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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Hon. James E. Chellis, Master-In-Equity

Appellate Case No. 2020-001127

1st Franklin Financial
Corporation

Respondent,

v.

Roby A. Adams

Appellant.

RECORD ON APPEAL

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INDEX

ORDERS & MOTIONS

Order continuing summary judgment hearing filed August 15, 2019	1
Amended Order Granting Partial Summary Judgment filed April 21, 2020	3
Respondent's Motion for Summary Judgment filed May 16, 2019	16
Respondent's Memo in support of its motion filed July 15, 2019	17
Ex.-Loan agreement	27
Ex. Adams depo excerpts	29
Respondent's Supplemental Memo in support filed March 2, 2020	36
Ex. A-Loan Agreement	47
Ex. B-Adams depo excerpts	50
Affidavit in support of Appellant's Objection to motion filed March 2, 2020	59
Ex-Schwerin depo excerpts	62
Form 4 Order Denying Appellant's Rule 59 Motion filed July 16, 2020	93
Appellant's Rule 59 Motion filed May 1, 2020	96
Ex.- Email from court re: amending MSJ order dated April 7, 2020	101
Ex.- Appellant's proposed MSJ order	103
Email to court re: consent to decide Rule 59 motion on briefs dated June 3, 2020	114
Appellant's Brief in support of Rule 59 motion filed June 19, 2020	115
Respondent's Response in opposition to Rule 59 motion filed June 26, 2020	125
Appellant's Reply to Respondent's Response filed July 6, 2020	130
Ex.-Notice of Acceleration dated April 12, 2016	138

PLEADINGS

Respondent's Complaint in first collection case filed April 19, 2016	139
Respondent's Complaint in second collection case filed September 19, 2016	143
Appellant's Answer & Counterclaims filed December 5, 2016	148
Appellant's First Amended Answer & Counterclaims filed April 26, 2017	159
Appellant's Second Amended Answer & Counterclaims filed August 27, 2019	169
Ex.-Collection letter dated February 8, 2018	179

TRANSCRIPTS

Transcript of March 5, 2020 summary judgment hearing	180
Transcript of deposition of Adams (excerpts)	50
Trancript of deposition of Schwerin (excerpts)	62

OTHER DOCUMENTS

Notice of Acceptance of offer of judgment filed April 29, 2020	304
Notice of Appeal filed August 14, 2020	305
Certificate of Counsel	306

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
1 st Franklin Financial Corporation,	)	CASE NO.: 2017-CP-18-00819
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER CONTINUING PLAINTIFF'S
	)	MOTION FOR SUMMARY JUDGMENT
Roby A. Adams,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the Court on Plaintiff 1st Franklin Financial Corporation's Motion for Summary Judgment. The parties appeared before the Court for oral argument on July 16, 2019. Prior to hearing the Plaintiff's Motion for Summary Judgment, the Court heard and granted Defendant's Motion to Amend his Answer and Counterclaims. Given that new allegations will be asserted in Defendant's amended pleading, the Court decided to continue Plaintiff's Motion for Summary Judgment. The parties reserve all arguments relative to Plaintiff's Motion for Summary Judgment.

AND IT IS SO ORDERED.

The Honorable James E. Chellis
Presiding Judge, First Judicial Circuit

St. George, South Carolina

August _____, 2019



Dorchester Common Pleas

Case Caption: 1st Franklin Financial VS Roby A Adams

Case Number: 2017CP1800819

Type: Order/Continuance

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
1 st Franklin Financial Corporation,	)	CASE NO.: 2017-CP-18-00819
	)	
Plaintiff,	)	AMENDED ORDER ON PLAINTIFF'S
	)	MOTION FOR PARTIAL SUMMARY
vs.	)	JUDGMENT
	)	
Roby A. Adams,	)	
	)	
Defendant.	)	
	)	

THIS MATTER came before this Court upon the motion of Plaintiff, 1st Franklin Financial Corporation (“1st Franklin” or “Plaintiff”) for partial summary judgment. A hearing before the undersigned was held on March 5, 2020. This Amended Order supersedes this Court’s prior Order on Plaintiff’s Motion for Partial Summary Judgment entered on April 13, 2020.¹

In its motion, 1st Franklin moves for summary judgment, as to liability only, on its affirmative claim for breach of the Loan Agreement entered into between 1st Franklin and Defendant Roby A. Adams (“Adams” or “Defendant”). In addition, 1st Franklin requests that this Court find that certain conduct of Plaintiff alleged in Defendant’s counterclaims is not “unconscionable conduct” under S.C. Code § 37-5-108(2) or otherwise actionable conduct that support Defendant’s counterclaims. For the reasons set forth below, 1st Franklin’s motion is granted.

FACTUAL BACKGROUND

On October 23, 2015, Defendant entered into a Loan Agreement with 1st Financial wherein 1st Financial agreed to loan money to Defendant, and Defendant agreed to repay the loan in

¹ On April 2020, 1st Franklin filed a motion pursuant to Rule 60(a) of the South Carolina Rules of Civil Procedure to correct a clerical mistake in the order entered on April 13, 2020. The court hereby grants the motion and enters this Amended Order.

installments. (See Compl., Exhibit A). During his deposition, the Defendant testified that he signed the Loan Agreement. (See Roby Adams Depo. Jan. 17, 2019 at 14:23-15:1) (hereinafter “Adams Depo.”). Defendant does not dispute that he failed to pay 1st Franklin in accordance with the Loan Agreement, and he does not dispute that he owes some amount to 1st Franklin. (*Id.* at 17:23-25). Defendant testified that he cannot recall whether he made any payments towards the loan, and that he is unsure of the exact amount that he owes 1st Franklin. (*Id.* at 15:21-16:7).

On September 22, 2016, 1st Franklin filed suit against Defendant in the Magistrate’s Court for Dorchester County alleging that Defendant defaulted under the Loan Agreement and owed, at that time, \$4,342.16.² On December 5, 2016, Defendant filed an Answer and Counterclaims denying liability and asserting counterclaims against 1st Franklin for violations of the South Carolina Consumer Protection Code (“SCCPC”), violations of the South Carolina Unfair Trade Practices Act (“SCUTPA”) and negligence *per se*.

On April 26, 2017, Defendant filed his First Amended Answer and Counterclaims wherein he claimed damages in excess of the Magistrate’s Court jurisdictional limit. As a result, in May 2017, this case was transferred to the Court of Common Pleas for Dorchester County. On August 29, 2019, Defendant filed his Second Amended Answer and Counterclaims.³ Defendant asserts counterclaims against 1st Franklin for (1) violation of the South Carolina Consumer Protection Code (“SCCPC”), (2) violation of the South Carolina Unfair Trade Practices Act (“SCUPTA”), and (3) negligence *per se*. Defendant’s counterclaims rely heavily on section 37-5-108(2) of SCCPC which prohibits “unconscionable conduct in collecting a debt.” Relevant to the subject

² Prior to the subject action, on April 19, 2016, 1st Franklin filed suit against Defendant in the Magistrate’s Court for Dorchester County based upon the same Loan Agreement, *1st Franklin Financial Corporation v. Roby A. Adams*, Civil Action 2016-CV-18-10302148. That action was dismissed *without prejudice* based upon 1st Franklin’s failure to file documentation relating to non-lawyer representation of a corporation in Magistrate’s Court pursuant to S.C. Code Ann. § 33-1-103.

³ 1st Franklin’s Motion for Summary Judgment was previously scheduled to be heard on July 16, 2019. However, prior to hearing 1st Franklin’s motion, the court heard and granted Defendant’s motion to file a Second Amended Complaint. As a result, the court continued 1st Franklin’s Motion for Summary Judgment.

motion, Defendant claims that 1st Franklin is liable to Defendant because it filed two separate lawsuits, filed four months apart, which alleged different amounts were owed by Defendant. (*See* Second Amended Answer and Counterclaims ¶ 12). The first lawsuit alleged \$4,351.24 was owed. (*Id.*). The subject lawsuit, filed following dismissal of the first, alleges \$4,342.16 is owed. (*Id.*). Thus, the subject action claims \$9.08 less than the first lawsuit. (*Id.*). Additionally, Defendant claims 1st Franklin is liable to Defendant because the Dorchester County Sheriff's Office served Defendant's neighbor with the previously filed and subsequently dismissed lawsuit. Finally, Defendant claims that 1st Franklin is liable to Defendant because 1st Franklin engaged in the unauthorized practice of law when it failed to file a form evidencing the corporation's intent to proceed in Magistrate's Court without representation by an attorney.⁴ In addition to giving rise to liability under the SCCPC, Defendant asserts these actions, in addition to allegedly violating of the SCCPC, also support his causes of action for violation of the SCUTPA and negligence *per se*.

LEGAL STANDARD

Rule 56, SCRCP, requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, "this initial responsibility may be discharged by 'showing' – that is, pointing out to the trial court – that there is an absence of evidence to support the nonmoving party's case." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party makes this demonstration, the opposing party "must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that

⁴ Defendant also claims that alleged communications from 1st Franklin to Defendant after Defendant was represented by counsel give rise to liability. 1st Franklin did not move for summary judgment on those allegations. As such, those allegations are not addressed in this Order.

there is a *genuine issue for trial*.” *Id.* (emphasis in original); *Midland Mut. Life Ins. Co. v. Harrell*, 331 S.C. 394, 397, 503 S.E.2d 189, 190 (Ct. App. 1998). The nonmoving party must specifically set forth such facts, “as would be admissible in evidence,” to show that a true jury issue exists. *See* S.C. R. Civ. P. 56(e).

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001). Under South Carolina law, where “plain, palpable and indisputable facts exist on which reasonable minds cannot differ,” summary judgment in favor of the moving party is proper. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. The Court Grants 1st Franklin Motion for Summary Judgment on its Claim for Breach of the Loan Agreement.

1st Franklin moves for summary judgment, as to liability only, on its affirmative claim for breach of the Loan Agreement. An action under a note is an action for breach of contract. *See Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 780 S.E.2d 263 (Ct. App. 2015). “The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach.” *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491–92, 732 S.E.2d 205, 209 (Ct.App.2012). The court finds there is no genuine issue of material fact as to the three required elements.

It is uncontested that the Loan Agreement created an enforceable contractual relationship between 1st Franklin and Defendant. Defendant admits that he entered into the Loan Agreement and agreed to be bound by the terms therein. (*See* Roby Adams Depo., Jan. 17, 2019, 14:23-15:1) (hereinafter “Adams Depo.”). Defendant also admits that he breached the Loan Agreement by failing to make payments when due, and he further admits that he owes some amount to 1st

Franklin. (*Id.* at 16:5-8; 17:23-25; 36:11-13). Hence, no genuine issue of material fact exists that 1st Franklin and Defendant entered into a contract, Defendant breached the contract, and that 1st Franklin has been damaged. The only question remaining on Plaintiff's contract action is the amount of the contractual damage sustained by the Plaintiff.

The court considered the arguments made by Defendant's counsel at the hearing but finds them to be without merit. The court finds that the deposition testimony attached to Plaintiff's memorandum is properly before the court despite Defendant's argument that it has not been authenticated. Rule 56(c), SCRCP specifically contemplates that the court will consider deposition testimony at the summary judgment stage. *See* Rule 56(c), SCRCP. Additionally, as to the argument that the Loan Agreement has not been properly authenticated, the court finds that it is self-authenticating under Rule 902(9), SCRE as a commercial paper or related document. Finally, Defendant's deposition testimony acknowledging the Loan Agreement negates counsel's argument under the best evidence rule, Rule 1002, SCRE. Again, during his deposition, Defendant acknowledged signing the Loan Agreement and his agreement to be bounds by its terms. (*See* Adams Depo., 14:23-15:1).

1st Franklin is entitled to summary judgment on the issue of Defendant's liability under the Loan Agreement. The court declines to enter judgment at this time and will address the issue of damages at subsequent proceedings in this matter.

II. 1st Franklin's Motion for Judgment as to Defendant's Counterclaims is Granted.

Defendant's Second Amended Answer and Counterclaims asserts causes of action against 1st Franklin for (1) violation of the South Carolina Consumer Protection Code ("SCCPC"), (2) violation of the South Carolina Unfair Trade Practices Act ("SCUPTA"), and (3) negligence *per se*. Defendant's counterclaims rely heavily on S.C. Code Ann. § 37-5-108(2) of the SCCPC. Section 37-5-108(2) provides a private cause of action "if the court *as a matter of law* finds that a

person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt.” (emphasis added). S.C. Code Ann. § 37-5-108(5) sets forth “factors” to be given “consideration” when a court analyzes whether a debt collector has engaged in “unconscionable conduct in collecting a debt” under section 37-5-108(2). Defendant, relying on certain factors under section 37-5-108(5), alleges that 1st Franklin engaged in “unconscionable conduct in collecting a debt”.

Relevant to this motion, 1st Franklin asserts that (1) the different amounts alleged in the two complaints, (2) the Dorchester County Sheriff’s Office serving Defendant’s neighbor, and (3) the allegations regarding the unauthorized practice of law do not, as a matter of law, constitute “unconscionable conduct in the collection of a debt.” *See* S.C. Code Ann. § 37-5-108(2). 1st Franklin seeks an order barring Plaintiff from introducing testimony or evidence at trial relating to these allegations.

A. 1st Franklin is Entitled to Summary Judgment on Defendant’s Claim that it Falsely Represented the Amount Owed by Defendant.

In April 2016, 1st Franklin filed an action in Magistrate’s Court seeking damages in the amount of \$4,351.24. *See 1st Franklin Financial Corporation v. Roby A. Adams*, Civil Action 2016-CV-18-10302148. That action was subsequently dismissed without prejudice. *See id.* In June 2016, 1st Franklin filed this action seeking \$4,342.16 in damages, \$9.08 less than the prior lawsuit. Based on the differing amount in the two complaints, Defendant alleges that 1st Franklin violated the SCCPC because it “falsely represented” the amount owed by Defendant. (*See* Second Amended Answer and Counterclaims ¶ 12). Defendant relies on S.C. Code § 37-5-108(5)(c)(1) which prohibits “using fraudulent, deceptive, or misleading representations in connection with the collection of a consumer credit transaction”, including false representations of the “character, amount, or legal status of any debt”. *See* S.C. Code §§ 37-5-108(2) and 37-5-108(5)(c)(1).

1st Franklin's argues the \$9.08 discrepancy between the amounts claimed to be owed, cannot, as a matter of law, be characterized as "fraudulent, deceptive, or misleading" or "unconscionable." See S.C. Code § 37-5-108(2). 1st Franklin claims it voluntarily corrected and reduced the amount it claimed from Defendant without any request or insistence from Defendant when it filed the second action. 1st Franklin further argues that Defendant's deposition testimony makes clear that he is wholly unaware of the amount actually owed to 1st Franklin and merely relies on the fact that the two complaints contained different amounts. (See Adams Depo. 17:17-18).

Defendant argues that the deposition testimony of Theresa Scherwin, 1st Franklin's branch manager, precludes the grant of summary judgment in favor of 1st Franklin. More specifically, Defendant contends that because Ms. Schwerin was unable to adequately explain why the amounts differing amount set forth in the two complaints, factual issues remain that prevent the entry of summary judgment. Defendant also argues that 1st Franklin's admission that the first collection lawsuit's demand for \$9.08 more than was actually due from Defendant on this debt was a "scrivener's error" constitutes an admission by 1st Franklin that this unintentional overcharge was a false representation of the amount of the debt due to them.

After considering the hearing the arguments of counsel and the filings, including the deposition testimony submitted by Defendant's counsel, the court holds that 1st Franklin is entitled to summary judgment on Defendant's claim that Plaintiff falsely represented the amount owed by Defendant. A complaint consists of allegations that must be proven by a preponderance of the evidence before a plaintiff is entitled to recover. Pleadings are privileged. See *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 22, 567 S.E.2d 881, 892 (Ct. App. 2002). Accepting Defendant's argument would lead to a finding of liability any time an amount alleged in a complaint by a creditor is, for whatever reason, found to be incorrect. Such a rule would have a

chilling effect on creditors pursuing debts they are rightfully owed and likely lead to a significant increase in claims by debtors seeking to avoid debts on technicalities. The proper response to the incorrect allegation is simply to deny it and demand strict proof.

This action has been pending for over three years. In three years of litigation Defendant has provided no evidence in the record upon which the court could find that 1st Franklin falsely represented the amount owed in a manner that could, even viewed in the light most favorable to defendant, be characterized as “fraudulent, deceptive, or misleading” or “unconscionable.” *See* S.C. Code § 37-5-108(2). At the summary judgment stage, the opposing party “must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.” *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545.

B. The Court Finds, as a Matter of Law, that the Alleged Service of the Summons and Complaint on Defendant’s Neighbor is Not Unconscionable Conduct

Defendant also alleges that 1st Franklin is liable for damages due to the Dorchester County Sheriff’s Office serving Defendant’s neighbor with the previously filed and subsequently dismissed lawsuit. Defendant alleges this act constitutes a violation of S.C. Code Ann. § 37-5-108(5)(b)(4), which prohibits a debt collector from communicating “with anyone other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the attorney of the creditor or debt collector, unless the consumer or a court of competent jurisdiction has given prior direct permission” regarding the debt. Acknowledging that 1st Franklin did not directly communicate with any other person regarding the debt, Defendant seeks to impose liability by claiming that the Dorchester County Sheriff’s Office was 1st Franklin’s agent. (*See* Second Amended Answer and Counterclaims ¶ 16).

The Dorchester County Sheriff’s Office was not acting as 1st Franklin’s agent when it served the complaint. Rather, it was carrying out its statutory mandate to carry out service of

process for the courts of this state. S.C. Code Ann. § 23-15-40 provides that “[t]he sheriff or his regular deputy, on the delivery thereof to him, shall serve, execute and return every process, rule, order or notice issued by any court of record in this State or by other competent authority.” No agency relationship existed. Even assuming that an agency relationship existed, 1st Franklin still would not be liable because the Sheriff’s Office acted outside of the scope of its authority in serving Defendant’s neighbor. 1st Franklin correctly named Defendant in the pleadings. The Sheriff’s Office, pursuant to its statutory authority, was instructed by the court to carry out service upon Defendant, not Defendant’s neighbor. A principal is not liable for the acts of an agent which are outside the agent’s scope of authority. *See* 2A C.J.S. Agency § 457. Thus, even assuming *arguendo* that the Sheriff’s Office was acting as 1st Franklin’s agent, it clearly acted outside the scope of its authority.

Furthermore, regardless of the agency issue, the court holds that the Dorchester County Sheriff’s Office mistakenly serving Defendant’s neighbor cannot, as a matter of law, be reasonably construed as 1st Franklin engaging “unconscionable conduct in collecting a debt”. Code Ann. § 37-5-108(5) sets forth “factors” to be given “consideration” when determining whether a debt collector has engaged in unconscionable conduct. “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Halsey v. Simmons*, --S.E.2d -- No. 2017-001459, 2020 WL 593950, at *5 (S.C. Ct. App. Jan. 22, 2020). The court finds that the legislature did not intend to impose strict liability for the factors set forth in section 37-5-108(5). Rather, the legislature intended to provide the courts deference to determine, as a matter of law, whether certain actions constituted unconscionable conduct. Defendant’s proposed interpretation of the statute whereby any violation of the factors set forth in section 37-5-108(5) gives rise to liability is in direct conflict with the actual language of the statute. The statute is clear that a court must find, as a matter of law, that a debt collector acted unconscionably. *See* S.C. Code Ann. § 37-5-

108(2). There is no evidence upon which this Court could find that 1st Franklin engaged in unconscionable conduct by virtue of the Dorchester County Sheriff's Office mistakenly serving Defendant's neighbor.

C. The Court Finds, as a Matter of Law, that the Alleged Unauthorized Practice of Law Does Not Support a Private Cause of Action

Defendant also alleges that 1st Franklin engaged in the unauthorized practice of law; and therefore, is liable to Defendant. Defendant claims 1st Franklin engaged in the unauthorized practice of law by failing to file a form evidencing the corporation's intent to proceed in Magistrate's Court without representation by an attorney

As an initial matter, there has been no finding that 1st Franklin engaged in the unauthorized practice of law, and such a finding rests within the exclusive jurisdiction of the Supreme Court of South Carolina. The South Carolina Supreme Court has the duty to regulate the practice of law in this state and, accordingly, has the authority to define what constitutes the unauthorized practice of law. The South Carolina Constitution provides "[t]he Supreme Court shall have jurisdiction over the admission to the practice of law...." S.C. Const. art. V. § 4; *see also* S.C. Code Ann. § 40–5–10 (2001) ("The inherent power of the Supreme Court with respect to regulating the practice of law, determining the qualifications for admission to the bar and disciplining, suspending and disbarring attorneys at law is hereby recognized and declared."). An action to determine whether an individual or entity has engaged in the unauthorized practice of law must be a request for declaratory relief brought in the original jurisdiction of the Supreme Court. *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 121, 634 S.E.2d 5, 7 (Ct. App. 2006). There has been no adjudication by the Supreme Court that 1st Franklin engaged in the unauthorized practice of law.

Additionally, even if there was an explicit finding that 1st Franklin engaged in the unauthorized practice of law, it could not support Defendant's counterclaims because the Supreme Court of South Carolina has plainly held that "there is no private right of action for the

unauthorized practice of law.” *Linder v. Ins. Claims Consultants, Inc.*, 348 S.C. 477, 497, 560 S.E.2d 612, 623 (2002). In *Linder*, although it acknowledged the statute prohibiting the unauthorized practice of law, S.C. Code Ann. §40-5-310, the Supreme Court held that the statute did not “sanction a private cause of action.” *Id.* Therefore, it held that South Carolina law precludes private citizens from suing for money damages based on an allegation of the unauthorized practice of law. *Id.*; see also *Hambrick*, 370 S.C. at 121, 634 S.E.2d at 7.⁵

Furthermore, in *Hambrick*, the Court of Appeals, relying on *Linder*’s prohibition against a private cause of action, held that the allegation that a party engaged in the unauthorized practice of law cannot be used to support or prove another cause of action. *Hambrick*, 370 S.C. at 124, 634 S.E.2d at 8. In *Hambrick*, the court explicitly rejected the plaintiffs’ attempt “[t]o get around *Linder*” by alleging the unauthorized practice of law to support various other causes of action. *Id.* Plaintiff’s claim concerning 1st Franklin’s alleged unauthorized practice of law fails.

Additionally, our Supreme Court

CONCLUSION

After carefully considering the pleadings, memoranda, applicable law and arguments of counsel, the court finds and so holds that 1st Franklin is entitled to summary judgment as to Defendant’s liability under the Loan Agreement. The court will determine the damages to be awarded to 1st Franklin, if any, following trial.

Plaintiff’s motion for summary judgment as to Defendant’s counterclaims alleging that Plaintiff falsely represented the amount of the debt, relating to the Dorchester County Sheriff’s Office serving Defendant’s neighbor and alleging that 1st Franklin engaged in the unauthorized practice of law is also granted. Defendant is barred from presenting testimony or evidence at any

⁵ See, Ex Parte: Edward J. Westbrook, Petitioner, In Re: The Murkin Group, LLC, Respondent. Appellate Case No. 2018-002263. The question of unauthorized practice of law is within exclusive jurisdiction of the South Carolina Supreme Court. Mr. Westbrook, lawyer for the debtor, raised the unauthorized practice of law of a collection agency in a direct petition to the Supreme Court.

future proceedings in this matter relating to the alleged false representation of the amount of the debt, service by the Dorchester County Sheriff's Office, or the alleged unauthorized practice of law.

AND IT IS SO ORDERED!

-Electronic Signature Page Follows-



Dorchester Common Pleas

Case Caption: 1st Franklin Financial VS Roby A Adams

Case Number: 2017CP1800819

Type: Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

Electronically signed on 2020-04-21 10:26:19 page 13 of 13

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

1ST Franklin Financial Corporation,

Plaintiff,

vs.

Roby Adams

Defendant.

IN THE COURT OF COMMON PLEAS

CASE # 2017-CP-18-00819

**PLAINTIFF'S NOTICE OF AND
AND MOTION FOR
SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that Plaintiff by and through its undersigned attorney, shall, and hereby does move this Honorable Court for an Order granting summary judgment in its favor in the above-captioned matter upon the grounds that there exists no genuine issue as to any material fact and that Plaintiff is entitled to judgment as a matter of law. Furthermore, Plaintiff moves this Honorable Court for an Order dismissing Defendant's counterclaim upon the grounds that no genuine issue of material facts exists regarding Defendant's counterclaim and Plaintiff is entitled to judgment as a matter of law.

This motion is based upon the pleadings in the within action, memorandum in support of this motion and attachments thereto, upon Rule 56 of the South Carolina Rules of Civil Procedure, and upon such additional law and argument as shall be appropriate.

BRUSH LAW FIRM, P.A.

s/ J. Chris Lanning

Thomas H. Brush

J. Chris Lanning

12-A Carriage Lane

Charleston, SC 29407

May 16, 2019

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
1 st Franklin Financial Corporation,	)	CASE NO.: 2017-CP-18-00819
	)	
Plaintiff,	)	MEMORANDUM OF LAW IN SUPPORT
	)	OF 1st FRANKLIN FINANCIAL
vs.	)	CORPORATION'S MOTION FOR
	)	SUMMARY JUDGMENT
Roby A. Adams,	)	
	)	
Defendant.	)	

NOW COMES Plaintiff 1st Franklin Financial Corporation ("Plaintiff" or "1st Franklin"), by and through its undersigned counsel, hereby files its Memorandum in Support of Motion for Summary Judgment. 1st Franklin moves for summary judgment as to its affirmative claim against Defendant Roby A. Adams ("Defendant" or "Adams") and as to the counterclaims asserted by Defendant.

FACTUAL BACKGROUND

On October 23, 2015, Defendant entered into a Loan Agreement with 1st Financial wherein 1st Financial agreed to loan Defendant money and Defendant agreed to repay the loan in installments. (See Loan Agreement attached as **Exhibit A**). Defendant admits that he signed the Loan Agreement agreeing to be bound by its terms. (See Roby Depo. Jan. 17, 2019 at 14:23-15:1).¹ Under the Loan Agreement, Defendant acknowledges that 1st Franklin is entitled to recover the costs it incurred trying to collect the debt from Defendant, including but not limited to 1st Franklin's attorneys' fees. (*Id.* at 18:1-7). Defendant does not dispute that he failed to pay 1st Franklin in accordance with the Loan Agreement and does not dispute that he owes some amount to 1st Franklin. (*Id.* at 17:23-25). Defendant testified that he cannot recall whether he made any

¹ Cited excerpts of Defendant's deposition transcript are attached hereto as **Exhibit B**.

payments towards the loan and that he is unsure of the exact amount that he owes 1st Franklin. (*Id.* at 15:21-16:7).

On September 22, 2016, 1st Franklin filed suit against Defendant in the Magistrate's Court for Dorchester County alleging that Defendant defaulted under the Loan Agreement and owed, at that time, \$4,342.16.² On December 5, 2016, Defendant filed an Answer and Counterclaims denying liability and asserting counterclaims against 1st Franklin for violations of the South Carolina Consumer Protection Code ("SCCPC"), violations of the South Carolina Unfair Trade Practices Act ("SCUTPA") and negligence *per se*. Defendant's Answer and Counterclaim expressly limited Defendant's claimed damages to be under the Magistrate's Court's jurisdictional limit of \$7,500.00. On April 26, 2017, Defendant filed his First Amended Answer and Counterclaims making the same allegations but claiming damages in excess of the Magistrate's Court jurisdictional limit. As a result, in May 2017, the case was transferred to the Court of Common Pleas for Dorchester County. The parties have completed written discovery and depositions. This matter is ripe for summary judgment.

LEGAL STANDARD

Rule 56, SCRCP, requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, "this initial responsibility may be discharged by 'showing' – that is, pointing out to the trial court – that there is an absence of evidence to support the nonmoving party's case." *Baughman v. Am. Tel. & Tel.*

² Prior to the subject action, on April 19, 2016, 1st Franklin filed suit against Defendant in the Magistrate's Court for Dorchester County based upon the same Loan Agreement, *1st Franklin Financial Corporation v. Roby A. Adams*, Civil Action 2016-CV-18-10302148. That action was dismissed *without prejudice* based upon 1st Franklin's failure to file documentation relating to non-lawyer representation of a corporation in Magistrate's Court pursuant to S.C. Code Ann. § 33-1-103.

Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party makes this demonstration, the opposing party “must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*.” *Id.* (emphasis in original); *Midland Mut. Life Ins. Co. v. Harrell*, 331 S.C. 394, 397, 503 S.E.2d 189, 190 (Ct. App. 1998). The nonmoving party must specifically set forth such facts, “as would be admissible in evidence,” to show that a true jury issue exists. *See* S.C. R. Civ. P. 56(e).

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001). Under South Carolina law, where “plain, palpable and indisputable facts exist on which reasonable minds cannot differ,” summary judgment in favor of the moving party is proper. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

ARGUMENT

I. 1st Franklin is Entitled to Summary Judgment on its Claim for Breach of the Loan Agreement

An action under a note is an action for breach of contract. *See e.g., Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 780 S.E.2d 263 (Ct. App. 2015). “The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach.” *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491–92, 732 S.E.2d 205, 209 (Ct.App.2012). There is no genuine issue of material fact as to any of the three elements required to establish Defendant’s liability under the Loan Agreement. Therefore, 1st Franklin is entitled to summary judgment against Defendant.

It is uncontested that the Loan Agreement created an enforceable contractual relationship between 1st Franklin and Defendant. Plaintiff admits that he entered into the Loan Agreement and

agreed to be bound by the terms therein. (See **Exhibit A** and Adams Depo. 14:23-15:1). Defendant does not dispute that he entered into a valid loan contract with 1st Franklin. Further, Defendant unequivocally admits that he breached the Loan Agreement by failing to make payments when due and further admits that he owes some amount to 1st Franklin. (*Id.* at 16:5-8; 17:23-25; 36:11-13). Next, Defendant does not dispute that 1st Franklin suffered damages as a result of Defendant's breach of the Loan Agreement. It is axiomatic that because Defendant failed to repay the loan, 1st Franklin suffered damages and is entitled to recover. In addition to the principal balance, interest and other charges due under the Loan Agreement, 1st Franklin has incurred attorneys' fees in its attempts to collect the debt. Defendant admits 1st Franklin is entitled to recover attorneys' fees under the terms of the Loan Agreement. (See **Exhibit A** and Adams Depo. 18:1-7). There is no genuine issue of material fact as to the existence of a contract between 1st Franklin and Defendant, a breach of the contract by Defendant, and the damages suffered by 1st Franklin. Therefore, 1st Franklin is entitled to summary judgment.

As set forth more fully below, all of Defendant's counterclaims against 1st Franklin lack merit. Regardless, Defendant's counterclaims do not preclude this Court from entering summary judgment in favor of 1st Franklin. All of Defendant's counterclaims relate to actions or conduct alleged to have occurred following Defendant's breach and default under the Loan Agreement. Even taken as true, Defendant's counterclaims do not challenge the enforceability of the Loan Agreement, attempt to excuse Defendant's breach under the Loan Agreement, or negate the damages suffered by 1st Franklin. To the extent Defendant is entitled to recover on any of his counterclaims, which he is not, any such recovery would be offset from the judgment in favor of 1st Franklin.

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003). Defendant has

not come forth with *any* evidence preventing the entry of summary judgment on 1st Franklin's claim under the Loan Agreement. There are no issues of fact to be determined by a factfinder. Therefore, 1st Franklin request that the court enter an Order granting it summary judgment and further requests that this Court schedule a damage's hearing to determine the amount of the judgment to be entered against Defendant.

II. 1st Franklin is Entitled to Summary Judgment on all Counterclaims Asserted by Defendant

Defendant's counterclaims are thinly veiled attempts to distract the court from Defendant's admitted failure to pay the amount due and owing to 1st Franklin under the Loan Agreement. Defendant asserts counterclaims for (1) violation of the SCCPC, (2) violation of SCUTPA, and (3) negligence *per se*. All of Defendant's counterclaims fail as a matter of law. 1st Franklin is, therefore, entitled to summary judgment on Defendant's counterclaims as well.

Defendant's counterclaims all rely on the same factual allegations. In support of his counterclaims, Defendant alleges that 1st Franklin violated various South Carolina statutes thereby giving rise to liability. Defendant makes three principal allegations. First, that 1st Franklin "falsely represented" the amount allegedly owed by filing two separate lawsuits, filed four months apart, which alleged different amounts were owed by Defendant. (See Amended Answer and Counterclaims ¶ 12). Admittedly, the first lawsuit alleged \$4,351.24 was owed.³ (*Id.*). The subject lawsuit, filed following dismissal of the first, alleged \$4,342.16 was owed. Thus, the subject action claims \$9.08 less than the first lawsuit. (*Id.*). Second, Defendant claims 1st Franklin violated SCCPC and SCUTPA by virtue of the Dorchester County Sheriff's Office serving Defendant's neighbor with the previously filed and subsequently dismissed lawsuit. Third, that 1st Franklin violated the SCCPC and SCUTPA by engaging in the unauthorized practice of law when it failed

³ The first lawsuit was dismissed without prejudice in 2016. *1st Franklin Financial Corporation v. Roby A. Adams*, Civil Action 2016-CV-18-10302148.

to file a form evidencing the corporation's intent to proceed in Magistrate's Court without representation by an attorney. Each allegation of improper conduct is address in turn below.

A. 1st Franklin's Scrivener's Error Does Not Give Rise to Liability

In April 2016, 1st Franklin filed an action in Magistrate's Court seeking damages in the amount of \$4,351.24. *See 1st Franklin Financial Corporation v. Roby A. Adams*, Civil Action 2016-CV-18-10302148. That action was dismissed without prejudice as a result of 1st Franklin failing to file documentation relating to non-lawyer representation in Magistrate's Court pursuant to S.C. Code Ann. § 33-1-103. *See id.* In June 2016, 1st Franklin filed this action seeking \$4,342.16 in damages, which amounts to \$9.08 less than the prior lawsuit. Based solely upon the discrepancy of the amounts claimed in the two lawsuits, Defendant alleges that 1st Franklin "falsely represented" the amount owed by Defendant. (*See* Amended Answer and Counterclaims ¶ 12). Defendant relies on S.C. Code § 37-5-108(5)(c)(1) which prohibits unconscionable conduct in collecting a debt and prohibits "using fraudulent, deceptive, or misleading representations in connection with the collection of a consumer credit transaction", including false representations of the "character, amount, or legal status of any debt". *See* S.C. Code §§ 37-5-108(2) and 37-5-108(5)(c)(1). 1st Franklin's scrivener's or minor accounting error, which resulted in a \$9.08 discrepancy between the amounts claimed to be owed, cannot be characterized as "fraudulent, deceptive, or misleading." *See* S.C. Code § 37-5-108(2) In fact, upon discovering the error, 1st Franklin voluntarily corrected the amount it claimed from Defendant without any request or insistence from Defendant. Defendant's deposition testimony makes clear that he is wholly unaware of the amount owed to 1st Franklin and merely relies on the fact that the two complaints contained different amounts. (*See* Adams Depo. 17:17-18). There is no evidence in the record from which a factfinder could find that 1st Franklin's miscalculation, resulting in a less than \$10 difference in the amount claimed to be owed, constitutes fraudulent, deceptive, or misleading such that it can support a

claim for damages. The statutes relied upon by Defendant were designed to protect consumers from predatory collection practices, not penalize for minor accounting errors.

B. 1st Franklin's is Not Liable for the Dorchester County Sheriff's Office Serving Defendant's Neighbor

Defendant furthers claims that 1st Franklin is liable for damages due to the Dorchester County Sheriff's Office serving Defendant's neighbor with the previously filed and subsequently dismissed lawsuit. Defendant alleges this act constitutes a violation of S.C. Code Ann. § 37-5-108(5)(b)(4), which prohibits a debt collector from communicating "with anyone other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the attorney of the creditor or debt collector, unless the consumer or a court of competent jurisdiction has given prior direct permission" regarding the debt. Acknowledging that 1st Franklin had no direct communication with any other person regarding the debt, Defendant seeks to impose liability by claiming that the Dorchester County Sheriff's Office was 1st Franklin's agent. (See Amended Answer and Counterclaims ¶ 16).

The Dorchester County Sheriff's Office was not acting as 1st Franklin's agent when serving the complaint. Rather, it was acting pursuant to its statutory mandate to carry out service of process for the courts of this state. S.C. Code Ann. § 23-15-40 provides that "[t]he sheriff or his regular deputy, on the delivery thereof to him, shall serve, execute and return every process, rule, order or notice issued by any court of record in this State or by other competent authority." The test to determine agency is whether or not the purported principal has the right to control the conduct of his alleged agent. *Fernander v. Thigpen*, 278 S.C. 140, 144, 293 S.E.2d 424, 426 (1982). 1st Franklin had no control over the means and methods used by the Sheriff's Office to serve Defendant. No agency relationship existed. In the absence of an agency relationship, 1st Franklin cannot be held vicariously liable for any alleged act or omission of the Sheriff's Office.

Furthermore, even assuming that an agency relationship existed, which it did not, the Sheriff's Office acted outside of the scope of its authority in serving Defendant's neighbor. 1st Franklin correctly named Defendant in the pleadings and requested that the Sheriff's Office carry out service upon Defendant. The fact that the Sheriff's Office served Defendant's neighbor does not give rise to liability. It is well established that a principal is not liable for the acts of an agent which are outside the agent's scope of authority. *See* 2A C.J.S. Agency § 457. Defendant's allegations regarding improper service fail as a matter of law. Serving a lawsuit is not a "collection activity" governed by the statute. It is a necessary and public function that is required by law and the civil rules. The cited statute exists to protect consumer privacy. There is, however, no expectation of privacy in the serving of a lawsuit. For example, the rules allow service by publication in the mass media.

C. 1st Franklin's Did Not Engage in the Unauthorized Practice of Law and There is No Private Cause of Action for the Unauthorized Practice of Law

Defendant also makes the unsupported and conclusory allegation that 1st Franklin engaged in the unauthorized practice of law; and therefore, is liable to Defendant. Defendant claims 1st Franklin engaged in the unauthorized practice of law by failing to file a form evidencing the corporation's intent to proceed in Magistrate's Court without representation by an attorney

As an initial matter, there has been no finding that 1st Franklin engaged in the unauthorized practice of law and 1st Franklin respectfully submits that such a finding rests within the exclusive jurisdiction of the Supreme Court of South Carolina. The South Carolina Supreme Court has the duty to regulate the practice of law in this state and, accordingly, has the authority to define what constitutes the unauthorized practice of law. The South Carolina Constitution provides "[t]he Supreme Court shall have jurisdiction over the admission to the practice of law...." S.C. Const. art. V. § 4; *see also* S.C. Code Ann. § 40-5-10 (2001) ("The inherent power of the Supreme Court with respect to regulating the practice of law, determining the qualifications for admission to the

bar and disciplining, suspending and disbaring attorneys at law is hereby recognized and declared.”). An action to determine whether an individual or entity has engaged in the unauthorized practice of law must be a request for declaratory relief brought in the original jurisdiction of the Supreme Court. *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 121, 634 S.E.2d 5, 7 (Ct. App. 2006). There has been no adjudication by the Supreme Court that 1st Franklin engaged in the unauthorized practice of law. Therefore, Defendant’s allegations regarding the unauthorized practice of law fail.

Additionally, even if there was an explicit finding that 1st Franklin engaged in the unauthorized practice of law, it could not support Defendant’s counterclaims because the Supreme Court of South Carolina has plainly held that “there is no private right of action for the unauthorized practice of law.” *Linder v. Ins. Claims Consultants, Inc.*, 348 S.C. 477, 497, 560 S.E.2d 612, 623 (2002). In *Linder*, although it acknowledged the statute prohibiting the unauthorized practice of law, S.C. Code Ann. §40-5-310, the Supreme Court held that the statute did not “sanction a private cause of action.” *Id.* Therefore, it held that South Carolina law precludes private citizens from suing for money damages based on an allegation of the unauthorized practice of law. *Id.*; *see also Hambrick*, 370 S.C. at 121, 634 S.E.2d at 7.

Furthermore, in *Hambrick*, the Court of Appeals, relying on *Linder*’s prohibition against a private cause of action, held that the allegation that a party engaged in the unauthorized practice of law cannot be used to support or prove another cause of action. *Hambrick*, 370 S.C. at 124, 634 S.E.2d at 8. In *Hambrick*, the court explicitly rejected the plaintiffs’ attempt “[t]o get around *Linder*” by alleging the unauthorized practice of law to support various other causes of action. *Id.* Plaintiff’s claims concerning 1st Franklin’s alleged unauthorized practice of law also fail.

CONCLUSION

For the reasons set forth herein, 1st Franklin respectfully requests that the Court grant summary judgment as to its claim against Defendant and schedule a damages hearing to determine the amount of the judgment to be entered against Defendant. 1st Franklin further requests that the court grant it summary judgment as to all counterclaims asserted by Defendant.

s/Robert H. Jordan

Robert H. Jordan, Esq. (SC Bar #13612)

Email: robertjordan@parkerpoe.com

Robert C. Osborne III (SC Bar #101827)

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Charleston, South Carolina 29401

Phone: 843-727-2650

Fax: 843-727-2680

Attorneys for 1st Franklin Financial Corporation

July 15, 2019

Charleston, South Carolina

LOAN AGREEMENT

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO § 15-48-10 OF THE SOUTH CAROLINA CODE OF LAWS (1976).

ACCOUNT NUMBER
8827-008795-1.1

BORROWERS NAME/MAILING ADDRESS

Roby A Adams
4924 CHARTWELL DR
NORTH CHARLESTON, SC 29420-7000

Lender's Name and Address:
1ST FRANKLIN FINANCIAL CORPORATION
1890 SAM RITTENBURG BLVD., SUITE 116
CHARLESTON, SC 29407

THIS DOCUMENT IS
REGULATED AS COLLATERAL
TO WELLS FARGO
PREFERRED CAPITAL INC.
SC 29407

DATE OF LOAN	FIRST PAYMENT DUE DATE	REMAINING PAYMENT DUE EACH MONTH AS FIRST PAYMENT, IF NO SUCH DAY EXISTS ON LAST DAY OF MONTH	FINAL PAYMENT DUE DATE	FIRST PAYMENT	OTHER PAYMENTS	PAYABLE IN
10/23/2015	11/23/2015		04/23/2017	\$ 276.00	\$ 276.00	18 MONTHLY PAYMENTS
\$ 1,171.76 Finance Charge		\$ 4,968.00 Total of Payments		35.98 % Annual Percentage Rate		

ITEMIZATION OF AMOUNT FINANCED		LIST OF CHECKS TO YOU OR TO YOU AND OTHERS	
\$ 2,887.39 Amount Paid on Your Prior Account		\$ 571.23 You	
\$ 571.23 Total Amount Paid To You or To You and Others at Your Request		\$ You and	
* \$ N/A Public Officials - Filing Fees		\$ You and	
* \$ 6.00 Ins. Company - Non-Filing Ins. - Personal Property		\$ You and	
* \$ N/A Ins. Co. - Auto Ins. Coverage	\$ NONE	\$ You and	
* \$ N/A Ins. Co. - 14-Day Disability Ins. - Mo. Benefit	\$ NONE	\$ You and	
* \$ 40.99 Ins. Co. Life Ins. - Decreasing Coverage	\$ 4,968.00	\$ You and	
* \$ 290.63 Ins. Co. - Personal Property Ins. - Dual Int. Coverage	\$ 4,968.00	\$ You and	
* \$ N/A Involuntary Unemployment Ins. - Exp. of Benefit Below	\$ NONE	\$ You and	
\$ 3,796.24 AMOUNT FINANCED		\$ You and	

*THESE AMOUNTS ARE PAID TO OTHERS ON YOUR BEHALF.

*You acknowledge that we may have a financial interest in the sale of insurance products by virtue of commission income that we may receive. If Unemployment insurance is written, the BENEFIT will be the lesser of \$1000.00 or the amount of your regularly scheduled payments as shown above, subject to certain limits as explained in the Certificate of Insurance.

NOTE AND SECURITY AGREEMENT

This NOTE AND SECURITY AGREEMENT, (hereinafter referred to as "Agreement") covers your indebtedness with 1st Franklin Financial Corporation. The words "you" and "your" refer to all of the people who sign below as Borrower or Co-signer. The words "we," "us" and "our" refer to 1st Franklin. If you have any questions about the provisions of this Agreement, please do not hesitate to ask.

PROMISE TO PAY: You agree to repay the amount shown above as Total of Payments in consecutive monthly payments. Your payment schedule is shown above. Each payment you make is applied first to any late charge due, then to reduce the amount owing on your account.

LATE PAYMENT: You agree to pay a late charge of 5% of any payment or portion of a payment which is not paid within 10 days of the day it is due, subject to a maximum charge of \$15.00 or a minimum charge of \$7.00, or such maximum or minimum charges that may later be established or adjusted by operation of law. We will not collect a late charge more than once for the same monthly payment. You also agree to pay our reasonable expenses in the collection of this Note in the event of your default, including reasonable attorney's fees not in excess of 15% of the unpaid balance if allowed by law. We may also take the steps set forth herein as remedies after default. Acceptance by us of a late payment or late charge does not excuse your late payment or mean that you can keep making payments after they are due.

CONVERSION: If two payments or portions thereof are in default for 10 days or more, you agree that we may, at our option, refund the unearned portion of the finance charge as of the due date of the first delinquent payment and thereafter charge a finance charge on the unpaid amount financed outstanding from time to time at the Annual Percentage Rate shown above. Each payment shall be applied first to the finance charge and the remainder to the unpaid amount financed until the loan is fully paid.

PREPAYMENT: You may pay more each month than the amount of your regular payment, and you may pay your loan in full at any time. If you prepay in full by cash, a new loan, a renewal, or refinancing, we will refund the unearned finance charge using the Rule of 78 method. No finance charge refund of less than \$1.00 will be made, and if payment in full is by cash, we may retain a minimum finance charge of \$15 if we have earned less than \$15 at the time of prepayment. Upon prepayment in full, we will also cancel any life, disability, personal property, or auto insurance coverage written in connection with this loan, and will refund any unearned premium using the Rule of 78 method. Life, disability and personal property insurance refunds are subject to a minimum retained premium of \$3.00. Automobile insurance refunds are subject to a minimum refund of \$1.00. Charges for non-filing insurance are not refundable.

RETURNED CHECK CHARGE: If you make a payment with any check, draft, negotiable order of withdrawal, or like instrument drawn on a bank or other depository institution and such instrument is not paid or is dishonored by such institution, you further agree to pay us a Service Charge of \$30.00.

CREDIT LIFE AND CREDIT DISABILITY INSURANCE: Credit insurance is not required to obtain this loan. If you choose for us to write individual credit life insurance, we will write individual decreasing-term credit life insurance on the Borrower who signs first below. If you choose for us to write joint credit life insurance, we will write joint decreasing-term credit life insurance on the Borrowers shown above. If you choose for us to provide credit disability insurance, we will write 14-day credit disability insurance, covering only the Borrower who signs first below. If you choose for us to provide involuntary unemployment insurance, the insurance will cover only the Borrower who signs first below. Each Borrower who signs this Loan Agreement agrees that the insurance is part of the debt even though he may not be the one insured. Refer to your Certificate of Insurance for complete details. You have a right to cancel the credit life and credit disability insurance within 15 days of the date of this loan and receive a refund of the premium charged. If you want to do this, each Borrower must agree in writing, and you must return the policy certificate to us.

CREDIT INSURANCE: You acknowledge that the Lender and/or its agent has a financial interest in the sale of any insurance, and may benefit from the sale of such insurance by virtue of commission income which it may receive.

WAIVERS: You waive your right to have a trial by jury resolve any dispute alleged against us. You waive your right to serve as a class action representative, as a private attorney general, and as a member of or as a participant in any lawsuit or arbitration filed against us by any person or group not a party to this Loan Agreement.

On the reverse side of this document, there is a continuation of the agreement, which contains important provisions, including a grant by you of a security interest in certain property.

SIGNATURES: When you sign below, you are agreeing to all the terms and conditions of this Loan Agreement and acknowledge receipt of a copy. You also acknowledge receipt of a copy of the Federal Disclosure Statement. The Borrower who signs first also acknowledges receipt of a certificate of insurance for any insurance written in connection with this loan. Cosigner acknowledges receipt of one copy of the Federal Trade Commission Notice to Cosigner. You also acknowledge that you have been involved in the determination of and agree with the total value of the items of personal property \$ 6,250.00 as detailed on the reverse side hereof. You sign this Loan Agreement under your hand and seal on the date of loan shown above.

ALTERNATIVE DISPUTE RESOLUTION AGREEMENT: BORROWER AND LENDER DO AGREE TO AN ALTERNATIVE DISPUTE RESOLUTION FOR THE SETTLEMENT OF ANY CONTROVERSIES BETWEEN THEM. THE TERMS OF THE ALTERNATIVE DISPUTE RESOLUTION AGREEMENT ARE SET FORTH IN A SEPARATE AGREEMENT. THE PARTIES HEREBY ACKNOWLEDGE THAT THE AGREEMENT OF THE BORROWER TO ENTER INTO THE SEPARATE AGREEMENT IS A MATERIAL INDUCEMENT TO THE LENDER'S ENTERING INTO THIS AGREEMENT WITH THE BORROWER.

Executed on behalf of Lender by:

Melissa Downey
Authorized Representative and executed by Borrower(s) in the presence of
Tiffany Stewart
Witness

Roby A Adams (L.S.)
Signature of Borrower
(L.S.)
Signature of Co-Signer
(L.S.)
Signature of Co-Signer
(L.S.)

CONSENT TO SECURITY AGREEMENT: In consideration of our granting this loan and to the extent of your interest in the property, you grant us a security interest in any personal property described above. You are not personally obligated to repay this loan.

Witness Co-Owner (L.S.)

3C 5400
11/2015 10182-2

Page 2 of 3

Distribution Instructions - Borrower(s), Co-Signer(s), Co-Owner, 2 File Copies, Pegboard

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8827-008795-1

CONTINUATION OF NOTE AND SECURITY AGREEMENT

SECURITY AND SECURITY INTEREST: To secure the repayment of the Note contained in this Agreement, you are granting to us a security interest in the following properties. You confirm that none of the items listed below are used by you in your work for wages.

☐ The following described motor vehicle(s) with all equipment, parts and accessories:

YR.	MAKE	MODEL	SERIAL NO.	INSURED THROUGH LENDER (Yes/No)
1.				
2.				
3.				

☒ The following Personal Property which is valued at \$ 6,250.00. Any item labeled in the 300 series can not be covered under the personal property insurance coverage that is available through the Lender. If you have pledged a television or radio, you confirm by signing on the reverse that you have not pledged the only television or radio that you own.

[115] Computer & Monitor, Desktop w/Monitor, Acer, PWSC90202035001C7F6900 350.00
 [010] 2nd Television, 52", JVC, 50A330 900.00
 [075] Camera and Accessories, Canon, 639634896 250.00
 [255] Lawn Mower - Riding, Craftsman, 650.00
 [250] Lawn Mower - Push, 27" Self-Propelled, Craftsman, 300.00
 [010] 2nd Television, 40", Sharp, 350.00
 [010] 2nd Television, 32", Sharp, 350.00
 [010] 2nd Television, 70", Sharp, M19440D20187 2,000.00
 [005] 2nd Radio, 10" Table Saw, Craftsman, 200.00
 [540] Tools - Electric Saw, Radial, Craftsman, 200.00
 [500] Stereo System, CD/Satellite, Bose, 500.00

located on or about your residence 4924 CHARTWELL DR. NORTH CHARLESTON, SC 29420-7000

☐ The following Personal Property, valued at \$ _____, in which Lender is taking or is retaining a purchase-money security interest.

NON-FILING INSURANCE: If we do not record our security interest in the personal property listed on the reverse side, you agree that we may exercise our right under state law to purchase and charge you for Non-Filing Insurance.

PERSONAL PROPERTY INSURANCE: Personal property insurance coverage is required on the personal property given as security. You may obtain it from anyone you want or provide it through an existing policy provided the insurance company is acceptable to us. If we write this insurance through a company we represent, we will write dual interest property insurance for the term of the loan. The premium and coverage amounts for this insurance are shown on the reverse side. Refer to your Certificate of Insurance for complete details.

AUTOMOBILE INSURANCE: Insurance coverage is required on the automobile given as security. You may obtain it from anyone you want or provide it through an existing policy provided the insurance company is acceptable to us. If we write this insurance through a company we represent, we will write limited physical damage insurance for the term of the loan. The premium and coverage amounts for this insurance are shown on the reverse side. Refer to your Certificate of Insurance for complete details.

OWNERSHIP AND DUTIES TOWARD PROPERTY: You represent that you own the property being given as security. You agree to keep the property in your possession and will not move it from the address shown. You agree to maintain it in good condition. The loss or destruction of this property from any cause, whether or not your fault, will not affect in any way your liability to repay this Note. You agree not to sell or otherwise dispose of the property without our prior consent, nor allow it to be used for any unlawful purpose. You agree to pay all taxes when due and maintain adequate insurance coverage through a company which meets with our approval. If you fail to pay any taxes or liens against the property or fail to maintain adequate insurance coverage, we may, at our option, make advances to pay any amounts due. Any advances will become a part of this Note amount and will be due and payable immediately.

DEFAULT: You will be in default if any one or more of the following occurs: (1) you fail to make a payment on this Note or any refinancing of this Note when it comes due; (2) the prospect of payment, performance or realization of our collateral is significantly impaired.

NOTICE AFTER DEFAULT: If you fail to make a required payment for 10 days or more, we will give you notice of your right to cure such default within 20 days after such notice is sent. If you fail to cure such default in the manner stated in the notice, or if you cure the default but fail to make a future payment when due, or if you default in any other manner under this agreement we may exercise our remedies after default without any notice to you.

REMEDIES AFTER DEFAULT: If you default, we may:

- (1) accelerate the maturity of the Note, making the net amount you owe due and payable. This net amount will be the unpaid balance of your account at that time less refunds as set forth in the Prepayment paragraph of this Agreement. You agree to pay the reasonable expenses incurred by us in the collection of this Note, including reasonable attorney's fees not in excess of 15% of the unpaid balance if we turn this Note over to an attorney who is not our employee, for collection if allowed by law.
- (2) demand additional security or parties obligated to repay this Note;
- (3) exercise any rights to remedy given to us by the Uniform Commercial Code and other applicable state or federal law;
- (4) require you to make available to us the property given as security for this Note. You agree that we may take immediate possession of the security without your having a prior judicial hearing and that we may enter your property or any other property where the security or any part of it is located in order to take possession, if possession can be taken without entry into a current dwelling used as a current residence and without the use of force or other breach of the peace. We may then sell the property at public or private sale, with or without advertisement. We will mail a Notice of the Sale by certified mail to the last address you provided to us at least 10 days before the date of sale. We may be a purchaser at the sale, and the proceeds will be distributed as required by the Uniform Commercial Code.

You agree that by our electing any one or more of the above remedies that we are not waiving our right to later elect or use any other remedy until this Note is paid in full. You also agree that our delay in enforcing any of these remedies does not cause us to lose any of our rights or remedies.

AUTHORIZATION TO COMMUNICATE WITH THIRD PERSONS: You authorize us to contact third persons in connection with making or collecting your loan, consistent with our Privacy Policy which has been adopted to protect your non-public, personal information.

NOTICE: If you believe that information that we have provided to a consumer reporting agency is inaccurate, please notify us of the specific information which is accurate at: 1st Franklin Financial Corporation, Attention: Compliance Department, Post Office Box 880, Toccoa, GA 30577. If you have any other questions about the handling of your account, you may write to us at this same address.

Page 1

STATE OF SOUTH CAROLINA)
)IN THE MAGISTRATE'S COURT
COUNTY OF DORCHESTER)
1ST FRANKLIN FINANCIAL
CORPORATION,

Plaintiff,

CASE NO.:

-vs-

2016-CV-18-10305402

ROBY A. ADAMS,

Defendant.

Discovery Deposition of Roby A. Adams
Date Taken: Thursday, January 17th, 2019
Time Taken: 10:00 a.m.
Location: Brush Law Firm
 12-A Carriage Lane
 Charleston, South Carolina 29407
Reported By: Judy W. Galuppo, Court Reporter
Job No.: 452923

MAGNA LEGAL SERVICES
WWW.MAGNALS.COM
866.624.6221



1 says you agree to pay a late charge of 5 percent of
2 any payment or portion of a payment that is not paid
3 within 10 days of the date it's due; does that sound
4 right?

5 A That's what this document says, yes.

6 Q Right. And you signed this document, so
7 you agreed to be bound by the terms of this agreement,
8 right?

9 A Yes.

10 Q All right. If you look on the second
11 page of this document, I'll point you to another
12 section I'd like you to look at, which is the Default
13 section right here. Do you see that section?

14 A Yes, I do.

15 Q All right. This section reads, "You will
16 be in default if any one or more of the following
17 occurs: You fail to make a payment on this note or
18 any refinancing of this note when it comes due."
19 Okay?

20 A Okay.

21 Q Does that sound right?

22 A That's what it says.

23 Q Yes, sir. You agreed to be bound by this
24 term of the Loan Agreement because you signed this
25 Loan Agreement, correct?

1 A Yes.

2 Q Now, if I could point down to right below
3 the Default section, the Remedies After Default, okay?
4 The remedies after default, "If you default, we may:"
5 1 says, "accelerate the maturity of the note, making
6 the amount you owe due and payable." Okay?

7 Also, let me just keep reading on that.
8 "This net amount will be the unpaid balance of your
9 account at the time, less refunds as set forth in the
10 Prepayment paragraph. You agree to pay the reasonable
11 expenses incurred by us in the collection of this
12 Note, including reasonable attorney fees not in excess
13 of 15 percent of the unpaid balance if we turn this
14 Note over to an attorney who is not an employee, for
15 collection if allowed by law." Is that right?

16 A That's what it says.

17 Q You agreed to be bound by this term, the
18 Remedies After Default term, because you signed this
19 Loan Agreement, correct?

20 A Yes.

21 Q How many payments did you make on this
22 loan?

23 A I don't remember.

24 Q Did you make any payments on the loan?

25 A I don't remember. I mean, it's been

1 almost three years.

2 Q You don't remember if you made a payment
3 on this loan?

4 A No, I don't.

5 Q Are you disputing that you owe this
6 amount --

7 A No.

8 Q -- to 1st Franklin?

9 A I'm disputing the amount because of the
10 difference in the documents that they sent my
11 attorney.

12 Q All right. Well, how can you dispute an
13 amount when you don't know how many payments you've
14 made? I'm confused on that part of it. If you could
15 enlighten me, please.

16 A It's been almost three years. I can't
17 recall back that far. I'm sorry.

18 Q So you don't know how much you owe then?

19 A No, I don't.

20 Q All right. Does \$4,342.16 sound about
21 right, what you owe?

22 MR. CANTRELL: Objection. Asked and
23 answered repeatedly.

24 MR. LANNING: I did not ask about the
25 amount.

1 MR. CANTRELL: Yes, you actually did
2 earlier.

3 MR. LANNING: No, I did not. I said
4 that's the amount on the loan agreement. I didn't
5 say that's the amount owed.

6 BY MR. LANNING:

7 Q The amount owed is \$4,342.16, plus costs
8 and attorney fees; does that sound about right to you?

9 A I don't know. I mean, I hate to be --
10 you know, I can tell, you know, that you're trying to
11 get a straight answer, and I'm trying to give you one.
12 You know, I can say yes to the amount on this document
13 that I signed because it's got my signature on it, the
14 rest of it I don't know. I just don't know.

15 Q Okay. Well, that's what I'm here trying
16 to figure out, is how much do you think you owe on
17 this account. And you can't tell me how much you owe,
18 correct?

19 A Correct.

20 Q Because you don't know how many payments
21 you made, if you made any payments, correct?

22 A Correct.

23 Q But you agree that you owe some amount to
24 1st Franklin?

25 A Yes.

1 Q And you agree that according to the terms
2 of the agreement you're also responsible for their
3 costs incurred trying to collect this debt?

4 A Yes.

5 Q Which would be the attorney fees and the
6 court costs, correct?

7 A Correct.

8 Q Mr. Adams, I've handed you what is marked
9 Plaintiff's Exhibit 2. This is the First Amended
10 Defendant's Answer and Counterclaims. This is what
11 you filed in response to 1st Franklin's Complaint.
12 Have you seen this document?

13 (Plaintiff's Exhibit 2 is marked for
14 identification.)

15 A Yes.

16 Q Okay. I point you to paragraph 12, okay?
17 According to paragraph 12 you allege, "That, upon
18 information and belief, the Plaintiff has falsely
19 represented the amount allegedly owed and that it is
20 asserted that two different amounts are owed in two
21 separate complaints."

22 How do you know that both of those
23 numbers -- if one of those numbers is false or both of
24 them are false, how do you know that?

25 A This was handled by my attorney. I

1 A I said that's what I think it's worth.

2 Q Would that be less the amount that you
3 currently owe to 1st Franklin?

4 MR. CANTRELL: Objection. Calls for
5 a legal conclusion.

6 BY MR. LANNING:

7 Q You can answer.

8 A It would be less than what I owe Franklin
9 but not -- you know, that won't cover my attorney
10 fees, that would be in addition.

11 Q I'm saying, you agree that you owe
12 something to 1st Franklin, right?

13 A Yes.

14 Q But again, we don't know what that number
15 is, right?

16 A Correct.

17 Q You can't tell me what that number is?

18 A I can't tell you what the number is.

19 Q All right. Mr. Adams, do you own
20 a house?

21 A Yes.

22 Q Is that the address that you gave me
23 before?

24 A Yes.

25 Q Do you have a mortgage on that house?

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
1 st Franklin Financial Corporation,	)	CASE NO.: 2017-CP-18-00819
	)	
Plaintiff,	)	SUPPLEMENTAL MEMORANDUM OF
	)	LAW IN SUPPORT OF 1st FRANKLIN
vs.	)	FINANCIAL CORPORATION'S
	)	MOTION FOR SUMMARY JUDGMENT
Roby A. Adams,	)	
	)	
Defendant.	)	
	)	

Plaintiff 1st Franklin Financial Corporation (“Plaintiff” or “1st Franklin”), by and through its undersigned counsel, hereby files its Supplemental Memorandum in Support of its Motion for Summary Judgment.¹ 1st Franklin seeks summary judgment as to its affirmative claim against Defendant Roby A. Adams (“Defendant” or “Adams”) and as to certain counterclaims asserted by Defendant.

FACTUAL BACKGROUND

On October 23, 2015, Defendant entered into a Loan Agreement with 1st Financial wherein 1st Financial agreed to loan money to Defendant, and Defendant agreed to repay the loan in installments. (See Loan Agreement attached as **Exhibit A**). Defendant admits that he signed the Loan Agreement agreeing to be bound by its terms. (See Roby Depo. Jan. 17, 2019 at 14:23-15:1).² Defendant does not dispute that he failed to pay 1st Franklin in accordance with the Loan Agreement and does not dispute that he owes some amount to 1st Franklin. (*Id.* at 17:23-25). Defendant testified that he cannot recall whether he made any payments towards the loan, and that he is unsure of the exact amount that he owes 1st Franklin. (*Id.* at 15:21-16:7).

¹ 1st Franklin’s Motion for Summary Judgment was previously scheduled to be heard on July 16, 2019. However, prior to hearing 1st Franklin’s motion, the court heard and granted Defendant’s motion to file a Second Amended Complaint. As a result, the court continued 1st Franklin’s Motion for Summary Judgment.

² Cited excerpts of Defendant’s deposition transcript are attached hereto as **Exhibit B**.
PPAB 5448400v1

On September 22, 2016, 1st Franklin filed suit against Defendant in the Magistrate's Court for Dorchester County alleging that Defendant defaulted under the Loan Agreement and owed, at that time, \$4,342.16.³ On December 5, 2016, Defendant filed an Answer and Counterclaims denying liability and asserting counterclaims against 1st Franklin for violations of the South Carolina Consumer Protection Code ("SCCPC"), violations of the South Carolina Unfair Trade Practices Act ("SCUTPA") and negligence *per se*. Defendant's Answer and Counterclaim expressly limited Defendant's claimed damages to be under the Magistrate's Court's jurisdictional limit of \$7,500.00.

On April 26, 2017, Defendant filed his First Amended Answer and Counterclaims making the same allegations but claiming damages in excess of the Magistrate's Court jurisdictional limit. As a result, in May 2017, the case was transferred to the Court of Common Pleas for Dorchester County. Following the transfer to the Circuit Court, the parties engaged in written discovery and conducted depositions. On August 29, 2019, Defendant filed his Second Amended Answer and Counterclaims. The Second Amended Answer and Counterclaim is nearly identical to Defendant's two prior pleadings, the only difference being reference to correspondence from 1st Franklin to Defendant sent on February 8, 2018 regarding the debt and an alleged telephone call made to Defendant by 1st Franklin on March 14, 2019.

LEGAL STANDARD

Rule 56, SCRCF, requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Although the moving party bears the

³ Prior to the subject action, on April 19, 2016, 1st Franklin filed suit against Defendant in the Magistrate's Court for Dorchester County based upon the same Loan Agreement, *1st Franklin Financial Corporation v. Roby A. Adams*, Civil Action 2016-CV-18-10302148. That action was dismissed *without prejudice* based upon 1st Franklin's failure to file documentation relating to non-lawyer representation of a corporation in Magistrate's Court pursuant to S.C. Code Ann. § 33-1-103.

initial burden of demonstrating the absence of a genuine issue of material fact, “this initial responsibility may be discharged by ‘showing’ – that is, pointing out to the trial court – that there is an absence of evidence to support the nonmoving party’s case.” *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party makes this demonstration, the opposing party “must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*.” *Id.* (emphasis in original); *Midland Mut. Life Ins. Co. v. Harrell*, 331 S.C. 394, 397, 503 S.E.2d 189, 190 (Ct. App. 1998). The nonmoving party must specifically set forth such facts, “as would be admissible in evidence,” to show that a true jury issue exists. *See* S.C. R. Civ. P. 56(e).

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001). Under South Carolina law, where “plain, palpable and indisputable facts exist on which reasonable minds cannot differ,” summary judgment in favor of the moving party is proper. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

ARGUMENT

I. 1st Franklin is Entitled to Summary Judgment on its Claim for Breach of the Loan Agreement

An action under a note is an action for breach of contract. *See e.g., Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 780 S.E.2d 263 (Ct. App. 2015). “The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach.” *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491–92, 732 S.E.2d 205, 209 (Ct.App.2012). There is no genuine issue of material fact as to any of the three elements required to establish

Defendant's liability under the Loan Agreement. Therefore, 1st Franklin is entitled to summary judgment against Defendant.

It is uncontested that the Loan Agreement created an enforceable contractual relationship between 1st Franklin and Defendant. Plaintiff admits that he entered into the Loan Agreement and agreed to be bound by the terms therein. (See **Exhibit A** and Adams Depo. 14:23-15:1). Defendant does not dispute that he entered into a valid loan contract with 1st Franklin. Further, Defendant unequivocally admits that he breached the Loan Agreement by failing to make payments when due, and he further admits that he owes some amount to 1st Franklin. (*Id.* at 16:5-8; 17:23-25; 36:11-13). Next, it is undisputed that 1st Franklin suffered damages as a result of Defendant's breach of the Loan Agreement. It is axiomatic that because Defendant failed to repay the loan, 1st Franklin suffered damages and is entitled to recover. There is no genuine issue of material fact as to the existence of a contract between 1st Franklin and Defendant, a breach of the contract by Defendant, and the damages suffered by 1st Franklin. Therefore, 1st Franklin is entitled to summary judgment.

As set forth more fully below, Defendant's counterclaims against 1st Franklin lack merit. Regardless, Defendant's counterclaims do not preclude this Court from entering summary judgment in favor of 1st Franklin on the issue of liability under the Loan Agreement. All of Defendant's counterclaims relate to actions or conduct alleged to have occurred following Defendant's breach and default under the Loan Agreement. Even taken as true, Defendant's counterclaims do not challenge the enforceability of the Loan Agreement, attempt to excuse Defendant's breach under the Loan Agreement, or negate the damages suffered by 1st Franklin by virtue of Plaintiff's failure to pay 1st Franklin. To the extent Defendant is entitled to recover on any of his counterclaims, which he is not, any such recovery could be offset from the judgment in favor of 1st Franklin.

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003). Defendant has not come forth with *any* evidence preventing the entry of summary judgment on 1st Franklin's claim under the Loan Agreement. There are no issues of fact to be determined by a factfinder. Granting summary judgment on Defendant's liability under the Loan Agreement will simplify the issues for trial. Therefore, 1st Franklin request that the court enter an Order granting it summary judgment on the issue of Plaintiff's liability under the Loan Agreement.

II. 1st Franklin is Entitled to Summary Judgment on the Counterclaims Asserted by Defendant Relating to the 1st Franklin's Clerical Error, the Service of the Summons and Complaint, and the Alleged Unauthorized Practice of Law.

1st Franklin seeks summary judgment on all of Defendant's counterclaims except for those relating to communications sent after 1st Franklin allegedly knew that Defendant was represented by counsel.⁴ Relevant to this motion, Defendant claims that 1st Franklin "falsely represented" the amount allegedly owed by filing two separate lawsuits, filed four months apart, which alleged different amounts were owed by Defendant. (See Second Amended Answer and Counterclaims ¶ 12). Admittedly, the first lawsuit alleged \$4,351.24 was owed.⁵ (*Id.*). The subject lawsuit, filed following dismissal of the first, alleged \$4,342.16 was owed. Thus, the subject action claims \$9.08 less than the first lawsuit. (*Id.*). Additionally, Defendant claims 1st Franklin is liable to Defendant because the Dorchester County Sheriff's Office served Defendant's neighbor with the previously filed and subsequently dismissed lawsuit. Finally, Defendant claims that 1st Franklin is liable to Defendant by allegedly engaging in the unauthorized practice of law because it failed to file a form evidencing the corporation's intent to proceed in Magistrate's Court without representation by an attorney. Based on these facts, Defendant asserts counterclaims for (1) violation of the SCCPC,

⁴ 1st Franklin's decision not to seek summary judgment on the remaining allegations should not be construed as an admission to liability. 1st Franklin denies any and all liability to Defendant.

⁵ The first lawsuit was dismissed without prejudice in 2016. *1st Franklin Financial Corporation v. Roby A. Adams*, Civil Action 2016-CV-18-10302148.

(2) violation of SCUTPA, and (3) negligence *per se*. As set forth below, these counterclaims fail as a matter of law.

A. 1st Franklin's Scrivener's Error Does Not Give Rise to Liability

In April 2016, 1st Franklin filed an action in Magistrate's Court seeking damages in the amount of \$4,351.24. *See 1st Franklin Financial Corporation v. Roby A. Adams*, Civil Action 2016-CV-18-10302148. That action was dismissed without prejudice as a result of 1st Franklin failing to file documentation relating to non-lawyer representation in Magistrate's Court pursuant to S.C. Code Ann. § 33-1-103. *See id.* In June 2016, 1st Franklin filed this action seeking \$4,342.16 in damages, which amounts to \$9.08 less than the prior lawsuit. Based solely upon the discrepancy of the amounts claimed in the two lawsuits, Defendant alleges that 1st Franklin "falsely represented" the amount owed by Defendant. (*See* Second Amended Answer and Counterclaims ¶ 12). Defendant relies on S.C. Code § 37-5-108(5)(c)(1) which prohibits unconscionable conduct in collecting a debt and prohibits "using fraudulent, deceptive, or misleading representations in connection with the collection of a consumer credit transaction", including false representations of the "character, amount, or legal status of any debt". *See* S.C. Code §§ 37-5-108(2) and 37-5-108(5)(c)(1).

A claim under S.C. Code 37-5-108 only arises "if the court ***as a matter of law*** finds that a person has engaged in, is engaging in, or is likely to engage in ***unconscionable conduct*** in collecting a debt arising from that transaction." S.C. Code Ann. § 37-5-108(2) (emphasis added). 1st Franklin's scrivener's or minor accounting error, which resulted in a \$9.08 discrepancy between the amounts claimed to be owed, cannot, as a matter of law, be characterized as "fraudulent, deceptive, or misleading" or "unconscionable." *See* S.C. Code § 37-5-108(2) In fact, upon discovering the error, 1st Franklin voluntarily corrected and reduced the amount it claimed from

Defendant without any request or insistence from Defendant. Defendant's deposition testimony makes clear that he is wholly unaware of the amount owed to 1st Franklin and merely relies on the fact that the two complaints contained different amounts. (See Adams Depo. 17:17-18). There is no evidence in the record from which this Court could find that 1st Franklin's miscalculation, resulting in a less than \$10 difference in the amount claimed to be owed, constitutes fraudulent, deceptive, or misleading such that it can support a claim for damages. See S.C. Code Ann. § 37-5-108(2).

The SCCPC and SCUTPA are intended protect consumers from predatory collection practices, not penalize creditors for minor accounting errors. Again, a claim under S.C. Code 37-5-108 only arises "if the court *as a matter of law* finds that a person has engaged in, is engaging in, or is likely to engage in *unconscionable conduct* in collecting a debt arising from that transaction." S.C. Code Ann. § 37-5-108(2) (emphasis added). Defendant's argument that a miscalculation of the owed amount owed by a debtor, without more, gives rise to liability is simply incorrect. S.C. Code 37-5-108(5)(a) sets forth factors that may be considered when determining whether a creditor "has engaged in, is engaging in, or is likely to engage in unconscionable conduct." See S. C. Code Ann. §§ 37-5-108(2) and 37-5-108(5)(a). Had the legislature intended to impose strict liability for any of the acts or actions enumerated under S.C. Code 37-5-108(5)(a), it would have done so with specific language to that effect. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Halsey v. Simmons*, --S.E.2d -- No. 2017-001459, 2020 WL 593950, at *5 (S.C. Ct. App. Jan. 22, 2020). It is clear that the legislature did not intend to impose strict liability under S.C. Code 37-5-108(5)(a). Rather, a court must find, as a matter of law, that a debt collector acted unconscionably. See S.C. Code Ann. § 37-5-108(2). There is no evidence demonstrating that 1st Franklin engaged in

unconscionable conduct. Thus, 1st Franklin is entitled to summary judgment on Defendant's counterclaim relating to the miscalculation of the amount owed by Defendant.

B. 1st Franklin's is Not Liable for the Dorchester County Sheriff's Office Serving Defendant's Neighbor

Defendant also claims that 1st Franklin is liable for damages due to the Dorchester County Sheriff's Office serving Defendant's neighbor with the previously filed and subsequently dismissed lawsuit. Defendant alleges this act constitutes a violation of S.C. Code Ann. § 37-5-108(5)(b)(4), which prohibits a debt collector from communicating "with anyone other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the attorney of the creditor or debt collector, unless the consumer or a court of competent jurisdiction has given prior direct permission" regarding the debt. Acknowledging that 1st Franklin had no direct communication with any other person regarding the debt, Defendant seeks to impose liability by claiming that the Dorchester County Sheriff's Office was 1st Franklin's agent. (See Second Amended Answer and Counterclaims ¶ 16).

The Dorchester County Sheriff's Office was not acting as 1st Franklin's agent when serving the complaint. Rather, it was acting pursuant to its statutory mandate to carry out service of process for the courts of this state. S.C. Code Ann. § 23-15-40 provides that "[t]he sheriff or his regular deputy, on the delivery thereof to him, shall serve, execute and return every process, rule, order or notice issued by any court of record in this State or by other competent authority." The test to determine agency is whether or not the purported principal has the right to control the conduct of his alleged agent. *Fernander v. Thigpen*, 278 S.C. 140, 144, 293 S.E.2d 424, 426 (1982). 1st Franklin had no control over the means and methods used by the Sheriff's Office to serve Defendant. No agency relationship existed. In the absence of an agency relationship, 1st Franklin cannot be held vicariously liable for any alleged act or omission of the Sheriff's Office.

Furthermore, even assuming that an agency relationship existed, which it did not, the Sheriff's Office acted outside of the scope of its authority in serving Defendant's neighbor. 1st Franklin correctly named Defendant in the pleadings. The Sheriff's Office, pursuant to its statutory authority, was instructed by the court to carry out service upon Defendant, not Defendant's neighbor. It is well established that a principal is not liable for the acts of an agent which are outside the agent's scope of authority. See 2A C.J.S. Agency § 457. Thus, even assuming *arguendo* that the Sheriff's Office was acting as 1st Franklin's agent, it clearly acted outside the scope of its authority.

Finally, Sheriff's Office's act of serving the Defendant was judicial in nature thereby barring Defendants counterclaims by virtue of quasi-judicial immunity. South Carolina law is clear that acts carried out in furtherance of court proceedings are entitled to quasi-judicial immunity. See *Fleming v. Asbill*, 326 S.C. 49, 58, 483 S.E.2d 751, 756 (1997) (holding a guardian ad litem, although not a court employee, is entitled common law immunity).

Defendant's allegations regarding improper service fail as a matter of law. Serving a lawsuit is not a "collection activity" governed by the statute. It is a necessary and public function that is required by law and the civil rules. The cited statute exists to protect consumer privacy. There is, however, no expectation of privacy in the serving of a lawsuit. For example, the South Carolina Rules of Civil Procedure allow service by publication in the mass media.

C. 1st Franklin's Did Not Engage in the Unauthorized Practice of Law and There is No Private Cause of Action for the Unauthorized Practice of Law

Defendant also makes the unsupported and conclusory allegation that 1st Franklin engaged in the unauthorized practice of law; and therefore, is liable to Defendant. Defendant claims 1st Franklin engaged in the unauthorized practice of law by failing to file a form evidencing the corporation's intent to proceed in Magistrate's Court without representation by an attorney

As an initial matter, there has been no finding that 1st Franklin engaged in the unauthorized practice of law, and 1st Franklin respectfully submits that such a finding rests within the exclusive jurisdiction of the Supreme Court of South Carolina. The South Carolina Supreme Court has the duty to regulate the practice of law in this state and, accordingly, has the authority to define what constitutes the unauthorized practice of law. The South Carolina Constitution provides “[t]he Supreme Court shall have jurisdiction over the admission to the practice of law....” S.C. Const. art. V. § 4; *see also* S.C. Code Ann. § 40–5–10 (2001) (“The inherent power of the Supreme Court with respect to regulating the practice of law, determining the qualifications for admission to the bar and disciplining, suspending and disbaring attorneys at law is hereby recognized and declared.”). An action to determine whether an individual or entity has engaged in the unauthorized practice of law must be a request for declaratory relief brought in the original jurisdiction of the Supreme Court. *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 121, 634 S.E.2d 5, 7 (Ct. App. 2006). There has been no adjudication by the Supreme Court that 1st Franklin engaged in the unauthorized practice of law. Therefore, Defendant’s allegations regarding the unauthorized practice of law fail.

Additionally, even if there was an explicit finding that 1st Franklin engaged in the unauthorized practice of law, it could not support Defendant’s counterclaims because the Supreme Court of South Carolina has plainly held that “there is no private right of action for the unauthorized practice of law.” *Linder v. Ins. Claims Consultants, Inc.*, 348 S.C. 477, 497, 560 S.E.2d 612, 623 (2002). In *Linder*, although it acknowledged the statute prohibiting the unauthorized practice of law, S.C. Code Ann. §40-5-310, the Supreme Court held that the statute did not “sanction a private cause of action.” *Id.* Therefore, it held that South Carolina law precludes private citizens from suing for money damages based on an allegation of the unauthorized practice of law. *Id.*; *see also Hambrick*, 370 S.C. at 121, 634 S.E.2d at 7.

Furthermore, in *Hambrick*, the Court of Appeals, relying on *Linder*'s prohibition against a private cause of action, held that the allegation that a party engaged in the unauthorized practice of law cannot be used to support or prove another cause of action. *Hambrick*, 370 S.C. at 124, 634 S.E.2d at 8. In *Hambrick*, the court explicitly rejected the plaintiffs' attempt "[t]o get around *Linder*" by alleging the unauthorized practice of law to support various other causes of action. *Id.* Plaintiff's claims concerning 1st Franklin's alleged unauthorized practice of law also fail.

CONCLUSION

For the reasons set forth herein, 1st Franklin respectfully requests that the Court grant summary judgment as to its claim against Defendant and conduct damages hearing to determine the amount of the judgment to be entered against Defendant. 1st Franklin further requests that the court grant it summary judgment as to all counterclaims asserted by Defendant. Finally, pursuant to S.C. Code § 37-5-108(6), 1st Franklin request that the court find that it is entitled to recover reasonable attorneys' fees incurred defending Defendant's counterclaims.

s/Robert H. Jordan
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Attorneys for 1st Franklin Financial Corporation

March 2, 2020
 Charleston, South Carolina

EXHIBIT A

LOAN AGREEMENT

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO § 15-48-10 OF THE SOUTH CAROLINA CODE OF LAWS (1976).

ACCOUNT NUMBER
8827-008795-1 1

BORROWERS NAME/MAILING ADDRESS

Roby A Adams
4924 CHARTWELL DR
NORTH CHARLESTON, SC 29420-7000

Lender's Name and Address:
1ST FRANKLIN FINANCIAL CORPORATION
1890 SAM RITTENBURG BLVD., SUITE 116
CHARLESTON, SC 29407

THIS DOCUMENT IS
NEEDED AS COLLATERAL
TO WELLS FARGO
BANKED CAPITAL INC.
SC 29407

DATE OF LOAN	FIRST PAYMENT DUE DATE	REMAINING PAYMENTS DUE EACH MONTH AS SUCH DAY EXIST IN LAST DAY OF MONTH	FINAL PAYMENT DUE DATE	FIRST PAYMENT	OTHER PAYMENTS	PAYABLE IN
10/23/2015	11/23/2015		04/23/2017	\$ 276.00	\$ 276.00	18 MONTHLY PAYMENTS
\$ 1,171.76 Finance Charge		\$ 4,968.00 Total of Payments		35.98 % Annual Percentage Rate		

ITEMIZATION OF AMOUNT FINANCED		LIST OF CHECKS TO YOU OR TO YOU AND OTHERS	
\$ 2,887.39 Amount Paid on Your Prior Account		\$ 571.23 You	
\$ 571.23 Total Amount Paid to You or to You and Others at Your Request		\$ You and	
\$ N/A Public Officials - Filing Fees		\$ You and	
\$ 6.00 Ins. Company - Non-Filing Ins. - Personal Property		\$ You and	
\$ N/A Ins. Co. - Auto Ins. Coverage	\$ NONE	\$ You and	
\$ N/A Ins. Co. - 14-Day Disability Ins. - Mo. Benefit	\$ NONE	\$ You and	
\$ 40.99 Ins. Co. Life Ins. - Decreasing Coverage	\$ 4,968.00	\$ You and	
\$ 290.63 Ins. Co. - Personal Property Ins. - Dual Int. Coverage	\$ 4,968.00	\$ You and	
\$ N/A Involuntary Unemployment Ins. - Exp. of Benefit Below	\$ NONE	\$ You and	
\$ 3,796.24 AMOUNT FINANCED		\$ You and	

*THESE AMOUNTS ARE PAID TO OTHERS ON YOUR BEHALF

*You acknowledge that we may have a financial interest in the sale of insurance products by virtue of commission income that we may receive. If Unemployment insurance is written, the BENEFIT will be the lesser of \$1000.00 or the amount of your regularly scheduled payments as shown above, subject to certain limits as explained in the Certificate of Insurance.

NOTE AND SECURITY AGREEMENT

This NOTE AND SECURITY AGREEMENT, (hereinafter referred to as "Agreement") covers your indebtedness with 1st Franklin Financial Corporation. The words "you" and "your" refer to all of the people who sign below as Borrower or Co-signer. The words "we," "us" and "our" refer to 1st Franklin. If you have any questions about the provisions of this Agreement, please do not hesitate to ask.

PROMISE TO PAY: You agree to repay the amount shown above as Total of Payments in consecutive monthly payments. Your payment schedule is shown above. Each payment you make is applied first to any late charge due, then to reduce the amount owing on your account.

LATE PAYMENT: You agree to pay a late charge of 5% of any payment or portion of a payment which is not paid within 10 days of the day it is due, subject to a maximum charge of \$15.00 or a minimum charge of \$7.00, or such maximum or minimum charges that may later be established or adjusted by operation of law. We will not collect a late charge more than once for the same monthly payment. You also agree to pay our reasonable expenses in the collection of this Note in the event of your default, including reasonable attorney's fees not in excess of 15% of the unpaid balance if allowed by law. We may also take the steps set forth herein as remedies after default. Acceptance by us of a late payment or late charge does not excuse your late payment or mean that you can keep making payments after they are due.

CONVERSION: If two payments or portions thereof are in default for 10 days or more, you agree that we may, at our option, refund the unearned portion of the finance charge as of the due date of the first delinquent payment and thereafter charge a finance charge on the unpaid amount financed outstanding from time to time at the Annual Percentage Rate shown above. Each payment shall be applied first to the finance charge and the remainder to the unpaid amount financed until the loan is fully paid.

PREPAYMENT: You may pay more each month than the amount of your regular payment, and you may pay your loan in full at any time. If you prepay in full by cash, a new loan, a renewal, or refinancing, we will refund the unearned finance charge using the Rule of 78 method. No finance charge refund of less than \$1.00 will be made, and if payment in full is by cash, we may retain a minimum finance charge of \$15 if we have earned less than \$15 at the time of prepayment. Upon prepayment in full, we will also cancel any life, disability, personal property, or auto insurance coverage written in connection with this loan, and will refund any unearned premium using the Rule of 78 method. Life, disability and personal property insurance refunds are subject to a minimum retained premium of \$3.00. Automobile insurance refunds are subject to a minimum refund of \$1.00. Charges for non-filing insurance are not refundable.

RETURNED CHECK CHARGE: If you make a payment with any check, draft, negotiable order of withdrawal, or like instrument drawn on a bank or other depository institution and such instrument is not paid or is dishonored by such institution, you further agree to pay us a Service Charge of \$30.00.

CREDIT LIFE AND CREDIT DISABILITY INSURANCE: Credit insurance is not required to obtain this loan. If you choose for us to write individual credit life insurance, we will write individual decreasing-term credit life insurance on the Borrower who signs first below. If you choose for us to write joint credit life insurance, we will write joint decreasing-term credit life insurance on the Borrowers shown above. If you choose for us to provide credit disability insurance, we will write 14-day credit disability insurance, covering only the Borrower who signs first below. If you choose for us to provide involuntary unemployment insurance, the insurance will cover only the Borrower who signs first below. Each Borrower who signs this Loan Agreement agrees that the insurance is part of the debt even though he may not be the one insured. Refer to your Certificate of Insurance for complete details. You have a right to cancel the credit life and credit disability insurance within 15 days of the date of this loan and receive a refund of the premium charged. If you want to do this, each Borrower must agree in writing, and you must return the policy certificate to us.

CREDIT INSURANCE: You acknowledge that the Lender and/or its agent has a financial interest in the sale of any insurance, and may benefit from the sale of such insurance by virtue of commission income which it may receive.

WAIVERS: You waive your right to have a trial by jury resolve any dispute alleged against us. You waive your right to serve as a class action representative, as a private attorney general, and as a member of or as a participant in any lawsuit or arbitration filed against us by any person or group not a party to this Loan Agreement.

On the reverse side of this document, there is a continuation of the agreement, which contains important provisions, including a grant by you of a security interest in certain property.

SIGNATURES: When you sign below, you are agreeing to all the terms and conditions of this Loan Agreement and acknowledge receipt of a copy. You also acknowledge receipt of a copy of the Federal Disclosure Statement. The Borrower who signs first also acknowledges receipt of a certificate of insurance for any insurance written in connection with this loan. Cosigner acknowledges receipt of one copy of the Federal Trade Commission Notice to Cosigner. You also acknowledge that you have been involved in the determination of and agree with the total value of the items of personal property \$ 8,250.00 as detailed on the reverse side hereof. You sign this Loan Agreement under your hand and seal on the date of loan shown above.

ALTERNATIVE DISPUTE RESOLUTION AGREEMENT: BORROWER AND LENDER DO AGREE TO AN ALTERNATIVE DISPUTE RESOLUTION FOR THE SETTLEMENT OF ANY CONTROVERSIES BETWEEN THEM. THE TERMS OF THE ALTERNATIVE DISPUTE RESOLUTION AGREEMENT ARE SET FORTH IN A SEPARATE AGREEMENT. THE PARTIES HEREBY ACKNOWLEDGE THAT THE AGREEMENT OF THE BORROWER TO ENTER INTO THE SEPARATE AGREEMENT IS A MATERIAL INDUCEMENT TO THE LENDER'S ENTERING INTO THIS AGREEMENT WITH THE BORROWER.

Executed on behalf of Lender by:

Melissa Downey
Authorized Representative and executed by Borrower(s) in the presence of
Infany Stewart
Witness

Roby A Adams (L.S.)
Signature of Borrower

(L.S.)
Signature of Borrower

(L.S.)
Signature of Co-Signer

(L.S.)
Signature of Co-Signer

CONSENT TO SECURITY AGREEMENT: In consideration of our granting this loan and to the extent of your interest in the property, you grant us a security interest in any personal property described above. You are not personally obligated to repay this loan.

Witness Co-Owner (L.S.)

3C 5400
11/20/15 10182-2

Page 2 of 3

Distribution Instructions - Borrower(s), Co-Signer(s), Co-Owner, 2 File Copies, Pegboard

8927-008795-1

CONTINUATION OF NOTE AND SECURITY AGREEMENT

SECURITY AND SECURITY INTEREST: To secure the repayment of the Note contained in this Agreement, you are granting to us a security interest in the following properties. You confirm that none of the items listed below are used by you in your work for wages.

☐ The following described motor vehicle(s) with all equipment, parts and accessories:

YR	MAKE	MODEL	SERIAL NO.	INSURED THROUGH LENDER (Yes/No)
1.				
2.				
3.				

☒ The following Personal Property which is valued at \$ 6,250.00. Any item labeled in the 300 series can not be covered under the personal property insurance coverage that is available through the Lender. If you have pledged a television or radio, you confirm by signing on the reverse that you have not pledged the only television or radio that you own.

[115] Computer & Monitor, Desktop w/Monitor, Acer, PWSC90202035001C7F6900 350.00
 [010] 2nd Television, 52", JVC, 50A330 900.00
 [075] Camera and Accessories, Canon, 639634896 250.00
 [255] Lawn Mower - Riding, Craftsman, 850.00
 [250] Lawn Mower - Push, 27" Self-Propelled, Craftsman, 300.00
 [010] 2nd Television, 40", Sharp, 350.00
 [010] 2nd Television, 32", Sharp, 350.00
 [010] 2nd Television, 70", Sharp, M19440D20187 2,000.00
 [005] 2nd Radio, 10" Table Saw, Craftsman, 200.00
 [540] Tools - Electric Saw, Radial, Craftsman, 200.00
 [500] Stereo System, CD/Satellite, Bose, 500.00

located on or about your residence 4924 CHARTWELL DR NORTH CHARLESTON SC 29420-7000

☐ The following Personal Property, valued at \$ _____, in which Lender is taking or is retaining a purchase-money security interest.

NON-FILING INSURANCE: If we do not record our security interest in the personal property listed on the reverse side, you agree that we may exercise our right under state law to purchase and charge you for Non-Filing Insurance.

PERSONAL PROPERTY INSURANCE: Personal property insurance coverage is required on the personal property given as security. You may obtain it from anyone you want or provide it through an existing policy provided the insurance company is acceptable to us. If we write this insurance through a company we represent, we will write dual interest property insurance for the term of the loan. The premium and coverage amounts for this insurance are shown on the reverse side. Refer to your Certificate of Insurance for complete details.

AUTOMOBILE INSURANCE: Insurance coverage is required on the automobile given as security. You may obtain it from anyone you want or provide it through an existing policy provided the insurance company is acceptable to us. If we write this insurance through a company we represent, we will write limited physical damage insurance for the term of the loan. The premium and coverage amounts for this insurance are shown on the reverse side. Refer to your Certificate of Insurance for complete details.

OWNERSHIP AND DUTIES TOWARD PROPERTY: You represent that you own the property being given as security. You agree to keep the property in your possession and will not move it from the address shown. You agree to maintain it in good condition. The loss or destruction of this property from any cause, whether or not your fault, will not affect in any way your liability to repay this Note. You agree not to sell or otherwise dispose of the property without our prior consent, nor allow it to be used for any unlawful purpose. You agree to pay all taxes when due and maintain adequate insurance coverage through a company which meets with our approval. If you fail to pay any taxes or liens against the property or fail to maintain adequate insurance coverage, we may, at our option, make advances to pay any amounts due. Any advances will become a part of this Note amount and will be due and payable immediately.

DEFAULT: You will be in default if any one or more of the following occurs: (1) you fail to make a payment on this Note or any refinancing of this Note when it comes due; (2) the prospect of payment, performance or realization of our collateral is significantly impaired.

NOTICE AFTER DEFAULT: If you fail to make a required payment for 10 days or more, we will give you notice of your right to cure such default within 20 days after such notice is sent. If you fail to cure such default in the manner stated in the notice, or if you cure the default but fail to make a future payment when due, or if you default in any other manner under this agreement we may exercise our remedies after default without any notice to you.

REMEDIES AFTER DEFAULT: If you default, we may:

- (1) accelerate the maturity of the Note, making the net amount you owe due and payable. This net amount will be the unpaid balance of your account at that time less refunds as set forth in the Prepayment paragraph of this Agreement. You agree to pay the reasonable expenses incurred by us in the collection of this Note, including reasonable attorney's fees not in excess of 15% of the unpaid balance if we turn this Note over to an attorney who is not our employee, for collection if allowed by law.
- (2) demand additional security or parties obligated to repay this Note;
- (3) exercise any rights to remedy given to us by the Uniform Commercial Code and other applicable state or federal law;
- (4) require you to make available to us the property given as security for this Note. You agree that we may take immediate possession of the security without your having a prior judicial hearing and that we may enter your property or any other property where the security or any part of it is located in order to take possession, if possession can be taken without entry into a current dwelling used as a current residence and without the use of force or other breach of the peace. We may then sell the property at public or private sale, with or without advertisement. We will mail a Notice of the Sale by certified mail to the last address you provided to us at least 10 days before the date of sale. We may be a purchaser at the sale, and the proceeds will be distributed as required by the Uniform Commercial Code.

You agree that by our electing any one or more of the above remedies that we are not waiving our right to later elect or use any other remedy until this Note is paid in full. You also agree that our delay in enforcing any of these remedies does not cause us to lose any of our rights or remedies.

AUTHORIZATION TO COMMUNICATE WITH THIRD PERSONS: You authorize us to contact third persons in connection with making or collecting your loan, consistent with our Privacy Policy which has been adopted to protect your non-public, personal information.

NOTICE: If you believe that information that we have provided to a consumer reporting agency is inaccurate, please notify us of the specific information which is accurate at: 1st Franklin Financial Corporation, Attention: Compliance Department, Post Office Box 880, Toccoa, GA 30077. If you have any other questions about the handling of your account, you may write to us at this same address.

EXHIBIT B

STATE OF SOUTH CAROLINA)
)IN THE MAGISTRATE'S COURT
COUNTY OF DORCHESTER)
1ST FRANKLIN FINANCIAL
CORPORATION,

Plaintiff,

CASE NO. :

-VS-

2016-CV-18-10305402

ROBY A. ADAMS,

Defendant.

Discovery Deposition of Roby A. Adams

Date Taken: Thursday, January 17th, 2019

Time Taken: 10:00 a.m.

Location: Brush Law Firm
12-A Carriage Lane
Charleston, South Carolina 29407

Reported By: Judy W. Galuppo, Court Reporter

Job No.: 452923

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1 says you agree to pay a late charge of 5 percent of
2 any payment or portion of a payment that is not paid
3 within 10 days of the date it's due; does that sound
4 right?

5 A That's what this document says, yes.

6 Q Right. And you signed this document, so
7 you agreed to be bound by the terms of this agreement,
8 right?

9 A Yes.

10 Q All right. If you look on the second
11 page of this document, I'll point you to another
12 section I'd like you to look at, which is the Default
13 section right here. Do you see that section?

14 A Yes, I do.

15 Q All right. This section reads, "You will
16 be in default if any one or more of the following
17 occurs: You fail to make a payment on this note or
18 any refinancing of this note when it comes due."
19 Okay?

20 A Okay.

21 Q Does that sound right?

22 A That's what it says.

23 Q Yes, sir. You agreed to be bound by this
24 term of the Loan Agreement because you signed this
25 Loan Agreement, correct?

1 A Yes.

2 Q Now, if I could point down to right below
3 the Default section, the Remedies After Default, okay?
4 The remedies after default, "If you default, we may:"
5 1 says, "accelerate the maturity of the note, making
6 the amount you owe due and payable." Okay?

7 Also, let me just keep reading on that.
8 "This net amount will be the unpaid balance of your
9 account at the time, less refunds as set forth in the
10 Prepayment paragraph. You agree to pay the reasonable
11 expenses incurred by us in the collection of this
12 Note, including reasonable attorney fees not in excess
13 of 15 percent of the unpaid balance if we turn this
14 Note over to an attorney who is not an employee, for
15 collection if allowed by law." Is that right?

16 A That's what it says.

17 Q You agreed to be bound by this term, the
18 Remedies After Default term, because you signed this
19 Loan Agreement, correct?

20 A Yes.

21 Q How many payments did you make on this
22 loan?

23 A I don't remember.

24 Q Did you make any payments on the loan?

25 A I don't remember. I mean, it's been

1 almost three years.

2 Q You don't remember if you made a payment
3 on this loan?

4 A No, I don't.

5 Q Are you disputing that you owe this
6 amount --

7 A No.

8 Q -- to 1st Franklin?

9 A I'm disputing the amount because of the
10 difference in the documents that they sent my
11 attorney.

12 Q All right. Well, how can you dispute an
13 amount when you don't know how many payments you've
14 made? I'm confused on that part of it. If you could
15 enlighten me, please.

16 A It's been almost three years. I can't
17 recall back that far. I'm sorry.

18 Q So you don't know how much you owe then?

19 A No, I don't.

20 Q All right. Does \$4,342.16 sound about
21 right, what you owe?

22 MR. CANTRELL: Objection. Asked and
23 answered repeatedly.

24 MR. LANNING: I did not ask about the
25 amount.

1 MR. CANTRELL: Yes, you actually did
2 earlier.

3 MR. LANNING: No, I did not. I said
4 that's the amount on the loan agreement. I didn't
5 say that's the amount owed.

6 BY MR. LANNING:

7 Q The amount owed is \$4,342.16, plus costs
8 and attorney fees; does that sound about right to you?

9 A I don't know. I mean, I hate to be --
10 you know, I can tell, you know, that you're trying to
11 get a straight answer, and I'm trying to give you one.
12 You know, I can say yes to the amount on this document
13 that I signed because it's got my signature on it, the
14 rest of it I don't know. I just don't know.

15 Q Okay. Well, that's what I'm here trying
16 to figure out, is how much do you think you owe on
17 this account. And you can't tell me how much you owe,
18 correct?

19 A Correct.

20 Q Because you don't know how many payments
21 you made, if you made any payments, correct?

22 A Correct.

23 Q But you agree that you owe some amount to
24 1st Franklin?

25 A Yes.

1 Q And you agree that according to the terms
2 of the agreement you're also responsible for their
3 costs incurred trying to collect this debt?

4 A Yes.

5 Q Which would be the attorney fees and the
6 court costs, correct?

7 A Correct.

8 Q Mr. Adams, I've handed you what is marked
9 Plaintiff's Exhibit 2. This is the First Amended
10 Defendant's Answer and Counterclaims. This is what
11 you filed in response to 1st Franklin's Complaint.
12 Have you seen this document?

13 (Plaintiff's Exhibit 2 is marked for
14 identification.)

15 A Yes.

16 Q Okay. I point you to paragraph 12, okay?
17 According to paragraph 12 you allege, "That, upon
18 information and belief, the Plaintiff has falsely
19 represented the amount allegedly owed and that it is
20 asserted that two different amounts are owed in two
21 separate complaints."

22 How do you know that both of those
23 numbers -- if one of those numbers is false or both of
24 them are false, how do you know that?

25 A This was handled by my attorney. I

1 think that is -- you know, I'm not sure which amount
2 is correct.

3 Q Okay. But you don't have any
4 documentation or proof that these numbers are false?

5 A Just the letters that were sent to my
6 attorney, you know, with the two different amounts on
7 them.

8 Q So you're saying because there's two
9 different amounts that they're both false.

10 A One of them is.

11 Q But you don't have any -- again, you
12 can't tell me how many payments you've made on this
13 loan so you don't know what the actual -- what you're
14 saying what the actual amount is due and owing, right?

15 A Right.

16 Q All right. If I could point you to
17 paragraph 18. Have you read paragraph 18?

18 A Yes.

19 Q Okay. What actions do you claim that
20 1st Franklin committed that were extreme or caused you
21 extreme embarrassment?

22 A By having -- leaving the papers that they
23 were serving on me with my neighbor across the street,
24 and you know, he came out and said, you know, I got
25 this court action for you on collections served by the

1 A I said that's what I think it's worth.

2 Q Would that be less the amount that you
3 currently owe to 1st Franklin?

4 MR. CANTRELL: Objection. Calls for
5 a legal conclusion.

6 BY MR. LANNING:

7 Q You can answer.

8 A It would be less than what I owe Franklin
9 but not -- you know, that won't cover my attorney
10 fees, that would be in addition.

11 Q I'm saying, you agree that you owe
12 something to 1st Franklin, right?

13 A Yes.

14 Q But again, we don't know what that number
15 is, right?

16 A Correct.

17 Q You can't tell me what that number is?

18 A I can't tell you what the number is.

19 Q All right. Mr. Adams, do you own
20 a house?

21 A Yes.

22 Q Is that the address that you gave me
23 before?

24 A Yes.

25 Q Do you have a mortgage on that house?

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

CASE NO.: 2017-CP-18-00819

1st FRANKLIN FINANCIAL
CORPORATION,
LLC

Plaintiff,

v.

ROBY ADAMS,

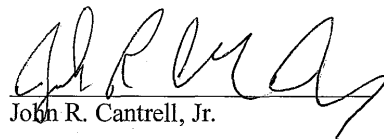
Defendant.

**AFFIDAVIT IN SUPPORT OF
DEFENDANT'S OBJECTION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Comes now the undersigned John R. Cantrell, Jr., and being first duly sworn, deposes and swears under penalty of perjury that the following facts are true based on his personal knowledge:

1. I am the attorney for the Defendant in the above matter.
2. Defendant is unable to fully respond to Plaintiff's pending summary judgment motion, since Plaintiff has not yet responded to Defendant's Second Discovery Requests, which were served upon Plaintiff on February 7, 2020 via email, and an authentic copy of which is attached as an exhibit to this Affidavit. Plaintiff's failure to respond to Defendant's Second Discovery requests makes it impossible for Defendant to establish the necessary factual elements of Defendant's counterclaims at this time, as discovery is not yet complete. In regards to Plaintiff's supplemental memo just filed today in support of its summary judgment motion, Defendant has not been provided with sufficient notice of Plaintiff's new arguments to be able to respond within the current time allowed prior to the hearing on Plaintiff's Motion, which is currently set for March 5, 2020.

3. Authentic copies of excerpts from the deposition of Theresa Schwerin, plaintiff's branch manager, are attached to this Affidavit as an exhibit.
4. Authentic copies of excerpts from the deposition of Roby Adams are attached to this Affidavit as an exhibit.
5. Defendant is unable to attach copies of Plaintiff's collection policy manual to this Affidavit, as Plaintiff has not yet authenticated them as requested in the attached Second Discovery Requests.
6. Defendant has suffered emotional distress damages from Plaintiff's collection actions in this case, as is evidenced by the attached authentic copy of an emotional damages checklist which has been completed by Defendant himself in his own handwriting.
7. Defendant incurred attorney fees and costs through September 6, 2016 of over \$2,000.00 to successfully defend Plaintiff's first collection action, which was filed in magistrate's court, and which was dismissed by the court without prejudice.


John R. Cantrell, Jr.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Sworn to and subscribed before me this 2nd day of March, 2020 by John R. Cantrell, Jr., who proved to me on the basis of satisfactory evidence to be the person who appeared before me.

(Check one)

☒ Personally known to me (or)

☐ Produced current SC Drivers License (or)

☐ Produced Other Photo ID (specify) _____

Grace E. Kerr
(signature of notary public)

Grace E. Kerr
(name of notary typed, stamped or printed)
Notary Public for SC
My Commission expires:



STATE OF SOUTH CAROLINA)
) IN THE MAGISTRATE'S COURT
COUNTY OF DORCHESTER)
1ST FRANKLIN FINANCIAL
CORPORATION,

Plaintiff,

CASE NO.:

-vs-

2016-CV-18-10305402

ROBY A. ADAMS,

Defendant.

Discovery Deposition of Theresa Schwerin

Date Taken: Thursday, January 17th, 2019

Time Taken: 11:35 a.m.

Location: The Brush Law Firm
 12-A Carriage Lane
 Charleston, South Carolina 29407

Reported By: Judy W. Galuppo, Court Reporter

Job No.: 454249

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1 A-P-P-E-A-R-A-N-C-E-S

2 Appearances for the Plaintiff

3 By: J. Chris Lanning, Esquire

BRUSH LAW FIRM

4 12-A Carriage Lane

Charleston, South Carolina 29407

5 843.766.5576

Email: clanning@brushlawfirm.com

6

7 Appearances for the Defendant

8 By: John R. Cantrell, Jr., Esquire

CANTRELL LEGAL, PC

9 1004 Red Bank Road

Post Office Box 1276

10 Goose Creek, South Carolina 29445

843.797.2454

11 Email: lawyer@comcast.net

12

13

14

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25

1 I don't know.

2 Q So you're not aware of any problems?

3 A I'm not aware of any problems.

4 Q Like the ones that arose here?

5 A No, I am not.

6 Q Okay. Let's move on to the second

7 exhibit that's been marked as Exhibit 2. Do you

8 recognize this document?

9 (Defendant's Exhibit 2 is marked for
10 identification.)

11 A I do.

12 Q What would that be?

13 A This would be my summons and complaint.

14 Q Okay. And is that your signature at the
15 bottom?

16 A Yes, it is.

17 Q And what is the date on this complaint?

18 A April 12th.

19 Q Of?

20 A 2016.

21 Q Okay. Thank you. What was the amount
22 claimed due in this complaint?

23 A The payoff \$4,351.24, plus court costs of
24 \$80, for a total of \$4,431.24.

25 Q Okay. Was that the correct amount that

1 was due at that time?

2 A Yes, it was.

3 Q How do you know that?

4 A I pulled a payoff.

5 Q But you said earlier you weren't familiar
6 with how the accounting system processed it.

7 A We have a system, and it says calculated
8 payoff, put the day's date in it and it calculates my
9 payoff for me.

10 Q So you just relied on whatever the system
11 put out from that request?

12 A Correct.

13 Q Okay. Is 1st Franklin still attempting
14 to collect the filing fee of \$80 for filing the first
15 complaint in this case?

16 A I would say -- it's on the account, so
17 I'm sure that it would be in the payoff on the other
18 one, because the \$80 was added to the account.

19 Q Now, we haven't gotten into the too much,
20 about the first complaint, but that case ended up
21 getting dismissed, didn't it?

22 A Yes, it did.

23 Q And normally even in that situation it's
24 1st Franklin's policy to go ahead and charge the
25 filing fee despite of the dismissal to the account?

1 A That's a good question. I would have to
2 ask my ROD on that one.

3 Q But you did note where it had been added
4 to do the account, apparently?

5 A The \$80 was added to the account.

6 Q And to your knowledge, they're still
7 seeking to collect that amount?

8 A Yes.

9 Q Okay. Next item is Defendant's
10 Exhibit 3. Do you recognize this document?

11 (Defendant's Exhibit 3 is marked for
12 identification.)

13 A Yes, I do.

14 Q What is it?

15 A This is the second Summons and Complaint
16 I filed.

17 Q Okay. Is that your signature at the
18 bottom?

19 A Yes, it is.

20 Q And what date is on this Complaint?

21 A September 22nd, 2016.

22 Q Okay. What was the amount claimed due in
23 this Complaint?

24 A \$4,342.16.

25 Q Okay. It says, "Including any costs

1 resulting in this action." Does that mean that the
2 \$80 service fee was included in this \$4,243.16?

3 A Yes, sir, it is.

4 Q Is there any reason why maybe it was done
5 differently than Exhibit 2, where it was specified
6 that the \$80 was in addition?

7 A I did not charge the customer the second
8 filing fee. 1st Franklin paid for it.

9 Q Oh, okay. So you just charge one filing
10 fee?

11 A That's correct.

12 Q Even if there are two cases on the same
13 account?

14 A Correct. We only charged the one fee.

15 Q Was this amount of \$4,342.16 that was
16 claimed due in this complaint the correct amount that
17 was due at that time?

18 A As of the payoff date of September 22nd,
19 yes, it was.

20 Q Okay. You may have answered this before.
21 But I'm trying to make sure I understand the
22 difference between these two amounts and these two
23 separate complaints. The loan, I guess, had been
24 accelerated prior to either Complaint, correct?

25 A Notice of Acceleration letter was

1 basically dated April 12th, 2016; that was the payoff
2 amount as of April 12th.

3 Q And as you indicated, the balance in the
4 second Complaint dropped, what was it, maybe \$9 or
5 something?

6 A Yeah, it wasn't much.

7 Q Nine or \$10?

8 A Yes.

9 Q And the reason for that, I believe you've
10 indicated you don't know.

11 A I don't know. I just pulled the payoff
12 like I'm instructed to do to file legal.

13 Q That's what the computer said?

14 A Yeah.

15 Q Okay, I understand. Let's look at the
16 next document, Plaintiff's Exhibit 4. Do you
17 recognize this document?

18 (Defendant's Exhibit 4 is marked for
19 identification.)

20 A This is the Notice of Acceleration that
21 was mailed to Mr. Adams on April 12, 2016, in the
22 amount of \$4,351.84.

23 Q Was this document mailed to Mr. Adams at
24 the address on the letter?

25 A Yes, it was.

1 Q And do you know whether you would have
2 done that, or someone else?

3 A I mailed them.

4 Q Is that a document you would normally
5 mail out yourself?

6 A I do.

7 Q Because it's part of the legal process?

8 A Correct.

9 Q And does 1st Franklin have a copy of this
10 document in its file on this account?

11 A I do.

12 Q Okay. You answered several of my
13 questions before I asked them. Thank you for being
14 very efficient.

15 Now, was this amount that was claimed due
16 of \$4,351.24 the correct amount that was due at that
17 time?

18 A As of April 12th, yes, sir.

19 Q The next one is Defendant's 5. Do you
20 recognize this document?

21 (Defendant's Exhibit 5 is marked for
22 identification.)

23 A This is the second Notice of Acceleration
24 I filed on September 22, 2016, in the amount of
25 \$4,342.16.

1 Q Okay. Next document is Defendant's 6.

2 Do you recognize this document?

3 (Defendant's Exhibit 6 is marked for
4 identification.)

5 A I do. This is our Collection Summary.

6 Q Okay. Please take a few minutes to
7 review it. You might not have seen that in a while.

8 A All right.

9 Q Does it appear to you to be a complete
10 and accurate copy of the original collection history
11 as it exists in 1st Franklin's records?

12 A I would say yes.

13 Q I think it starts on 10/23/15. I guess
14 that would have been the loan origination date,
15 perhaps?

16 A Actually, my ROD approved this one.

17 Q Oh, who is -- what is a ROD?

18 A He's my supervisor.

19 Q Supervisor?

20 A Uh-huh.

21 Q Is that Richard?

22 A Corirossi.

23 Q Boy, spell that one for the court
24 reporter.

25 A C-O-R-I-R-O-S-S-I.

1 Q Okay. Where does he work at?

2 A His main office is in Summerville branch.

3 Q Okay. Is he like a regional supervisor?

4 A He is.

5 Q Very good. Now, I notice that if you
6 look at the first page of this document, it ends on
7 6/29/16.

8 A Appears to, yeah.

9 Q And it looks like that was during the
10 prosecution of the first collection action.

11 A Yeah, I guess. What was the question
12 again?

13 Q Okay. I was trying to figure out the
14 last entry on this collection history, which you
15 indicated you thought was complete, says it was on
16 6/29/16. So I think the original complaint you filed
17 in September 2016.

18 A It's got to have some more on here
19 because I know that happened here in September.

20 Q Yeah. So what happened to that? You did
21 enter notes regarding September.

22 A May I ask him a question?

23 Q No, not really. Did you enter collection
24 notes regarding the second collection complaint?

25 A I did.

1 Q So it appears to you that maybe this is
2 not complete?

3 A I would say it's not.

4 Q Okay.

5 MR. CANTRELL: Mr. Lanning, would you be
6 able to get me a copy of this complete record?

7 MR. LANNING: Yes.

8 (This page contains requested information.)

9 A Oh, I can see why. This was printed on
10 9/6, and I filed legal on 9/22. The print date is
11 down here (indicating).

12 Q Yeah, I see that.

13 A That's why.

14 MR. CANTRELL: If you could get me an
15 updated copy of that, Mr. Lanning?

16 MR. LANNING: I will.

17 BY MR. CANTRELL:

18 Q I wondered about that. Because I said,
19 well, why was she putting notes in for the first one
20 but not the second one?

21 A So whenever this one was printed, it was
22 printed 9/6.

23 Q Yes.

24 A That's why.

25 Q And 9/22 was the second date?

1 A Yes. So that's why.

2 Q That makes sense.

3 A I was wondering why my notes weren't in
4 there.

5 Q Okay. Let's look at -- I notice
6 there's -- apparently there is something that looks
7 like employee codes in here periodically. Do those
8 codes identify the employee who did that action?

9 A They do.

10 Q Okay. If you could, tell me the names of
11 some of these.

12 A Okay. So 5461 would be my employee
13 number.

14 Q Okay.

15 A 4905 would be Rich Corirossi's number.
16 And 4213 would be Tiffany Simmons, and she is my
17 assistant.

18 Q Tiffany Simmons?

19 A Yes.

20 Q Okay.

21 A Had to think about that for a minute.

22 Q Was an assistant. Is she no longer
23 there?

24 A No, she is my assistant manager.

25 Q Oh, okay, assistant manager.

1 over 60 percent I used to have to send to the ROD.

2 But now my DTI has been -- in '15, I did not have it,
3 so I had to send it to him.

4 Q Okay. The CBI, tell me what that means.

5 A That's his Beacon Score, CBI, the score
6 that the Credit Bureau gave him.

7 Q Oh, okay. So you got a FICO, then a
8 different.

9 A That's pretty much the FICO score, 540.
10 We put CBI, which is basically with the Credit Bureau.

11 Q I see. On 12/7/15, there's an L6 code.
12 What is an L6 code?

13 A I have no idea.

14 Q Do you see the entry on is 12/7/15?

15 A I see it. L6, left message.

16 Q It says, "left message with other." I
17 see a lot of L7's which say, "left message with
18 machine." Do you enter that code? Or how?

19 A The NA, no answer -- we have a drop down
20 box, and that's basically it. Then after the -- we
21 put VM, which is voicemail full. We enter that
22 comment. But we just put no answer. It's a drop down
23 box that we want to call on accounts.

24 Q But you don't remember using the L6 code
25 before yourself? It looks like you didn't do this

1 one, or did you?

2 A Yeah, I didn't.

3 Q That was Melissa, I think, based on what
4 you said earlier. "Left message with other." Does
5 that mean somebody other than the borrower?

6 A That's what it says, yes.

7 Q Okay. So it says you called ref; is that
8 a reference?

9 A That's what it looks like, yes.

10 Q Says, "left"?

11 A "Left message with Joyce."

12 Q With Joyce. And then, "took call back."
13 Does that mean she called you back?

14 A I don't know what that means.

15 Q Okay. And then a follow-up date. What
16 does follow-up date mean?

17 A Basically means if we -- if you notice,
18 it's the same as the date. So if we call somebody and
19 they say they're going to pay us on 12/7 -- or 12/10,
20 we'll hold it to 12/20, and that's your date. And it
21 just pins that account to the date we set.

22 Q Now, do you know why your office would
23 have called this reference named Joyce on that date?

24 A I guess she was looking to verify if we
25 had the correct number for Roby or the correct

1 address.

2 Q But you wouldn't actually know that?

3 A Roby is the one that gave us Joyce's
4 information. We always ask for an emergency contact.

5 Q Okay. Now, I haven't seen any document
6 that has been produced by 1st Franklin that has that
7 list of references or emergency contacts. Is there a
8 document in your system that would have that on it?

9 A I mean, we would have a personal
10 reference contact, yes.

11 MR. CANTRELL: Can you provide that to
12 me, Mr. Lanning.

13 MR. LANNING: If they have it, yes.

14 (This page contains requested information.)

15 BY MR. CANTRELL:

16 Q Okay. Do you have a procedure about
17 contacting references, in which situations you will or
18 won't do that?

19 A If we cannot contact a customer, and when
20 their voicemail is full, we will occasionally call a
21 reference just to verify that we have the correct
22 phone number and/or address, and that's pretty much
23 it.

24 Q Okay. Do you know what else might have
25 been discussed with her on that date?

1 A I cannot say.

2 Q Okay. Now, were you authorized by
3 Mr. Adams to contact Joyce on this account?

4 A He's the one that gave us the name and
5 number.

6 Q For what purpose?

7 A We always ask for three emergency --
8 MR. LANNING: Objection. Asked and
9 answered. You can answer.

10 THE WITNESS: I can?

11 MR. LANNING: Yes.

12 A We ask for emergency contact. In case I
13 cannot contact you, give me a person that you trust to
14 get a message to you, or to verify, is pretty much,
15 and they give us the information.

16 Q Okay.

17 A How else would I get the name or number?

18 Q Well, I mean, let's say she'd been listed
19 as a reference on a loan application and you called
20 her to see if he was a good person to make a loan to.

21 A No, we don't do that.

22 Q Okay. So it's just for contact purposes?

23 A Right. Emergency contact is what we ask.

24 Q Emergency contact. So do you have --
25 what was the emergency in this case, by the way?

1 A We could not get in touch with him, so
2 she was just calling to verify we had the correct
3 number.

4 Q But you don't know if she discussed
5 anything about the account?

6 A Normally we do not. We just ask if the
7 phone number we have is correct, and verify the
8 address.

9 Q Okay. And what if they tell you, I
10 haven't seen him, or I don't know where he is?

11 A Then we just say thank you.

12 Q Okay. Do you have a written
13 authorization from Mr. Adams to contact his references
14 for this purpose?

15 A No, we do not get a written contact. We
16 have the verbal when he gives us the information.

17 Q On 4/22/16, I think that may be the first
18 page. There is a -- there is an event, a letter,
19 event number 24, a letter number 200, what is that?

20 A I do not know what letter 200 is, I
21 honestly don't.

22 Q Okay. And it's got a zero in the
23 employee thing. Is this an automatic letter? Or why
24 would it say zero on who did it?

25 A It's an event. I know that.

1 our break, so let's resume talking about that a little
2 bit.

3 Now, other than the problems that you had
4 with serving Mr. Adams with that first collection
5 complaint, was there anything different in the
6 procedures that you used in pursuing that collection
7 action than you normally would in cases that you filed
8 against other folks that owe money to 1st Franklin?

9 A You want to repeat that again one more
10 time?

11 Q I will. It was a very long question. So
12 there was some problems in the first complaint with
13 service upon Mr. Adams?

14 A Not because of 1st Franklin, though.

15 Q Aside from that, was there anything
16 different in the procedures that you used in pursuing
17 that collection against Mr. Adams than you would in
18 normal cases?

19 A No.

20 Q Okay. Prior to appearing in court on
21 that first collection case against Mr. Adams, was it
22 normal for your office not to file the non-lawyer
23 authorization form with the complaint?

24 A Honestly, I never knew about that letter
25 until that day. I'm being truthful.

1 Q So your practice before that time was to
2 do what with the non-lawyer form?

3 A Normally we would bring one the day of
4 court and give it to the magistrate, or they would
5 have the original and they would keep it on file for
6 us.

7 Q So you would walk in, they'd call your
8 case, you'd present your form?

9 A Right.

10 Q But it wouldn't have been filed with the
11 complaint at that time?

12 A Correct. We normally just had to bring
13 it to the Magistrate's Office.

14 Q Okay. Now, I think you said earlier that
15 case was dismissed because the complaint wasn't -- the
16 non-lawyer form wasn't filed with the complaint?

17 A Correct.

18 Q After that case was dismissed for failure
19 to file that form, did you continue to file collection
20 cases against other borrowers without filing the
21 non-lawyer form?

22 A No.

23 Q So how did your procedure change at that
24 point?

25 A I added that to -- actually, it's

1 Dorchester?

2 A No. I know I did have to file one in
3 Walterboro.

4 Q Okay.

5 A But pretty much that's -- usually the
6 majority are Charleston County.

7 Q Do you have restrictions on borrowers
8 having to live in a certain radius of your office?

9 A Normally it's a 50-mile radius.

10 Q Okay. Does your procedure in other
11 magistrate courts differ from your current procedure
12 in the Dorchester County court where you filed this
13 form with the complaint?

14 A As far filing them, no. They're pretty
15 much the same in both courts.

16 Q So are you saying that your current
17 practice is to file the non-lawyer with the complaint
18 in every magistrate?

19 A Every complaint that I -- no matter where
20 it goes, it's attached.

21 Q Okay. Did the other magistrate judges
22 require that?

23 A They just recently started requiring it.

24 Q Really?

25 A They won't it accept it without the --

1 Q How long has that been?

2 A Sometimes the middle of last year, maybe.

3 Q Okay. But prior to the time that we
4 showed up in that first case and raised that issue,
5 you weren't aware of that?

6 A Normally they just had us bring it to the
7 courts with us.

8 Q And you weren't aware of any other judge
9 that had --

10 A Each magistrate, they would tell you, is
11 different. So I can't speak for any of them. They're
12 all different.

13 Q But you haven't been previously told that
14 it was supposed to be filed with the complaint until
15 that time?

16 A No, not until that time. As long as we
17 had it when we came to court, that's basically...

18 Q Okay. Now, prior to the time that you
19 filed the second collection complaint, were you aware
20 of whether or not 1st Franklin received a copy of the
21 Consumer Affairs Complaint that Mr. Adams had filed
22 with the South Carolina Department of Consumer
23 Affairs?

24 A We did receive a copy of it.

25 Q What would have been done with that after

1 it was received by your office?

2 A That was basically forwarded to home
3 office for the attorneys to handle, our compliance
4 department.

5 Q Okay. Have you and your office staff
6 been trained by 1st Franklin regarding collection laws
7 that might apply to your collection activity in South
8 Carolina?

9 A Yes, we have gone. 1st Franklin is very
10 good with training employees.

11 Q How do these trainings occur?

12 A We have meetings, basically.

13 Q And is this -- like who attends these
14 meetings?

15 A Pretty much the managers. And we have
16 trainers that come to the office to work with the
17 individual staff.

18 Q How often do these trainings occur?

19 A Well, it just depends on when -- I mean,
20 managers meetings, we have those pretty much three
21 times as year, maybe.

22 Q And what about this in-office training?

23 A It's basically pretty much if we have new
24 policies or anything, the trainers will come to the
25 branch. So it's just as-needed. So we have to be

1 certified. They certify all their employees.

2 Q Certified how?

3 A Basically on compliance. If something
4 changes when they come and with us, you have to be
5 certified.

6 Q Obviously there's some training.

7 A Correct.

8 Q Is there some type of test the employees
9 have to take or pass?

10 A No.

11 Q So how do they achieve this
12 certification?

13 A Basically that's where the trainer sits
14 there and works with you.

15 Q Okay. So they come in and they train
16 them and after they've been taught they're certified?

17 A Correct.

18 Q By the company itself, not by some
19 independent?

20 A Right, it's the company.

21 Q Okay. Now, which collection laws have
22 you and your staff been trained on that might apply in
23 South Carolina?

24 A We have -- basically we have policy and
25 procedure, so it's all in there. If you have

1 a problem, just go to the policy.

2 Q Do you remember any collection laws that
3 apply to collection activity in South Carolina?

4 A There are some in the policy, yes.

5 Q But you don't remember which ones they
6 are at this point?

7 A No. I would have to go to the policy.

8 Q Okay. Has your office staff been trained
9 on bankruptcy laws?

10 A We don't handle the bankruptcy,
11 basically, in the branch. But yes, pretty much we
12 have an office that handles nothing but bankruptcies.
13 So we have a recovery center, and they handle all the
14 bankruptcies.

15 Q Okay. Do you conduct any training
16 yourself for any of your staff members? Or is that
17 not one of your job duties?

18 A If I need them to, then yes, I can.

19 Q Okay. Now, let's say you have a new
20 employee that comes in and they haven't yet received
21 this training. Are they allowed to engage in
22 collection activity before they do that?

23 A They have to go through a two-week
24 training before they can do that.

25 Q So if one of your employees were to quit

1 collection laws.

2 Q Now, regarding collection laws and the
3 Consumer Protection Code, do you know what it says, if
4 anything, about calling people more than one time
5 a day?

6 A I'm sure that the attorney, because he
7 just rewrote all this not long time ago, so yeah.

8 Q But you yourself might not be personally
9 aware of that provision, whether it applies in a --

10 A I do not know. If this isn't the law,
11 then I haven't read the law. But I mean, it's in our
12 policy. And an attorney wrote it, then, by George, he
13 knows what's going on in South Carolina.

14 Q This MLA that you got, that wasn't
15 conducted by your in-house people, was it?

16 A Huh-uh.

17 Q Okay. So I guess you would have been
18 trained on the collection laws by someone --

19 A Well, the MLA has nothing to do with the
20 collection laws. That's basically just for real
21 estate lending.

22 Q Oh, so you wouldn't have covered the
23 collection laws in MLA?

24 A Huh-uh. That's mortgage loan
25 origination, basically.

1 Q I know, but I misunderstood what you said
2 earlier. I thought you said that that's how you
3 became familiar with the collection laws.

4 A I don't know. I guess I've been in
5 finance long enough, I know the laws.

6 Q Yes, ma'am. Now, are you aware under the
7 South Carolina Consumer Protection Code whether or not
8 it's proper to contact the references of a South
9 Carolina borrower about collecting a debt?

10 A At one point in time you used to could,
11 but now we do not.

12 Q Do not or can't, which one?

13 A We do not.

14 Q Okay?

15 A The company chose not to.

16 Q But my question was, do you know if the
17 law says you can or can't?

18 A I do not know that.

19 Q Okay. Are you aware whether or not it's
20 proper to attempt to collect a debt from a South
21 Carolina borrower if that amount is not the actual
22 amount owed on that account?

23 A Wait a minute.

24 Q Let me slow down. Are you aware of
25 whether or not it's improper to collect an amount due

1 address to be served, correct?

2 A I did.

3 Q You had no contact with the constable,
4 right?

5 A None.

6 Q You didn't tell the constable to serve
7 the neighbor, right?

8 A No, sir.

9 Q And you'd used the constable many times
10 when you'd have service?

11 A I have, yes.

12 Q Has anything like that ever happened
13 before?

14 A To my knowledge, no. I mean, like I
15 said, I don't know when they're served. I just wait
16 for a court date.

17 Q Okay.

18 A When we go to court, the judge would
19 normally say that the person was served on such and
20 such date at court. But prior to me going to court,
21 no. I don't know.

22 Q And if the constable cannot serve, that's
23 when you hire a process server?

24 A Correct.

25 Q And that's more expensive than using the

1 constable, right?

2 A Yes. Which is not added to the account.
3 We eat that cost.

4 Q So you pay the \$80 to the court?

5 A No. We have a private processor. We
6 send the court 70, and then we add 70 to the account.
7 But when the private processor is 50, we eat that, the
8 customer does not pay that, we do.

9 Q The cost of the process serving is not
10 added on to their account?

11 A It is not added on, no.

12 Q And again, the reason that you would have
13 called someone on a reference sheet would be that you
14 just have no luck getting in contact with the
15 borrower?

16 A Verify the phone number and if we have
17 the correct address.

18 Q That's all you talk to them about?

19 A Yes.

20 Q And this is a reference sheet that is
21 filled out at the time of the loan application?

22 A We don't actually have them fill out
23 a sheet. We just ask them for two emergency contacts.

24 Q Where do you put that?

25 A We put it into the system. We don't have

Collection History

8827 008795 1

ROBY A ADAMS

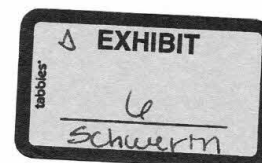
Date	Time	Code	Tlfr/Emp	Description
06/29/2016	12:17 PM		5461	Constable in Summerville Court is the one who served papers & going to reserve customer again.. Follow-up Date: 06/29/2016
06/20/2016	4:49 PM		5461	Court called - his attorney question method of being served - they served a neighbor - so their are going to reserve him so court cancel today. Follow-up Date: 06/20/2016
05/10/2016	10:09 AM		5461	LVM for Denise to check status of lawsuit, Follow-up Date: 05/10/2016
04/22/2016	3:48 PM		5461	ok to charge off
04/22/2016	2:00 AM	EV	0	EVENT NUMBER 0024 ; LETTER NUMBER 0200
04/12/2016	9:23 AM		5461	Lawsuit filed - mailed letter of acceleration to cust, mailed paperwork to Sville Court. Follow-up Date: 04/12/2016
04/04/2016	9:28 AM	SF	4905	SF See File : Approved to file a Summons & Complaint., Follow-up Date: 04/04/2016
03/28/2016	11:13 AM		5461	Spoke w/ Mr. Cantrell no changes, not filing bankruptcy., Follow-up Date: 03/28/2016
03/23/2016	10:38 AM	L7	5461	L7 Left Message with Machine: LVM FOR ATTORNEY, Follow-up Date: 03/23/2016
03/08/2016	8:38 AM		5461	Rec'd letter of representation from atty John Cantrell on 3-7-16 (after closing) do not contact cust, family, friends or other creditor customer by letter, phone, fax, email or any other means. Did DNA acct & changed to no statements. Atty re
03/08/2016	8:38 AM		5461	quested copy of executed loan contract with credit application. Did fax to his attention.
03/07/2016	11:45 AM		5461	ATTY TO FAX LETTER OVER TODAY - DID NOT RETRAIN FOR BANKRUPTCY
02/25/2016	9:19 AM		5461	LVM Atty # to ver he retain cust
02/25/2016	8:50 AM	SF	4213	SF See File : received letter through the door stating that we need to contact his attorney John R. Cantrell 843-797-2454 dont contact him at all.
02/24/2016	11:42 AM	NA	5461	NA No Answer : VML FULL
02/22/2016	10:44 AM	NA	5461	NA No Answer : vml full
02/19/2016	9:06 AM	NA	5461	NA No Answer : ml box full
02/17/2016	10:25 AM	NA	5461	NA No Answer : ml box full
02/01/2016	8:49 AM	SF	4213	SF See File : Treatment will be over 2.27.2016 and he said that his phone is broken
02/01/2016	8:47 AM	SF	4213	SF See File : customer sent letter through the door stating that he is very ill and his cancer has come back for the 3rd time. He is required to travel to Emory in Atlanta for treatment he said that he is trying to stay out of bankruptcy
02/01/2016	8:47 AM		4213	and he cant make any payments until March he is behind on everything.
01/29/2016	2:56 PM	NA	5461	NA No Answer : ml box full
01/27/2016	9:15 AM	NA	5461	NA No Answer : ml box full
01/25/2016	9:45 AM	NA	5461	NA No Answer : ml box full
01/22/2016	10:54 AM	NA	5461	NA No Answer : ml box full
01/20/2016	9:05 AM	NA	4213	NA No Answer:
01/19/2016	9:41 AM	NA	4213	NA No Answer : vm full
01/15/2016	9:22 AM	NA	4213	NA No Answer : vm full

1ST FRANKLIN FINANCIAL CORPORATION

CollectionComments

Page 1 of 3

9/6/2016 1:16:54 PM



D6

Collection History

ROBY A ADAMS

8827 008795 1

Date	Time	Code	Tlr/Emp	Description
01/14/2016	9:55 AM	NA	4213	NA No Answer : vm full
01/11/2016	9:31 AM	NA	4213	NA No Answer : vm full
01/08/2016	3:12 PM	NA	4213	NA No Answer : VM FULL
01/06/2016	8:31 AM	NA	4213	NA No Answer : vm full
01/05/2016	12:21 PM	L7	4893	L7 Left Message with Machine : called cell; lvm, Follow-up Date: 01/05/2016
01/04/2016	12:37 PM	L7	4213	L7 Left Message with Machine : called mobile lmm
12/31/2015	9:16 AM	L7	4213	L7 Left Message with Machine : called mobile lmm
12/30/2015	8:38 AM	L7	4213	L7 Left Message with Machine : called mobile lmm
12/28/2015	1:08 PM	L7	4213	L7 Left Message with Machine : called mobile lmm
12/23/2015	11:30 AM	E27	4213	E27 Unable to Reach by Phone : vm full
12/22/2015	10:23 AM	NA	4213	NA No Answer : vm full
12/21/2015	1:40 PM	NA	4213	NA No Answer : vm full
12/21/2015	1:39 PM	NA	4213	NA No Answer : vm full
12/19/2015	8:47 AM	NA	4213	NA No Answer : vm full and 2978812 has been changed to a unlisted number
12/18/2015	8:39 AM	NA	4213	NA No Answer : vm full
12/16/2015	10:15 AM	NA	4213	NA No Answer : called residence and the number has been changed but its not listed : called mobile vm full
12/14/2015	5:12 PM	NA	5461	NA No Answer : ml box full
12/08/2015	2:50 PM	PP	4893	PP Promised Payment : 289.80 : ccob; has been ill; will be in monday; Follow-up Date: 12/14/2015
12/08/2015	11:01 AM	NP	4213	NP No Promise : sent notice 23-3
12/08/2015	2:00 AM	EV	0	EVENT NUMBER 0023 ; LETTER NUMBER 0003
12/07/2015	3:38 PM	L6	4893	L6 Left Message with Other : called ref; lmo w/Joyce took callback, Follow-up Date: 12/07/2015
12/07/2015	10:10 AM		5461	REVIEWED ACCT OK TO MAIL RTC, Follow-up Date: 12/07/2015
12/05/2015	9:58 AM	R1	4213	R1 Right To Cure 1st Letter : called residence na, called mobile lmm sent right to cure
12/05/2015	2:00 AM	EV	0	EVENT NUMBER 0024 ; LETTER NUMBER 0018
12/04/2015	9:24 AM	NA	4893	NA No Answer : called hm; vm didn't pick up, Follow-up Date: 12/04/2015
12/03/2015	9:13 AM	L7	4893	L7 Left Message with Machine : called cell; lvm, Follow-up Date: 12/03/2015
12/02/2015	9:54 AM	NA	4893	NA No Answer : called cell; vm full, Follow-up Date: 12/02/2015
12/01/2015	9:58 AM	NA	4893	NA No Answer : called cell; vm didn't pick up, Follow-up Date: 12/01/2015
11/30/2015	3:24 PM	NA	4893	NA No Answer : called cell; vm didn't pick up, Follow-up Date: 11/30/2015
11/27/2015	2:48 PM	L7	4893	L7 Left Message with Machine : called cell; lvm, Follow-up Date: 11/27/2015

1ST FRANKLIN FINANCIAL CORPORATION

CollectionComments

9/6/2016 1:16:54 PM

Page 2 of 3

ROBY A ADAMS Collection History 8827 008795 1

Date	Time	Code	Tlrr/Emp	Description
10/23/2015	9:33 AM		0	*** Approval *** Approved by: Approval Amount: \$ Approval Note: current cust; cust sign; verified inc/emp; renewing BTO per cust request; DTI% 75.11; CBI: 540/BNI: 53; cust has always paid well on his accts with us
10/23/2015	9:33 AM		4905	*** ROD Approval/Approval *** Approved by: Richard F. Corrossi - Approval Amount: \$3,460 Approval Date: 10/23/15 Approval Note : BTO only -bni & fico are consistent with prior loans
10/23/2015	2:00 AM	EV	0	EVENT NUMBER 0021 ; LETTER NUMBER 0000

1ST FRANKLIN FINANCIAL CORPORATION

CollectionComments

9/6/2016 1:16:54 PM

Page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP1800819

1st Franklin Financial
PLAINTIFF(S)

Roby A Adams
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant's Motion to Reconsider under SCRPC 59 is denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/15/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Dorchester Common Pleas

Case Caption: 1st Franklin Financial VS Roby A Adams

Case Number: 2017CP1800819

Type: Order/Electronic Form 4

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

Electronically signed on 2020-07-15 18:44:42 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	C.A. NO.: 2017-CP-18-00819
1st Franklin Financial Corporation	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF MOTION AND RULE 59
	)	MOTION
	)	
Roby A. Adams	)	
	)	
Defendant.	)	
	)	

Defendant named above hereby files this Notice of Motion and Rule 59 Motion (“Motion”) for the reasons stated below. Defendant hereby gives notice that the Motion may be heard at any time after 10 days from the date of service of this Motion or at such later time as the court may order.

On April 21, 2020, the court entered its Amended Order on Plaintiff's Motion for Partial Summary Judgment (“Summary Judgment Order”). This Motion seeks to alter or amend that order in part as is detailed below, or in the alternative for rehearing on Plaintiff's partial summary judgment motion. Also, if it please the court and opposing counsel, in lieu of in person argument on this Motion, Defendant is agreeable to submitting the matter to the court on briefs by the parties without oral argument.

In the Summary Judgment Order, the court made four primary rulings. As stated in the conclusion of that Order, the court ruled in favor of Plaintiff on Defendant's liability under the loan agreement. Regarding Defendant's counterclaims, the court ruled against Defendant on his claims that Plaintiff falsely represented the amount of the debt,

his allegations about Plaintiff's liability for the county sheriff's improper service of the Complaint on Defendant's neighbor, and his claim that Plaintiff engaged in the unauthorized practice of law. This Motion seeks reconsideration by the court of its holding against Defendant as a matter of law that Plaintiff did not falsely represent the amount of the debt, and that Defendant is barred from presenting any testimony or evidence on this issue at any future hearing in this case, including the portion of the Order in the section on improper service which found that the South Carolina legislature did not intend to impose strict liability for violations of S.C. Code § 37-5-108(5). The Defendant does not seek reconsideration of the court's holding that the Plaintiff is not liable for the improper service of the Complaint or that Plaintiff is not liable for any alleged unauthorized practice of law.

At the hearing on Plaintiff's partial summary judgment motion, Defendant ended his arguments regarding his counterclaims prematurely based on assurances by the court that his doing so would not prejudice Defendant, since the court intended to rule against the Plaintiff on the issue of summary judgment as to Defendant's counterclaims. In reliance upon that oral ruling, Defendant did not make all arguments that he had intended to establish why the court should not grant summary judgment as to those counterclaims. In compliance with the court's oral ruling, Plaintiff's counsel submitted the attached proposed order, which denied Plaintiff's summary judgment motion in regards to Defendant's counterclaims, as the court had orally ruled at the hearing. However, upon receiving that proposed order, the court sent the attached email to all parties indicating that the court had changed its mind and was now going to rule in favor of granting Plaintiff's summary judgment motion as to Defendant's counterclaim that Plaintiff had

falsely represented the amount of the debt. Defendant was prejudiced by the court's reversal of its oral ruling on this issue in several ways. First, Defendant now has to incur additional attorney fees and costs both to bring this Motion, and also to possibly appeal any adverse ruling on this issue, which is the only issue that Defendant would choose to appeal, prior to the trial of this case, since otherwise Defendant would lose his right to appeal this issue, since the court's Order on this issue is a final appealable order. Second, Defendant is prejudiced since he ended his argument on Defendant's counterclaims prematurely, based on the court's assurances that he would not be prejudiced on his counterclaims, but now he has lost the opportunity to make a full record of those arguments, which he believed would not have to be made until the trial of this case. For this reason, if the court chooses not to reconsider its grant of summary judgment to Plaintiff on this issue, Defendant requests that he be allowed to fully present his arguments regarding his counterclaims prior to the trial of this case. Third, Defendant was prejudiced since the court's Order raised additional legal issues which were not addressed at the hearing, due to the court's prior oral ruling in favor of allowing the counterclaims to proceed to trial, and which arguments Defendant has not had an opportunity to try to refute, which Defendant intends to address in detail in any brief that Defendant may file in support of this Motion.

In the section of the court's Order in the last paragraph on page 9, the court finds that the legislature did not intend to impose strict liability for any violation of S.C. Code § 37-5-108(5), but does not cite any authority for this proposition. Defendant asks the court to reconsider this portion of the court's holding or cite authority to support it.

In the section of the court's Order at the bottom of page 7 and the top of page 8,

the court sets forth its written holding regarding why Plaintiff is not liable for any violation for falsely representing the amount of the debt. It appears from the context that this holding, with which Defendant respectfully disagrees, is limited to the false representation of the amount of the debt in the first Complaint. However, to the extent that the language of the Conclusion paragraph in the court's Order goes beyond that to include any false representation of the amount of the debt, even ones appearing in documents other than the Complaint, Defendant asks that the court reconsider this language in the Order as well. In any brief filed in support of this Motion, Defendant intends to examine the authority cited by the court in support of its holding on this issue. Defendant notes, for the record, that no causes of action against Plaintiff for common law slander, libel, or defamation were raised by Defendant in his counterclaims, and Defendant believes that any case authority in regards to those unraised issues is irrelevant.

WHEREFORE, Defendant respectfully requests that the court take the following actions:

1. Reconsider its Order in part on the issues indicated above in regards to Defendant's counterclaims,
2. Alternatively, in the event that the court chooses not to reconsider its Order, to allow Defendant an opportunity to make a record regarding all of the arguments that he could have made at the hearing on Plaintiff's partial summary judgment motion, either by granting rehearing or additional briefing on the issues, and
3. For such other and further relief as this Court deems just and proper.

May 1, 2020

Cantrell Legal, PC

By: /s/ John R. Cantrell, Jr.

John R. Cantrell, Jr.

Attorney for Defendant

P.O. Box 1276

Goose Creek, SC 29445

Telephone: (843) 797-2454

Facsimile: (309) 213-0922

Email: lawyer@comcast.net

SC Bar # 10309

ELECTRONICALLY FILED - 2020 May 01 6:02 PM - DORCHESTER - COMMON PLEAS - CASE#2017CPI1800819



John Cantrell <johncantrelljr@gmail.com>

1st Franklin v. Adam- Proposed Order

James Chellis <JChellis@dorchestercountysc.gov>

Tue, Apr 7, 2020 at 3:11 PM

To: "Osborne, Robert C." <robertosborne@parkerpoe.com>, John Cantrell <johncantrelljr@gmail.com>

Cc: "Jordan, Robert H." <robertjordan@parkerpoe.com>, "Norman, Karen D." <karennorman@parkerpoe.com>

Gentlemen,

One advantage that I have is the season of time and contemplation.

Re: 1st Franklin is Not Entitled to Summary Judgment on Defendant's Claim that it Falsely Represented the Amount Owed by Defendant.

As my comments at the hearing reflect, and after considering this while reviewing the proposed order, I am changing my mind. I do not think despite the \$9 difference alleged in the separate cases that this is a false representation as contemplated under the SCCPC.

I ask Mr. Osborne to redraft this section granting partial SJ on this point. The stated difference is in a complaint filed in a lawsuit. The pleadings of a lawsuit are mere allegations. They must be proven. Following the logic of Mr. Cantrell's position to its extreme result would mean that if any amount alleged due were proven incorrect, then that would open a flood gate to litigation on this point, including separate lawsuits after entry of a judgment in favor of a creditor who alleged an incorrect amount due. Moreover, this argument has a chilling effect on creditors who have found themselves owed a debt. I cannot find myself supporting Mr. Cantrell's position that pleading the wrong amount gives rise to a cause of action for a false representation. The pleading is a privileged document.

I understand Mr. Cantrell will be disappointed. In drafting the modification please set out Mr. Cantrell's argument fairly and plainly. I believe my decision is correct now. Nonetheless, should he want to pursue an appeal, I'd like the record to fairly set out his position.

Mr. Osborne, please add supporting case law that a pleading is privileged. That the cause of action including the amount of the damages must be proven by a preponderance of the evidence. The fact finder must decide the damages, et. cet. Also, you should add the policy argument that I express in this email.

Best Regards,

Judge James E. Chellis

Master in Equity

First Judicial Circuit

Dorchester County

South Carolina

ELECTRONICALLY FILED - 2020 May 01 6:02 PM - DORCHESTER - COMMON PLEAS - CASE#2017CP1800819

jchellis@dorchestercountysc.gov

[Quoted text hidden]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
1 st Franklin Financial Corporation,	)	CASE NO.: 2017-CP-18-00819
	)	
Plaintiff,	)	ORDER ON PLAINTIFF'S MOTION
	)	FOR PARTIAL SUMMARY JUDGMENT
vs.	)	
	)	
Roby A. Adams,	)	
	)	
Defendant.	)	
	)	

THIS MATTER came before this Court upon the motion of Plaintiff, 1st Franklin Financial Corporation (“1st Franklin” or “Plaintiff”) for partial summary judgment. A hearing before the undersigned was held on March 5, 2020.

In its motion, 1st Franklin moves for summary judgment, as to liability only, on its affirmative claim for breach of the Loan Agreement entered into between 1st Franklin and Defendant Roby A. Adams (“Adams” or “Defendant”). In addition, 1st Franklin requests that this Court find that certain conduct alleged in Defendant’s counterclaims is not “unconscionable conduct” under S.C. Code § 37-15-108(2) or otherwise actionable such that those allegations can support Defendant’s counterclaims. For the reasons set forth below, 1st Franklin’s motion is granted, in part, and denied, in part.

FACTUAL BACKGROUND

On October 23, 2015, Defendant entered into a Loan Agreement with 1st Financial wherein 1st Financial agreed to loan money to Defendant, and Defendant agreed to repay the loan in installments. (*See* Compl., Exhibit A). During his deposition, the Defendant testified that he signed the Loan Agreement. (*See* Roby Adams Depo. Jan. 17, 2019 at 14:23-15:1) (hereinafter “Adams Depo.”). Defendant does not dispute that he failed to pay 1st Franklin in accordance with the Loan Agreement, and he does not dispute that he owes some amount to 1st Franklin. (*Id.*

at 17:23-25). Defendant testified that he cannot recall whether he made any payments towards the loan, and that he is unsure of the exact amount that he owes 1st Franklin. (*Id.* at 15:21-16:7).

On September 22, 2016, 1st Franklin filed suit against Defendant in the Magistrate's Court for Dorchester County alleging that Defendant defaulted under the Loan Agreement and owed, at that time, \$4,342.16.¹ On December 5, 2016, Defendant filed an Answer and Counterclaims denying liability and asserting counterclaims against 1st Franklin for violations of the South Carolina Consumer Protection Code ("SCCPC"), violations of the South Carolina Unfair Trade Practices Act ("SCUTPA") and negligence *per se*.

On April 26, 2017, Defendant filed his First Amended Answer and Counterclaims wherein he claimed damages in excess of the Magistrate's Court jurisdictional limit. As a result, in May 2017, this case was transferred to the Court of Common Pleas for Dorchester County. On August 29, 2019, Defendant filed his Second Amended Answer and Counterclaims.² Defendant asserts counterclaims against 1st Franklin for (1) violation of the South Carolina Consumer Protection Code ("SCCPC"), (2) violation of the South Carolina Unfair Trade Practices Act ("SCUPTA"), and (3) negligence *per se*. Defendant's counterclaims rely heavily on section 37-15-108(2) of SCCPC which prohibits "unconscionable conduct in collecting a debt." Relevant to the subject motion, Defendant claims that 1st Franklin is liable to Defendant because it filed two separate lawsuits, filed four months apart, which alleged different amounts were owed by Defendant. (*See* Second Amended Answer and Counterclaims ¶ 12). The first lawsuit alleged \$4,351.24 was owed. (*Id.*). The subject lawsuit, filed following dismissal of the

¹ Prior to the subject action, on April 19, 2016, 1st Franklin filed suit against Defendant in the Magistrate's Court for Dorchester County based upon the same Loan Agreement, *1st Franklin Financial Corporation v. Roby A. Adams*, Civil Action 2016-CV-18-10302148. That action was dismissed *without prejudice* based upon 1st Franklin's failure to file documentation relating to non-lawyer representation of a corporation in Magistrate's Court pursuant to S.C. Code Ann. § 33-1-103.

² 1st Franklin's Motion for Summary Judgment was previously scheduled to be heard on July 16, 2019. However, prior to hearing 1st Franklin's motion, the court heard and granted Defendant's motion to file a Second Amended Complaint. As a result, the court continued 1st Franklin's Motion for Summary Judgment.

first, alleges \$4,342.16 is owed. (*Id.*). Thus, the subject action claims \$9.08 less than the first lawsuit. (*Id.*). Additionally, Defendant claims 1st Franklin is liable to Defendant because the Dorchester County Sheriff's Office served Defendant's neighbor with the previously filed and subsequently dismissed lawsuit. Finally, Defendant claims that 1st Franklin is liable to Defendant because 1st Franklin engaged in the unauthorized practice of law when it failed to file a form evidencing the corporation's intent to proceed in Magistrate's Court without representation by an attorney.³ In addition to giving rise to liability under the SCCPC, Defendant asserts these actions, in addition to allegedly violating of the SCCPC, also support his causes of action for violation of the SCUTPA and negligence *per se*.

LEGAL STANDARD

Rule 56, SCRCPC, requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, "this initial responsibility may be discharged by 'showing' – that is, pointing out to the trial court – that there is an absence of evidence to support the nonmoving party's case." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party makes this demonstration, the opposing party "must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*." *Id.* (emphasis in original); *Midland Mut. Life Ins. Co. v. Harrell*, 331 S.C. 394, 397, 503 S.E.2d 189, 190 (Ct. App. 1998). The nonmoving party must

³ Defendant also claims that alleged communications from 1st Franklin to Defendant after Defendant was represented by counsel give rise to liability. 1st Franklin did not move for summary judgment on those allegations. As such, those allegations are not addressed in this Order.

specifically set forth such facts, “as would be admissible in evidence,” to show that a true jury issue exists. *See* S.C. R. Civ. P. 56(e).

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001). Under South Carolina law, where “plain, palpable and indisputable facts exist on which reasonable minds cannot differ,” summary judgment in favor of the moving party is proper. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. The Court Grants 1st Franklin Motion for Summary Judgment on its Claim for Breach of the Loan Agreement.

1st Franklin moves for summary judgment, as to liability only, on its affirmative claim for breach of the Loan Agreement. An action under a note is an action for breach of contract. *See Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 780 S.E.2d 263 (Ct. App. 2015). “The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach.” *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491–92, 732 S.E.2d 205, 209 (Ct.App.2012). The court finds there is no genuine issue of material fact as to the three required elements.

It is uncontested that the Loan Agreement created an enforceable contractual relationship between 1st Franklin and Defendant. Defendant admits that he entered into the Loan Agreement and agreed to be bound by the terms therein. (*See* Roby Adams Depo., Jan. 17, 2019, 14:23-15:1) (hereinafter “Adams Depo.”). Defendant also admits that he breached the Loan Agreement by failing to make payments when due, and he further admits that he owes some amount to 1st Franklin. (*Id.* at 16:5-8; 17:23-25; 36:11-13). Next, by virtue of Defendant failing to make payments, it is undisputed that 1st Franklin suffered damages as a result of Defendant’s breach of

the Loan Agreement. It is axiomatic that because Defendant failed to repay the loan, 1st Franklin suffered damages and is entitled to recover. There is no genuine issue of material fact as to the existence of a contract between 1st Franklin and Defendant, a breach of the contract by Defendant, and the damages suffered by 1st Franklin.

The court considered the arguments made by Defendant's counsel at the hearing but finds them to be without merit. The court finds that the deposition testimony attached to Plaintiff's memorandum is properly before the court despite Defendant's argument that it has not been authenticated. Rule 56(c), SCRCP specifically contemplates that the court will consider deposition testimony at the summary judgment stage. *See* Rule 56(c), SCRCP. Additionally, as to the argument that the Loan Agreement has not been properly authenticated, the court finds that it is self-authenticating under Rule 902(9), SCRE as a commercial paper or related document. Finally, Defendant's deposition testimony acknowledging the Loan Agreement negates counsel's argument under the best evidence rule, Rule 1002, SCRE. Again, during his deposition, Defendant acknowledged signing the Loan Agreement and his agreement to be bound by its terms. (*See* Adams Depo., 14:23-15:1).

1st Franklin is entitled to summary judgment on the issue of Defendant's liability under the Loan Agreement. The court declines to enter judgment at this time and will address the issue of damages at subsequent proceedings in this matter.

II. 1st Franklin's Motion for Judgment as to Defendant's Counterclaims is Granted, in Part, and Denied, in Part.

Defendant's Second Amended Answer and Counterclaims asserts causes of action against 1st Franklin for (1) violation of the South Carolina Consumer Protection Code ("SCCPC"), (2) violation of the South Carolina Unfair Trade Practices Act ("SCUPTA"), and (3) negligence *per se*. Defendant's counterclaims rely heavily on S.C. Code Ann. § 37-15-108(2) of the SCCPC. Section 37-15-108(2) provides a private cause of action "if the court *as a matter of law* finds that

a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt.” (emphasis added). S.C. Code Ann. § 37-5-108(5) sets forth “factors” to be given “consideration” when a court analyzes whether a debt collector has engaged in “unconscionable conduct in collecting a debt” under section 37-15-108(2). Defendant, relying on certain factors under section 37-5-108(5), alleges that 1st Franklin engaged in “unconscionable conduct in collecting a debt”.

Relevant to this motion, 1st Franklin asserts that (1) the different amounts alleged in the two complaints, (2) the Dorchester County Sheriff’s Office serving Defendant’s neighbor, and (3) the allegations regarding the unauthorized practice of law do not, as a matter of law, constitute “unconscionable conduct in the collection of a debt.” *See* S.C. Code Ann. § 37-15-108(2). 1st Franklin seeks an order barring Plaintiff from introducing testimony or evidence at trial relating to these allegations.

A. 1st Franklin is Not Entitled to Summary Judgment on Defendant’s Claim that it Falsely Represented the Amount Owed by Defendant.

In April 2016, 1st Franklin filed an action in Magistrate’s Court seeking damages in the amount of \$4,351.24. *See 1st Franklin Financial Corporation v. Roby A. Adams*, Civil Action 2016-CV-18-10302148. That action was subsequently dismissed without prejudice. *See id.* In June 2016, 1st Franklin filed this action seeking \$4,342.16 in damages, \$9.08 less than the prior lawsuit. Based on the differing amount in the two complaints, Defendant alleges that 1st Franklin violated the SCCPC because it “falsely represented” the amount owed by Defendant. (*See* Second Amended Answer and Counterclaims ¶ 12). Defendant relies on S.C. Code § 37-5-108(5)(c)(1) which prohibits “using fraudulent, deceptive, or misleading representations in connection with the collection of a consumer credit transaction”, including false representations of the “character, amount, or legal status of any debt”. *See* S.C. Code §§ 37-5-108(2) and 37-5-108(5)(c)(1).

1st Franklin's argues the \$9.08 discrepancy between the amounts claimed to be owed, cannot, as a matter of law, be characterized as "fraudulent, deceptive, or misleading" or "unconscionable." *See* S.C. Code § 37-5-108(2). 1st Franklin claims it voluntarily corrected and reduced the amount it claimed from Defendant without any request or insistence from Defendant when it filed the second action. 1st Franklin further argues that Defendant's deposition testimony makes clear that he is wholly unaware of the amount actually owed to 1st Franklin and merely relies on the fact that the two complaints contained different amounts. (*See* Adams Depo. 17:17-18).

While the Court is skeptical that the different amounts alleged in the two complaints, without more, give rise to liability, the court finds factual issues preclude the grant of summary judgment. After considering the deposition testimony submitted by Defendant's counsel in opposition to 1st Franklin's motion, the court holds there are factual issues which prevent the grant of summary judgment in favor of 1st Franklin on the claim that it falsely represented the amount owed by Defendant.

B. The Court Finds, as a Matter of Law, that the Alleged Service of the Summons and Complaint on Defendant's Neighbor is Not Unconscionable Conduct

Defendant also alleges that 1st Franklin is liable for damages due to the Dorchester County Sheriff's Office serving Defendant's neighbor with the previously filed and subsequently dismissed lawsuit. Defendant alleges this act constitutes a violation of S.C. Code Ann. § 37-5-108(5)(b)(4), which prohibits a debt collector from communicating "with anyone other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the attorney of the creditor or debt collector, unless the consumer or a court of competent jurisdiction has given prior direct permission" regarding the debt. Acknowledging that 1st Franklin did not directly communication with any other person regarding the debt, Defendant seeks to impose

liability by claiming that the Dorchester County Sheriff's Office was 1st Franklin's agent. (*See* Second Amended Answer and Counterclaims ¶ 16).

The Dorchester County Sheriff's Office was not acting as 1st Franklin's agent when it served the complaint. Rather, it was carrying out its statutory mandate to carry out service of process for the courts of this state. S.C. Code Ann. § 23-15-40 provides that "[t]he sheriff or his regular deputy, on the delivery thereof to him, shall serve, execute and return every process, rule, order or notice issued by any court of record in this State or by other competent authority." No agency relationship existed. Even assuming that an agency relationship existed, 1st Franklin still would not be liable because the Sheriff's Office acted outside of the scope of its authority in serving Defendant's neighbor. 1st Franklin correctly named Defendant in the pleadings. The Sheriff's Office, pursuant to its statutory authority, was instructed by the court to carry out service upon Defendant, not Defendant's neighbor. It is well established that a principal is not liable for the acts of an agent which are outside the agent's scope of authority. *See* 2A C.J.S. Agency § 457. Thus, even assuming *arguendo* that the Sheriff's Office was acting as 1st Franklin's agent, it clearly acted outside the scope of its authority.

Furthermore, regardless of the agency issue, the court holds that the Dorchester County Sheriff's Office mistakenly serving Defendant's neighbor cannot, as a matter of law, be reasonably construed as 1st Franklin engaging "unconscionable conduct in collecting a debt". Code Ann. § 37-5-108(5) sets forth "factors" to be given "consideration" when determining whether a debt collector has engaged in unconscionable conduct. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Halsey v. Simmons*, --S.E.2d -- No. 2017-001459, 2020 WL 593950, at *5 (S.C. Ct. App. Jan. 22, 2020). The court finds that the legislature did not intend to impose strict liability for the factors set forth in section 37-15-108(5). Rather, the legislature intended to provide the courts deference to

determine, as a matter of law, whether certain actions constituted unconscionable conduct. Defendant's proposed interpretation of the statute whereby any violation of the factors set forth in section 37-5-108(5) gives rise to liability is in direct conflict with the actual language of the statute. The statute is clear that a court must find, as a matter of law, that a debt collector acted unconscionably. *See* S.C. Code Ann. § 37-5-108(2). There is no evidence upon which this Court could find that 1st Franklin engaged in unconscionable conduct by virtue of the Dorchester County Sheriff's Office mistakenly serving Defendant's neighbor.

C. The Court Finds, as a Matter of Law, that the Alleged Unauthorized Practice of Law Does Not Support a Private Cause of Action

Defendant also alleges that 1st Franklin engaged in the unauthorized practice of law; and therefore, is liable to Defendant. Defendant claims 1st Franklin engaged in the unauthorized practice of law by failing to file a form evidencing the corporation's intent to proceed in Magistrate's Court without representation by an attorney

As an initial matter, there has been no finding that 1st Franklin engaged in the unauthorized practice of law, and such a finding rests within the exclusive jurisdiction of the Supreme Court of South Carolina. The South Carolina Supreme Court has the duty to regulate the practice of law in this state and, accordingly, has the authority to define what constitutes the unauthorized practice of law. The South Carolina Constitution provides "[t]he Supreme Court shall have jurisdiction over the admission to the practice of law...." S.C. Const. art. V. § 4; *see also* S.C. Code Ann. § 40-5-10 (2001) ("The inherent power of the Supreme Court with respect to regulating the practice of law, determining the qualifications for admission to the bar and disciplining, suspending and disbarring attorneys at law is hereby recognized and declared."). An action to determine whether an individual or entity has engaged in the unauthorized practice of law must be a request for declaratory relief brought in the original jurisdiction of the Supreme Court. *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 121, 634 S.E.2d 5, 7 (Ct. App. 2006).

There has been no adjudication by the Supreme Court that 1st Franklin engaged in the unauthorized practice of law.

Additionally, even if there was an explicit finding that 1st Franklin engaged in the unauthorized practice of law, it could not support Defendant's counterclaims because the Supreme Court of South Carolina has plainly held that "there is no private right of action for the unauthorized practice of law." *Linder v. Ins. Claims Consultants, Inc.*, 348 S.C. 477, 497, 560 S.E.2d 612, 623 (2002). In *Linder*, although it acknowledged the statute prohibiting the unauthorized practice of law, S.C. Code Ann. §40-5-310, the Supreme Court held that the statute did not "sanction a private cause of action." *Id.* Therefore, it held that South Carolina law precludes private citizens from suing for money damages based on an allegation of the unauthorized practice of law. *Id.*; see also *Hambrick*, 370 S.C. at 121, 634 S.E.2d at 7.

Furthermore, in *Hambrick*, the Court of Appeals, relying on *Linder's* prohibition against a private cause of action, held that the allegation that a party engaged in the unauthorized practice of law cannot be used to support or prove another cause of action. *Hambrick*, 370 S.C. at 124, 634 S.E.2d at 8. In *Hambrick*, the court explicitly rejected the plaintiffs' attempt "[t]o get around *Linder*" by alleging the unauthorized practice of law to support various other causes of action. *Id.* Plaintiff's claim concerning 1st Franklin's alleged unauthorized practice of law fails.

CONCLUSION

After carefully considering the pleadings, memoranda, applicable law and arguments of counsel, the court finds and so holds that 1st Franklin is entitled to summary judgment as to Defendant's liability under the Loan Agreement. The court will determine the damages to be awarded to 1st Franklin, if any, following trial.

As to Defendant's counterclaims, the court holds that there are material issues of fact precluding summary judgment on Defendant's claims regarding whether 1st Franklin falsely

represented the amount of the debt owed by Defendant. As to Defendant's counterclaims resulting from the Dorchester County Sheriff's Office serving Defendant's neighbor, the court holds Defendant's allegations are insufficient to support his cause of actions under the SCCPC, SCUTPA and for negligence *per se*. Finally, Defendant's claims regarding the alleged unauthorized practice of law fail as a matter of law. South Carolina law does not allow a private cause of action for the alleged unauthorized practice of law, and an allegation that a party engaged in the unauthorized practice of law cannot be used to support another cause of action. Defendant is barred from presenting testimony or evidence at any future proceedings in this matter relating to service by the Dorchester County Sheriff's Office or the alleged unauthorized practice of law.

AND IT IS SO ORDERED!

-Electronic Signature Page Follows-



John Cantrell <johncantrelljr@gmail.com>

1st Franklin v. Adams - CASE NO.: 2017-CP-18-00819

John Cantrell <johncantrelljr@gmail.com>

Wed, Jun 3, 2020 at 3:13 PM

To: James Chellis <JChellis@dorchestercountysc.gov>

Cc: Meagan Kizer <MKizer@dorchestercountysc.gov>, "Jordan, Robert H." <robertjordan@parkerpoe.com>, "Osborne, Robert C." <robertosborne@parkerpoe.com>

Meagan:

We have a pending motion to reconsider the recent summary judgment order. In the motion, we consented to having the matter decided on briefs, if the court would allow that option. It is also my understanding that opposing counsel consents to having the matter decided on briefs as well. If that is acceptable to the court, then I guess we need to create a briefing schedule.

Sincerely,
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[Quoted text hidden]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	C.A. NO.: 2017-CP-18-00819
1st Franklin Financial Corporation	)	
	)	
Plaintiff,	)	DEFENDANT'S BRIEF IN SUPPORT
	)	OF RULE 59 MOTION
vs.	)	
	)	
Roby A. Adams	)	
	)	
Defendant.	)	
	)	

Defendant named above hereby files this Brief in Support of Rule 59 Motion, as requested by the court. The Motion requests that the court alter or amend a portion of its April 21, 2020 Summary Judgment Order, as is indicated in the Motion. The Motion seeks reconsideration by the court of its holding against Defendant as a matter of law that Plaintiff did not falsely represent the amount of the debt, and that Defendant is barred from presenting any testimony or evidence on this issue at any future hearing in this case, including the portion of the Order in the section on improper service which found that the South Carolina legislature did not intend to impose strict liability for violations of S.C. Code § 37-5-108(5). The Defendant does not seek reconsideration of the court's holding that the Plaintiff is not liable for the improper service of the Complaint or that Plaintiff is not liable for any alleged unauthorized practice of law. Note that where possible, hyperlinks to any reported decisions are included in this Brief for ease of reference.

Strict liability is the appropriate standard

At the bottom of page 9 of the Summary Judgment Order, the court holds that the South Carolina legislature did not intend to impose strict liability for violations of the

factors set forth in S.C. Code § 37-5-108(5), but the court cites no authority for this conclusion, except for a cite to the language of S.C. Code § 37-5-108(2). That section provides, in pertinent part as follows: “(2) With respect to a consumer credit transaction, if the court as a matter of law finds that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction, the court may grant an injunction. In addition, the consumer has a cause of action to recover actual damages and, in an action other than a class action, a right to recover from the person violating this section a penalty in the amount determined by the court of not less than one hundred dollars nor more than one thousand dollars.” The court appears to be focusing on the language from the statute which says “if the court finds as a matter of law” in support of its conclusion that the legislature intended to grant discretion to the court to determine if a violation of the factors in Sec. 37-5-108(5) constitutes unconscionable debt collection conduct, but the language of the statute does not support this conclusion. First, notice that the language in Sec. 37-5-108(2) uses both the phrase “if the court finds as a matter of law” and then later in that section “a penalty in the amount determined by the court.” It appears to the Defendant that all this language is intended to accomplish is to indicate that it is the court, and not a jury, that makes the determination whether the law has been violated and, if so, how much of a penalty is appropriate for that violation. Indeed, our Court of Appeals reached that very same conclusion in the case of Wells Fargo Bank, N.A. v. Smith, 398 S.C. 487, 497-98, 730 S.E.2d 328 (Ct. App. 2012); however, our Supreme Court ordered that the case be depublished and have no precedential effect in 2014, so we don't know if this holding is still good law or not.

The court's interpretation that a violation of the factors set forth in Sec. 37-5-108(5) does not give rise to a violation of that section unless the court determines, in its subjective discretion, that the conduct was unconscionable is contrary to the holding of our state Supreme Court in the disciplinary case of [In the Matter of Sean Bannon Zenner](#), 348 S.C. 499, 560 S.E.2d 406 at FN3 (S.C. 2002) where the court says as follows:

Two statutes govern debt collectors' conduct when contacting debtors. S.C. Code Ann. § 37-5-108 (Supp. 2000) prohibits a debt collector from: (1) threatening to use criminal prosecution against the consumer; (2) communicating with the consumer at frequent intervals during a twenty-four hour period or at unusual hours so that it is a reasonable inference the primary purpose of the communication was to harass the consumer; (3) communicating with a consumer at any unusual time or place known or which should be known to be inconvenient to the consumer, with convenient time being between 8 a.m. and 9 p.m.; (4) contacting a consumer at his place of employment after the consumer or his employer has requested in writing that no contacts be made; (5) using obscene or profane language or language the natural consequence of which is to abuse the hearer or reader. The Federal Consumer Protection Act, 15 U.S.C. §§ 1671, et. seq., also prohibits the debt collector from engaging in the conduct listed above.”

Note that the Supreme Court simply says that this statute “prohibits” a debt collector from engaging in any of these types of debt collection conduct, without any deference to a court's subjective discretion to determine whether or not such conduct is unconscionable. This interpretation of the statute is in accord with Defendant's view that a violation of any of the “factors” listed in Sec. 37-5-108(5) creates strict liability for the violation. Defendant's approach is further supported by the Supreme Court's citation to the Federal Consumer Protection Act, which includes the Fair Debt Collection Practices

Act (“FDCPA”) as [Title VIII of that Act](#), since the FDCPA is a strict liability statute. [Allen v. LaSalle Bank, NA](#), 629 F. 3d 364 at FN7 (3rd Cir. 2011)(citing cases). Note also that the definition section of the South Carolina Consumer Protection Code (“SCCPC”), in [Sec. 37-1-102\(2\)\(f\)](#) indicates that one of the underlying purposes of the SCCPC is to “conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act,” which means that the strict liability standard of the FDCPA should be applied when interpreting the SCCPC as well.

False representation of the amount of the debt

First, there is currently no dispute by Plaintiff that the \$9.08 higher amount alleged due from the Defendant in the first collection lawsuit was not false. Plaintiff now characterizes it as a “discrepancy” or a “scrivener's error,” thereby admitting that it was incorrect. The dispute is over whether the \$9.08 overcharge claimed due in the first lawsuit creates a material issue of fact that precludes granting summary judgment to Plaintiff on Defendant's SCCPC counterclaim.

Also, although intent is irrelevant in regards to a strict liability statute like the SCCPC, Plaintiff claims that the lower amount claimed due in the second lawsuit was evidence that Plaintiff “voluntarily corrected” the amount alleged due from Defendant without any assistance from Defendant. However, the deposition testimony of Plaintiff's branch manager Theresa Schwerin, which was taken on January 17, 2019 well after the filing of the second collection lawsuit on September 22, 2016, indicates Plaintiff's belief at that time that the amount claimed due in the first suit was the correct amount due on the account, and that Plaintiff made no error in alleging that two different amounts were due in the two collection lawsuits. (See Defendant's Attorney Affidavit filed 3-2-20,

Exhibit Depo Excerpts Theresa Schwerin, p. 23, ll. 17-25 through p.24, 1-2). So Plaintiff's current position that the amount alleged due in the first lawsuit was actually incorrect is a recent change of position for Plaintiff.

Originally, at the hearing on Plaintiff's Summary Judgment Motion, the court indicated that it was going to deny Plaintiff's Motion in regards to Defendant's SCCPC counterclaim; however, in the email from the court to the parties attached as an exhibit to Defendant's Rule 59 Motion, the court indicated that it had changed its mind and was now asking Plaintiff's counsel to amend his proposed order to include those changes. The court based this decision on the legal doctrine of litigation privilege for pleadings filed in a lawsuit and on the fact that it would create a "chilling effect" on creditors who are owed a debt. The court also instructed Plaintiff's counsel to cite case law in support of the court's conclusion that the allegations of the Complaint are protected by litigation privilege, although the court provided no authority for that conclusion itself. On pages 7-8 of the April 21, 2020 Summary Judgment Order, the court deals with the false representation counterclaim. It incorporates the changes requested by the court, and cites a case that purports to stand for the proposition that "pleadings are privileged." That case is *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 22, 567 S.E.2d 881, 892 (Ct. App. 2002). However, this case does not support the court's conclusion. *Pond Place* was a slander of title suit for the filing of a *lis pendens* in connection with a declaratory judgment action involving real estate. Our Court of Appeals ruled that the *lis pendens* was filed in connection with the litigation, and as such was absolutely privileged and could not form the basis for a slander of title action. *Id* at 32. Of course, Defendant hasn't alleged any action against Plaintiff for slander of title, or for any other defamation

action. Therefore, litigation privilege is not at issue and *Pond Place* does not apply.

However, even if common law litigation privilege did apply to the SCCPC allegations of Defendant's counterclaims, Plaintiff could not prevail as a matter of law in its attempt to defeat the false representation counterclaim. That is because any common law privilege that might apply would have been abrogated by the creation of the SCCPC, since that statute would replace any contrary common law that might have existed prior to its creation. Indeed, although Defendant is not aware of a South Carolina state court case that has addressed this issue, there is a 4th Circuit Court of Appeals case directly on point in regards to the very similar FDCPA provisions. [15 U.S.C. Sec.1692e\(2\)](#) makes any false, deceptive, or misleading representation about the amount of an alleged debt a violation of federal law. In an FDCPA case brought by a consumer (“Sayyed”) against a debt collector (“W&A”) for false allegations allegedly made by W&A in a summary judgment motion filed in the case, including an allegedly false allegation about the amount of the debt owed by Sayyed, W&A argued that the allegations in its summary judgment motion were subject to common law litigation immunity and therefore not actionable as an FDCPA violation. [Sayyed v. Wolpoff & Abramson](#), 485 F. 3d 226 (4th Cir. 2007). However, the 4th Circuit ruled that there was no common law litigation immunity exception in the text of the FDCPA. *Sayyed* at 230. In support of this decision, the 4th Circuit also cited the United States Supreme Court decision in [Heintz v. Jenkins](#), 514 U.S. 291, 293, 115 S.Ct. 1489, 131 L.Ed.2d 395 (1995), which was another FDCPA suit alleging a false statement regarding the amount of a debt, which statement appeared in a settlement letter sent by the creditor's attorney to the consumer's attorney. In *Heintz*, the Supreme Court ruled that the FDCPA does apply to lawyers

engaged in litigation, and noted that a former version of the FDCPA, prior to its amendment, had included an exemption from the definition of debt collectors for lawyers, but that exemption had been repealed. Similarly, as noted earlier, in South Carolina our state Supreme Court did not note any exemption from the SCCPC for lawyers engaged in collection activity in the *Zenner* disciplinary matter previously referenced above. Remember also that the SCCPC states that it should be construed in such a way as to conform to the policies expressed in the FDCPA. See S.C. Code [Sec. 37-1-102\(2\)\(f\)](#). Defendant therefore believes that there is no common law litigation privilege for violations of the SCCPC either.

In the Summary Judgment Order, the court further claims that \$9.08 overcharge in the first collection suit cannot be characterized as fraudulent, deceptive, misleading, or unconscionable. However, we must allow the statute to define its own terms, and not attempt to define those terms in a vacuum. It is clear that the \$9.08 overcharge in the first lawsuit was a false representation of the amount of Defendant's debt. That alone is sufficient to make it "fraudulent, deceptive or misleading" under [S.C. Code Sec. 37-5-108\(5\)\(c\)\(1\)](#), which then makes it "unconscionable" debt collection conduct under [S.C. Code Sec. 37-5-108\(2\)](#). Under the Supreme Court *Zenner* case mentioned above, such conduct is considered to be "prohibited," and there is no reason why creditor collection conduct prohibited by our Supreme Court should be tolerated in this court.

Although the court's concerns about possible litigation privilege preventing the false representation in Plaintiff's Complaint about the amount of Defendant's debt being actionable under the SCCPC seem to be restricted solely to the false representation contained in the Complaint, in the Conclusion paragraph of the court's Summary

Judgment Order, the court bars Defendant from presenting any testimony or evidence at any future proceeding in this matter regarding Plaintiff's false representation of the amount of the debt. This provision goes beyond any false representation that was contained solely in the Complaint. Remember that at the hearing on Plaintiff's Summary Judgment Motion the court had initially ruled that Defendant's SCCPC counterclaim regarding the false representation would survive, and that it was therefore unnecessary for Defendant to present all of his evidence regarding his counterclaims at that time. In addition to the false representation about the amount of the debt contained in the Complaint, Defendant alleges that Plaintiff has made other false representations regarding the amount of the debt, including representations in both Plaintiff's deposition testimony, and in a letter that was sent to Defendant prior to the filing of Plaintiff's Complaint. Therefore, the language in the Conclusion paragraph is overly broad. In the event that the court chooses not to reconsider its grant of summary judgment to Plaintiff on the false representation of the amount of the debt in Plaintiff's Complaint, Defendant asks the court to amend the language in the Conclusion paragraph to restrict it to the false representation contained in the Complaint, so that Defendant will not be prejudiced by his reliance upon the court's oral ruling at the hearing in this matter, and so that Defendant will be allowed to present evidence of other false representations regarding the amount of the debt at any future hearing or trial in this case.

In regards to further arguments regarding Defendant's counterclaims, which Defendant did not raise at the hearing on Plaintiff's motion in reliance upon the court's assurance that Defendant would not be prejudiced regarding his counterclaims by shortening his arguments on those counterclaims, Defendant believes that it is premature

to make those additional arguments at this time, since they will be unnecessary if the court chooses to reconsider its order granting summary judgment to Plaintiff on Defendant's SCCPC counterclaim for false representation of the amount of Defendant's debt. Further, since Defendant's counterclaims are based on fee-shifting statutes, which could possibly make Plaintiff liable for any reasonable attorney fees incurred by Defendant in making any premature arguments on those counterclaims, Defendant believes that it is his duty to mitigate his attorney fees and wait for the court's ruling on reconsideration of its Order before engaging in extensive argument on a premature issue. However, in the event that the court chooses not to reconsider the portions of its order contested above, then Defendant respectfully requests that the court provide such opportunity, either by hearing or further briefing, as may be necessary to make those additional extensive arguments regarding why summary judgment should not be granted to Plaintiff on Defendant's counterclaims at this time.

WHEREFORE, Defendant respectfully requests that the court take the following actions:

1. Reconsider its Order in part on the issues indicated above in regards to Defendant's counterclaims,
2. Alternatively, in the event that the court chooses not to reconsider its Order, to allow Defendant an opportunity to make a record regarding all of the arguments concerning Defendant's counterclaims that he could have made at the hearing on Plaintiff's partial summary judgment motion, either by granting rehearing or additional briefing on those issues, and
3. For such other and further relief as this Court deems just and proper.

June 19, 2020

Cantrell Legal, PC

By: /s/ John R. Cantrell, Jr.

John R. Cantrell, Jr.

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ELECTRONICALLY FILED - 2020 Jun 19 4:51 PM - DORCHESTER - COMMON PLEAS - CASE#2017CP1800819

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
1 st Franklin Financial Corporation,	)	CASE NO.: 2017-CP-18-00819
	)	
Plaintiff,	)	PLAINTIFF'S RESPONSE IN
	)	OPPOSITION TO DEFENDANT'S RULE
vs.	)	59(e) MOTION
	)	
Roby A. Adams,	)	
	)	
Defendant.	)	
	)	

Plaintiff 1st Franklin Financial Corporation ("1st Franklin" or "Plaintiff") submits this response in opposition to Defendant Roby A. Adam's ("Defendant") Rule 59 Motion. Defendant's motion rehashes arguments already rejected by the court, and ignores the plain language of the South Carolina Consumer Protection Code. This Court's prior order is well-reasoned and is in accord with applicable South Carolina law. Therefore, for the reasons set forth herein and the arguments previously made by 1st Franklin in its filings and at the prior hearing, Defendant's motion should be denied.

FACTUAL BACKGROUND

The court is aware of the facts of this case. Plaintiff incorporates the Factual Background section of its Supplemental Memorandum in Support of its Motion for Partial Summary Judgment as if set forth herein. Briefly, this case involves Defendant's admitted failure to repay a loan in the principal amount of \$4,968.00 from 1st Franklin to Defendant. Pursuant to an offer of judgment from Defendant, which was accepted by 1st Franklin, judgment was entered against Defendant in the amount of \$4,343.00 on May 21, 2020.

In its Amended Order on Plaintiff's Motion for Partial Summary Judgment dated, April 21, 2020, this Court granted summary judgment in favor of 1st Franklin on certain counterclaims asserted by Defendant. Defendant's Rule 59 Motion asks this Court to alter its findings in that

order. Specifically, Defendant requests that this court find that S.C. Code Ann. §§ 37-5-108(2) and 37-5-108(5) impose strict liability thereby resulting in a finding that a \$9.08 difference in the amount alleged in two complaints filed by 1st Franklin is unconscionable conduct automatically giving rise to liability.

LEGAL STANDARD

“The purpose of Rule 59(e), SCRCPP, to alter or amend the judgment, is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” *Collins Music Co. v. IGT*, 353 S.C. 559, 562, 579 S.E.2d 524, 525 (Ct. App. 2002) (quoting *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)) (internal quotations omitted). “A party may wish to file such a motion when [it] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Pursuant to Rule 59, SCRCPP, “the court may open the judgment if one has been entered and amend his findings of fact and conclusions of law or make new findings and conclusions and direct the entry of a new judgment.” *NCNB S.C. v. Floyd*, 303 S.C. 261, 263, 399 S.E.2d 794, 795 (Ct. App. 1990). Rule 59(e) provides an “extraordinary remedy that should be used sparingly.” *Pacific Ins. Co. v. American Nat’l Fire Ins. Co.*, 148 F.3d 396, 402 (4th Cir. 1998). “Under Rule 59(f), SCRCPP, a Rule 59(e) motion “may in the discretion of the court be determined on the briefs filed by the parties *without oral argument*.” *Pollard v. Cty. of Florence*, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (Ct. App. 1994) (emphasis in original).

ARGUMENT

Defendant argues that this Court erred in finding that S.C. Code Ann. § 37-5-108(2) is not a strict liability statute. Defendant’s argument is without merit. A claim under S.C. Code 37-5-108(2) only arises “if the court as a matter of law finds that a person has engaged in, is engaging

in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction.” S.C. Code Ann. § 37-5-108(2). S.C. Code 37-5-108(5), the subsection Defendant contends is a strict liability statute, states “[i]n applying [37-5-108(2)], consideration shall be given to” the factors enumerated in subsections 37-5-108(5)(a) – (e). Defendant continues to ignore the “consideration shall be given” language of section 37-5-108(5). This language unquestionably demonstrates that subsections 37-5-108(5)(a) – (e) are to be given “consideration” when the court is tasked with determining whether a debt collector has, as a matter of law, engaged in unconscionable conduct in violation of section 37-5-108(2). Thus, it is clear even if a court finds some technical violation of subsections 37-5-108(5)(a) – (e), it does not automatically lead to a finding of liability.

“Under the plain meaning rule, it is not the province of the court to change the meaning of a clear and unambiguous statute. Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” See *S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 491, 697 S.E.2d 587, 590 (2010); see also *State v. Johnson*, 396 S.C. 182, 188, 720 S.E.2d 516, 520 (Ct. App. 2011) (“In interpreting a statute, the court will give words their plain and ordinary meaning[] and will not resort to forced construction that would limit or expand the statute.”). Here, despite the legislature explicitly providing that the factors in subsections 37-5-108(5)(a) – (e) are to be given “consideration”, Defendant argues that any technical violation of any factor set forth automatically creates liability under the statute. Defendant’s argument is in direct conflict with the actual language of the statute. If the legislature intended section to be a strict liability statute, it would have done so with specific language to that effect. The language of the statute is clear that subsections 37-5-108(5)(a) – (e) are only to be given “consideration”, not

given dispositive effect. Defendant's interpretation of sections 37-5-108(2) and 37-5-108(5) as strict liability statutes is untenable.

Defendant's argument that the \$9.08 difference in the amount of the debt that was alleged in the two complaints automatically gives rise to liability also fails. Once again, ignoring the plain language of the statute, Defendant argues that this Court has no discretion to determine what constitutes unconscionable conduct in collecting a debt. S.C. Code Ann. § 37-5-108(2). As set forth above, the governing statutes clearly provide the court with discretion in determining whether, "as a matter of law", a debt collector "has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt." *Id.* Here, after considering the evidence in the record, a record which Defendant had more than three (3) years to develop, this Court found the \$9.08 difference in the amount alleged in the complaints was not unconscionable and that Defendant failed to present any evidence upon which the court could find, as a matter of law, that 1st Franklin falsely represented the amount of the debt. Instead, the court held:

In three years of litigation Defendant has provided no evidence in the record upon which the court could find that 1st Franklin falsely represented the amount owed in a manner that could, even viewed in the light most favorable to defendant, be characterized as "fraudulent, deceptive, or misleading" or "unconscionable." See S.C. Code § 37-5-108(2).

(See Amended Order on Plaintiff's Motion for Summary Judgment at *8). The court's decision is well reasoned and should not be amended. The court's holding that Defendant be barred from presenting evidence or testimony regarding any alleged false representation should also remain. Defendant had the opportunity to present evidence in filings and at the hearing but failed to do so. Vague allegations of "other false representations regarding the amount of the debt" without any specific reference are insufficient. (See Defendant's Brief in Support of Rule 59 Motion at *8).

CONCLUSION

For the reasons set forth herein, 1st Franklin respectfully requests that the Court deny Defendant's Rule 59 motion without a hearing or additional briefing. Counsel's assertion that he was prevented from making an adequate record of his arguments is surprisingly in light of the fact that counsel was given more than two (2) hours to argue at the hearing held on March 5, 2020.¹ See S.C. Code Ann. § 40-5-330 ("No attorney, solicitor or counsellor shall be allowed to occupy more than two hours of the time of the court in the argument of any cause, unless he shall first obtain the special permission of the court to do so."). Counsel's decision to not file a substantive written response to Plaintiff's motion should also be considered.

Respectfully Submitted,

s/Robert H. Jordan
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Attorneys for 1st Franklin Financial Corporation

June 26, 2020
Charleston, South Carolina

¹ Defendant suggests that an additional record is needed as Defendant may file an appeal. However, the Amended Order that is subject of this motion is not appealable See Rule 54(b), SCRCP.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	C.A. NO.: 2017-CP-18-00819
1st Franklin Financial Corporation	)	
	)	
Plaintiff,	)	
	)	DEFENDANT'S REPLY TO
vs.	)	PLAINTIFF'S RESPONSE TO
	)	RULE 59(e) MOTION
	)	
Roby A. Adams	)	
	)	
Defendant.	)	
	)	

Defendant named above hereby files this Reply to Plaintiff's Response to Rule 59(e) Motion ("Response"), which Response was filed June 26, 2020. Note that where possible, hyperlinks to any reported decisions are included in this Brief for ease of reference.

Factual background

In Reply to Plaintiff's allegations regarding the factual background of the case that are relevant to the Rule 59(e) Motion ("Motion"), Defendant wishes to point out to the court that Plaintiff's allegations regarding any debt that might be owed by the Defendant to the Plaintiff are irrelevant to any issues that have been brought before the court in the Motion, since Defendant has not asked the court to reconsider any rulings by the court in regards to any loan agreement between the parties. (See Rules [401](#) & [402](#), SCORE). The only logical reason that Plaintiff would raise these irrelevant arguments is in an attempt to prejudice the court against Defendant regarding the irrelevant debt allegations. Defendant therefore requests that the court ignore this improper attempt to raise irrelevant

prejudicial matters, and limit its ruling to matters properly before the court.

Legal Standard

Defendant wishes to point out to the court that Plaintiff agrees, based on the cases cited in the Legal Standard section of its Response, that it is proper to use a Rule 59(e) motion where the court failed to rule on an argument or issue, which happened in this case, since the court changed its mind from the oral ruling on Defendant's counterclaims at the original hearing on the Plaintiff's summary judgment motion, and raised entirely new arguments after that hearing in regards to Defendant's counterclaims to which the Defendant has not had an opportunity to respond except in this Rule 59(e) Motion and supporting briefs.

Argument

Plaintiff claims that S.C. Code § [37-5-108\(2\)](#) is not a strict liability statute, as was suggested by Plaintiff in its proposed order, which the court adopted as its own order. First, the court should take notice of which of Defendant's arguments in Defendant's Brief in Support of Rule 59 Motion, which was filed June 19, 2020, that Plaintiff does not contest. Note that Plaintiff completely ignores the holding of our state Supreme Court in the *Zenner* case cited in Defendant's Brief, wherein the court held that a debt collection attorney's failure to comply with several of the provisions of [37-5-108](#) was "prohibited," without any reference to any alleged discretion by the court to allow such conduct. Our Supreme Court's approach finding these actions to be prohibited certainly appears to use a strict liability approach. Second, Plaintiff does not take issue with Defendant's characterization of the FDCPA as a strict liability statute or Defendant's contention that S.C. Code § [37-1-102\(2\)\(f\)](#) requires South Carolina courts to follow the policies of the

FDCPA when interpreting the SCCPC, including the strict liability policy of the FDCPA. Third, Plaintiff does not take issue with Defendant's contention that Plaintiff did not “voluntarily correct” the amount alleged due from Defendant in its second collection suit, but instead had maintained that both of the different amounts were correct until just recently. Fourth, Plaintiff does not contest Defendant's criticism of the *Pond Place* case cited by the court in its Summary Judgment Order as being inapplicable to this case since no slander of title or other defamation counterclaim has been raised by Defendant. Fifth, Plaintiff does not contest Defendant's contention that even if common law litigation were to have applied in this case, that it would have been abrogated by our legislature's enactment of the SCCPC without providing any exception for litigation activities, as the 4th Circuit Court of Appeals ruled in regards to the FDCPA in the *Sayyed* case cited in Defendant's Brief or the [United States Supreme Court case](#) cited in the same Brief. Note also that our state Supreme Court didn't find any exception for attorneys involved in litigation in the *Zenner* case referred to earlier.

Indeed, instead of contesting all of these arguments that were raised in Defendant's Motion and supporting Brief, Plaintiff chooses to rest its whole argument on one phrase from the statute, namely the phrase from S.C. Code § [37-5-108\(5\)](#), which states that when determining whether a person has engaged in unconscionable conduct when collecting a debt, “consideration shall be given to each of the following factors, among others, as applicable.” After this language, the statute goes on to list various improper conduct, several of which were listed by our Supreme Court as being “prohibited” by the SCCPC and as violations of that statute in the *Zenner* case cited in Defendant's Brief. Plaintiff contends that the word “consideration” means that a state

court judge has discretion to determine whether or not when a person engages in any of this conduct that an unconscionable debt collection action has been taken. However, that one word cannot bear the weight that Plaintiff attempts to give to it. It appears to Defendant that when interpreting this language, especially in light of the strict prohibition approach used by the Supreme Court in [Zenner](#), that the phrase as a whole simply means that the court should consider each of the listed prohibited types of conduct to be a violation of the statute, in addition to other unlisted types of conduct not listed in the statute, which could also constitute a violation of the statute. In other words, the actions actually listed in the statute are prohibited violations of the statute, but the court may find that other types of debt collection conduct are unconscionable and could violate the statute, since the SCCPC is a remedial statute designed to protect consumers from both debt collection conduct already known to be improper as well as any new improper types of debt collection conduct not anticipated by the legislature at the time the SCCPC was enacted. In other words, the improper actions listed in the SCCPC create a floor, but not a ceiling, for unconscionable debt collection activity, and any discretion that the court has is only in regards to adding prohibited conduct, not in removing from the definition of unconscionability conduct already prohibited by the statute. Any other interpretation would give a court discretion to find that conduct considered improper by both the legislature and our state Supreme Court was not really improper after all. This approach would eviscerate the statute, and put judges in the place of the legislature. Instead, this court should follow the example of our Supreme Court, and find that all of the improper debt collection conduct listed in [§37-5-108\(5\)](#) is a prohibited violation of the SCCPC, including the prohibition on false representations regarding the amount of a debt as stated

in [37-5-108\(5\)\(c\)\(1\)](#). Interestingly, Plaintiff cites the “plain language” doctrine regarding its interpretation of the statute. However, unless Plaintiff were to contend, which it hasn't yet done, that our Supreme Court got it wrong in the *Zenner* case, then we must assume that the Supreme Court was also aware of this maxim, and that they also found the language of the SCCPC to be “plain” and without ambiguity when they found that any violation of the statute was a prohibited violation of that statute without giving any deference to the subjective opinion of a trial court to determine that prohibited conduct was not a violation.

Plaintiff contends that the court was correct in its holding in the Summary Judgment Order that Defendant had presented no evidence sufficient enough to withstand summary judgment on the issue of whether or not the \$9.08 error in the amount incorrectly alleged due by Plaintiff from Defendant in the first collection suit was unconscionable debt collection conduct. However, this holding ignores the effect of the definition section of the SCCPC, as previously addressed in Defendant's Brief, also ignores the fact, as evidenced by the email from the court attached as an exhibit to Defendant's Motion, that the court based its holding that the \$9.08 error in the amount alleged due on the court's assumption at that time that common law litigation privilege protected Plaintiff from liability for that incorrect amount Plaintiff was attempting to collect from Defendant. However, since Defendant has now provided the court with authority for the proposition that common law litigation privilege should not apply to contravene the language of the SCCPC, the court's summary judgment order on that issue should be reversed. Instead, the court should find that it cannot grant summary judgment to Plaintiff on Defendant's SCCPC counterclaim, since the law appears to be in favor of

Defendant on that issue, especially since Plaintiff has not provided the court with any authority on that issue to the contrary.

Regarding Plaintiff's argument that the court should continue to bar Defendant from presenting **any** evidence or testimony regarding Plaintiff's false representation of the amount of the debt, Defendant refers the court to the arguments already made by Defendant in his Brief in regards that part of the order being overly broad, since it would apply to evidence of false representations of the amount of the debt made outside of the Complaint. In Defendant's Brief, references were made to at least two such other false representations, including those in the deposition testimony of Plaintiff's witness Theresa Schwerin, and in a letter sent to Defendant by Plaintiff prior to the time Plaintiff sued Defendant. The court may view the improper collection letter, which was attached to the deposition of Theresa Schwerin as Exhibit 4, and an accurate and complete copy of which is attached to this Reply Brief as well. Other false representations of the amount of the debt were made by Theresa Schwerin in her deposition, which was filed with this court as Exhibit 7 to Defendant's Motion to Compel filed on May 27, 2019, which Defendant incorporates herein by reference. See Defendant's arguments regarding the location of those statements in the deposition that were made in Defendant's Brief, pp. 4-5, which cited the deposition at p. 23, ll.17-25 through p. 24. ll. 1-2. See also the deposition at p. 47, l. 23- p. 48 l. 1. Regarding her representation that the higher incorrect amount alleged due in the April 12, 2016 Notice of Acceleration letter being correct, see her testimony in the deposition at p. 27, l. 18 – p. 28. l. 18. As the court can see, contrary to Plaintiff's assertions that Defendant's allegations of other false representations of the amount of the debt owed being “vague” and without specific references, there are more

than one such misrepresentation, both in a pre-litigation letter, and a deposition well after the second collection suit had been filed. Therefore, even if the court continues to rely upon its common law litigation immunity holding, the April 12, 2016 letter had a false representation regarding the amount of the debt before any collection suit was filed, and the January 17, 2019 deposition of Theresa Schwerin contained false representations about the amount of the debt well after Plaintiff claims that Plaintiff had “voluntarily corrected” the amount Plaintiff improperly alleged was due in the first Complaint. This means that the court's ruling that Defendant should be barred from presenting any evidence or testimony regarding Plaintiff's false allegations about the amount of the debt, including representations other than those found in the first Complaint, is overly broad, and that language should be removed from the court's Order, since there is a material question of fact about other misrepresentations about the amount owed not found in the first Complaint.

Defendant also wishes to remind the court that due to Defendant's reliance upon the court's oral ruling in favor of Defendant on Defendant's counterclaims at the hearing on Plaintiff's summary judgment motion, and the court's assurance that Defendant would not be prejudiced by terminating Defendant's oral argument before having had an opportunity to present all of Defendant's arguments, that it would be proper for the court to grant Defendant an additional opportunity, either by in person hearing or additional briefing, to allow Defendant to make those arguments, in the event that the court chooses not to reconsider its ruling and allow the Defendant to pursue his false representation counterclaim at any further hearing or trial in this case. Any objection that Plaintiff may have had regarding the length of Defendant's arguments at the last hearing should be

treated by the court as having been waived by the Plaintiff, since Plaintiff did not make that objection at the hearing, and cannot now do so after the hearing.

Conclusion

WHEREFORE, Defendant respectfully requests that the court take the following actions:

1. Reconsider its Order in part on the issues indicated above in regards to Defendant's counterclaims,
2. Alternatively, in the event that the court chooses not to reconsider its Order, to allow Defendant an opportunity to make a record regarding all of the arguments concerning Defendant's counterclaims that he could have made at the hearing on Plaintiff's partial summary judgment motion, either by granting rehearing or additional briefing on those issues, and
3. For such other and further relief as this Court deems just and proper.

July 6, 2020

Cantrell Legal, PC

By: /s/ John R. Cantrell, Jr.

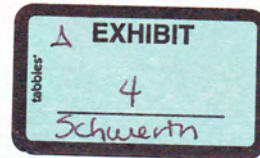
John R. Cantrell, Jr.
Attorney for Defendant
P.O. Box 1276
Goose Creek, SC 29445
Telephone: (843) 797-2454
Facsimile: (309) 213-0922
Email: lawyer@comcast.net
SC Bar # 10309



1890 Sam Rittenburg Blvd. #116
Charleston, SC 29407
(843) 573-9980

April 12, 2016

Roby A. Adams
4924 Chartwell Drive
North Charleston, SC 29420



NOTICE OF ACCELERATION

Re: 1st Franklin Financial Corporation – Account Number: 8827-008795-1
Credit Loan Transaction Date: 10/23/2015

Dear Roby Adams,

You are hereby notified that due to your default of the terms and conditions of your credit loan transaction with our company, we have exercised our right to accelerate to maturity the entire remaining unpaid balance, including accrued interest and other lawful charges.

As a result, the entire remaining balance of \$ 4,351.24 is due and payable immediately. 1st Franklin has started legal proceedings to collect the unpaid balance and may take other legal action, including repossession of any goods or motor vehicles if pledged as collateral for the credit loan transaction. You may also be required to pay filing fees and court costs in addition to the amount stated above.

If you would like to pay this amount in full, you must contact us immediately upon receipt of the Notice.

Sincerely,

Terri Schwerin
Branch Manager

4714
2/2016

Distribution Instructions: File Copy, Borrower(s), Owner(s)

DY

ELECTRONICALLY FILED - 2020 Jul 06 9:17 PM - DORCHESTER - COMMON PLEAS - CASE#2017CP1800819

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SUMMONS

2016 JUN 20 AM 10:00
SHERIFFS OFFICE
CIVIL PROCESS

IN THE SUMMERVILLE MAGISTRATE

INSTRUCTIONS FOR DEFENDANT

1. If you do not wish to oppose plaintiff's claim you may:
 - a. Contact plaintiff and make an out-of-court settlement with the plaintiff before the trial date and file with the magistrate court a dismissal of the case signed by the plaintiff, or
 - b. Make no answer to the complaint. In that case, the plaintiff will be given a default judgment against you in the amount specified in the complaint.
2. If you wish to oppose the claim:
 - a. You must file an answer with the magistrate's court within the time limit specified in the summons. If you fail to answer within that time period, you lose your right to defend the case and the plaintiff may be given a default judgment against you in the amount specified in the complaint. Your answer may be made in writing in a form approved by the magistrate, or your answer may be made orally to the magistrate's court if you appear in person within the time limit specified in the summons.
 - b. If you answer within the specified time, you will be notified of the time and date of the trial. You must maintain a correct mailing address with the court and you must appear for trial. Should you fail to appear, you lose your right to defend the case and the plaintiff may be given a default judgment against you in the amount specified in the complaint.
 - c. At the time for trial you must bring with you all books, papers, witnesses, and evidence you have to establish your defense. You are required to comply with the South Carolina Rules of Evidence.
 - d. At your request the court will issue a subpoena for any witness you may need (you must request the subpoena as soon as possible and before the trial date). There is a fee of \$3.00 for the magistrate to prepare and mail a subpoena. If the subpoena is delivered by a deputy, there is an additional service fee of \$8.00 that must be paid to the court. Further, you will be responsible to the witness for a fee of \$25.00.
3. If you desire a jury trial, you must request one in writing at least five (5) working days prior to the date set for trial. If no jury trial is timely requested, the matter will be heard and decided by the magistrate.
4. If you have a claim against the plaintiff that grows out of the same transaction or occurrence as the plaintiff's claim, you may file a counterclaim. The counterclaim must be filed with the magistrate within the time limit specified in the summons for answering. The counterclaim must be made in writing in a form approved by the magistrate, or it may be made orally to the magistrate's court if you appear in person within the time limit specified in the summons. Your counterclaim will be tried at the same time as the plaintiff's claim if it does not exceed the jurisdiction of the magistrate to hear. If the counterclaim exceeds the magistrate's jurisdiction, the entire matter will be transferred to the circuit court.
5. If you have a claim against the plaintiff that does not grow out of the same occurrence or transaction as the plaintiff's claim, you may file a claim (complaint) against the plaintiff. This claim would be heard separate and apart from the plaintiff's claim against you.
6. If you are a member of the Armed Services of the United States, please advise the court upon receipt of this summons.
7. If you are under 18 years of age, please advise the court upon receipt of this summons.
8. If you are a prisoner in any municipal, county, state, or federal jail or prison, please advise the court upon receipt of this summons.
9. You may be represented by an attorney, but are not required to have one. The magistrate's court will explain the procedure of the court and will help you prepare papers related to your action if you require such assistance. The court cannot, however, represent you or provide you with an attorney or give you any legal advice.
10. If you are a business and are going to be represented by a Non-Lawyer, a Non-Lawyer Authorization Form must be included with your Answer/Counterclaim. (See 33-1-103 SC Code of Laws)

2016CV1810302148

CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

1st Franklin Financial Corporation)

PLAINTIFF)

1890 Sam Rittenburg Blvd. #116)

STREET ADDRESS)

Charleston, SC 29407)

CITY, STATE ZIP)

(843) 573-9980)

TELEPHONE)

VS.)

Roby A Adams)

DEFENDANT(S))

4924 Chartwell Drive)

STREET ADDRESS)

North Charleston, SC 29420)

CITY, STATE ZIP)

(843) 813-2695)

TELEPHONE)

IN THE MAGISTRATE'S COURT

COMPLAINT

I, 1st Franklin Financial Corp., the plaintiff in this civil action do make the following claims:

1. I believe the defendant, Roby A. Adams, is a resident of Dorchester County, and resides at 4924 Chartwell Dr., North Charleston, SC which is within Judge _____'s magisterial jurisdiction or this Complaint is properly filed in Dorchester County.

2. I make this complaint on the following:

This is a suit on a note: Two (2) copies of note attached. Defendant has defaulted in payment of said note with balance of \$4,431.24 now due and payable. (Attach supplement if necessary)

3. I believe, because of the above information, that I am entitled to and do request a judgment for **\$4,431.24** and/or other relief as below requested:

Pavoff on account \$4,351.24 plus court cost of \$80.00.

including any costs resulting in this action.

I state under penalty of perjury that the above is correct and truthful, except those based on my information and belief.

Dated: April 12, 2016

Gene Schwen
Signature of Plaintiff (or his attorney)
manager

SCCA/701 (Amended 05/08)

LOAN AGREEMENT

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO § 15-48-10 OF THE SOUTH CAROLINA CODE OF LAWS (1976).

ACCOUNT NUMBER

8827-008795-1 1

BORROWER'S NAME / MAILING ADDRESS

Roby A Adams
4924 CHARTWELL DR
NORTH CHARLESTON, SC 29420-7000

Lender's Name and Address:

1ST FRANKLIN FINANCIAL CORPORATION
1890 SAM RITTENBURG BLVD., SUITE 116
CHARLESTON, SC 29407

THIS DOCUMENT IS
PLEGDED AS COLLATERAL
TO WELLS FARGO
PREFERRED CAPITAL INC
AS AGENT

DATE OF LOAN	FIRST PAYMENT DUE DATE	REMAINING PAYMENTS DUE SAME DAY EACH MONTH AS FIRST PAYMENT, IF NO SUCH DAY EXISTS ON LAST DAY OF MONTH.	FINAL PAYMENT DUE DATE	FIRST PAYMENT	OTHER PAYMENTS	PAYABLE IN
10/23/2015	11/23/2015		04/23/2017	\$ 276.00	\$ 276.00	18 MONTHLY PAYMENTS

\$ 1,171.76 Finance Charge \$ 4,968.00 Total of Payments 35.98 % Annual Percentage Rate

ITEMIZATION OF AMOUNT FINANCED

\$ 2,887.30 Amount Paid on Your Prior Account
\$ 571.23 Total Amount Paid To You or To You and Others at Your Request
* \$ N/A Public Officials - Filing Fees
* \$ 6.00 Ins. Company - Non-Filing Ins. - Personal Property
* \$ N/A Ins. Co. - Auto Ins. Coverage
* \$ N/A Ins. Co. - 14-Day Disability Ins. - Mo. Benefit
* \$ 40.99 Ins. Co. Life Ins. - Decreasing Coverage
* \$ 290.63 Ins. Co. - Personal Property Ins. - Dual Int. Coverage
* \$ N/A Involuntary Unemployment Ins. - Exp. of Benefit Below
\$ 3,796.24 AMOUNT FINANCED

LIST OF CHECKS TO YOU OR TO YOU AND OTHERS

\$ 571.23 You
\$ You and
\$ You and
\$ You and
\$ You and
\$ You and
\$ You and
\$ You and
\$ You and
\$ You and

*THESE AMOUNTS ARE PAID TO OTHERS ON YOUR BEHALF.

You acknowledge that we may have a financial interest in the sale of insurance products by virtue of commission income that we may receive. If Unemployment Insurance is written, the BENEFIT will be the lesser of \$1000.00 or the amount of your regularly scheduled payments as shown above, subject to certain limits as explained in the Certificate of Insurance.

NOTE AND SECURITY AGREEMENT

This NOTE AND SECURITY AGREEMENT, (hereinafter referred to as "Agreement") covers your indebtedness with 1st Franklin Financial Corporation. The words "you" and "your" refer to all of the people who sign below as Borrower or Co-signer. The words "we," "us" and "our" refer to 1st Franklin. If you have any questions about the provisions of this Agreement, please do not hesitate to ask.

PROMISE TO PAY: You agree to repay the amount shown above as Total of Payments in consecutive monthly payments. Your payment schedule is shown above. Each payment you make is applied first to any late charge due, then to reduce the amount owing on your account.

LATE PAYMENT: You agree to pay a late charge of 5% of any payment or portion of a payment which is not paid within 10 days of the day it is due, subject to a maximum charge of \$18.00 or a minimum charge of \$7.20, or such maximum or minimum charges that may later be established or adjusted by operation of law. We will not collect a late charge more than once for the same monthly payment. You also agree to pay our reasonable expenses in the collection of this debt in the event of your default, including reasonable attorney's fees not in excess of 15% of the unpaid balance if allowed by law. We may also take the steps set forth herein as remedies after default. Acceptance by us of a late payment or late charge does not excuse your late payment or mean that you can keep making payments after they are due.

CONVERSION: If two payments or portions thereof are in default for 10 days or more, you agree that we may, at our option, refund the unearned portion of the finance charge as of the due date of the first delinquent payment and thereafter charge a finance charge on the unpaid amount financed outstanding from time to time at the Annual Percentage Rate shown above. Each payment shall be applied first to the finance charge and the remainder to the unpaid amount financed until the loan is fully paid.

PREPAYMENT: You may pay more each month than the amount of your regular payment, and you may pay your loan in full at any time. If you prepay in full by cash, a new loan, a renewal, or refinancing, we will refund the unearned finance charge using the Rule of 78 method. No finance charge refund of less than \$1.00 will be made, and if payment in full is by cash, we may retain a minimum finance charge of \$15 if we have earned less than \$15 at the time of prepayment. Upon prepayment in full we will also cancel any life, disability, personal property, or auto insurance coverage written in connection with this loan and will

Account Number

8827-008795-1

CONTINUATION OF NOTE AND SECURITY AGREEMENT

SECURITY AND SECURITY INTEREST: To secure the repayment of the Note contained in this Agreement, you are granting to us a security interest in the following properties. You confirm that none of the items listed below are used by you in your work for wages.

☐ The following described motor vehicle(s) with all equipment, parts and accessories:

YR.	MAKE	MODEL	SERIAL NO.	INSURED THROUGH LENDER (Yes/No)
1.				
2.				
3.				

☒ The following Personal Property which is valued at \$ 6,250.00. Any item labeled in the 300 series can not be covered under the personal property insurance coverage that is available through the Lender. If you have pledged a television or radio, you confirm by signing on the reverse that you have not pledged the only television or radio that you own.

- [115] Computer & Monitor, Desktop w/Monitor, Acer, PWSC90202035001C7F6900 350.00
- [010] 2nd Television, 52", JVC, 50A330 900.00
- [075] Camera and Accessories, Canon, 639634896 250.00
- [255] Lawn Mower - Riding, Craftsman, 850.00
- [250] Lawn Mower - Push, 27" Self-Propelled, Craftsman, 300.00

2016 CV 1810305402

CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

2017-CP-18- 819

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

1st Franklin Financial Corporation)

PLAINTIFF)

1890 Sam Rittenburg Blvd. #116)

STREET ADDRESS)

Charleston, SC 29407)

CITY, STATE ZIP)

(843) 573-9980)

TELEPHONE)

VS.)

Roby A. Adams)

DEFENDANT(S))

4924 Chartwell Drive)

STREET ADDRESS)

North Charleston, SC 29420)

CITY, STATE ZIP)

(843) 813-2695)

TELEPHONE)

COMPLAINT
2017 MAY 15 PM 4:47
CLERK OF COURT
DORCHESTER COUNTY
FILED-RECORDED

I, 1st Franklin Financial Corp., the plaintiff in this civil action do make the following claims:

1. I believe the defendant, Roby A Adams, is a resident of Dorchester County, and resides at 4924 Chartwell Drive North Charleston, SC which is within Judge _____'s magisterial jurisdiction or this Complaint is properly filed in Dorchester County.

2. I make this complaint on the following:

This is a suit on a note; Two (2) copies of Note, Notice of Right To Cure & Authorization for Non-Lawyer Representative attached. Defendant has defaulted in payment of said note with balance of \$4,342.16 now due and payable. (Attach supplement if necessary)

3. I believe, because of the above information, that I am entitled to and do request a judgment for \$4,342.16 and/or other relief as below requested:

Payoff on account \$4,342.16.

including any costs resulting in this action.

I state under penalty of perjury that the above is correct and truthful, except those based on my information and belief.

Dated: September 22, 2016

Theresa Schwen
Signature of Plaintiff (or his attorney)

manager



1890 Sam Rittenburg Blvd., Suite 116
Charleston SC 29417
(843) 573-9980

FILED-RECORDED
2017 MAY 15 PM 4:47
CHERYL J. HARRIS
CLERK OF COURT
DORCHESTER COUNTY

Date: December 05, 2015

Roby A Adams
4924 Chartwell Dr
North Charleston SC 29420-7000

Account Number: 8827 008795 1

Last Day for Payment: December 28, 2015

Amount Now Due: \$289.80

Dear Roby A Adams,

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late.

If you do not pay by that date, we may exercise our rights under the law. These rights include the right to repossess any property held as collateral for this transaction and the right, in many instances, to hold you personally responsible for any difference between the amount the property brings in a sale and the balance due us on the credit transaction in question.

If you are late again in making your payments, we may exercise our rights without sending you another notice like this one.

If you have questions, write or telephone us promptly.

Sincerely,

1st Franklin Financial Corporation



FILED-RECORDED
2011 MAY 15 PM 4:47
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)

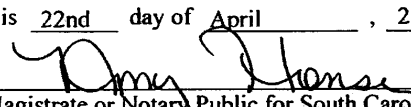
IN THE MAGISTRATE'S COURT

COUNTY OF DORCHESTER)

AUTHORIZATION FOR
NON-LAWYER REPRESENTATIVE

I, the undersigned, as Vice President of 1st Franklin Financial Corporation, authorize Theresa "Terri" Schwerin a non-lawyer, to represent this business in civil actions in Magistrate's Court. I acknowledge that the business is legally bound by all actions undertaken by the representative during the course of the representation, as well as to any judgment of the Court obtained therefrom. I further acknowledge that it is my responsibility to notify the Court of any change in the status of this authorization.

Sworn to and Subscribed before me
this 22nd day of April, 2016.


Magistrate or Notary Public for South Carolina


Signature

My Commission expires 03/22/2026) For 1st Franklin Financial Corporation

Virginia Palmer

Print Name

864-429-5626

Business Telephone #

4091 SC 02/2009

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO § 15-48-10 OF THE SOUTH CAROLINA CODE OF LAWS (1976).

8827-008795-1 1

Borrower's Name / Mailing Address

Roby A Adams
4924 CHARTWELL DR
NORTH CHARLESTON, SC 29420-7000

Lender's Name and Address:
1ST FRANKLIN FINANCIAL CORPORATION
 1890 SAM RITTENBURG BLVD., SUITE 116
 CHARLESTON, SC 29407

THIS DOCUMENT IS
PLEGGED AS COLLATERAL
TO WELLS FARGO
PREFERRED CAPITAL, INC
AS AGENT

DATE OF LOAN	FIRST PAYMENT DUE DATE	REMAINING PAYMENTS DUE SAME DAY EACH MONTH AS FIRST PAY- MENT, IF NO CLOSING PAY.	FINAL PAYMENT DUE DATE	FIRST PAYMENT	OTHER PAYMENTS	PAYABLE IN
10/23/2015	11/23/2015		04/23/2017	\$ 276.00	\$ 276.00	18 MONTHLY PAY- MENTS

\$ 1,171.76 Finance Charge \$ 4,968.00 Total of Payments 35.98 % Annual Percentage Rate

ITEMIZATION OF AMOUNT FINANCED

\$ 2,887.39 Amount Paid on Your Prior Account

\$ 571.23 Total Amount Paid To You or To You and Others at Your Request _____

\$ N/A Public Officials – Filing Fees

\$ 6.00 Ins. Company – Non-Filing Ins. – Personal Property

\$ N/A Ins. Co. – Auto Ins. Coverage \$ NONE

\$ N/A Ins. Co. – 14–Day Disability Ins. – Mo. Benefit \$ NONE

\$ 40.99 Ins. Co. Life Ins. – Decreasing Coverage \$ 4,968.00

\$ 290.63 Ins. Co. – Personal Property Ins. – Dual Int. Coverage \$ 4,968.00

\$ N/A Involuntary Unemployment Ins. – Exp. of Benefit Below \$ NONE

\$ 3,796.24 AMOUNT FINANCED

*THESE AMOUNTS ARE PAID TO OTHERS ON YOUR BEHALF.

LIST OF CHECKS TO YOU OR TO YOU AND OTHERS

571.23 You
\$ _____ You and
\$ _____ You and
\$ _____ You and
\$ _____ You and
\$ _____ You and
\$ _____ You and
\$ _____ You and
\$ _____ You and
\$ _____

FILED - RECORDED
MAY 15 PM 4:47
CLERK OF COURT
ORCHES TER COUNTY

***You acknowledge that we may have a financial interest in the sale of insurance products by virtue of commission income that we may receive.**

If Unemployment insurance is written, the BENEFIT will be the lesser of \$1000.00 or the amount of your regularly scheduled payments as shown above, subject to certain limits as explained in the Certificate of Insurance.

NOTE AND SECURITY AGREEMENT

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LATE PAYMENT: You agree to pay a late charge of 5% of any payment or portion of a payment which is not paid within 10 days of the day it is due, subject to a maximum charge of \$18.00 or a minimum charge of \$7.20, or such maximum or minimum charges that may later be established or adjusted by operation of law. We will not collect a late charge more than once for the same monthly payment. You also agree to pay our reasonable expenses in the collection of this Note in the event of your default, including reasonable attorney's fees not in excess of 15% of the unpaid balance if allowed by law. We may also take the steps set forth herein as remedies after default. Acceptance by us of a late payment or late charge does not excuse your late payment or mean that you can keep making payments after they are due.

CONVERSION: If two payments or portions thereof are in default for 10 days or more, you agree that we may, at our option, refund the unearned portion of the finance charge as of the due date of the first delinquent payment and thereafter charge a finance charge on the unpaid amount financed outstanding from time to time at the Annual Percentage Rate shown above. Each payment shall be applied first to the finance charge and the remainder to the unpaid amount financed until the loan is fully paid.

PREPAYMENT: You may pay more each month than the amount of your regular payment, and you may pay your loan in full at any time. If you prepay in full by cash, a new loan, a renewal, or refinancing, we will refund the unearned finance charge using the Rule of 78 method. No finance charge refund of less than \$1.00 will be made, and if payment in full is by cash, we may retain a minimum finance charge of \$15 if we have earned less than \$15 at the time of prepayment. Upon prepayment in full, we will also cancel any life, disability, personal property, or auto insurance coverage written in connection with this loan, and will refund any unearned premium using the Rule of 78 method. Life, disability and personal property insurance refunds are subject to a minimum retained premium of \$3.00. Automobile insurance refunds are subject to a minimum refund of \$1.00. Charges for non-filing insurance are not refundable.

RETURNED CHECK CHARGE: If you make a payment with any check, draft, negotiable order of withdrawal, or like instrument drawn on a bank or other depository institution and such instrument is not paid or is dishonored by such institution, you further agree to pay us a Service Charge of \$30.00.

CREDIT LIFE AND CREDIT DISABILITY INSURANCE: Credit insurance is not required to obtain this loan. If you chose for us to write individual credit life insurance, we will write individual decreasing-term credit life insurance on the Borrower who signs first below. If you chose for us to write joint credit life insurance, we will write joint decreasing-term credit life insurance on the Borrowers shown above. If you chose for us to provide credit disability insurance, we will write 14-day credit disability insurance, covering only the Borrower who signs first below. If you chose for us to provide involuntary unemployment insurance, the insurance will cover only the Borrower who signs first below. Each Borrower who signs this Loan Agreement agrees that the insurance is part of the debt even though he may not be the one insured. Refer to your Certificate of Insurance for complete details. You have a right to cancel the credit life and credit disability insurance within 15 days of the date of this loan and receive a refund of the premium charged. If you want to do this, each Borrower must agree in writing, and you must return the policy certificate to us.

CREDIT INSURANCE: You acknowledge that the Lender and/or its agent has a financial interest in the sale of any insurance, and may benefit from the sale of such insurance by virtue of commission income which it may receive.

WAIVERS: You waive your right to have a trial by jury resolve any dispute alleged against us. You waive your right to serve as a class action representative, as a private attorney general, and as a member of or as a participant in any lawsuit or arbitration filed against us by any person or group not a party to this Loan Agreement.

On the reverse side of this document, there is a continuation of the agreement, which contains important provisions, including a grant by you of a security interest in certain property.

SIGNATURES: When you sign below, you are agreeing to all the terms and conditions of this Loan Agreement and acknowledge receipt of a copy. You also acknowledge receipt of a copy of the Federal Disclosure Statement. The Borrower who signs first also acknowledges receipt of a certificate of insurance for any insurance written in connection with this loan. Cosigner acknowledges receipt of one copy of the Federal Trade Commission Notice to Cosigner. You also acknowledge that you have been involved in the determination of and agree with the total value of the items of personal property \$ 6,250.00 as detailed on the reverse side hereof. You sign this Loan Agreement under your hand and seal on the date of loan shown above.

ALTERNATIVE DISPUTE RESOLUTION AGREEMENT: BORROWER AND LENDER DO AGREE TO AN ALTERNATIVE DISPUTE RESOLUTION FOR THE SETTLEMENT OF ANY CONTROVERSIES BETWEEN THEM. THE TERMS OF THE ALTERNATIVE DISPUTE RESOLUTION AGREEMENT ARE SET FORTH IN A SEPARATE AGREEMENT. THE PARTIES HEREBY ACKNOWLEDGE THAT THE AGREEMENT OF THE BORROWER TO ENTER INTO THE SEPARATE AGREEMENT IS A MATERIAL INDUCEMENT TO THE LENDER'S ENTERING INTO THIS AGREEMENT WITH THE BORROWER.

Executed on behalf of Lender by:

Melissa DeWine
Authorized Representative and executed by Power(s) in the presence of:

Witness Tiffany Stewart

Ruby C. Avel (L.S.)
Signature of Borrower

Signature of Borrower (L.S.)

Signature of Co-Signer (L.S.)

Signature of Co-Signer (L.S.)

CONSENT TO SECURITY AGREEMENT: In consideration of our granting this loan and to the extent of your interest in the property, you grant us a security interest in any personal property described above. You are not personally obligated to repay this loan.

Witness

Co-Owner

(L.S.)

SC 5400

Page 2 of 3

01/2015 10182-2

Distribution Instructions – Borrower(s), Co-Signer(s), Co-Owner, 2 File Copies, Pegboard

Account Number
8827-008795-1

CONTINUATION OF NOTE AND SECURITY AGREEMENT

SECURITY AND SECURITY INTEREST: To secure the repayment of the Note contained in this Agreement, you are granting to us a security interest in the following properties. You confirm that none of the items listed below are used by you in your work for wages.

☐ The following described motor vehicle(s) with all equipment, parts and accessories:

YR.	MAKE	MODEL	SERIAL NO.	INSURED THROUGH LENDER (Yes/No)
1.				
2.				
3.				

☒ The following Personal Property which is valued at \$ 6,250.00. Any item labeled in the 300 series can not be covered under the personal property insurance coverage that is available through the Lender. If you have pledged a television or radio, you confirm by signing on the reverse that you have not pledged the only television or radio that you own.

[115] Computer & Monitor, Desktop w/Monitor, Acer, PWSC90202035001C7F6900 350.00
[010] 2nd Television, 52", JVC, 50A330 900.00
[075] Camera and Accessories, Canon, 639634896 250.00
[255] Lawn Mower - Riding, Craftsman, 650.00
[250] Lawn Mower - Push, 27" Self-Propelled, Craftsman, 300.00
[010] 2nd Television, 40", Sharp, 350.00
[010] 2nd Television, 32", Sharp, 350.00
[010] 2nd Television, 70", Sharp, M19440D20187 2,000.00
[005] 2nd Radio, 10" Table Saw, Craftsman, 200.00
[540] Tools - Electric Saw, Radial, Craftsman, 200.00
[500] Stereo System, CD/Satellite, Bose, 500.00

located on or about your residence 4924 CHARTWELL DR. NORTH CHARLESTON, SC 29420-7000

☐ The following Personal Property, valued at \$ _____, in which Lender is taking or is retaining a purchase-money security interest.

NON-FILING INSURANCE: If we do not record our security interest in the personal property listed on the reverse side, you agree that we may exercise our right under state law to purchase and charge you for Non-Filing Insurance.

PERSONAL PROPERTY INSURANCE: Personal property insurance coverage is required on the personal property given as security. You may obtain it from anyone you want or provide it through an existing policy provided the insurance company is acceptable to us. If we write this insurance through a company we represent, we will write dual interest property insurance for the term of the loan. The premium and coverage amounts for this insurance are shown on the reverse side. Refer to your Certificate of Insurance for complete details.

AUTOMOBILE INSURANCE: Insurance coverage is required on the automobile given as security. You may obtain it from anyone you want or provide it through an existing policy provided the insurance company is acceptable to us. If we write this insurance through a company we represent, we will write limited physical damage insurance for the term of the loan. The premium and coverage amounts for this insurance are shown on the reverse side. Refer to your Certificate of Insurance for complete details.

OWNERSHIP AND DUTIES TOWARD PROPERTY: You represent that you own the property being given as security. You agree to keep the property in your possession and will not move it from the address shown. You agree to maintain it in good condition. The loss or destruction of this property from any cause, whether or not your fault, will not affect in any way your liability to repay this Note. You agree not to sell or otherwise dispose of the property without our prior consent, nor allow it to be used for any unlawful purpose. You agree to pay all taxes when due and maintain adequate insurance coverage through a company which meets with our approval. If you fail to pay any taxes or liens against the property or fail to maintain adequate insurance coverage, we may, at our option, make advances to pay any amounts due. Any advances will become a part of this Note amount and will be due and payable immediately.

DEFAULT: You will be in default if any one or more of the following occurs: (1) you fail to make a payment on this Note or any refinancing of this Note when it comes due; (2) the prospect of payment, performance or realization of our collateral is significantly impaired.

NOTICE AFTER DEFAULT: If you fail to make a required payment for 10 days or more, we will give you notice of your right to cure such default within 20 days after such notice is sent. If you fail to cure such default in the manner stated in the notice, or if you cure the default but fail to make a future payment when due, or if you default in any other manner under this agreement we may exercise our remedies after default without any notice to you.

REMEDIES AFTER DEFAULT: If you default, we may:

- (1) accelerate the maturity of the Note, making the net amount you owe due and payable. This net amount will be the unpaid balance of your account at that time less refunds as set forth in the Prepayment paragraph of this Agreement. You agree to pay the reasonable expenses incurred by us in the collection of this Note, including reasonable attorney's fees not in excess of 15% of the unpaid balance if we turn this Note over to an attorney who is not our employee, for collection if allowed by law.
- (2) demand additional security or parties obligated to repay this Note;
- (3) exercise any rights to remedy given to us by the Uniform Commercial Code and other applicable state or federal law;
- (4) require you to make available to us the property given as security for this Note. You agree that we may take immediate possession of the security without your having a prior judicial hearing and that we may enter your property or any other property where the security or any part of it is located in order to take possession, if possession can be taken without entry into a current dwelling used as a current residence and without the use of force or other breach of the peace. We may then sell the property at public or private sale, with or without advertisement. We will mail a Notice of the Sale by certified mail to the last address you provided to us at least 10 days before the date of sale. We may be a purchaser at the sale, and the proceeds will be distributed as required by the Uniform Commercial Code.

You agree that by our electing any one or more of the above remedies that we are not waiving our right to later elect or use any other remedy until this Note is paid in full. You also agree that our delay in enforcing any of these remedies does not cause us to lose any of our rights or remedies.

AUTHORIZATION TO COMMUNICATE WITH THIRD PERSONS: You authorize us to contact third persons in connection with making or collecting your loan, consistent with our Privacy Policy which has been adopted to protect your non-public, personal information.

NOTICE: If you believe that information that we have provided to a consumer reporting agency is inaccurate, please notify us of the specific information which is inaccurate at: 1st Franklin Financial Corporation, Attention: Compliance Department, Post Office Box 880, Toccoa, GA 30577. If you have any other questions about the handling of your account, you may write to us at this same address.

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	
COUNTY OF DORCHESTER	)	
	)	C.A. NO.: 2016-CV-18-10305402
	)	
1 st Franklin Financial Corporation	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT'S ANSWER AND
	)	COUNTERCLAIMS
Roby A. Adams	)	
	)	(Jury trial demanded as to all matters
	)	so triable)
Defendant.	)	
_____	)	

NOW COMES Defendant herein, by and through counsel, and in Answer to Plaintiff's complaint alleges and says as follows:

Each and every allegation of the Complaint not herein specifically admitted, qualified, or explained is denied.

FIRST DEFENSE

In answer to the specific allegations in Plaintiff's Complaint, Defendant states:

1. Defendant admits the allegations of paragraph 1 of plaintiff's complaint.
2. Defendant admits that the indicated documents were attached to plaintiff's complaint, as alleged in paragraph 2 of the complaint, but denies that defendant owes plaintiff \$4,342.16 as alleged.
3. Defendant denies the allegations of paragraph 3 of plaintiff's complaint. In addition, defendant requests that the court take notice that the plaintiff has alleged two different amounts being due on this account, with the first amount of \$4,351.24 being alleged in the prior dismissed complaint that was filed on this

account under case number 2016-CV-18-10302148 on June 20, 2016, so plaintiff's allegations regarding any amount due are unreliable.

SECOND DEFENSE and MOTION TO DISMISS COMPLAINT FOR FAILURE TO
COMPLY WITH RULE 9(i)

4. That the allegations as set forth above are realleged and incorporated by reference as if set forth fully herein.
5. That, pursuant to Rules 12(b) and 9(i), SCRCPC defendant moves to dismiss plaintiff's complaint for failure to comply with Rule 9(i) in regards to providing a verified and itemized statement of account.
6. Rule 9(i) requires that in an action on an account that the plaintiff must attach a verified copy of the account to the pleading, and that the accounting must be itemized.
7. No verified statement of account was attached to plaintiff's complaint.
8. Plaintiff's complaint also does not contain any itemization of any amounts due under the account, but merely states an alleged payoff amount due without any computation of that amount, which violates the requirements of Rule 9(i), SCRCPC, for which cause the complaint should be dismissed.

FIRST COUNTERCLAIM – SCCPC VIOLATION

9. That each and every allegation and defense as set forth above is realleged and incorporated by reference as if set forth fully herein.
10. That defendant is a "consumer" and this credit transaction is a "consumer credit transaction" within the meaning of S.C. Code 37-1-201.
11. That S.C. Code 37-5-108 prohibits unconscionable agreements or conduct in

regards to a consumer credit transaction.

12. That, upon information and belief, plaintiff has falsely represented the amount allegedly owed in that it has asserted that two different amounts are owed in two separate complaints that have been filed with this court in two different cases, namely the amount of \$4,351.24 alleged in the June 20, 2016 complaint that was filed with this court and the lesser amount of \$4,342.16 alleged in the current complaint filed October 14, 2016, and one or both of these representations are in violation of S.C. Code 37-5-108(5)(c)(1). Defendant further alleges that no payments were made by defendant to plaintiff since June 20, 2016 that could have reduced the amount owed on the account.
13. That plaintiff paid the Dorchester County Magistrate's court \$80.00 to file the complaint in the first action against the defendant, which was case number 2016-CV-18-10302148.
14. That a portion of the filing fee, upon information and belief in the amount of \$10.00, was paid to the Dorchester County Sheriff's Office to serve the summons and complaint in the first case upon the defendant.
15. That plaintiff could have chosen to hire a private process server instead and then would only have had to pay \$70.00 to file the first case, instead of \$80.00.
16. That plaintiff's choice to pay the extra amount and use the Dorchester County Sheriff's office to serve the first complaint made the sheriff's office plaintiff's agent for service of process upon the defendant.
17. That instead of personally serving the first complaint upon the defendant, that on April 20, 2016, the summons and complaint in the first case was initially served

upon Doug Rose, who is defendant's neighbor, as is evidenced by the attached affidavit of service.

18. That as a direct and proximate result of the improper service of the first complaint, defendant has suffered extreme embarrassment over this matter and has shown other symptoms of severe emotional distress.
19. That plaintiff's agent's actions in improperly serving the first complaint are in violation of S.C. Code Sec. 37-5-108(5)(b)(4), since providing the first complaint to defendant's neighbor was a communication to that neighbor regarding defendant's debt.
20. That plaintiff's agent's actions in improperly serving the first complaint violated S.C. Code Sec. 37-5-108(5)(d), since defendant's neighbor had no legitimate business need for information regarding defendant's debt and this disclosure might reasonably be found to have damaged the defendant's reputation.
21. That also, when plaintiff filed the first complaint, plaintiff failed to file with this court the non-lawyer authorization form required by S.C. Code Sec. 33-1-103.
22. As a result of plaintiff's failure to file the required non-lawyer authorization form, plaintiff's first case was dismissed by this court on September 6, 2016.
23. That S.C. Code Sec. 33-1-103 provides that if a plaintiff complies with this Code section, that plaintiff's non-lawyer representative is not engaging in the unauthorized practice of law. This safe harbor only exists if plaintiff complies with this Code section. In cases such as this one where plaintiff did not comply with this Code section, plaintiff's non-lawyer representative was engaging in the unauthorized practice of law, in violation of both this Code section, and S.C.

Code Sec. 40-5-310, which governs the unauthorized practice of law and provides that any person who engages in the unauthorized practice of law is guilty of a felony, and upon conviction must be fined up to \$5,000.00 or imprisoned up to five years, or both, which means that the unauthorized practice of law is a very serious offense.

24. Plaintiff's non-lawyer representative was engaging in the unauthorized practice of law as plaintiff's agent, as part of her job duties for plaintiff, so pursuant to the doctrine of respondeat superior, plaintiff is responsible for it's agent's unauthorized practice of law.
25. Plaintiff's agent's unauthorized practice of law is a violation of S.C. Code Sec. 37-5-108(2).
26. As a result of plaintiff's agent's unauthorized practice of law, and the resulting dismissal of plaintiff's first case against defendant, the defendant has had to incur legal fees in order to successfully defend that unwarranted lawsuit.
27. That defendant filed a complaint with the South Carolina Department of Consumer Affairs on June 21, 2016, in compliance with S.C. Code Sec. 37-5-108(6).
28. That, upon information and belief, plaintiff is engaging in such other and further practices that violate S.C. Code 37-5-108 as may be shown at trial.
29. That defendant is entitled to recover her actual damages in an amount to be proven at trial plus up to \$1,000.00 in statutory damages per violation along with her attorney's fees and the costs incurred in pursuing this action as authorized pursuant to S.C. Code 37-5-108(2).

SECOND COUNTERCLAIM – SCUTPA VIOLATION

30. That each and every allegation and defense as set forth above is realleged and incorporated by reference as if set forth fully herein.
31. The factual allegations above, plus any facts that defendant may later establish at any hearing or trial in this matter constitute a violation of the South Carolina Unfair Trade Practices Act (“SCUTPA”), as may be found at South Carolina Code Sec. 39-5-10 *et seq.*.
32. To establish a violation of the SCUTPA, the defendant must establish that plaintiff has engaged in either unfair methods of competition or deceptive acts and practices in the conduct of any trade or commerce in South Carolina. It is also necessary to show that the improper conduct have an adverse impact upon the public interest, which requires that the improper conduct have the potential for repetition, which may be shown either by showing that the same kind of actions happened in the past or by showing that the plaintiff’s procedures create a potential for repetition of the improper conduct.
33. A violation of the SCUTPA allows any person who has lost money or property as a result of the unfair or deceptive acts or practices to recover actual damages, plus reasonable attorney fees and costs. If the court finds that the SCUTPA violation was willful or knowing, then the court must award treble damages, and may provide such other relief as is necessary or proper.
34. Plaintiff’s actions which are alleged above to be unfair, unconscionable, false, misleading or deceptive violate the SCUTPA.

35. Plaintiff is a lender. As part of plaintiff's normal business operations, it files lawsuits against consumers in an attempt to collect debts. These lawsuits that are filed by plaintiff constitute part of its normal trade or commerce in the state of South Carolina.
36. Plaintiff has repeated some of the same violations against defendant in both the first and second complaints on two separate occasions. Upon information and belief, plaintiff's debt collection complaints against other consumers in this state are substantially similar to the two debt collection complaints filed against the defendant. These facts demonstrate the element of repetition which is required in order to violate the SCUTPA.
37. Plaintiff either knew or should have known that it was filing lawsuits that violated the rules and statutes indicated above.
38. Plaintiff failed to exercise due diligence in reviewing and filing improper lawsuits against both defendant and other South Carolina consumers.
39. Plaintiff's actions in filing lawsuits that violated the rules and statutes indicated above were unfair or deceptive.
40. Plaintiff's actions in filing lawsuits that violated the above rules and statutes were knowing or willful.
41. Plaintiff should be enjoined from any further violations of the SCUTPA.
42. Defendant reserves the right to establish such other violations of the SCUTPA as defendant may be able to prove at any hearing or trial in this matter.

THIRD COUNTERCLAIM – NEGLIGENCE PER SE

43. That each and every allegation and defense as set forth above is realleged and

incorporated by reference as if set forth fully herein.

44. That plaintiff's actions alleged above which violate any statute constitute negligence per se under South Carolina law.
45. That plaintiff owed a duty to defendant to avoid violating any of the above rules or statutes.
46. That plaintiff's failure to follow the rules and statutes indicated above are the proximate cause of damages to the defendant, including defendant's need to incur otherwise unnecessary legal fees and expenses in defending plaintiff's unwarranted legal actions and pursuing recovery of those damages in this counterclaim.

THIRD DEFENSE

47. That defendant expressly reserves the right to assert any other defenses that may be available at law or equity.
48. Defendant expressly limits his recovery on his counterclaims to an amount to be limited by the jurisdictional limit of this court and agrees to reduce any amount awarded by the court to such amount as to be within this court's jurisdiction.

WHEREFORE, having fully responded to plaintiff's complaint, defendant prays this Court for the following relief:

1. That plaintiff's complaint be dismissed;
2. That plaintiff have and recover nothing from defendant;
3. That the court order trial by jury on all issues so triable in this case;
4. That this Court enter a judgment in favor of defendant ruling that defendant is either not indebted to plaintiff or indebted in a lesser amount than claimed by

plaintiff;

5. That the court find that the plaintiff has violated S.C. Code Sec. 37-5-108;
6. That the court find that the plaintiff has violated S.C. Code Sec. 39-5-10;
7. That the court find that the plaintiff's violation of S.C. Code Sec. 39-5-10 was either willful or knowing;
8. That the court issue an injunction preventing the plaintiff from any further violations of the SCUTPA (S.C. Code Sec. 39-5-10);
9. That the court award treble damages against the plaintiff for violations of S.C. Code Sec. 39-5-10, if appropriate;
10. That defendant have and recover from plaintiff a sum to be determined by the court for compensation for defendant's actual damages;
11. That defendant have and recover from plaintiff a sum to be determined by the court for compensation for defendant's attorney fees and costs;
12. That the court award punitive damages against the plaintiff for any actions that the court finds to be either reckless, willful, or intentional;
13. That defendant have and recover from plaintiff the sum of \$1,000.00 in statutory damages for each violation of S.C. Code 37-5-108; and
14. For such other and further relief as this Court deems just and proper.

December 1, 2016

Cantrell Legal, PC

By:


John R. Cantrell, Jr.

Attorney for Defendant

P.O. Box 1276

Goose Creek, SC 29445

Telephone: (843) 797-2454

Facsimile: (309) 213-0922

Email: lawyer@comcast.net
SC Bar # 10309

CERTIFICATE OF SERVICE

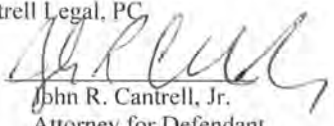
This is to certify that the undersigned has this day served the attached Defendant's Answer & Counterclaims on all the parties to this action by depositing a copy hereof, first-class postage prepaid, in the United States mail, addressed to the party or the attorney for each said party as follows:

1st Franklin Financial Corporation
1890 Sam Rittenburg Blvd. # 116
Charleston, SC 29407

Dated this December 1, 2016.

Cantrell Legal, PC

By:


John R. Cantrell, Jr.
Attorney for Defendant

DORCHESTER COUNTY SHERIFF'S OFFICE
L C Knight, Sheriff

101 Ridge Street
Suite 1
Saint George, SC 29477



STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

1ST FRANKLIN FINANCIAL
PLAINTIFF(s)

Case Number: 2016CV1810302148

vs

ROBY ADAMS
DEFENDANT(s)

AFFIDAVIT OF SERVICE

SERVICE OF: ROBY ADAMS
COURT: DORCHESTER COUNTY MAGISTRATE,
SUMMERVILLE
JUDGE: PATTON, KATRINA

PERSONALLY comes the undersigned, who says on oath that on the 20th day of April, 2016, at 10:06 AM , he/she served the ANSWER , COMPLAINT, SUMMONS on ROBY ADAMS by delivering unto DOUG ROSE, NEIGHBOR, at 4925 CHARTWELL DRIVE , NORTH CHARLESTON, SC 29420 personally copy(ies) thereof. Service of process was made in accordance with applicable statutes and the Rules of Civil Procedures in effect at the time of service.

Notary Statement

SWORN to before me on this the 21st day of April, 2016.

Angie Williams }
Notary Public For The State of South Carolina }
My Commission Expires 5/25/2016 }

Corey Anderson 377
COREY ANDERSON

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
1st Franklin Financial Corporation)
Plaintiff,)
vs.)
Roby A. Adams)
Defendant.)

IN THE MAGISTRATE'S COURT

2017-CP-18- 819

C.A. NO.: 2016-CV-18-10305402

FILED APR 26 2017

FIRST AMENDED DEFENDANT'S
ANSWER AND COUNTERCLAIMS

(Jury trial demanded as to all matters
so triable)

FILED-RECORDED
2017 MAY 15 PM 4:49
CLERK OF COURT
DORCHESTER COUNTY

NOW COMES Defendant herein, by and through counsel, and files this Amended
Answer to Plaintiff's complaint and alleges and says as follows:

Each and every allegation of the Complaint not herein specifically admitted,
qualified, or explained is denied.

FIRST DEFENSE

In answer to the specific allegations in Plaintiff's Complaint, Defendant states:

1. Defendant admits the allegations of paragraph 1 of plaintiff's complaint.
2. Defendant admits that the indicated documents were attached to plaintiff's
complaint, as alleged in paragraph 2 of the complaint, but denies that defendant
owes plaintiff \$4,342.16 as alleged.
3. Defendant denies the allegations of paragraph 3 of plaintiff's complaint. In
addition, defendant requests that the court take notice that the plaintiff has alleged
two different amounts being due on this account, with the first amount of
\$4,351.24 being alleged in the prior dismissed complaint that was filed on this

account under case number 2016-CV-18-10302148 on June 20, 2016, so plaintiff's allegations regarding any amount due are unreliable.

SECOND DEFENSE and MOTION TO DISMISS COMPLAINT FOR FAILURE TO
COMPLY WITH RULE 9(i)

4. That the allegations as set forth above are realleged and incorporated by reference as if set forth fully herein.
5. That, pursuant to Rules 12(b) and 9(i), SCRPC defendant moves to dismiss plaintiff's complaint for failure to comply with Rule 9(i) in regards to providing a verified and itemized statement of account.
6. Rule 9(i) requires that in an action on an account that the plaintiff must attach a verified copy of the account to the pleading, and that the accounting must be itemized.
7. No verified statement of account was attached to plaintiff's complaint.
8. Plaintiff's complaint also does not contain any itemization of any amounts due under the account, but merely states an alleged payoff amount due without any computation of that amount, which violates the requirements of Rule 9(i), SCRPC, for which cause the complaint should be dismissed.

FIRST COUNTERCLAIM – SCCPC VIOLATION

9. That each and every allegation and defense as set forth above is realleged and incorporated by reference as if set forth fully herein.
10. That defendant is a "consumer" and this credit transaction is a "consumer credit transaction" within the meaning of S.C. Code 37-1-201.
11. That S.C. Code 37-5-108 prohibits unconscionable agreements or conduct in

regards to a consumer credit transaction.

12. That, upon information and belief, plaintiff has falsely represented the amount allegedly owed in that it has asserted that two different amounts are owed in two separate complaints that have been filed with this court in two different cases, namely the amount of \$4,351.24 alleged in the June 20, 2016 complaint that was filed with this court and the lesser amount of \$4,342.16 alleged in the current complaint filed October 14, 2016, and one or both of these representations are in violation of S.C. Code 37-5-108(5)(c)(1). Defendant further alleges that no payments were made by defendant to plaintiff since June 20, 2016 that could have reduced the amount owed on the account.
13. That plaintiff paid the Dorchester County Magistrate's court \$80.00 to file the complaint in the first action against the defendant, which was case number 2016-CV-18-10302148.
14. That a portion of the filing fee, upon information and belief in the amount of \$10.00, was paid to the Dorchester County Sheriff's Office to serve the summons and complaint in the first case upon the defendant.
15. That plaintiff could have chosen to hire a private process server instead and then would only have had to pay \$70.00 to file the first case, instead of \$80.00.
16. That plaintiff's choice to pay the extra amount and use the Dorchester County Sheriff's office to serve the first complaint made the sheriff's office plaintiff's agent for service of process upon the defendant.
17. That instead of personally serving the first complaint upon the defendant, that on April 20, 2016, the summons and complaint in the first case was initially served

upon Doug Rose, who is defendant's neighbor, as is evidenced by the attached affidavit of service.

18. That as a direct and proximate result of the improper service of the first complaint, defendant has suffered extreme embarrassment over this matter and has shown other symptoms of severe emotional distress.
19. That plaintiff's agent's actions in improperly serving the first complaint are in violation of S.C. Code Sec. 37-5-108(5)(b)(4), since providing the first complaint to defendant's neighbor was a communication to that neighbor regarding defendant's debt.
20. That plaintiff's agent's actions in improperly serving the first complaint violated S.C. Code Sec. 37-5-108(5)(d), since defendant's neighbor had no legitimate business need for information regarding defendant's debt and this disclosure might reasonably be found to have damaged the defendant's reputation.
21. That also, when plaintiff filed the first complaint, plaintiff failed to file with this court the non-lawyer authorization form required by S.C. Code Sec. 33-1-103.
22. As a result of plaintiff's failure to file the required non-lawyer authorization form, plaintiff's first case was dismissed by this court on September 6, 2016.
23. That S.C. Code Sec. 33-1-103 provides that if a plaintiff complies with this Code section, that plaintiff's non-lawyer representative is not engaging in the unauthorized practice of law. This safe harbor only exists if plaintiff complies with this Code section. In cases such as this one where plaintiff did not comply with this Code section, plaintiff's non-lawyer representative was engaging in the unauthorized practice of law, in violation of both this Code section, and S.C.

Code Sec. 40-5-310, which governs the unauthorized practice of law and provides that any person who engages in the unauthorized practice of law is guilty of a felony, and upon conviction must be fined up to \$5,000.00 or imprisoned up to five years, or both, which means that the unauthorized practice of law is a very serious offense.

24. Plaintiff's non-lawyer representative was engaging in the unauthorized practice of law as plaintiff's agent, as part of her job duties for plaintiff, so pursuant to the doctrine of respondeat superior, plaintiff is responsible for its agent's unauthorized practice of law.
25. Plaintiff's agent's unauthorized practice of law is a violation of S.C. Code Sec. 37-5-108(2).
26. As a result of plaintiff's agent's unauthorized practice of law, and the resulting dismissal of plaintiff's first case against defendant, the defendant has had to incur legal fees in order to successfully defend that unwarranted lawsuit.
27. That defendant filed a complaint with the South Carolina Department of Consumer Affairs on June 21, 2016, in compliance with S.C. Code Sec. 37-5-108(6).
28. That, upon information and belief, plaintiff is engaging in such other and further practices that violate S.C. Code 37-5-108 as may be shown at trial.
29. That defendant is entitled to recover her actual damages in an amount to be proven at trial plus up to \$1,000.00 in statutory damages per violation along with her attorney's fees and the costs incurred in pursuing this action as authorized pursuant to S.C. Code 37-5-108(2).

SECOND COUNTERCLAIM – SCUTPA VIOLATION

30. That each and every allegation and defense as set forth above is realleged and incorporated by reference as if set forth fully herein.
31. The factual allegations above, plus any facts that defendant may later establish at any hearing or trial in this matter constitute a violation of the South Carolina Unfair Trade Practices Act (“SCUTPA”), as may be found at South Carolina Code Sec. 39-5-10 *et seq.*
32. To establish a violation of the SCUTPA, the defendant must establish that plaintiff has engaged in either unfair methods of competition or deceptive acts and practices in the conduct of any trade or commerce in South Carolina. It is also necessary to show that the improper conduct have an adverse impact upon the public interest, which requires that the improper conduct have the potential for repetition, which may be shown either by showing that the same kind of actions happened in the past or by showing that the plaintiff’s procedures create a potential for repetition of the improper conduct.
33. A violation of the SCUTPA allows any person who has lost money or property as a result of the unfair or deceptive acts or practices to recover actual damages, plus reasonable attorney fees and costs. If the court finds that the SCUTPA violation was willful or knowing, then the court must award treble damages, and may provide such other relief as is necessary or proper.
34. Plaintiff’s actions which are alleged above to be unfair, unconscionable, false, misleading or deceptive violate the SCUTPA.

35. Plaintiff is a lender. As part of plaintiff's normal business operations, it files lawsuits against consumers in an attempt to collect debts. These lawsuits that are filed by plaintiff constitute part of its normal trade or commerce in the state of South Carolina.
36. Plaintiff has repeated some of the same violations against defendant in both the first and second complaints on two separate occasions. Upon information and belief, plaintiff's debt collection complaints against other consumers in this state are substantially similar to the two debt collection complaints filed against the defendant. These facts demonstrate the element of repetition which is required in order to violate the SCUTPA.
37. Plaintiff either knew or should have known that it was filing lawsuits that violated the rules and statutes indicated above.
38. Plaintiff failed to exercise due diligence in reviewing and filing improper lawsuits against both defendant and other South Carolina consumers.
39. Plaintiff's actions in filing lawsuits that violated the rules and statutes indicated above were unfair or deceptive.
40. Plaintiff's actions in filing lawsuits that violated the above rules and statutes were knowing or willful.
41. Plaintiff should be enjoined from any further violations of the SCUTPA.
42. Defendant reserves the right to establish such other violations of the SCUTPA as defendant may be able to prove at any hearing or trial in this matter.

THIRD COUNTERCLAIM – NEGLIGENCE PER SE

43. That each and every allegation and defense as set forth above is realleged and

incorporated by reference as if set forth fully herein.

44. That plaintiff's actions alleged above which violate any statute constitute negligence per se under South Carolina law.
45. That plaintiff owed a duty to defendant to avoid violating any of the above rules or statutes.
46. That plaintiff's failure to follow the rules and statutes indicated above are the proximate cause of damages to the defendant, including defendant's need to incur otherwise unnecessary legal fees and expenses in defending plaintiff's unwarranted legal actions and pursuing recovery of those damages in this counterclaim.

THIRD DEFENSE

47. That defendant expressly reserves the right to assert any other defenses that may be available at law or equity.
48. Defendant alleges that the damages on his counterclaims exceed the amount of [REDACTED] and exceed the jurisdictional limit of the Magistrate Court in which Plaintiff's Complaint was originally filed.

WHEREFORE, having fully responded to plaintiff's complaint, defendant prays this Court for the following relief:

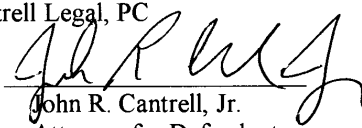
1. That plaintiff's complaint be dismissed;
2. That plaintiff have and recover nothing from defendant;
3. That the court order trial by jury on all issues so triable in this case;
4. That this Court enter a judgment in favor of defendant ruling that defendant is either not indebted to plaintiff or indebted in a lesser amount than claimed by

plaintiff;

5. That the court find that the plaintiff has violated S.C. Code Sec. 37-5-108.
6. That the court find that the plaintiff has violated S.C. Code Sec. 39-5-10.
7. That the court find that the plaintiff's violation of S.C. Code Sec. 39-5-10 was either willful or knowing.
8. That the court issue an injunction preventing the plaintiff from any further violations of the SCUTPA (S.C. Code Sec. 39-5-10).
9. That the court award treble damages against the plaintiff for violations of S.C. Code Sec. 39-5-10, if appropriate.
10. That defendant have and recover from plaintiff a sum to be determined by the court for compensation for defendant's actual damages;
11. That defendant have and recover from plaintiff a sum to be determined by the court for compensation for defendant's attorney fees and costs;
12. That the court award punitive damages against the plaintiff for any actions that the court finds to be either reckless, willful, or intentional;
13. That defendant have and recover from plaintiff the sum of \$1,000.00 in statutory damages for each violation of S.C. Code 37-5-108; and
14. For such other and further relief as this Court deems just and proper.

April 25, 2017

Cantrell Legal, PC

By: 

John R. Cantrell, Jr.
Attorney for Defendant
P.O. Box 1276
Goose Creek, SC 29445
Telephone: (843) 797-2454
Facsimile: (309) 213-0922

Email: lawyer@comcast.net
SC Bar # 10309

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the attached First Amended Defendant's Answer & Counterclaims on all the parties to this action by depositing a copy hereof, first-class postage prepaid, in the United States mail, addressed to the party or the attorney for each said party as follows:

Thomas H. Brush, Esq.
Brush Law Firm
12-A Carriage Lane
Charleston, SC 29407

Dated this April 25, 2017.

Cantrell Legal, PC

By: 

John R. Cantrell, Jr.
Attorney for Defendant

FILED-RECORDED
2017 MAY 15 PM 4:49
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	
)	C.A. NO.: 2017-CP-18-00819
1 st Franklin Financial Corporation)	
)	
Plaintiff,)	
)	
vs.)	SECOND AMENDED DEFENDANT'S
)	ANSWER AND COUNTERCLAIMS
Roby A. Adams)	
)	
Defendant.)	
)	

NOW COMES Defendant herein, by and through counsel, and files this Second Amended Answer to Plaintiff's complaint and alleges and says as follows:

Each and every allegation of the Complaint not herein specifically admitted, qualified, or explained is denied.

FIRST DEFENSE

In answer to the specific allegations in Plaintiff's Complaint, Defendant states:

1. Defendant admits the allegations of paragraph 1 of plaintiff's complaint.
2. Defendant admits that the indicated documents were attached to plaintiff's complaint, as alleged in paragraph 2 of the complaint, but denies that defendant owes plaintiff \$4,342.16 as alleged.
3. Defendant denies the allegations of paragraph 3 of plaintiff's complaint. In addition, defendant requests that the court take notice that the plaintiff has alleged two different amounts being due on this account, with the first amount of \$4,351.24 being alleged in the prior dismissed complaint that was filed on this account under case number 2016-CV-18-10302148 on June 20, 2016, so plaintiff's allegations regarding any amount due are unreliable.

SECOND DEFENSE and MOTION TO DISMISS COMPLAINT FOR FAILURE TO
COMPLY WITH RULE 9(i)

4. That the allegations as set forth above are realleged and incorporated by reference as if set forth fully herein.
5. That, pursuant to Rules 12(b) and 9(i), SCRCF defendant moves to dismiss plaintiff's complaint for failure to comply with Rule 9(i) in regards to providing a verified and itemized statement of account.
6. Rule 9(i) requires that in an action on an account that the plaintiff must attach a verified copy of the account to the pleading, and that the accounting must be itemized.
7. No verified statement of account was attached to plaintiff's complaint.
8. Plaintiff's complaint also does not contain any itemization of any amounts due under the account, but merely states an alleged payoff amount due without any computation of that amount, which violates the requirements of Rule 9(i), SCRCF, for which cause the complaint should be dismissed.

FIRST COUNTERCLAIM – SCCPC VIOLATION

9. That each and every allegation and defense as set forth above is realleged and incorporated by reference as if set forth fully herein.
10. That defendant is a "consumer" and this credit transaction is a "consumer credit transaction" within the meaning of S.C. Code 37-1-201.
11. That S.C. Code 37-5-108 prohibits unconscionable agreements or conduct in regards to a consumer credit transaction.
12. That, upon information and belief, plaintiff has falsely represented the amount

allegedly owed in that it has asserted that two different amounts are owed in two separate complaints that have been filed with this court in two different cases, namely the amount of \$4,351.24 alleged in the June 20, 2016 complaint that was filed with this court and the lesser amount of \$4,342.16 alleged in the current complaint filed October 14, 2016, and one or both of these representations are in violation of S.C. Code 37-5-108(5)(c)(1). Defendant further alleges that no payments were made by defendant to plaintiff since June 20, 2016 that could have reduced the amount owed on the account.

13. That plaintiff paid the Dorchester County Magistrate's court \$80.00 to file the complaint in the first action against the defendant, which was case number 2016-CV-18-10302148.
14. That a portion of the filing fee, upon information and belief in the amount of \$10.00, was paid to the Dorchester County Sheriff's Office to serve the summons and complaint in the first case upon the defendant.
15. That plaintiff could have chosen to hire a private process server instead and then would only have had to pay \$70.00 to file the first case, instead of \$80.00.
16. That plaintiff's choice to pay the extra amount and use the Dorchester County Sheriff's office to serve the first complaint made the sheriff's office plaintiff's agent for service of process upon the defendant.
17. That instead of personally serving the first complaint upon the defendant, that on April 20, 2016, the summons and complaint in the first case was initially served upon Doug Rose, who is defendant's neighbor, as is evidenced by the attached affidavit of service.

18. That as a direct and proximate result of the improper service of the first complaint, defendant has suffered extreme embarrassment over this matter and has shown other symptoms of severe emotional distress.
19. That plaintiff's agent's actions in improperly serving the first complaint are in violation of S.C. Code Sec. 37-5-108(5)(b)(4), since providing the first complaint to defendant's neighbor was a communication to that neighbor regarding defendant's debt.
20. That plaintiff's agent's actions in improperly serving the first complaint violated S.C. Code Sec. 37-5-108(5)(d), since defendant's neighbor had no legitimate business need for information regarding defendant's debt and this disclosure might reasonably be found to have damaged the defendant's reputation.
21. That also, when plaintiff filed the first complaint, plaintiff failed to file with this court the non-lawyer authorization form required by S.C. Code Sec. 33-1-103.
22. As a result of plaintiff's failure to file the required non-lawyer authorization form, plaintiff's first case was dismissed by this court on September 6, 2016.
23. That S.C. Code Sec. 33-1-103 provides that if a plaintiff complies with this Code section, that plaintiff's non-lawyer representative is not engaging in the unauthorized practice of law. This safe harbor only exists if plaintiff complies with this Code section. In cases such as this one where plaintiff did not comply with this Code section, plaintiff's non-lawyer representative was engaging in the unauthorized practice of law, in violation of both this Code section, and S.C. Code Sec. 40-5-310, which governs the unauthorized practice of law and provides that any person who engages in the unauthorized practice of law is guilty of a

felony, and upon conviction must be fined up to \$5,000.00 or imprisoned up to five years, or both, which means that the unauthorized practice of law is a very serious offense.

24. Plaintiff's non-lawyer representative was engaging in the unauthorized practice of law as plaintiff's agent, as part of her job duties for plaintiff, so pursuant to the doctrine of respondeat superior, plaintiff is responsible for it's agent's unauthorized practice of law.
25. Plaintiff's agent's unauthorized practice of law is a violation of S.C. Code Sec. 37-5-108(2).
26. As a result of plaintiff's agent's unauthorized practice of law, and the resulting dismissal of plaintiff's first case against defendant, the defendant has had to incur legal fees in order to successfully defend that unwarranted lawsuit.
27. That defendant filed a complaint with the South Carolina Department of Consumer Affairs on June 21, 2016, in compliance with S.C. Code Sec. 37-5-108(6).
28. That plaintiff directly sent defendant a collection letter dated February 8, 2018, a true and authentic copy of which is attached as an exhibit to this Answer.
29. That the February 8, 2018 collection letter that plaintiff sent to defendant violated S.C. Code Sec. 37-5-108(5)(b)(ii), since plaintiff knew at that time, which was after defendant's original Answer was received by plaintiff, that defendant was represented by an attorney.
30. That plaintiff called defendant directly on March 14, 2019 in an attempt to collect on this loan account.

31. That the March 14, 2019 collection call violated S.C. Code Sec. 37-5-108(5)(b) (ii), since plaintiff knew at that time, which was after defendant's original Answer was received by plaintiff, that defendant was represented by an attorney.
32. That, upon information and belief, plaintiff is engaging in such other and further practices that violate S.C. Code 37-5-108 as may be shown at trial.
33. That defendant is entitled to recover his actual damages in an amount to be proven at trial plus up to \$1,000.00 in statutory damages per violation along with her attorney's fees and the costs incurred in pursuing this action as authorized pursuant to S.C. Code 37-5-108(2).

SECOND COUNTERCLAIM – SCUTPA VIOLATION

34. That each and every allegation and defense as set forth above is realleged and incorporated by reference as if set forth fully herein.
35. The factual allegations above, plus any facts that defendant may later establish at any hearing or trial in this matter constitute a violation of the South Carolina Unfair Trade Practices Act (“SCUTPA”), as may be found at South Carolina Code Sec. 39-5-10 *et seq.*.
36. To establish a violation of the SCUTPA, the defendant must establish that plaintiff has engaged in either unfair methods of competition or deceptive acts and practices in the conduct of any trade or commerce in South Carolina. It is also necessary to show that the improper conduct have an adverse impact upon the public interest, which requires that the improper conduct have the potential for repetition, which may be shown either by showing that the same kind of actions happened in the past

or by showing that the plaintiff's procedures create a potential for repetition of the improper conduct.

37. A violation of the SCUTPA allows any person who has lost money or property as a result of the unfair or deceptive acts or practices to recover actual damages, plus reasonable attorney fees and costs. If the court finds that the SCUTPA violation was willful or knowing, then the court must award treble damages, and may provide such other relief as is necessary or proper.
38. Plaintiff's actions which are alleged above to be unfair, unconscionable, false, misleading or deceptive violate the SCUTPA.
39. Plaintiff is a lender. As part of plaintiff's normal business operations, it files lawsuits against consumers in an attempt to collect debts. These lawsuits that are filed by plaintiff constitute part of its normal trade or commerce in the state of South Carolina.
40. Plaintiff has repeated some of the same violations against defendant in both the first and second complaints on two separate occasions. Upon information and belief, plaintiff's debt collection complaints against other consumers in this state are substantially similar to the two debt collection complaints filed against the defendant. These facts demonstrate the element of repetition which is required in order to violate the SCUTPA.
41. Plaintiff either knew or should have known that it was filing lawsuits that violated the rules and statutes indicated above.
42. Plaintiff failed to exercise due diligence in reviewing and filing improper lawsuits against both defendant and other South Carolina consumers.

43. Plaintiff's actions in filing lawsuits that violated the rules and statutes indicated above were unfair or deceptive.
44. Plaintiff's actions in filing lawsuits that violated the above rules and statutes were knowing or willful.
45. Plaintiff's actions as alleged above in the cause of action for violation of S.C. Code Sec. 37-5-108(5)(b)(ii), occurred on more than one occasion and therefore show the necessary actual repetition to constitute a SCUTPA violation as well.
46. Defendant has incurred actual damages as a result of plaintiff's violation of the SCUTPA.
47. Plaintiff should be enjoined from any further violations of the SCUTPA.
48. Defendant reserves the right to establish such other violations of the SCUTPA as defendant may be able to prove at any hearing or trial in this matter.

THIRD COUNTERCLAIM – NEGLIGENCE PER SE

49. That each and every allegation and defense as set forth above is realleged and incorporated by reference as if set forth fully herein.
50. That plaintiff's actions alleged above which violate any statute constitute negligence per se under South Carolina law.
51. That plaintiff owed a duty to defendant to avoid violating any of the above rules or statutes.
52. That plaintiff's failure to follow the rules and statutes indicated above are the proximate cause of damages to the defendant, including defendant's need to incur otherwise unnecessary legal fees and expenses in defending plaintiff's unwarranted legal actions and pursuing recovery of those damages in this

counterclaim.

THIRD DEFENSE

53. That defendant expressly reserves the right to assert any other defenses that may be available at law or equity.

54. Defendant alleges that the damages on his counterclaims exceed the amount of \$10,000.00 and exceed the jurisdictional limit of the Magistrate Court in which Plaintiff's Complaint was originally filed.

WHEREFORE, having fully responded to plaintiff's complaint, defendant prays this Court for the following relief:

1. That plaintiff's complaint be dismissed;
2. That plaintiff have and recover nothing from defendant;
3. That this Court enter a judgment in favor of defendant ruling that defendant is either not indebted to plaintiff or indebted in a lesser amount than claimed by plaintiff;
4. That the court find that the plaintiff has violated S.C. Code Sec. 37-5-108.
5. That the court find that the plaintiff has violated S.C. Code Sec. 39-5-10.
6. That the court find that the plaintiff's violation of S.C. Code Sec. 39-5-10 was either willful or knowing.
7. That the court issue an injunction preventing the plaintiff from any further violations of the SCUTPA (S.C. Code Sec. 39-5-10).
8. That the court award treble damages against the plaintiff for violations of S.C. Code Sec. 39-5-10, if appropriate.
9. That defendant have and recover from plaintiff a sum to be determined by the

court for compensation for defendant's actual damages;

10. That defendant have and recover from plaintiff a sum to be determined by the court for compensation for defendant's attorney fees and costs;
11. That the court award punitive damages against the plaintiff for any actions that the court finds to be either reckless, willful, or intentional;
12. That defendant have and recover from plaintiff the sum of \$1,000.00 in statutory damages for each violation of S.C. Code 37-5-108; and
13. For such other and further relief as this Court deems just and proper.

July 5, 2019

Cantrell Legal, PC

By: /s/ John R. Cantrell, Jr.
Attorney for Defendant
P.O. Box 1276
Goose Creek, SC 29445
Telephone: (843) 797-2454
Facsimile: (309) 213-0922
Email: lawyer@comcast.net
SC Bar # 10309

1343 Wilson Rd
Newberry, SC 29108
803-321-1977



02-08-2018
Account Number: 8827 008795 1
Amount of Debt: 4,342.16

Roby A Adams 291
4924 Chartwell Dr
North Charleston SC 29420-7000

Dear Roby A Adams,

Your account has been transferred to the 1st Franklin Financial Corporation Recovery Center for collection.

Please contact our office at the number or address shown on this letter to make arrangements on your outstanding debt. We would like to work with you on a settlement to give you the opportunity to pay this obligation.

Contact us within 10 days from the date of this letter to discuss a settlement agreement.

Sincerely,

Nerissa Marshall, Manager
803-321-1977

ELECTRONICALLY FILED - 2019 Aug 27 3:16 PM - DORCHESTER - COMMON PLEAS - CASE#2017CPI1800819

Event 24 Letter 214

2-13-2018

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF DORCHESTER

3 1ST FRANKLIN FINANCIAL CORPORATION,

4 Plaintiff,

5 vs. CASE NO. 2017-CP-18-00819

6 ROBY A. ADAMS,

7 Defendant.

8
9 HEARING BEFORE: HONORABLE JAMES E. CHELLIS

10 DATE: March 5, 2020

11 TIME: 10:12 a.m.

12 LOCATION: DORCHESTER COUNTY COURTHOUSE

5200 E. Jim Bilton Boulevard

13 St. George, South Carolina

14 REPORTED BY: Julie L. Bonomo

1 APPEARANCES OF COUNSEL:

ATTORNEYS FOR PLAINTIFF

2 1ST FRANKLIN FINANCIAL CORPORATION:
3 PARKER POE ADAMS & BERNSTEIN, LLP
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5 Charleston, South Carolina 29401
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6 Robertosborne@parkerpoe.com

7 ATTORNEYS FOR DEFENDANT

8 ROBY A. ADAMS:

9 CANTRELL LEGAL PC
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10 Goose Creek, South Carolina 29445
843-797-2454
11 Lawyer@comcast.net
12
13
14
15

(INDEX AT REAR OF TRANSCRIPT)

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1 THE COURT: Good morning, everyone. My
2 name is James Chellis. I am the master-in-equity
3 for Dorchester County. We, unfortunately, had two
4 cases scheduled for 10 o'clock this morning.
5 Sometimes that happens. I apologize to both
6 parties or all parties who were scheduled before
7 10:00. In view of the two cases, I am going to use
8 a little judicial discretion, if you will, or
9 privilege or whatever you call it, and I'm going to
10 call the 1st Franklin case first, and then we'll
11 get to the Fort Line case after we finish with
12 this.

13 The first case, 1st Franklin Financial
14 Corporation, Plaintiff, this is your case,
15 Ms. Bonomo, and 1st Franklin is the plaintiff. Our
16 defendant is Roby A. Adams. Now, this is a motion
17 for summary judgment. Appearing on behalf of the
18 plaintiff is Mr. John Osborne with the law firm
19 of --

20 MR. OSBORNE: Parker Poe, Your Honor.

21 THE COURT: Parker Poe.

22 MR. OSBORNE: Robert Osborne.

23 THE COURT: Yes, Robert Osborne.

24 MR. CANTRELL: And John Cantrell for
25 the defendant, Mr. Roby Adams.

1 THE COURT: That's right. And,
2 Mr. Cantrell, it's good to have both of you in the
3 courtroom today. In a little, short pretrial
4 matter, in discussion with both counsel for the
5 parties in this case, I was made aware that
6 Mr. Cantrell wanted to make a motion before we got
7 started. And so at this time I'm going to hear
8 that motion, and that may decide where we go from
9 here.

10 MR. CANTRELL: Thank you, Your Honor.
11 Actually, two motions, but the first one is the
12 motion to strike the plaintiff's supplemental
13 memorandum of law that was filed on March 2nd at
14 5:14 p.m. That would have been Monday. According
15 to the consent scheduling order, Monday was the
16 deadline for the filing of any affidavits that were
17 necessary. Plaintiff hasn't filed any affidavits,
18 but he did file a supplemental memorandum of law.

19 Now, ordinarily that would not be a lot
20 of concern, but if you'll look at the motion for
21 summary judgment, which was actually filed May 16th
22 back in 2019 by the prior attorney for 1st
23 Franklin, you'll see it's very basic, Your Honor.
24 It doesn't really say what the grounds are for the
25 motion. It simply says the motion is based on the

1 pleading memorandum in support of this motion, and
2 there were none at that time. Plaintiff's original
3 memorandum was filed two months later on
4 Rule 56 of the South Carolina Rules of Civil
5 Procedure: "And such additional law and argument
6 as shall be appropriate."

7 Now, we believe, Your Honor, that we're
8 entitled to due process under both United States
9 Constitution and the South Carolina Constitution,
10 and one of the main components of that is
11 meaningful notice of any action that the court
12 wants to take.

13 So we really haven't had an
14 opportunity -- we certainly haven't had ten days,
15 because this motion by itself really doesn't tell
16 me anything. Doesn't give me sufficient due
17 process notice to know what it's all about. It's
18 only defined by the memorandum that was filed back
19 in July of last year and then the new one that's
20 been filed Monday of this week. So, you know, if
21 you take your normal ten days' notice that you get,
22 at least where a motion is heard, this motion
23 doesn't tell you anything. And if you were to --
24 so it's really defective regarding due process
25 notice. But if you combine it with their original

1 memo, you know, you can get a sense of what
2 arguments are being presented and what needs to be
3 defended. And that's fine, but when you throw in
4 this new memo from Monday after normal working
5 hours, I haven't had time to review that. Only
6 scanned it briefly. Really not prepared to address
7 it.

8 So I would ask that the Court either
9 strike that supplemental brief or grant such
10 additional time as may be necessary for us to be
11 prepared and continue this hearing until that time
12 and to allow him to be heard on his new arguments.
13 I don't know exactly how they differ. The time
14 hasn't allowed for that examination. But I do know
15 that my client would be prejudiced if I'm not able
16 to properly address his new arguments to the extent
17 there are any in that document. And if there
18 aren't any, that's fine. We can rely on the old
19 memo, and I'm prepared to go forward on that. But
20 on this new one I'm not.

21 So I move to strike it on that basis,
22 Your Honor. Or, in the alternative, to continue
23 the case based on that lack of notice of new
24 arguments.

25 THE COURT: Mr. Osborne?

1 MR. OSBORNE: Thank you, Your Honor.
2 Robert Osborne on behalf of the plaintiff, 1st
3 Franklin Financial.

4 As Mr. Cantrell said that the original
5 motion was filed I think in May of last year. This
6 hearing was originally scheduled for July of 2019,
7 and at that time we filed a memo in support of the
8 motion. I can't say that the supplemental
9 memorandum is verbatim as what was previously
10 filed, but it's very similar. We don't move for
11 summary judgment on anything. In addition, there
12 may be slight variations, but the supplemental
13 memorandum, it's not vastly different from what was
14 previously filed, given the amount of time that had
15 passed since the last hearing was scheduled. We
16 felt it was appropriate to refile something else
17 with the Court to restate our arguments.

18 I don't feel like there's any prejudice
19 at all to Mr. Cantrell. He's had since July to be
20 on notice of the arguments that we're going to
21 make. And regardless of that, there is no
22 requirement in state court as to when you have to
23 file a memorandum. There is the ten-day motion
24 requirement, obviously, but as Mr. Cantrell
25 recognized, that this motion was filed back in May

1 of last year.

2 So we feel like the supplemental
3 memorandum is proper, and certainly object to any
4 sort of continuance. This hearing has already been
5 continued once and we have a trial date set for
6 next month. So we would like to go forward today,
7 Your Honor.

8 THE COURT: Mr. Cantrell, any reply to
9 that?

10 MR. CANTRELL: I'm sorry, I couldn't
11 hear you, Your Honor.

12 THE COURT: Any reply to that, sir?

13 MR. CANTRELL: He's saying there's no
14 real new argument. If there's no real new
15 argument, he has no need for the new memo, and that
16 would cure the notice issue. You can't look at
17 this -- you can't look at this motion and say it
18 provides due process of any argument because it
19 doesn't make any arguments.

20 So I would say in that regard, Your
21 Honor, that I don't think I have had sufficient due
22 process notice to be able to respond to the new
23 arguments, but this is my position, Your Honor.

24 THE COURT: I'm going to overrule your
25 objection, and we'll go forward on the motion for

1 summary judgment. You said you had a second motion
2 before we start?

3 MR. CANTRELL: There is a motion in
4 limine I also want to make, Your Honor.

5 THE COURT: In limine?

6 MR. CANTRELL: In limine, Your Honor.

7 THE COURT: All right.

8 MR. CANTRELL: Pursuant to Rule 7(b), I
9 would move in limine. This is a motion for summary
10 judgment, and there have been attached to this
11 motion a couple of exhibits. Now, that motion and
12 any exhibits are controlled by Rule 56 and the
13 evidentiary rules.

14 I would note that there have been no
15 affidavits filed by the plaintiff in this case, so
16 these two exhibits, one of which is a reported loan
17 agreement, and one of which are some experts from a
18 deposition of my client, neither of them have been
19 authenticated. Authentication, Your Honor, is
20 required by Rule 901 of the Rules of Evidence which
21 actually says, Rule 901(a): "The requirement of
22 authentication or of identification as a condition
23 precedent to admissibility is satisfied by evidence
24 sufficient to support findings in the matter in
25 question is what its proponent claims."

1 And if you go to Rule 56, it talks
2 about how a person can authenticate documents such
3 as the one they are trying to introduce, and it
4 talks about -- Rule 56(e) says: "Supporting and
5 opposing affidavits shall be made on personal
6 knowledge, shall set forth such facts as would be
7 admissible in evidence" -- there's that
8 admissibility requirement -- "and shall show
9 affirmatively that affiant is competent to testify
10 to the matters stated therein."

11 And here's the important part: "Sworn
12 or certified copies of all papers or parts thereof
13 referred to in an affidavit shall be attached
14 thereto or served therewith."

15 And then "The court may permit
16 affidavits to be supplemented or opposed by
17 deposition, answers to interrogatories, or further
18 affidavits. When a motion for summary judgment is
19 made and supported as provided in this rule, an
20 adverse party may not rest on mere allegations or
21 denials of this pleading."

22 So we have got the evidentiary rule
23 saying any documents, any physical evidence you
24 want to introduce has to be authenticated. We've
25 got Rule 56(e) saying you can do that by affidavit,

1 but we don't have an affidavit. So we don't have
2 this loan agreement authenticated. We don't have
3 these deposition excerpts from my client's
4 deposition also haven't been authenticated.
5 There's nothing they're proving that they are what
6 they claim to be, at least as far as the admissible
7 evidence standard of Rule 901 and
8 Rule 56(e).

9 So we would -- and furthermore, there
10 is also a provision in the rules which says that,
11 as far as these deposition questions are concerned,
12 I would prefer that they be addressed by being
13 published to the Court, because you understand,
14 Your Honor, the rules say that most objections in a
15 deposition are reserved until later. So I don't
16 know -- there are objections we would have had to
17 some of these questions he is trying to get in by
18 just filing the document without giving us an
19 opportunity to actually object to any of the
20 questions that were asked in the deposition.

21 So I would suggest, if it please the
22 Court, that if the Court doesn't strike this as
23 unauthentic for any reason, that he be required to
24 read the question, give me time to object if I have
25 an objection to it before just taking it into

1 evidence without allowing us any opportunity to
2 object to the deposition questions. However, I
3 don't believe they should get it at all, because
4 they aren't authenticated. There is nothing --
5 there is no sworn or certified copies of these
6 documents like Rule 56(e) requires to authenticate
7 them, and I don't think you can get them into
8 evidence without that Rule 56(e) requires that they
9 be admissible into evidence just as if this were a
10 trial.

11 Really what he is trying to do is
12 preclude our opportunity for trial on these issues
13 and -- not completely because it's not a full
14 motion for summary judgment but a partial one.
15 He's trying to preclude our opportunity for trial,
16 so the standard should be at least as high or
17 higher than it would be at trial on any
18 admissibility of evidence argument.

19 So that's why we would move in limine
20 that those exhibits not be admitted due to lack of
21 authentication and Rule 56 and its requirements,
22 Your Honor.

23 THE COURT: Mr. Osborne?

24 MR. OSBORNE: Your Honor, the
25 deposition transcript was sworn testimony taken

1 before a court reporter. I'm sure I have the
2 originals in my file at the office. If the Court
3 is inclined, I would be happy to send the original
4 deposition transcripts to Your Honor so you can
5 open it as you would at trial. I think it's common
6 practice for a motion for summary judgment to
7 attach deposition testimony. I have never actually
8 had this argument come up, Your Honor, but I do
9 think that, one, we're not at trial, and, again,
10 this was sworn testimony in front of a court
11 reporter. We have original transcripts if Your
12 Honor would like to see it.

13 THE COURT: Thank you very much.
14 Your objection is overruled,
15 Mr. Cantrell.

16 The question I do have for you,
17 Mr. Cantrell, is I noticed that you filed a
18 memorandum as well on Monday.

19 Would your standards apply to your
20 memorandum as well?

21 MR. CANTRELL: They certainly do, Your
22 Honor, which is why I included an authenticating
23 affidavit with mine so that I could comply with
24 Rule 56(e), and if Your Honor will look at my
25 affidavit, you will see that it certifies -- it's

1 sworn to under oath and certifies that these are
2 true and correct copies of his -- of the testimony
3 that I was trying to get in. That is totally
4 missing from his --

5 THE COURT: You signed the affidavit,
6 Mr. Cantrell. As the lawyer you can't testify.
7 Your affidavit isn't testimony.

8 MR. CANTRELL: I only --

9 THE COURT: You want to recuse yourself
10 from the case and be a witness?

11 MR. CANTRELL: Your Honor, I simply
12 authenticated documents which were in my
13 possession. You know, Your Honor, as an attorney,
14 the court reporter sends the deposition transcripts
15 to me. The money for the deposition transcript
16 flows through me. So I am actually the one that
17 has the personal knowledge that Rule 602 of the
18 Rules of Evidence requires two authenticate that
19 document. Or perhaps the court reporter herself,
20 but she is not here, and her certification isn't
21 before us. There is no certification by the court
22 reporter on either of these documents. So the only
23 other way they can be authenticated is by
24 affidavit, and that hasn't been done.

25 THE COURT: Well, I find your argument

1 to be a real stretch, frankly, and I can't -- in
2 all of my time as a lawyer and the years I have
3 served as a judge, I have never seen an affidavit
4 authenticated or the deposition testimony attached
5 to a memorandum or otherwise presented at a motion
6 for summary judgment have to be authenticated.

7 I mean, do you have any cases to
8 support that position?

9 MR. CANTRELL: Of course, Your Honor.
10 Rule 901 of the Rules of Evidence --

11 THE COURT: I read that. Okay. What
12 about --

13 MR. CANTRELL: And Rule 56(e), Your
14 Honor.

15 THE COURT: Those are rules. Those are
16 not cases that an appellate court --

17 MR. CANTRELL: Those rules were drafted
18 by the Supreme Court of South Carolina, Your Honor.
19 They're binding on this Court. If you would like,
20 I can read the provision in the Rules of Evidence
21 which makes them binding on all courts in this
22 state.

23 THE COURT: That's not necessary. I'm
24 ready to hear the motion for summary judgment.

25 MR. OSBORNE: Thank you, Your Honor.

1 THE COURT: So your motions are
2 overruled. And let's hear the motion for summary
3 judgment that we were scheduled to come here today
4 for.

5 MR. OSBORNE: Thank you, Your Honor.
6 By way of background, I know Your Honor is familiar
7 with this case somewhat.

8 THE COURT: I'm intimately familiar
9 with this case.

10 MR. OSBORNE: All right. Well, I won't
11 bore you with background, then, but I will go
12 through -- our motion for summary judgment is not a
13 full motion for summary judgment.

14 We are moving for summary judgment on
15 our affirmative claims against Mr. Adams on the
16 issue of liability only.

17 THE COURT: Okay.

18 MR. OSBORNE: We're not asking for an
19 entry of judgment, and we're also moving for
20 summary judgment on certain counterclaims that were
21 advanced by Mr. Adams.

22 The causes of action in the
23 counterclaims are violations of the South Carolina
24 Consumer Protection Code, violation of the
25 South Carolina Unfair Trade Practices Act, and

1 negligence per se.

2 THE COURT: Yes.

3 MR. OSBORNE: And the three items we're
4 moving for summary judgment on relate to an
5 accounting error between two complaints that were
6 filed in this -- I say this case. There was one
7 previously dismissed case. There was an allegation
8 about improper service of the complaint by the
9 Dorchester County Sheriff's Office on Mr. Adams'
10 neighbor, and then an allegation regarding
11 unauthorized practice of law. And so those are the
12 counterclaims that we're moving for.

13 There is also allegations about some
14 communications after Mr. Adams was represented by
15 counsel, and we're not addressing those in this
16 argument.

17 But as for the affirmative claims, Your
18 Honor, this is a simple breach of contract case.
19 Mr. Adams took out a loan from 1st Franklin and has
20 not repaid the loan. Mr. Adams has been deposed.
21 During his deposition he testified that he entered
22 into the loan agreement and agreed to be bound by
23 its terms, and he agreed in his testimony or
24 acknowledged in his deposition that he had failed
25 to pay 1st Franklin. He couldn't recall making any

1 payments, and he plainly admits in the deposition
2 that he owes some amount to 1st Franklin.

3 So, Your Honor, the elements for breach
4 of contract are obviously the contract is breached
5 and damages. There is no issue, as a matter of
6 law, or no issue of material facts as to those
7 elements. He agreed he entered into a contract.
8 He agreed he hasn't paid. By him having not paid,
9 it's automatic that 1st Franklin has been damaged.

10 Your Honor, we're trying to simplify
11 the issues for trial here. We recognize that we're
12 going to have a trial next month. So we would like
13 to simplify the issues so we can likely get this
14 done in one day and not have to bleed over into a
15 second or more days and that going over issues that
16 are undisputed.

17 So that is our motion on our
18 affirmative claim.

19 THE COURT: Yes, sir.

20 MR. OSBORNE: And now I'll get into the
21 counterclaims, Your Honor.

22 So all of the counterclaims seem to
23 rely on certain activities or events that the
24 defendant alleges violated the South Carolina
25 Consumer Protection Code, and based on that, he

1 alleges that he has a cause of action under the
2 Consumer Protection Code, and also that those
3 violations support causes of action under the
4 Unfair Trade Practices Act and negligence per se.

5 The important thing about the Consumer
6 Protection Code, and the defendant relies on
7 37-5-108, and it prevents "unconscionable conduct
8 in collecting a debt," and then it sets forth
9 factors to be considered by the court as a matter
10 of law whether a creditor engaged in unconscionable
11 conduct.

12 So the finding here is not that a
13 collector may have violated certain provisions or
14 factors set forth in the statute. The Court has to
15 find as a matter of law that there was
16 unconscionable conduct, and those factors help in
17 determining whether or not that occurred.

18 So the idea that this is some sort of
19 strict liability statute that, if you make one of
20 these violations, you're automatically liable,
21 that's just not the case. There is an
22 unconscionable standard which is a high standard,
23 and the way that the statute is drafted, it is
24 clear that the legislative intent was not to
25 penalize creditors for alleged violations but there

1 has to be unconscionable conduct.

2 So I think that falls in line with all
3 of these arguments that we make, Your Honor, but I
4 will address each one in turn now.

5 The first lawsuit that was filed -- and
6 it was filed back in 2016. So we have been dealing
7 with this for almost four years now. I think next
8 month will be four years since the first lawsuit
9 was filed in Magistrate Court. The first lawsuit
10 alleged that there was \$4,351.24 owed. That
11 lawsuit was subsequently dismissed, and 1st
12 Franklin refiled a lawsuit later, a few months
13 later, and it alleged \$4,342.16 was owed. So there
14 was a \$9.08 difference in the amount alleged in
15 each complaint.

16 1st Franklin, by its own accord,
17 dropped the amount in the second action by \$9, and
18 based on that, the difference -- solely the
19 difference in the two complaints, Mr. Cantrell and
20 the defendant have alleged that 1st Franklin
21 violated the Consumer Protection Code by falsely
22 representing the amount owed. And I'll argue to
23 you and submit to you, Your Honor, that a
24 scrivener's error or accounting error that was
25 voluntarily corrected by 1st Franklin and which was

1 a less-than-\$10 difference in the amount owed is
2 not unconscionable conduct. We can't get around
3 the fact that, yes, there were two different
4 numbers in the two complaints, but that is not
5 unconscionable. The Consumer Protection Code is
6 meant to penalize predatory debt collection
7 actions. This was an accounting error. It was a
8 clerical error. There was no evidence that there
9 was any sort of unconscionable conduct from which
10 the Court could find that 1st Franklin falsely
11 misrepresented or used fraudulent or deceptive or
12 misleading representations as to the character
13 amount or legal status of any debt.

14 Again, Your Honor, this is something
15 that under the Consumer Protection Code, that the
16 Court finds as a matter of law. So we think this
17 issue is obviously ripe for summary judgment, and
18 that an accounting error does not rise to
19 unconscionable conduct.

20 The second allegation which supports
21 defendant's counterclaims relate to the service of
22 the Complaint, and when the Complaint was filed
23 with the Dorchester County Magistrate Court, the
24 Magistrate Court, through statutory authority had
25 the Dorchester County Sheriff's Office go serve the

1 Complaint. The sheriff's deputy who served the
2 Complaint, for reasons we don't truly understand,
3 we don't know the full background of it, but we
4 don't deny that the Sheriff's Office accidentally
5 served the defendant's neighbor with the Complaint.
6 And, Your Honor, the defendant has alleged that
7 another violation of the Consumer Protection Code,
8 that the service of the Complaint was a prohibited
9 communication, and this is quote, "with anyone
10 other than the consumer, his attorney, or a
11 consumer reporting agency if permitted by law."

12 So basically, in short, under the
13 Consumer Protection Code, you're not allowed to
14 communicate with any other -- a debt collector is
15 not allowed to communicate with any other person
16 about the debt other than the debtor. And the
17 defendant alleges that the Dorchester County
18 serving the Complaint was a violation of that.

19 Acknowledging that 1st Franklin didn't
20 have any sort of communication with anybody else
21 about the debt, the defendant tries to base this
22 allegation or claim on the fact that the Sheriff's
23 Office was 1st Franklin's agent and, therefore, 1st
24 Franklin is vicariously liable or liable as the
25 County's principal.

1 Your Honor, there was no agency
2 relationship that rests on a matter of control.
3 The Sheriff's Office, by the Civil Rules of
4 Procedure, as well as statutory authority, is
5 authorized to effect service of process, or the
6 Magistrate Court. The Magistrate Court was the one
7 that contacted the Sheriff's Office and had them do
8 that. 1st Franklin didn't have any right of
9 control over what the Sheriff's Office did. There
10 simply wasn't an agency relationship.

11 If there was an agency relationship,
12 the Dorchester County Sheriff's Office acted
13 outside of the scope. Mr. Adams was clearly
14 identified on the pleadings. We never asked the
15 Sheriff's Office, never asked them -- the court was
16 the one that asked them. We never instructed them
17 to serve the neighbor. There were no
18 communications about that. There's no evidence in
19 the record that there were any communications about
20 serving the neighbor.

21 So to the extent there was an agency
22 relationship, which we would argue there certainly
23 was not, the agent, the Sheriff's Office, acted
24 outside the scope of their authority and,
25 therefore, under black letter law, 1st Franklin

1 cannot be liable, Your Honor.

2 And, finally, a final argument. We
3 would argue that the Sheriff's Office was carrying
4 out a judicial function and is entitled to judicial
5 immunity to the extent that this was even argued
6 was a violation of the Consumer Protection Code,
7 which, again, we would argue that it's not a
8 violation.

9 I don't want to harp on this too much,
10 but a simple alleged violation is not enough under
11 the statute to be unconscionable conduct. It has
12 to be unconscionable, and a mistake made by the
13 Sheriff's Office in serving the Complaint should
14 not fall back and be considered unconscionable
15 conduct on behalf of 1st Franklin.

16 Finally, Your Honor, there are
17 allegations about the unauthorized practice of law.
18 This, again, goes back to a Magistrate Court
19 action. In Magistrate Court, as Your Honor is
20 likely aware, corporations can represent
21 themselves, unlike in Circuit Court, and in doing
22 so, there is a certain form that has to be filed
23 with the Magistrate Court.

24 1st Franklin did not file that form
25 with the Magistrate Court, and it resulted in

1 actually the first action being dismissed, and that
2 was the reason why the case was kicked.

3 In addition to being dismissed,
4 Mr. Cantrell and the defendant now argue that that
5 gives rise to a counterclaim for the unauthorized
6 practice of law. There is no counterclaim for the
7 unauthorized practice of law, but he uses that
8 allegation to support his other claims, the
9 Consumer Protection and the South Carolina Fair
10 Trade Practices and negligence cause of action.

11 And, Your Honor, this one is black
12 letter law. There is no private cause of action
13 for the unauthorized practice of law. That's in
14 the Hambrick v. GMAC Mortgage Corporation case.
15 And, Your Honor, respectfully, there has been no
16 finding that 1st Franklin engaged in the
17 unauthorized practice of law. Again, black letter
18 law that South Carolina Supreme Court has exclusive
19 jurisdiction to determine what constitutes
20 unauthorized practice of law.

21 And, again, even if there was some
22 finding that there was, there's no private cause of
23 action. That is also the Linder case. And, too,
24 the Hambrick case, which I have mentioned earlier,
25 clearly states and has cited Linder, saying that

1 you can't get around the prohibitions, that there
2 is no private cause of action for the unauthorized
3 practice of law by using that allegation to support
4 other claims. That is exactly what's happened
5 here. He uses that allegation to try to support
6 his three claims for the Consumer Protection Code,
7 Unfair Trade Practices, and negligence per se.

8 I have a copy of the Hambrick case,
9 Your Honor, that I would be glad to hand up. I
10 think it's dispositive --

11 THE COURT: It's not necessary. I have
12 access to it.

13 MR. OSBORNE: Okay. So, Your Honor,
14 based on those reasons, there is no issue as to
15 Mr. Adams entering into the loan agreement. He
16 admits that he hasn't paid, and 1st Franklin has
17 been damaged as a result of that. We moved for
18 summary judgment on the issue of liability under
19 the breach of contract agreement -- or, excuse me,
20 breach of contract cause of action against him.

21 And then as to the counterclaims, for
22 the reasons I stated, the scrivener's error, the
23 service of the Complaint, and the alleged
24 unauthorized practice of law, those don't give rise
25 to the claims asserted by Mr. Adams, and we move

1 for summary judgment on those bases as well.

2 THE COURT: Thank you.

3 MR. OSBORNE: In doing so, we hope to
4 make for a pointed trial that we can quickly get
5 through the remaining issues in this case, and it's
6 been -- next month will be four years that this
7 case has been going on over a \$5,000 debt, and we
8 would like to get this resolved, and I'm sure both
9 sides would like to, and we're working together to
10 do that, Your Honor.

11 THE COURT: Thank you, Mr. Osborne.
12 Okay. Mr. Cantrell?

13 MR. CANTRELL: Thank you, Your Honor.
14 Your Honor, the delay in this case isn't as
15 significant as making sure the parties achieve
16 justice, and the Court should be reminded that I
17 have been in this case the whole time. This is the
18 first time I have seen opposing counsel today, and
19 his firm has only been in this case for a very
20 short time. Plaintiff had hired another firm which
21 is no longer around. They substituted counsel --

22 THE COURT: Mr. Cantrell, I expressed
23 my understanding of the background of the case, and
24 I appreciate your point, but let's get to the issue
25 of liability on the debt.

1 MR. CANTRELL: We will, Your Honor.

2 THE COURT: Do you have any evidence
3 that your client is not liable under the debt?

4 MR. CANTRELL: Yes, Your Honor. Let's
5 talk about that. Okay.

6 Regarding the debt, Your Honor, if
7 you'll look -- you know, we have got -- if you'll
8 look at our Answer, you'll see that, for the most
9 part, it was a general denial. So, you know, they
10 retain the burden of proof regarding my client's
11 liability under the debt.

12 Now, in order to establish that, they
13 have attempted to attach a copy of the purported
14 loan agreement. I would note a couple of issues
15 with this particular document, Your Honor.

16 This is not an original. If you'll
17 look on the copy of the document that they
18 provided, which, by the way, hasn't been
19 authenticated, there has been no witness to justify
20 that -- first of all, we haven't seen the original.
21 Let's start with that. We haven't seen the
22 original. Let's look at this little stamp in the
23 upper right-hand corner of the first page. It
24 says -- and it's faint, but I believe it says:
25 "This document is pledged as collateral to Wells

1 Fargo Preferred Capital or its agent." I think.
2 It's hard to read the last part, Your Honor.

3 So all we know is we have never seen
4 the original of this document. We know that
5 apparently there was an original loan between
6 Mr. Adams and 1st Franklin, but we don't know who
7 currently has this now. This appears to be a
8 negotiable note, Your Honor, which means that
9 whoever has possession of that has the right to
10 enforce it. Now, if some person other than 1st
11 Franklin has this note, then my client is subject
12 to double liability. It is unfair to allow them to
13 walk in here with a copy of a negotiable
14 instrument, which is, in effect, a \$4,000 bill, and
15 say we own this loan, but we're not going to
16 provide you with the original loan document to show
17 it. So even if my client did sign the original of
18 a loan with them, which I think he would admit that
19 he did, do we know that they still possess it?
20 They haven't provided us with any proof of that, so
21 I think it would be unfair to my client to allow a
22 copy of this document to come in even if the --
23 even if Your Honor does find it to be admissible.

24 Now, in these depo excerpts that they
25 have attached, they make a lot about the fact that

1 they asked Mr. Adams, you know, about this document
2 and what it called for. A lot of their questions
3 involved questions that would be legal conclusions
4 about his interpretation of the document. Had I
5 been given the opportunity to object to that
6 deposition testimony, which the Court has not
7 provided me, I would've noted that those questions
8 were objectionable, No. 1, because they called for
9 a legal conclusion regarding an interpretation of a
10 contract, which is a matter of law, and a layman
11 shouldn't be expected to do that. Had I been able
12 to do that at a deposition or here, I would have
13 objected to those questions on that basis.

14 The document, you know, can be
15 authenticated itself. He doesn't have to -- my
16 client shouldn't be required to go in there and
17 tell them what it means. That's improper for
18 another reason, Your Honor. It's Rule 1002 --

19 THE COURT: Did you say it was a
20 negotiable instrument?

21 MR. CANTRELL: It appears to be --
22 well, I don't have the original. The copy I don't
23 believe -- is certainly not a negotiable
24 instrument. And we have never seen the original.
25 Since Mr. Adams would've signed it years ago, he

1 hasn't seen the original. They have not produced
2 it at this point at any point in the case. So --

3 THE COURT: Is it or is it not a
4 negotiable instrument?

5 MR. CANTRELL: The copy is not a
6 negotiable instrument. The original, if it were
7 produced, it appears to be the same as this copy,
8 Your Honor, but we can't compare them, so we don't
9 know. But if this copy is a true and correct
10 current copy of the original in their possession,
11 which we haven't seen yet, then it appears to be a
12 negotiable instrument, Your Honor, yes.

13 THE COURT: Okay. Thank you.

14 MR. CANTRELL: But it's not here, so we
15 don't know who has it. And we don't know if Your
16 Honor grants liability to my client, to 1st
17 Franklin if he is not also going to owe somebody
18 else, because Your Honor can't bind the rights of
19 third parties that are not in this court. If
20 indeed it was transferred for whatever amount or
21 treatise to somebody else, they could come back
22 that my client would owe the --

23 THE COURT: Read that little squib you
24 said was on the corner.

25 MR. CANTRELL: I apologize --

1 THE COURT: Read it back to me.

2 MR. CANTRELL: At the top -- and this
3 is evidence that may not be in their possession --

4 THE COURT: Doesn't it say "pledged as
5 security"?

6 MR. CANTRELL: "Pledged as collateral,"
7 Your Honor.

8 THE COURT: Collateral.

9 MR. CANTRELL: How do we know they
10 haven't called that? How do we know they haven't
11 sold it? We know that -- I mean, usually a big
12 bank like this, when they get collateral, they want
13 to keep it in their vault, not leave it in somebody
14 else's, because it's negotiable and it's like a
15 \$4,000 bill.

16 So we don't know what's happened to it.
17 We just know that we have never seen the original.
18 And it says on there that they don't have a full
19 interest in this. Somebody else got an interest in
20 at least part of it to the extent it's collateral.
21 And it may be more than that. We don't know. We
22 just haven't seen it, Your Honor.

23 THE COURT: Well, what does pledge
24 mean? Pledge as collateral, what does collateral
25 mean?

1 MR. CANTRELL: Collateral means there
2 is a secured loan that 1st Franklin apparently took
3 out with Wells Fargo, perhaps some line of credit.
4 Commercial lines of credit often exist. And they
5 have taken this note apparently at one point in
6 time. Who knows where it is now --

7 THE COURT: Don't give me the ifs and
8 ands. Just what is collateral?

9 MR. CANTRELL: Collateral is property
10 that is pledged for repayment of a debt, Your
11 Honor.

12 THE COURT: Does it transfer title?

13 MR. CANTRELL: Not initially, but --

14 THE COURT: All right. That's enough.
15 Thank you. Go on with the rest of your argument.

16 MR. CANTRELL: Thank you, Your Honor.
17 Okay.

18 So he has been asked in this deposition
19 all kinds of questions about this document, mostly
20 legal questions, and they're trying to use that to
21 say, well, this is what the document means because
22 Adams says this is what it means. But that doesn't
23 work because of South Carolina Rule of Evidence
24 1002. Now, this is commonly called the best
25 evidence rule, but that's not actually what the

1 rule says. The rule actually says -- and I'll
2 quote it to you. Its heading is "Requirement of
3 Original." "To prove the content of a writing,
4 recording, or photograph, the original writing,
5 recording, or photograph is required except as
6 otherwise provided in these rules or by statute."

7 So our -- and this annotated rule cites
8 the case called Riddle v. City of Greenville, a
9 1968 case from the South Carolina Supreme Court,
10 251 S.C. 473. What that case says is you can't
11 introduce other evidence of the contents of a
12 writing except for the writing itself. You can't
13 talk about it. The oral -- oh, this document says,
14 is really hearsay of a sort because you're trying
15 to say what the document says, but you can't
16 because the document really does speak for itself.
17 This is one of the few times where that objection
18 is actually appropriate, because the best evidence
19 rule says the original document speaks for itself.

20 So we don't have that, Your Honor, and
21 Mr. Adams didn't have it --

22 THE COURT: It's also
23 self-authenticating --

24 MR. CANTRELL: Actually, it isn't, Your
25 Honor. There is a rule on self-authentication.

1 That's 902 --

2 THE COURT: If it's a negotiable
3 instrument, it's self-authenticated.

4 MR. CANTRELL: 902. Let's look at 902,
5 Your Honor.

6 THE COURT: Do you agree with my
7 statement?

8 MR. CANTRELL: That --

9 THE COURT: A negotiable instrument is
10 self-authenticating.

11 MR. CANTRELL: We don't have a
12 negotiable instrument in front of us. We have a
13 copy of what may be a negotiable instrument. We
14 don't have a negotiable instrument. It just told
15 us in 1002 the original is required.

16 THE COURT: I didn't ask you whether we
17 had it in front of you or not. Do you agree with
18 the statement, a negotiable instrument is a
19 self-authenticating document?

20 MR. CANTRELL: Well, let's see. What
21 exception to the -- under which of the self --
22 there is about ten self-authentication
23 subparagraphs. Which one are you claiming it's
24 self-authenticating under, Your Honor?

25 THE COURT: It is a negotiable

1 instrument. Negotiable instruments are
2 self-authenticating.

3 MR. CANTRELL: The copy is not a
4 negotiable instrument. The original may be if we
5 were to see it.

6 THE COURT: I didn't say anything about
7 a copy. I'm talking about generically --

8 MR. CANTRELL: Okay.

9 THE COURT: -- a negotiable instrument
10 is a self-authenticating document.

11 MR. CANTRELL: There are ten
12 subparagraphs under 902, self-authentication.
13 Under which one is the Court --

14 THE COURT: Well, why don't you look
15 through them and see which one applies. Or,
16 Mr. Osborne, you can.

17 MR. CANTRELL: I will let my opposing
18 counsel do that, Your Honor, because it certainly
19 would be a violation of my duty of loyalty to my
20 client to prove that this was self-authenticating,
21 would it not?

22 THE COURT: Mr. Osborne, what would you
23 say?

24 MR. OSBORNE: Rule 902, subsection (9),
25 "Commercial Paper and Related Documents."

1 THE COURT: Thank you, Mr. Osborne.

2 MR. CANTRELL: 902, yes. Yes, Your
3 Honor, let's address commercial paper. That is the
4 problem with these cases, you've got to know the
5 UCC, so many different areas of law.

6 Commercial paper, if you will go to
7 Black's Law Dictionary, you will find that
8 commercial paper is short-term commercial financing
9 documents, usually 90 days or less. It is
10 commercial paper because it's traded on the
11 commercial markets. It's a type of commodity --

12 THE COURT: Mr. Cantrell, I don't want
13 to -- listen --

14 MR. CANTRELL: This is not commercial
15 paper.

16 THE COURT: Why do I need hear about
17 that --

18 MR. CANTRELL: Okay.

19 THE COURT: -- when we're talking about
20 the liability under the note that your client
21 executed and in which the deposition testimony
22 states that he admits he signed and he admits he
23 hasn't paid?

24 MR. CANTRELL: Okay. First --

25 THE COURT: Do you have evidence to the

1 contrary of those two statements?

2 MR. CANTRELL: I have the
3 South Carolina Rules of Evidence, Your Honor.

4 THE COURT: I mean, other than some
5 procedural issue or some evidentiary rule, can you
6 dispute -- do you have a fact that disputes that
7 your client admitted that he signed the note and
8 that he has not paid it?

9 MR. CANTRELL: Your Honor, I believe
10 that evidence is inadmissible for the reasons that
11 I've stated. Remember, Rule 50 --

12 THE COURT: Because it's not
13 authenticated?

14 MR. CANTRELL: Well, it was not
15 authenticated. It violates the best evidence rule.

16 THE COURT: Okay.

17 MR. CANTRELL: Let's see. One second,
18 Your Honor. It violates the best evidence rule.
19 Only the original contract can prove its terms.
20 That's Rule 1002. It's objectionable because that
21 question calls for a legal conclusion. You know,
22 does this document say this, does this document say
23 that. Those all request legal conclusions. Had --

24 THE COURT: That is not the question I
25 asked you. The answer to the deposition was he was

1 presented with a copy of it or a -- that was the
2 gist of the question that I read, and he was asked,
3 is that your signature. He said yes. Have you --
4 do you owe money to 1st Franklin, and his answer
5 was yes.

6 MR. CANTRELL: I believe he would admit
7 that he had an original loan with 1st Franklin,
8 Your Honor.

9 THE COURT: Okay. We're getting
10 somewhere now.

11 MR. CANTRELL: Whether he still owes
12 money to them depends on whether they still hold
13 the original note, which we have never seen;
14 whether it's been pledged to somebody else and
15 taken by somebody else for some loan that we don't
16 know anything about. I mean, Rule 56(e) which
17 governs summary judgment says that --

18 THE COURT: Mr. Cantrell, you have
19 already admitted to me that the collateral -- the
20 taking of an instrument for collateral does not
21 transfer the title to the property. That is the
22 underlying document.

23 MR. CANTRELL: But it could be very
24 well be they don't have the original, Your Honor,
25 and only the original can prove the content of that

1 document. You can't prove it by asking my client
2 about its content. Not according to Rule 1002.
3 And Rule 56(e) says only admissible evidence can be
4 considered on a motion for summary judgment. It's
5 not admissible if it doesn't comply with the
6 South Carolina Rules of Evidence.

7 THE COURT: All right. Let's move on
8 to the two issues -- or the issues concerning the
9 affirmative defenses.

10 MR. CANTRELL: Your Honor, I have got a
11 lot of issues, Your Honor. I came prepared to
12 discuss them here in court today.

13 THE COURT: You do?

14 MR. CANTRELL: And if the Court allows
15 it, I will address all of them.

16 THE COURT: He is moving to have your
17 counterclaims summarily dismissed on the bases of
18 what he argued. Okay?

19 MR. CANTRELL: And I intend to get
20 there, Your Honor. I just want to make sure, first
21 of all --

22 THE COURT: Did I miss something?

23 MR. CANTRELL: I'm sorry, Your Honor?

24 THE COURT: Did I miss something?

25 MR. CANTRELL: Yes, Your Honor. I

1 haven't been allowed to finish my argument. I want
2 to make sure that I have covered the argument on
3 the debt first.

4 THE COURT: All right.

5 MR. CANTRELL: And then I will move to
6 the counterclaims.

7 Your Honor, there are also in the
8 deposition excerpts from my client that were
9 attached to his memo, they are asking my client
10 about whether or not he owed any attorney's fees
11 under the note.

12 THE COURT: I recall that.

13 MR. CANTRELL: That calls for a legal
14 conclusion. So then we're back to Rule 1002, only
15 the original document can say what it says.

16 THE COURT: Attorney's fees are not
17 before me today.

18 MR. CANTRELL: Exactly. Because
19 they're irrelevant. But, Your Honor, allowed that
20 testimony into evidence over my objection. So I'm
21 trying to have some opportunity to refute it since
22 I haven't had any other. Your Honor didn't allow
23 him to publish those deposition questions. Your
24 Honor merely admitted it into evidence over my
25 objection. So in order for me to be able to

1 address that, I need to make sure that it doesn't
2 matter to the Court. If it doesn't matter to the
3 Court, and it's not before the Court, that's fine.

4 THE COURT: It's not before me.

5 MR. CANTRELL: Okay. But I don't want
6 it to come back to haunt me later, oh, this
7 document was filed and entered into evidence
8 without objection. So I have objected to that
9 portion of the excerpts from the deposition as
10 well.

11 THE COURT: All right. Well, I'm not
12 even considering that.

13 MR. CANTRELL: Very good, but I don't
14 want it to bite me down the road, Your Honor. The
15 Supreme Court has a rule that, if you don't raise
16 that argument in the lower court, you can't raise
17 it in theirs. So I'm trying to make sure --

18 THE COURT: That issue squarely is an
19 issue that goes to damages.

20 MR. CANTRELL: Yes, Your Honor.

21 THE COURT: And they're not asking for
22 damages today.

23 MR. CANTRELL: Okay. That's good.

24 THE COURT: So you can raise that issue
25 later on.

1 MR. CANTRELL: Very good.

2 THE COURT: And I suppose we'll get to
3 that at some point.

4 MR. CANTRELL: As long as it's
5 preserved, Your Honor. I just want to make sure
6 that I didn't miss something important, and that's
7 why I mentioned it.

8 THE COURT: Thank you.

9 MR. CANTRELL: But I will continue past
10 that.

11 Okay. Regarding damages, he said --

12 THE COURT: Why are we talking about
13 damages? Because that is not before me.

14 MR. CANTRELL: That's what I'm trying
15 to say. He has claimed in his motion that they
16 proved all three elements of breach of contract
17 action, but really they haven't because damages is
18 not before you. So they can't say -- even if they
19 proved one and two, the existence of contract and
20 it's breached, they haven't proven damages, so they
21 really can't say as they did in their motion that
22 we've proven all three. As long as the Court is
23 clear on that and I'm clear on that, I'm good.

24 THE COURT: Okay. Thank you. I'm
25 clear on that.

1 MR. CANTRELL: Okay. And there is an
2 admission in their documents that there is a
3 dispute about the amount owed. So that is
4 preserved I think. That's not an issue today.

5 Okay. Now, I think I covered that, so
6 I'm ready to proceed to the counterclaims, Your
7 Honor. Okay. Very good. Okay.

8 I believe opposing counsel already
9 raised this, but in our Amended Answer, our current
10 Amended Answer, Second Amended Answer, there was an
11 allegation that the improper service of that first
12 Complaint also violated the Consumer Protection
13 Code because it was a publication -- a
14 communication to his neighbor, a person that had no
15 interest in the loan. And there was some
16 discussion about how, you know, even if this was a
17 violation, there was immunity. And under the
18 common law there might have been immunity for
19 something like that, but we've had some interesting
20 cases in this area of law.

21 There is not a lot of cases under the
22 Consumer Protection Code itself in South Carolina,
23 but it's very similar, as Your Honor knows, to the
24 Fair Debt Collection Practice Act. There's a lot
25 of cases on that around the country, including the

1 Fourth Circuit Court of Appeals which has -- which
2 had the same argument come up before it in a case
3 called Sayyed, S-A-Y-Y-E-D, versus Wolpoff,
4 W-O-L-P-O-F-F, and Abramson. Actually there's
5 several of those, that firm's cases up there. I
6 think they were a debt collection agency or
7 something. A firm, a law firm, actually. And they
8 raised this common law immunity, you know, we can't
9 be held liable for this because it was done in the
10 course of litigation. Fourth Circuit said, no,
11 Congress eliminated that immunity when they created
12 the FDCPA. When they said you can't use these
13 false, misleading, or deceptive communications in
14 the collection of a debt, that common law immunity
15 disappeared.

16 So to the extent there was any such
17 immunity at one point when South Carolina
18 legislature comes along and says you can't use
19 false or misleading or deceptive or unconscionable
20 actions in the collection of a debt, any such
21 immunity have evaporated.

22 We don't really have a South Carolina
23 case that I'm aware of on that, the federal law is
24 so similar, even down to the same wording being
25 used about the types of violations, I believe that

1 should be persuasive on the immunity issue, Your
2 Honor.

3 THE COURT: Let me ask you one
4 question.

5 MR. CANTRELL: Yes, Your Honor.

6 THE COURT: The documents that were
7 served irregularly on the neighbor, were they
8 documents as a matter of public record?

9 MR. CANTRELL: Yes, I believe they
10 would have been, Your Honor. But the statute
11 doesn't create an exception for that. It's kind of
12 like in that Sayyed case --

13 THE COURT: Hold on a second. If I
14 take your position to its logical conclusion, it
15 would sound to me like if a creditor files a
16 lawsuit on a note and claims an amount is due, then
17 you're saying that if anybody looks at that, a
18 third party looks at that filed Complaint, that
19 that somehow violates the Fair Debt Collection Act?

20 MR. CANTRELL: Not if they go to the
21 court record and look at that, but if a creditor
22 takes that, that notice of debt --

23 THE COURT: This is a lawsuit.

24 MR. CANTRELL: -- that allegation of
25 debt that affects the consumer's reputation, and

1 you'll see, if you look at my client's deposition,
2 excerpts that I attached, he was pretty severely
3 affected by this unauthorized publication to his
4 neighbor.

5 THE COURT: So the fact that a clerk of
6 court files a Summons and Complaint, it's uploaded
7 on the internet, the whole world can look at it,
8 you're telling me that that violates the Fair Debt
9 Collection Act?

10 MR. CANTRELL: Of course not. I didn't
11 say that.

12 THE COURT: Well, it's essentially the
13 same thing.

14 MR. CANTRELL: No, it isn't, because
15 that's where the public record is located, and you
16 can go --

17 THE COURT: It's not located on the
18 internet. It's located downstairs.

19 MR. CANTRELL: Exactly. You can seek
20 out through the server and -- I can't explain all
21 the technical, but you'd end up, you know, getting
22 from Africa to downstairs through the internet, as
23 I understand it.

24 THE COURT: Okay.

25 MR. CANTRELL: But that being the case,

1 if you take that document and you serve it on a
2 person that is a neighbor of a person, and they
3 have admitted that that person had no need to know
4 this information, and the statute actually says, you
5 know, that if you serve this on someone -- if you
6 disclose this debt to somebody that has no need
7 to -- I think it's under 37-5-108(d). It talks
8 about that. It says "Disclosing to a person with
9 knowledge or reason to know that the person does
10 not have a legitimate business need for the
11 information or in any way prohibited by statute,
12 information affected the consumer's credit or other
13 reputation." This did affect his reputation.
14 There at least are allegations about that. In the
15 deposition testimony he testified to that. So you
16 can't -- you can't do that. So whatever common law
17 immunity or other immunity might exist, a creditor
18 can't do that.

19 So that's --

20 THE COURT: They didn't disclose a
21 debt. They disclosed a complaint.

22 MR. CANTRELL: Okay. And that
23 Complaint alleged that Mr. Adams had defaulted on a
24 debt to 1st Franklin. It would affect his
25 reputation. He claims it affected his reputation.

1 Now, we can't really judge the credibility of that
2 here at the motion for summary judgment stage, but
3 there is a material question of fact about whether
4 that indeed happened is my only point, Your Honor.

5 THE COURT: What about this agency
6 issue?

7 MR. CANTRELL: Agency. Okay, Your
8 Honor. That's a good question.

9 THE COURT: How can the sheriff be your
10 agent?

11 MR. CANTRELL: Okay.

12 THE COURT: Your client's agent. Or,
13 excuse me, how can a sheriff be a litigant's agent?
14 In this case, 1st Financial.

15 MR. CANTRELL: Good question, Your
16 Honor.

17 THE COURT: What is the definition of
18 agency?

19 MR. CANTRELL: Well, I guess that
20 depends on what case you look at, Your Honor.

21 THE COURT: Does the sheriff's
22 department owe 1st Financial a fiduciary duty?

23 MR. CANTRELL: I don't know. That is
24 between them. They can include them if they want.
25 I haven't seen them do that. I think you put a

1 defendant in a very bad position if you say you're
2 only recourse in this situation is to sue the
3 sheriff of the county where you live and drive
4 around, and nobody really wants to do that a lot,
5 Your Honor.

6 THE COURT: Okay.

7 MR. CANTRELL: But whether or not
8 they're the agency -- there's a case on this broad
9 scope of agency called Simmons. I think it's a
10 Supreme Court case. I'll have it here in just a
11 minute, Your Honor. Here we go. It's Simmons v.
12 Robinson. Would Your Honor prefer I quote from it
13 or hand up --

14 THE COURT: Just quote from it. I'd
15 like to hear the definition of agency from
16 Robinson.

17 MR. CANTRELL: Very good, Your Honor.
18 What it says in Simmons -- there are actually two
19 issues we're going to talk about. The first is
20 agency. The second is the possibility of a
21 nondelegable duty, and we'll get there in a minute,
22 but Your Honor asked about agency first, so we're
23 going to talk about that first.

24 Here we go. In the Simmons case on
25 page 212, it's 303 S.C. 201 from 1991,

1 South Carolina Court of Appeals. I'm sorry, not
2 the Supreme Court. And it says: "As the trial
3 judge correctly ruled, the policy covers not only
4 employees but agents as well. 'Agency' is a
5 comprehensive term, having more than one meaning.
6 In its broadest sense, it includes every relation
7 in which one person acts for or represents
8 another." And then they cite a case from the Sixth
9 Circuit which was denied and served to the Supreme
10 Court.

11 "Under this definition, an independent
12 contractor can also be an agent. The two are not
13 mutually exclusive."

14 And then they say: "The term 'agency'
15 is, of course, used in a more restricted sense than
16 the law of principal and agent. (See restatement
17 section of 'Agency,' Section 1, paragraph 1, 1958
18 defining 'Agency'). But in the instant case, we
19 are required to define the term more broadly."

20 So the Court of Appeals says that
21 agency can even include independent contractors,
22 people that you wouldn't normally --

23 THE COURT: In the gravamen of your
24 Complaint, though, you're saying the sheriff has to
25 be an agent of 1st Financial so that 1st Financial

1 is vicariously liable for the acts of the sheriff.

2 That's what you're saying, right?

3 MR. CANTRELL: I did say that, Your
4 Honor.

5 THE COURT: Okay. So let me ask you
6 another question.

7 Mr. Osborne's brief points out that the
8 sheriff has a statutory duty to effect service when
9 asked to do so or, worse, I think in every case
10 it's the sheriff's responsibility. But the rules
11 allow others to do it as long as they meet certain
12 criteria.

13 So you're telling me that a sheriff
14 acting under its statutorily required duties by the
15 legislature can be your adversary's agent because
16 they were fulfilling a statutory duty?

17 MR. CANTRELL: If Your Honor looks into
18 the deposition testimony of Theresa Schwerin, their
19 branch manager, you will see that she admitted in
20 there that there is two ways they can have this
21 Complaint served.

22 THE COURT: I know that. I've said
23 that.

24 MR. CANTRELL: There was an \$80 --

25 THE COURT: You're making a big deal

1 out of the fact that they hired the sheriff -- they
2 asked the sheriff to do it rather than an
3 independent party.

4 MR. CANTRELL: And they saved money
5 because of that. There was a financial incentive
6 for them doing that.

7 THE COURT: Good for them. What is
8 wrong with that? It saves your client money if
9 they're found liable.

10 MR. CANTRELL: There is nothing wrong
11 with that if the party doing the service does it
12 properly, but if they do it negligently, then we
13 have got to ask the Court, well, does the broad
14 sense of "agency" incorporate that person. If it
15 doesn't, if it doesn't, then we have got to ask the
16 Court, has a nondelegable duty prevented the
17 creditor from transferring liability for that
18 improper service to the party that did the service
19 at their direction, because they chose to pay the
20 \$80 fee instead of the cheaper \$70 fee and then an
21 extra \$50 for a private process server.

22 THE COURT: Isn't it really at the
23 direction of the Magistrate Court if they serve the
24 defendant under this --

25 MR. CANTRELL: I think some Magistrate

1 Courts use a constable that's attached to the
2 Magistrate Court. I think in this case they
3 actually used the Dorchester County Sheriff's
4 Office.

5 THE COURT: Let me --

6 MR. CANTRELL: Is that your question,
7 Your Honor?

8 THE COURT: I think it's the Magistrate
9 Court that says I have a pleading, they paid for
10 service, go serve them.

11 MR. CANTRELL: Well, the Magistrate
12 Court would do that after you say I choose
13 option A, I want you to serve it, I'm going to pay
14 you the \$80 instead of the \$70 and use a private
15 process server. So you have got some control over
16 who does the service, but what if they do it wrong?
17 Let's drop back to the possibility of the
18 nondelegable duty.

19 So back in Simmons again, the same case
20 we talked about a little while ago, they said on
21 page -- lower down on page 212, I think the same
22 page we were talking about before, and this was a
23 child custody issue with a foster parent and
24 whether DSS was responsible for some bad actions
25 the foster parent did, even though the foster

1 parent was an independent contractor and they were
2 arguing not an agent.

3 But it says -- it's talking about DSS.
4 "Correctly states in its manual," which they have a
5 comprehensive manual on what foster parents are
6 supposed to do or not do, "the Department is
7 legally responsible for the child. Some
8 responsibilities are so important to society that
9 they cannot be transferred." And then they cite
10 Prosser and Keeton on Torts.

11 "A person who delegates to an
12 independent contractor an absolute duty owed to
13 another person or to the public remains liable for
14 the negligence of the independent contractor just
15 as if the independent contractor were an employee."

16 THE COURT: Okay.

17 MR. CANTRELL: So it is -- there is a
18 possibility that these duties imposed by the
19 Consumer Protection Code are so important that, you
20 know, you should be responsible if you're a
21 designated server who is not your employee or agent
22 performed that duty.

23 THE COURT: Mr. Cantrell, do you have
24 any other points on the sheriff's service?

25 MR. CANTRELL: In addition to the

1 Simmons case which I just cited, I would cite --
2 and that was for the appeals. I would also cite
3 another case on that issue.

4 THE COURT: Is it in your memorandum?

5 MR. CANTRELL: I'm sorry, Your Honor?

6 THE COURT: Is it in your memorandum?

7 MR. CANTRELL: I'm sorry, Your Honor?

8 THE COURT: Is it in your memorandum of
9 opposition?

10 MR. CANTRELL: My apologies, Your
11 Honor. I don't hear well, and I apologize again
12 for that.

13 THE COURT: That's fine. My only
14 question is is the case that you're about to cite
15 in the memorandum that you filed with the Court on
16 Monday?

17 MR. CANTRELL: And now I hear and
18 understand your question, and the answer is no, I
19 have not filed the memorandum with the Court in
20 opposition to this motion. What I filed with the
21 Court on Monday was an affidavit, and it was
22 authenticating various documents which were
23 attached to the affidavit, Your Honor. Questions
24 of fact, not questions of law.

25 My legal defense I'm making here today,

1 and if I'm not allowed to make it --

2 THE COURT: Go ahead. Tell me what
3 that case was.

4 MR. CANTRELL: -- then it won't be in
5 the record.

6 THE COURT: Thank you. I apologize. I
7 thought that you had --

8 MR. CANTRELL: Okay.

9 THE COURT: I thought the affidavit was
10 your response.

11 MR. CANTRELL: It was an objection to
12 their motion, but it was not in support of a
13 memorandum that I had filed, Your Honor.

14 Okay. Your Honor, there is another
15 case addressing the issue of a nondelegable duty.
16 It's Court of Appeals case also called
17 Carson v. Vance, 326-S.C.-543, 1997. And this also
18 was a case where --

19 THE COURT: Let me ask you a question.

20 MR. CANTRELL: Yes.

21 THE COURT: Are you saying that the --
22 are you saying that the filing of an allegation of
23 a complaint with a summons attached is a
24 nondelegable duty?

25 MR. CANTRELL: Under the Consumer

1 Protection Code, you can't publish information that
2 could damage a person's reputation. You can't
3 communicate that to a person who has no need for
4 that information. It's kind of like -- the
5 Consumer Protection Code, let's say somebody has a
6 valid debt and you send them a postcard trying to
7 collect it --

8 THE COURT: Let's talk about what we
9 have.

10 MR. CANTRELL: -- that is a violation.
11 We call it public disclosure, Your Honor. This is
12 the same thing kind of thing. You're disclosing to
13 a person who has no need to know the information,
14 information that could hurt that consumer's
15 reputation and allegedly did based on my client's
16 deposition testimony. So, you know, he claims it
17 did hurt him. So we have got a material question
18 of fact as to whether that's the case.

19 Now, do we have a South Carolina
20 appellate court case that says that violation is a
21 nondelegable duty? No, we don't. And that was the
22 point I was going to make as well. We don't
23 actually know if the nondelegable duty doctrine our
24 Supreme Court, if they would find that that applies
25 in this situation. However, the Consumer

1 Protection Code is designed to protect consumers
2 like my client. He did suffer severe emotional
3 distress, as he has alleged in his deposition
4 testimony. I mean, he even provided a significant
5 checklist, which I believe I also attached to my
6 affidavit. If I'm not mistaken, it's part of his
7 deposition testimony.

8 THE COURT: Yes, I read it twice.

9 MR. CANTRELL: So he claimed that this
10 severely damaged him.

11 THE COURT: I read that.

12 MR. CANTRELL: And in that situation,
13 should they be allowed to say oh, well, an
14 independent contractor did it, it's not our fault,
15 when the statute says you can't disclose this
16 stuff?

17 THE COURT: Well, first of all,
18 Mr. Cantrell, I don't see how you could possibly --
19 you could possibly align the sheriff and the
20 concept of independent contractor. That is
21 incongruent to me. I mean, the sheriff is not an
22 independent contractor, period.

23 MR. CANTRELL: He is not an employee,
24 so where does that leave him, Your Honor?

25 THE COURT: He has a statutory duty to

1 do what he was requested to do.

2 MR. CANTRELL: But in relation to 1st
3 Franklin, I think it is possible he is an
4 independent contractor.

5 THE COURT: Well, I disagree with you,
6 so let's go to the next point that you want to
7 make.

8 MR. CANTRELL: Okay, Your Honor. Let
9 me make sure I covered that, because I kind of
10 bounced around a little in response to a few of
11 your questions, and I don't want to miss anything,
12 because I spent a good bit of time preparing to
13 make my defense today, and I want to make sure that
14 I comply with the Supreme Court rules about making
15 my record.

16 THE COURT: You can keep all of that to
17 yourself. I'll give you a minute to think. Okay?
18 Are you trying to make more of a record?

19 MR. CANTRELL: I'm here to make a
20 record, Your Honor.

21 THE COURT: I'm sorry. It sounded to
22 me like you were ruminating on what you needed to
23 do next.

24 MR. CANTRELL: No. No. I need to make
25 my record. It's clear. I'm attempting to do that,

1 Your Honor. That's what I'm doing right here today
2 in front of you. But, okay.

3 Aside from the whole unauthorized
4 practice of law issue, which -- well, let's stop
5 there for a minute because that is a concern. I
6 just recently read these cases opposing counsel has
7 raised in that regard, and I can't say they're not
8 troubling.

9 THE COURT: From your position.

10 MR. CANTRELL: From my position, yes,
11 Your Honor, not to the system of justice as a
12 whole. I'm simply saying, from my client's
13 position, I understand his concern. I don't think
14 it's an unreasonable concern based on the cases
15 that I've read. However, only having recently read
16 them, you know, I can't say I understand the full
17 parameters or the full effects of those decisions.
18 But it may very well be possible that my client
19 doesn't have a claim for monetary damages based on
20 the unauthorized practice of law.

21 But I think the proper -- the proper
22 way to address that if the Court were to decide
23 that is likely the case was the same way they
24 handled it in that Linder case that opposing
25 counsel cited. What happened in that case was they

1 actually -- they said on the first page of that
2 Supreme Court decision: "A lawsuit between these
3 parties is currently pending in Circuit Court based
4 on Respondent's claim against Petitioners for
5 breach of contract. That lawsuit has been stayed
6 pending the Court's decision in the instant
7 matter."

8 So I think that's probably the proper
9 result is if the Court were to decide, hey, this
10 unauthorized practice of law thing, you can only
11 take that before the Supreme Court. And I did have
12 one other case -- not in the Circuit Court but in
13 the Magistrate Court -- where the master judge
14 found that the proper result in this case was to
15 give the plaintiff a certain amount of time to
16 either file an original action in the Supreme Court
17 or else the case -- that cause of action would be
18 dismissed. And I think in that case that was the
19 only cause of action. So the case actually would
20 have ended up being dismissed as a result.

21 I think that's what happened in Linder.
22 I think if Your Honor decides, hey, I don't have
23 jurisdiction to decide what is and what isn't the
24 unauthorized practice of law, and I think it's
25 pretty clear that the signing of a pleading,

1 showing up in court, representing a corporation is
2 the practice of law, but it sounds like in this
3 case opposing counsel has decided to say, well, you
4 can't make that determination even though the
5 Supreme Court has already said it in another case,
6 we have got to make it each time we meet. I mean,
7 that's what it sounded like to me. And that's
8 troubling because it doesn't seem to be very
9 judicially economic, but that's what it seems to
10 say.

11 So if that is the case, then I would
12 request that the Court consider allowing me a
13 certain amount of time -- the other judge found
14 45 days was appropriate. I don't know as a sole
15 practitioner if I really have the ability to take
16 the case to the Supreme Court with regional
17 jurisdiction, especially in a contingency case like
18 this, Your Honor. But there may be another
19 attorney or perhaps a Legal Aid organization that
20 would have an interest in doing that. So it might
21 take me a little while to determine that.

22 But I would suggest and request, if the
23 Court were to so find and agree with opposing
24 counsel on the unauthorized practice of law issue,
25 that my client be allowed the opportunity to seek

1 to file an action there if he can find competent
2 counsel to represent him in that area.

3 THE COURT: Let me make sure I have got
4 this clear. The case in which the unauthorized
5 practice of law allegation arises was ultimately
6 dismissed by the master -- I mean by the
7 magistrate, correct?

8 MR. CANTRELL: You mean in my other
9 case?

10 THE COURT: No. The unauthorized
11 practice of law claim arises out of an action that
12 was brought in the Magistrate Court that was
13 dismissed.

14 MR. CANTRELL: In this case? I'm not
15 following Your Honor. I apologize.

16 THE COURT: In this case --

17 MR. CANTRELL: Yes, Your Honor.

18 THE COURT: -- you've asserted the
19 unauthorized practice of law by the plaintiff
20 because they appeared in a Magistrate Court setting
21 without an affidavit saying that that party could
22 serve as an agent for the corporation in the
23 master's court. That is the allegation, right?

24 MR. CANTRELL: Yes, that is the current
25 allegation, Your Honor.

1 THE COURT: So that case was dismissed
2 by the magistrate?

3 MR. CANTRELL: No. Well, okay, the
4 first case was dismissed by the magistrate, and
5 that's what's not appealable. You could argue that
6 was res judicata on the issue, but, in any event,
7 yes, that's what happened, Your Honor.

8 THE COURT: Okay. Let's go to the
9 third issue if you've finished with this
10 unauthorized --

11 MR. CANTRELL: But what is not clear
12 from that statement, Your Honor, is that really
13 that unauthorized practice continued. It was
14 repeated. It didn't happen just in the first case.
15 It happened in this very case, too. Remember, this
16 case before the Court today was originally filed in
17 the Magistrate Court, but later, due to
18 jurisdictional limitation and amendment of the
19 Answer, it came up in Circuit Court.

20 Now, we have also alleged that the
21 unauthorized practice issue infects the current
22 case, and perhaps we need to be clear on that
23 because that may have been missed, Your Honor.

24 In order to determine -- and here is
25 the thing: It doesn't just violate the

1 South Carolina code section that we have been
2 talking about. This action -- and it's not just
3 the unauthorized practice of law. It's also a
4 violation of a South Carolina Supreme Court order,
5 In Re Unauthorized Practice of Law, issued by
6 Justice Toal as chief justice in 1992, where they
7 said, you know, originally we have always held that
8 corporations had to be represented by an attorney
9 in our courts, but we have reconsidered that and
10 now we want to allow nonattorneys to represent.

11 THE COURT: Mr. Cantrell, get to the
12 point of how the unauthorized practice of law has
13 infected, as you say, this case.

14 MR. CANTRELL: Very good, Your Honor.

15 THE COURT: And then I'll need to take
16 a pause as soon as you finish this argument.
17 Hopefully you can make it succinct. I'm going to
18 take a pause because I have got to sell some real
19 estate, and then we'll come back to the case.

20 MR. CANTRELL: Yes, Your Honor.
21 Certainly.

22 If we were to look at that nonlawyer
23 form that was filed in the Magistrate Court, Your
24 Honor, we would find that -- in this case, in this
25 case, we would find that the form was actually

1 signed -- and this is one of the documents that
2 Your Honor got uploaded yesterday with your request
3 to see all the documents in the case. You would
4 find that the form was actually signed by 1st
5 Franklin's vice president of operations, I think it
6 was, and that does not comply with both the Supreme
7 Court order that I told you about and Magistrate
8 Court Rule 21. So that is the easiest thing to
9 read to you. It's rather succinct. This is about
10 the nonlawyer form that they're required to file.

11 It says in the last sentence: "The
12 Court shall require a written authorization from
13 the entity's president, chairperson, general
14 partner, owner, or chief executive officer." And
15 then it continues with some stuff that's irrelevant
16 to our case. But it specifically says only a few
17 people are allowed to sign that, giving that
18 nonlawyer employee authorization.

19 The same language appears in
20 Justice Toal's Supreme Court order, which actually
21 preceded this Magistrate Court rule. I guess the
22 Magistrate Court rule resulted from that Supreme
23 Court order, as I understand it.

24 In any event, that is totally separate
25 from the unauthorized practice of law issue. You

1 have an issue of violating a Magistrate Court rule,
2 and you have an issue of violating a Supreme Court
3 order.

4 THE COURT: Okay. I've got it. So
5 your claim is that there is a defect in the
6 authorizing document that would allow the summons
7 of debt to be filed in a Magistrate Court.

8 Is that it?

9 MR. CANTRELL: I apologize, Your Honor.
10 You faded off a little, and my hearing isn't as
11 good as normal.

12 THE COURT: All right. You're claiming
13 that there is a defect in the authorizing document
14 that allowed whoever filed the summons for debt in
15 the Magistrate Court in the second instance had a
16 defect.

17 MR. CANTRELL: Same as in the first
18 case. That same defect existed in both cases.

19 THE COURT: Got it. Is there another
20 argument?

21 MR. CANTRELL: Not regarding that
22 affidavit, Your Honor. If you want to take a break
23 at this point, that's certainly fine with me.

24 THE COURT: Let's do that. Stay where
25 you are. We're off the record in the 1st Franklin

1 case.

2 (A brief recess was taken.)

3 THE COURT: If I'm correct, we have
4 covered the arguments for summary judgment, your
5 oppositions to summary judgment on the
6 counterclaims relative to the attorney's fee issue,
7 and the improper service by the sheriff as an
8 unconscionable act. Correct?

9 MR. CANTRELL: We covered that, Your
10 Honor. The Court should be aware, based on some of
11 my submissions in my affidavit, some of the
12 excerpts from their branch manager's deposition,
13 there are alleged violations other than just the
14 service issue. I don't want to gloss over that
15 fact. We'll pop through those as we get the
16 opportunity. I'll let you know because I think
17 they're trying to dismiss my counterclaim entirely,
18 saying all of this is about improper service, but
19 it's not all about that.

20 THE COURT: I knew you had an issue
21 concerning the telephone call?

22 MR. CANTRELL: There are telephone call
23 issues. Actually, there is at least one letter,
24 maybe two. I just yesterday, maybe 24 hours ago,
25 got some response to my second discovery request

1 from 1st Franklin, and they appear to have admitted
2 to maybe two letters, and I don't have it in front
3 of me, but maybe four calls. It's more than -- you
4 know, discovery has revealed more than we had
5 originally mentioned in our Complaint, which is one
6 reason we're going to also ask the Court -- and
7 discovery is not complete. I should mention that
8 as well. We have just gotten that yesterday.

9 There are some objections, matters that weren't
10 responded to. We are going to, of course, consult
11 with them before filing any motion to compel, but
12 hopefully we can work this out. But the Complaint
13 does not have all of that in there. There's new
14 stuff that's just been disclosed --

15 THE COURT: It doesn't need to have it
16 in there. As long as you have alleged it --

17 MR. CANTRELL: I'm sorry?

18 THE COURT: It doesn't need to be in
19 the Complaint the specific items if you have
20 alleged unconscionable conduct or some failure to
21 comply with the Consumer Protection Act on the
22 basis I guess that it violates the Fair Collection
23 Act because they contacted a client after the
24 client had procured counsel.

25 Is that the gist of it?

1 MR. CANTRELL: But it's a post-petition
2 claim, so I would think in that circumstance it
3 might be necessary to supplement the Complaint to
4 add that. If opposing counsel is going to hold to
5 that position and we can produce evidence of any
6 violation of the statutes alleged, then I'm fine
7 with that. But if he's going to say no, that
8 happened after filing the petition, it wasn't
9 properly added, I don't want to get into a fight
10 over that.

11 THE COURT: Hold on a second.

12 Mr. Osborne --

13 MR. OSBORNE: Your Honor, I would just
14 like to quickly add, the post-representation
15 communications, we're not moving for summary
16 judgment on that. What we're trying to do here is
17 at trial limit the trial to that issue and get rid
18 of the unauthorized practice of law, the service
19 issue, the scrivener's error and then -- as to
20 liability on our part.

21 THE COURT: So your issue on the
22 unconscionable conduct, you're not moving for
23 summary judgment on that?

24 MR. OSBORNE: Well, we're moving for
25 summary judgment on basically Mr. Cantrell at trial

1 to bring the issues or to present evidence that the
2 clerical error or the service --

3 THE COURT: I've got you.

4 MR. OSBORNE: He has got three causes
5 of action, and I think his causes of action would
6 still survive, but we what we're trying to do is
7 limit the issues at trial --

8 THE COURT: I've got you.

9 So just limit your response,
10 Mr. Cantrell, to the \$8 difference in the
11 Complaints and I think there was one telephone call
12 that was made before you filed your Second Amended
13 Complaint.

14 MR. OSBORNE: And even the call, Your
15 Honor, I mean, we understand that that -- we
16 haven't addressed that in our memorandum, so we
17 think that is an issue that needs to be addressed
18 at trial. I mean, I'm happy to address it now, but
19 we haven't moved to prevent him from bringing that
20 up at trial. We would like to limit the issues at
21 trial to that single issue.

22 MR. CANTRELL: Sure. If he hasn't
23 raised it, then it's not relevant to our discussion
24 today, I'm fine with that. I just want to make
25 sure that I can raise it at trial --

1 THE COURT: You can raise those.

2 MR. CANTRELL: The post-petition
3 violations.

4 THE COURT: Yes.

5 MR. CANTRELL: Alleged violations.

6 THE COURT: Anything else?

7 MR. CANTRELL: Okay, Your Honor. So
8 let's talk about that. So let's talk --

9 THE COURT: I'm talking about the \$8 --

10 MR. CANTRELL: Let's talk about the
11 scrivener's error. Let's talk about that, Your
12 Honor. Okay.

13 So, first of all --

14 THE COURT: That benefits your client.

15 MR. CANTRELL: Actually, Your Honor,
16 think about this: The original action which was
17 dismissed claimed about \$10 more was owed.

18 THE COURT: It was a little less than
19 that. It was \$8.

20 MR. CANTRELL: It's \$9 and something.
21 Am I not correct? 9 or 10 dollars.

22 THE COURT: Round it up to \$10.

23 MR. CANTRELL: That's what I tried to
24 do, Your Honor. But I think it actually is 9.42
25 just off the top of my head. So it probably rounds

1 down to 9, but, in any event, let's call it \$10. I
2 seem to remember weird, little facts like that
3 sometimes. I could be wrong.

4 But, in any event, that first lawsuit
5 was actually claiming more than was actually due.

6 THE COURT: Yeah, I saw that.

7 MR. CANTRELL: That's a harm. That is
8 a harm. That's a harm and a violation from the
9 filing of that first suit. Now, they pretty much
10 admit this error. They call it a scrivener's
11 error.

12 THE COURT: Here's where I want you to
13 focus, because you pretty much formed a concern.

14 Do you agree that allegations of a
15 Complaint are privileged?

16 MR. CANTRELL: No. Based on the Fourth
17 Circuit case I quoted to you earlier, Sayyed v.
18 Wolpoff and Abramson, a published Fourth Circuit
19 case which would be binding if we had an FD CPA
20 claim, but we don't, but which contained the same
21 type of language by analogy of the Consumer
22 Protection Code where they address that same thing.
23 And this attorney firm that was being sued for
24 improper debt collection procedures -- and, by the
25 way, they did hold in that case that a law firm

1 that regularly collects debt is covered FDCPA, and
2 they raised all kinds of immunity defenses, and
3 they said, no, Congress abolished that immunity
4 when they didn't create an exception for attorneys.
5 Actually, the statute used to have one. It's been
6 removed. Sorry, you're on the hook, too, if you're
7 a law firm and you regularly collect debt, and that
8 doesn't mean that we can't regulate you in the
9 practice of law. Congress has said it's okay, so
10 that's what they did.

11 Now, we don't have a case like that
12 on the South Carolina court side, because we just
13 don't have that many cases, but it's the same kind
14 of statute. And they said there that -- I
15 apologize, I lost the original question. My brain
16 is a little fuzzy.

17 THE COURT: I just want to know if I
18 file a lawsuit against somebody --

19 MR. CANTRELL: Yes.

20 THE COURT: -- and I claim that they
21 owe me money --

22 MR. CANTRELL: Yes.

23 THE COURT: -- and I am a debt
24 collector --

25 MR. CANTRELL: Yes.

1 THE COURT: -- you're saying that
2 because the allegation in the Complaint is an
3 incorrect number, that violates the Fair Debt
4 Collection?

5 MR. CANTRELL: It definitely does. The
6 Fourth Circuit has so ruled. And I don't know if I
7 got the Supreme Court -- I think I got Supreme
8 Court authority on that. Heintz v. Jenkins, if I
9 remember correctly, also reinforced that against
10 the law firm, if I remember correctly. But we
11 don't have any law in South Carolina yet, but under
12 the FDCPA it definitely does --

13 THE COURT: A lawsuit, an actual
14 Complaint?

15 MR. CANTRELL: Yes. Yes, it does.
16 That is clear law under the FDCPA, because there
17 were no exceptions for that law firm. And
18 litigation documents are not privileged, which is
19 also part of the holding of that case I cited to
20 you. Under common law they were, but that was
21 abolished with the creation of the FDCPA, Your
22 Honor. Which doesn't apply here because we don't
23 have that FDCPA claim. But it's the same kind of
24 statute.

25 So if our Court is trying to follow the

1 most persuasive authority out there, the Fourth
2 Circuit is pretty persuasive on this issue in our
3 jurisdiction on the FDCPA. Same kind of statute.
4 Actually, what our statute does is it goes beyond
5 the FDCPA. Remember, the FDCPA only regulates debt
6 collectors. So an original creditor like 1st
7 Franklin wouldn't be included. But the
8 South Carolina Consumer Protection Code regulates
9 original creditors.

10 So South Carolina has gone beyond the
11 protection given at the federal level, and that is
12 significant. In many ways our statute should be
13 construed as more restrictive than the FDCPA
14 because of that fact. And that's another reason
15 why maybe a collector of the original lender
16 wouldn't train its employees necessarily on how to
17 comply with that because they're not exposed to
18 federal liability, only to state liability. And
19 the number of these suits is so few, why do it?

20 So that being said, yes, I see no
21 reason to think that there is any special
22 litigation privilege. It doesn't exist, in my
23 opinion, Your Honor.

24 But let's talk about this admitted
25 error. Now, they called it a scrivener's error.

1 And they say, well, it doesn't matter because it's
2 not unconscionable because it's a small amount.
3 Well, that's not what the law says. Let's just
4 look at the law together. This is just two or
5 three pages from the Consumer Protection Code, and
6 to make it easier for everybody, if Your Honor
7 doesn't mind, may I hand up a copy of this for you?

8 THE COURT: What is the citation?

9 MR. CANTRELL: Well, I'll cite it to
10 you if you want. It's 37-5-108. But I'm also
11 going to read it to you. You may find it easier to
12 read than me reading it. But it's 37-5-108. And
13 there is a couple of sections here that are
14 applicable.

15 THE COURT: 37-5 --

16 MR. CANTRELL: 108.

17 THE COURT: -- 108?

18 MR. CANTRELL: Yes. And the first
19 section is going is to be (2) under that, and this
20 is the basic remedy section that says if a court
21 finds -- "With respect to a consumer credit
22 transaction, if the court as a matter of law finds
23 that a person has engaged in, is engaging in, or is
24 likely to engage in unconscionable conduct in
25 collecting a debt arising from that transaction,

1 the court may grant an injunction. In addition,
2 the consumer has a cause of action to recover
3 actual damages and, in an action other than a class
4 action, a right to recover from the person
5 violating this section a penalty in the amount
6 determined by the court of not less than one
7 hundred dollars nor more than one thousand
8 dollars." And then there is another sentence that
9 doesn't really apply to us.

10 Okay. So that is the first part of it,
11 and then we have got to get into what is
12 unconscionable conduct. So that talks about
13 unconscionable conduct that's sanctionable. Let's
14 go down to the second page at the top. This is
15 subsection (5) of 37-5-108. It's (5).

16 It says: "In applying subsection (2),
17 consideration shall be given to each of the
18 following factors, among others, as applicable."

19 So the first thing we learned is this
20 is not an exclusive list. Other types of
21 unconscionable conduct from the collection of a
22 debt could be sanctionable, but these are factors
23 that shall be given consideration.

24 And then you go down to (5)(c) near the
25 bottom. I have highlighted that paragraph for you.

1 It says: "using fraudulent, deceptive, or
2 misleading representations in connection with the
3 collection of a consumer credit transaction. Such
4 false representations shall include:" Now, notice
5 the shift here. It goes from fraudulent,
6 deceptive, or misleading, and then says "such false
7 representations." So a false representation is
8 fraudulent under the definition of the statute.

9 The first one under (c)(i), it says:
10 "the character, amount, or legal status of any
11 debt." So what it says under (2) is unconscionable
12 conduct is sanctionable. Under (5) which says in
13 applying (2), you look at these factors. And then
14 under (c) it says using false representations
15 including the amount of a debt. That is
16 unconscionable debt collection practice.

17 Now, he says there is no strict
18 liability under here. Well, what do you call that?
19 Where does it say "unless"? It doesn't say
20 "unless." It says if you falsely represent the
21 amount of a debt when collecting that debt in a
22 consumer credit transaction, you're liable. That
23 sounds like strict liability to me.

24 Now, he says, oh, you know, a lot of
25 stuff about it's just not -- it's just not

1 significant, it's just a scrivener's error. Well,
2 the law doesn't make an exception for what they
3 call scrivener's errors. This is a false
4 representation about the amount of the debt, and
5 that is where the analysis ends, Your Honor.

6 Now, Your Honor does have discretion on
7 the statutory damages side, is this worth a hundred
8 dollars or is this worth a thousand dollars. I
9 mean, there is discretion for the Court to consider
10 the amount of the damage to the consumer, in
11 addition to other statutory damage, in addition to
12 actual damages which can include emotional stress
13 damages, in addition to attorney's fees.

14 So those are -- that's why this
15 argument about this is de minimis, it's not
16 unconscionable, the statute is clear that false
17 representation or unconscionable conduct in
18 collecting a debt includes false representation
19 about the amount of the debt. And that happened
20 here, you know.

21 So that is -- and then you go on down
22 and we talked to you already about disclosing to a
23 person if a person doesn't have a legitimate
24 business information. That is on down later
25 indeed, but on your question about why is this \$10

1 significant? Because it was -- they now -- and
2 they now acknowledge that that was false. They
3 haven't done that before. And that is rather
4 interesting. If you go back to our exhibit
5 attached to our affidavit, you will see excerpts
6 from the deposition of their branch manager, and
7 they do claim in their argument that, you know, we
8 fixed it, we corrected it, and we abandoned this
9 improper claim. They did not. They did not. If
10 you go to page 23, which is, like, the second --
11 well, the first page that I attached in the
12 Schwerin deposition, the question was -- and I'll
13 say "question" and "answer." It just says "Q" and
14 "A" on here. And this was me asking
15 Theresa Schwerin, their branch manager, the
16 question.

17 "Question: And what is the date on
18 this Complaint?

19 "Answer: April 12th.

20 "Question: Of?

21 "Answer: 2016.

22 "Question: Okay. Thank you. What was
23 the amount claimed due in this Complaint?

24 "Answer: The payoff, \$4,351.24 plus
25 court costs of \$80, for a total of \$4,431.24.

1 "Question: Okay. Was that the correct
2 amount that was due at that time?

3 "Answer: Yes, it was.

4 "Question: How do you know that?

5 "Answer: I pulled a payoff."

6 This representation under oath was
7 given my Mrs. Schwerin on January 17 of 2019. So
8 not only did they not abandon their claim that
9 this was an error and fixed it voluntarily, they
10 were still maintaining in 2019, several years into
11 this, about two or three years, that that original
12 amount was correct. Now they have just come out
13 now and said, you know, it wasn't. But I can go
14 through this deposition and I can show you several
15 other places --

16 THE COURT: I think you're using --
17 that is an argument -- the characterization of that
18 as assertion that that is what is due now, I think
19 you're -- I think that is a reach, Mr. Cantrell. I
20 mean, you're just asking her what was the amount
21 due in that original Complaint.

22 MR. CANTRELL: I did.

23 THE COURT: You can't say that now she
24 is asserting that was correct in this now present
25 action.

1 MR. CANTRELL: "Was that the correct
2 amount that was due at that time?

3 "Yes, it was."

4 THE COURT: Well, she answered that it
5 was because she pulled it from the record of her
6 files.

7 MR. CANTRELL: She pulled the payoff,
8 her personally. She went to her computer --

9 THE COURT: Okay.

10 MR. CANTRELL: -- which raises a big
11 issue about the credibility of their computer
12 system regarding any amount, because she did the
13 same thing in both cases and came up with different
14 amounts. And now they admit this is a scrivener's
15 error. So that was wrong. She doesn't say it was
16 wrong. Here she says it was right because the
17 computer told me it was right.

18 Now, is that computer credible? Should
19 we require more of their evidence at damages
20 hearing regarding printouts because their computer
21 got it wrong at least once? I don't know, but I do
22 know that she says several times throughout this
23 deposition that that was the right amount, and that
24 was in 2019. So when he says, hey, we admitted it,
25 we fixed it, they were still believing that that

1 amount was right until very recently. I was a
2 little bit surprised to see their admission that it
3 was an error. But they're using this de minimis
4 argument which the code doesn't support. So I
5 would say even a \$10 error is actionable under --
6 and that is totally apart from the whole
7 unauthorized practice of law issue.

8 So this is something they're trying to
9 get rid of in our Complaint, and there is
10 evidence -- there is evidence that this violates
11 the law. So there is certainly a material issue of
12 fact, in my opinion, on whether or not that \$10
13 higher charge alleged in the first lawsuit was a
14 violation of the Consumer Protection Code, Your
15 Honor.

16 Does that completely answer your
17 question regarding why I believe that violates --

18 THE COURT: Yes.

19 MR. CANTRELL: Okay. Thank you, Your
20 Honor.

21 So that is -- that is the -- that is
22 that issue. Okay.

23 They also argue about the service
24 issue. They argue that it's within -- that it's
25 not within the scope of the sheriff's job

1 performance to negligently serve that Complaint. I
2 would say his job was to serve it. So if he did
3 that wrong, that would be within the scope. Just
4 because he did it negligently doesn't mean it's not
5 within the scope of his employment. Like a truck
6 driver, whose job it is to transport goods, if he
7 runs into somebody, you can't say, oh, it's only
8 his job to transport goods safely.

9 But I would take issue with him on the
10 scope argument. I'd also note they didn't cite any
11 South Carolina cases on the scope argument. I'm
12 just doing that briefly because I saw it in their
13 arguments. I wanted to mention it. But that's all
14 I need to say on that.

15 Okay. So that covers their arguments.
16 Now I need to look at some of mine based on my
17 attachments to my affidavit so that the Court will
18 understand the additional possible violations that
19 the Court should not dismiss our counterclaims
20 regarding.

21 Okay. Let's see. Let us look at the
22 Schwerin deposition first. Let's just pop through
23 there, and we will highlight a few things that was
24 testified to by the branch manager.

25 Okay. Another question that's asked

1 shortly after the one about the payoff a little
2 while ago:

3 "Question: Okay. Is 1st Franklin
4 still attempting to collect the filing fee of \$80
5 for filing the first Complaint in this case.

6 "Answer: I would say it's on the
7 account, so I'm sure that it would be in the payoff
8 on the other one because the \$80 was added to the
9 account."

10 THE COURT: I've got that one. Thank
11 you.

12 MR. OSBORNE: Your Honor, if we're
13 doing anything about damages, I'm not sure -- we're
14 not moving --

15 THE COURT: It's not relevant.

16 MR. OSBORNE: -- for entry of judgment.
17 We've raised three issues in our motion.

18 THE COURT: Right.

19 MR. OSBORNE: We're not moving to
20 dismiss the causative action. He can still present
21 evidence. We're trying to limit the evidence that
22 will be --

23 THE COURT: That's right. All right.
24 I got that point.

25 MR. CANTRELL: Okay, Your Honor. The

1 point in there was that the action was dismissed,
2 but they were still charging a filing fee.

3 THE COURT: I've got it.

4 MR. CANTRELL: Okay. It wasn't really
5 a damages issue as much as it was an improper
6 charge, an unconscionable debt collection practice
7 because they were adding --

8 THE COURT: Okay.

9 MR. CANTRELL: -- a charge that wasn't
10 authorized by law.

11 THE COURT: I understand.

12 MR. CANTRELL: As long as Your Honor
13 understands that. I'm just making sure it's not
14 damages really. It's not about damages. It's
15 about trying to collect it in the first place.

16 THE COURT: Okay. Move on.

17 MR. CANTRELL: Okay. Very good, Your
18 Honor.

19 Fortunately I have highlighted only
20 areas of significance, so I will only mention them
21 to you.

22 On page 31 I raise the issue of whether
23 or not the collection notes that they provided to
24 me were complete. I only went through, like,
25 shortly after the first action was filed. So I

1 said, "Did you enter collection notes regarding the
2 second collection complaint," which wasn't showing
3 up on their end, and she said, "I did.

4 "Question: So it appears to you maybe
5 this is not complete?"

6 THE COURT: I've got that one.

7 MR. CANTRELL: Okay.

8 THE COURT: The problem with that --
9 the issue was the run date on the first exhibit and
10 the run date on the next exhibit was like two
11 weeks' difference, and she said that's why that
12 note wasn't on the 9/6, whatever --

13 MR. CANTRELL: Yeah, you remember
14 reading that part. Yes, Your Honor. So we had
15 asked for that back in January of 2019. We got
16 that yesterday, Your Honor.

17 THE COURT: Okay.

18 MR. CANTRELL: So there is still stuff
19 that we may need to address.

20 THE COURT: All right.

21 MR. CANTRELL: And we're kind of in a
22 spot because we have got scheduling order
23 deadlines, and there is no reason that stuff --
24 they even said, Mr. Lanny (ph), would you be able
25 to get me a copy of this complete record, yes, and

1 he didn't for a year, 14 months.

2 THE COURT: Okay.

3 MR. CANTRELL: You know, that is a
4 concern because we may have limitations on
5 discovery. And that is something I should mention,
6 too. They mention the case called Baughman v.
7 AT&T, and that case said a couple of things. One
8 of the things it said is you should not grant a
9 motion for summary judgment until a full and fair
10 opportunity for discovery has been issued. In that
11 case, actually, it had been three years into the
12 case at that point and the court said, look,
13 discovery is not complete. And we have just been
14 given stuff that we were due 14 months ago.

15 So I'm concerned that if I need to get
16 written discovery on that or if I need to get
17 somebody to testify to something that's just been
18 disclosed from way back when, I'm concerned that I
19 won't be able to do that. And part of what they
20 produced to me has been redacted due to claims of
21 attorney-client privilege and work product at a
22 point in time when I'm not even certain they were
23 represented by the first attorney which was the
24 Brush Law Firm.

25 So I need to work on him with that, but

1 I'm telling you, I may have violations in those
2 documents that have just been served on me less
3 than 24 hours ago that need to be addressed, and
4 that is another reason why I don't think discovery
5 is complete in this case and summary judgment
6 shouldn't be granted at this point in time.

7 THE COURT: I think you have already
8 addressed the issue was to come to grips with
9 whether or not the \$8 difference was unconscionable
10 and whether or not the second or the additional
11 phone call after you were retained was
12 unconscionable.

13 Isn't that right, Mr. Osborne?

14 MR. OSBORNE: Your Honor, on the phone
15 call issue, we haven't raised that on this motion
16 for summary judgment.

17 THE COURT: That's still open?

18 MR. OSBORNE: That is still open.

19 THE COURT: This is just the \$8, okay?

20 MR. CANTRELL: Well, so far, Your
21 Honor, you haven't let me go through the other
22 important parts of the deposition. There are at
23 least one or two other issues I wanted to raise.

24 THE COURT: Let me just say this --

25 MR. CANTRELL: I'm sorry, Your Honor?

1 THE COURT: -- Mr. Cantrell: Were I to
2 agree that there are material issues of fact that
3 need to be -- that may change the situation as to
4 the unconscionable claim that you have brought,
5 would it be necessary for you to cover all of those
6 with me today?

7 MR. CANTRELL: No, Your Honor. If Your
8 Honor thinks that there is --

9 THE COURT: Let me just ask you: So if
10 one is enough, do I need to hear all of them?

11 MR. CANTRELL: As long as Your Honor
12 feels that way, you know, he is knocked a number of
13 them --

14 THE COURT: I don't know what his
15 response is yet --

16 MR. CANTRELL: Exactly. Sure.

17 THE COURT: You're asserting,
18 basically, there are a number of material facts
19 that need to be -- that would affect the
20 application of law in the case.

21 MR. CANTRELL: Regarding the
22 counterclaims, yes, Your Honor.

23 THE COURT: Just one counterclaim,
24 unconscionable issue claim.

25 MR. CANTRELL: That is all they have

1 argued today, Your Honor.

2 THE COURT: No. They have argued the
3 principal agency issue, the sheriff, and they have
4 argued that the --

5 MR. OSBORNE: Unauthorized practice of
6 law.

7 THE COURT: Unauthorized practice of
8 law. I mean, I'm ready to rule unless there is
9 something specific that you want to tell me,
10 Mr. Osborne, on this unconscionable stuff that is
11 concerning you.

12 MR. OSBORNE: The only thing -- just
13 two quick points, Your Honor.

14 Rule 56 requires evidence --

15 THE COURT: Right.

16 MR. OSBORNE: -- to create an issue of
17 fact. We have heard a lot of arguments from
18 Mr. Cantrell today. That is not evidence.

19 THE COURT: Right.

20 MR. OSBORNE: And then as a final
21 issue, the statute that he relies on gives you as a
22 matter of law the discretion to find whether
23 conduct is unconscionable.

24 THE COURT: Okay.

25 MR. OSBORNE: I would disagree with his

1 interpretation of a misrepresentation is
2 unconscionable. That is a finding for Your Honor
3 to make.

4 And, you know, again, he is still going
5 to have an opportunity at trial to bring evidence
6 in of allegedly unconscionable conduct. What we're
7 trying to do is take out the scrivener's error,
8 take out the service issue, and take out the
9 unauthorized practice of law issue so we can focus
10 on whatever remaining claims he has as
11 unconscionable.

12 THE COURT: All right. And what is
13 your response to his assertion that the
14 unconscionable -- the characterization of the act
15 as being unconscionable is within my discretion?

16 MR. CANTRELL: I don't see where the
17 statute grants that, Your Honor.

18 THE COURT: Mr. Osborne, do you want to
19 point it out to me?

20 MR. OSBORNE: "If the court as a matter
21 of law finds that a person has engaged in" -- "is
22 engaging in or is likely to engage in
23 unconscionable conduct in collecting a debt," it
24 goes on. And then going down to subsection (5):
25 "consideration shall be given to each of the

1 following factors:"

2 It's his argument that, if you violate
3 one of these factors, which we will not -- we don't
4 admit that we violated, but even assuming that we
5 did, that doesn't lead to liability. That's a
6 factor to be considered by the Court when you make
7 the determination about whether that collector had
8 engaged in unconscionable conduct.

9 THE COURT: Right.

10 MR. OSBORNE: That's the plain language
11 of the statute, Your Honor.

12 MR. CANTRELL: I would say that these
13 are a list of unconscionable debt collection
14 practices, but they're not exclusive because it
15 says "among others." It's applicable. When it
16 says "among others," it means that these are
17 factors that create unconscionable debt collection.

18 THE COURT: I've got you.

19 MR. CANTRELL: So that would be my
20 position on that. I certainly think there's a
21 material question of fact on that issue, Your
22 Honor. That's the point of today's hearing, right?
23 I mean, he says I have no evidence. I have
24 introduced deposition testimonies. I have
25 introduced -- I mean, I've got some documents

1 attached I haven't gotten to yet. Remember those
2 collection notes I told you about? There is
3 evidence of notice violation in there. If you
4 like, I will be glad to hit that as well right now.

5 THE COURT: I don't think it's
6 necessary.

7 MR. CANTRELL: Okay, Your Honor.

8 THE COURT: Anything else, Mr. Osborne?

9 MR. OSBORNE: Just very briefly, Your
10 Honor, on the affidavit about not having enough
11 time for discovery.

12 He served discovery, the last round of
13 discovery, on February 7th. We answered in under
14 30 days. So this argument that he's been waiting
15 around for stuff, there was a motion to compel over
16 the summer. We never heard anything. I believe we
17 fully complied with your Court's order in that
18 regard. Haven't heard anything else that we
19 haven't, so this argument that we haven't complied
20 with discovery I think falls flat. Or haven't
21 allowed him to engage in discovery.

22 MR. CANTRELL: They really haven't
23 complied with the scheduling order which they
24 drafted and filed. Before us, Your Honor, is a
25 consent order, and it said 15 days. Now, we gave

1 them the request February 7th. They answered
2 yesterday. That's 26 days. So I applaud Your
3 Honor's effort to move this case along, but it's,
4 frankly, their fault for not complying with that
5 15 days that has pushed things out. And, Your
6 Honor, if they want things to move along, they've
7 got to participate in the process, and they
8 haven't.

9 MR. OSBORNE: The parties will make
10 best efforts to answer discovery within 15 days.

11 THE COURT: It was a target. It was a
12 target. It wasn't set as a drop-dead date.

13 MR. CANTRELL: That's fine. But that's
14 why it's taken longer.

15 THE COURT: I'm ready to rule. Are you
16 ready for me to rule?

17 MR. CANTRELL: If Your Honor feels I
18 wouldn't be prejudiced by mentioning these other
19 possible violations, I will be glad to short
20 circuit my argument at this point.

21 THE COURT: All right. Good. I'm
22 going to rule in favor of the plaintiff on the
23 liability issue. I'm going to rule in favor of the
24 plaintiff on the issue of the sheriff as an agent
25 or whatever. The sheriff was just simply

1 conducting business it's authorized to do by
2 statute. Not only authorized but mandated to do by
3 statute. I'm going to rule in favor of the
4 plaintiff on the unauthorized practice of law
5 issue. And on the unconscionability issue, I am
6 going to rule in favor of the defendant and allow
7 all of those issues to be brought before me at the
8 trial.

9 Mr. Osborne, will you prepare an order
10 for that effect?

11 MR. OSBORNE: Yes, sir, Your Honor.
12 Just so I'm clear, the unconscionability issue I
13 think relates to both the sheriff's issue and the
14 unauthorized practice of law.

15 THE COURT: In other words, those are
16 not unconscionable.

17 MR. OSBORNE: Okay. But he's going to
18 be free at trial to raise issues relating to the
19 scrivener's error?

20 THE COURT: You know, I'll let him put
21 that out.

22 MR. OSBORNE: Yes, sir.

23 THE COURT: I don't know that I can
24 make a discretionary call at this stage without all
25 the facts in front of me.

1 MR. OSBORNE: Yes, sir. I was just
2 making sure I understood our order.

3 THE COURT: I understand, but it's
4 pretty hard to rule on the law of the case when it
5 allows me to have some discretion to determine
6 whether or not the act was or was not an
7 unconscionable act. And so until that evidence is
8 actually before me, I can't weigh -- I can't
9 evaluate in my discretion, I can't make a
10 discretionary call at this point.

11 MR. OSBORNE: Yes, sir, Your Honor.

12 THE COURT: Do you understand that?

13 MR. OSBORNE: I understand, yes, sir.

14 THE COURT: I mean, that just seems to
15 me to be an issue that has to be tried.

16 MR. CANTRELL: Your Honor, for
17 clarification -- I was trying to write your points
18 as fast as I could -- plaintiff for liability,
19 sheriff not agent, unauthorized practice of law in
20 favor of the plaintiff, and then for me on the
21 counterclaims. But there was one more thing that I
22 missed. Could you remind me what the fourth one
23 was?

24 THE COURT: Well, your issue that
25 violated the Consumer Protection Act for certain

1 unconscionable acts that you're alleging that they
2 did, I'm going to allow you to present that
3 evidence at trial.

4 MR. CANTRELL: I think there was one
5 more against me that I missed. Could you help
6 me --

7 THE COURT: Liability, the sheriff, and
8 unauthorized practice of law.

9 MR. CANTRELL: Got that.

10 THE COURT: The conscionability conduct
11 under the Consumer Protection Act based on the
12 allegations of your Complaint, I'm going to allow
13 you to bring some evidence in on that issue,
14 because I don't think at this stage in the game I
15 can make a call, a discretionary call, based on
16 basically the argument of counsel and a few --

17 MR. CANTRELL: Very good. I got all of
18 those. I thought there was a fifth one, but I must
19 have --

20 MR. OSBORNE: That is all I have.

21 THE COURT: Is that all you have?

22 MR. OSBORNE: Yes, sir.

23 MR. CANTRELL: That's all -- I wasn't
24 sure. Thank you.

25 THE COURT: Thank you very much,

1 gentlemen.

2 MR. OSBORNE: We'll work with
3 Mr. Cantrell to get an order submitted jointly. If
4 we have issues, we'll contact the Court.

5 MR. CANTRELL: Thank you, Your Honor.
6 (Hearing adjourned 12:06 p.m.)
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CERTIFICATE OF REPORTER

I, Julie L. Bonomo, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 9th day of November,
2020, at Charleston, Charleston County, South
Carolina.



Julie L. Bonomo
Court Reporter
My Commission expires
July 28, 2027

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REQUESTED INFORMATION INDEX
(No Information Requested)

E X H I B I T S
(No Exhibits Proffered)

[& - action]

Page 1

&	2	5	a
& 2:3	2 78:19 79:16	5 1:10 79:15,15,24	a.m. 1:11
1	80:11,13	80:12 94:24	abandon 83:8
1 30:8 51:17,17	200 2:4	5,000 27:7	abandoned 82:8
103:5	201 50:25	50 38:11 53:21	ability 63:15
10 3:4 21:1 73:17	2016 20:6 82:21	5200 1:12	able 6:15 8:22
73:21,22 74:1	2017 1:5	543 57:17	30:11 41:25 89:24
81:25 85:5,12	2019 4:22 7:6 83:7	56 5:4 9:12 10:1,4	90:19
1002 30:18 33:24	83:10 84:24 89:15	10:25 11:8 12:6,8	abolished 75:3
35:15 38:20 40:2	2020 1:10 102:13	12:21 13:24 15:13	76:21
41:14	2027 102:25	39:16 40:3 93:14	abramson 45:4
102 103:5	21 67:8	5:14 4:14	74:18
108 78:16,17	212 50:25 54:21	6	absolute 55:12
10:00 3:7	21875 102:20	602 14:17	access 26:12
10:12 1:11	23 82:10	7	accidentally 22:4
1276 2:9	24 69:24 91:3	7 9:8	accord 20:16
12:06 101:6	251 34:10	70 53:20 54:14	account 87:7,9
12th 82:19	26 97:2	7th 96:13 97:1	accounting 17:5
14 90:1,14	28 102:25	8	20:24 21:7,18
15 96:25 97:5,10	29401 2:5	8 72:10 73:9,19	accurate 102:6
16th 4:21	29445 2:10	91:9,19	achieve 27:15
17 83:7	2nd 4:13	80 52:24 53:20	acknowledge 82:2
18-00819 1:5	3	54:14 82:25 87:4	acknowledged
1958 51:17	30 96:14	87:8	17:24
1968 34:9	301 2:4	843-727-2650 2:5	acknowledging
1991 50:25	303 50:25	843-797-2454 2:10	22:19
1992 66:6	31 88:22	9	act 16:25 19:4
1997 57:17	326 57:17	9 20:17 36:24	44:24 46:19 47:9
1st 1:3 2:2 3:10,13	37-5 78:15	73:20,21 74:1	69:8 70:21,23
3:15 4:22 7:2	37-5-108 19:7 48:7	9.08 20:14	94:14 99:6,7,25
17:19,25 18:2,9	78:10,12 79:15	9.42 73:24	100:11
20:11,16,20,25	4	9/6 89:12	acted 23:12,23
21:10 22:19,23,23	4,000 29:14 32:15	90 37:9	acting 52:14
23:8,25 24:15,24	4,342.16 20:13	901 9:20,21 11:7	action 5:11 16:22
25:16 26:16 29:6	4,351.24 20:10	15:10	19:1,3 20:17
29:10 31:16 33:2	82:24	902 35:1,4,4 36:12	24:19 25:1,10,12
39:4,7 48:24	4,431.24. 82:25	36:24 37:2	25:23 26:2,20
49:14,22 51:25,25	45 63:14	9th 102:12	43:17 62:16,17,19
60:2 67:4 68:25	473 34:10		64:1,11 66:2 72:5
70:1 77:6 87:3			72:5 73:16 79:2,3
			79:4 83:25 87:20

88:1,25 actionable 85:5 actions 21:7 45:20 54:24 activities 18:23 acts 51:7 52:1 100:1 actual 76:13 79:3 81:12 adams 1:6 2:3,7 3:16,25 16:15,21 17:9,14,19,20 23:13 26:15,25 29:6 30:1,25 33:22 34:21 48:23 add 71:4,14 added 71:9 87:8 adding 88:7 addition 7:11 25:3 55:25 79:1 81:11 81:11,13 additional 5:5 6:10 86:18 91:10 address 6:6,16 20:4 37:3 40:15 42:1 61:22 72:18 74:22 89:19 addressed 11:12 72:16,17 91:3,8 addressing 17:15 57:15 adjourned 101:6 admissibility 9:23 10:8 12:18 admissible 10:7 11:6 12:9 29:23 40:3,5 admission 44:2 85:2 admit 29:18 39:6 74:10 84:14 95:4	admits 18:1 26:16 37:22,22 admitted 12:20 38:7 39:19 41:24 48:3 52:19 70:1 77:24 84:24 advanced 16:21 adversary's 52:15 adverse 10:20 affect 48:13,24 92:19 affiant 10:9 affidavit 10:13,25 11:1 13:23,25 14:5,7,24 15:3 56:21,23 57:9 59:6 64:21 68:22 69:11 82:5 86:17 96:10 affidavits 4:16,17 9:15 10:5,16,18 affirmative 16:15 17:17 18:18 40:9 affirmatively 10:9 affixed 102:12 africa 47:22 agency 22:11 23:1 23:10,11,21 45:6 49:5,7,18 50:8,9 50:15,20,22 51:4 51:14,17,18,21 53:14 93:3 agent 22:23 23:23 29:1 49:10,12,13 51:12,16,25 52:15 55:2,21 64:22 97:24 99:19 agents 51:4 ago 30:25 54:20 69:24 87:2 90:14 91:3	agree 35:6,17 63:23 74:14 92:2 agreed 17:22,23 18:7,8 agreement 9:17 11:2 17:22 26:15 26:19 28:14 ahead 57:2 aid 63:19 align 59:19 allegation 17:7,10 21:20 22:22 25:8 26:3,5 44:11 46:24 57:22 64:5 64:23,25 76:2 allegations 10:20 17:13 24:17 48:14 74:14 100:12 alleged 19:25 20:10,13,14,20 22:6 24:10 26:23 48:23 59:3 65:20 69:13 70:16,20 71:6 73:5 85:13 allegedly 58:15 94:6 alleges 18:24 19:1 22:17 alleging 100:1 allow 6:12 29:12 29:21 41:22 52:11 66:10 68:6 98:6 100:2,12 allowed 6:14 22:13,15 41:1,19 57:1 59:13 63:25 67:17 68:14 96:21 allowing 12:1 63:12 allows 40:14 99:5	alternative 6:22 amended 44:9,10 44:10 72:12 amendment 65:18 amount 7:14 18:2 20:14,17,22 21:1 21:13 31:20 44:3 46:16 62:15 63:13 78:2 79:5 80:10 80:15,21 81:4,10 81:19 82:23 83:2 83:12,20 84:2,12 84:23 85:1 amounts 84:14 analogy 74:21 analysis 81:5 ands 33:8 annotated 34:7 answer 28:8 38:25 39:4 44:9,10,10 56:18 65:19 82:13 82:19,21,24 83:3,5 85:16 87:6 97:10 answered 84:4 96:13 97:1 answers 10:17 anybody 22:20 46:17 apart 85:6 apologies 56:10 apologize 3:5 31:25 56:11 57:6 64:15 68:9 75:15 apparently 29:5 33:2,5 appealable 65:5 appeals 45:1 51:1 51:20 56:2 57:16 appear 70:1 appearances 2:1

appeared 64:20 appearing 3:17 appears 29:7 30:21 31:7,11 67:19 89:4 appellate 15:16 58:20 applaud 97:2 applicable 78:14 79:18 95:15 application 92:20 applies 36:15 58:24 apply 13:19 76:22 79:9 applying 79:16 80:13 appreciate 27:24 appropriate 5:6 7:16 34:18 63:14 april 82:19 area 44:20 64:2 areas 37:5 88:20 argue 20:22 23:22 24:3,7 25:4 65:5 85:23,24 argued 24:5 40:18 93:1,2,4 arguing 55:2 argument 5:5 8:14 8:15,18 12:18 13:8 14:25 17:16 24:2 33:15 41:1,2 42:16 45:2 66:16 68:20 81:15 82:7 83:17 85:4 86:10 86:11 95:2 96:14 96:19 97:20 100:16 arguments 6:2,12 6:16,24 7:17,20	8:19,23 20:3 69:4 86:13,15 93:17 arises 64:5,11 arising 78:25 aside 61:3 asked 11:20 23:14 23:15,16 30:1 33:18 38:25 39:2 50:22 52:9 53:2 86:25 89:15 asking 16:18 40:1 41:9 42:21 82:14 83:20 asserted 26:25 64:18 asserting 83:24 92:17 assertion 83:18 94:13 assuming 95:4 at&t 90:7 attach 13:7 28:13 attached 9:10 10:13 15:4 29:25 41:9 47:2 54:1 56:23 57:23 59:5 82:5,11 96:1 attachments 86:17 attempted 28:13 attempting 60:25 87:4 attorney 4:22 14:13 22:10 63:19 66:8 74:23 90:21 90:23 attorney's 41:10 41:16 69:6 81:13 attorneys 2:1,7 75:4 authenticate 10:2 12:6 14:18	authenticated 9:19 10:24 11:2,4 12:4 14:12,23 15:4,6 28:19 30:15 35:3 38:13 38:15 authenticating 13:22 34:23 35:10 35:19,24 36:2,10 36:20 56:22 authentication 9:19,22 12:21 34:25 35:22 36:12 authority 21:24 23:4,24 76:8 77:1 authorization 67:12,18 authorized 23:5 88:10 98:1,2 authorizing 68:6 68:13 automatic 18:9 automatically 19:20 aware 4:5 24:20 45:23 69:10	58:15 61:14,19 62:3 69:10 74:16 86:16 100:11,15 bases 27:1 40:17 basic 4:23 78:20 basically 22:12 71:25 92:18 100:16 basis 6:21 30:13 70:22 baughman 90:6 behalf 3:17 7:2 24:15 believe 5:7 12:3 28:24 30:23 38:9 39:6 44:8 45:25 46:9 59:5 85:17 96:16 believing 84:25 benefits 73:14 bernstein 2:3 best 33:24 34:18 38:15,18 97:10 beyond 77:4,10 big 32:11 52:25 84:10 bill 29:14 32:15 bilton 1:12 bind 31:18 binding 15:19,21 74:19 bit 60:12 85:2 bite 42:14 black 23:25 25:11 25:17 black's 37:7 bleed 18:14 bonomo 1:14 3:15 102:3,23 bore 16:11
		b b 9:8 103:12 back 4:22 5:18 7:25 20:6 24:14 24:18 31:21 32:1 41:14 42:6 54:17 54:19 66:19 82:4 89:15 90:18 background 16:6 16:11 22:3 27:23 bad 50:1 54:24 bank 32:12 base 22:21 based 4:25 6:23 18:25 20:18 26:14	

bottom 79:25 boulevard 1:12 bounced 60:10 bound 17:22 box 2:9 brain 75:15 branch 52:19 69:12 82:6,15 86:24 breach 17:18 18:3 26:19,20 43:16 62:5 breached 18:4 43:20 break 68:22 brief 6:9 52:7 69:2 briefly 6:6 86:12 96:9 bring 72:1 94:5 100:13 bringing 72:19 broad 50:8 53:13 broadest 51:6 broadly 51:19 brought 64:12 92:4 98:7 brush 90:24 burden 28:10 business 48:10 81:24 98:1	90:6 calls 38:21 41:13 70:3 cantrell 2:8,9 3:24 3:24 4:2,6,10 7:4 7:19,24 8:8,10,13 9:3,6,8 13:15,17 13:21 14:6,8,11 15:9,13,17 20:19 25:4 27:12,13,22 28:1,4 30:21 31:5 31:14,25 32:2,6,9 33:1,9,13,16 34:24 35:4,8,11,20 36:3 36:8,11,17 37:2,12 37:14,18,24 38:2,9 38:14,17 39:6,11 39:18,23 40:10,14 40:19,23,25 41:5 41:13,18 42:5,13 42:20,23 43:1,4,9 43:14 44:1 46:5,9 46:20,24 47:10,14 47:19,25 48:22 49:7,11,15,19,23 50:7,17 52:3,17,24 53:4,10,25 54:6,11 55:17,23,25 56:5,7 56:10,17 57:4,8,11 57:20,25 58:10 59:9,12,18,23 60:2 60:8,19,24 61:10 64:8,14,17,24 65:3 65:11 66:11,14,20 68:9,17,21 69:9,22 70:17 71:1,25 72:10,22 73:2,5,7 73:10,15,20,23 74:7,16 75:19,22 75:25 76:5,15 78:9,16,18 83:19	83:22 84:1,7,10 85:19 87:25 88:4 88:9,12,17 89:7,13 89:18,21 90:3 91:20,25 92:1,7,11 92:16,21,25 93:18 94:16 95:12,19 96:7,22 97:13,17 99:16 100:4,9,17 100:23 101:3,5 capital 29:1 carolina 1:1,13 2:5 2:10 5:4,9 15:18 16:23,25 18:24 25:9,18 33:23 34:9 38:3 40:6 44:22 45:17,22 51:1 58:19 66:1,4 75:12 76:11 77:8 77:10 86:11 102:4 102:14 carrying 24:3 carson 57:17 case 1:5 3:10,11 3:13,14 4:5 6:23 9:15 14:10 16:7,9 17:6,7,18 19:21 25:2,14,23,24 26:8 27:5,7,14,17,19,23 31:2 34:8,9,10 45:2,23 46:12 47:25 49:14,20 50:8,10,24 51:8,18 52:9 54:2,19 56:1 56:3,14 57:3,15,16 57:18 58:18,20 61:23,24,25 62:12 62:14,17,18,19 63:3,5,11,16,17 64:4,9,14,16 65:1 65:4,14,15,16,22	66:13,19,24,25 67:3,16 68:18 69:1 74:17,19,25 75:11 76:19 87:5 90:6,7,11,12 91:5 92:20 97:3 99:4 cases 3:4,7 15:7,16 37:4 44:20,21,25 45:5 61:6,14 68:18 75:13 84:13 86:11 causative 87:20 cause 19:1 25:10 25:12,22 26:2,20 62:17,19 79:2 102:9 causes 16:22 19:3 72:4,5 certain 16:20 18:23 19:13 24:22 52:11 62:15 63:13 90:22 99:25 certainly 5:14 8:3 13:21 23:22 30:23 36:18 66:21 68:23 85:11 95:20 certificate 102:1 103:5 certification 14:20 14:21 certified 10:12 12:5 certifies 13:25 14:1 certify 102:5,8 chairperson 67:13 change 92:3 character 21:12 80:10 characterization 83:17 94:14

[charge - conduct]

Page 5

charge 85:13 88:6 88:9 charging 88:2 charleston 2:5 102:13,13 cheaper 53:20 checklist 59:5 chellis 1:9 3:2 chief 66:6 67:14 child 54:23 55:7 choose 54:12 chose 53:19 circuit 24:21 45:1 45:10 51:9 62:3 62:12 65:19 74:17 74:18 76:6 77:2 97:20 circumstance 71:2 citation 78:8 cite 51:8 55:9 56:1 56:2,14 78:9 86:10 cited 25:25 56:1 61:25 76:19 cites 34:7 city 34:8 civil 5:4 23:3 claim 11:6 18:18 22:22 61:19 62:4 64:11 68:5 71:2 74:20 75:20 76:23 82:7,9 83:8 92:4 92:24 claimed 43:15 59:9 73:17 82:23 claiming 35:23 68:12 74:5 claims 9:25 16:15 17:17 25:8 26:4,6 26:25 46:16 48:25 58:16 90:20 94:10	clarification 99:17 class 79:3 clear 19:24 43:23 43:23,25 60:25 62:25 64:4 65:11 65:22 76:16 81:16 98:12 clearly 23:13 25:25 clerical 21:8 72:2 clerk 47:5 client 6:15 9:18 28:3 29:11,17,21 30:16 31:16,22 36:20 37:20 38:7 40:1 41:8,9 53:8 59:2 61:18 63:25 70:23,24 73:14 90:21 client's 11:3 28:10 47:1 49:12 58:15 61:12 code 16:24 18:25 19:2,6 20:21 21:5 21:15 22:7,13 24:6 26:6 44:13 44:22 55:19 58:1 58:5 59:1 66:1 74:22 77:8 78:5 85:4,14 collateral 28:25 32:6,8,12,20,24,24 33:1,8,9 39:19,20 collect 58:7 75:7 87:4 88:15 collecting 19:8 78:25 80:21 81:18 94:23 collection 21:6 44:24 45:6,14,20 46:19 47:9 70:22	74:24 76:4 79:21 80:3,16 88:6,23 89:1,2 95:13,17 96:2 collector 19:13 22:14 75:24 77:15 95:7 collectors 77:6 collects 75:1 combine 5:25 comcast.net 2:11 come 13:8 16:3 29:22 31:21 42:6 45:2 66:19 83:12 91:8 comes 45:18 commercial 33:4 36:25 37:3,6,8,8 37:10,11,14 commission 102:24 commodity 37:11 common 1:1 13:5 44:18 45:8,14 48:16 76:20 commonly 33:24 communicate 22:14,15 58:3 communication 22:9,20 44:14 communications 17:14 23:18,19 45:13 71:15 compare 31:8 compel 70:11 96:15 competent 10:9 64:1 complaint 17:8 20:15 21:22,22 22:1,2,5,8,18	24:13 26:23 44:12 46:18 47:6 48:21 48:23 51:24 52:21 57:23 70:5,12,19 71:3 72:13 74:15 76:2,14 82:18,23 83:21 85:9 86:1 87:5 89:2 100:12 complaints 17:5 20:19 21:4 72:11 complete 70:7 88:24 89:5,25 90:13 91:5 102:6 completely 12:13 85:16 complied 96:17,19 96:23 comply 13:23 40:5 60:14 67:6 70:21 77:17 complying 97:4 components 5:10 comprehensive 51:5 55:5 computer 84:8,11 84:17,18,20 concept 59:20 concern 4:20 61:5 61:13,14 74:13 90:4 concerned 11:11 90:15,18 concerning 40:8 69:21 93:11 conclusion 30:9 38:21 41:14 46:14 conclusions 30:3 38:23 condition 9:22 conduct 19:7,11 19:16 20:1 21:2,9

[conduct - court]

Page 6

21:19 24:11,15 70:20 71:22 78:24 79:12,13,21 80:12 81:17 93:23 94:6 94:23 95:8 100:10 conducting 98:1 congress 45:11 75:3,9 connection 80:2 conscionability 100:10 consent 4:15 96:25 consider 63:12 81:9 consideration 79:17,23 94:25 considered 19:9 24:14 40:4 95:6 considering 42:12 constable 54:1 constitutes 25:19 constitution 5:9,9 construed 77:13 consult 70:10 consumer 16:24 18:25 19:2,5 20:21 21:5,15 22:7,10,11,13 24:6 25:9 26:6 44:12 44:22 55:19 57:25 58:5,25 70:21 74:21 77:8 78:5 78:21 79:2 80:3 80:22 81:10 85:14 99:25 100:11 consumer's 46:25 48:12 58:14 consumers 59:1 contact 101:4 contacted 23:7 70:23	contained 74:20 content 34:3 39:25 40:2 contents 34:11 contingency 63:17 continuance 8:4 continue 6:11,22 43:9 continued 8:5 65:13 continues 67:15 contract 17:18 18:4,4,7 26:19,20 30:10 38:19 43:16 43:19 62:5 contractor 51:12 55:1,12,14,15 59:14,20,22 60:4 contractors 51:21 contrary 38:1 control 23:2,9 54:15 controlled 9:12 copies 10:12 12:5 14:2 copy 26:8 28:13 28:17 29:13,22 30:22 31:5,7,9,10 35:13 36:3,7 39:1 78:7 89:25 corner 28:23 31:24 corporation 1:3 2:2 3:14 25:14 63:1 64:22 corporations 24:20 66:8 correct 14:2 31:9 64:7 69:3,8 73:21 83:1,12,24 84:1	corrected 20:25 82:8 correctly 51:3 55:4 76:9,10 costs 82:25 counsel 2:1 4:4 17:15 27:18,21 36:18 44:8 61:6 61:25 63:3,24 64:2 70:24 71:4 100:16 102:9 counterclaim 25:5 25:6 69:17 92:23 counterclaims 16:20,23 17:12 18:21,22 21:21 26:21 40:17 41:6 44:6 69:6 86:19 92:22 99:21 country 44:25 county 1:2,12 3:3 17:9 21:23,25 22:17 23:12 50:3 54:3 102:13 county's 22:25 couple 9:11 28:14 78:13 90:7 course 15:9 45:10 47:10 51:15 70:10 court 1:1 3:1,21 3:23 4:1 5:11 6:8 6:25 7:17,22 8:8 8:12,24 9:5,7 10:15 11:13,22,22 12:23 13:1,2,10,13 14:5,9,14,19,21,25 15:11,15,16,18,19 15:23 16:1,8,17 17:2 18:19 19:9 19:14 20:9 21:10 21:16,23,24 23:6,6	23:15 24:18,19,21 24:23,25 25:18 26:11 27:2,11,16 27:22 28:2 30:6 30:19 31:3,13,19 31:23 32:1,4,8,23 33:7,12,14 34:9,22 35:2,6,9,16,25 36:6,9,13,14,22 37:1,12,16,19,25 38:4,12,16,24 39:9 39:18 40:7,12,13 40:14,16,22,24 41:4,12,16 42:2,3 42:3,4,11,15,16,18 42:21,24 43:2,8,12 43:22,24 45:1 46:3,6,13,21,23 47:5,6,12,17,24 48:20 49:5,9,12,17 49:21 50:6,10,14 51:1,2,10,20,23 52:5,22,25 53:7,13 53:16,22,23 54:2,5 54:8,9,12 55:16,23 56:4,6,8,13,15,19 56:21 57:2,6,9,16 57:19,21 58:8,20 58:24 59:8,11,17 59:25 60:5,14,16 60:21 61:9,22 62:2,3,9,11,12,13 62:16 63:1,5,12,16 63:23 64:3,10,12 64:16,18,20,23 65:1,8,16,17,19 66:4,11,15,23 67:7 67:8,12,20,21,22 67:23 68:1,2,4,7 68:12,15,19,24 69:3,10,20 70:6,15

70:18 71:11,21 72:3,8 73:1,4,6,9 73:14,18,22 74:6 74:12 75:12,17,20 75:23 76:1,7,8,13 76:25 78:8,15,17 78:20,22 79:1,6 81:9 82:25 83:16 83:23 84:4,9 85:18 86:17,19 87:10,15,18,23 88:3,8,11,16 89:6 89:8,17,20 90:2,12 91:7,17,19,24 92:1 92:9,14,17,23 93:2 93:7,15,19,24 94:12,18,20 95:6,9 95:18 96:5,8 97:11,15,21 98:15 98:20,23 99:3,12 99:14,24 100:7,10 100:21,25 101:4 102:3,24 court's 62:6 96:17 courthouse 1:12 courtroom 4:3 courts 15:21 54:1 66:9 cover 92:5 covered 41:2 44:5 60:9 69:4,9 75:1 covers 51:3 86:15 cp 1:5 create 46:11 75:4 93:16 95:17 created 45:11 creation 76:21 credibility 49:1 84:11 credible 84:18	credit 33:3,4 48:12 78:21 80:3,22 creditor 19:10 46:15,21 48:17 53:17 77:6 creditors 19:25 77:9 creek 2:10 criteria 52:12 cure 8:16 current 31:10 44:9 64:24 65:21 currently 29:7 62:3 custody 54:23 d d 45:3 48:7 103:1 damage 58:2 81:10,11 damaged 18:9 26:17 59:10 damages 18:5 42:19,22 43:11,13 43:17,20 61:19 79:3 81:7,12,13 84:19 87:13 88:5 88:14,14 date 1:10 8:5 82:17 89:9,10 97:12 day 7:23 18:14 102:12 days 5:14,21 18:15 37:9 63:14 96:14 96:25 97:2,5,10 de 81:15 85:3 dead 97:12 deadline 4:16 deadlines 89:23 deal 52:25	dealing 20:6 debt 19:8 21:6,13 22:14,16,21 27:7 27:25 28:3,6,11 33:10 41:3 44:24 45:6,14,20 46:19 46:22,25 47:8 48:6,21,24 58:6 68:7,14 74:24 75:1,7,23 76:3 77:5 78:25 79:22 80:11,15,16,21,21 81:4,18,19 88:6 94:23 95:13,17 debtor 22:16 deceptive 21:11 45:13,19 80:1,6 decide 4:8 61:22 62:9,23 decided 63:3 decides 62:22 decision 62:2,6 decisions 61:17 defaulted 48:23 defect 68:5,13,16 68:18 defective 5:24 defendant 1:7 2:7 3:16,25 18:24 19:6 20:20 22:6 22:17,21 25:4 50:1 53:24 98:6 defendant's 21:21 22:5 defended 6:3 defense 56:25 60:13 defenses 40:9 75:2 define 51:19 defined 5:18	defining 51:18 definitely 76:5,12 definition 49:17 50:15 51:11 80:8 delay 27:14 delegates 55:11 denial 28:9 denials 10:21 denied 51:9 deny 22:4 department 49:22 55:6 depends 39:12 49:20 depo 29:24 deposed 17:20 deposition 9:18 10:17 11:3,4,11,15 11:20 12:2,25 13:4,7 14:14,15 15:4 17:21,24 18:1 30:6,12 33:18 37:21 38:25 41:8,23 42:9 47:1 48:15 52:18 58:16 59:3,7 69:12 82:6 82:12 83:14 84:23 86:22 91:22 95:24 deputy 22:1 designated 55:21 designed 59:1 determination 63:4 95:7 determine 25:19 63:21 65:24 99:5 determined 79:6 determining 19:17 dictionary 37:7 differ 6:13 difference 20:14 20:18,19 21:1

72:10 89:11 91:9 different 7:13 21:3 37:5 84:13 direction 53:19,23 disagree 60:5 93:25 disappeared 45:15 disclose 48:6,20 59:15 disclosed 48:21 70:14 90:18 disclosing 48:8 58:12 81:22 disclosure 58:11 discovery 69:25 70:4,7 90:5,10,13 90:16 91:4 96:11 96:12,13,20,21 97:10 discretion 3:8 81:6 81:9 93:22 94:15 99:5,9 discretionary 98:24 99:10 100:15 discuss 40:12 discussion 4:4 44:16 72:23 dismiss 69:17 86:19 87:20 dismissed 17:7 20:11 25:1,3 40:17 62:18,20 64:6,13 65:1,4 73:17 88:1 dispositive 26:10 dispute 38:6 44:3 disputes 38:6 distress 59:3 doctrine 58:23	document 6:17 11:18 14:19 28:15 28:17,25 29:4,16 29:22 30:1,4,14 33:19,21 34:13,15 34:16,19 35:19 36:10 38:22,22 39:22 40:1 41:15 42:7 48:1 68:6,13 documents 10:2 10:23 12:6 14:12 14:22 36:25 37:9 44:2 46:6,8 56:22 67:1,3 76:18 91:2 95:25 doing 24:21 27:3 53:6,11 61:1 63:20 86:12 87:13 dollars 73:21 79:7 79:8 81:8,8 dorchester 1:2,12 3:3 17:9 21:23,25 22:17 23:12 54:3 double 29:12 downstairs 47:18 47:22 drafted 15:17 19:23 96:24 drive 50:3 driver 86:6 drop 54:17 97:12 dropped 20:17 dss 54:24 55:3 due 5:8,16,24 8:18 8:21 12:20 46:16 65:17 74:5 82:23 83:2,18,21 84:2 90:14,20 duties 52:14 55:18 duty 36:19 49:22 50:21 52:8,16	53:16 54:18 55:12 55:22 57:15,24 58:21,23 59:25 e e 1:9,12 10:4,25 11:8 12:6,8 13:24 15:13 39:16 40:3 45:3 103:1,12 earlier 25:24 74:17 easier 78:6,11 easiest 67:8 economic 63:9 effect 23:5 29:14 52:8 98:10 effects 61:17 effort 97:3 efforts 97:10 either 6:8 14:22 62:16 elements 18:3,7 43:16 eliminated 45:11 else's 32:14 emotional 59:2 81:12 employee 55:15,21 59:23 67:18 employees 51:4 77:16 employment 86:5 ended 62:20 ends 81:5 enforce 29:10 engage 78:24 94:22 96:21 engaged 19:10 25:16 78:23 94:21 95:8 engaging 78:23 94:22	enter 89:1 entered 17:21 18:7 42:7 entering 26:15 entirely 69:17 entitled 5:8 24:4 entity's 67:13 entry 16:19 87:16 equity 3:2 error 17:5 20:24 20:24 21:7,8,18 26:22 71:19 72:2 73:11 74:10,11 77:25,25 81:1 83:9 84:15 85:3,5 94:7 98:19 errors 81:3 especially 63:17 essentially 47:12 establish 28:12 estate 66:19 evaluate 99:9 evaporated 45:21 event 65:6 67:24 74:1,4 events 18:23 102:10 everybody 78:6 evidence 9:20,23 10:7,23 11:7 12:1 12:8,9,18 14:18 15:10,20 21:8 23:18 28:2 32:3 33:23,25 34:11,18 37:25 38:3,10,15 38:18 40:3,6 41:20,24 42:7 71:5 72:1 84:19 85:10,10 87:21,21 93:14,18 94:5 95:23 96:3 99:7

100:3,13 evidentiary 9:13 10:22 38:5 exactly 6:13 26:4 41:18 47:19 92:16 examination 6:14 exception 35:21 46:11 75:4 81:2 exceptions 76:17 excepts 11:3 excerpts 29:24 41:8 42:9 47:2 69:12 82:5 exclusive 25:18 51:13 79:20 95:14 excuse 26:19 49:13 executed 37:21 executive 67:14 exhibit 82:4 89:9 89:10 exhibits 9:11,12 9:16 12:20 103:13 exist 33:4 48:17 77:22 existed 68:18 existence 43:19 expected 30:11 experts 9:17 expires 102:24 explain 47:20 exposed 77:17 expressed 27:22 extent 6:16 23:21 24:5 32:20 45:16 extra 53:21	58:18 69:15 77:14 85:12 92:2 93:17 95:21 factor 95:6 factors 19:9,14,16 79:18,22 80:13 95:1,3,17 facts 10:6 18:6 74:2 92:18 98:25 faded 68:10 failed 17:24 failure 70:20 faint 28:24 fair 25:9 44:24 46:19 47:8 70:22 76:3 90:9 fall 24:14 falls 20:2 96:20 false 45:13,19 80:4 80:6,7,14 81:3,16 81:18 82:2 falsely 20:21 21:10 80:20 familiar 16:6,8 far 11:6,11 91:20 fargo 29:1 33:3 fast 99:18 fault 59:14 97:4 favor 97:22,23 98:3,6 99:20 fdcpa 45:12 74:19 75:1 76:12,16,21 76:23 77:3,5,5,13 february 96:13 97:1 federal 45:23 77:11,18 fee 53:20,20 69:6 87:4 88:2 feel 7:18 8:2	feels 92:12 97:17 fees 41:10,16 81:13 felt 7:16 fiduciary 49:22 fifth 100:18 fight 71:9 file 4:18 7:23 13:2 24:24 62:16 64:1 67:10 75:18 filed 4:13,17,21 5:3,18,20 7:5,7,10 7:14,25 9:15 13:17 17:6 20:5,6 20:9 21:22 24:22 42:7 46:18 56:15 56:19,20 57:13 65:16 66:23 68:7 68:14 72:12 88:25 96:24 files 46:15 47:6 84:6 filing 4:16 11:18 57:22 70:11 71:8 74:9 87:4,5 88:2 final 24:2 93:20 finally 24:2,16 financial 1:3 2:2 3:13 7:3 49:14,22 51:25,25 53:5 financing 37:8 find 14:25 19:15 21:10 29:23 37:7 58:24 63:23 64:1 66:24,25 67:4 78:11 93:22 finding 19:12 25:22 94:2 findings 9:24 finds 21:16 78:21 78:22 94:21	fine 6:3,18 42:3 56:13 68:23 71:6 72:24 97:13 fining 25:16 finish 3:11 41:1 66:16 finished 65:9 firm 3:18 27:19,20 45:7,7 74:23,25 75:7 76:10,17 90:24 firm's 45:5 first 3:10,13 4:11 20:5,8,9 25:1 27:18 28:20,23 37:24 40:20 41:3 44:11 50:19,22,23 59:17 62:1 65:4 65:14 68:17 73:13 74:4,9 78:18 79:10,19 80:9 82:11 85:13 86:22 87:5 88:15,25 89:9 90:23 fixed 82:8 83:9 84:25 flat 96:20 flows 14:16 focus 74:13 94:9 follow 76:25 following 64:15 79:18 95:1 foregoing 102:5 form 24:22,24 66:23,25 67:4,10 formed 74:13 fort 3:11 forth 10:6 19:8,14 fortunately 88:19 forward 6:19 8:6 8:25
f 45:4,4 fact 21:3 22:22 29:25 38:6 47:5 49:3 53:1 56:24			

[foster - honor]

Page 10

foster 54:23,25,25 55:5 found 53:9 62:14 63:13 four 20:7,8 27:6 70:3 fourth 45:1,10 74:16,18 76:6 77:1 99:22 franklin 1:3 2:2 3:10,13,15 4:23 7:3 17:19,25 18:2 18:9 20:12,16,20 20:25 21:10 22:19 22:24 23:8,25 24:15,24 25:16 26:16 29:6,11 31:17 33:2 39:4,7 48:24 60:3 68:25 70:1 77:7 87:3 franklin's 22:23 67:5 frankly 15:1 97:4 fraudulent 21:11 80:1,5,8 free 98:18 front 13:10 35:12 35:17 61:2 70:2 98:25 fulfilling 52:16 full 12:13 16:13 22:3 32:18 61:16 61:17 90:9 fully 96:17 function 24:4 further 10:17 102:8 furthermore 11:9 fuzzy 75:16	g game 100:14 general 28:9 67:13 generically 36:7 gentlemen 101:1 george 1:13 getting 39:9 47:21 gist 39:2 70:25 give 5:16 11:24 26:24 33:7 60:17 62:15 given 7:14 30:5 77:11 79:17,23 83:7 90:14 94:25 gives 25:5 93:21 giving 11:18 67:17 glad 26:9 96:4 97:19 gloss 69:14 gmac 25:14 go 4:8 6:19 8:6,25 10:1 16:11 21:25 30:16 33:15 37:6 46:20 47:16 50:11 50:24 54:10 57:2 60:6 65:8 79:14 79:24 81:21 82:4 82:10 83:13 91:21 goes 24:18 42:19 77:4 80:5 94:24 going 3:7,9 4:7 7:20 8:24 18:12 18:15 27:7 29:15 31:17 50:19,23 54:13 58:22 66:17 70:6,10 71:4,7 78:11,19 94:4,24 97:22,23 98:3,6,17 100:2,12 good 3:1 4:2 42:13 42:23 43:1,23	44:7 49:8,15 50:17 53:7 60:12 66:14 68:11 88:17 97:21 100:17 goods 86:6,8 goose 2:10 gotten 70:8 96:1 governs 39:17 grant 6:9 79:1 90:8 granted 91:6 grants 31:16 94:17 gravamen 51:23 greenville 34:8 grips 91:8 grounds 4:24 guess 49:19 67:21 70:22	92:10 heard 5:22 6:12 93:17 96:16,18 hearing 1:9 6:11 7:6,15 8:4 68:10 84:20 95:22 101:6 hearsay 34:14 heintz 76:8 held 45:9 66:7 help 19:16 100:5 hereunto 102:11 hey 62:9,22 84:24 high 12:16 19:22 higher 12:17 85:13 highlight 86:23 highlighted 79:25 88:19 hired 27:20 53:1 hit 96:4 hold 39:12 46:13 71:4,11 74:25 holding 76:19 honor 3:20 4:10 4:23 5:7 6:22 7:1 8:7,11,21,23 9:4,6 9:19 11:14 12:22 12:24 13:4,8,12,22 13:24 14:11,13 15:9,14,18,25 16:5 16:6 17:18 18:3 18:10,21 20:3,23 21:14 22:6 23:1 24:1,16,19 25:11 25:15 26:9,13 27:10,13,14 28:1,4 28:6,15 29:2,8,23 30:18 31:8,12,16 31:18 32:7,22 33:11,16 34:20,25 35:5,24 36:18
	h	h 103:12 hambrick 25:14 25:24 26:8 hand 26:9 28:23 50:13 78:7 102:11 handled 61:24 happen 65:14 happened 26:4 32:16 49:4 61:25 62:21 65:7,15 71:8 81:19 happens 3:5 happy 13:3 72:18 hard 29:2 99:4 harm 74:7,8,8 harp 24:9 haunt 42:6 head 73:25 heading 34:2 hear 4:7 8:11 15:24 16:2 37:16 50:15 56:11,17	

[honor - judgment]

Page 11

37:3 38:3,9,18 39:8,24 40:10,11 40:20,23,25 41:7 41:19,22,24 42:14 42:20 43:5 44:7 44:23 46:2,5,10 49:4,8,16,20 50:5 50:11,12,17,22 52:4,17 54:7 56:5 56:7,11,23 57:13 57:14 58:11 59:24 60:8,20 61:1,11 62:22 63:18 64:15 64:17,25 65:7,12 65:23 66:14,20,24 67:2 68:9,22 69:10 71:13 72:15 73:7,12,15,24 76:22 77:23 78:6 81:5,6 85:15,20 87:12,25 88:12,18 89:14,16 91:14,21 91:25 92:7,8,11,22 93:1,13 94:2,17 95:11,22 96:7,10 96:24 97:6,17 98:11 99:11,16 101:5 honor's 97:3 honorable 1:9 hook 75:6 hope 27:3 hopefully 66:17 70:12 hours 6:5 69:24 91:3 hundred 79:7 81:7 hurt 58:14,17	i idea 19:18 identification 9:22 identified 23:14 ifs 33:7 immunity 24:5 44:17,18 45:8,11 45:14,17,21 46:1 48:17,17 75:2,3 important 10:11 19:5 43:6 55:8,19 91:22 imposed 55:18 improper 17:8 30:17 44:11 53:18 69:7,18 74:24 82:9 88:5 inadmissible 38:10 incentive 53:5 inclined 13:3 include 49:24 51:21 80:4 81:12 included 13:22 77:7 includes 51:6 81:18 including 44:25 80:15 incongruent 59:21 incorporate 53:14 incorrect 76:3 independent 51:11 51:21 53:3 55:1 55:12,14,15 59:14 59:20,22 60:4 index 2:15 103:8 infected 66:13 infects 65:21 information 48:4 48:11,12 58:1,4,13	58:14 81:24 103:8 103:9 initially 33:13 injunction 79:1 instance 68:15 instant 51:18 62:6 instructed 23:16 instrument 29:14 30:20,24 31:4,6,12 35:3,9,12,13,14,18 36:1,4,9 39:20 instruments 36:1 intend 40:19 intent 19:24 interest 32:19,19 44:15 63:20 interested 102:10 interesting 44:19 82:4 internet 47:7,18 47:22 interpretation 30:4,9 94:1 interrogatories 10:17 intimately 16:8 introduce 10:3,24 34:11 introduced 95:24 95:25 involved 30:3 irregularly 46:7 irrelevant 41:19 67:15 issue 8:16 16:16 18:5,6 21:17 26:14,18 27:24 38:5 42:18,19,24 44:4 46:1 49:6 54:23 56:3 57:15 61:4 63:24 65:6,9	65:21 67:25 68:1 68:2 69:6,14,20 71:17,19,21 72:17 72:21 77:2 84:11 85:7,11,22,24 86:9 88:5,22 89:9 91:8 91:15 92:24 93:3 93:16,21 94:8,9 95:21 97:23,24 98:5,5,12,13 99:15 99:24 100:13 issued 66:5 90:10 issues 12:12 18:11 18:13,15 27:5 28:14 40:8,8,11 50:19 69:23 72:1 72:7,20 87:17 91:23 92:2 98:7 98:18 101:4 items 17:3 70:19 j james 1:9 3:2 january 83:7 89:15 jenkins 76:8 jim 1:12 job 85:25 86:2,6,8 john 2:9 3:18,24 jointly 101:3 jr 2:9 judge 15:3 49:1 51:3 62:13 63:13 judgment 3:17 4:21 7:11 9:1,10 10:18 12:14 13:6 15:6,24 16:3,12,13 16:14,19,20 17:4 21:17 26:18 27:1 39:17 40:4 49:2 69:4,5 71:16,23,25 87:16 90:9 91:5

91:16 judicata 65:6 judicial 3:8 24:4,4 judicially 63:9 julie 1:14 102:3,23 july 5:19 7:6,19 102:25 jurisdiction 25:19 62:23 63:17 77:3 jurisdictional 65:18 justice 27:16 61:11 66:6,6 67:20 justify 28:19	90:3 92:12,14 94:4 98:20,23 knowledge 10:6 14:17 48:9 knows 33:6 44:23	layman 30:10 lead 95:5 learned 79:19 leave 32:13 59:24 legal 2:8 21:13 30:3,9 33:20 38:21,23 41:13 56:25 63:19 80:10 legally 55:7 legislative 19:24 legislature 45:18 52:15 legitimate 48:10 81:23 lender 77:15 letter 23:25 25:12 25:17 69:23 letters 70:2 level 77:11 liability 16:16 19:19 26:18 27:25 28:11 29:12 31:16 37:20 53:17 71:20 77:18,18 80:18,23 95:5 97:23 99:18 100:7 liable 19:20 22:24 22:24 24:1 28:3 45:9 52:1 53:9 55:13 80:22 limine 9:4,5,6,9 12:19 limit 71:17 72:7,9 72:20 87:21 limitation 65:18 limitations 90:4 linder 25:23,25 61:24 62:21 line 3:11 20:2 33:3 103:3	lines 33:4 list 79:20 95:13 listen 37:13 litigant's 49:13 litigation 45:10 76:18 77:22 little 3:8 4:3 28:22 31:23 54:20 60:10 63:21 68:10 73:18 74:2 75:16 85:2 87:1 live 50:3 llp 2:3 loan 9:16 11:2 17:19,20,22 26:15 28:14 29:5,15,16 29:18 33:2 39:7 39:15 44:15 located 47:15,17 47:18 location 1:12 logical 46:14 long 43:4,22 52:11 70:16 88:12 92:11 longer 27:21 97:14 look 4:20 8:16,17 13:24 28:7,8,17,22 35:4 36:14 46:21 47:1,7 49:20 66:22 78:4 80:13 86:16,21 90:12 looks 46:17,18 52:17 lost 75:15 lot 4:19 29:25 30:2 40:11 44:21,24 50:4 80:24 93:17 lower 42:16 54:21 loyalty 36:19
k keep 32:13 60:16 keeton 55:10 kicked 25:2 kind 46:11 58:4,12 60:9 75:13 76:23 77:3 89:21 kinds 33:19 75:2 knew 69:20 knocked 92:12 knot 83:8 know 5:17,20 6:1 6:13,14 11:16 14:13 16:6 22:3 28:7,9 29:3,4,6,19 30:1,14 31:9,15,15 32:9,10,11,16,17 32:21 37:4 38:21 39:16 44:16 45:8 47:21 48:3,5,9 49:23 52:22 55:20 58:13,16,23 61:16 63:14 66:7 69:16 70:4 75:17 76:6 80:24 81:20 82:7 83:4,13 84:21,22	l l 1:14 45:4 102:3 102:23 lack 6:23 12:20 language 67:19 74:21 95:10 lanny 89:24 large 102:5 law 3:18 4:13,18 5:5 17:11 18:6 19:10,15 21:16 22:11 23:25 24:17 25:6,7,12,13,17,18 25:20 26:3,24 30:10 37:5,7 44:18,20 45:7,8,14 45:23 48:16 51:16 56:24 61:4,20 62:10,24 63:2,24 64:5,11,19 66:3,5 66:12 67:25 71:18 74:25 75:7,9 76:10,11,16,17,20 78:3,4,22 81:2 85:7,11 88:10 90:24 92:20 93:6 93:8,22 94:9,21 98:4,14 99:4,19 100:8 lawsuit 20:5,8,9 20:11,12 46:16,23 62:2,5 74:4 75:18 76:13 85:13 lawyer 2:11 14:6 15:2		

m	95:23,25 99:14	mistaken 59:6	near 79:24
magistrate 20:9	meaning 51:5	monday 4:14,15	necessarily 77:16
21:23,24 23:6,6	meaningful 5:11	5:20 6:4 13:18	necessary 4:17
24:18,19,23,25	means 29:8 30:17	56:16,21	6:10 15:23 26:11
53:23,25 54:2,8,11	33:1,21,22 95:16	monetary 61:19	71:3 92:5 96:6
62:13 64:7,12,20	meant 21:6	money 14:15 39:4	need 8:15 37:16
65:2,4,17 66:23	meet 52:11 63:6	39:12 53:4,8	42:1 48:3,6,10
67:7,21,22 68:1,7	meeting 2:4	75:21	58:3,13 60:24
68:15	memo 6:1,4,19 7:7	month 8:6 18:12	65:22 66:15 70:15
main 5:10	8:15 41:9	20:8 27:6	70:18 86:14,16
maintaining 83:10	memorandum	months 5:3 20:12	89:19 90:15,16,25
making 17:25	4:13,18 5:1,3,18	90:1,14	91:3 92:3,10,19
27:15 52:25 56:25	7:9,13,23 8:3	morning 3:1,4	needed 60:22
60:14 88:13 99:2	13:18,20 15:5	mortgage 25:14	needs 6:2 72:17
manager 52:19	56:4,6,8,15,19	motion 3:16 4:6,8	negligence 17:1
82:6,15 86:24	57:13 72:16	4:12,20,25,25 5:1	19:4 25:10 26:7
manager's 69:12	mention 70:7	5:15,22,22 7:5,8	55:14
mandated 98:2	86:13 88:20 90:5	7:23,25 8:17,25	negligently 53:12
manual 55:4,5	90:6	9:1,3,9,11,11	86:1,4
march 1:10 4:13	mentioned 25:24	10:18 12:14 13:6	negotiable 29:8,13
markets 37:11	43:7 70:5	15:5,24 16:2,12,13	30:20,23 31:4,6,12
master 3:2 62:13	mentioning 97:18	18:17 40:4 43:15	32:14 35:2,9,12,13
64:6	mere 10:20	43:21 49:2 56:20	35:14,18,25 36:1,4
master's 64:23	merely 41:24	57:12 70:11 87:17	36:9
material 18:6 49:3	mind 78:7	90:9 91:15 96:15	neighbor 17:10
58:17 85:11 92:2	mine 13:23 86:16	motions 4:11 16:1	22:5 23:17,20
92:18 95:21	minimis 81:15	move 6:21 7:10	44:14 46:7 47:4
matter 4:4 9:24	85:3	9:9 12:19 26:25	48:2
18:5 19:9,15	minute 50:11,21	40:7 41:5 88:16	neither 9:18 102:8
21:16 23:2 30:10	60:17 61:5	97:3,6	never 13:7 15:3
42:2,2 46:8 62:7	misleading 21:12	moved 26:17	23:14,15,16 29:3
78:1,22 93:22	45:13,19 80:2,6	72:19	30:24 32:17 39:13
94:20	misrepresentation	moving 16:14,19	96:16
matters 10:10	94:1	17:4,12 40:16	new 5:19 6:4,12,16
70:9	misrepresented	71:15,22,24 87:14	6:20,23 8:14,14,15
mean 15:7 32:11	21:11	87:19	8:22 70:13
32:24,25 38:4	missed 65:23	mutually 51:13	nonattorneys
39:16 59:4,21	99:22 100:5	n	66:10
63:6 64:6,8 72:15	missing 14:4	n 103:1	nondelegable
72:18 75:8 81:9	mistake 24:12	name 3:2	50:21 53:16 54:18
83:20 86:4 93:8			57:15,24 58:21,23

nonlawyer 66:22 67:10,18 normal 5:21 6:4 68:11 normally 51:22 notary 102:4 note 9:14 28:14 29:8,11 33:5 37:20 38:7 39:13 41:11 46:16 86:10 89:12 noted 30:7 notes 88:23 89:1 96:2 notice 5:11,17,21 5:25 6:23 7:20 8:16,22 46:22 80:4 96:3 noticed 13:17 november 102:12 number 76:3 77:19 92:12,18 numbers 21:4	occurred 19:17 office 13:2 17:9 21:25 22:4,23 23:3,7,9,12,15,23 24:3,13 54:4 officer 67:14 official 102:12 oh 34:13 42:6 59:13 80:24 86:7 okay 15:11 16:17 26:13 27:12 28:5 31:13 33:17 36:8 37:18,24 38:16 39:9 40:18 42:5 42:23 43:11,24 44:1,5,7,7 47:24 48:22 49:7,11 50:6 52:5 55:16 57:8,14 60:8,17 61:2 65:3,8 68:4 73:7,12 75:9 79:10 82:22 83:1 84:9 85:19,22 86:15,21,25 87:3 87:25 88:4,8,16,17 89:7,17 90:2 91:19 93:24 96:7 98:17 old 6:18 once 8:5 84:21 open 13:5 91:17 91:18 operations 67:5 opinion 77:23 85:12 opportunity 5:14 11:19 12:1,12,15 30:5 41:21 63:25 69:16 90:10 94:5 opposed 10:16	opposing 10:5 27:18 36:17 44:8 61:6,24 63:3,23 71:4 opposition 56:9,20 oppositions 69:5 option 54:13 oral 34:13 order 4:15 28:12 41:25 65:24 66:4 67:7,20,23 68:3 89:22 96:17,23,25 98:9 99:2 101:3 ordinarily 4:19 organization 63:19 original 5:2,25 7:4 13:3,11 28:16,20 28:22 29:4,5,16,17 30:22,24 31:1,6,10 32:17 34:3,4,19 35:15 36:4 38:19 39:7,13,24,25 41:15 62:16 73:16 75:15 77:6,9,15 83:11,21 originally 7:6 65:16 66:7 70:5 originals 13:2 osborne 2:3 3:18 3:20,22,22,23 6:25 7:1,2 12:23,24 15:25 16:5,10,18 17:3 18:20 26:13 27:3,11 36:16,22 36:24 37:1 71:12 71:13,24 72:4,14 87:12,16,19 91:13 91:14,18 93:5,10 93:12,16,20,25 94:18,20 95:10	96:8,9 97:9 98:9 98:11,17,22 99:1 99:11,13 100:20 100:22 101:2 osborne's 52:7 outside 23:13,24 overrule 8:24 overruled 13:14 16:2 owe 31:17,22 39:4 49:22 75:21 owed 20:10,13,22 21:1 41:10 44:3 55:12 73:17 owes 18:2 39:11 owner 67:14
o			p
o 45:4,4 o'clock 3:4 oath 14:1 83:6 object 8:3 11:19 11:24 12:2 30:5 objected 30:13 42:8 objection 8:25 11:25 13:14 34:17 41:20,25 42:8 57:11 objectionable 30:8 38:20 objections 11:14 11:16 70:9 obviously 7:24 18:4 21:17			p 45:4 p.m. 4:14 101:6 p.o. 2:9 page 28:23 50:25 54:21,21,22 62:1 79:14 82:10,11 88:22 103:3 pages 78:5 paid 18:8,8 26:16 37:23 38:8 54:9 paper 36:25 37:3,6 37:8,10,15 papers 10:12 paragraph 51:17 79:25 parameters 61:17 parent 54:23,25 55:1 parents 55:5 parities 31:19 parker 2:3 3:20,21 parkerpoe.com 2:6

[part - procedure]

Page 15

part 10:11 28:9 29:2 32:20 59:6 71:20 76:19 79:10 89:14 90:19 partial 12:14 participate 97:7 particular 28:15 parties 3:6,6 4:5 27:15 62:3 97:9 partner 67:14 parts 10:12 91:22 party 10:20 46:18 53:3,11,18 64:21 102:9 passed 7:15 pause 66:16,18 pay 17:25 53:19 54:13 payments 18:1 payoff 82:24 83:5 84:7 87:1,7 pc 2:8 penalize 19:25 21:6 penalty 79:5 pending 62:3,6 102:10 people 51:22 67:17 performance 86:1 performed 55:22 period 59:22 permit 10:15 permitted 22:11 person 10:2 22:15 29:10 44:14 48:2 48:2,3,8,9 51:7 53:14 55:11,13 58:3,13 78:23 79:4 81:23,23 94:21	person's 58:2 personal 10:5 14:17 personally 84:8 persuasive 46:1 77:1,2 petition 71:1,8 73:2 petitioners 62:4 ph 89:24 phone 91:11,14 photograph 34:4,5 physical 10:23 place 88:15 places 83:15 plain 95:10 plainly 18:1 plaintiff 1:4 2:1 3:14,15,18 4:17 7:2 9:15 27:20 62:15 64:19 97:22 97:24 98:4 99:18 99:20 plaintiff's 4:12 5:2 pleading 5:1 10:21 54:9 62:25 pleadings 23:14 pleas 1:1 please 11:21 pledge 32:23,24 pledged 28:25 32:4,6 33:10 39:14 plus 82:24 poe 2:3 3:20,21 point 27:24 31:2,2 33:5 43:3 45:17 49:4 58:22 60:6 66:12 68:23 87:24 88:1 90:12,22 91:6 94:19 95:22	97:20 99:10 pointed 27:4 points 52:7 55:24 93:13 99:17 policy 51:3 pop 69:15 86:22 portion 42:9 position 8:23 15:8 46:14 50:1 61:9 61:10,13 71:5 95:20 possess 29:19 possession 14:13 29:9 31:10 32:3 possibility 50:20 54:17 55:18 possible 60:3 61:18 86:18 97:19 possibly 59:18,19 post 71:1,14 73:2 postcard 58:6 practice 13:6 17:11 24:17 25:6 25:7,13,17,20 26:3 26:24 44:24 61:4 61:20 62:10,24 63:2,24 64:5,11,19 65:13,21 66:3,5,12 67:25 71:18 75:9 80:16 85:7 88:6 93:5,7 94:9 98:4 98:14 99:19 100:8 practices 16:25 19:4 25:10 26:7 95:14 practitioner 63:15 preceded 67:21 precedent 9:23 preclude 12:12,15 predatory 21:6	prefer 11:12 50:12 preferred 29:1 prejudice 7:18 prejudiced 6:15 97:18 prepare 98:9 prepared 6:6,11 6:19 40:11 preparing 60:12 present 72:1 83:24 87:20 100:2 presented 6:2 15:5 39:1 preserved 43:5 44:4 president 67:5,13 pretrial 4:3 pretty 47:2 62:25 74:9,13 77:2 99:4 prevent 72:19 prevented 53:16 prevents 19:7 previously 7:9,14 17:7 principal 22:25 51:16 93:3 printouts 84:20 prior 4:22 private 25:12,22 26:2 53:21 54:14 privilege 3:9 77:22 90:21 privileged 74:15 76:18 probably 62:8 73:25 problem 37:4 89:8 procedural 38:5 procedure 5:5 23:4

procedures 74:24 proceed 44:6 process 5:8,17,24 8:18,22 23:5 53:21 54:15 97:7 procured 70:24 produce 71:5 produced 31:1,7 90:20 product 90:21 proffered 103:13 prohibited 22:8 48:11 prohibitions 26:1 proof 28:10 29:20 proper 8:3 61:21 61:21 62:8,14 properly 6:16 53:12 71:9 property 33:9 39:21 proponent 9:25 prosser 55:10 protect 59:1 protection 16:24 18:25 19:2,6 20:21 21:5,15 22:7,13 24:6 25:9 26:6 44:12,22 55:19 58:1,5 59:1 70:21 74:22 77:8 77:11 78:5 85:14 99:25 100:11 prove 34:3 36:20 38:19 39:25 40:1 proved 43:16,19 proven 43:20,22 provide 29:16 provided 10:19 28:18 29:20 30:7 34:6 59:4 88:23	provides 8:18 proving 11:5 provision 11:10 15:20 provisions 19:13 public 46:8 47:15 55:13 58:11 102:4 publication 44:13 47:3 publish 41:23 58:1 published 11:13 74:18 pulled 83:5 84:5,7 purported 28:13 pursuant 9:8 pushed 97:5 put 49:25 98:20	r r 2:9 raise 42:15,16,24 72:25 73:1 88:22 91:23 98:18 raised 44:9 45:8 61:7 72:23 75:2 87:17 91:15 raises 84:10 reach 83:19 read 11:24 15:11 15:20 29:2 31:23 32:1 39:2 59:8,11 61:6,15,15 67:9 78:11,12 reading 78:12 89:14 ready 15:24 44:6 93:8 97:15,16 real 8:14,14 15:1 66:18 really 4:24 5:13,15 5:24 6:6 12:11 34:14,16 43:17,21 45:22 49:1 50:4 53:22 63:15 65:12 79:9 88:4,14 96:22 rear 2:15 reason 11:23 25:2 30:18 48:9 70:6 77:14,21 89:23 91:4 reasons 22:2 26:14 26:22 38:10 recall 17:25 41:12 recess 69:2 recognize 18:11 recognized 7:25 reconsidered 66:9	record 23:19 46:8 46:21 47:15 57:5 60:15,18,20,25 68:25 84:5 89:25 102:7 recording 34:4,5 recourse 50:2 recover 79:2,4 recuse 14:9 redacted 90:20 referred 10:13 refile 7:16 refiled 20:12 refute 41:21 regard 8:20 61:7 96:18 regarding 5:24 17:10 28:6,10 30:9 43:11 68:21 84:12,20 85:17 86:20 89:1 92:21 regardless 7:21 regional 63:16 regularly 75:1,7 regulate 75:8 regulates 77:5,8 reinforced 76:9 relate 17:4 21:21 related 36:25 102:9 relates 98:13 relating 98:18 relation 51:6 60:2 relationship 23:2 23:10,11,22 relative 69:6 relevant 72:23 87:15 relies 19:6 93:21 rely 6:18 18:23

[remaining - says]

Page 17

remaining 27:5 94:10 remains 55:13 remedy 78:20 remember 38:11 65:15 74:2 76:9 76:10 77:5 89:13 96:1 remind 99:22 reminded 27:16 removed 75:6 repaid 17:20 repayment 33:10 repeated 65:14 reply 8:8,12 reported 1:14 9:16 reporter 13:1,11 14:14,19,22 102:1 102:3,24 103:5 reporting 22:11 represent 24:20 64:2 66:10 80:20 representation 71:14 80:7 81:4 81:17,18 83:6 representations 21:12 80:2,4,7,14 represented 17:14 66:8 90:23 representing 20:22 63:1 represents 51:7 reputation 46:25 48:13,13,25,25 58:2,15 request 38:23 63:12,22 67:2 69:25 97:1 requested 60:1 103:8,9	require 67:12 84:19 required 9:20 11:23 30:16 34:5 35:15 51:19 52:14 67:10 requirement 7:22 7:24 9:21 10:8 34:2 requirements 12:21 requires 12:6,8 14:18 93:14 res 65:6 reserved 11:15 resolved 27:8 respect 78:21 respectfully 25:15 respond 8:22 responded 70:10 respondent's 62:4 response 57:10 60:10 69:25 72:9 92:15 94:13 responsibilities 55:8 responsibility 52:10 responsible 54:24 55:7,20 rest 10:20 33:15 restate 7:17 restatement 51:16 restricted 51:15 restrictive 77:13 rests 23:2 result 26:17 62:9 62:14,20 resulted 24:25 67:22	retain 28:10 retained 91:11 revealed 70:4 review 6:5 rid 71:17 85:9 riddle 34:8 right 4:1 9:7 16:10 23:8 28:23 29:9 33:14 40:7 41:4 42:11 52:2 61:1 64:23 68:12 79:4 84:16,17,23 85:1 87:18,23,23 89:20 91:13 93:15,19 94:12 95:9,22 96:4 97:21 rights 31:18 ripe 21:17 rise 21:18 25:5 26:24 road 42:14 robert 2:3 3:22,23 7:2 robertosborne 2:6 robinson 50:12,16 robby 1:6 2:7 3:16 3:25 round 73:22 96:12 rounds 73:25 rule 5:4 9:8,12,20 9:21 10:1,4,19,22 10:25 11:7,8 12:6 12:8,21 13:24 14:17 15:10,13 30:18 33:23,25 34:1,1,7,19,25 36:24 38:5,11,15 38:18,20 39:16 40:2,3 41:14 42:15 67:8,21,22 68:1 93:8,14	97:15,16,22,23 98:3,6 99:4 ruled 51:3 76:6 rules 5:4 9:13,20 11:10,14 14:18 15:10,15,17,20 23:3 34:6 38:3 40:6 52:10 60:14 ruminating 60:22 run 89:9,10 runs 86:7 s s 45:3 103:12 s.c. 34:10 50:25 57:17 safely 86:8 sanctionable 79:13,22 80:12 satisfied 9:23 saved 53:4 saves 53:8 saw 74:6 86:12 saying 8:13 10:23 10:25 25:25 46:17 51:24 52:2 57:21 57:22 61:12 64:21 69:18 76:1 says 4:25 9:21 10:4 11:10 28:24 28:24 32:18 33:22 34:1,1,10,13,15,19 39:17 40:3 41:15 45:18 48:4,8 50:18 51:2,20 54:9 55:3 58:20 59:15 67:11,16 78:3,20 79:16 80:1,6,9,11,12,14 80:17,20,24 82:13 84:16,22,24 95:15 95:16,23

[sayyed - speaks]

Page 18

sayyed 45:3 46:12 74:17 scanned 6:6 scheduled 3:4,6 7:6,15 16:3 scheduling 4:15 89:22 96:23 schwerin 52:18 82:12,15 83:7 86:22 scope 23:13,24 50:9 85:25 86:3,5 86:10,11 scrivener's 20:24 26:22 71:19 73:11 74:10 77:25 81:1 81:3 84:14 94:7 98:19 se 17:1 19:4 26:7 seal 102:12 second 9:1 18:15 20:17 21:20 38:17 44:10 46:13 50:20 68:15 69:25 71:11 72:12 79:14 82:10 89:2 91:10 section 51:17,17 66:1 78:19,20 79:5 sections 78:13 secured 33:2 security 32:5 see 4:23 13:12,25 28:8 35:20 36:5 36:15 38:17 47:1 51:16 52:19 59:18 67:3 77:20 82:5 85:2 86:21 94:16 seek 47:19 63:25 seen 15:3 27:18 28:20,21 29:3	30:24 31:1,11 32:17,22 39:13 49:25 self 34:23,25 35:3 35:10,19,21,22,24 36:2,10,12,20 sell 66:18 send 13:3 58:6 sends 14:14 sense 6:1 51:6,15 53:14 sentence 67:11 79:8 separate 67:24 serve 21:25 23:17 48:1,5 53:23 54:10,13 64:22 86:1,2 served 10:14 15:3 22:1,5 46:7 51:9 52:21 91:2 96:12 server 47:20 53:21 54:15 55:21 service 17:8 21:21 22:8 23:5 26:23 44:11 52:8 53:11 53:18,18 54:10,16 55:24 69:7,14,18 71:18 72:2 85:23 94:8 serving 22:18 23:20 24:13 set 8:5 10:6 19:14 97:12 sets 19:8 setting 64:20 severe 59:2 severely 47:2 59:10 sheriff 49:9,13 50:3 51:24 52:1,8	52:13 53:1,2 59:19,21 69:7 93:3 97:24,25 99:19 100:7 sheriff's 17:9 21:25 22:1,4,22 23:3,7,9,12,15,23 24:3,13 49:21 52:10 54:3 55:24 85:25 98:13 shift 80:5 short 4:3 22:12 27:20 37:8 97:19 shortly 87:1 88:25 show 10:8 29:16 83:14 showing 63:1 89:2 side 75:12 81:7 sides 27:9 sign 29:17 67:17 signature 39:3 102:20 signed 14:5 30:25 37:22 38:7 67:1,4 significance 88:20 significant 27:15 59:4 77:12 81:1 82:1 signing 62:25 similar 7:10 44:23 45:24 simmons 50:9,11 50:18,24 54:19 56:1 simple 17:18 24:10 simplify 18:10,13 simply 4:25 14:11 23:10 61:12 97:25 single 72:21	sir 8:12 18:19 98:11,22 99:1,11 99:13 100:22 situation 50:2 58:25 59:12 92:3 sixth 51:8 slight 7:12 small 78:2 society 55:8 sold 32:11 sole 63:14 solely 20:18 somebody 31:17 31:21 32:13,19 39:14,15 48:6 58:5 75:18 86:7 90:17 somewhat 16:7 soon 66:16 sorry 8:10 40:23 51:1 56:5,7 60:21 70:17 75:6 91:25 sort 8:4 19:18 21:9 22:20 34:14 sound 46:15 sounded 60:21 63:7 sounds 63:2 80:23 south 1:1,13 2:5 2:10 5:4,9 15:18 16:23,25 18:24 25:9,18 33:23 34:9 38:3 40:6 44:22 45:17,22 51:1 58:19 66:1,4 75:12 76:11 77:8 77:10 86:11 102:4 102:13 speak 34:16 speaks 34:19

special 77:21 specific 70:19 93:9 specifically 67:16 spent 60:12 spot 89:22 squarely 42:18 squib 31:23 st 1:13 stage 49:2 98:24 100:14 stamp 28:22 standard 11:7 12:16 19:22,22 standards 13:19 start 9:2 28:21 started 4:7 state 1:1 7:22 15:22 77:18 102:4 stated 10:10 26:22 38:11 statement 35:7,18 65:12 statements 38:1 states 5:8 25:25 37:22 55:4 statue 48:4 status 21:13 80:10 statute 19:14,19 19:23 24:11 34:6 46:10 48:11 59:15 75:5,14 76:24 77:3,4,12 80:8 81:16 93:21 94:17 95:11 98:2,3 statutes 71:6 statutorily 52:14 statutory 21:24 23:4 52:8,16 59:25 81:7,11 stay 68:24	stayed 62:5 stop 61:4 street 2:4 stress 81:12 stretch 15:1 strict 19:19 80:17 80:23 strike 4:12 6:9,21 11:22 stuff 59:16 67:15 70:14 80:25 89:18 89:23 90:14 93:10 96:15 subject 29:11 submissions 69:11 submit 20:23 submitted 101:3 subparagraphs 35:23 36:12 subsection 36:24 79:15,16 94:24 subsequently 20:11 substituted 27:21 succinct 66:17 67:9 sue 50:2 sued 74:23 suffer 59:2 sufficient 5:16 8:21 9:24 suggest 11:21 63:22 suit 74:9 suite 2:4 suits 77:19 summarily 40:17 summary 3:17 4:21 7:11 9:1,9 10:18 12:14 13:6 15:6,24 16:2,12,13	16:14,20 17:4 21:17 26:18 27:1 39:17 40:4 49:2 69:4,5 71:15,23,25 90:9 91:5,16 summer 96:16 summons 47:6 57:23 68:6,14 supplement 71:3 supplemental 4:12 4:18 6:9 7:8,12 8:2 supplemented 10:16 support 5:1 7:7 9:24 15:8 19:3 25:8 26:3,5 57:12 85:4 supported 10:19 supporting 10:4 supports 21:20 suppose 43:2 supposed 55:6 supreme 15:18 25:18 34:9 42:15 50:10 51:2,9 58:24 60:14 62:2 62:11,16 63:5,16 66:4 67:6,20,22 68:2 76:7,7 sure 13:1 27:8,15 40:20 41:2 42:1 42:17 43:5 60:9 60:13 64:3 72:22 72:25 87:7,13 88:13 92:16 99:2 100:24 surprised 85:2 survive 72:6 sworn 10:11 12:5 12:25 13:10 14:1	system 61:11 84:12 t t 103:12 take 5:12,21 46:14 48:1 62:11 63:15 63:21 66:15,18 68:22 86:9 94:7,8 94:8 taken 12:25 33:5 39:15 69:2 97:14 takes 46:22 talk 28:5 34:13 50:19,23 58:8 73:8,8,10,11 77:24 talked 54:20 81:22 talking 36:7 37:19 43:12 54:22 55:3 66:2 73:9 talks 10:1,4 48:7 79:12 target 97:11,12 technical 47:21 telephone 69:21 69:22 72:11 tell 5:15,23 30:17 57:2 93:9 telling 47:8 52:13 91:1 ten 5:14,21 7:23 35:22 36:11 term 37:8 51:5,14 51:19 terms 17:23 38:19 testified 17:21 48:15 86:24 testify 10:9 14:6 90:17 testimonies 95:24 testimony 12:25 13:7,10 14:2,7

15:4 17:23 30:6 37:21 41:20 48:15 52:18 58:16 59:4 59:7 thank 4:10 7:1 13:13 15:25 16:5 27:2,11,13 31:13 33:15,16 37:1 43:8,24 57:6 82:22 85:19 87:10 100:24,25 101:5 theirs 42:17 thereof 10:12 102:10 theresa 52:18 82:15 thereto 10:14 therewith 10:14 thing 19:5 47:13 58:12,12 62:10 65:25 67:8 74:22 79:19 84:13 93:12 99:21 things 86:23 90:7 90:8 97:5,6 think 7:5 8:21 12:7 13:5,9 20:2,7 21:16 26:10 29:1 29:18,21 44:4,5 45:6 48:7 49:25 50:9 52:9 53:25 54:2,8,21 60:3,17 61:13,21 62:8,18 62:21,22,24 67:5 69:16 71:2 72:5 72:11,17 73:16,24 76:7 77:21 83:16 83:18,19 91:4,7 95:20 96:5,20 98:13 100:4,14	thinks 92:8 third 31:19 46:18 65:9 thought 57:7,9 100:18 thousand 79:7 81:8 three 17:3 26:6 43:16,22 72:4 78:5 83:11 87:17 90:11 throw 6:3 time 1:11 4:7 5:2 6:5,10,11,13 7:7 7:14 11:24 15:2 27:17,18,20 33:6 60:12 62:15 63:6 63:13 83:2 84:2 90:22 91:6 96:11 times 34:17 84:22 title 33:12 39:21 toal 66:6 toal's 67:20 today 4:3 8:6 16:3 27:18 40:12 41:17 42:22 44:4 56:25 60:13 61:1 65:16 72:24 92:6 93:1 93:18 today's 95:22 told 35:14 67:7 84:17 96:2 top 32:2 73:25 79:14 torts 55:10 total 82:25 totally 14:3 67:24 85:6 trade 16:25 19:4 25:10 26:7	traded 37:10 train 77:16 transaction 78:22 78:25 80:3,22 transcript 2:15 12:25 14:15 102:6 transcripts 13:4 13:11 14:14 transfer 33:12 39:21 transferred 31:20 55:9 transferring 53:17 transport 86:6,8 treatise 31:21 trial 8:5 12:10,12 12:15,17 13:5,9 18:11,12 27:4 51:2 71:17,17,25 72:7,18,20,21,25 94:5 98:8,18 100:3 tried 73:23 99:15 tries 22:21 troubling 61:8 63:8 truck 86:5 true 14:2 31:9 102:6 truly 22:2 try 26:5 trying 10:3 11:17 12:11,15 14:3 18:10 33:20 34:14 41:21 42:17 43:14 58:6 60:18 69:17 71:16 72:6 76:25 85:8 87:21 88:15 94:7 99:17 turn 20:4	twice 59:8 two 3:3,7 4:11 5:3 9:16 14:18 17:5 20:19 21:3,4 38:1 40:8 43:19 50:18 51:12 52:20 69:24 70:2 78:4 83:11 89:10 91:23 93:13 type 37:11 74:21 types 45:25 79:20 u ucc 37:5 ultimately 64:5 unauthentic 11:23 unauthorized 17:11 24:17 25:5 25:7,13,17,20 26:2 26:24 47:3 61:3 61:20 62:10,24 63:24 64:4,10,19 65:10,13,21 66:3,5 66:12 67:25 71:18 85:7 93:5,7 94:9 98:4,14 99:19 100:8 unconscionability 98:5,12 unconscionable 19:7,10,16,22 20:1 21:2,5,9,19 24:11 24:12,14 45:19 69:8 70:20 71:22 78:2,24 79:12,13 79:21 80:11,16 81:16,17 88:6 91:9,12 92:4,24 93:10,23 94:2,6,11 94:14,15,23 95:8 95:13,17 98:16 99:7 100:1

underlying 39:22 understand 11:13 22:2 47:23 56:18 61:13,16 67:23 72:15 86:18 88:11 99:3,12,13 understanding 27:23 understands 88:13 understood 99:2 undisputed 18:16 unfair 16:25 19:4 26:7 29:12,21 unfortunately 3:3 united 5:8 unreasonable 61:14 uploaded 47:6 67:2 upper 28:23 use 3:7 33:20 45:12,18 54:1,14 uses 25:7 26:5 usually 32:11 37:9 v v 25:14 34:8 50:11 57:17 74:17 76:8 90:6 valid 58:6 vance 57:17 variations 7:12 various 56:22 vastly 7:13 vault 32:13 verbatim 7:9 versus 45:3 vicariously 22:24 52:1 vice 67:5 view 3:7	violate 65:25 95:2 violated 18:24 19:13 20:21 44:12 95:4 99:25 violates 38:15,18 46:19 47:8 70:22 76:3 85:10,17 violating 68:1,2 79:5 violation 16:24 22:7,18 24:6,8,10 36:19 44:17 58:10 58:20 66:4 71:6 74:8 85:14 96:3 violations 16:23 19:3,20,25 45:25 69:13 73:3,5 86:18 91:1 97:19 voluntarily 20:25 83:9 vs 1:5 w w 45:4 waiting 96:14 walk 29:13 want 9:4 10:24 14:9 24:9 32:12 37:12 40:20 41:1 42:5,14 43:5 49:24 54:13 60:6 60:11,13 66:10 68:22 69:14 71:9 72:24 74:12 75:17 78:10 93:9 94:18 97:6 wanted 4:6 86:13 91:23 wants 5:12 50:4 way 14:23 16:6 19:23 28:18 48:11 61:22,23 74:25	90:18 92:12 ways 52:20 77:12 we've 10:24 43:22 44:19 87:17 week 5:20 weeks 89:11 weigh 99:8 weird 74:2 wells 28:25 33:3 went 84:8 88:24 witness 14:10 28:19 102:11 wolpoff 45:3 74:18 wording 45:24 words 98:15 work 33:23 70:12 90:21,25 101:2 working 6:4 27:9 world 47:7 worse 52:9 worth 81:7,8 would've 30:7,25 write 99:17 writing 34:3,4,12 34:12 written 67:12 90:16 wrong 53:8,10 54:16 74:3 84:15 84:16,21 86:3 x x 103:1,12 y y 45:3,3 yeah 74:6 89:13 year 5:19 7:5 8:1 90:1 years 15:2 20:7,8 27:6 30:25 83:10 83:11 90:11	yesterday 67:2 69:24 70:8 89:16 97:2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
1 st Franklin Financial Corporation,	)	CASE NO.: 2017-CP-18-00819
	)	
Plaintiff,	)	NOTICE OF ACCEPTANCE OF
	)	DEFENDANT'S OFFER OF JUDGMENT
vs.	)	
	)	
Roby A. Adams,	)	
	)	
Defendant.	)	
	)	

Pursuant to Rule 68, South Carolina Rules of Civil Procedure, Plaintiff 1st Franklin Financial Corporation ("1st Franklin" or "Plaintiff") hereby accepts the Offer of Judgment filed by Defendant Roby A. Adams ("Adams" or "Defendant") on April 17, 2020, in the amount of Four Thousand Three Hundred Forty-Three and 00/100 Dollars (\$4,343.00), plus allowable accrued administrative, filing, or other costs. A copy of Defendant's Offer of Judgment is attached as **Exhibit A.**

Acceptance of this offer does not resolve Defendant's pending counterclaims against 1st Franklin.

This 29th day of April, 2020.

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Attorneys for 1st Franklin Financial Corporation

April 29, 2020
 Charleston, South Carolina

RECEIVED
Aug 14 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master-In-Equity, Dorchester County

Case No. 2017-CP-18-00819

1st Franklin Financial
Corporation

Respondent,

v.

Roby A. Adams

Appellant.

NOTICE OF APPEAL

Roby A. Adams appeals the Amended Order on Plaintiff's Motion for Partial Summary Judgment filed April 21, 2020 and the Form 4 Rule 59(e) Order filed July 16, 2020, on which dates Appellant received written notice of entry of the orders.

Dated this August 14, 2020

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Apr 29 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Hon. James E. Chellis, Master-In-Equity

Appellate Case No. 2020-001127

1st Franklin Financial
Corporation

Respondent,

v.

Roby A. Adams

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all
material proposed to be included by any of the parties and not any other material.

April 29, 2021

/s/ John R. Cantrell, Jr.

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