

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge
Robin B. Stilwell, Circuit Court Judge

Case No. 2019-001565

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

Michelle Hodges, Individually and as Personal Representative
of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon;
SC Housing Corp.; and Twin Creeks Homeowners Association,
Inc. Defendants,

Of Whom Michelle Hodges, in her Individual capacity,
is the Appellant.

PROPOSED AMENDED INITIAL BRIEF

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May 21 2021

SC Court of Appeals

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STATEMENT OF THE ISSUES

Does the Court of Appeals agree that the Circuit court abused its discretion by denying the motion to amend without prior Notice of a claim of prejudice from the opposing party?

Does the Court of Appeals agree that the Circuit court violated my due process rights by allowing the opposing party to plead at the hearing or by making a Sua Sponte Order, denying the motion to amend?

Does the Court of Appeals agree that I had been restrained in my liberty to put up a defense to any claim of prejudice; due to the fact that I did not have prior notice of any prejudice?

Does the Court of Appeals agree that the Circuit court abused its discretion by not yielding to the statutory interpretation, of the South Carolina Supreme Court's prior ruling in Gurnham Op. No, concerning the restrictions placed on the exemptions, when a lender is seeking to foreclose outside of the time limits of the presentation of claims period?

Does the Court of Appeals agree that the Circuit court abused its discretion in granting Summary Judgment to Wells Fargo, when discovery was not complete?

Does the Court of Appeals agree that the Circuit Court abused its discretion in striking the jury demand, when there was no contract in which the Appellate waived her demand for a jury trial, nor was the motion filed addressing the jury demand within 15 days, as ordered by the court?

Did the Circuit court abuse its discretion ruling to strike my Jury demand, affecting the mode trial, when I have an outstanding claim of Fraud in where the claim is legal and compulsory?

Did the Circuit court abuse its discretion in restricting the Master in equity's jurisdiction to just dispensing with the case?

Did the Circuit err in changing the Mode of trial, when there is a fact of fraud for a jury to decide?

Did the Circuit court err in not finding a genuine issue of material fact concerning the non claim statute?



RELEVANT PORCEDURAL HISTORY

The procedural history listed below is relevant to this appeal, as I must clarify my confusion in denominating my answers and motions for leave and clarification, is as follows:

Complaint filed 12/22/2017	Answer served 1/25/2017
Amended by right (First Amended Answer)	02/01/2018 - Wells Fargo reply -2/13/2018
Sought leave to amend (Second Amended Answer	02/26/2018 - Wells Fargo reply - None
Sought leave to amend (Third Amended Answer)	03/15/2018 - Wells Fargo reply - None
Leave granted by Judge Verdin on 3/28/2028	
Filing of Third Amended Answer (enlargement)	05/07/2018 - Wells Fargo reply -5/21/2018
Sought leave to amend (Fourth Amended Answer)	06/05/2018 - Wells Fargo reply - None
Leave granted by Judge Kinlaw on 07/19/2018	

DISCOVERY

Motion to Compel Discovery filed	07/06/2018
Filed exhibits for motion to compel	07/11/2018
First set sent	08/24/2018
Second set sent	10/26/2018
Third set sent	12/26/2018
	01/17/2019(interrogatories only)

Lots of back and forth over the Third set of admissions containing mortgage statements, which plaintiff refused to admit to. However, I understand now they are deemed admitted.

Fourth set sent	04/12/2019
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Filing of Fourth Amended Answer	07/30/2018-Wells Fargo reply - 8/10/2018
Sought leave to amend (Fifth Amended Answer) (Note – incorrectly denominated as Sixth and Seventh Amended Answer)	04/12/2019 - Wells Fargo Reply - None
Denial of leave to amend Order dated	04/29/2019
Motion for Summary Judgment (Respondent)	06/10/2019
Motion to Compel Discovery filed	
Memorandum in Opposition to MSJ & Affidavit	07/12/2019
Preliminary Order of MSJ	07/24/2019
Order of Summary Judgment	08/07/2019
Motion to Alter/Amend (premature)	08/05/2019
Motion to Alter/Amend(Incorporated above motion)	08/16/2019
Order Denying Motion to Alter/Amend(No changes)	08/22/2019
Notice of Appeal	09/06/2019
Initial Brief	
Respondent motion for ext. to file initial brief	
Notice of Bankruptcy filed	
Notice to proceed with Appeal	
Respondent filed an initial brief	01/07/2021
Notice to proceed	

STATEMENT OF THE CASE

This appeal is concerning a denial of a motion for leave to amend my fifth amended answer and concerning summary judgment that was granted in favor of Wells Fargo, by the Circuit Court, in an action for foreclosure. I filed a motion for leave to amend my fifth amended answer and I incorrectly denominated it my seventh amended answer. According to South Carolina Rules of Civil Procedures, Rule 15a the burden of proving prejudice is on the party opposing the motion. The Respondent did not file a response to the motion, but showed up at the hearing and it was

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decided between the judge and respondent to deny the motion solely based on the fact that it was my seventh amended answer. I reviewed the South Carolina Rules of Civil Procedure, Rule 15a to see if I could find any restrictions concerning the number of times a motion for leave can be filed. And Rule 15(a) SCRPC provides that when a party asks to amend his pleading, "leave shall be freely given when justice so requires and does not prejudice any other party." "This rule strongly favors amendments and the court is encouraged to freely grant leave to amend." *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005) (citing *Jarrell v. Seaboard Sys. R.R., Inc.*, 294 S.C. 183, 186, 363 S.E.2d 398, 399 (Ct. App. 1987)). The South Carolina Supreme court has held in *BB&T v. Taylor*, 369 S.E. 548, 551, 633 S.E. 2d 501, 502-3 (2006) "An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support. *Id.* at 551, 633 S. E. 2d a 503. In *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222, 226 (1962). The *Foman* Court continued:

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the

opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be "freely given."

Since the Respondent did not plead prejudice and the Circuit Court's ruling was different from the above substantive reasons, I could not find any evidence that supports the court's ruling.

Since I did not have notice or an opportunity to respond, as the motion was heard and denied the same day; I wanted to find out if I had suffered a denial of my constitutional right to due process.

In *Stono River Entl. Protection Ass'n v. S C. Dep't of Health and Env'tl. Control*, 305 S.C. 90; 94, 406 S.E. 2d 340, 342 (1991), the South Carolina Supreme court held "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way and

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judicial review. I further found that this court, the South Carolina Court of Appeals, considers order or judgment void, if a court does not provide due process. See *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S. E. 639, 644, 478 S. E. 2d 868, 871 (Ct. App. 1996). Due to the judges tone and his action with the Respondent's attorney, as they were nodding their heads in agreement and prompting one another, I did not object to the judge's comments. *State V. Pace*, 316 S. C. 71, 447 S. E. 2d 186 (1994) (failure to make a contemporaneous objection to judge's comments excused where judge's tone and tenor made it clear that any objection would have been futile).

If the Circuit court had properly exercised its discretion summary judgment would not have been granted, as I claimed to be a successor in interest and under South Carolina joint tenancy law, when one joint tenant passes away the whole of the property passes to the remaining joint tenants as a non probate asset and according the Probate non claim statute, Wells Fargo must have presented a creditor's claim within 8 months of the first publication of the newspaper notice to all creditors and Wells Fargo would have had to have received a notice of disallowance in order to acquire a right to take any action against the subject property.

I have a cause of action for a Deceptive Business Practice, due to Wells Fargo's claim that there was an escrow shortage. In order to establish repetition, I was raised that Wells Fargo had claimed that it was the owner of the Notice in April 2012 and it is obvious that Wells Fargo is still in the same line of work. I also stated the date in which my Mother passed away and as a fact of life, death will continue. This gives Wells Fargo the opportunity to continue to make deceptive claims that a person has an escrow shortage, that will increase their payments and then due to the death of the original owner, claim that an Heir is not the owner of the property, for purposes of instituting fraudulent foreclosures and commit fraud upon the court in order to avoid the South Carolina Supreme Court's order 2011-05-02-02, concerning Foreclosure Intervention.

A handwritten mark or signature in blue ink, consisting of a circle with a stylized 'S' or 'G' shape inside.

Per the South Carolina Rules of Civil Procedure, Rule 56, summary judgment can be granted on liability alone and I wanted to find out, what would make me liable on the Note and I found according to UCC, if I had signed the Note I would be liable and I cannot confess to any negotiable instrument that I have not signed. Wells Fargo's counsel claimed that I admitted that the payments were due. However, if reviews all ambiguities and inferences in favor of the non moving party, the court would be able to ascertain that Mr. Laney was attempting to solicit a due date from me, when he in fact provided the due date and he wanted me to confirm what a piece paper said and that it what I confirmed, only that is what the paper said, as I don't know the actual due date. I only know the month, in which I no longer made payments. I objected at the hearing when Wells Fargo's counsel presented its claimed copy of the promissory Note, in the context of authenticity, when I stated it was not an original. However, the court reporter advised me that she could not separate out the part of the transcript that I wanted because of the way the hearing was conducted and this caused not to be able to afford the transcript and this in itself is also unfair. However the court's ruling concerning standing and the Note, is on the face of the s Order granting summary judgment. Wells Fargo is not the original lender and the only information that I could find that could possibly have tied Wells Fargo to the Note, is the endorsement on the Note. However, I have been unable to find where the endorsement was dated, where it would show that the endorsement occurred near the time of Wells Fargo's purchase of the Note, making it relevant, to prove a fact of standing. At the hearing for the motion for summary judgment there was no testimony nor evidence from a Wells Fargo employee, as to any debt nor of any authentication of the document that Wells Fargo's counsel claims is an original note, nor is the document notarized, showing that it would be admissible evidence, as an exception to hearsay. The document is not notarized And Wells Fargo 's counsel

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did not provide an affidavit as to his firsthand knowledge concerning the Note nor was there an affidavit showing that that he was competent to testify to Wells Fargo's possession of the original Note and according to SCRCP, Rule 44 the document must be testified to by a document custodian. Further, is there no affidavit that Wells Fargo would be able to reduce the copy of the Note to an admissible form at the trial. . In fact according to Wells Fargo's counsel is disqualified from being the advocate and witness for his client. And it is well settled that a statement from an attorney is not admissible evidence. In the complaint Wells Fargo claimed that its rights to foreclosure were in the assignment of the mortgage. In my authorized sixth amended answer and Memorandum in Opposition to Wells Fargo's motion for summary judgment. I stated that Wells Fargo lacked standing, as a transfer of the mortgage without a transfer of the Note is a nullity. After this defense Wells Fargo's counsel, began to claim that he was in possession of the original and he wanted me to admit that he had the original, which I could do, as the document presented, had a dry signature, such as copy as opposed to a wet signature or an original document. Since Wells Fargo must pursue the Note, in order to foreclose, Wells Fargo appears to be subject to the Probate non claim statute, barring its claim, as I stated an uncontroverted fact that Wells Fargo did not file a creditor's claim within the presentation of claims period, in order to acquire a right of action. Yet we have Summary Judgment in favor of Wells Fargo and the court's order states that Wells Fargo has standing as Wells Fargo is in possession of the original Note or is the servicer. Wells Fargo has claimed that it is the holder of the Note and mortgage and in possession of the same. Wells Fargo further stated that it is servicing its own loan, so it appears that the alternative ruling, concerning Wells Fargo being the servicer, is being taken out of context, due to Wells Fargo's claim that it is servicing its own loan, so Wells Fargo would not have a pecuniary interest in collecting payments under a contract

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for another party and in the cases cited to by Wells Fargo the servicers were deemed to have standing, due to testimony from a document custodian. Wells Fargo has standing\hasin the face of my claim for a deceptive business practice, where I am not required to come forward with facts to prove a genuine of fact for trial, until Wells Fargo meets its burden. I filed for Chapter 13 bankruptcy and Wells Fargo's counsel presented a copy of the order from the Bankruptcy court. The order is misleading, as it is not from an adversary proceeding and appears to be subject to Res Judicata, as according to the South Carolina Supreme court res judicata applies when. I still have an outstanding claim for fraud which I attempted to allege in my 5th amended answer, which presents a genuine issue of fact for a jury to decide, as it is legal and compulsory to Wells Fargo, foreclosure action. I only had 1 request for production, left for Wells Fargo, when it filed for summary judgment. which is a request for a loan history, which does not require a fishing expedition. Concerning whether or not I should include the Estate as an Appellant. The Estate of Ruth Ladson Witherspoon is not suing Wells Fargo and I have never signed any of my pleadings in a representative capacity.

STANDARD OF REVIEW
AMENDMENT OF PLEADINGS

The South Carolina Appellate courts have held that "A motion to amend pleadings is within the sound discretion of the trial judge" *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 632, 743 S.E.2d 808, 812 (2013) (citing *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 22, 431 S.E.2d 587, 590 (1993). ".....and his actions will not be disturbed on appeal absent an abuse of discretion. (See *Porter Bros., Inc. v. Specialty Welding Co.*, 286 S.C. 39, 331 S.E. (2d) 783 (Ct. App. 1985). The South Carolina Rules of Civil Procedure, Rule of law 15(a) states leave shall be freely given when justice so requires and does not prejudice

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any other party. And the South Carolina Supreme Court has stated that Rule 15(a) strongly favors amendments and the court is encouraged to freely grant leave to amend. See “Parker v. Spartanburg Sanitary sewer Dist., 362 S.E. 276, 286, 607 S.E.2d 7111, 717 (Ct. App. 2005).

provides in relevant part that the Appellate court’s jurisdiction in cases of equity requires that it review the findings of fact as well as the law. It is well settled that the court of appeals may reverse a finding of fact by the circuit court (in a case of equity) when the appellant satisfied the court that the preponderance of the evidence is against the finding of the circuit court. See Finley, 55 S. C. 202, 33 S. E. at 360-61. Therefore the standard of review is de novo based upon the preponderance of the evidence and there must be a showing of an abuse of discretion.

STATEMENT OF FACT AND ARGUMENT
DENIAL OF LEAVE TO AMEND SIXTH AMENDED ANSWER

I filed a motion for leave to amend my Fifth Amended Answer on 6/5/2018, under the South Carolina Rules of Civil Procedure, Rule 15. R_____pg 1, line 1, Motion for leave to amend Sixth Amended Answer.(note: I incorrectly denominated my motion as leave to amend my Seventh Amended Answer). d if found futile. I have listed the following claims to show that my motion has merit and is not futile according to cccccccc. I claimed a RESPA violation R_____Seventh Amended Answer pg 10, Count III. I claimed fraud concerning my escrow account. R_____7th Amended Answer page 11, item 6. (I claimed lack of standing as a defense). Seventh Amended Answer pg 3, item 12 and item 20. I did not receive a pleading in response to this motion concerning any prejudice and the Public Index does not reflect a pleading in response to the Motion filed on 6/5/2018. The ruling of the Circuit Court is as stated “This matter comes before the Court pursuant to Plaintiff’s Motion to Alter or Amend her Complaint for a seventh time. The Motion is respectfully denied.” R_____ Order dated 4/29/19.



Since the South Carolina Rules of Civil Procedure, Rule 15 is used when a Court makes a discretionary decision, as to whether or not to allow an amendment to a pleading; I reviewed this Rule of law and I did not find any restrictions as to the number of times that a party is allowed to file a motion for leave to amend pleadings. The South Carolina Supreme Court stated “An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support.” *Id.* at 551, 633 S.E.2d at 503. (*BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502-03 (2006). In order to find out if there is any evidentiary support concerning the Circuit Court’s Order for denying the amendment; I reviewed the record and the record is void of any pleading of prejudice. Since I could not find any evidence of a pleading of prejudice, and in accordance with *BB&T v. Taylor*, it appears that the Circuit court’s order is not supported by evidence. The South Carolina Supreme Court has held “...a trial court has discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion”. See *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019). Per the South Carolina Court of Appeals the burden of proof of prejudice is on the opposing party (*Tanner v. Florence County Treasurer*, 521 S.E 2d 153, 336 S. C. 559 (1999)). Since the Respondent was allowed to plead at the hearing, without a fair Notice or the Circuit Court made a Sua Sponte decision, using its own reason to the deny the motion and the motion was heard and denied the same day; I reviewed the South Carolina Constitution, to find out if I suffered a Due Process violation. Article 1 § 22, of the South Carolina Constitution provides in relevant part:

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of

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liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review. (1970 (56) 2684; 1971 (57) 315.)

Further the South Carolina Supreme Court stated “The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way and judicial review. see Stono River Entl. Protection Ass’n v. S C. Dep’t of Health and Env’tl. Control, 305 S.C. 90; 94, 406 S.E. 2d 340, 342 (1991).

The South Carolina Supreme Court has also held that a demonstration of substantial prejudice is required to establish a due process claim. See , See Tall Tower,Inc. v. S.C. Procurement Review Panel, 294 S.C. 225, 233, 363 S.E.2d 683, 687 (1987). Since I did not have fair Notice of any prejudice, or an opportunity to respond in a meaningful way, as the motion was decided and denied on the same day, it appears that my substantive right due process was violated.

It would be patently unfair if this court would now find a denial reason for the Respondent, as the Respondent, strategically did not want to end the case early on, as if it had done so; and a foreclosure sale had taken place prior to October of 2019, the Respondent would have been required to return the amount of \$36,000.00 to SC Help, per the requirements of the program.

SUMMARY JUDGMENT
STANDARD OF REVIEW

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When reviewing a grant of summary judgment, an appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRPC. *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Id.*; Rule 56(c), SCRPC. When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Id.*

A foreclosure action is an equitable action. *Wachovia Bank, Nat'l Ass'n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 440–41 (2014). Thus, the Appellate Court's review is de novo. *Stoney v. Stoney*, 421 S.C. 528, 530, 809 S.E.2d 59, 59 (2017).; *see* S.C. Const. art. V, § 5 (stating in equity cases, the Appellate courts "shall review the findings of fact as well as the law, except in cases where the facts are settled by a jury and the verdict not set aside"). Under de novo Standard of review, South Carolina Supreme Court has long recognized, two principles "(1) a trial [court] is in a superior position to assess witness credibility, and (2) an appellant has the burden of showing the appellate court that the preponderance of the evidence is against the finding of the trial [court]." *Stoney*, 421 S.C. at 530, 809 S.E.2d at 59. De novo review allows us to take our own view of the evidence and make our own findings of fact. *Id.* In an appeal from an action in equity tried by a judge, appellate courts may find facts in accordance with their own views of the preponderance of the evidence. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775–76 (1976). However, "[w]hether a party is entitled to a jury trial is a question of law." Article V, § 5 of the South Carolina Constitution provides in relevant part that the Appellate court's jurisdiction in cases of equity requires that it review the findings of fact as well as the law. It is well settled that the court of appeals may reverse a finding of fact by the circuit court when the appellant satisfied the court that the preponderance

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of the evidence is against the finding of the circuit court. See *Finley*, 55 S. C. 202, 33 S. E. at 360-61. Therefore the standard of review is de novo based upon the preponderance of the evidence and there must be a showing of an abuse of discretion.

"Questions of statutory interpretation are questions of law, which the Appellate Courts are free to decide without any deference to the court below." *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) (quoting *CFRE, L.L.C. v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Id.* In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* at 499, 640 S.E.2d at 459. Further, "the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

**STATEMENT OF FACTS AND ARGUMENT
CONCERNING THE COMPLETION OF DISCOVERY**

I quoted the South Carolina Supreme court "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law". *Tupper v. Dorchester county*, 326 S.C. 318, 487 S.E.2d 187 (1997). R_____Memo in opp. to MSJ pg. 3 under "Legal Standard" lines 10-12. I stated "The motion for summary judgment was premature as discovery was not complete and shows that the Plaintiff's escrow statement has proven to contribute to whether or not there is a material issue that can change the outcome of this case" I



cited *Baughman v. Am. Tel & Tel Co.*, 306 S.C. 202, 112, 410 S.E. 2d 537, 543 (1991). Summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. R_____ Notice and Motion to Alter or Amend Summary Judgment dated 8/5/2019 and because this motion was premature, when the final order was issued, I incorporated the statements from the 8/5/2019 motion into my 8/16/2018 Motion to Alter or Amend R_____. The Circuit Court's order dated 7/24/2019, shows that the court was aware that discovery was not complete and the court ordered the Respondent to answer the discovery request within 10 days. Once I had the admission of the escrow statement, I filed the 8/16/2019 motion to alter or amend explaining that I still needed to complete discovery, by stating that the escrow statement admitted to, gives me an opportunity to present evidence as to a material fact that would change the outcome of this case. Yet the court issued an order on 8/22/2019, denying the motion on 8/22/2019. According to the *Tupper* and *Baughman* cases noted above, the court's order is an abuse of discretion, as ordering the Respondent to answer the discovery request did not allow me to complete discovery, as it only left me with an escrow statement that had a misrepresentation, as I should have been given the opportunity to complete my pursuit of the misrepresentation in the escrow statement.

Now that the Respondent has admitted to the escrow statement, I only have 2 requests for admissions of 2 mortgage statements and 1 production request and that is for the loan history from 9/1/2014 – 10/1/2016, which are relevant to the misrepresentation made in the Respondent's escrow statement, claiming there was an escrow shortage. Since my motion to alter or amend was premature, once the final order was issued on 8/7/2019, I filed a motion to alter or amend dated 8/16/2019, in which I inadvertently added the word except and I clarified that all my statements in my Memorandum/affidavit and motion to alter or amend dated 8/5/2018

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are all based on firsthand knowledge, as I had previously mistakenly stated “based on my information and belief” in my Memorandum/Affidavit in opposition to the motion for summary judgment. R_____ 8/ 16/2019 Motion to Alter or Amend, page 3, line 1 -3 and

In Baughman, the South Carolina Supreme Court cited two factors to be considered in determining whether the party opposing summary judgment has had a “full and fair opportunity to complete discovery” First, the party must demonstrate “a likelihood that further discovery will uncover additional evidence relevant to the issue... and that they are not merely engaged in a fishing expedition.” Id. At 112, 410 S.E. 2d at 544.

I have suffered through discovery abuse such that when I requested the basic interrogatories, such as “give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case.” The Respondent’s counsel provided me with the names of the defendants listed in the complaint. And when the Respondent’s counsel stated that he had provided me with verified statements to my interrogatories; I found that the Respondent’s counsel had provided me with pre signed sworn statements which predated the interrogatories, indicating that the Respondent had not actually read or verified the interrogatories. And after I sent the third set of discovery requests the Respondent’s counsel began to make excuses in order to delay the process. While gathering the documents for my Fifth set of Discovery requests, I received the Respondent’s motion for Summary Judgment, dated June 11, 2019 which I also had to defend against and this caused me not to send out the remaining three documents, requiring admissions.

I did not know what my causes of action would be, so I did not have my documents set up in any particular order. The 3 remaining admissions will clearly and convincingly show that this is a fraudulent foreclosure and that Wells Fargo set a scheme in place to defraud me of my property.

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I stated discovery was not complete. R _____ Memo in opp. to MSJ pg 17 last line and raised the issue at the hearing. The Circuit Court's preliminary Order dated 7/24/2019 shows that the court was aware that discovery was not complete. Again explained that discovery was not complete in the Motion to alter date 8/16/2019 and I reiterated this in my 8/5/2019 motion to alter or amend. I did not make the mortgage statements part of the record Discovery was not complete. I made a mistake in a fact, concerning whether or not the statements had to be deemed admitted by the court. I am not going on a fishing expedition, as I have 3 documents that I need admissions for which will allow me to plead clearly and concisely.

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant. *Staubes v. City of Folly Beach*, 331 S.C. 192, 500 S.E.2d 160 (Ct.App.1998). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Id.* However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Id.*; *Pye, supra.*

STATEMENT OF FACTS AND ARGUMENT
LACK OF STANDING

Wells Fargo's counsel stated ".....Wells Fargo is in possession of the original Promissory Note, and Defendant was informed of this." "See e.g., *Schneider v. Deutsche Bank Nat; Trust Co.* 572 Fed. Appx. 185, 190 (4th Cir. 2014) (holding, in applying South Carolina law, that whoever possesses an instrument endorsed in blank has the full power to enforce it." R _____ MSJ pg 4 under item e line 12-16.



Wells Fargo's counsel stated "because the subject Promissory Note is endorsed in blank, and Wells Fargo is in possession of the original Promissory Note. " "A copy of the Note is attached hereto as Exhibit B." "Wells Fargo, therefore has the full power to enforce the subject Promissory Note and the accompanying Mortgage." "See e.g., Schneider v. Beutsche Bank Nat. Trust Co., 572 Fed. Appx. 185, 190 (4th Cir. 2014) (holding, in applying South Carolina law, "whoever possesses an instrument endorsed in blank has the full power to enforce it")"

R___ MSJ pg. 5 under item 3a,lines 2-5.

Wells Fargo's counsel (Mr. Laney) stated to me at 2 appointments (9/12/18 and 5/23/10, in person and over the phone, when each appointment was made that he had the Original Note.

R___ Memo in opp. to MSJ page 7, under item 3A lines 5-6.

I stated "Section 62-3-803 provides in relevant: (a) All claims against a decedent's estate which arose before the death of the decedent including claims of the State and any political subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or nonclaim statute; are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following: (1) one year after the decedent's death;...."R___ Memo in opp. of MSJ pg 9 under the second B, lines 1-7.

I stated "Attached is a copy of the creditor's claim from the Greenville County Probate Court's website showing tht is stamped and received by the Court and it is void of any claims by the Plaintiff. Copy of Warranty Deed,copy of my Mother's Death Certificate...."R___ Affidavit in Opp to MSJ pg. 2 lines 6-9 and line 12.

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The Respondent stated “Defendant is incorrect.” “Under the South Carolina Probate Code, a secured creditor is not required to file a claim against the probate estate if it is solely seeking to foreclose the mortgage and is not attempting to hold the estate liable for the deficiency following the foreclosure sale.” “S.C. Code Ann. §62-3-104..., S.C. Code Ann. §62-3-803(d)(1).....S.C. Code Ann §62-3-804(7)(b) (“Pursuant to Section 62-3-104, this subsection does not apply to a proceeding by a secured creditor of a decedent to enforce the secured creditor’s right to its security.”) *See also Beach First Nat’l Bank v. Gurnham (In re Estate of Gurnham)*, 407 S.C. 194, 205, 754 S.E.2d 875, 881 (2014) (discussing intersection of probate law and mortgage foreclosure actions and holding that, “the secured creditor may pursue foreclosure proceedings on the security for the mortgage without presenting a claim against the estate.”).R___ Reply in support of MSJ.

FACTS AND ARGUMENT
PROBATE NON CLAIM BAR

According to South Carolina Rules of Civil Procedure, Rule 56 “ supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein.” I wanted to understand whether or not Wells Fargo’s counsel provided the evidence in accordance with the said Rule. So I reviewed the record and I found that Mr. Laney, whom filed the motion for Summary Judgment, substituted into this case as the attorney, for the Respondent, has been the litigator at hearings, the advocate in pleadings and is now presenting himself as custodian/employee/witness of Wells Fargo, as to the collateral file having first-hand knowledge as to the whereabouts of the Promissory Note is in this case. I admit that Mr. Laney told me, that he was in possession of the original Promissory Note and at the 2 appointments; he stated “I am showing you the original note.” And in the MSJ, as noted above Mr. Laney is



speaking in the first person, so I am looking for the affidavit, showing that Mr. Laney is competent to testify to the whereabouts of the Promissory Note. I further looked at the Rules of professional conduct and see under 3.7 that an Attorney cannot act as both the witness and the advocate. If I wanted to prove that the evidence concerning the Promissory notes was insufficient, such as in this case, I would use the South Carolina Rules of Civil Procedure, Rule 56 to show that the necessary affidavit is not in the record and I would point to the Rules of Professional conduct 3.7 which in relevant part shows, that an Attorney cannot serve as both an advocate and witness.

we do not have mentioned in my If I wanted to prove that the Circuit Court, inappropriately granted summary judgment to Wells Fargo, I would first look at rule 56 to see what burden did Wells Fargo have to meet. According to South Carolina Rules of Civil Procedure, Rule 56 If I wanted to prove that Wells Fargo does not have a right to enforce the Note or Mortgage against me, in my individual capacity, as an Heir; I would use S. C. Code Ann. 62-3-803(a) (1/1/2014), to show that Wells Fargo, was required to file a creditor's claim in the Probate Court within 1 year of the date of my Mother's passing, which was 7/5/2015 and I would provide a copy of the Death Certificate, to prove to the court, the date that triggered the one year period to begin . I would provide additional evidence, such as the Probate Court's claim record to show that the Probate claim record is void of any claims by Wells Fargo, such as in this case and I would further provide proof of publication, of the Notice to creditor's, showing that Wells Fargo was in fact notified by publication, such as in this case; as to the requirements of presentment of claims.

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If I further wanted to prove that Wells Fargo could not proceed against my property, as a non probate transfer, due to joint tenancy, which is the crux of this case. I would provide a copy of the Special Warranty Deed, which created the joint tenancy, by the four unities, supported by And I would show by S. C. Code Ann. § 27-7-40(a)(ii), that the property passes by law to the other joint tenants. S. C. Code Ann. . § 27-7-40(a) provides in relevant part:

a) In addition to any other methods for the creation of a joint tenancy in real estate which may exist by law, whenever any deed of conveyance of real estate contains the names of the grantees followed by the words "as joint tenants with rights of survivorship, and not as tenants in common" the creation of a joint tenancy with rights of survivorship in the real estate is conclusively deemed to have been created. This joint tenancy includes, and is limited to, the following incidents of ownership:

ii) In the event of the death of a joint tenant survived by more than one joint tenant in the real estate, the entire interest of the deceased joint tenant vests equally in the surviving joint tenants who continues to own the entire interest owned by them as joint tenants with right of survivorship review.

I would further provide a copy of my Mother's Death Certificate, which shows that I am her daughter and my Birth Certificate to show blood relation. Although the secured creditor may pursue foreclosure proceedings on the security for the mortgage without presenting a claim against the estate and, thus, may do so outside the time limits of the nonclaim statute. I would further review the non claim statute S.C. Code Ann. § 62-3-803(a), for restrictions as to whom and what property that the creditor cannot pursue, such as in this case of an Heir nor the non probate transfer of property.

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If I wanted to prove in this case, that there had been an abuse of discretion, I would point to statutory interpretation and show that the Circuit Court's ruling does not comport with established case law in GURHAM and the South Carolina Supreme Court, found the non claim statute does apply, when the creditor is suing a person covered by the statute, outside of the time frames of the non claim statute

If I wanted to prove that Wells Fargo did not provide sufficient evidence to support its motion to summary judgment. I would look at SCRPC, Rule 56 to see what is required as evidence

FACTS AND ARGUMENT
GRANTING SUMMARY JUDGMENT

Defendant is incorrect. Under the South Carolina Probate Code, a secured creditor is not required to file a claim against the probate estate if it is solely seeking to foreclose the mortgage and is not attempting to hold the estate liable for the deficiency following the foreclosure sale. S.C. Code Ann. §62-3-104. ("This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein."). *See also Beach First Nat'l Bank v. Gurnham (In re Estate of Gurnham)*, 407 S.C. 194, 205, 754 S.E.2d 875, 881 (2014) (discussing intersection of probate law and mortgage foreclosure actions and holding that, "the secured creditor may pursue foreclosure proceedings on the security for the mortgage without presenting a claim against the estate."). R___ Judgment dated 8/7/2019.

So I looked at Gurnham Op. No. 27360, Filed February 26, 2014, for statutory interpretation by the South Carolina Supreme court and the South Carolina Supreme court went on to explain the statutes listed above by the Circuit Court: S.C. Code Ann. §62-3-104, S.C. Code Ann. §62-3-803(d)(1) and §62-3-804(7)(b) (refers to 63-3-104) and 62-3-803(c)(1) and 62-3-812 mentioned

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by the South Carolina Supreme Court are exemptions and that the exemptions are not without limitations.

“...the General Assembly has created two avenues by which a secured creditor may seek recovery following the opening of an estate and the appointment of a personal representative. Under the first avenue, the secured creditor may pursue foreclosure proceedings on the security for the mortgage without presenting a claim against the estate and, thus, may do so outside the time limits of the nonclaim statute.

DISCOVERY

I stated Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Tupper v. Dorchester county, 326 S.C. 318, 487 S.E.2d 187 (1997). R_____ (Notarized) Memo in opp. to MSJ pg. 3 under “Legal Standard” lines 10-12

I stated “Attached is a copy of the creditor’s claim from the Greenville County Probate Court’s website showing tht is was stamped and received by the Court and it is void of any claims by the Plaintiff.” Copy of Warranty Deed ..., copy of my Mother’s Death Certificate.

R_____ Notarized Affidavit attached to the Memo in opp. to MSJ

SUFFICIENCY OF EVIDENCE

Wells Fargo’s counsel, spoke in the first person concerning possession of the Note R_____

To prove in this case, that there had been an abuse of discretion, I would point to statutory interpretation and show that the Circuit Court’s ruling does not comport with established case law in GURHAM and the South Carolina Supreme Court, found the non claim statute does apply, when the creditor is suing a person covered by the statute, outside of the time frames of

24

the non claim statute.R____MSJ pg 5 3a line 1-9. However, according to South Carolina Rules of Civil Procedure, Rule 56(e), requires that on MSJ “supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.” No affidavit was provided to show that counsel was custodian of the collateral file, I looke for admissible statements, such as when counsel received the collateral file and that he personally reviewed the original Note and Mortgage and when returned the file to Wells Fargo.

**FOR THE FIRST TIME ON APPEAL
PLEADING THE NON CLAIM STATUTE 62-3-803(a)
(OUT OF AN ABUNDANCE OF CAUTION)**

Per Gurham, the nonclaim statute can be plead at anytime in the proceeding and even for the first time on appeal. Wells Fargo stated – “It is in possession of the Note and can enforce the Note: I stated – “62-3-803(a) The Respondent stated – “this is a novel issue....”R_____Reply in support of Motion for Summary Judgment, page line.

Therefore, out of an abundance of caution, I plead the non claim statute. My Mother Ruth Ladson Witherspoon, was the only obligor on the Note and Mortgage and she passed away on 7/5/2015. At the time of my Mother’s passing the subject property was owned in Joint Tenancy, via a “Special Warranty” Deed, showing the four unities: time, title, possession and interest. Due to joint tenancy, the property passed to my Brother and I as the remaining joint tenants in accordance with Title 27. . Further, I am an Heir, as my Mother passed away, intestate and under the property passes to closing living relative. I wanted to find out if the non claim statute applied to this case so I reviewed the statute and found that the Heirs and non probate assets are on the same footing as the Estate. Per the Non-claim statute Tollison case and non claim showsSince the Non Claim statute restriction on exemptions, puts, Heirs and non probate

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assets on the same footing as an Estate; I plead the non claim statute as an Heir and I plead the non claim statute as the property is a non probate asset.

as the Probate non claim statute provides in relevant part:

I plead the fact that the first Notice to all creditors was Published on 8/7/2015 and the record is void of any response from Wells Fargo. and it is apparent that Wells Fargo is a joint tenants, under S. C. Ann. .recorded which is the mortgage and granted by the previous owners, NVR. Shortly thereafter, probate was opened and the first Publication Notice to all creditors, went out on 8/7/2015. who Wells Fargo did not file a creditor's claim within one year of the date of the passing of my Mother, Ruth Ladson Witherspoon and the first publication notice in the Greenville News was on 8/7/2015.

**STANDARD OF REVIEW OF
MODE OF TRIAL**

Striking jury demand/referral to the Master in equity
MODE OF TRIAL
Order Dated 7/24/2019

The South Carolina supreme court stated in Collier v. Green, 244 S.C. 367, 137 S.E.2d 277 (1964); The Supreme court stated "To the Court belongs all issues of law and all cases in chancery, and to the jury all questions of fact in cases at law for the recovery of money or of any specific real or personal property, Meetze v. Charlotte, Columbia & Augusta Ry. Co., 23 S.C. 1" The Circuit Court stated its decision to strike my jury demand is based on the Respondent's motion and pleading at the hearing. However the Respondent's motion was untimely, as my request for a jury demand was included in my amended answer filed on 7/30/2018 and the court ordered the Respondent to respond to my amended answer within 15 days of service, giving the Respondent until 8/13/2018 to speak on the jury demand.



Further the South Carolina Supreme court has held that in an action of equity and the defendant's counter claim in compulsory and legal, the defendant has a right to a jury trial. See Wachovia I have an outstanding claim for fraud, which can be equitable or legal, in my case it is legal, as I am seeking compensatory and punitive damages. I can plead with clarity and convincingly, if I am allowed to finish discovery by way of 3 documents of which I seek to obtain admissions.

The South Carolina Supreme Court stated "An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." Id. at 551, 633 S.E.2d at 503. (BB&T v. Taylor, 369 S.C. 548, 551, 633 S.E.2d 501, 502-03 (2006). In order to prove to the court that there was an error in law and that the order based on factual conclusions; I would point to the Respondent's motion Wachovia Bank, National Association v. William E. Blackburn..et all Op. No. 27359, filed on February 26, 2014.

BANKRUPTCY ORDER SUBJECT TO RES JUDICATA

The Respondent provided a copy of the Bankruptcy Order and I am not sure why and I am not requesting judicial notice. However, out of an abundance of caution; I am addressing the order. The Bankruptcy order is misleading, as it not a final consented to order, from an adversary proceeding. The Bankruptcy Court Order, appears to be subject to Res Judicata. per the South Carolina Supreme Court, res judicata applies if the following elements are met: (1) the identities of the parties are the same as in the prior litigation; (2) the subject matter or cause of action is the same as in the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction. See, Johnson v. Greenwood Mills Inc., 317 S.C. 248, 250-251, 452 S.E.2d 832, 833 (1994) and Griggs v. Griggs, 214 S.C. 177, 51 S.E.2d 622, 627 (1949). In the

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case in the circuit court the parties are the same Wells Fargo and Michelle Hodges. The cause of action is the same, which is a debt claimed by Wells Fargo and there has been a final decision of summary judgment in favor of Wells Fargo, in case no. 2017CP2308016, which is the subject of this Appeal. The Summary Judgment Order is dated August 7, 2019 and the Bankruptcy Order is dated May 5, 2020.

CONCLUSION

Summary Judgment, should have been granted in my favor, because the Court's order dated 8/7/2019, does not appear to be not supported by evidence that would be admissible at trial. The evidence appears to be erroneous, in order to prove possession without the testimony of a document custodian and the appropriate affidavits. The copy of the Note appears to have been prejudicial to my rights by arousing a bias in favor of Wells Fargo, such that the ruling does not appear to be impartial and based on the record. Concerning the amendment it is well settled that an amendment should be freely given an here again, it does not appear that the ruling was impartial, as I did not have a fair notice and a meaningful opportunity to respond. When due process has been violated this court has ruled that the order are void. (Lawyer as Witness) 3.7. Attorney for Wells Fargo has acted at advocate at the hearing for the Motion for Summary Judgment and acts as a witness in the Motion for summary judgment, speaking in the first person and with personal knowledge. And for the reasons stated above this Court should reverse the Circuit Court's Order, denying the amendment of pleading and reverse the summary judgment. Based on the information contained in this brief, it appears that I have suffered discovery abuse, had my due process rights violated by 2 judges and this is a foreclosure action where I would be made homeless from these rulings, which appears to be manifest injustice and I am praying for justice in this matter.

30

Respectfully submitted,

5/19/2021

Michelle Hodges, Pro Se Appellant

P O Box 95

Mauldin, SC 29662

864-714-5263

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge
Robin B. Stilwell, Circuit Court Judge

Case No. 2019-001565

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

Michelle Hodges, Individually and as Personal Representative
of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon;
SC Housing Corp.; and Twin Creeks Homeowners Association,
Inc. Defendants,

Of Whom Michelle Hodges, in her Individual capacity,
is the Appellant.

**AFFIDAVIT IN SUPPORT OF AMENDED
INITIAL BRIEF, DESIG. OF RECORD AND FINAL BRIEF**

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① of 2

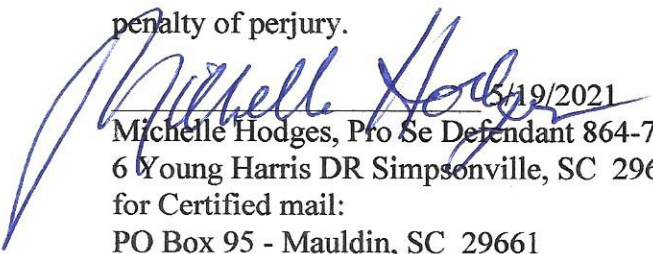
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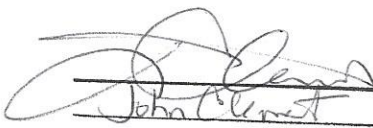
May 21 2021

SC Court of Appeals

I hereby reiterate all statements in my notice and motion to amend my initial brief, designation of record and final brief

I Michelle Hodges, hereby certify that the above statements are true and correct, under the penalty of perjury.


5/19/2021
Michelle Hodges, Pro Se Defendant 864-714-5263
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John V. Clement



Notary Public
State of South Carolina
County of Anderson
Commission Expires: 08/24/2025

John

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
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SC Court of Appeals

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Of Whom Michelle Hodges, in her Individual capacity,
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**NOTICE AN MOTION FOR LEAVE TO AMEND INITIAL BRIEF, DESIG. OF
RECORD ANDFINAL BRIEF**

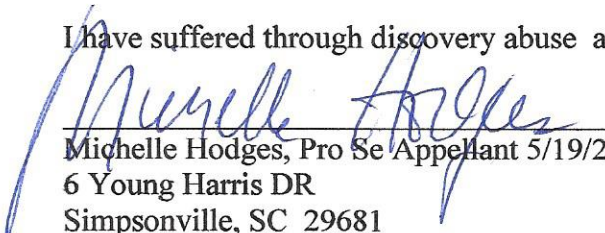
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① 1/6/2

2 pages total

Pursuant to South Carolina Appellate Court Rules, Rule 240, I am requesting leave to provide an amended initial brief, corrected designation of record and final brief, in the interest of justice, as

I have suffered through discovery abuse and the violation of my due process rights.


Michelle Hodges, Pro Se Appellant 5/19/2021

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge
Robin B. Stilwell, Circuit Court Judge

Case No. 2019-001565

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

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of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon;
SC Housing Corp.; and Twin Creeks Homeowners Association,
Inc. Defendants,

Of Whom Michelle Hodges, in her Individual capacity,
is the Appellant.

PROOF OF SERVICE
FOR LETTER OF CHANGES TO THE STATEMENT OF ISSUES

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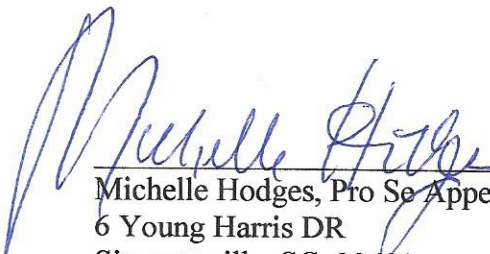
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CONCERNING
WELLS FARGO V. MICHELLE HODGES
CASE NUMBER 2019-001565

Attached is my receipt and I hereby certify that I served a copy of my Notice, Motion and affidavit in support of proposed initial brief; by depositing it in the mail on 5/20/21 at the UPS store located at 3504 Highway 153, Greenville, SC 29611, on the following parties:

S. Sterling Laney, III, Esquire
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For Wells Fargo Bank, N.A.
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Bryant S. Caldwell, Associate
For Wells Fargo Bank, N. A.
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2/16/21