

**FORM 13
BRIEF OF APPELLANT***

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

Donald B Hocker, Circuit Court Judge

Case No. 2021-CP-00142

Unifund CCR, LLC,

Respondent,

v.

Shonda L Wade,

Appellant.

[FINAL] BRIEF OF APPELLANT

Shonda L Wade
17 Carver St Ext
Due West, SC 29639
(864) 379-2152
Appellant

RECEIVED

DEC 02 2021

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

Did the Trial Court err in not affording Appellant a “fair” hearing/trial, thus triggering Due Process under the 5th and 14th Amendments of the US Constitution?

2 Did the Trial Court err granting Summary Judgement when there are questions as to any fact or allegation?

STATEMENT OF THE CASE

On May 14, 2020, Unifund CCR, LLC brought this action alleging money owed in the sum of \$4,372.61 against Shonda L Wade. Appellant answered alleging Unifund claim was unfounded due to no written or oral contractual relationship had been built between Unifund and Appellant. That Appellant did not deprive Unifund CCR, LLC of any monies. The hearing was held on February 1, 2021, and summary judgment for Unifund was entered on February 3, 2021.

STANDARD OF REVIEW

The Fourteenth Amendment to the U.S. Constitution provides, in part, that no state may "deprive any person of life, liberty, or property, without due process of law." This provision has been interpreted as requiring the states to assure that the defendant is receiving "that fundamental fairness essential to the very concept of justice." Lisenba v. California., 314 U.S. 219, 236, 62 S.Ct. 280, 86 L.Ed. 166 (1941). This fundamental concept of fairness should be dominant in every proceeding before the magistrate or municipal judge.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c), SCRPC: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Laurens Emergency Med. Specialists v. M.S. Bailey & Sons 1

Bankers, 355 S.C. 104, 584 S.E.2d 375 (2003); Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002); Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003); Redwend Ltd. Pship v. Edwards, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Sauner v. Public Serv. Auth., 354 S.C. 397, 581 S.E.2d 161 (2003); Hendricks v. Clemson Univ., 353 S.C. 449, 578 S.E.2d 711 (2003); McNair v. Rainsford, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998); see also Laurens Emergency Med. Specialists, 355 S.C. at 108, 584 S.E.2d at 377 (stating that in reviewing summary judgment motion, facts and circumstances must be viewed in light most favorable to non-moving party). If triable issues exist, those issues must go to the jury. Baril v. Aiken Regl Med. Ctrs., 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002); Young v. South Carolina Dept of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999)

Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Regions Bank, 354 S.C. at 659, 582 S.E.2d at 438; Trivelas v. South Carolina Dept of Transp., 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001).

FACTS

Appellant was served to answer a complaint from Unifund and Appellant answered the complaint in denial of any written or oral contractual relationship between Appellant and Unifund. Appellant had no documents or interrogatories to which Unifund was entitled to, nor any information about who Unifund was/is. Unifund moved for a Motion of Summary Judgement stating general denial and Appellant answered by asking the courts not to grant summary judgement, but it was granted. Appellant received Notice from the Clerk of Court Common Pleas that the case would be held via WebEx. Appellant also received written instructions and a picture example on the use of WebEx. Appellant was very adamant about participating in the hearing but ran into technical difficulties. Appellant called the number given if having technical difficulties and was connected to Judge Hocker's secretary Mrs. Reagan. Appellant explained that the field where you enter your name and other information to get in the waiting room would not allow it on the computer. Mrs. Reagan said that Judge Hocker would pull Appellant in, and that Judge Hocker was hearing a case, but we were in the queue. Appellant hung up and put the phone on silent as court etiquette dictates, not to disturb the hearing that could come at any minute. That minute never came, so after sitting and waiting with the example screen showing on the computer and after nothing happening Appellant turned the phones volume back up and called the number given for technical difficulties. Judge Hocker's secretary Mrs. Reagan answered again and informed Appellant, that the hearing had went forward and summary judgement was granted, and we need to get a lawyer.

ARGUMENTS

I. BECAUSE APPEALANT WAS NOT AFFORDED A FAIR TRIAL, SHE COULD NOT PRESENT ANY ARGUMENT/EVIDENCE TO THE ALLEGATIONS ALLEGED.

The Trial Court denied the Appellant a fair hearing when the Judge knew that Appellant wanted to be given a chance to defend against the allegations (See R. Trans. Pg. 4 Line 5- 9). Appellant called the number indicated for technical difficulties and spoke to Mrs. Reagan, who said she was the Judge' secretary. Appellant explained that the fields indicated on the example form (See Form marked as R. Exhibit A, B) to enter name, Email address, ect.. would not accept any commands. Appellant was then informed that “ the Judge would pull us in” and Appellant again explained that none of the fields are working and was informed the same thing. Appellant hung up and turned the phone on silent, as Court Etiquette dictates and waited to be “pulled in” the que. After waiting for approximately 45 minutes Appellant went to call the Technical Difficulty number and seen that the office had called (See R. Exhibit C, Pg. 3). Appellant called the number and was told by Mrs. Regan that the hearing was already held and that we should get a lawyer.

When it was discovered by trial Judge that Technical Issues was the cause of Appellant not being present, the Judge should have ordered a continuance. The continuance would not have caused harm on either party because the hearing was via WEBEX (see R. Exhibit D). This situation of using technology in this manner is foreign to Appellant and probably most Pro Se litigants, where the Judge and Respondent are more adapt and familiar. This put Appellant at a great disadvantage and by continuing with the hearing triggered Appellant's right to a fair trial as set out in the 5th and 14th Amendment of the United State Constitution Due Process Clause, fundamental fairness. Appellant followed all the court's direction and instructions with this new way of doing things, only to be penalized by trial court. SC ARTICLE I DECLARATION OF RIGHTS, SECTION 22. Procedure before administrative agencies; judicial review. 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

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.)

II. BECAUSE SUMMARY JUDGEMENT IS PROPER WHEN THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND THE MOVING PARTY IS ENTITLED TO JUDGEMENT AS A MATTER OF LAW, EVEN THOUGH APPEALANT DID ARGUE THAT THERE WAS NO ORAL/WRITTEN CONTRACT BETWEEN APPEALANT AND RESPONDENT. THE RESPONDENT IS RELYING ON A CONTRACT THAT APPEALANT HAS NO KNOWLEDGE OF, WHICH IS A GENUINE ISSUE FOR THE COURTS TO DECIDE ON.

Trial/Hearing Judge erred in granting Summary Judgement when there is an issue that should be decided after evidence and argument(s) are heard from both parties. It is clear from the entire transcript that Respondent offered nothing into evidence to show that Appellant was responsible for any debt to Respondent. The Respondent relied on the allegation that by not responding to Respondent's Interrogatories and Document production that Appellant was thus admitting to all set forth. Appellant had no knowledge of any debt owed to Respondent nor any representative for the time period. Appellant argued that no contract, written or oral was ever established with Respondent. This is not a general denial; this is an issue to be resolved by having a hearing.

South Carolina Code of Laws Title 32 - Contracts and Agents Statute of Frauds
Section 32-3-10. Agreements required to be in writing and signed.

No action shall be brought whereby: (2) To charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person, Section 32-3-20-Action on representation as to character will lie only where representation is in writing and signed.

No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any person to the intent or purpose that such other person may obtain credit, money or goods thereon unless such representation or assurance be made in writing, signed by the party to be charged therewith or by some person thereunto by him legally authorized. Title 36 - Commercial Code, Section 36-2-201 (1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing. The Respondent has reduced Appellant to a good, thus has the same protection. Respondent has no contract in written or oral.

CONCLUSION

Appellant was not afforded a fair hearing with a technology that is new to most Pro Se litigants. The Judge understood Appellant wanted to be a part of the hearing and should have continued the case until technical difficulties could be rectified. This would have put no hardship on either party since it was being conducted via WebEx. That there is a material fact and summary judgement should not have been entered against, because there is no signed contract, written or oral, between Appellant and Respondent For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

s/Shonda L Wade
Shonda L Appellant
17 Carver St Ext
Due West, SC 29639
Appellant

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF COMMON PLEAS

UNIFUND CCR, LLC,)
PLAINTIFF,)
)
-VS-)
)
SHONDA WADE)
DEFENDANT.)
_____)

CASE NO.: 2020-CP-01-0134

TRANSCRIPT OF RECORD

FEBRUARY 1, 2021
VIRTUAL HEARING VIA WEBEX

B E F O R E:

THE HONORABLE DONALD B. HOCKER, JUDGE

A P P E A R A N C E S:

ATTORNEY FOR PLAINTIFF:

WESLEY DAIL, ESQUIRE

ATTORNEY FOR DEFENDANT:

SHONDA WADE, PRO SE
(DID NOT APPEAR FOR WEBEX HEARING)

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(NO EXHIBITS WERE INTRODUCED DURING PROCEEDING)

1 THE COURT: This is the case of *Unifund CCR, LLC v*
2 *Shonda Wade*. It's a 2020 case, file number -134, Abbeville
3 case. This is a Plaintiff's Motion for Summary Judgment.
4 Wes Dail is the attorney for the Plaintiff and the Defendant
5 is pro se. I will put on the record that my office had some
6 prior communication with Ms. Wade that she wanted to
7 participate in this hearing. Also, I think she talked to my
8 office this morning and indicated that she was in my waiting
9 room, but she is not. My office just tried to call the
10 number that we had and got a voicemail, so I'm going to
11 proceed forward with the hearing. Mr. Dail, I'll turn the
12 record over to you, sir.

13 MR. DAIL: Yes, Your Honor. This is just an action to
14 seek a balance owed on a charged off of a credit card
15 account. The account was opened in February 2011 and
16 charged off in February 2018 for non-payment. It was
17 originally a Capital One account sold to my client, the
18 Plaintiff, Unifund after charge off. We filed suit on May
19 14th of last year. The date of last payment was June 24,
20 2017, so we did file within the applicable statute of
21 limitations.

22 The Defendant was served August 11th of last year,
23 filed an answer with pretty much general denials. We served
24 discovery upon the Defendant on November 17th of last year
25 to which the Defendant did not respond. That is largely the

1 basis of our Motion for Summary Judgment as well as the
2 other facts of the case. The Defendant is in default --
3 excuse me -- rather, the Defendant has admitted the
4 allegations in discovery by virtue of not responding
5 thereto. So, we are seeking the balance at the time of
6 charge-off which is alleged in the complaint as \$4,372.61,
7 plus \$287.06 in cost for cost of this action, for a total
8 judgment of \$4659.67.

9 THE COURT: Okay, Mr. Dail. The motion is granted. If
10 you will prepare an appropriate order and e-file it to me
11 please, I would appreciate that.

12 MR. DAIL: I will do that, Your Honor. Thank you very
13 much.

14 (Whereupon, the proceeding was concluded.)

15 - - - END OF TRANSCRIPT OF RECORD - - -
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Certificate of Reporter

I, the undersigned, Tara T. Scott, Official Court Reporter for the State of South Carolina Judicial Branch, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the Virtual WebEx hearing of the captioned case, relative to appeal, in the Eighth Circuit Court for Abbeville County, South Carolina, on the 1st day of February, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Tara T. Scott

Tara T. Scott, CVR

Official Circuit Court Reporter

South Carolina Judicial Branch

March 2, 2021

X Call details



+1 864-984-2076



Outgoing call

2m 38s

Monday, February 1, 2021, 10:05 AM



Missed call

Monday, February 1, 2021, 10:05 AM



Outgoing call

1m 27s

Monday, February 1, 2021, 9:12 AM



Copy number



Edit number before call



Delete

Exhibit C

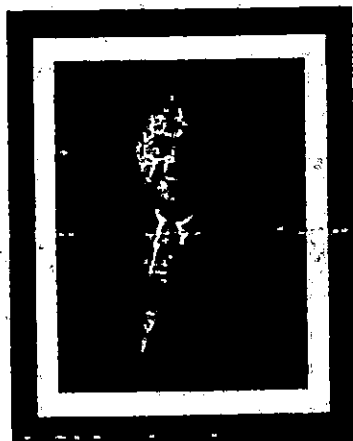


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For **Recording Prohibited**

Event Information: Judge Donald B. Hocker's Virtual Courtroom



[Join Event Now](#)

You cannot join the event now because it has r

First name:

Last name:

Email address:

Event password:

[Join Now](#)

[Join by browser](#) **NEW!**

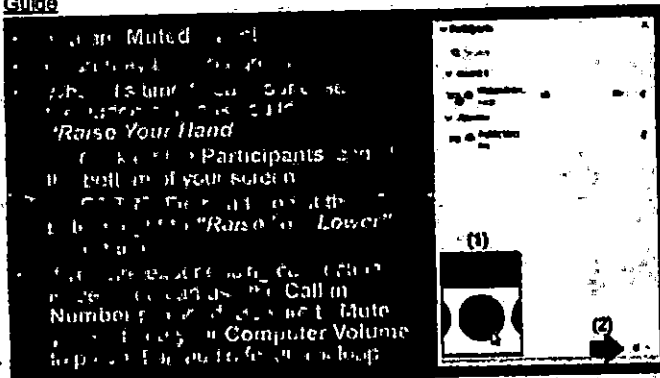
If you are the host, [start your own event](#)

Event status: Not started

Date and time: Friday, August 8, 2025 9:00 am
Eastern Daylight Time (New York, GMT-04:00)
[Change time zone](#)

Duration: 8 hours

Description: *If prompted for a password, it is accounts*
Call in number for audio only United States Toll +1-408-418-9388
Call in Access code: 129 748 1493 #
Call in Attendee ID number is issued when you JOIN
You can test your Webex connection here anytime: [TEST YOUR WEBEX](#)
SCJB Virtual Court User Guides: [Attorney Guide](#) and [General Public Guide](#)



By joining this event, you are accepting the Cisco Webex [Terms of Service](#) and [Privacy Statement](#).

P 3

Everyone,

Judge Hocker has started using the virtual courtroom through the sccourts.org website. The hearing will still be on WebEx, but instead of receiving invitations by email, you will log into the WebEx from the sccourts website.

Here are the instructions to sign into the Virtual Courtroom:

To sign into Judge Hocker's virtual courtroom, please click on this link <https://www.sccourts.org/calendar/> > Today's date > Circuit. Then under Judge Hocker's name there should be a link to his virtual courtroom. This will bring you to an Event page where you will need to enter your first name, last name and email address. Once the information is entered, click on "Join Now". Judge Hocker has to open the virtual courtroom so please allow a few minutes for him to open the event if you at first cannot join.

See the attached picture for an example of the Virtual Courtroom Event Information page. You will be muted upon entry into the WebEx. When Judge Hocker calls your case, click on the Participants icon at the bottom of the screen, then click on the hand icon at the bottom right of your screen to "Raise" or "Lower" your hand. This will allow Judge Hocker to be notified that you are in attendance and change your role to a presenter.

In case of technical errors please call our office at (864) 984-2076.

Please feel free to contact me with any further questions.

Exhibit "A"