

100428

RECEIVED

NOV 29 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Circuit Court Case No. 2022-CP-42-04957
Appellate Case No. 2023-001180

Bank of the West.....Respondent,

v.

Tammy Michele EpleyAppellant.

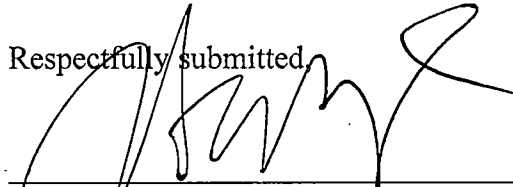
**RESPONDENT’S MOTION TO DISMISS, OR ALTERNATIVELY,
TO REQUIRE APPELLANT TO PROCEED WITH FILING HER INITIAL BRIEF**

Bank of the West, now known as BMO Harris Bank N.A. (the “Respondent”), hereby moves the Court, pursuant to Rule 240, SCACR, for an Order either (1) dismissing the appeal or, alternatively (2) ordering Tammy Michele Epley (the “Appellant”) to file her initial brief within thirty (30) days.

This Motion is supported by email correspondence from the court reporter, a copy of which is attached hereto as **Exhibit A**, and the Memorandum in Support of Respondent’s Motion filed simultaneously herewith.

[signature on following page]

Respectfully submitted,



Robert C. Byrd, SC Bar No. 1069
Parker Poe Adams & Bernstein LLP
850 Morrison Drive, Suite 400
Charleston, SC 29403
Telephone: (843) 727-2650
Facsimile: (843) 727-2680
bobbybyrd@parkerpoe.com

Phillip M. Fajgenbaum, SC Bar No.105588
Parker Poe Adams & Bernstein LLP
620 South Tryon Street, Suite 800
Charlotte, North Carolina 28202
Telephone: (704) 372-9000
Facsimile: (704) 334-4706
phillipfajgenbaum@parkerpoe.com

Attorneys for Respondent
Bank of the West, now known as BMO Harris
Bank N.A.

November 28, 2023

Hewitt, Michelle

From: Kevin Dehlinger <kdehlinger@LegalEagleInc.com>
Sent: Tuesday, November 14, 2023 3:21 PM
To: Hewitt, Michelle
Cc: Transcripts
Subject: FW: Bank of the West v Epley Transcript

Caution: External email

Michelle,

Please see below. We never received a confirmation or a deposit from Mr. Epley in order to proceed with the transcript. If you would like to order this transcript, we would be happy to put it in production. We do not require deposits for those who are members of the Bar. Thank you.



Kevin Dehlinger
Director of Operations

M (864) 444-4219 | P (864) 467-1373
E kdehlinger@legaleagleinc.com

107 LeGrand Blvd., Greenville, SC 29607
www.LegalEagleInc.com



5 REASONS
TO HIRE A
LITIGATION SERVICES
PROVIDER

Legal Eagle
READ MORE

The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of this message with any third party, without a written consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure such a mistake does not occur in the future.

From: Kevin Dehlinger
Sent: Wednesday, November 1, 2023 10:25 AM
To: jamesepley@gmail.com
Cc: Transcripts <transcripts@sccourts.org>
Subject: RE: Bank of the West v Epley Transcript

James,

We have not received a response or payment of the deposit for this transcript. Please respond by the end of the day tomorrow or we will have to move to the next transcript in line. Thank you.



Kevin Dehlinger
Director of Operations

M (864) 444-4219 | P (864) 467-1373
E kdehlinger@legaleagleinc.com

107 LeGrand Blvd., Greenville, SC 29607
www.LegalEagleInc.com



**5 REASONS
TO HIRE A
LITIGATION SERVICES
PROVIDER**

READ MORE

The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of this message with any third party, without a written consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure such a mistake does not occur in the future.

From: Kevin Dehlinger
Sent: Wednesday, October 25, 2023 12:57 PM
To: jamesepley@gmail.com
Cc: Transcripts <transcripts@sccourts.org>
Subject: Bank of the West v Epley Transcript

James,

Today, Legal Eagle has been assigned your transcript request in the above referenced matter. In order to complete your order, a 50% deposit is necessary. Based upon our review of the records, it appears this transcript will be approximately 20 pages long. As such, the 50% deposit amount is \$60.00 (10 pages x \$6.00 per page) for this overnight transcript to be delivered as a PDF to your email.

The deposit invoice is attached to this email. Please reference the invoice number in your payment. A final invoice will be sent once the transcript is completed. Payment of the deposit can be made by mailing a check made out to **Legal Eagle** at the address below:

Legal Eagle, PO Box 5682, Greenville, SC 29606

You may also go to our website and make payment through our portal. Please be sure to reference the invoice number. The web address is below:

<https://app.gotnpgateway.com/checkout/22b467cb-00ea-4e9f-953a-641e3c4b8889>

Please include any attorneys who were present at the hearing and who they represented with your confirmation.

Once the deposit is received by Legal Eagle, we will place your transcript inline for production. The due date will be the next day from the date the deposit was received if received before 12:00 pm. If you have any questions, please let us know.

Thank you,



Kevin Dehlinger
Director of Operations

M (864) 444-4219 | P (864) 467-1373
E kdehlinger@legaleagleinc.com

107 LeGrand Blvd., Greenville, SC 29607
www.LegalEagleInc.com



**5 REASONS
TO HIRE A
LITIGATION SERVICES
PROVIDER**

Legal Eagle
READ MORE

The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of this message with any third party, without a written consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure such a mistake does not occur in the future.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by Mimecast, a leader in email security and cyber resilience. Mimecast integrates email defenses with brand protection, security awareness training, web security, compliance and other essential capabilities. Mimecast helps protect large and small organizations from malicious activity, human error and technology failure; and to lead the movement toward building a more resilient world. To find out more, visit our website.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Circuit Court Case No. 2022-CP-42-04957
Appellate Case No. 2023-001180

RECEIVED

NOV 29 2023

SC Court of Appeals

Bank of the West.....Respondent,

v.

Tammy Michele EpleyAppellant.

**MEMORANDUM IN SUPPORT OF RESPONDENT’S MOTION TO DISMISS, OR
ALTERNATIVELY, TO REQUIRE APPELLANT TO PROCEED WITH FILING HER
INITIAL BRIEF**

The Respondent, Bank of the West, now known as BMO Harris Bank N.A. (the “Respondent”), respectfully submits this Memorandum in support of its Motion to Dismiss, or Alternatively, to Require Appellant to Proceed with Filing of Her Initial Brief, in accordance with Rule 204(c), SCACR.

The Appellant was previously instructed by the Court to file a motion requesting permission to order the transcript outside of the deadlines set forth in Rule 207, SCACR. The Appellant filed the requested motion and also filed with the Court a completed Transcript Request Form on August 31, 2023. However, the Appellant subsequently failed to follow through with making arrangements with the court reporter to prepare a transcript and, more importantly, failed

to notify the Respondent of her subsequent communications with the court reporter, as required by Rule 207(a)(1).

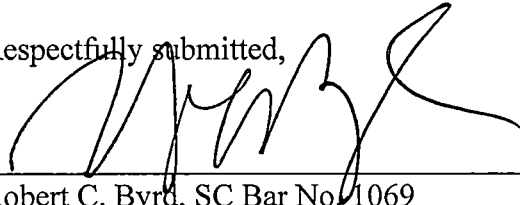
The undersigned's paralegal received an email from Kevin Dehlinger, the Director of Operations with Legal Eagle, in response to an inquiry about the status of the hearing transcript supposedly ordered back on August 31. A copy of the email is attached hereto as Exhibit A and incorporated herein by reference.

As Mr. Dehlinger explains, he informed the Appellant on October 25 that a \$60 deposit would be required from the Appellant in order to prepare the transcript. Not having received any response from the Appellant, Mr. Dehlinger subsequently sent her a follow-up email on November 1 informing the Appellant that unless she responded, the court reporter would "move to the next transcript in line." According to Mr. Dehlinger, they never received either the deposit or the confirmation requested from the Appellant. Moreover, as stated above, the Appellant never forwarded to the Respondent the correspondence she received from the court reporter, as required by Rule 207.

The Appellant's actions to date have evidenced a clear disregard of the Rules of Appellate Procedure and an intention not to prosecute this appeal according to those Rules. Accordingly, the Respondent believes it is entitled to either: (1) an Order dismissing the appeal for the Appellant's failure and/or refusal to comply with the Rules of this Court or, in the alternative, (2) an Order requiring the Appellant to file her initial brief within thirty (30) days.

[signature on following page]

Respectfully submitted,



Robert C. Byrd, SC Bar No. 1069
Parker Poe Adams & Bernstein LLP
850 Morrison Drive, Suite 400
Charleston, SC 29403
Telephone: (843) 727-2650
Facsimile: (843) 727-2680
bobbybyrd@parkerpoe.com

Phillip M. Fajgenbaum, SC Bar No. 105588
Parker Poe Adams & Bernstein LLP
620 South Tryon Street, Suite 800
Charlotte, North Carolina 28202
Telephone: (704) 372-9000
Facsimile: (704) 334-4706
phillipfajgenbaum@parkerpoe.com

Attorneys for Respondent
Bank of the West, now known as BMO Harris
Bank N.A.

November 28, 2023

Hewitt, Michelle

From: Kevin Dehlinger <kdehlinger@LegalEagleInc.com>
Sent: Tuesday, November 14, 2023 3:21 PM
To: Hewitt, Michelle
Cc: Transcripts
Subject: FW: Bank of the West v Epley Transcript

Caution: External email

Michelle,

Please see below. We never received a confirmation or a deposit from Mr. Epley in order to proceed with the transcript. If you would like to order this transcript, we would be happy to put it in production. We do not require deposits for those who are members of the Bar. Thank you.



Kevin Dehlinger
Director of Operations

M (864) 444-4219 | P (864) 467-1373
E kdehlinger@legaleagleinc.com

107 LeGrand Blvd., Greenville, SC 29607
www.LegalEagleInc.com



The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of this message with any third party, without a written consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure such a mistake does not occur in the future.

From: Kevin Dehlinger
Sent: Wednesday, November 1, 2023 10:25 AM
To: jamesepley@gmail.com
Cc: Transcripts <transcripts@sccourts.org>
Subject: RE: Bank of the West v Epley Transcript

James,

We have not received a response or payment of the deposit for this transcript. Please respond by the end of the day tomorrow or we will have to move to the next transcript in line. Thank you.



Kevin Dehlinger
Director of Operations

M (864) 444-4219 | P (864) 467-1373
E kdehlinger@legaleagleinc.com

107 LeGrand Blvd., Greenville, SC 29607
www.LegalEagleInc.com



**5 REASONS
TO HIRE A
LITIGATION SERVICES
PROVIDER**

READ MORE

The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of this message with any third party, without a written consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure such a mistake does not occur in the future.

From: Kevin Dehlinger
Sent: Wednesday, October 25, 2023 12:57 PM
To: jamesepley@gmail.com
Cc: Transcripts <transcripts@sccourts.org>
Subject: Bank of the West v Epley Transcript

James,

Today, Legal Eagle has been assigned your transcript request in the above referenced matter. In order to complete your order, a 50% deposit is necessary. Based upon our review of the records, it appears this transcript will be approximately 20 pages long. As such, the 50% deposit amount is \$60.00 (10 pages x \$6.00 per page) for this overnight transcript to be delivered as a PDF to your email.

The deposit invoice is attached to this email. Please reference the invoice number in your payment. A final invoice will be sent once the transcript is completed. Payment of the deposit can be made by mailing a check made out to **Legal Eagle** at the address below:

Legal Eagle, PO Box 5682, Greenville, SC 29606

You may also go to our website and make payment through our portal. Please be sure to reference the invoice number. The web address is below:

<https://app.gotnpgateway.com/checkout/22b467cb-00ea-4e9f-953a-641e3c4b8889>

Please include any attorneys who were present at the hearing and who they represented with your confirmation.

Once the deposit is received by Legal Eagle, we will place your transcript inline for production. The due date will be the next day from the date the deposit was received if received before 12:00 pm. If you have any questions, please let us know.

Thank you,



Kevin Dehlinger
Director of Operations

M (864) 444-4219 | P (864) 467-1373
E kdehlinger@legaleagleinc.com

107 LeGrand Blvd., Greenville, SC 29607
www.LegalEagleInc.com



**5 REASONS
TO HIRE A
LITIGATION SERVICES
PROVIDER**

Legal Eagle
READ MORE

The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of this message with any third party, without a written consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure such a mistake does not occur in the future.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by Mimecast, a leader in email security and cyber resilience. Mimecast integrates email defenses with brand protection, security awareness training, web security, compliance and other essential capabilities. Mimecast helps protect large and small organizations from malicious activity, human error and technology failure; and to lead the movement toward building a more resilient world. To find out more, visit our website.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Trial Court Case No. 2022-CP-42-04957
Appellate Case No. 2023-001180

RECEIVED

NOV 29 2023

SC Court of Appeals

Bank of the West.....Respondent,

v.

Tammy Michele EpleyAppellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 28, 2023, he has caused a copy of the **MEMORANDUM IN SUPPORT OF RESPONDENT’S MOTION TO DISMISS, OR ALTERNATIVELY, TO REQUIRE APPELLANT TO PROCEED WITH FILING HER INITIAL BRIEF** to be served upon the Appellant by placing a copy in the U.S. Mail, first class, postage prepaid, and addressed as follows:

Tammy Michele Epley
538 Abner Creek Road
Greer, SC 29651



Robert C. Byrd, SC Bar No. 1069
Parker Poe Adams & Bernstein LLP
850 Morrison Drive, Suite 400
Charleston, SC 29403
Telephone: (843) 727-2650
Facsimile: (843) 727-2680
bobbybyrd@parkerpoe.com



Robert C. Byrd
Partner
t: 843.727.2665
f: 843.727.2680
bobbybyrd@parkerpoe.com

Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC
Washington, DC

November 28, 2023

VIA FEDERAL EXPRESS

The Honorable Jenny A. Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
NOV 29 2023
SC Court of Appeals

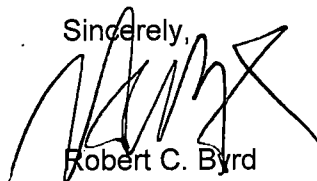
RE: **Bank of the West v. Tammy Michele Epley**
Appellate Case No. 2023-001180

Dear Ms. Kitchings:

Enclosed for filing, please find an **original** and six (6) copies each of Respondent's Motion to Dismiss, or Alternatively, to Require Appellant to Proceed with Filing Her Initial Brief and Memorandum in Support thereof along with proofs of service in the above-referenced appeal. Also enclosed is this firm's check no. 509800 in the amount of \$50.00 for the filing fee. Please return a filed-stamped copy of each to me by means of the pre-paid, Federal Express envelope which is enclosed.

By copy of this letter, I am serving the Appellant with copies of the Motion and Memorandum in Support thereof. Should you have any questions regarding this matter, please do not hesitate to contact me.

With kindest regards, I am

Sincerely,

Robert C. Byrd

RCB/mrh

Enclosures

cc w/enc.: Tammy Michele Epley

PPAB 10186749v1

ORIGIN ID:RBWA (843) 727-2652
MICHELLE HEWITT
PARKER POE ADAMS & BERNSTEIN LLP
850 MORRISON DRIVE
SUITE 400
CHARLESTON, SC 29403
UNITED STATES US

SHIP DATE: 28NOV23
ACTWGT: 0.50 LB
CAD: 250406665/INET4660

BILL SENDER

TO THE HON. JENNY A. KITCHINGS, CLERK
SOUTH CAROLINA COURT OF APPEALS
1220 SENATE STREET

COLUMBIA SC 29201

(803) 734-1890

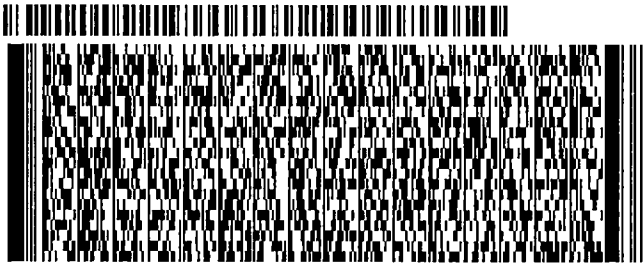
REF: 16051-00090

INV:

PO:

DEPT:

583J17D129AES



FedEx
Express



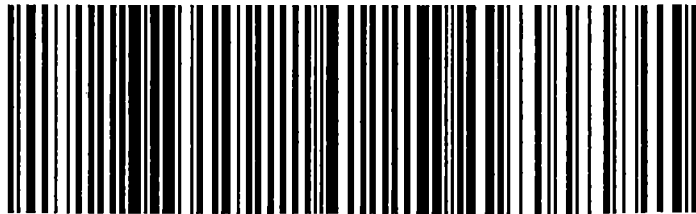
J24023101607uv

WED - 29 NOV 12:00P
PRIORITY OVERNIGHT

TRK# 7742 5774 3773
0201

28 USCA

29201
SC-US CAE



RECEIVED

NOV 29 2023

SC Court of Appeals

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number. Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.