

RECEIVED

Mar 12 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.

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

Respondents hereby submit this reply to the Appellant’s return to their motion 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. Appellant still has not served a record on appeal that contains all designated matter.

1. I have reviewed the record on appeal and supplemental record on appeal documents that Appellant’s counsel served yesterday. Matter designated for inclusion in the record on appeal is still missing.

2. Still missing from the record(s) on appeal submitted by Appellant are the following:
 - a. The “[a]ffidavits of service of summons and complaint from 2013” designated by Respondents; and
 - b. The “Notice of Appeal in Decarlis Case(s) 2020-001563” designated by Appellant.
3. If Appellant desires not to include the “Notice of Appeal in Decarlis Case(s) 2020-001563”, Respondents have no problem with that. That document was never presented to the lower court in this case and, thus, should never have been designated for inclusion in the record on appeal.
4. The 2013 affidavits of the service of the summons and complaint were properly designated and should be included. While they are not the fulcrum upon which the issues subject of this case balance, they do have some bearing upon the proceedings below, and Respondents’ brief makes reference to them. They need to be in the record on appeal in order for reference to them in the final brief to be changed to a citation to the record on appeal.
5. Appellant makes two arguments in its return I would like to address.
6. Appellant observes that Respondents’ motion was filed on the day that one of its attorneys was having surgery. That timing was not calculated on Respondents’ part. I should not have to make a motion about the content of the record on appeal at all; had Appellant’s

counsel done their job, there would have been no need to make this motion. As it was, I had to find time to do it, and the day that one of Appellant's lawyers was having surgery was when I found time to do it. Appellant points to no hardship or even inconvenience created by that timing. It is not as though the deadline to serve a return to the motion was on the day of surgery. Further, Appellant is represented by multiple lawyers, and it was not my understanding that all of them were undergoing surgery on March 1.

7. Appellant's counsel complains that Respondents' designation of matter was not specific enough and attempts to attribute Appellant's counsel's problems putting the record on appeal together to that. Respondents' designation of matter was specific enough. If there was, however, some problem with its specificity, that problem was cured on December 27, 2023, when Respondent's counsel emailed Appellant's counsel with granular specifics at Appellant's counsel's request. That was over a month before Appellant served a "record on appeal" that did not contain *any* of those items or several other designated documents.

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 12, 2024

RECEIVED

Mar 12 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 reply to return to 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 12, 2024