

Record/FILE ON DEMAND

Acceptance of Offer with full immunity AND WITHOUT RECOURSE! NBLB-20200518NLBWILM0801-COAPP-0002^o

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAY 19 2021

SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2020-001130
Common Pleas Case No.: 16-CP-18-1678

Wilmington Savings Fund
Society FSB as Trustee of
Stanwich Mortgage Loan Trust C.....Respondent,

v.

Nelson L. Bruce, et al.....Appellant.

OPPOSITION TO APPELLEE'S MOTION TO DISMISS APPEAL

Nelson L. Bruce, Propria Persona, Sui Juris
c/o 144 Pavilion Street
Summerville, South Carolina 29483
(843) 437-7901
Leonbruce81@yahoo.com
Appellant

May 18, 2021

APPELLANTS RESPONSE TO RESPONDENT STATEMENT OF ISSUE

Appellant, Nelson L. Bruce, hereby responds and objects to respondent Wilmington Savings Fund Society FSB, as Trustee of Stanwich Mortgage Loan Trust C request to dismiss this appeal which appellant received on May 10, 2021 on the grounds that Appellant has not preserved the issues for appeal for the reasons presented throughout this opposition and response.

APPELLANT'S REPLY AND ADDITION TO PROCEDURAL HISTORY OF

APPEAL

On or about May 20, 2020, Appellant filed a MOTION FOR RECONSIDERATION, RELIEF FROM APRIL 22, 2020 ORDER AND DIMISSAL OF AMENDED COUNTERCLAIM/COUNTERSUIT AND REFERRAL TO MASTER IN EQUITY, TO VACATE/SET ASIDE THE APRIL 22, 2020 JUDGMENT/ORDER AND STAY PROCEEDINGS, TO STRIKE FILINGS BY PLAINTIFF'S ATTORNEY, TO ENJOIN PARTIES, FOR CONTINUANCE OF HIS MOTION FOR ENTRY OF DEFAULT MOTION FOR SUMMARY JUDGMENT AND EXPEDITED REVIEW OF MOTION on the record after appellant received a copy of the April 22, 2020 signed order dismissing the case which appellant received on May 11, 2020. The court never mailed out the 4-22-2020 judgment/order to the appellant until 5-1-2020 as evidenced and documented by the clerk (see...common pleas 5-1-2020 court record for this case) and the appellant did not receive delivery of the 4-22-2020 judgment/order until 5-11-2020 due to the effects of Covid-19 with U.S.P.S. mailing delays. On 7-8-2020 the court made a ruling denying appellants 5-20-2020 Motion and referred the case to the MIE and this appeal followed for both the 4-22-2020 judgment/order and the 7-8-2020 order.

APPELLANTS REPLY TO MEMORANDUM AND POTION TO DISMISS

I. APPELLANT REPLY TO SECTION I OF RESPONDENTS MOTION TO DISMISS "WITH THE EXCEPTION OF HIS FD CPA CLAIMS,

**APPELLANT REFUSED TO ADDRESS ANY OF HIS COUNTERCLAIMS
AT THE HEARING.**

Respondent claims that Appellant declined to argue his position therefore has waived the right to try to re-litigate the issues presented to this court because they are not preserved and then starts to reference parts of the transcript. Appellant objects to this allegation. Although appellant made some statements at the hearing in regards to the motion to dismiss, appellant had already presented his case before the court and the issues have already been raised and preserved on the record in appellant's filed opposition to respondent's motion to dismiss (see... Defendants' Opposition to Plaintiff's Motion to Dismiss and Motion for Order of Reference filed and entered on 12-17-2018 which is hereby reiterated and incorporated by reference in its entirety) which is why appellant stated "it would be a breach of that contract for me to continue to start making objections towards the issue that he claiming" (see...page 3 respondents motion to dismiss appeal). Appellant's 12-17-2018 opposition pertains to any arguments in regards to the motion to dismiss before any arbitration agreements were made during the pendency of the case therefore the issues have been preserved for appellate review.

At the hearing, appellant presented to the court to review the record and address all affidavits filed on the record (see...respondents copy of transcript pages 11 – 12 filed with their motion to dismiss this appeal). This would include the appellants 12-17-2018 amended counterclaim which clearly specified as an Affidavit and is in Affidavit form (see...page 1 of appellant 9-25-2017 amended counterclaim). This affidavit is undisputed facts before the court as there are no rebuttal affidavits on file to this affidavit which should have been considered in this matter. The following was stated at the hearing:

THE COURT: Okay. Very well. Anything else you want to tell me about the -- in response to the motion to dismiss?

MR. BRUCE: In regards to the motion to dismiss, and so that I don't waiver any further arbitration rights, I will present a few things. There are some affidavits filed on the record in regards to the debt validation that they never responded to, including the attorneys. They failed to respond. The FDCPA requires that they respond in thirty days. They failed to respond, failed to produce any validation of the debt. The attorney claims that the attorney validated the debt. They have no firsthand knowledge in regards to that, and so they cannot validate that debt. Only a person with firsthand knowledge can validate that debt, and again they have produced no affidavits in rebuttal to my affidavit.

THE COURT: Got it. Very well.

By the attorneys own words, they admit to allegedly attempting to validate an alleged mortgage debt by stating “ As an initial matter, this debt was validated by our law firm” (see... Respondents filed copy of transcript pages 9 – 10 filed with their motion to dismiss) which is in line with appellants exhibits (exhibits–L) file on record on 5-20-2020 with appellant’s motion which is hereby incorporated by reference in its entirety as proof that respondents are debt collectors trying to collect a debt directly or indirectly and proof that the respondents were trying to collect a debt during the pendency of foreclosure which makes them a debt collector as their communication specifically states “THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION WILL BE USED FOR THAT PURPOSE” which is a statement required by FDCPA for all debt collectors to have with their communications to a consumer when attempting to collect a debt. The 5-20-2020 file motion along with a proposed order (see...5-20-2020 motion filing) which contains issues by the appellant was first raised to the circuit court requesting a ruling on the motion by the court which they ruled on 7-8-2020 therefore are preserved for appellate review *Fettler v. Gentner*, 396 S.C. 461, 722 S.E.2d 26, 30 (S.C. Ct. App. 2012) (holding an appellate court cannot address an issue unless it was first raised to and ruled upon by the lower court).

Also There Appears to be a Controversy which amounts to a lack of jurisdiction, and a void judgment/order under Rule 60 and a violation of appellant’s constitutional rights, rights to a

trial by jury as exercised and demanded as prescribed under **SCRCP Rule 38(b)** and therefore is preserved under **SCRCP Rule 38(a)** for a jury to decide on all issues pertaining to the appellants amended counterclaims and preserved for appellate review.

Rule 39(a), SCRCP, provides,

When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the calendar and the clerk's filebook as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or its own initiative finds that a right of trial by jury of some or all of those issues does not exist.

Rule 38(b), SCRCP, states,

Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

The court in determining the appellant's right to a jury trial by jury was solely based on the foreclosure action filed by the respondent being an equitable action (see...4-22-2020 order under section "PLAINTIFF'S MOTION TO REFER"), not the amended counterclaims and therefore the court had only found that appellant did not have a right to a trial by jury on some of the issues as prescribed under **Rule 39(a)**, on the foreclosure action "only", not appellants counterclaims. Therefore the issues whether appellant is required a trial by jury on his amended counterclaims was never addressed and appellant has a right to a trial by jury on all of those issues presented in his amended counterclaim as demanded in his amended counterclaim (see...section "VII" paragraph 47 of 9-25-2017 amended counterclaim) as there are no written stipulations filed with the court nor oral stipulation in open court or entered in the record by the appellant consenting to trial by the court sitting without a jury as the 4-22-2020 order shows the

court decided the issues, not a jury.

In *South Carolina Community Bank v. Salon Proz, LLC* Appellate Case No. 2014-002627, April 26, 2017 it was decided that, a counterclaim is considered a separate action because it can be ordered as a separate trial. Appellant is entitled to a jury trial in this equitable action because his amended counterclaims are legal and compulsory.” *Carolina First Bank v. BADD, LLC*, 414 S.C. 289, 295, 778 S.E.2d 106, 109 (2015). “A counterclaim is compulsory if it arises out of the same transaction or occurrence as the party's claim which is the case here as appellants amended counterclaims meet the restrictions enunciated in *Carolina First Bank v. BADD, LLC* because they bear a logical relation to the foreclosure claim and arise out of the origination and administration of the subject alleged mortgage loan.

There has been a demand for a jury trial/trial by jury documented by the clerk and acknowledged on the record (see... the 10-27-2017 record where the clerk documented the following as a "Clerk's error" Changed file type from non-jury to jury, see...appellant's 8-23-2018 exhibit – H filed on the record which is a copy of the record, also see...the lower courts 5-23-2018 record documenting a notice of jury roster) which evidences a jury, not the court was to decide any and all issues presented in appellant's amended counterclaim and therefore the court's judgment/order is void as presented in appellants brief and preserved for appellate review. This was brought to the courts attention before and after the hearing which the court ignored thereby violating appellants rights to a trial by jury on the issues (see...12-17-2018 filing page 4 paragraph 3, and 5-20-2020 filing pages 3, 6, 26-28, and 30-31). The record regarding a jury trial did not get adjusted until after the 4-22-2020 order dismissing the amended counterclaims therefore the court was already on notice that the amended counterclaims was to be decided by a jury, not the court. Nothing in the record demonstrates appellant voluntarily

relinquished the right to a trial by jury, a jury trial. The right of trial by jury is highly favored, and waivers of the right are always strictly construed and not lightly inferred or extended by implication.” *Keels v. Pierce*, 315 S.C. 339, 342, 433 S.E.2d 902, 904 (Ct. App. 1993). “In the absence of an express agreement or consent, a waiver of the right to a jury trial will not be presumed.” *Id.* These are matters in controversy for which a jury must decide all the issues pertaining to the amended counterclaim (see... **SCRPC Rule 38(c)**) as a matter of law and are preserved as provided under **SCRPC Rule 38(a)**. The Bill of Rights guarantees every party the right to a “trial by jury” in every controversy in every court that has a value of \$20 or more and I have exercised that right with my demand for a jury trial, trial by jury (see... appellants amended counter claim filed on 9-25-2017 section “VII” paragraph 47). This right is not subject to review, and or restriction, as it is a secured and guaranteed right supported by precedent and Appellant has exercised that right and has not consented to waiving that right.

There are no rebuttal affidavits filed and signed under oath, penalty of perjury, and firsthand knowledge that can authenticate the statements that the attorneys has made throughout this case on behalf of their clients the appellees. Affidavits stand as truth when not rebutted or properly rebutted (see...[*United States v. Kis*, 658 F.2d 526, 536 (7th Cir. 1981); *Cert. Denied*, 50 U.S. L. W. 2169; S. Ct. March 22, 1982]). Affidavit uncontested unrebutted unanswered stands as true. “An Affidavit if not contested in a timely manner is considered undisputed facts as a matter of law.”). Indeed, no more than affidavits is necessary to make the prima facie case which is the case here. *United States v. Kis*, 658 F2d 526 (7 th Cir. 1981); *certiorari denied*, 50 U.S.L.W. 2169; S.Ct. March 22, 1982 denied, 50 U.S.L.W. 2169; S.Ct. March 22, 1982. Since there are no rebuttal affidavits filed on the record the attorneys have provided nothing but hearsay and allegations on the record, no facts and appellant’s affidavits are all undisputed facts.

This court and Common Pleas Court is a court of record and the court is required to review all filings on the record in order to fairly rule on the issues presented before it whether or not stated at a hearing. As long as it is filed on the record, it is before the court for the court to review and consider. If this was not the case then why are all filings required to be filed with the clerk of record in order for the judge to review to make a decision and why is the record required in order for the appellate court to review any errors of the court? In fact, there are no requests filed on the record by the respondent in the form required by the circuit court (see...page 7 of 3-23-2018 filing by respondent for example of the required form/cover sheet) asking for a hearing in order for a hearing to conduct on their motion to dismiss therefore the court was only required to go by the record when addressing the motion to dismiss appellants counterclaims which would include the appellant's opposition to respondents motion to dismiss. The court took it upon itself without consent and request of the parties on the form required by the court to request a hearing on the matter. All responses was already on the record and they were to make their decision based off of the record and the parties responses on the record in opposition to the motion to dismiss and the court is required to consider the record. The lower court failed to do this and because there was no consent to the hearing and nor records of a request for a hearing on the matter, the court had no right to conduct a hearing on any issues especially if it violates a parties right to a trial by jury on all the issues as preserved. These are the reasons why the referenced 5-20-2020 motion was filed giving the court the opportunity to review the full record of appellant's filings on the record for this matter since the filing of the amended counterclaim to correct their errors and fairly make a decision and to inform the court that a jury must be present as a trial by jury was demanded for all the issues.

The respondent had an opportunity to contest the 5-20-2020 motion with the filing of an

opposition but failed to raise any objections and challenges to that motion and therefore have waived their right to raise any objections in this appeal to what was presented and raised before the circuit court in that motion as any responses toward the 5-20-2020 motion would not have been on the record before the appeal and would be raised for the first time on appeal which respondent has already stated would be axiomatic (see... "Section I" page 4 of respondents motion to dismiss) and any such challenges and responses should be stricken from the record in this appeal. In this case, all issues raised in appellant's informal brief has been raised before the lower court and ruled on as evidenced by their 7-8-2020 denial filed on the record of that court therefore the appellant has reached the minimum requirement for issues presented in appellants brief to this court and therefore are not raised for the first time and are preserved for appellate review. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court (E.g., *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)). For these reasons, respondent's motion to dismiss should be denied.

II. APPELLANT REPLY TO SECTION II OF RESPONDENTS MOTION TO DISMISS "FDCPA CLAIMS"

Respondent claims that Appellate has argued a different theory for his Fair Debt Collections Practices Act ("FDCPA") claims in his brief to the appellate court and therefore appellant has not preserved a claim under the FDCPA for review. Respondent claims that appellant argued that he did not receive a verification in the form he requested. That appellant did not address whether respondent is a debt collector under the FDCPA. On the contrary, appellant had already raised these arguments in his position on the record in his 12-17-2018 opposition (see... pages 1, 2, 5, 6, and 11) as this opposition clearly and specifically addresses the motion to dismiss and appellant raised these arguments in his 5-20-2020 motion (see...5-20-20 motion pages 6 – 8 of 33 and 15 - 23 of 33) which are all hereby reiterated an incorporated by

reference in their entirety therefore the FDCPA claims are preserved for appellate review. In fact, there were additional arguments/theories added to the order that was not presented or raised at the hearing (see...March 12, 2020 hearing transcript filed with respondent's 5-11-2020 motion to dismiss) such as:

- Assuming Plaintiff is collecting a debt, Plaintiff is the holder of the Note and the legal title owner of the Mortgage, so it is not collecting the debt of another. As the U.S. Supreme Court has stated, "you have to attempt to collect debts owed another before you can ever qualify as a debt collector." *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1724, 198 L. Ed. 2d 177 (2017) (Emphasis in original.)
- Further, Plaintiff's foreclosure action with a waiver of deficiency is not collection of a debt. It has waived deficiency and is seeking only to foreclose its security interest in the property. Enforcing a security interest in real estate is not the collection of a debt. The FDCPA is designed.
- Defendant Response purports to assert a counterclaim for Conspiracy. "A civil conspiracy consists of three elements: (1) A combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes the plaintiff special damages" *Hammond v. Butler, Means, Evins & Brown*, 300 S.C. 458, 463, 388 S.E.2d 796, 798 (1990). Defendant has not alleged facts to support any of the elements. In his claim he states "the opposing parties". There are no opposing parties, only the Plaintiff. There is no combination of two or more persons, which is an essential element of the cause of action.
- Defendant has not pleaded facts showing any parties have come together for the purpose of injuring Plaintiff. Additionally, Defendant has not pleaded special damages. Rule 9(g), SCRPC, requires "when items of special damage are claimed, they shall be specifically stated." In *AJG Holdings LLC v. Dunn*, the Court of Appeals stated, "To prove special damages, [claimaints] had to show that the acts in furtherance of the conspiracy were separate and independent from other wrongful acts alleged in the complaint. See *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981). Special damages must be properly pled, or the claim for civil conspiracy will be dismissed. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115–16, 682 S.E.2d 871, 875 (Ct.App.2009); see also Rule 9(g), SCRPC (requiring special damages to be specifically stated in the pleadings). *AJG Holdings LLC v. Dunn*, 392 S.C. 160, 167–68, 708 S.E.2d 218, 222–23 (Ct. App. 2011), *aff'd*, 410 S.C. 346, 764 S.E.2d 912 (2014) The AJG Court cited the *Hackworth* case, which makes it clear that dismissal is appropriate when special damages are not properly pleaded. The Defendant's claims for conspiracy should be dismissed.
- Defendant has included a counterclaim for "Violation of TILA" in the caption of his Amended Response. The reference would appear to be to the Truth in Lending Act. However, Defendant has not pleaded any specific facts related to a violation

of this act. Therefore, the Defendant's Counterclaim must be dismissed.

- In relevant part Rule 53(b) provides: "In an action ... for foreclosure, some or all of the causes of action in a case may be referred to a master." Rule 71 (a) adds: "Actions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53."
- Defendant has sought a jury trial. "A mortgage foreclosure is an action in equity." U.S. Bank Trust Nat'l Ass'n v. Bell, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009). "Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." Lester v. Dawson, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). This foreclosure action is proper to be referred, and Defendant does not have a right to a jury trial.

However, the above arguments are similar to what was raised on the record in respondents 11-15-2018 Memorandum to their motion to dismiss, and by the court allowing the respondents to utilize the record to add additional allegations/theories outside of the hearing that was not raised at the hearing, the court opened the door for Appellant to address them further and add his own additional allegations/theories and the court should had drafted the appellant's arguments in his opposition that was filed on the record on 12-17-2018 as there should be equal protections and rights amongst the parties by a neutral party, the court otherwise the court is acting in a bias, prejudicial manner against the appellant. Since the court made their decision based off the record in favor of the moving party only, the respondent without the drafting of appellants perspective which would include the opposition filed on the record as they obligated themselves to do (see...hearing transcript page 13) there was clearly a need for the 5-20-2020 motion by the appellant. The court failed to add appellant's arguments and theory filed on the record in his 12-17-2018 opposition as they did with respondents 11-15-2018 memorandum and placed an order dismissing the amended counterclaims. The additional allegations/theories were raised before the lower court first with the filing of appellant's 5-20-2020 motion which stayed the timeframe to file any notice of appeal of which the respondent waived their right to challenge and raise objections to the 5-20-2020 motion as they failed to file an opposition to this motion as

presented above. Therefore the issues are preserved for review of the appellate court and this is not the first time they were presented as respondents were served with a copy of the above 5-20-2020 motion filing and the 12-17-2018 appellant's opposition to plaintiff's motion to dismiss. It is clear that the court's decision was not completely based off of the 3-12-2020 hearing, it was based off of the record, the respondents 11-15-2018 Memorandum, proposed order that had additional allegations/theories which the court adopted and signed. The court never reviewed the record as directed by the appellant as evidenced before the court (see...pages 11-12 of the 3-12-2020 transcript, pages 3-4 of the 12-17-2018 opposition, and page 6 of appellant's 5-20-2020 motion) nor did the court draft from appellants perspective as they obligated themselves to (see...hearing transcript page 13). For these reasons respondent's motion to dismiss appeal should be denied.

III. APPELLANT REPLY TO SECTION III OF RESPONDENTS MOTION TO DISMISS " APPELLANT DID NOT ARGUE THE CIRCUIT COURT'S FAILR TO ENJOIN PARTIES, THE CIRCUIT COURT'S FAILURE TO VACATE AN ORDER SUBSTITUTING PLAINTIFF, OR THE CIRCUIT COURT'S FAILURE TO PHYSICALLY FILE PROOF OF THE CIRCUIT COURT'S JURISDICTION"

Respondent argues that appellant did not argue and raise the issues of the failure to enjoin parties, the failure to vacate an order substituting Plaintiff, the courts failure to physically file proof of the court's jurisdiction as identified for appellate review to Judge Goodstein and therefore they are not preserved for appellate court to review. On the contrary, appellant has raised these issues to the judge and filed them on the record, see...appellants 12-17-2018 opposition to plaintiff's motion to dismiss pages 2 – 5 & 10 – 11 and appellants 5-20-2020 motion pages 1, 6 – 8, 10, 16 – 17, 20 – 22, 24, 29 – 32) therefore appellant objects and has preserved these issues for appellate court review and respondents motion to dismiss should be denied.

IV. APPELLANT REPLY TO SECTION IV OF RESPONDENTS MOTION TO DISMISS “FAILURE TO PAY FILING FEES”

In regards to the challenge to the filing fees addressed at the hearing, appellant states that because the court set a date for the motions to be addressed for his filings, appellant thought that the court accepted the motions and his form for them to collect a filing fee as a state agency and was proceeding forward since the court did not send any notices for failure to file a filing fee and therefore had to appear because he requested the hearings and appeared for motion hearing under threat of duress and/or coercion as specified in appellants 5-20-2020 motion (see...page 2 of appellant’s 5-20-2020 motion). Appellant states that because this case has been going on for over 3 years and there has been multiple filings by all parties, that is would be impossible for appellant to memorize all fillings for 3 + years and when the court asked if he filed any affidavits regarding indigency and the current filing fees for those motions, at the time he could only address what he could remember unaware at the time that he had already filed an affidavit regarding indigency status which would cover all filings moving forward. Appellant directed the court to view all affidavits filed on the record as referenced above in this opposition therefore if the court had reviewed all affidavits filed on the record, the court would have noticed that an affidavit was filed as it was brought to the circuit court judges attention (see...5-20-2020 motion filing on the record pages 4 – 5).

Respondents makes several arguments in regards to the filing fees that pertain to preserving the issue for appellate review. Respondent addressed the appellant’s challenge to the courts filing fees, and claims that appellant argued that he should not have to pay filing fees until the county provided him proof of where the fees are being allocated referencing Tr., p. 4, 11., 14-18 of the 3-12-2020 transcript then goes on to claim that appellant abandons this argument and

argues instead he should be allowed to proceed without paying filing fees because he has filed sufficient documents to evidence his indigent status and states a failure to raise an issue constitutes waiver and is not properly before the Court on appeal and that appellant cites no authority in his brief for his position that he should not have to pay the filing fee. Respondent also claims that appellant has not preserve his claim to proceed as an indigent because he did not claim that position at the hearing when asked by the judge. Appellant objects to the respondents allegations as he has raised the argument about his challenge to the court to paying filing fees to the court by requesting proof of where the fees are being allocated by stating under section “V” of Appellants brief (see...page 23 of appellant’s brief), “The filing fee was challenged by appellant which the court never produced on the record, any facts to support their claims in opposition to appellants challenge to the fee which is an undisputed fact” although appellant did raise arguments about indigent status. The court failed to produce any evidence that there office is not prepaid by the taxes of the people nor where the funds they are additionally charging filers are being appropriated to before denying appellant’s motions therefore they are preserved for appellate review. Appellant addressed all issues regarding the filing fees before the circuit court in his 5-20-2020 motion (see...pages 4 – 5) before appeal therefore they are not abandoned and they are preserved for appellate review. Appellant’s claims of indigency are in affidavit form, Appellant’s claims of forms for the court to collect a filing fee as a state agency are filed on the record and there for are facts, not conclusions and therefore are undisputed facts as there are no objections in reference to the affidavit and form to collect a filing fee as a state agency. For these reasons, respondent’s motion to dismiss should be denied.

CONCLUSION

Further, appellant has preserved all the issues addressed in his brief, and therefore are not

addressed for the first time on appeal and respondents motion to dismiss should be denied. Even though respondent believes that the issues presented in appellant's brief may not have been preserved for appellate review and doesn't specify exactly what was not presented before the lower court that appellate presented in his brief, it is clear that the issues regarding the right to a trial by jury, the FDCPA, filing fees were definitely preserved for appellate review. All the issues in appellant's brief are preserved for appellate review as specified above, even if they weren't, this court may still consider matters not raised before the circuit court before appeal was filed if any, based upon judicial economy and public policy/fairness. *See... Bell v. Progressive Direct Insurance, 407 S.C. 565, 582 n. 9 (2014) and Jeter v. South Carolina Department of Transportation, 369 S.C. 433, 441 n.6 (2006)*. It is clear that the court was bias in their decision and acted in a prejudicial manner and unfairness as they based their decision on the record of one parties arguments and theories and not the other parties opposition which include the other parties arguments and theories even though brought to their attention in a motion and that the court violated the appellants rights to a trial by jury as demanded by deciding the issues which all issues are preserved for a jury to decide and should be reversed and re-litigated before a jury as no hearing was consented to nor requested by the respondent in the form required by the circuit court to set a hearing on the matter. For the reasons specified above and throughout this opposition the respondent's motion to dismiss should be denied.

Appellant prays that this honorable court enter an order allowing appellant twenty (20) days from the date of a decision on the motion to dismiss appeal to amend his appeal brief, to remove the duplicate section (section "I" and section "XII" are duplicates), to add issues related to the stay of proceedings, the estoppel, and the information presented in this opposition as it pertains to issues presented in the brief that are part of the lower courts record.

RESPECTFULLY PRESENTED,

“Without Prejudice”

Nelson L. Bruce 5-18-2021

THE BENEFICIAL OWNER OF THE CESTI QUI EQUITABLE TRUST

Nelson L. Bruce, Propria Persona, Sui Juris

All Natural Rights Explicitly Reserved and Retained

U.C.C. 1-207/1-308, 1.103.6

c/o 144 Pavilion Street, Summerville, South Carolina [29483]

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Ph. 843-437-7901

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Diane S. Goodstein, Circuit Court Judge

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Wilmington Savings Fund
Society FSB as Trustee of
Stanwich Mortgage Loan Trust C.....Respondent,

v.

Nelson L. Bruce, et al.....Appellant.

**PROOF OF SERVICE – OPPOSITION TO APPELLEE’S MOTION TO DISMISS
APPEAL**

I Nelson L. Bruce, Appellant, hereby certify that I served a copy of the foregoing
OPPOSITION TO APPELLEE’S MOTION TO DISMISS APPEAL by depositing a copy of it in
the United States Mail, postage prepaid under Certified Mail Addressed To:

ALBERTELLI LAW
Attention: William S. Koehler
1201 Main Street, Suite 1450
Columbia, South Carolina 29201
(803) 828-0880
Attorney for Respondent
Certified Mail No.: 7020 2450 0000 0106 7130

Dated this 18th day of May, 2021.

RESPECTFULLY PRESENTED,

“Without Prejudice”

Nelson L. Bruce 5-18-2021

THE BENEFICIAL OWNER OF THE CESTI QUI EQUITABLE TRUST

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U.C.C. 1-207/1-308, 1.103.6

c/o 144 Pavilion Street, Summerville, South Carolina [29483]

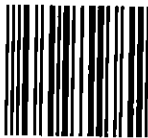
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[zip code exempt - DMM 602 1.3e (2)]

DELIVERY OPTIONS (Customer Use Only):

SIGNATURE REQUIRED Note: The mailer must check the "Signature Required" box if the mailer: 1) Requires the addressee's signature; OR 2) Purchases additional insurance; OR 3) Purchases COD service; OR 4) Purchases Return Receipt service. If the box is not checked, the Postal Service will leave the item in the addressee's mail receptacle or other secure location without attempting to obtain the addressee's signature on delivery.

Delivery Options

- No Saturday Delivery (delivered next business day)
 - Sunday/Holiday Delivery Required (additional fee, where available*)
 - 10:30 AM Delivery Required (additional fee, where available*)
- *Refer to USPS.com® or local Post Office™ for availability.

TO: (PLEASE PRINT) PHONE (803) 734-1890

COURT OF APPEALS
ATTENTION: CLERK OF COURT
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

ZIP + 4® (U.S. ADDRESSES ONLY)

29201

- For pickup or USPS Tracking™, visit USPS.com or call 800-222-1811.
- \$100.00 Insurance included.

PEEL FROM THIS CORNER

PAYMENT BY ACCOUNT (if applicable)

USPS® Corporate Acct. No. Federal Agency Acct. No. or Postal Service™ Acct. No.

ORIGIN (POSTAL SERVICE USE ONLY)

1-Day 2-Day Military DPO

PO ZIP Code Scheduled Delivery Date (MM/DD/YY) Postage

29485 5-19-21 \$

Date Accepted (MM/DD/YY) Scheduled Delivery Time Insurance Fee COD Fee

5-18-21 10:30 AM 3:00 PM \$ \$

Time Accepted AM PM 10:30 AM Delivery Fee Return Receipt Fee Live Animal Transportation Fee

4:53 PM \$ \$ \$

Special Handling/Fragile Sunday/Holiday Premium Fee Total Postage & Fees

\$ \$ **RECEIVED**

Weight Flat Rate Acceptance Employee Initials

lbs. ozs. **BB MAY 18 2021**

DELIVERY (POSTAL SERVICE USE ONLY)

Delivery Attempt (MM/DD/YY) Time Employee Signature

AM PM **SC Court of Appeals**

Delivery Attempt (MM/DD/YY) Time Employee Signature

AM PM

LABEL 11-B, MARCH 2019

PSN 7659-02-000-9986

To schedule free Package Pickup, scan the QR code.



USPS.COM/PICKUP



PS10001000006

EP13F May 2020
OD: 12 1/2 x 9 1/2



UNITED STATES POSTAL SERVICE