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Feb 17 2021

SC Court of Appeals

EXHIBIT A

(Minus Attachments Which are in the ALC Filings)

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**, Plaintiff¹

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.

Robert Michael Ardis moves this Honorable Court to **GRANT** Summary Judgment in favor of the Appellant/Claimant, and **GRANT** the Appellant/Claimant the other **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" in 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**.

594, also See *Powell v. Lennon*, 914 F2d 1459 (11th Cir 1990).

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), SCRPC ; 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), SCRPC; 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 27, 2020

/s/ Robert Michael Ardis

Robert Michael Ardis, Appellant/Claimant
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Sumter, S.C. 29150
(803) 236-0859
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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.

/s/ Robert Michael Ardis

Robert Michael Ardis, Appellant/Claimant
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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, via Eservice pursuant to Rule 4, South Carolina Rules of Civil Procedure on this 27th day of April 2020.

/s/ Robert Michael Ardis

Robert Michael Ardis, Appellant/Claimant