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OCT 26 2021

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

William O. Spencer Jr., Lawyer
(Unlawful Special Referee)

Case No.2018-000355

Unpublished Opinion No. 2021-UP-231
Submitted May 1, 2021 - Filed Jun 23, 2021

JPMorgan Chase Bank,
National Association

Respondent,

v.

Fritz Allen Timmons

Appellant.

MOTION TO STRIKE AND DISREGARD ORDER OF OCT. 1 2021

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In Response to the Fraudulent statement made by Judge Donald W. Beatty that dismisses the Petition for Certiorari claiming that it was not served in a timely manor plainly proved that Judge Beatty is clearly incompetent in computing times in accordance to court rules or willfully and intentionally violating Court Rules and State Laws in order to cover up the criminal actions of the Lower Courts as well as showing extreme bias and prejudice against the Appellant, Ipso Facto, committed Fraud Upon the Court and Conspiracy to interfere with civil rights, see 18 U.S. Codes §1985 (3) Depriving persons of rights or privileges.

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In *Bulloch v. United States*, 763 F.2d 1115, 1121(10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted." "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

On August 25th the order denying the Appellants motion to rehear was filed, this day is not to be counted in according to Rule 263, SCACR stating "In computing any period of time prescribed ... the day of the act, event, or default after which the designated period of time begins to run is not to be included.", Therefore, the time calculation starts on August 26th and ends on September 25th of which is also not to be included in the calculation due to fact that it is a Saturday. In accordance to Rule 263, SCACR stating "The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a state or federal holiday, in which event the period runs until the end

of the next day". Therefore the end period to serve the Petition is Monday September 27th. Ipso Facto, the Petition was filed in a Timely Manor. Ipso Facto, Voids the Order for Fraud and/or Perjury.

The Order is also Void and Null for Judge Beatty for Refusing to Recuse himself from this case as clearly stated in the Petition. With the Crimes committed by the Lower Courts and Refusal of the Appellant Judges to Recuse themselves (of which voids the^o Orders of the Appellant Court), Judge Beatty has directly Violated SC Code 14-3-50 stating "no justice shall preside in any case or at the hearing thereof in which he may be interested". As head of this Self Protecting Criminal Organization that calls itself a Judicial System, Judge Beatty has a strong interest in the case in order to Protect those of the Lower Court and cover up the criminal actions there of as well as protecting Court Rules that Deny the Rights of Due Process. Judge Beatty as well as other SC Supreme Court judges as stated in the petition by refusing previous Petitions, thereby violating their oaths of Office and violating SC Code 8-1-60 for Neglect of duty, Ipso facto, aided and abided the violations of the Lower Courts of one and/or more but not limited to of the following: 18 U.S. Codes §474, §484, §494, §495, §506, §1018, §1621, §1622, §1985, §1986, §1957, §1961, §2381, §2382, §2383, §2384, State Codes §15-53-90, §16-5-10, §16-9-10, §16-17-10, §16-17-410, §30-9-30 as well as numerous other Codes, Court Rules and Rights to Due Process.

Judge Beatty has also Knowing, Willfully and Directly Violated State Code §14-3-60 that states" In case all or any of the justices of the Supreme Court shall be disqualified or be otherwise prevented from presiding in any cause, the court, or the justices thereof, shall certify the same to the Governor of the State, and he shall immediately commission specially the requisite number of men learned the the law for the trial and determination thereof.", as well as State Code §14-3-330 that Clearly states "The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and **shall review upon appeal:** ,, (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment (3) A final order affecting a substantial right made in any special proceeding..."

"An action to recover on a promissory note is . . . an action at law." Chambers v.

Pingree, 351 S.C. 442, 449, 570 S.E.2d 528, 532 (Ct. App. 2002). "In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." Townes Assocs. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

Without the Consent of the Appellant for a Special Referee in Direct Violations of State Code and with the Appellant having the Original Note in Hand, the Respondent fabricating a Fictional Transcript with a Fictional Court Reporter/Notary Public and inserting it into a Supplementary Record Violating Court Rules and permitted and upheld this Perjury by the Appellant Court (altering the Record on appeal in favor for the Respondent) as well as the Respondents numerous other Violations of Codes and Rules, The Orders of William O. Spencer, as well as those of the Appellant Court are Void and Null and has no Legal effect, standing or force.

A judgement is void if it not consistent with Due Process of law. Orner v. Shalala, 30 F.3d 1307, 1308 (C.A.10 (Colo.),1994); V.T.A., Inc. V. Airco, Inc., 597 F.2d 220, 221 (1979). A judgment reached without due process of law is without jurisdiction and thus void. Bass v. Hoagland, 172 F. 2d 205, 209 (1949). If voidness of judgment is found then relief from judgment is not discretionary and any order based upon that judgment is also void. V.T.A., Inc. V. Airco, Inc.,supra @ 221; Venable v. Haislip, 721 F.2d 297, 298 (1983).

Therefore, Judge Beatty's Order that does not comply to Court Rules and directly violating State Codes in attempt to aid and abide and Cover-up the criminal acts of the Lower Courts by dismissing the Petition without Jurisdiction or Authority Automatically Voids his Order.

Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as requied by law, then the judge has given another example of his "appearance of partiality" which, possibly, further disqualifies the judge. Should another judge not accept the disqualification of the judge, then the second judge has evidenced an "appearance of partiality" and has possibly disqualified himself/herself. None of the orders issued by any judge who has been

disqualified by law would appear to be valid. It would appear that they are void as a matter of law, and are of no legal force or effect.

Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.").

Should a judge issue any order after he has been disqualified by law, and if the party has been denied of any of his / her property, then the judge may have been engaged in the Federal Crime of "interference with interstate commerce". The judge has acted in the judge's personal capacity and not in the judge's judicial capacity. It has been said that this judge, acting in this manner, has no more lawful authority than someone's next-door neighbor (provided that he is not a judge).

The Supreme Court has also held that if a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason to the Constitution. If a judge acts after he has been automatically disqualified by law, then he is acting without jurisdiction, and that suggest that he is then engaging in criminal acts of treason, and may be engaged in extortion and the interference with interstate commerce.

Courts have repeatedly ruled that judges have no immunity for their criminal acts. Since both treason and the interference with interstate commerce are criminal acts, no judge has immunity to engage in such acts.

In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." [Emphasis added]. *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994).

Courts have repeatedly held that positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 108 S.Ct. 2194 (1988) (what matters is not the reality of bias or prejudice but its appearance); *United States v. Balistrieri*, 779 F.2d 1191 (7th Cir. 1985) (Section 455(a) "is directed against the appearance of partiality, whether or not the judge

is actually biased.") ("Section 455(a) of the Judicial Code, 28 U.S.C. §455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process.").

That Court also stated that Section 455(a) "requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned." Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989). In Pfizer Inc. v. Lord, 456 F.2d 532 (8th Cir. 1972), the Court stated that "It is important that the litigant not only actually receive justice, but that he believes that he has received justice." "Recusal under Section 455 is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances." Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989).

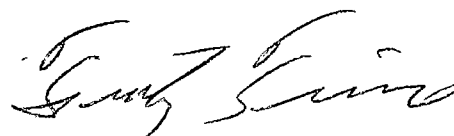
The Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the appearance of justice", Levine v. United States, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). A judge receiving a bribe from an interested party over which he is presiding, does not give the appearance of justice.

"[t]he Due Process Clause of the Constitution safeguards the right to impartial judges and requires recusal of judges who are or who appear to be biased, whenever a judge's impartiality might reasonably be questioned." *People v. Julien*, 47 P.3d 1194, 1202 (Colo. 2002)

With the above said, This Court Shall

- (1) Strike and Disregard the Order of Judge Beatty of which is Disqualified from this case under Canon 3 as well as the above said,
- (2) Notify the Governor of South Carolina under State Code §14-3-60.
- (3) Notify the appropriate authorities for the actions of the Judges of this Case under Canon 3 D(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.* and

(4) Notify the appropriate authorities for the actions of the Lawyers of this Case under Canon 3 D(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct contained in Rule 407, SCACR, should take appropriate action. A judge having knowledge* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.*



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