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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No. 2023-000421

Southern First Bank, N.A. d/b/a Greenville First Bank,.....Appellant,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, United States of America, acting through its agency, Department of Treasury – Internal Revenue Service, Federal Housing Commissioner, The South Carolina Department of Revenue, Belfair Property Owners’ Association, Inc., and the Greenery, Inc. a South Carolina corporation,.....Respondents.

MOTION TO REQUIRE APPELLANT TO SERVE RECORD ON APPEAL THAT
CONTAINS ALL DESIGNATED MATTER OR DISMISS APPEAL

Respondents hereby move pursuant to Rules 210, 260(a), and 263(b), SCACR, as well as pursuant to all other applicable law, for an order that 1) directs the Appellant to serve and file a record on appeal that contains all the materials the parties designated for inclusion in the record on appeal and 2) directs the dismissal of this appeal if the Appellant does not meet this requirement. The grounds for this motion are as follows:

1. The Appellant has failed to serve the record on appeal in this case. The Appellant served and filed something that it *titled* “Record on Appeal,” but it is most definitely not the record on appeal in this case.
2. The record on appeal would contain all the designated matter.

3. Rule 210(c), SCACR, mandates that “[t]he Record on Appeal shall include all matter designated to be included by any party under Rule 209[.]”
4. The ostensible record on appeal served and filed by the Appellant does not contain all designated materials.
5. The email exchanges between Appellant’s and Respondents’ counsel submitted as exhibits to this motion are incorporated herein by reference. Respondents ask that the court read these exchanges.
6. Appellant’s counsel knew at the time that he served and filed the supposed record on appeal that it did not contain all the designated materials, as his own email acknowledged at the time.
7. I have been very patient, generous, and helpful toward Appellant’s counsel in this appeal. Respondents did not file a motion to strike Appellant’s designation and/or brief, even though Appellant’s designation contained materials that were blatantly outside the scope of what can be properly designated for inclusion in the record on appeal, since the Appellant designated documents for inclusion that, beyond any doubt, were never presented to the lower court in this case. Rule 210(c), SCACR. Without being asked, I provided Appellant’s counsel with a designated email exchange between the lower court and the parties’ counsel that I thought he might not already possess. When he asked me to provide specifics about designated documents that he could easily determine himself, I gave

him that information. When he strangely asked for copies of designated documents he could simply download from the electronic public index, I sent those to him.

8. When I communicated to Appellant's counsel that a number of designated materials were omitted from what he served and filed as the record on appeal, his response was to ask me to do work to fix that.
9. Appellant's counsel then filed a motion for extension in which he misleadingly characterized this situation as a "miscommunication" about "supplementation" of the record on appeal. Appellant's counsel knew very well that he had never actually served something that meets the requirements to be the record on appeal for this case. The "supplementation" Appellant's motion referenced would be to include designated material Appellant's counsel knew was not in what he served and filed.
10. Until a record on appeal that actually meets the requirements of the rules is served, Respondents cannot submit their final brief. They cannot change the references in their brief to designated but unincluded materials into citations to pages in a record on appeal that does not include those materials.
11. The Appellant's failure to fulfill this simple requirement has not only made a mess of its side of this appeal, it has made it impossible for the Respondents to meet their next obligations in the appeal process.

12. Perhaps this court has continued patience with the Appellant. I do not. No good reason exists for why Appellant has yet to serve a record on appeal that simply contains all the designated materials. Apparently, Appellant's counsel had intended to take no action as a result of his knowledge that he had served and filed a purported record on appeal that did not contain all the designated materials.
13. Rule 260(a), SCACR, provides that "[w]henver it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court." Appellant has failed to comply with the South Carolina Appellate Court Rules. This fact appears from the record of filings in this appeal, as it is revealed by comparison of the filed designations and the ostensible record on appeal the Appellant filed.
14. This court has the authority to dismiss this appeal right now. Id. It is more than fair to Appellant that Appellant be given a final opportunity to serve and file a record on appeal that contains all designated matter and meets the requirements of Rule 210, SCACR, and, if Appellant still does not do so, that its appeal be dismissed.

WHEREFORE Respondents pray for an order that 1) directs the Appellant to serve and file a record on appeal that contains all the materials the parties designated for inclusion in the record on appeal and 2) directs the dismissal of this appeal if the Appellant does not meet this requirement.

Respectfully submitted,

/s/ Andrew S. Radeker

Andrew S. Radeker

S.C. Bar No. 73743

Radeker Law, P.A.

Post Office Box 6903

Columbia, South Carolina 29260

(803) 500-0891

drew@radekerlaw.com

Attorney for Respondents

Kenneth J. Vilcheck and

Renee M. Vilcheck

March 1, 2024

Drew Radeker

From: Josh Smith <jsmith@smithhudsonlaw.com>
Sent: Wednesday, February 21, 2024 1:41 PM
To: Drew Radeker
Cc: Aaron Angell; Rhonda Schaub
Subject: RE: So. First v. Vilcheck

Drew,

Located this email. It had hit my spam filter for some reason. Maybe due to the change of email address but who knows.

Thanks,



Josh Smith
Attorney | Smith Hudson Law, LLC
200 North Main Street, Suite 301-C
Greenville, South Carolina 29601
jsmith@smithhudsonlaw.com | www.smithhudsonlaw.com
MAIN: 864-908-3912 | DIRECT: 864-908-3913

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From: Drew Radeker <Drew@radekerlaw.com>
Sent: Monday, February 5, 2024 7:18 AM
To: Josh Smith <jsmith@smithhudsonlaw.com>
Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>
Subject: RE: So. First v. Vilcheck

You don't often get email from drew@radekerlaw.com. [Learn why this is important](#)

[EXTERNAL]

Josh, sorry about not getting these to you on Friday. Please note my changed email address. I doubt any other supplementation of the ROA needs to be made, but I will review it and will speak up if I do see anything else.

Thank you.

Drew Radeker

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Post Office Box 6903, Columbia, SC 29260 • (803) 500-0891
www.radekerlaw.com • drew@radekerlaw.com

From: Josh Smith <jsmith@smithhudsonlaw.com>
Sent: Friday, February 2, 2024 4:02 PM
To: Drew Radeker <Drew@harrisonfirm.com>

Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>

Subject: RE: So. First v. Vilcheck

Drew,

We can supplement the ROA as needed to include these items. It is due today so I am going to file the ROA as it is now and, again, we can supplement to the extent it does not contain anything you designated and want to be included.

Thanks,



Josh Smith

Attorney | Smith Hudson Law, LLC
200 North Main Street, Suite 301-C
Greenville, South Carolina 29601

jsmith@smithhudsonlaw.com | www.smithhudsonlaw.com

MAIN: 864-908-3912 | DIRECT: 864-908-3913

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From: Josh Smith

Sent: Friday, February 2, 2024 2:22 PM

To: Drew Radeker <Drew@harrisonfirm.com>

Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>

Subject: RE: So. First v. Vilcheck

Drew,

Can you please email the items listed in your email and below to me. I've discovered you cannot pull filings online from Beaufort County because they do not have anything available on the electronic public index.

1. Memo in Opposition to Motion to Reconsider filed 02.15.23
2. Summons and Complaint filed 2012

Thanks,



Josh Smith

Attorney | Smith Hudson Law, LLC
200 North Main Street, Suite 301-C
Greenville, South Carolina 29601

jsmith@smithhudsonlaw.com | www.smithhudsonlaw.com

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From: Drew Radeker <Drew@harrisonfirm.com>

Sent: Wednesday, December 27, 2023 2:21 PM

To: Josh Smith <jsmith@smithhudsonlaw.com>

Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>

Subject: RE: So. First v. Vilcheck

[EXTERNAL]

Josh:

As you seem to have picked up, the last item in the designation is there to catch anything I referenced but inadvertently didn't designate. Nobody's asking you to come through our brief looking for such things. It just lets me say that I did designate an item if I actually left something off, which I don't think I did.

The affidavits of service from 2013 are the ones filed on January 31, 2013 – the only affidavits of service from 2013.

The others you asked about are:

Proof of service filed November 16, 2022, on IRS;
Proof of service filed November 16, 2022, on Portfolio Recovery;
Acceptance of service by Longbridge filed December 1, 2022;
Secretary of State letter about service filed December 2, 2022;
Affidavit of service on SC Dept of Revenue filed December 8, 2022;
Answer and consent to reference by USA filed December 15, 2022;
Answer of SCDOR filed December 21, 2022;
The two federal housing certificates of service filed December 21, 2022;
Longbridge's motion to dismiss; and
Dept. of HUD answer filed January 20, 2023.

Thanks.

Drew Radeker



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From: Josh Smith <jsmith@smithhudsonlaw.com>

Sent: Wednesday, December 27, 2023 1:48 PM

To: Drew Radeker <Drew@harrisonfirm.com>

Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>

Subject: RE: So. First v. Vilcheck

Good afternoon Drew,

I've reviewed your DOM and have some questions/issues with it. I am almost always agreeable to including materials designated by the parties with little exception, however I need to ask that Respondents address and rectify the following as they are not compliant with SCACR 209, most notably subpart (a) which requires the DOM to "set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in

the record on appeal.” And subpart (b) which states in part that “The Designation must clearly identify what the party desires to have included in the Record on appeal....”

Appellant has an issue with the following items in Respondents’ DOM:

2 – saying “all documents showing proof of service on the added parties of the order joining parties and motion for judicial sale that accompanied it.”. Respondents need to specify what POS(s) at least by date and recipients and if you want the Motion for Judicial Sale to be included break it out as a separate item.

3 – saying “all documents filed by the added parties in this case (e.g. answers).” Respondents need to specify exactly what documents are being referenced in this item and break each out in a separate number.

9 – please specify the dates of the affidavits of service “from 2013” you want included.

10 – saying “Any other matter presented to the lower court which was cited in Respondents’ brief but inadvertently omitted from this designation.” First, without more specificity it is unsure what if anything is cited by not included within the Respondents’ DOM. Second, Appellant is not required to make sure it includes things that are omitted from the DOM. I will, of course, let you know if I notice a document cited in Respondents’ brief but not included in the DOM but Respondents cannot rely upon its opposition to make sure they do a complete DOM.

It is not the Appellant’s duty to interpret and track down every item that may be encompassed by the generally worded DOM items noted above. Please revise the Respondents’ DOM by COB tomorrow to comply with the Rules so we can know what Respondents want in the ROA, discuss any potentially objectionable items, and ultimately ensure everything you want (and that is appropriate) is included in the Record. Last thing I want is for us to have to deal with an issue or dispute about something that was intended to but was not included in the ROA. It’s a pain for everyone.

I am happy to discuss anything with you if you think it necessary or helpful.

Thanks,



Josh Smith

Attorney | Smith Hudson Law, LLC
200 North Main Street, Suite 301-C
Greenville, South Carolina 29601

jsmith@smithhudsonlaw.com | www.smithhudsonlaw.com

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From: Drew Radeker <Drew@harrisonfirm.com>

Sent: Sunday, December 17, 2023 10:29 AM

To: Josh Smith <jsmith@smithhudsonlaw.com>

Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>

Subject: So. First v. Vilcheck

[EXTERNAL]

Josh, I realized that you may not have the long string of emails I designed for inclusion on the record. They’re attached to this message.

Thanks.

Drew Radeker



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From: Josh Smith <jsmith@smithhudsonlaw.com>
Sent: Thursday, December 14, 2023 4:55 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>
Subject: RE: Motion for Extension of Reply Brief Deadline

Thanks Drew. Appreciate the quick response and consent.

Have a good evening as well,



Josh Smith
Attorney | Smith Hudson Law, LLC
200 North Main Street, Suite 301-C
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jsmith@smithhudsonlaw.com | www.smithhudsonlaw.com
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From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Thursday, December 14, 2023 4:52 PM
To: Josh Smith <jsmith@smithhudsonlaw.com>
Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>
Subject: RE: Motion for Extension of Reply Brief Deadline

[EXTERNAL]

Josh, we consent. Have a great evening.

Thanks.

Drew Radeker



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From: Josh Smith <jsmith@smithhudsonlaw.com>
Sent: Thursday, December 14, 2023 4:28 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Aaron Angell <aaron@angellmolony.com>
Subject: Motion for Extension of Reply Brief Deadline

Drew,

I plan to file a motion asking the Court for a brief five day extension of our deadline to file the Reply Brief. Would the Respondents consent to that motion/extension? Please let me know as soon as you can so I can make the appropriate representation in the motion that I plan to file in the morning.

Thanks,



Josh Smith
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Drew Radeker

From: Drew Radeker
Sent: Wednesday, February 21, 2024 3:24 PM
To: Josh Smith
Cc: Aaron Angell
Subject: Re: So. First v. Vilcheck

Josh, I have already told you the materials I designated that weren't included in the record on appeal you put together. I'm not doing it again. I'm not doing any more work to help you meet Southern First's obligations as the appellant.

Don't send me something to review so that I can help you do your job some more. Instead, serve a record on appeal that contains all the materials designated for inclusion in it. My patience is nearly at its end.

Thank you.

Drew Radeker

Sent from my iPhone - please excuse any typos

On Feb 21, 2024, at 2:47 PM, Josh Smith <jsmith@smithhudsonlaw.com> wrote:

Drew,

I think we're both clearly frustrated. I don't see any utility in arguing over any of this stuff and just want to get this sorted. To that end, I'll put together an email to you with a list of items I think you want added to the ROA. You can verify and/or edit as needed, and I can then update the Record and we all complete and file final briefs. I'll shoot that email to you as soon as I can.

Thanks,

<image001.jpg>

Josh Smith

Attorney | Smith Hudson Law, LLC
[200 North Main Street, Suite 301-C](#)
[Greenville, South Carolina 29601](#)

jsmith@smithhudsonlaw.com | www.smithhudsonlaw.com

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From: Drew Radeker <Drew@radekerlaw.com>
Sent: Wednesday, February 21, 2024 1:58 PM
To: Josh Smith <jsmith@smithhudsonlaw.com>
Cc: Aaron Angell <aaron@angellmolony.com>
Subject: RE: So. First v. Vilcheck

[EXTERNAL]

I consent to an extension of the final briefs deadline. Actually, what I think is needed is an extension of the deadline to serve the record on appeal, which was never actually done. I consent to an extension of the time to do that, too. You served and filed something, but it isn't the record on appeal, as that would contain all the designated materials.

I see from a later email that you found where I had sent you the materials you asked for.

I already sent you an email listing the things you wanted specifics on more specifically. The way I designated them was not wrong, but I told you which documents were filed and on which dates, so I don't know what else you think you need. I've attached the email string that contains all that specification.

I am sure my frustration is showing. Putting the record on appeal together is the appellant's responsibility. I've already gone well beyond anything that the rules require in helping you with this. Instead of thanking me, you're acting like I owe you something. I don't. I'm usually happy to help opposing counsel, but that happiness fades when my goodwill is met with opposing counsel's attempts to blame me for their failures.

Thank you.

Drew Radeker

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www.radekerlaw.com • drew@radekerlaw.com

From: Josh Smith <jsmith@smithhudsonlaw.com>

Sent: Wednesday, February 21, 2024 1:24 PM

To: Drew Radeker <Drew@radekerlaw.com>

Cc: Aaron Angell <aaron@angellmolony.com>

Subject: RE: So. First v. Vilcheck

Drew,

I'm going to have to file a motion for extension so we can get this sorted out and final briefs done. We clearly miscommunicated on the day I served the ROA. I took your email as saying you'd review the ROA and let me know if anything needed to be added, and having heard nothing until yesterday, thought we were good to go for final briefs tomorrow.

The issue with needing supplementation and knowing exactly what is missing is precisely why I asked you to amend your DOM the day it was served. Instead, you sent me an email with some more specifics but no new DOM. Now that you are saying supplementation of the ROA is necessary you're referring to the broad categories in the DOM. We need specifics. The Rule requires specifics. Please update your DOM to comply with the Rule by specifying exactly item by item what you want in the ROA. "All documents showing proof of service" or "all documents filed by the added parties (e.g. answers)..." is not adequate. Please send me an amended DOM listing, one by one, each document you want in the

ROA. That way we can be sure to include what you want. I don't want to go through round after round of supplementation because we don't have a specific list of documents.

As you know, there are two lower cases related to this appeal. The older one (2021CP0704253) does not have any of the filings available online in the public record. Therefore, to the extent your DOM has something from that earlier case, please provide it.

Please send me the amended DOM as soon as you can and by no later than COB Tuesday February 27th. Then we can hopefully get an amended ROA done next week before I have surgery on March 1st and will be out for at least a week or two.

Finally, I do not see an email from you in my inbox with the materials we requested when originally putting together the ROA. Could you please forward that email and/or those materials to me.

Always happy to talk anything over we need to.

Thanks,

<image001.jpg>

Josh Smith

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jsmith@smithhudsonlaw.com | www.smithhudsonlaw.com

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From: Drew Radeker <Drew@radekerlaw.com>

Sent: Tuesday, February 20, 2024 4:04 PM

To: Josh Smith <jsmith@smithhudsonlaw.com>

Cc: Aaron Angell <aaron@angellmolony.com>

Subject: Re: So. First v. Vilcheck

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[EXTERNAL]

Josh, every one of the missing documents is on the electronic public index. That's where I got them from. I already sent you what you had said you were missing (though that's not everything that's left out of the record).

Thank you.

Drew Radeker

Sent from my iPhone - please excuse any typos

On Feb 20, 2024, at 3:44 PM, Josh Smith <jsmith@smithhudsonlaw.com> wrote:

Drew,

I'm aware of all the Rules and how to do things on appeal, however, we don't need to fight about this at all. Please just send me whatever you want included in a supplemental record, I'll put it together, and we can move forward. As I said to you when we were working on it weeks ago, there are some materials we do not have, including the ones I requested from you. Unfortunately nothing is on the public record in Beaufort County. So, please send me whatever you want included today. I'll get an updated record done tomorrow as I plan to do my final briefs tomorrow as I have a mediation set for Thursday. If that's an issue for you please let me know and we can file something asking for a brief extension on final brief submissions.

Thanks,

<image001.jpg>

Josh Smith

Attorney | Smith Hudson Law, LLC
200 North Main Street, Suite 301-C
Greenville, South Carolina 29601

jsmith@smithhudsonlaw.com | www.smithhudsonlaw.com

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From: Drew Radeker <Drew@radekerlaw.com>

Sent: Tuesday, February 20, 2024 1:09 PM

To: Josh Smith <jsmith@smithhudsonlaw.com>

Cc: Aaron Angell <aaron@angellmolony.com>

Subject: RE: So. First v. Vilcheck

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[EXTERNAL]

Josh, you haven't included a number of items we designated in the record on appeal. Your emails from around when you served the record on appeal indicate that you were aware then that items were missing from the record on appeal.

Items 2, 3, 4, 7, 8, and 9 from our designation are absent from the record on appeal you submitted. (I still don't understand why you filed it already. At the time you serve it, you're supposed to file proof of service of it. You file the record when you file the final briefs. You serve it ahead of when you file it so that corrections can be made to it before filing.) The record on appeal is supposed to contain a certificate signed by appellant's counsel that states that all the designated materials have been included in the record on appeal. There is no such certificate here, with good reason: what you put together does not contain all the designated materials.

Please serve a corrected record on appeal that includes all designated materials and let me know when you plan to do so. If we haven't resolved this matter by Thursday morning, I will file a motion to deal with the same.

Thank you.

Drew Radeker
RADEKER LAW, P.A.

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www.radekerlaw.com • drew@radekerlaw.com

From: Josh Smith <jsmith@smithhudsonlaw.com>
Sent: Monday, February 19, 2024 4:08 PM
To: Drew Radeker <Drew@radekerlaw.com>
Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>
Subject: RE: So. First v. Vilcheck

Drew,

I took from your February 5th email that you were going to review and let me know if anything needed to be added to the ROA. I had not planned to supplement it barring hearing from you. Do you have anything you want to add? Yes, final briefs are due Thursday and if we need to supplement the ROA we need to move quickly.

Thanks,

<image001.jpg>

Josh Smith
Attorney | Smith Hudson Law, LLC
[200 North Main Street, Suite 301-C](https://www.smithhudsonlaw.com)
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From: Drew Radeker <Drew@radekerlaw.com>
Sent: Monday, February 19, 2024 3:54 PM
To: Josh Smith <jsmith@smithhudsonlaw.com>
Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>
Subject: RE: So. First v. Vilcheck

You don't often get email from drew@radekerlaw.com. [Learn why this is important](#)

[EXTERNAL]

Josh, checking on the timeline for the record on appeal supplementation. I think the final briefs are due Wednesday or something like that.

Thanks.

Drew Radeker
RADEKER LAW, P.A.

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Post Office Box 6903, Columbia, SC 29260 • (803) 500-0891
www.radekerlaw.com • drew@radekerlaw.com

From: Drew Radeker
Sent: Monday, February 5, 2024 7:18 AM
To: Josh Smith <jsmith@smithhudsonlaw.com>
Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>
Subject: RE: So. First v. Vilcheck

Josh, sorry about not getting these to you on Friday. Please note my changed email address. I doubt any other supplementation of the ROA needs to be made, but I will review it and will speak up if I do see anything else.

Thank you.

Drew Radeker
RADEKER LAW, P.A.

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www.radekerlaw.com • drew@radekerlaw.com

From: Josh Smith <jsmith@smithhudsonlaw.com>
Sent: Friday, February 2, 2024 4:02 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>
Subject: RE: So. First v. Vilcheck

Drew,

We can supplement the ROA as needed to include these items. It is due today so I am going to file the ROA as it is now and, again, we can supplement to the extent it does not contain anything you designated and want to be included.

Thanks,

<image001.jpg>

Josh Smith
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Greenville, South Carolina 29601
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From: Josh Smith
Sent: Friday, February 2, 2024 2:22 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>
Subject: RE: So. First v. Vilcheck

Drew,

Can you please email the items listed in your email and below to me. I've discovered you cannot pull filings online from Beaufort County because they do not have anything available on the electronic public index.

1. Memo in Opposition to Motion to Reconsider filed 02.15.23
2. Summons and Complaint filed 2012

Thanks,

<image001.jpg>

Josh Smith
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[Greenville, South Carolina 29601](https://www.smithhudsonlaw.com)
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From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Wednesday, December 27, 2023 2:21 PM
To: Josh Smith <jsmith@smithhudsonlaw.com>
Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>
Subject: RE: So. First v. Vilcheck

[EXTERNAL]

Josh:

As you seem to have picked up, the last item in the designation is there to catch anything I referenced but inadvertently didn't designate. Nobody's asking you to come

through our brief looking for such things. It just lets me say that I did designate an item if I actually left something off, which I don't think I did.

The affidavits of service from 2013 are the ones filed on January 31, 2013 – the only affidavits of service from 2013.

The others you asked about are:

Proof of service filed November 16, 2022, on IRS;
Proof of service filed November 16, 2022, on Portfolio Recovery;
Acceptance of service by Longbridge filed December 1, 2022;
Secretary of State letter about service filed December 2, 2022;
Affidavit of service on SC Dept of Revenue filed December 8, 2022;
Answer and consent to reference by USA filed December 15, 2022;
Answer of SCDOR filed December 21, 2022;
The two federal housing certificates of service filed December 21, 2022;
Longbridge's motion to dismiss; and
Dept. of HUD answer filed January 20, 2023.

Thanks.

Drew Radeker

<image002.png>

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From: Josh Smith <jsmith@smithhudsonlaw.com>
Sent: Wednesday, December 27, 2023 1:48 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>
Subject: RE: So. First v. Vilcheck

Good afternoon Drew,

I've reviewed your DOM and have some questions/issues with it. I am almost always agreeable to including materials designated by the parties with little exception, however I need to ask that Respondents address and rectify the following as they are not compliant with SCACR 209, most notably subpart (a) which requires the DOM to "set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal." And subpart (b) which states in part that "The Designation must clearly identify what the party desires to have included in the Record on appeal...."

Appellant has an issue with the following items in Respondents' DOM:

2 – saying “all documents showing proof of service on the added parties of the order joining parties and motion for judicial sale that accompanied it.” Respondents need to specify what POS(s) at least by date and recipients and if you want the Motion for Judicial Sale to be included break it out as a separate item.

3 – saying “all documents filed by the added parties in this case (e.g. answers).” Respondents need to specify exactly what documents are being referenced in this item and break each out in a separate number.

9 – please specify the dates of the affidavits of service “from 2013” you want included.

10 – saying “Any other matter presented to the lower court which was cited in Respondents’ brief but inadvertently omitted from this designation.” First, without more specificity it is unsure what if anything is cited by not included within the Respondents’ DOM. Second, Appellant is not required to make sure it includes things that are omitted from the DOM. I will, of course, let you know if I notice a document cited in Respondents’ brief but not included in the DOM but Respondents cannot rely upon its opposition to make sure they do a complete DOM.

It is not the Appellant’s duty to interpret and track down every item that may be encompassed by the generally worded DOM items noted above. Please revise the Respondents’ DOM by COB tomorrow to comply with the Rules so we can know what Respondents want in the ROA, discuss any potentially objectionable items, and ultimately ensure everything you want (and that is appropriate) is included in the Record. Last thing I want is for us to have to deal with an issue or dispute about something that was intended to but was not included in the ROA. It’s a pain for everyone.

I am happy to discuss anything with you if you think it necessary or helpful.

Thanks,

<image001.jpg>

Josh Smith

Attorney | Smith Hudson Law, LLC
200 North Main Street, Suite 301-C
Greenville, South Carolina 29601

jsmith@smithhudsonlaw.com | www.smithhudsonlaw.com

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From: Drew Radeker <Drew@harrisonfirm.com>

Sent: Sunday, December 17, 2023 10:29 AM

To: Josh Smith <jsmith@smithhudsonlaw.com>

Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>

Subject: So. First v. Vilcheck

[EXTERNAL]

Josh, I realized that you may not have the long string of emails I designed for inclusion on the record. They're attached to this message.

Thanks.

Drew Radeker

<image002.png>

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From: Josh Smith <jsmith@smithhudsonlaw.com>
Sent: Thursday, December 14, 2023 4:55 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>
Subject: RE: Motion for Extension of Reply Brief Deadline

Thanks Drew. Appreciate the quick response and consent.

Have a good evening as well,

<image001.jpg>

Josh Smith
Attorney | Smith Hudson Law, LLC
[200 North Main Street, Suite 301-C](https://www.smithhudsonlaw.com)
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From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Thursday, December 14, 2023 4:52 PM
To: Josh Smith <jsmith@smithhudsonlaw.com>
Cc: Aaron Angell <aaron@angellmolony.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>
Subject: RE: Motion for Extension of Reply Brief Deadline

[EXTERNAL]

Josh, we consent. Have a great evening.

Thanks.

Drew Radeker

<image002.png>

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From: Josh Smith <jsmith@smithhudsonlaw.com>
Sent: Thursday, December 14, 2023 4:28 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Aaron Angell <aaron@angellmolony.com>
Subject: Motion for Extension of Reply Brief Deadline

Drew,

I plan to file a motion asking the Court for a brief five day extension of our deadline to file the Reply Brief. Would the Respondents consent to that motion/extension? Please let me know as soon as you can so I can make the appropriate representation in the motion that I plan to file in the morning.

Thanks,

<image001.jpg>

Josh Smith

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MAIN: 864-908-3912 | DIRECT: 864-908-3913

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Mar 01 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No. 2023-000421

Southern First Bank, N.A. d/b/a Greenville First Bank,.....Appellant,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, United States of America, acting through its agency, Department of Treasury – Internal Revenue Service, Federal Housing Commissioner, The South Carolina Department of Revenue, Belfair Property Owners’ Association, Inc., and the Greenery, Inc. a South Carolina corporation,.....Respondents.

PROOF OF SERVICE

I certify that I have served the foregoing motion to require service of the record on appeal or dismiss appeal on the date given below by emailing it to counsel for the Appellant(s) at the address(es) noted below.

Joseph O. Smith, Esq., at jsmith@smithhudsonlaw.com
Joshua J. Hudson, Esq., at jhudson@smithhudsonlaw.com
Aaron J. Angell, Esq., at aaron@angellmolony.com

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Attorney for Respondents
Kenneth J. Vilcheck and
Renee M. Vilcheck

March 1, 2024