

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Master-in-Equity

The Honorable Charles B. Simmons, Jr.

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Case No. 2011-CP-23-5912

Court of Appeals Tracking No. 2012-213310

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Bank of America, N.A., successor by merger to BAC  
Home Loans Servicing, LP FKA Countrywide Home  
Loans Servicing, LP, .....

Appellant,

v.

Charles M. Thompson, Mortgage Electronic  
Registration Systems, Inc., as nominee for E-Loan,  
Inc., Mortgage Electronic Registration Systems, Inc. as  
nominee for MidCountry Bank, Bridges Crossing  
Property Owners' Association, Inc., and SC Telco  
Federal Credit Union, and Oriole Properties, Inc.,  
of whom Oriole Properties is, .....

Respondent.

**RECEIVED**

MAY 28 2013

**SC Court of Appeals**

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Case No. 2011-CP-23-3368

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U.S. Bank, National Association, .....

Respondent,

v.

Charles M. Thompson, E-Loan, Inc. and SC Telco  
Federal Credit Union,  
of whom Bank of America, N.A. as successor in  
interest to E-Loan, Inc. is, .....

Appellant.

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**Return to Motion to Withdraw as Counsel**

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Pursuant to this Court's letter dated May 17, 2013, Appellant Bank of America,  
N.A., successor by merger to BAC Home Loans Servicing, LP FKA Countrywide

Home Loans Servicing, LP (“Bank of America”), files this Return to the Motion to Withdraw filed by Joseph T. Merli, Esquire. Bank of America does not object to this Court allowing Mr. Merli to withdraw as counsel of record for U.S. Bank provided this Court precludes U.S. Bank, or its new counsel, from filing U.S. Bank’s requested “motion to submit a brief out of time, and take any other action necessary to protect the interests of U.S. Bank, N.A.” This withdrawal of counsel should not be allowed to prejudice Bank of America at this stage of the appeal. Both Mr. Merli and the Finkel Law Firm, LLC had ample time to prepare for Mr. Merli’s retirement and protect the interests of U.S. Bank in this appeal. However, they failed to do so. This Court should not permit them to use this withdrawal to belatedly seek approval to re-engage this appeal.

Bank of America served its Initial Appellant’s Brief and Designation of Matters on Mr. Merli and the Finkel Law Firm, LLC on November 2, 2012. See Certificate of Service of Initial Appellant’s Brief attached hereto as Exhibit A. On November 28, 2012, Mr. Merli and the Finkel Law Firm, LLC filed and served a Motion for an Extension of Time to file U.S. Bank’s Initial Respondent’s Brief.<sup>1</sup> See Motion dated November 28, 2012, attached hereto as Exhibit B. The ground for that Motion was to allow new counsel for U.S. Bank time to review the file and draft the Initial Respondent’s Brief of U.S. Bank.<sup>2</sup> Id. Mr. Merli and the Finkel Law Firm did not file a substitution of counsel. No other counsel has appeared for U.S. Bank in this appeal.

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<sup>1</sup> The motion was silent on the amount of time U.S. Bank sought as an extension. Using the customary 30 days, U.S. Bank’s brief would have been due on December 27, 2012.

<sup>2</sup> To date, Mr. Cisa has not filed any appearance in this action due to what, counsel for Bank of America, has been informed is a conflict between Mr. Cisa and U.S. Bank.

On February 1, 2013, this Court sent Mr. Merli a letter at his Finkel Law Firm address stating that counsel had to file the required motion fee for the Motion within ten days of the date of that letter. See Letter to Merli attached hereto as Exhibit C. Counsel for Bank of America is unsure if Mr. Merli or the Finkel Law Firm complied with the Court's request. What is known is that U.S. Bank ultimately failed to file an Initial Respondent's Brief in this matter. Moreover, Mr. Merli and the Finkel Law Firm have been copied on numerous filings in this Court made by Bank of America and Respondent Oriole Properties. See Substitution of Counsel for Bank of America filed January 15, 2013, Bank of America's motions for extensions of time filed throughout this appeal, Motion for Extension filed by Respondent Oriole Properties, etc. Despite being served with these filings, Mr. Merli and the Finkel Law Firm took no action in this appeal in regards to filing of an Initial Brief or Substitution of Counsel.

Now, U.S. Bank seeks to use this Motion to Withdraw as a vehicle to remedy its inaction throughout this appeal and file a motion to submit its Respondent's Brief out of time or any such related motions. See Motion p. 2, final sentence. Bank of America objects to this request. Mr. Merli and the Finkel Law Firm had ample time to remedy this situation and/or file any needed substitution of counsel, but they failed to do so. To allow U.S. Bank to file any Initial Respondent's Brief at this time would prejudice Bank of America. Bank of America would have to incur significant costs to draft a reply to a brief that is now **152 days delinquent**. This Court should not allow U.S. Bank to avoid the temporal filing requirements imposed by the Appellate Court Rules. Therefore, Mr. Merli's withdrawal should be conditioned on an order from this

Court directing that U.S. Bank cannot file any briefing in this matter. Otherwise, this Court should deny the Motion to Withdraw.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Michael J. Anzelmo

SC Bar No. 72933

E-Mail: michael.anzelmo@nelsonmullins.com

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Post Office Box 11070 (29211-1070)

Columbia, South Carolina 29201

803.799.2000

Attorneys for Bank of America

May 28, 2013

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Charles B. Simmons, Circuit Court Judge

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Appellate Case No. 2012-213310  
Trial Court Case No. 2011-CP-23-05912, 2011-CP-23-03668

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Bank of America, N.A. successor by merger to BAC  
Home Loans Servicing, LP FKA Countrywide Home  
Loans Servicing, LP, ..... Appellant.

v.

Charles M. Thompson, Mortgage Electronic  
Registration Systems, Inc., as nominee for E-Loan,  
Inc., Mortgage Electronic Registration Systems, Inc., as  
nominee for MidCountry Bank, Bridges Crossing  
Property Owners' Association, Inc., and SC Telco  
Federal Credit Union, and Oriole Properties, Inc.,,  
Defendants,

Of Whom Oriole Properties, LLC is the Respondent.

U.S. Bank, National Association ..... Respondent,

v.

Charles M. Thompson, E-Loan, Inc., and SC Telco  
Federal Credit Union, ..... Defendants.

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PROOF OF SERVICE

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I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Bank of America, N.A., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Return to Motion to Withdraw as Counsel

Counsel Served:

Paul E. Hammack  
Andrew F. Carson  
Clawson and Staubes, LLC  
223 W. Stone Avenue, Suite 100  
Greenville, SC 29609

Frank M. Cisa  
Cisa & Dobbs, LLP  
858 Lowcountry Blvd., Ste. 101  
Mt. Pleasant, SC 29464

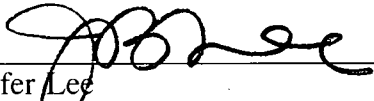
Joseph T. Merli  
2076 Church Creek Drive  
Charleston, SC 29414

Joseph T. Merli  
Finkel Law Firm, LLC  
4000 Faber Place Drive, Suite 450  
North Charleston, SC 29405

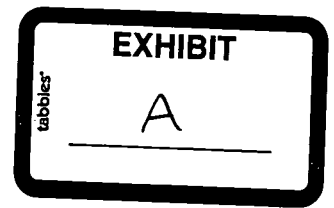
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**SC Court of Appeals**

  
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Jennifer Lee  
Administrative Assistant

May 28, 2013



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Charles B. Simmons, Master-in-Equity

Case No. 2011-CP-23-5912

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SC Court of Appeals

Bank of America, N.A., successor by merger to BAC Home Loans Servicing,  
LP FKA Countrywide Home Loans Servicing, LP,

Appellant,

v.

Charles M. Thompson, Mortgage Electronic Registration Systems, Inc., as  
nominee for E-Loan, Inc., Mortgage Electronic Registration Systems, Inc., as  
nominee for MidCountry Bank, Bridges Crossing Property Owners' Association,  
Inc., and SC Telco Federal Credit Union, and Oriole Properties, Inc.,  
of whom Oriole Properties, LLC is

Respondent.

Case No. 2011-CP-23-3668

U.S. Bank, National Association,

Respondent,

v.

Charles M. Thompson, E-Loan, Inc., and SC Telco Federal Credit Union,  
of whom Bank of America, N.A. as successor in interest to E-Loan, Inc., is

Appellant.

PROOF OF SERVICE

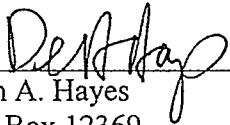
The undersigned attorney for the Appellant, Bank of America, N.A., as successor by  
merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP, and  
as successor to E-Loan, Inc., certifies that the Initial Brief of Appellant and Appellant's

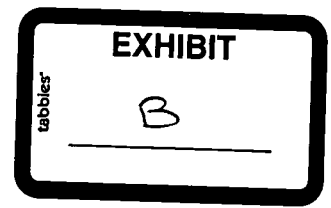
Designation of Matter to be Included in the Record on Appeal, was served on Respondents by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Joseph T. Merli, Esq.  
FINKEL LAW FIRM, LLC  
4000 Faber Place Drive, Suite 450  
North Charleston, SC 29405  
ATTORNEY FOR RESPONDENT U.S. BANK, N.A.

Paul E. Hammack, Esq.  
CLAWSON AND STAUBES, LLC  
223 W. Stone Avenue, Suite 100  
Greenville, South Carolina 29609  
ATTORNEY FOR RESPONDENT ORIOLE PROPERTIES, LLC

this 2nd day of November, 2012

  
\_\_\_\_\_  
Dean A. Hayes  
P.O. Box 12369  
Columbia, SC 29211-2369  
(803) 252-5817  
Attorney for Appellant



THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Charles B. Simmons, Master-in-Equity

Case No. 2011-CP-23-5912

Bank of America, N.A., successor by merger to BAC Home Loans Servicing,  
LP FKA Countrywide Home Loans Servicing, LP,

Appellant,

v.

Charles M. Thompson, Mortgage Electronic Registration Systems, Inc., as  
Nominee for E-Loan, Inc., Mortgage Electronic Registration Systems, Inc., as  
Nominee for MidCountry Bank, Bridges Crossing Property Owners' Association,  
Inc., and SC Telco Federal Credit Union, and Oriole Properties, Inc.,  
of whom Oriole Properties, LLC is

Respondent,

Case No. 2011-CP-23-3668

U.S. Bank, National Association,

Respondent,

v.

Charles M. Thompson, E-Loan, Inc., and SC Telco Federal Credit Union,  
of whom Bank of America, N.A., as successor in interest to E-Loan, Inc., is

Appellant,

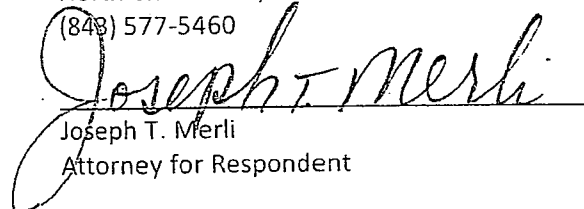
MOTION FOR EXTENSION OF TIME

Respondent, U.S. Bank, National Association, herein "Respondent", moves for an extension of time for filing the Initial Brief of Respondent on the following grounds:

1. On or about August 29, 2012 Respondent was advised by the undersigned that The Finkel Law Firm LLC was unable to continue to represent Respondent in the instant actions due to a conflict of interest arising out of the fact that an actual dispute concerning priority of liens had arisen.
2. On November 2, 2012 the Initial Brief of Appellant was served upon the undersigned attorney of record for Respondent by depositing in the U.S. mail.
3. On November 9, 2012 Respondent advised the undersigned that Attorney Frank Cisa of the law firm Cisa and Dodds, LLP was approved to represent the Respondent in the instant appeal.
4. Since November 12, 2012 Mr. Cisa has been communicating with Respondent to obtain necessary information to enable Mr. Cisa to make a formal appearance as the Respondent's new counsel of record, e.g. conflict waiver letter, engagement agreement, etc.
5. In order to enable Mr. Cisa to effect the substitution of counsel, review the file and prepare the Initial Brief of Respondent, an extension of time is requested.
6. Counsel for Appellant has consented to this motion.

WHEREFORE, Respondent prays for an extension of time, pursuant to Rule 263(b), SCACR, to accommodate the filing of the Initial Brief of Respondent.

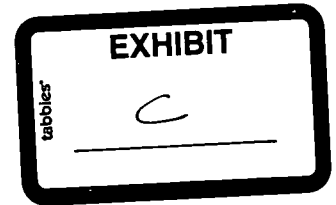
FINKEL LAW FIRM LLC  
P.O. Box 71727  
North Charleston, SC 29415  
(843) 577-5460

  
Joseph T. Merli  
Attorney for Respondent

November 28, 2012



5100102170



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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February 1, 2013

Mr. Joseph T. Merli  
PO Box 71727  
N. Charleston SC 29415

Re: Bank of America v. Charles Thompson  
Appellate Case No. 2012-213310

Dear Counsel:

Upon reviewing your motion for extension on behalf of the respondent, US Bank, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The required filing fee has not been submitted. The correct filing fee is \$25.00.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Dean Anthony Hayes  
Paul E. Hammack