

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SC DEW – Appeals
1550 Gadsden
Cola. SC 29201

9590 9402 5860 0038 2986 05

2. Article Number (Transfer from service label)
7019 1640 0000 5705 0894

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [signature]

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- sured Mail
- sured Mail Restricted Delivery ...ver $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a copy of this **Emergency Motion,** and its **Appendixes,** have been provided to the Court and the South Carolina Department of Employment and Workforce, on this 31st day of August 2020, via U.S. Mail.

/s/ Robert Michael Ardis
Robert Michael Ardis, Appellant

RECEIVED
SEP 01 2020
SC Court of Appeals

RECEIVED
SEP 01 2020
SC Court of Appeals

August 31, 2020

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Case Number 2020-000981
Appellant's Motion to Strike and to Impose Sanctions and for Other Relief

Dear Ms. Kitchens,

I am the Appellant, Robert Michael Ardis, but I go by Mike Ardis. Attached you will please find my **Motion to Strike and to Impose Sanctions and for Other Relief,** regarding the recently filed Return to Motion to Expedite filed by the Respondents.

It is being provided to you via email as a courtesy, and is also being provided and filed via United States Mail. The Respondents are copied on this email, and via US Mail. Unfortunately, they have a "habit" of misplacing or "not receiving" pleadings that I filed, so I am filing it this way to make certain they cannot say that again.

Additionally, due to the actions of the Respondents, I do not have the ability to make multiple copies of my **Motion** and its **Appendixes A-J.** I apologize in advance if this is a problem. I would respectfully request that you get my attached **Motion** and **Appendixes A-J** before the Court of Appeals with all due speed. My family is hurting due to the actions of the Respondents and this is set forth in detail in the attached filings.

Should you have any questions, please do not hesitate to contact me. Thanking you in advance for your assistance.

Kind regards,
<u>/s/ Mike Ardis</u>
Mike Ardis
(803) 236-0859
michael.ardis2001@gmail.com

R. Mike Aidis
105 North Guignard Drive
Sumter, SC 29150

RECEIVED
SEP 01 2020
SC Court of Appeals

S.C. Court of Appeals
Post Office Box 11629
Columbia, SC 29211
RE: Case # 2020-000981
Expedited Attention Requested

HANDLE WITH CARE