Record/FILE ON DEMAND

THE REPUBLIC STATE OF South Carolina
In The 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.

FINAL BRIEF OF APPELLANT

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

December 31st, 2021

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INTRODUCTION

Appellant hereby brings forth this brief under threat of duress and/or coercion under fear of this court re-litigating matters and placing judgments/orders upon controversies that are arbitrable and as agreed to by the parties to be arbitrated by default, failure to reject the offer in the timeframe allowed and the parties (the appellees and other respondents/parties requested to be enjoined in this case) conduct which constituted acceptance by performance and assent/consent, tacit acquiescence to the agreement, its terms and provisions which have been agreed to be decided by an arbitrator see…**Appellant's MOTION FOR RECONSIDERATION filed and entered on 5-20-2020 (see…R. pp. 528-530)** which is hereby reiterated and incorporated by reference in its entirety).

STATEMENT OF RELATED CASES

Similar issues are presented in ***Birster v. American Home Mortgage Services, Inc.*, No. 11-13574-G,** which was appealed from the Southern District of Florida in August 2011, reversed and remanded in October 2012. This case presented important questions regarding the interpretation of the Fair Debt Collection Practices Act (FDCPA), a statute for which Congress has granted the Consumer Financial Protection Bureau rulemaking and enforcement authority. See…**Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §§ 1002(12)(H), 1022(b)(1), 1061(b)(5), 1089 (2010).** In particular, the FDCPA prohibits harmful debt collection practices that occur in the context of foreclosure proceedings. In ***Barbato v. Greystone Alliance, L.L.C.*, 2019 WL 847920 (3d Cir. Feb. 22, 2019)**, the Third Circuit held that the debt buyer, Crown Asset Management (Crown), is a debt collector under the "principal purpose" prong, holding that "an entity that otherwise meets the 'principal purpose' definition cannot avoid the dictates of the FDCPA merely by hiring a third party to do its collecting." Both

of these cases are hereby incorporated by reference in their entirety to help assist this court in properly determining and defining the appellees and other parties requested to be enjoined positions as debt collectors under the FDCPA.

STATEMENT OF ISSUES ON APPEAL

1. The Fair Debt Collection Practices Act (FDCPA or Act) prohibits "debt collectors" from using certain means to collect debts and from engaging in certain conduct "in connection with the collection of a debt." ***See* 15 U.S.C. §§ 1692c–1692g.** Thus, to state a claim under most provisions of the FDCPA, a plaintiff must show both that the defendant is a "debt collector" and that the challenged conduct is a means of, or otherwise relates to, collecting debts. This appeal presents the following questions concerning the FDCPA's scope:

    a. The Act defines "debt collector" as a person whose **"principal purpose"** is debt collection or "who regularly collects or attempts to collect" debts. 15 U.S.C. § 1692a(6). For the purposes of a single provision of the Act, § 1692f(6), the term "debt collector" "also includes" a person whose "principal purpose" is "the enforcement of security interests." *Id.* Does a person who meets the FDCPA's general definition of "debt collector" qualify as a debt collector for purposes of the entire Act if (a) he also qualifies as a debt collector under the additional definition applicable to § 1692f(6), and (b) he is enforcing a security interest in the particular case?

    b. Although the Act does not define "debt collection," attempting to obtain payment of a consumer debt unquestionably constitutes debt collection under the FDCPA. ***Heintz v. Jenkins*, 514 U.S. 291, 294 (1995).** Does attempting to obtain payment of a consumer debt cease to qualify as debt collection covered by the Act if the debt collector or a related party simultaneously attempts to enforce a security interest backing the debt?

    c. Can an entity that otherwise meets the 'principal purpose' definition avoid the dictates of the FDCPA merely by hiring a third party to do its collecting?

2. Did the Court err by dismissing appellant's counterclaims and not instructing appellant on how his pleadings are deficient, how to repair them and allow appellant the opportunity to correct it with leave of court to repair any deficiencies in his counterclaim?

3. Did the court ERR and create abuse of discretion by denying appellant's right to a trial by jury, a jury trial as demanded by appellant and not waived in violation of his rights, his right

under the **7th Amendment of the U.S. Constitution, the Bill of Rights** and **Section 14 of the State of South Carolina Constitution**?

4. Did the court ERR and create abuse of discretion by dismissing the appellant's numerous motions to vacate, motion to dismiss, motion for stay, motion for TRO for failure to pay filing fee when 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 as appellant has filed on the record a form for a state agency to collect any alleged filing fee requested by appellant (see… Motion/Vacate 9/15/17 Order filed on 8-23-2018, R. pp. 342-348) and an affidavit that documents appellant is indigent (see…R. pp. 44 paragraph 50 of appellants amended counterclaim/countersuit which is in affidavit form and qualifies as an affidavit) which the court has already stated must be filed for a waiver of the filing fee (see…R. pp. 60 of the 3-12-2020 transcript)?
5. Did the court ERR and create abuse of discretion by failing to take in consideration that the affidavits filed by appellant are facts before the court which stand as true and prima facie evidence to support appellants claims as there are no rebuttal affidavits signed under penalty of perjury supporting any hearsay that the opposing parties attorney has stated which they have filed on the record in opposition to appellants affidavits?
6. Did the court violate the appellant's due process rights and committed an abuse of discretion by failing to enjoin all parties requested to be enjoined in the case by the appellant in his counterclaim as required under SCRCP Rule 13(h) and his opposition filings when clearly notified to the court that it would be futile to appellant's counterclaims that he has brought forth against the original opposing party, BANA, and the new party requested to be enjoined, Carrington Mortgages Services, LLC (Carrington), and substitute plaintiff, Wilmington

Savings Fund Society, FSB as Trustee and the attorneys (Wilmington) all as debt collectors as presented in **paragraph 9** of defendant/appellant amended counterclaim filed on 9-25-2017 (R. pp. 39), defendant/appellants entire opposition to plaintiff/appellees motion to dismiss and order of reference filed on 12-17-2018 (R. pp. 393-405) and motion for reconsideration filed on 5-20-2020 R. pp. 532-534, 536, 542-543, 546-547, 550, 555-557)?

7. Did the court err, commit an abuse of discretion, violate the appellant's due process rights, violate SCRCP Rule 10(b) and (c) and create undue prejudice by only going by the opposing parties attorneys' hearsay, by limiting the appellants claims to the caption "only" under SCRCP Rule 10(a), by reducing the counter claims to only three (3) counterclaims, by ignoring the appellants other remaining form of claims specified in appellant's amended counterclaims see…R. pp. 42-43, paragraph 35, 41, 42, & 49(a) to 49(j) that were numbered, stated and incorporated by reference as SCRCP Rule 10(b) and (c) required to be considered as a form of claim?
8. Did the court Err and commit an abuse of discretion, by not filing physical proof on the record of their jurisdiction when jurisdiction was challenged by the appellant (see…Defendant's Amended Motion/Pre Trial Discovery filed and entered 7-23-2018, R. pp. 255-256 and appellant's motion to reconsider filed 5-20-2020 R. pp. 548), by moving forward and placing any further orders on the record including denying appellant's countersuit/counterclaims, and motions and as a result, their order is void for want of jurisdiction (subject matter or otherwise), their failure to prove jurisdiction on the record in this case when challenged?
9. Did the court err and commit an abuse of discretion by violating SCRCP **Rule** 25(c), SCRCP **Rule** 5 and the appellant's due process rights by allowing a substitution of plaintiff

in the middle of a pending countersuit/counterclaim against the original plaintiff, Bank of America, N.A. without a hearing allowing the appellant the opportunity to raise objections to the substitution knowing that the appellant countersuit/counterclaim clearly evidences and documents that the claims are against multiple parties (see…R. pp. 39, **paragraph 9** of defendant/appellants amended countersuit/counterclaim filed on 9-25-2017, defendant/appellants entire opposition to plaintiff/appellees motion to dismiss and order of reference filed on 12-17-2018 (R. pp. 393-405) and motion for reconsideration filed on 5-20-2020 R. pp. 532-534, 536, 542-543, 546-547, 550, 555-557) who all should have been enjoined so that the claims could be properly adjudicated against each individual party requested to be enjoined?

10. Did the Court Err and Commit an Abuse of Discretion by Dismissing Appellant's Constructive Fraud, Conspiracy Claims, and Truth in Lending Act (TILA) claims?

STATEMENT OF THE CASE

I **Nelson L. Bruce** a natural citizen as defined in statute and **article 1 section 8 of the United States of America Constitution,** of the age of the majority, am over the age of 18, hereby present this Appeal Brief as such is based on firsthand knowledge of the facts, as true and wholly accurate in the form of reintroduction of evidence, Affidavits, Motions, Presentments, Declarations, Exhibits originally presented in the Court of Common Pleas for review by this body and are hereby incorporated by reference in its entirety with this Appeal Brief. On 8-18-2016, Original Plaintiff Bank of America, N.A. filed a Summons & Complaint and Lis Pendens which Appellant was never served with. On 4-3-2017 Appellant filed a motion to dismiss. On 9-13-2017 Appellant filed an Answer and Counterclaim. On 9-18-2017 the court denied appellants motion to dismiss. On 9-25-2017 appellant filed an amended answer and counterclaim. On 10-

27-2017 the clerk of court filed a "Clerk's error" Changed file type from non-jury to jury documenting that the case including appellant's counterclaims is a jury trial as demanded by appellant in his counterclaim. On 3-1-2018 the original appellees by their alleged attorney filed a response to appellant's counter claims. On 3-1-2018 original appellees by their alleged attorney filed a response to appellant's counter claims. On 3-23-2018 appellees filed a Motion and Order to Substitute Plaintiff which an unknown judge not assigned to the case signed and entered as an order of the court. On 3-27-2018 Appellant filed a Reply/Response and Objections to Original Plaintiff's Answer/Response to Defendant's Counterclaims. On 5-22-2018 and 5-23-2018 the court referenced the case on the jury roster. On 7-20-2018, Appellant filed a Motion/Pre-Trial Discovery. On 7-23-2018 Appellant filed an Amended Motion/Pre Trial Discovery, Jurisdiction Challenge, and Notice of Judiciary Duty. On 8-23-2018 Appellant filed 2 Motions to Dismiss and 2 Motions to Vacate and contesting the filing fee. On 8-24-2018 Appellant filed a Motion for Temporary Restraining Order and contesting the filing fee. On 10-16-2018 Appellees filed responses to appellants 8-23-2018 and 8-24-2018 motions. On 11-15-2018 Appellees filed a motion to dismiss appellant's counterclaims/order of reference and a Memo/Memo in Support of their motion well after a response to appellant's counterclaims. On 12-17-2018 Appellant filed an Opposition to Plaintiff's Motion to Dismiss and Motion for Order of Reference. On 4-22-2020 the court issued an order dismissing appellant's counterclaims, dismissing appellant's other motions for failing pay filing fees, Continuing appellant's Amended Motion for Pre-Trial Discovery and referring the case to the master in equity. On 5-20-2020 Appellant filed a Motion/Reconsider. On 7-8-2020 the court Denied appellant's Motion to Reconsider and referred back to the Master in Equity. On 7-21-2020 Appellant filed a Notice of Appeal to Court of Appeals. On 8-27-2020 appellant corrected a deficiency in the Notice of Appeal and filed an

Amended Notice of Appeal.

STATEMENT OF FACTS

A. Statutory Background

Congress enacted the FDCPA in 1977 to eliminate "abusive, deceptive, and unfair debt collection practices. Abusive collection practices remain a widespread problem today. The FDCPA is the key federal statute protecting these consumers. Among other things, the Act forbids debt collectors from employing harassing, oppressive, or abusive practices; making misleading or deceptive representations; and using unfair or unconscionable means to collect debts. *See* 15 U.S.C. §§ 1692d–1692f. The Act also limits when debt collectors can contact debtors, guarantees consumers an opportunity to dispute their debts, and generally bars attempts to collect a disputed debt until the debt is verified. *Id.* §§ 1692c, 1692g(a)–(b).

B. Facts

Appellant disputed the alleged mortgage debt numerous times with Appellees, the parties requested to be enjoined and the previous servicer of the appellant's alleged mortgage, the Original Plaintiff, Bank of America, N.A. (BANA) who at the time was collecting on behalf of Ginnie Mae which clearly qualified BANA as a Debt collector under all definitions of the FDCPA, Principal Purpose, Regularly Collects on behalf of another, and enforcement of security interest (see…**15 U.S. Code § 1692a)** which makes them a Debt collector under the entire act, with the first dispute of the alleged debt sent to BANA in July of 2015 (see… Motion to Dismiss for Lack of Standing/Exhibits A and B R. pp. 74-109 filed and entered on 4-3-2017). As of July 2015, BANA had 30 days to validate and verify the alleged debt they were attempting to collect with proper verification of the debt as required by the FDCPA. The FDCPA prescribes that debt collectors must cease any and all collection activities until they have validate the debt and

provide sufficient verification of the alleged debt, in this case mortgage debt that BANA was attempting to collect from the Appellant, the consumer or produce a copy of a judgement to the appellant (see...**15 U.S. Code § 1692g).**

The **Legal Definition of Verification** is:

- The **legal** context refers to a declaration under oath or upon penalty of perjury that a statement or pleading is true (see... Defendants Opposition to Plaintiffs Motion to Dismiss filed 12-17-2018 R. pp. 402 paragraph 11).

As of the date of this initial brief, Appellant has not received any such verification of the alleged mortgage debt from any plaintiff's, both original nor substitute, the attorneys nor Carrington the new alleged servicer and no verification has been filed on the record that can evidence this or otherwise. On 8-19-2016 BANA hired an attorney (see...defendant's motion to reconsider filed 5-20-2020, R. pp. 562-565 Exhibit –L) who filed a foreclosure complaint seeking to enforce an alleged security interest who also attempted to collect the alleged mortgage debt at the same time of the filing both constituting collection activity under the FDCPA as referenced above as they were doing more that enforcing a security interest which BANA was required to cease and desist from as appellant again disputed with the original attorney for BANA who also never validated and verify the alleged debt as specified above. According to the foreclosure complaint, the appellant allegedly defaulted on their alleged mortgage loan on August 1, 2015 (see...complaint filed 8-19-2016 R. pp. 31 paragraph 11). BANA continued to attempt to collect the alleged disputed mortgage debt from August 1, 2015 to May 1, 2017 until they assigned their alleged servicing right over to Carrington Mortgage Services, LLC (see...appellant's amended counterclaim filed on 9-25-2017 R. pp. 39 paragraph 9) even during foreclosure proceedings. The appellees hired Carrington Mortgage Services, LLC to indirectly attempt to collect payments from the appellant during foreclosure proceedings and they

continued to attempt to collect on the alleged disputed mortgage debt on behalf of the substitute plaintiff from May 2, 2017 to present, during foreclosure proceedings (see...motion to reconsider filed 5-20-2020 exhibits – L R. pp. 566-575 and motion to compel filed 3-29-2019 R. pp. 519 exhibits/evidence – J4).

Appellees, BANA and all parties requested to be enjoined have attempted to collect a payment of some sort from the appellant on the alleged mortgage debt as they all have sent appellant letters which state that "THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE" which significantly qualifies them as debt collectors under the FDCPA as the law requires them to include this statement when attempting to collect a debt. These are Statements of Undisputed Material Facts as there are no oppositions, against the motion to reconsider and other filing of appellant including exhibits, affidavits, no sufficient objections filed supported by disputed facts from the appellees objecting to any of these facts filed on the record at any time during these proceedings in verified form with the proper verification attached.

STANDARD OF REVIEW

Pro se litigants (Party Aggrieved is a pro se litigant) are held to less stringent pleading standards than BAR registered attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims and the opportunity to correct any deficiencies. **(see...*Haines v Kerner, 404 U.S. 519* and *Platsky v. C.I.A.* 953 F.2d. 25).**

Appellant's evidence came in the form of affidavits which is prima facie evidence ***(See ...United States v. Kis, 658 F.2d 526, 536 (7th Cir. 1981);*** An Affidavit if not contested in a timely manner is considered undisputed facts as a matter of law. "Allegations in affidavit in

support of filing must be considered as true in absence of counter-affidavit." [**Group v Finletter, 108 F. Supp. 327** Federal case of **Group v Finletter, 108 F. Supp. 327**]. ***In re Platsky v. C.I.A.* 953 F.2d. 25**: court errs if court dismisses the pro se litigant (Party Aggrieved is a pro se litigant) without instruction of how pleadings are deficient and how to repair pleadings. The court failed to instruct appellant on how his pleadings are deficient, how to repair them and failed to allow appellant leave of court to correct any deficiencies. In re **Anastasoff:** litigants' constitutional rights are violated when courts depart from precedent where parties are similarly situated. All litigants have a constitutional right to have their claims adjudicated according the rule of precedent. See...***Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000).*** Statements of counsel, in their briefs or their arguments are not sufficient for a motion to dismiss or for summary judgment, ***Trinsey v. Pagliaro,* D.C. Pa. 1964, 229 F. Supp. 647**. Appellant also explicitly reserved his retained rights to amend his amended counterclaim/countersuit with leave of court with the filing of his opposition as he explained there was new evidence, new parties to be enjoined and issues in this matter that have come forth since the filing of his amended countersuit (see...Defendants opposition to Plaintiff's motion to dismiss filed on 12-17-2018 R. pp. 394-396 paragraph 1) which the court has deprived him of in violation of his rights.

A counterclaim is considered a separate action because it can be ordered as a separate trial (see...***South Carolina Community Bank v. Salon Proz, LLC* Appellate Case No. 2014-002627, April 26, 2017**). Appellant's FCRA, SCCPC and other claims were filed in this case on 9-25-2017 (see... **Section "VII"** of amended counterclaim R. pp. 43 paragraph's 35, 41, 42, & 49(a) to 49(j), were properly numbered, stated and incorporated by reference as SCRCP **Rule** 10(b) and (c) required but was dismissed without the court even addressing these claims and without a trial by jury (see... ***South Carolina Community Bank v. Salon Proz, LLC*, 2017**) as

demanded in the amended counterclaim (see... **Section "VII"** R. pp. 43 paragraph 47) which was negligently ignored by the judge of the court even though pointed out and also docketed by the clerk for a jury trial (see... R. pp. 188 "Clerk's error" Changed file type from non-jury to jury Filed and entered on 10-27-2017). The judge is required to know and abide by the court rules. Appellant did not waive his right to a trial by jury under the **7th Amendment of the U.S. Constitution**, the Bill of Rights and Section 14 of the State of South Carolina Constitution and has exercised that right (see... Section "VII" R. pp. 43 paragraph 47).

The court failed to follow their own rules, SCRCP **Rule** 19 provides that:

- A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if(1) in his absence complete relief cannot be afforded among those already parties. This rule provides that if a party has not been joined, the court shall order that he be made a party.

The court failed to add all requested joiners as parties to the case in violation of their own civil rules. BANA and Carrington, are necessary parties to this action. Bank of America, N.A. had already received service of process by appellant in court on 9-13-2017 and by mail of the amended counterclaim filed on 9-25-2017 therefore the court must join or rejoin them as parties to protect the Appellant, to not prejudice appellant's claims and insure a full adjudication of the controversy against all relevant parties which claims are against as presented in his amended counterclaim/countersuit. On a SCRCP **Rule** 12(b) motion, "the proper course for the trial court is to determine the necessity of adding a new party under Rule 19. ***Bancohio National Bank v. Neville, 310 S.C. 323, 328, 426 S.E.2d 773, 776 (1993).*** The court has also failed to follow SCRCP **Rule** 12(b)7 as appellant has raised his defense for failure to enjoin relevant parties to the case (see...Appellant's motion to reconsider filed 5-20-2020 R. pp. 532-533 and 554-555). Appellant has raised multiple objections for failure of the court to enjoin parties.

See...appellant's opposition filed 12-17-2018 R. pp. 394-397.

The court is in violation of their own rules, SCRCP **Rule 25 (c) Transfer of Interest** provides that:

- In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in **Rule 25(a)(1)** which in general provides that, together with the notice of hearing shall be served on the parties as provided in **Rule 5** which was not done.

Appellant never was served with a copy of the motion for substitution of Plaintiff and there is no evidence filed on the record that documents that the appellant ever received a copy of the motion for substitution of plaintiff, together with a notice of hearing through the U.S. Mail (See...R. pp. 1-7 Motion and Order to Substitute Plaintiff filed, entered, and ordered 3-23-2018). These facts was addressed in appellant's motion to vacate (see... R. pp. 354-361 Motion to Vacate the Court's March 23, 2018 Order filed and entered 8-23-2018). Appellant also brings to this courts attention that the order was signed by a judge without jurisdiction, who is not assigned to this case and therefore also makes the 3-23-2018 order a void order (see...R. pp. 2 Motion and Order to Substitute Plaintiff filed, entered, and ordered 3-23-2018 page 2) as that judge lacked jurisdiction in this case and is not the assigned judge assigned to this case for this matter to make such orders. If this was the proper assigned judge, the judge would have or should have known that a substitution of the plaintiff would be futile and would prejudice the appellant and his counterclaims against all parties including the original plaintiff and therefore the substitute plaintiff should have just been enjoined into the case as requested by the appellant as specified above. Wilmington savings fund society FSB, is the registered agent for Stanwhich Mortgage Loan Trust C which is the alleged trust that appellants mortgage loan has been pooled

under. A registered agent acts on behalf of the registered corporation, the Stanwhich Mortgage loan trust C which is registered as a Delaware Corp. Wilmington savings fund society FSB is also acting as trustee who is also collecting payment from a designated servicer on behalf of the trust to and then making payments to the members of the trust therefore operating on behalf of another party which constitutes as debt collection as prescribed under the FDCPA as their principal purpose is to collect payment directly or indirectly from the appellant on behalf the members of the trust under a trustee agreement (see... R. pp. 545 Appellants motion to reconsider filed on 5-20-2020 paragraph 4).

ARGUMENTS

I. THE COURT ERRED AND COMMITTED AN ABUSE OF DISCRETION BY DISMISSING APPELLANT'S FAIR DEBT COLLECTION PRACTICES ACT (FDCPA) CLAIMS

The court has stated that Defendant/Appellant has not pleaded sufficient facts to support his FDCPA claim. That the FDCPA only applies to debt collectors. The court stated that assuming Plaintiff is collecting a debt, Plaintiff is the holder of the Note and the legal title owner of the Mortgage, and so it is not collecting the debt of another citing 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.)** The court goes on to say that Plaintiff's foreclosure action with a waiver of deficiency is not collection of a debt because 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 (see... R. pp. 12-13 of the 4-22-2020 order dismissing counterclaims). The court has not identified any physical sufficient evidentiary facts signed under penalty of perjury from the plaintiff who is a natural man or woman with firsthand

knowledge of the facts filed on the record that can support the court's opinion and therefore is an unsupported opinion of the court. The Plaintiff/Appellees are improperly utilizing ***Henson v. Santander Consumer USA Inc.***, which only focuses on the one definition of debt collect, the regularly collects definition.

In ***Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718 (2017),** the Supreme Court held that Santander was not a debt collector under the Fair Debt Collection Practices Act's (FDCPA's) second definition of debt collector under 15 U.S.C. § 1692a(6). This narrow opinion held that a debt buyer is not subject to the FDCPA as an entity regularly collecting debts owed or due another, leaving intact the alternative approach of showing that a debt buyer qualifies as a debt collector under the FDCPA because the principal purpose of its business is the collection of debts.

In ***Barbato v. Greystone Alliance, L.L.C.*, 2019 WL 847920 (3d Cir. Feb. 22, 2019),** the Third Circuit held that the debt buyer, Crown Asset Management (Crown), is a debt collector under the "principal purpose" prong, holding that "an entity that otherwise meets the 'principal purpose' definition cannot avoid the dictates of the FDCPA merely by hiring a third party to do its collecting." The Third Circuit remanded the case to the district court to determine the debt buyer's liability for the acts of those collecting on its accounts. In doing so, the Third Circuit set out some guidance for the lower court. First, a debt buyer can be liable for the acts of its agents even though the debt buyer did not exert any actual control over the collection agency's FDCPA violation. In addition, while probably not relevant to this case, the Third Circuit also stated that a debt buyer can be liable for the FDCPA violations of its agents even if the agents are not covered as debt collectors under the FDCPA.

To state a claim under most provisions of the FDCPA, a plaintiff must show both that the defendant is a "debt collector" and that the challenged conduct related to debt collection. The common pleas court concluded that, The FDCPA only applies to debt collectors. 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, claiming that as the U.S. Supreme Court has stated **(Henson v. Santander Consumer USA Inc., 137 S. Ct. 1718, 1724, 198 L. Ed. 2d 177 (2017) (Emphasis in original.))**, "you have to attempt to collect debts owed *another* before you can ever qualify as a debt collector." The court has also stated that, Plaintiff's foreclosure action with a waiver of deficiency is not collection of a debt because the plaintiff has waived deficiency and is seeking only to foreclose its security interest in the property that enforcing a security interest in real estate is not the collection of a debt (see... R. pp. 12-13 of the courts 4-22-2020 order dismissing the counterclaims). These conclusions misconstrue the FDCPA.

Debt Collector: The FDCPA generally defines "debt collector" as an entity whose "principal purpose" is debt collection or "who regularly collects or attempts to collect" debts. 15 U.S.C. § 1692a(6). Under an additional definition applicable for purposes of a single provision, § 1692f(6), the term "debt collector" "also includes" any entity whose "principal purpose" is "the enforcement of security interests." *Id.* Six categories of people are specifically excluded from the definition of "debt collector." *Id.* § 1692a(6)(A)–(F). Enforcers of security interests do not appear on that list.

Courts that have concluded that enforcers of security interests qualify as "debt collectors" only for purposes of § 1692f(6) have failed to consider that enforcers of security interests may also "regularly collect" debts and thus qualify as "debt collectors" under the general definition, see...***Birster v. American Home Mortgage Services, Inc.*, No. 11-13574-G.**

Recognizing that an entity may meet both the general and the additional definition does not render the additional definition superfluous. Some enforcers of security interests, such as repossession agencies that rarely contact debtors, constitute "debt collectors" only under the

additional definition, while others—like entities that initiate foreclosure proceedings and then seek payment in lieu of foreclosure—both "regularly" collect debts and "principal[ly]" enforce security interests, ***Birster v. American Home Mortgage Services, Inc.*, No. 11-13574-G.** The additional definition requires the former category of people to comply with § 1692f(6), even though they are not generally subject to the Act.

By the Act's plain terms, an entity that meets both definitions of "debt collector" qualifies as a "debt collector" for purposes of the entire Act. The additional definition does not exclude enforcers of security interests from the general definition, but rather "also includes" them for purposes of a particular provision. Notably, unlike other entities, enforcers of security interests are not explicitly excluded from the definition of debt collector. Nearly every court, including every federal appellate court, to have considered this question agrees. This conclusion is also consistent with a prior administrative interpretation of the Act, and furthers the Act's consumer-protection purposes.

An entity that satisfies both definitions of "debt collector" remains a "debt collector" subject to the entire FDCPA even if it is enforcing a security interest in a particular case. That an entity is enforcing a security interest in a particular case bears on whether its actions constitute debt collection, not on whether the entity is a debt collector. The statute defines "debt collectors" by reference to their "principal purpose" and "regular[]" activities, not their activities in a particular case. Section 1692i(a)(1), which regulates "debt collectors" enforcing security interests in real property, confirms that entities enforcing a security interest in a particular case can qualify as "debt collectors" under provisions other than § 1692f(6).

Because appellees did not contest that it regularly collects debts nor it's principal purpose when it allegedly acquired the alleged defaulted debt was collection of payments from the

consumer for the alleged debt, it constitutes as a "debt collector" for purposes of the entire FDCPA.

Debt Collection: Attempting to obtain payment of a consumer debt constitutes debt collection covered by the FDCPA. ***Heintz v. Jenkins*, 514 U.S. 291, 294 (1995).** Nothing in the Act suggests that seeking payment from a debtor ceases to qualify as debt collection if it accompanies proceedings to enforce a security interest, ***Birster v. American Home Mortgage Services, Inc.*, No. 11-13574-G.** That conclusion would create an enormous loophole, allowing debt collectors to abuse consumers with impunity whenever they happened also to seek to enforce a security interest. Every federal appellate court to have published a decision on this issue, and nearly every other court, agrees.

In ***Birster v. American Home Mortgage Services, Inc.*, No. 11-13574-G** it was stated that, although the district court suggested that pursuing foreclosure, by itself, cannot constitute debt collection covered by the Act, the Court need not reach that question here. At a minimum, seeking payment from a debtor unquestionably qualifies as debt collection, even if it occurs in the context of foreclosure proceedings, which is the case here. The appellant's allege that appellees, original plaintiff, and Carrington repeatedly attempted to induce him to pay amounts owed on the alleged mortgage was debt collection even though it occurred in the context of foreclosure proceedings. The Appellees and the parties requested to be enjoined into this case have done more that try to enforce an alleged security interest with a foreclosure proceeding as they have also attempted to collect the alleged debt either directly or indirectly during foreclosure proceedings which constitute debt collection under the entire FDCPA. When doing both Appellant has specified and produced sufficient facts, affidavits and evidence on the record of which the FDCPA supports proves all parties referenced in this matter to be parties to appellants countersuit/counterclaim even the parties requested to be enjoined are debt collectors under the FDCPA definitions (see… R. pp. 546-549 appellant's motion for reconsideration filed on 5-20-2020).

Wilmington is acting as a trustee's collecting (directly or indirectly) debts on behalf of bond/share/certificate holders who invested into a mortgage backed security (MBS) trust which qualifies as collecting on behalf of another because once the servicer collects (the indirect party) payment from a borrower and pays the trustee, the trustee does not keep the money received from an alleged servicer, the trustee has to pass that payment through to the bond/share/certificate holders who invested into the MBS, the trust (see... R. pp. 546 Appellants motion to reconsider filed on 5-20-2020 paragraph 4). This also qualifies the plaintiff and all parties requested to be enjoined as debt collectors under the "regularly collects" definition and the "principle purpose" definition of the FDCPA even while in foreclosure, even if its principal purpose is the enforcement of security interests as stated in the CFPB's brief in **Birster v. American Home Mortgage Services, Inc. on or about December 21, 2011, Case No. 11-13574-G** and as decided in **Mary Barbato v. Crown Asset Management LLC, et al., No. 18-1042 (3d Cir. Feb. 22, 2019)** which significantly limited the Supreme Court's decision in **Henson** to the interpretation of the "regularly collects" definition of a "debt collector" in the FDCPA.

Response/Objection to sections "b" (RESPONDENTS ARGUMENT SECTION "II")

Respondent believes that appellant is arguing for the first time on appeal the arguments stated in his initial brief (Appellant's Initial Brief, Pp. 13-18, 29-34) and that he is changing his entire position on appeal (Respondent initial brief, pg. 14). Appellant object for the reasons stated in his opposition to respondent's motion to dismiss appeal section II R. pp. 611-614, and appellant's initial brief sections "I" and "XII" which are hereby reiterated and incorporated by reference in their entirety.

Response/Objection to sections "c" (RESPONDENTS ARGUMENT SECTION "II")

Appellant objects to this section of the Respondents initial brief for the reasons stated in his opposition to respondent's motion to dismiss appeal section II R. pp. 611-614, and appellants initial brief sections "I" and "XII" which are hereby reiterated and incorporated by reference in

their entirety.

II. THE COMMON PLEAS COURT ERR BY DISMISSING APPELLANT'S COUNTERCLAIMS AND NOT INSTRUCTING APPELLANT ON HOW HIS PLEADINGS ARE DEFICIENT AND HOW TO REPAIR THEM AND ALLOW APPELLANT THE OPPORTUNITY TO CORRECT IT WITH LEAVE OF COURT TO REPAIR ANY DEFICIENCIES IN HIS COUNTERCLAIM

The Common Pleas court held appellant to the same standards as a BAR registered attorney and dismissed appellant, the aggrieved party who is considered a Pro Se litigant counterclaims/countersuit without instructions on how pleadings are deficient, instructing on how to repair the pleadings and without the opportunity to repair any deficiencies in the counterclaim. Pro se litigants (Party Aggrieved is a pro se litigant) are held to less stringent pleading standards than BAR registered attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims **(see…*Haines v Kerner, 404 U.S. 519).* In re *Platsky v. C.I.A.* 953 F.2d. 25:** court errs if court dismisses the pro se litigant (Party Aggrieved is a pro se litigant) without instruction of how pleadings are deficient and how to repair pleadings. In re Anastasoff: litigants' constitutional rights are violated when courts depart from precedent where parties are similarly situated. All litigants have a constitutional right to have their claims adjudicated according the rule of precedent. See…***Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000).*** (See… R. pp. 530 appellant motion to reconsider filed on 5-20-2020 pg. 4 of 33). Appellant also explicitly reserved his retained rights to amend his amended counterclaim/countersuit with leave of court with the filing of his opposition as he explained there was new evidence, new parties to be enjoined and issues in this matter that have come forth since the filing of his amended counterclaim/countersuit (see…R. pp. 395-396 Defendants opposition to Plaintiff's motion to dismiss filed on 12-17-2018 paragraph 1) which the court has deprived him of in violation of his

Rights and to seek justice.

Response/Objection to sections "a" and "b" (RESPONDENTS ARGUMENT SECTION "III")

Appellant objects to this section of the Respondents initial brief for the reasons stated in appellant's motion to reconsider R. pp. 558 and appellant's opposition to plaintiff's motion to dismiss and order of reference paragraph 1, R. pp. 396 which clearly and specifically addresses the respondents motion to dismiss and order of reference which are hereby reiterated and incorporated by reference in their entirety as appellant clearly stated that, "Defendant hereby explicitly reserves and retains the right to amend his amended countersuit with leave of court and hereby exercises that right with the filing of this opposition as there is new evidence, new parties to be enjoined and issues in this matter that have come forth since the filing of his amended countersuit." This is clearly a request of the court for leave to amend his amended counterclaim/countersuit that had been raised before the court in the properly filed motions referenced above therefore there is a ruling to be appealed that has been preserved for appellate review and not waived by the appellant.

Response/Objection to sections "c" (RESPONDENTS ARGUMENT SECTION "III")

Appellant objects to this section of the Respondents initial brief for the reasons stated in appellant's motion to reconsider R. pp. 396 and appellants initial brief section "II" which are hereby reiterated and incorporated by reference in their entirety. Even if appellant was to be held to the same standards as an attorney, the record clearly shows appellant requested leave of court to amend his amended counterclaim/countersuit (see...appellant's motion to reconsider R. pp. 558 and appellant's opposition to plaintiff's motion to dismiss and order of reference paragraph 1, R. pp. 396) and therefore the issue is preserved for appellate review.

III. THE JUDGE ERRED AND COMMITTED AN ABUSE OF DISCRETION AND VIOLATED THE APPELLANTS DUE PROCESS RIGHTS BY VIOLATING

SCRCP RULE 10(B) AND (C) "FORM OF PLEADINGS", BY IGNORING THE APPELLANTS OTHER FORM OF CLAIMS

The court err and committed an abuse of discretion, violate the appellant's due process rights by violating SCRCP Rule 10(b) and (c), by ignoring the appellants other remaining form of claims specified in Section "VII" of appellant's amended Counterclaim/Countersuit filed on 9-25-2017 R. pp. 42-43 paragraph's 35, 41, 42, & 49(a) to 49(j) that were numbered and incorporated by reference as SCRCP Rule 10(b) and (c) required to be considered as a form of claim to be acknowledged by the court.

SCRCP Rule 10(b) and (c) "FORM OF PLEADINGS" state that:

- **(b) Paragraphs; Separate Statements.** All averments of the facts of a cause of action or defense and demands for relief shall be made in consecutive numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each cause of action and each defense shall be stated in a separate cause of action or defense.

- **(c) Adoption by Reference; Exhibits.** Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading.

The court create undue prejudice by only going by the opposing party's attorneys' hearsay which are not facts before the court. The court improperly limited the appellant's claims to the caption "only" form of pleading under SCRCP Rule 10(a), by reducing the counter claims to only three (3) counterclaims (see... R. pp. 63 of the March 12, 2020 transcript) when there are clearly more than three (3) claims as documented in appellees "Memorandum of Law in Support of Motion to Dismiss filed on 11-15-2018 R. pp. 388-392," and as briefly and clearly stated and detailed in appellants amended countersuit/counterclaim in affidavit form which includes claims and violations of laws that have been incorporated by reference specified in Defendant's

Amended Counterclaim/Countersuit filed on 9-25-2017 R. pp. 42-43 paragraph's 35, 41, 42, & 49(a) to 49(j) and Defendant's Reply/Response And Objections To Plaintiff's Answer/Response To Defendant's Counterclaims paragraph 47 R. pp. 219-220. The court actual addressed 5 claims by the Appellant but limited his claims. The court briefly and limitedly addressed the libel, slander, constructive fraud, and improperly addressed the violation of the Fair Debt Collection Practices Act, the violations of TILA presumably the Truth in Lending Act (see... See...R. pp. 10-14 of 4-22-2020 order dismissing the counterclaims/countersuit). Also by limiting the appellant's counterclaims for violations of law, and not allowing appellant leave of court to amend his pleadings, the court has limited the appellant's Libel and Slander claims as they also are directed to appellees reporting to credit bureaus, a third party false information and information they were required to cease and desist from reporting when not verified in violation of the FCRA.

Response/Objection to sections "d" (RESPONDENTS ARGUMENT SECTION "II")

Appellant objects to this section of the Respondents initial brief for the reasons stated in his opposition to respondent's motion to dismiss appeal sections "I" and "II" R. pp. 393-404, which are hereby reiterated and incorporated by reference in their entirety.

Response/Objection to sections "e" (RESPONDENTS ARGUMENT SECTION "II")

Appellant objects to this section of the Respondents initial brief for the reasons stated in appellant's initial brief section "III", which are hereby reiterated and incorporated by reference in their entirety.

Response/Objection to sections "f" (RESPONDENTS ARGUMENT SECTION "II")

Appellant objects to this section of the Respondents initial brief for the reasons stated in appellant's initial brief section "III" pgs. 19-21, which are hereby reiterated and incorporated by

reference in their entirety.

IV. THE COURT ERR AND CREATE ABUSE OF DISCRETION BY DISMISSING THE CASE AND DENYING APPELLANT'S RIGHT TO A TRIAL BY JURY, A JURY TRIAL AS DEMANDED BY APPELLANT AND NOT WAIVED IN VIOLATION OF HIS RIGHTS

A counterclaim is considered a separate action because it can be ordered as a separate trial (see...***South Carolina Community Bank v. Salon Proz, LLC*** **Appellate Case No. 2014-002627, April 26, 2017**). Appellant's FCRA, SCCPC and other claims were filed in this case on 9-25-2017 (see... R. pp. 42-43 **Section "VII"** of amended counterclaim paragraph's 35, 41, 42, & 49(a) to 49(j), were properly numbered, stated and incorporated by reference as SCRCP **Rule** 10(b) and (c) required but was dismissed without the court even addressing the remaining claims as claims and without a trial by jury (see... ***South Carolina Community Bank v. Salon Proz, LLC*, 2017**) as demanded in the amended counterclaim (see... **Section "VII"** R. pp. 43 paragraph 47) which was negligently ignored by the judge of the court even though pointed out and also docketed by the clerk for a jury trial (see... R. pp. 188 "Clerk's error" Changed file type from non-jury to jury Filed and entered on 10-27-2017). The judge is required to know and abide by the court rules. Appellant did not waive his right to a trial by jury under the 7th Amendment of the U.S. Constitution, the Bill of Rights and Section 14 of the State of South Carolina Constitution and has exercised that right (see... R. pp. 43 Section "VII" pg. 9 of 12 paragraph 47).

As presented in appellant's motion for reconsider filed on 5-20-2020 R. pp. 552-554 which is hereby reiterated and incorporated by reference in its entirety, the court violated the appellant's rights by going off of the Plaintiff's attorney proposed order which are not facts before the court which claims that defendant is not entitled to a jury trial under the grounds that "A mortgage foreclosure is an action in equity" citing ***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).*** However the court has failed to also recognize that where legal and equitable issues or rights are raised in the same complaint as they are here, the legal issues are for determination by a jury and the equitable issues are for determination by the court. See...South Carolina Court of Appeals ***3792 - Bateman v. Rouse (2004) quoting Floyd v. Floyd, 306 S.C. 376, 379, 412 S.E.2d 397, 398-99 (1991).*** Defendant has raised multiple legal issues in his amended counterclaim/countersuit which is legal and compulsory and therefore defendant is entitled to a jury trial in this matter, see...***South Carolina Community Bank, Respondent, v. LLC Appellate Case No. 2014-002627 Decided: April 26, 2017.*** The court only addressed that the foreclosure is in equity (see... R. pp. 14 of the courts 4-22-2020 order dismissing appellant's amended counterclaims). The court failed to address that the counterclaim is legal and compulsory therefore the counterclaims are subject to a jury trial because it was demanded by appellant and not waived (see... R. pp. 43 appellant's amended counterclaim filed 9-25-2017 paragraph 47).

Furthermore, either party may demand a trial by jury of any issue triable by jury. See... **Rule 38 (b), SCRCP**. Therefore a trial defendant has a right to a trial by jury as demanded by appellant. The appellant demanded trial by jury for his amended counterclaim/countersuit which was for a jury to decide, not the court. This case should not have been referred to the master in equity and there should be no orders granting final summary judgment by the court in regards to the amended counterclaim/countersuit without a jury trial as there are still issues of material facts as presented that must be resolved in this case with a jury present in regards to the legal issues raised by the plaintiff in their complaint and challenged by the Defendant. Any such

summary orders and judgments not judged in the presence of a jury as demanded are void orders and judgments.

Response/Objection to sections "a", "b", and "c" (RESPONDENTS ARGUMENT SECTION "IV")

Appellant objects to this section of the Respondents initial brief for the reasons stated in his opposition to respondent's motion to dismiss appeal sections "I" R. pp. 605-611 which is hereby reiterated and incorporated by reference in its entirety. Appellant also hereby corrects the statement in his opposition to respondent's motion to dismiss appeal which stated that, "This would include the appellants 12-17-2018 amended counterclaim which clearly specified as an Affidavit and is in Affidavit form", the amended counterclaim date to which appellant was referring to was 9-25-2017 R. pp. 35-46 not 12-17-2018. Appellant even directed the court to review the record at the hearing (see...Transcript., R. pp. 65 at 23-25., R. pp. 66 at 1-10) which if the court had properly review the record, the court would have seen that appellant demanded a jury trial/trial by jury and therefore this issue is preserved for appellate review as the record documents a demand from the appellant for a jury trial/trial by jury since the initiation of his counterclaims/countersuit and therefore are not waived as they have been properly before the court and already acknowledged by the court as evidenced by the clerk changing the status from non-jury to jury as referenced above R. pp. 188 in the opposition of the appellant to the respondent's motion to dismiss appeal R. pp. 608.

V. THE COURT ERRED AND CREATE ABUSE OF DISCRETION BY DISMISSING THE APPELLANT'S NUMEROUS MOTIONS TO VACATE, MOTION TO DISMISS, MOTION FOR STAY, MOTION FOR TRO FOR FAILURE TO PAY FILING FEE

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. The court has failed to recognize that the appellant has filed on the record a form for a state agency to collect any alleged filing fee requested by the court (see... R. pp. 342-348 Motion/Vacate 9/15/17 Order filed on 8-23-2018) and appellant's affidavit that documents appellant is indigent (see... R. pp. 44 paragraph 50 of appellants amended counterclaim/countersuit and affidavit filed with motion to reconsider filed on 5-20-2020 R. pp. 525-526) which is in affidavit form and qualifies as an affidavit) which the court has already stated an affidavit of documenting a party is indigent must be filed for a waiver of the filing fee (See... R. pp. 60 of the 3-12-2020 transcript also see... R. pp. 530-531, R. pp. 525-526 the affidavit filed with appellant's motion for reconsideration filed 5-20-2020). Because this court has already been moving forward with the case, including appellant's amended counterclaims, they had already been in possession an acceptable affidavits that documents appellant indigent status which should have been liberally construed by the court as such. The court had the necessary filings before them, even affidavits to construe that the appellant is indigent and entitled to a fee waiver, to have moved forward with the appellant's motions referenced in the 4-22-2020 order R. pp. 8 by the court dismissing appellant's counterclaims.

Response/Objection to sections "b - c" (RESPONDENTS ARGUMENT SECTION "I")

Respondent alleged that appellant abandoned his argument that, "he should not have to pay filing fees until the county provided him proof of where the fees are being allocated (Transcript., R. pp. 58, at ll., 14-18) because In his brief Appellant argues instead he should be allowed to proceed without paying filing fees under the theory he has filed sufficient documents to evidence his indigent status. Appellant objects for the reasons specified in his "OPPOSITION TO APPELLEE'S MOTION TO DISMISS APPEAL (section IV "R. pp. 615-616") and appellant's initial brief (section "V"). Appellant also has not abandoned this argument because

the first line in his brief, section "V" clearly evidences that the argument raised in the March 12, 2020 hearing has been preserved for appellate review by stating, "The filing fee was challenged by appellant which the court never produced on the record, any facts to support their claims in opposition to appellant's challenge to the fee which is an undisputed fact. The lower court also did not allow appellant the opportunity to produce evidence to support his claims and authority for his argument. Appellant received evidence directly from the South Carolina Supreme Court which stated specifically which fund Diane S. Goodstein office is funded by the states appropriated fund (see...defendants motion to reconsider R. pp. 531) to cover all operations of the court in advance every year which is why appellant challenged where these filing fees are being allocated to since the court is already pre-paid in advance by tax payers dollars (Transcript., R. pp. 58 at 6-25, R. pp. 59 at 1-17) which is estimated and paid out to the court from state citizens and estimated financials every year through the "South Carolina Department of Administration Budget Department" through the states appropriated fund to Diane's office by the office and budget department (see...defendants motion to reconsider R. pp. 531). By asking for an additional $25 is a double tax issue (see...defendants motion to reconsider R. pp. 531). The lower court also documented that this argument is preserved for appellate review (Transcript., R. pp. 616 at 5-22). It also looks like the court reporter did not document word for word what the appellant stated at the hearing as there are incomplete section of the transcript documenting the responses at the hearing labeled as "---" as the court reported failed to document that Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer

provides coverage under the Workmen's Compensation Laws of this state. *Right and justice shall be administered without sale, denial, or delay.* ***Ramsbacher v. Jim Palmer Trucking 391 Mont. 298 (Mont. 2018).*** Also see…**Trankel v. State 282 Mont. 348 (Mont. 1997), State ex Rel. Mont. Citizens v. Waltermire 224 Mont. 273 (Mont. 1986)** and ***St. ex Rel. Mt. Citizens v.*** **Waltermire 227 Mont. 85 (Mont. 1987).**

VI. THE COURT ERRED AND CREATED ABUSE OF DISCRETION BY FAILING TO TAKE IN CONSIDERATION NO MORE THAN AFFIDAVIT'S ARE NEEDED TO MAKE THE PRIMA FACIE CASE, THAT AFFIDAVITS STAND AS TRUTH WHEN NOT REBUTTED, THAT STATEMENTS OF COUNSEL, IN THEIR BRIEFS OR THEIR ARGUMENTS ARE NOT SUFFICIENT FOR A MOTION TO DISMISS

Appellant's disputes with the appellees and counterclaim came in the affidavit form which is prima facie evidence, are considered facts to support his claims ***(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] "Indeed, no more than affidavits is necessary to make the prima facie case." See… Morris v National Cash Register, 44 S.W. 2d 433 at point #4 …an uncontested allegations in affidavit must be accepted as true. An Affidavit if not contested in a timely manner is considered undisputed facts as a matter of law.")***, where there are no rebuttal affidavits evidencing any facts in verified form sign under penalty of perjury by an individual man or woman with firsthand knowledge of any facts verifying on the record facts to rebut appellants verified facts supported by evidence (see… R. pp. 394, 396-397, of appellant's opposition to appellees motion to dismiss and order of reference filed on 12-17-2018 and see… R. pp. 534-536, 541-542, 556 of appellant's motion to reconsider filed 5-20-2020). "Allegations in affidavit in support of filing must be considered as true in absence of counter-affidavit." [**Group v Finletter, 108 F. Supp. 327** Federal case of **Group v Finletter, 108 F. Supp. 327**]. Statements of counsel, in their briefs

or their arguments are not sufficient for a motion to dismiss or for summary judgment, ***Trinsey v. Pagliaro,* D.C. Pa. 1964, 229 F. Supp. 647** (see... R. pp. 399-400 paragraphs 8 of appellant's opposition to appellees motion to dismiss and order of reference filed on 12-17-2018 and see...R. pp. 530, 542, 556 of appellant's motion to reconsider filed 5-20-2020).

Response/Objection to sections "a" (RESPONDENTS ARGUMENT SECTION "II")

It is unclear what the respondent's arguments are in this section. It appears that respondent is arguing that 'Viewing the evidence in favor of the [non-moving party], the motion must be granted if facts alleged in the complaint and inferences reasonably deductible therefrom do not entitle the plaintiff to relief, that "the well settled rule is that facts, and not legal conclusions, must be stated in pleadings," and that "in reviewing the pleadings the Court is "not bound to accept as true a legal conclusion couched as a factual allegation."" Appellant objects for the reasons specified in his motion to reconsider R. pp. 532-534, his opposition to plaintiff's motion to dismiss and order of reference R. pp. 394-397 paragraphs 1 and 3, Appellants opposition to respondents motion to dismiss appeal R. pp. 605-606, 609, 615-616 and Appellant initial brief section "VI" which are hereby reiterated and incorporated by reference in their entirety as appellant's amended counterclaim came in the affidavit form which is prima facie evidence, are considered facts before the court to support his claims as there are no rebuttal affidavits filed on the record in this case. "Prima facie evidence of fact is in law sufficient to establish the fact, unless rebutted" ***Mack v. Post Exchange* 207 S.C. 258 (S.C. 1945).**

The grant of a motion to dismiss for failure to state facts sufficient to constitute a cause of action cannot be upheld if facts alleged in the complaint and inferences reasonably deducible therefrom, if proven, would entitle the plaintiff to relief on any theory of the case. ***State v. Adkison* 213 S.E.2d 591 (S.C. 1975)** Quoting. ***Newton v. South Carolina Public Railways***

Comm'n, 319 S.C. 430, 462 S.E.2d 266 (1995); ***Brown v. Leverette***, 291 S.C. 364, 353 S.E.2d 697 (1987). "The trial court and this [C]ourt on appeal must presume all well pled facts to be true." ***Morrow Crane Co. v. T.R. Tucker Constr. Co.***, 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct.App. 1988). "[A] judgment on the pleadings is considered to be a drastic procedure by our courts." ***Russell v. City of Columbia***, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) (citation omitted).

The law requires that an affidavit in attachment, in order to withstand the attack of irregularity, must contain an allegation of facts from which the inference sought may be drawn, and, if made upon information and belief, the source of such information (***Witherspoon Co. v. Bell* 132 S.C. 303 (S.C. 1925)).**

Response/Objection to sections "h" (RESPONDENTS ARGUMENT SECTION "II")

Appellant objects to this section of the Respondents initial brief for the reasons stated in appellant's initial brief section "VI" and his opposition to respondent's motion to dismiss appeal section I, R. pp. 609-611, which are hereby reiterated and incorporated by reference in their entirety.

VII. THE COURT VIOLATE THE APPELLANT'S DUE PROCESS RIGHTS, THE COURT RULES AND COMMITED AN ABUSE OF DISCRETION BY FAILING TO ENJOIN ALL PARTIES REQUESTED TO BE ENJOINED IN THE CASE BY THE APPELLANT IN HIS COUNTERSUIT AND OTHER FILINS AS REQUIRED UNDER SCRCP RULE 13(H)

The court violate the appellant's due process rights and committed an abuse of discretion by failing to follow SCRCP Rule 13(h) and enjoin all parties requested to be enjoined in the case by the appellant in his counterclaim and other filings. SCRCP Rule 13(h) governs the rules for enjoining additional parties to a counterclaim and state that SCRCP Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim. SCRCP **Rule** 19 provides in

general that, A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (A) in his absence complete relief cannot be afforded among those already parties and by B(ii) by the parties absence it would leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest. Section (a)(2) of SCRCP Rule 19 provides that if a party has not been joined, the court shall order that he be made a party. SCRCP **Rule 20 provides that,** (a) Persons Who May Join or Be Joined as *Defendants* in one action as defendants if (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action. The court completely ignored these rules and therefore have violated them. The appellant filings clearly notified to the court that there is a right to relief asserted against all parties requested to be enjoined which clearly arises out of the same transaction, occurrence, or series of transactions or occurrences related to the alleged mortgage account, that there are question of law, fact that are common to the parties requested to be enjoined that has arisen in this case and that it would be futile to appellant's counterclaims if not to enjoin BANA who was already the main party to the counterclaims, and the new party requested to be enjoined, Carrington Mortgages Services, LLC (Carrington), and substitute plaintiff, Wilmington Savings Fund Society, FSB as Trustee and the attorneys (Wilmington) all as debt collectors as presented in R. pp. 38-39 **paragraph 8 & 9** of defendant/appellant amended counterclaim filed on 9-25-2017, defendant/appellants entire opposition to plaintiff/appellees motion to dismiss and order of reference filed on 12-17-2018 R. pp. 393-405 and motion for reconsideration filed on 5-20-2020 R. pp. 532-534, 536, 542-543, 546-547, 550, 555-557. There is a clear Failure to Join Necessary

Parties under **Rule 12(b)(7), SCRCP. Rule 12(b)(7)** provides that one defense to an action is the failure to join a party under Rule 19 of the South Carolina Rules of Civil Procedure. This defense has already been raised by the appellant as presented in this motion (see... R. pp. 554-555 of appellants Motion for reconsideration filed on 5-20-2020).

VIII. THE COURT ERRED AND COMMITTED AN ABUSE OF DISCRETION BY VIOLATING SCRCP RULE 25(C), SCRCP RULE 5 AND THE APPELLANT'S DUE PROCESS RIGHTS BY ALLOWING A SUBSTITUTION OF PLAINTIFF IN THE MIDDLE OF A PENDING COUNTERSUIT/COUNTERCLAIM

On 9-25-2017 Appellant filed a countersuit/counterclaim against the original plaintiff, Bank of America, N.A. The court allowed the plaintiff to substitute their position in the foreclosure and the pending countersuit/counterclaim without a hearing allowing the appellant the opportunity to raise objections to the substitution knowing that the appellant countersuit/counterclaim clearly evidences and documents that the claims are against multiple parties (see... R. pp. 39 **paragraph 9** of defendant/appellants amended countersuit/counterclaim filed on 9-25-2017, defendant/appellants entire opposition to plaintiff/appellees motion to dismiss and order of reference filed on 12-17-2018 R. pp. 393-405 and motion for reconsideration filed on 5-20-2020 R. pp. 532-534, 536, 542-543, 546-547, 550, 555-557) who all should have been enjoined so that the claims could be properly adjudicated against each individual party requested to be enjoined. The court not only ignored this fact, but an judge without jurisdiction, assigned to the order the same day the substitution of plaintiff was requested not giving the appellant the opportunity to oppose the substitution (see...order granting substitution of plaintiff filed on 3-3-2018. Because the substitution was signed and ordered by a judge not assigned to the case, this order should have been a void order.

IX. THE COURT ERRED AND COMMITTED AN ABUSE OF DISCRETION BY DISMISSING APPELLANT'S CONSTRUCTIVE FRAUD AND CONSPIRACY CLAIMS

The court alleges that To establish constructive fraud, all elements of actual fraud except the element of intent must be established: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury citing ***Pitts v. Jackson Nat. Life Ins. Co.*, 352 S.C. 219, 333 (Ct.App. 1993)**. A complaint is fatally defective if it fails to allege all nine elements of fraud. Where the Complaint omits allegations on any element of fraud, the trial court should grant a motion to dismiss. Id.
The court alleged appellant's pleadings fail to specify what false representations the Plaintiff has made and, among other things, how the Defendant would have relied on the truth of these allegedly false representations to his detriment and therefore failed to plead a cause of action for Constructive Fraud and this counterclaim was dismissed (see... R. pp. 12 of the 4-22-2020 order dismissing counterclaims). The court has stated that Defendant/Appellant 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), SCRCP, requires "when items of special damage are claimed, they shall be specifically stated." (see... R. pp. 13-14 of the 4-22-2020 order dismissing counterclaims).

Appellant has satisfied all elements of fraud and conspiracy as specified in his motion for

reconsideration filed on 5-20-2020 R. pp. 535-541, 549-551 which is hereby reiterated in its entirety and incorporated by reference with this brief.

Response/Objection to sections "g" (RESPONDENTS ARGUMENT SECTION "II")

Appellant objects to this section of the Respondents initial brief for the reasons stated in appellant's initial brief section "IX", which are hereby reiterated and incorporated by reference in their entirety.

X. THE COURT ERRED AND COMMITTED AN ABUSE OF DISCRETION BY DISMISSING APPELLANT'S TRUTH IN LENDING ACT (TILA) CLAIMS

The court claims that Defendant/Appellant has not pleaded any specific facts related to a violation of TILA and therefore, the Defendant's Counterclaim must be dismissed. On the contrary, Appellant has specified facts to support his claims under TILA (see…motion for reconsideration filed on 5-20-2020 R. pp. 551-552 also see… R. pp. 150-191 Defendant Memorandum of Law in support of brief filed and entered 9-13-2017 plus exhibits E - F).

XI. THE COMMON PLEAS COURT ERRED AND COMMIT AN ABUSE OF DISCRETION, BY NOT PHYSICALLY FILING PROOF OF THEIR JURISDICTION ON THE RECORD WHEN JURISDICTION WAS CHALLENGED BY THE APPELLANT

Appellant has challenged the Common Pleas Courts Jurisdiction which they have failed to produce on the record (see…Defendant's Amended Motion/Pre Trial Discovery filed and entered 7-23-2018 R. pp. 256-257, 259 paragraphs 1, 4, 9 and also see…appellant's motion to reconsider filed 5-20-2020 R. pp. 548 paragraph 9). By moving forward and placing any further orders on the record including denying appellant's countersuit/counterclaims, and motions and as a result, their orders are void for want of jurisdiction (subject matter or otherwise), their failure to prove jurisdiction on the record in this case when challenged.

Response/Objection to sections "a", "b", "c", and "d" (RESPONDENTS ARGUMENT SECTION "V")

Appellant objects to this section of the Respondents initial brief for the reasons stated in his opposition to respondent's motion to dismiss appeal sections "III" R. pp. 614, appellant's motion to reconsider paragraph 9 R. pp. 548, and appellant's initial brief section "XI" which are hereby reiterated and incorporated by reference in their entirety and therefore is preserved for appellate review. These issues are not abandoned nor waived. Appellant has not voluntarily submitted to personal jurisdiction by appearing, even if he did, the court still has not proven it had subject matter jurisdiction or otherwise to make a ruling on his amended counterclaim/countersuit. Because the issue has been raised to the trial court as evidenced by the record, they are preserved for appellate review.

XII. THE COURT ERRED AND COMMITTED AN ABUSE OF DISCRETION BY DISMISSING APPELLANT'S FAIR DEBT COLLECTION PRACTICES ACT (FDCPA) CLAIMS

The court has stated that Defendant/Appellant has not pleaded sufficient facts to support his FDCPA claim. That the FDCPA only applies to debt collectors. The court stated that assuming Plaintiff is collecting a debt, Plaintiff is the holder of the Note and the legal title owner of the Mortgage, and so it is not collecting the debt of another citing 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.)** The court goes on to say that Plaintiff's foreclosure action with a waiver of deficiency is not collection of a debt because 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 (see... R. pp. 12-13 of the 4-22-2020 order dismissing

counterclaims). The court has not identified any physical sufficient evidentiary facts signed under penalty of perjury from the plaintiff who is a natural man or woman with firsthand knowledge of the facts filed on the record that can support the court's opinion and therefore is an unsupported opinion of the court. The Plaintiff/Appellees are improperly utilizing ***Henson v. Santander Consumer USA Inc.***, which only focuses on the one definition of debt collect, the regularly collects definition.

In ***Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718 (2017),** the Supreme Court held that Santander was not a debt collector under the Fair Debt Collection Practices Act's (FDCPA's) second definition of debt collector under 15 U.S.C. § 1692a(6). This narrow opinion held that a debt buyer is not subject to the FDCPA as an entity regularly collecting debts owed or due another, leaving intact the alternative approach of showing that a debt buyer qualifies as a debt collector under the FDCPA because the principal purpose of its business is the collection of debts.

In ***Barbato v. Greystone Alliance, L.L.C.*, 2019 WL 847920 (3d Cir. Feb. 22, 2019),** the Third Circuit held that the debt buyer, Crown Asset Management (Crown), is a debt collector under the "principal purpose" prong, holding that "an entity that otherwise meets the 'principal purpose' definition cannot avoid the dictates of the FDCPA merely by hiring a third party to do its collecting." The Third Circuit remanded the case to the district court to determine the debt buyer's liability for the acts of those collecting on its accounts. In doing so, the Third Circuit set out some guidance for the lower court. First, a debt buyer can be liable for the acts of its agents even though the debt buyer did not exert any actual control over the collection agency's FDCPA violation. In addition, while probably not relevant to this case, the Third Circuit also stated that a debt buyer can be liable for the FDCPA violations of its agents even if the agents are not covered as debt collectors under the FDCPA.

To state a claim under most provisions of the FDCPA, a plaintiff must show both that the

defendant is a "debt collector" and that the challenged conduct related to debt collection. The common pleas court concluded that, The FDCPA only applies to debt collectors. 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, claiming that as the U.S. Supreme Court has stated **(Henson v. Santander Consumer USA Inc., 137 S. Ct. 1718, 1724, 198 L. Ed. 2d 177 (2017) (Emphasis in original.))**, "you have to attempt to collect debts owed *another* before you can ever qualify as a debt collector." The court has also stated that, Plaintiff's foreclosure action with a waiver of deficiency is not collection of a debt because the plaintiff has waived deficiency and is seeking only to foreclose its security interest in the property that enforcing a security interest in real estate is not the collection of a debt (see… R. pp. 12-13 of the courts 4-22-2020 order dismissing the counterclaims). These conclusions misconstrue the FDCPA.

Debt Collector: The FDCPA generally defines "debt collector" as an entity whose "principal purpose" is debt collection or "who regularly collects or attempts to collect" debts. 15 U.S.C. § 1692a(6). Under an additional definition applicable for purposes of a single provision, § 1692f(6), the term "debt collector" "also includes" any entity whose "principal purpose" is "the enforcement of security interests." *Id.* Six categories of people are specifically excluded from the definition of "debt collector." *Id.* § 1692a(6)(A)–(F). Enforcers of security interests do not appear on that list.

Courts that have concluded that enforcers of security interests qualify as "debt collectors" only for purposes of § 1692f(6) have failed to consider that enforcers of security interests may also "regularly collect" debts and thus qualify as "debt collectors" under the general definition, see…***Birster v. American Home Mortgage Services, Inc.*, No. 11-13574-G.**

Recognizing that an entity may meet both the general and the additional definition does

not render the additional definition superfluous. Some enforcers of security interests, such as repossession agencies that rarely contact debtors, constitute "debt collectors" only under the additional definition, while others—like entities that initiate foreclosure proceedings and then seek payment in lieu of foreclosure—both "regularly" collect debts and "principal[ly]" enforce security interests, ***Birster v. American Home Mortgage Services, Inc.*, No. 11-13574-G.** The additional definition requires the former category of people to comply with § 1692f(6), even though they are not generally subject to the Act.

By the Act's plain terms, an entity that meets both definitions of "debt collector" qualifies as a "debt collector" for purposes of the entire Act. The additional definition does not exclude enforcers of security interests from the general definition, but rather "also includes" them for purposes of a particular provision. Notably, unlike other entities, enforcers of security interests are not explicitly excluded from the definition of debt collector. Nearly every court, including every federal appellate court, to have considered this question agrees. This conclusion is also consistent with a prior administrative interpretation of the Act, and furthers the Act's consumer-protection purposes.

An entity that satisfies both definitions of "debt collector" remains a "debt collector" subject to the entire FDCPA even if it is enforcing a security interest in a particular case. That an entity is enforcing a security interest in a particular case bears on whether its actions constitute debt collection, not on whether the entity is a debt collector. The statute defines "debt collectors" by reference to their "principal purpose" and "regular[]" activities, not their activities in a particular case. Section 1692i(a)(1), which regulates "debt collectors" enforcing security interests in real property, confirms that entities enforcing a security interest in a particular case can qualify as "debt collectors" under provisions other than § 1692f(6).

Because appellees did not contest that it regularly collects debts nor it's principal purpose when it allegedly acquired the alleged defaulted debt was collection of payments from the consumer for the alleged debt, it constitutes as a "debt collector" for purposes of the entire FDCPA.

Debt Collection: Attempting to obtain payment of a consumer debt constitutes debt collection covered by the FDCPA. ***Heintz v. Jenkins*, 514 U.S. 291, 294 (1995).** Nothing in the Act suggests that seeking payment from a debtor ceases to qualify as debt collection if it accompanies proceedings to enforce a security interest, ***Birster v. American Home Mortgage Services, Inc.*, No. 11-13574-G.** That conclusion would create an enormous loophole, allowing debt collectors to abuse consumers with impunity whenever they happened also to seek to enforce a security interest. Every federal appellate court to have published a decision on this issue, and nearly every other court, agrees.

In ***Birster v. American Home Mortgage Services, Inc.*, No. 11-13574-G** it was stated that, although the district court suggested that pursuing foreclosure, by itself, cannot constitute debt collection covered by the Act, the Court need not reach that question here. At a minimum, seeking payment from a debtor unquestionably qualifies as debt collection, even if it occurs in the context of foreclosure proceedings, which is the case here. The appellant's allege that appellees, original plaintiff, and Carrington repeatedly attempted to induce him to pay amounts owed on the alleged mortgage was debt collection even though it occurred in the context of foreclosure proceedings. The Appellees and the parties requested to be enjoined into this case have done more that try to enforce an alleged security interest with a foreclosure proceeding as they have also attempted to collect the alleged debt either directly or indirectly during foreclosure proceedings which constitute debt collection under the entire FDCPA. When doing both Appellant has specified and produced sufficient facts, affidavits and evidence on the record of which the FDCPA supports proves all parties referenced in this matter to be parties to appellants countersuit/counterclaim even the parties requested to be enjoined are debt collectors

under the FDCPA definitions (see... R. pp. 541-549 appellant's motion for reconsideration filed on 5-20-2020).

Wilmington is acting as a trustee's collecting (directly or indirectly) debts on behalf of bond/share/certificate holders who invested into a mortgage backed security (MBS) trust which qualifies as collecting on behalf of another because once the servicer collects (the indirect party) payment from a borrower and pays the trustee, the trustee does not keep the money received from an alleged servicer, the trustee has to pass that payment through to the bond/share/certificate holders who invested into the MBS, the trust (see...Appellants motion to reconsider filed on 5-20-2020 R. pp. 545 paragraph 4). This also qualifies the plaintiff and all parties requested to be enjoined as debt collectors under the "regularly collects" definition and the "principle purpose" definition of the FDCPA even while in foreclosure, even if its principal purpose is the enforcement of security interests as stated in the CFPB's brief in **Birster v. American Home Mortgage Services, Inc. on or about December 21, 2011, Case No. 11-13574-G** and as decided in **Mary Barbato v. Crown Asset Management LLC, et al., No. 18-1042 (3d Cir. Feb. 22, 2019)** which significantly limited the Supreme Court's decision in Henson to the interpretation of the "regularly collects" definition of a "debt collector" in the FDCPA.

CONCLUSION

The Court should reverse the Common Pleas Court orders (see...4-22-2020 and 7-8-2020 R. pp. 8-21 and R. pp. 22-23) and hold that an entity, such as the Appellees, the Original Plaintiff and all parties requested to be enjoined satisfies the FDCPA's general definition of "debt collector" qualifies as a "debt collector" for purposes of the entire Act, even if its principal purpose is enforcing security interests and even if it attempted to enforce a security interest in the particular case. The Court should also hold that, at a minimum, the Appellees, the Original Plaintiff and all parties requested to be enjoined engaged in activity related to debt collection insofar as it attempted to obtain payment of money from the Appellant's/Defendants, even if it also took steps to enforce a security interest at the same time. This Court should reverse the

Common Pleas Court orders (see… 4-22-2020 and 7-8-2020 R. pp. 8-21 and R. pp. 22-23), referring the case to the Master in Equity, dismissing the TILA, Conspiracy, Libel & Slander, and Constructive Fraud Claims, direct the Common Pleas Court to allow the appellant leave of court to amend his complaint to correct and repair any deficiencies and to add any new claims he has reserved his rights to that have commenced during the 2-3 years the case has been pending in the Common Pleas Court. This Court should reverse the Common Pleas Court orders (see… 4-22-2020 and 7-8-2020 court orders R. pp. 8-21 and R. pp. 22-23) denying appellant's motions for failure to pay filing fee, to acknowledge that appellant has filed affidavits of fee waivers on the record documenting he is indigent, appellant has filed forms for the court to collect any alleged fees and direct the court to move forward with appellant's motions. To direct the court to enjoin the parties requested by appellant to be enjoined, to properly apply and follow their rule own civil rules without any further bias and prejudicial acts, to re-docket the case as a jury trial at the very least for appellants counterclaim/countersuit. **Done this 31st day of December, 2021.**

RESPECTFULLY PRESENTED,

"Without Prejudice"

Nelson L. Bruce

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