

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No.: 2019-001941

RECEIVED
OCT 15 2020
SC Court of Appeals

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

v.

Janie C. Southern.....Appellant.

FINAL REPLY BRIEF OF APPELLANT

Susan Ingles, S.C. Bar No.4577
Consumer Law Unit Head
South Carolina Legal Services
701 South Main Street
Greenville, South Carolina 29601
Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ARGUMENT IN REPLY1

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

CONCLUSION 4

TABLE OF AUTHORITIES

Cases

<i>Capital U-Drive-It, Inc. v. Beaver</i> , 369 S.C. 1, 630 S.E.2d 464 (2006).....	3
<i>Clark v. Cantrell</i> , 339 S.C. 369, 529 S.E.2d 528 (2000).....	2
<i>Electro Lab of Aiken V. Sharp Const.</i> , 357 S.C. 363, 593 S.E.2d 170 (Ct. App. 2004).....	3
<i>Hagood v. Sommerville</i> , 362 S.C. 191, 607 S.E.2d 707 (2005)	3
<i>I'ON, L.L.C. v. Town of Mt. Pleasant</i> 338 S.C. 406, 526 S.E.2d 716 (2000).....	2
<i>Osprey, Inc. v. Cabana Ltd. Partnership</i> , 340 S.C. 367, 532 S.E.2d 274 (S.C. 2000).....	2
<i>Shaw v. Psychomedics Corp.</i> , 426 S.C. 194, 826 S.E.2d 281 (2019).....	1
<i>State v. Barnes</i> , S.C. Ct. App. Op. # 5749 (filed July 22, 2020).....	2
<i>State v. Sweat</i> , 379 S.C. 367, 665 S.E.2d 645 (Ct. App. 2008).....	2
<i>Thomerson v. DeVito</i> , SC Supreme Court Opn. # 27972 (filed May 27, 2020)	1

Statutes

S.C. Code Ann. §§ 14-3-320 and -330 (1976 & Supp.1998)	2
S.C.Code Ann. § 14-8-200 (Supp.1998).....	2

Other Authorities

Toal, Jean Hoefler; Walker, Amelia Waring; and Baker, Margaret E., <u>Appellate Practice in South Carolina</u> (3 rd ed. South Carolina Bar 2016).....	1
---	---

Rules

Rule 220(c), SCACR	3
--------------------------	---

Constitutional Provisions

S.C. Const. art. V, §§ 5 and 9	2
--------------------------------------	---

ARGUMENT IN REPLY

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

In this consumer debt collection case, Appellant Janie Southern asks this Court to decide a novel question of South Carolina law. Specifically, can Bank of America, N.A. pursue a credit card collection action against Southern, a South Carolina consumer, by pleading one, archaic claim, "Accounted Stated," a cause of action that has never been addressed by a South Carolina appellate court in the context of consumer debt collection?

In its brief, Respondent ignores the particular and well-settled Standard of Review that controls the appellate court's review of a novel question of South Carolina law. (**Resp. Br. 8**). Respondent fails to acknowledge when "a case contains a novel question of law the appellate court is free to decide the question with no particular deference to the lower court." Toal, Jean Hoefler; Walker, Amelia Waring; and Baker, Margaret E., Appellate Practice in South Carolina (3rd ed. South Carolina Bar 2016). See also Thomerson v. DeVito, SC Supreme Court Opn. # 27972 (filed May 27, 2020) (*quoting Shaw v. Psychemedics Corp.*, 426 S.C. 194, 197, 826 S.E.2d 281, 282 (2019) (citation omitted)): "In answering a certified question raising a novel question of law, this Court is free to decide the question based on its assessment of

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

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

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

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

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

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

Respondent clearly misapprehends the particular Standard of Review applicable to deciding the novel question of law now before the Court.

Alternatively, Respondent now asks the Court to affirm under Rule 220(c), SCACR, on the basis of a separate and distinct cause of action that was neither pled nor raised at trial. To do so would avoid answering the important novel question set forth in this appeal; i.e., does South Carolina law recognize an action for “account stated” in the context of a bank attempting to collect an alleged consumer credit card balance—a balance that continued to change from the filing of the complaint through the end of trial?

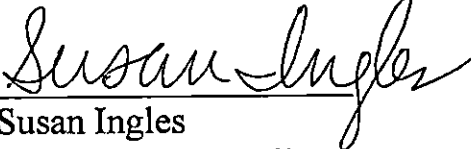
CONCLUSION

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

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

Respectfully submitted,

October 12, 2020


Susan Ingles
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

OCT 15 2020

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No.: 2019-001941

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

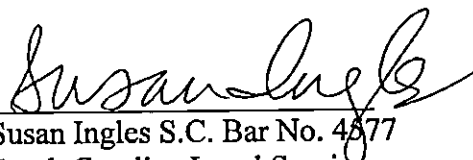
v.

Janie C. Southern..... Appellant.

CERTIFICATE OF COUNSEL

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

October 12, 2020



Susan Ingles S.C. Bar No. 4877
South Carolina Legal Services
701 South Main Street
Greenville, South Carolina 29601