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SC Court of Appeals

STATEMENT OF THE CASE

Appellant Harold Simmons Jr. is a disabled businessman of Charleston County.

Respondent Allen Livingston is a businessman of Charleston County.

- 1) On March 11, 2014, the Respondent filed a Lis Pendens concerning a property that was in contract between the Respondent and on April 4, 2014 the Appellant was served. At the time, Appellant had paid Respondent \$92,000.
- 2) On April 24, 2014, the Appellant filed an answer and requested a Jury Trial at the time. The Respondent, Bruce Berlinsky (Respondent's Attorney) and Judge Dennis held an unscheduled hearing on April 28, 2014. This is a violation of Due Process of Law. Appellant was never informed or served by the court about these hearings.
- 3) And on June 4, 2014, Respondent's Attorney filed an affidavit of default. Appellant Harold Simmons had no knowledge about the Affidavit of Default until Respondent Attorney used it for his defense at the August 11, 2016 hearing.
- 4) On June 12, 2014, Appellant filed a counterclaim for years of harassment by Respondent Allen Livingston and his Attorneys.
- 5) On July 16, 2014, a hearing was scheduled to go before Judge Nicholson.
- 6) On July 2, 2014, Appellate Harold Simmons Junior received a letter from Respondent's Attorney Bruce Berlinsky stating a Motion Hearing scheduled for July 16, 2014 before Judge Nicholson is no longer necessary at this time.
- 7) From the first date on or around November 2014 through December 17, 2014, Judge Mikell Scarborough and the court denied the Appellant any and all due process along with ignoring and not accepting prior orders by Judge Nicholson and the fact that the Respondent's legal counsel falsely testified about a hearing and presented documents based on the false Default Hearing and further refused to take in consideration the Respondent's perjury and falsification by forgery of documents in prior court proceedings under Judge Nicholson and the court.

Judge Mikell Scarborough has constantly denied the Appellant several Requests and Demand for a Jury Trial. At the time, **the court gave no reason** to why Appellant was denied and Appellant Harold Simmons, Jr. did not know about Judge Dennis until the August 11, 2016 hearing. Appellant was denied a Change of Venue and Counterclaim during the entire process and refused to dismiss the Respondent's claim and grant Appellant the counterclaim demand. This Appeal followed: No court has the lawful right to strike a jury trial according to South Carolina Rule of the Court rule 53 and 38. The Appellant is entitled to a jury

trial and no rule exist that states a jury trial can be struck. Their original Judge Nicholson order was not upheld based on the denial of the relief set by Judge Nicholson for the Appellant, so the original agreement of the parties be in effect and advance monthly payments and months be honored. This was not upheld along with the frivolous and mock default hearing held without notifying and serving the appellant. This default hearing on April 28, 2014 by Judge Dennis was unscheduled and it is not on the court record, but the Master-in-Equity Courts decided to utilize it against the Appellant; and as of August 6, 2018, Appellant was ordered by the Courts to pay \$60,212.00 to stop the sale of Appellant's property. At the time, the Appellant only owed \$25,613.42. Because of this the Appellant paid \$34,598.54 over what was owed. The Appellant asks the Appeal Court to be reimbursed the overpayment and attorney fees of \$75,000.00 and a counterclaim of \$600,000.00 for years of harassment done through the Court by the Respondent, Allen Livingston and his attorneys.

8) As shown, these are the violations of due process:

- a. Denied seven requests and demand for jury trial
- b. Denied all motions
- c. Overlooking Plaintiff (Respondent) perjury
- d. Denied of counter claim
- e. Ignored the fact that the case is under appeal
- f. Continue to move forward with the case in the lower court

*Harold Simmons, Jr.*

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