

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Court of Common Pleas

James E. Chellis, Circuit Court Judge

Case No. 2019-CP-18-00302

RECEIVED
Mar 22 2021
SC Court of Appeals

Ashley Tucker,

Appellant,

v.

Farmers & Merchant Bank of S.C.,

Respondent.

BRIEF OF APPELLANT

Ashley Tucker, Appellant
155 Shady Ln.
Summerville, South Carolina 29485
(843) 557-2729

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case	1
Standard of Review	1
Facts	1
Arguments	
1. BECAUSE RESPONDENT COULD HAVE RAISED FRAUD IN HIS PRIOR BREACH OF CONTRACT SUIT AGAINST APPELLANT, HE IS BARRED BY RES JUDICATA FROM BRINGING THIS SUIT	2
2. BECAUSE FRAUD MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE, THE COURT ERRED WHEN IT CHARGED THE JURY THAT THE RESPONDENT MUST PROVE FRAUD BY A PREPONDERANCE OF THE EVIDENCE	2
Conclusion	2

1. On June 19th 2019 I had court. I sent the judge power of attorney , certificate of acknowledgement, a copy of the constitution of South Carolina and an order of strict appearance. When the case started out the Judge pointed out that he had received my mail that was supposed to be filed. But since I had not filed it within 5 days that he couldnt put it on the case. See page 4 script 6 through page 5 script 3.
2. The Judge went through all of my documents that I sent him and I had to identify all of my evidence I had sent him. See page8 script 22 thru page 9 script 4-8
3. He then proceeded to ask Elizabeth Blackwell whether she could Authenticate the documents that were produced from the state archives of South Carolina. which the Judge said he was going to mark it for authentication purposes. see page 12 script 12-14.
4. Elizabeth Blackwell states that I never answered her in which infact I did. Counsel Blackwell called her witness which is the Farmers and Merchants bank employee Brian West, and he stated and he stated that i had sent an money order to the bank. in which they tried to state that i never sent a response at all. see page 42 script 19. page 46-49 script 25.
5. I explained to the judge that My Husband is incarcerated. attorney Blackwell lied and said i never told her that my husband was in jail but in fact when questioned Counsel blackwell said that i did tell her he was in jail but I never told what jail he was in.

6. In return the Judge asked her witness Brian West did I ever notify the bank of Curtis Tuckers whereabouts and Mr.West stated that I did notify the bank employee by the name of Zachary Zabac and others as well of Curtis Tuckers whereabouts and then he in return notified Mrs Blackwell of Curtis tucker address. see page 48-57 script 25.
7. Attorney Blackwell continuously lied and said my Mother lied about Curts whereabouts when clearly we didnt. The bank knew the whole time where Curtis Tucker was incarcerated at.

TABLE OF AUTHORITIES*

CASES

Lacey v. BAC Home Loans Servicing, LP, 480 B.R. 13 (2012)	2
Ibanez, 458 Mass. At 651, 941 N.E.2d 40) (Bailey v. Wells Fargo Bank, NA (In re Bailey)	2
Farm Bureau Ins. Co. of Ark. V Running M Farms, Inc. 237 S.W.3d 32, 36 (Ark. 2006)	2

OTHER AUTHORITIES

1865 South Carolina State Constitution	2
Rule 5.1 Constitutional Challenge to a State Statue	2

STATEMENT OF ISSUES ON APPEAL

1. THE TRIAL COURT ERR IN FAILING TO ADHERE TO THE SOUTH CAROLINA STATE CONSITUTION?
2. THE TRIAL COURT ERR IN ADHEREING TO THE RULE 5.1 CONSTITUTIONAL CHALLENGE OF FORECLOSURE?

STATEMENT OF THE CASE

On February 1, 2017, John B. Doe brought this action alleging fraud against Jane C. Roe. Roe answered alleging Doe's claim was precluded by judgment in a prior contract action between the parties. The contract action was tried on November 15, 2007, and judgment was entered on December 1, 2007.

Doe died before the trial of this case. By order of the court dated February 15, 2017, Stephen L. Doe, as personal representative, was substituted as plaintiff.

On August 15, 2017, the case was tried by a jury which found for Doe and awarded him \$10,000.00 in damages. On September 15, 2017, Roe served the Notice of Appeal on Doe.

STANDARD OF REVIEW

[Set forth appropriate standard of review with citation(s) to authority if all issues are governed by the same standard of review; otherwise include a separate section with a heading of “Standard of Review” at the start of the argument on each issue.]

FACTS

[Counsel may wish to set out the facts relevant to the arguments at this point in the brief. This, however, is optional, and the relevant facts may be included in the discussion of each argument. In either case, the brief must contain references to where the salient facts can be found in the Record on Appeal. In Initial Briefs, these references shall be made in the manner specified by Rule 208(b)(4), SCACR. In the Final Briefs, these references shall be to the page and line number of the Record on Appeal (i.e., R.p. 37, lines 7-8). Rules 211(b)(1), SCACR.]

1

ARGUMENTS

- I. BECAUSE RESPONDENT COULD HAVE RAISED FRAUD IN HIS PRIOR BREACH OF CONTRACT SUIT AGAINST APPELLANT, HE IS BARRED BY RES JUDICATA FROM BRINGING THIS SUIT.

[Set out discussion and citations of authority.]

- II. BECAUSE FRAUD MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE, THE TRIAL COURT ERRED WHEN IT CHARGED THE JURY THAT THE RESPONDENT MUST PROVE FRAUD BY A PREPONDERANCE OF THE EVIDENCE.

[Set out discussion and citations of authority.]

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

March 17th, 2021

Respectfully submitted,

/s/

Ashley Tucker, Appellant
155 Shady Ln.
Summerville, South Carolina 29485
(843) 557-2729

FORM 7
PROOF OF SERVICE OF A MOTION FOR EXTENSION OF TIME

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Master-in-Equity

James E. Chellis, Judge

Case No. 2019-001957

Farmers & Merchant Bank of
South Carolina,

Respondent,

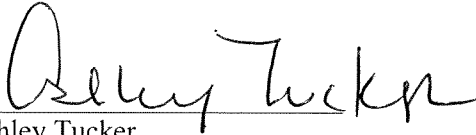
v.

Curtis R. Tucker; Ashley Tucker;
SC Housing Finance and Employment
Lending Program; and South Carolina
Federal Credit Union, Defendant, of whom
Ashley Tucker is the Appellant,

PROOF OF SERVICE

I certify that I have served the Motion for Extension of Time on Farmers & Merchant Bank of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on March 18th, 2021 addressed to his attorney of record, Elizabeth Ann Blackwell & Carmelo Barone Sammataro, at: ssammataro@turnerpadget.com.

March 18th, 2021



Ashley Tucker
155 Shady Ln
Summerville, South Carolina 29485

RECEIVED
Mar 22 2021
SC Court of Appeals