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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2024-000917

U.S. Bank Trust National Association, as Trustee of the Tiki Series IV Trust,
.....Respondent,

v.

Angela T. Franks,
.....Appellant.

RESPONDENT’S MOTION TO DISMISS APPEAL

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MOTION TO DISMISS APPEAL

This is a mortgage foreclosure action in which the appellant, Angela T. Franks (“Franks”), has appealed the master-in-equity’s judgment of foreclosure and sale entered on May 15, 2024. Franks filed her initial brief and designation of matter in this appeal on December 9, 2024. By an order dated January 21, 2025, the respondent, U.S. Bank Trust National Association, as Trustee of the Tiki Series IV Trust (“U.S. Bank”), was granted until February 10, 2025 to file its initial brief. U.S. Bank moves to dismiss Franks’s appeal based on Franks’s failure to comply with the requirements for filing an initial brief and designation of matter.

A copy of Franks’s initial brief is attached as exhibit A. A cursory review of the brief reveals it does not comply with the requirements set forth in Rule 208 of the South Carolina Appellate Court Rules. Rule 208(b)(1)(C) provides the following requirements for the statement of the case in the appellant’s initial brief:

The statement shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal. The statement shall not contain contested matters and *shall contain, as a minimum*, the following information: the date of the commencement of the action or matter;; the nature of the action or matter; the nature of the defense or of the response; the action of the court, jury, master, or administrative tribunal; the date(s) of the trial or hearing; the mode of the trial; the amount involved on the appeal; the date and nature of the order, judgment or decision appealed from; the date of and service of the notice of appeal; the date of and description of such orders, judgments, decisions, and proceedings of the lower court or administrative tribunal that may have affected the appeal, or may throw light upon the questions involved in the appeal; and any changes made in the parties by death, substitution, or otherwise. Any matters stated or alleged in appellant’s statement shall be binding on appellant.

Rule 208(b)(1)(C), SCRCR (emphasis added). A review of the statement of the case in Franks’s initial brief reveals that it is mostly a statement of allegations that contains virtually no information regarding the foreclosure case.

The standard of review in Franks's initial brief also fails to comply with the requirements of the South Carolina Appellate Court Rules. The South Carolina Appellate Court Rules require an appellant's initial brief to "concisely set forth the applicable standard of review with citations to relevant case law establishing the standard." Rule 208(b)(1)(D), SCACR. In Franks's initial brief, the standard of review is just requesting that the appellate court review certain matters. There is no standard of review provided, nor are there any "citations to relevant case law establishing the standard."

Even more important than the deficiencies with Franks's statement of the case and standard of review is the fact that Franks's brief contains no arguments. "South Carolina Appellate Court Rules specify what is required in the arguments section for an appellant's brief: 'The brief shall be divided into as many parts as there are issues to be argued. At the head of each part, the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citation of authority.'" *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 99, 594 S.E.2d 485, 496 (Ct. App. 2004) (citing Rule 208(b)(1)(D), SCACR). "Numerous cases have held that where an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal." *Id.* (citing *Glasscock, Inc. v. United States Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001); *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 437, 540 S.E.2d 113, 120 (Ct. App. 2000); *Welch v. Epstein*, 342 S.C. 279, 288 n.1, 536 S.E.2d 408, 412 n.1 (Ct. App. 2000)). *See also Broom v. Jennifer*, 403 S.C. 96, 115, 742 S.E.2d 382, 391 (2013) ("Issues raised in a brief but not supported by authority may be deemed abandoned and not considered on appeal."). As stated above, Franks's brief does not set forth any arguments.

In *Henning v. Kay*, 307 S.C. 436, 415 S.E.2d 794 (1992), the appellants had filed their initial brief, and the respondent moved to dismiss the appeal based on the appellants' failure to

comply with the South Carolina Appellant Court Rules in preparing the brief and in the designation of matter. *Id.* at 437-38, 415 S.E.2d at 794-95. The Supreme Court, in reviewing appellants' brief, stated:

Appellant's brief fails to comply with the Rule 207 [now Rule 208, SCACR] in the following particulars: the components of the brief are incorrectly organized and labeled, the issues are not distinctively headed, the table of authorities is not alphabetized or referenced to the body of the brief, the statement of the case contains contested matter and omits required information, and the arguments contain no citations to the record or to the cases listed in the table of authorities.

Id. at 437, 415 S.E.2d at 794. The Court further stated "that the South Carolina Appellate Court Rules are not mere technicalities but provide the parties with an orderly mechanism through which to guide the appeals in this State," and that it was incumbent upon the appellant "to provide material that complies with the Rules and facilitates appellate review." *Id.* The Court stated that it "would be completely justified in dismissing this appeal based on appellant's numerous violations of the Rules." *Id.*

Franks's brief, like the appellant's brief in *Henning*, is incorrectly organized and labeled, the issues are not distinctly headed, and the table of authorities is not alphabetized. Even worse, there is no body in Franks's brief that contains arguments, much less any arguments citing to the record and to cases to support the arguments.

Franks's designation of matter to be included in the record on appeal, which is attached as exhibit B, also completely fails to comply with the South Carolina Appellate Court Rules. Rule 209 provides that the designation of matter "shall 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." Rule 209(a), SCACR. In *Henning*, the Court stated that the record on appeal "shall not include any matter not presented to the

trial court.” *Id.* For this reason, the designation of matter to include in the record on appeal should not include matter not presented to the trial court.

A review of Franks’s designation of matter reveals that much of the designated material, such as “emails from Kondaur Capital,” “copies of cancelled checks to demonstrate successful completion,” qualified written requests to SC Community Bank, and copies of telephone logs with prior servicers of the mortgage are documents that were not presented to the master-in-equity. As shown by the master’s order and judgment of foreclosure and sale dated May 15, 2024 from which Franks appeals, Franks was held in default and was therefore unable to present any evidence to the master-in-equity. Therefore, Franks cannot include this matter in her designation of matter.

A review of Franks’s brief and designation of matter reveals that they do not comply with the requirements of the South Carolina Appellate Court Rules. It is also evident that there is no way for U.S. Bank to be able to reasonably respond to Franks’s brief. For these reasons, Frank’s appeal should be dismissed.

Respectfully submitted,

/s/ Dean A. Hayes

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Attorney for Respondent

February 7, 2025

Exhibit A

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master In Equity

Joseph M. Strickland, Master in Equity

Case No. 2024 – 000917

Former Case No. 2022-cp-4002905

US BANK TRUST
NATIONAL ASSOCIATION,

Respondent,

v.

Angela T Franks,

Appellant,

INITIAL BRIEF OF APPELLANT

December 9, 2024



Angela T Franks
Post Office Box 983
Columbia, SC 29202
803-466-3005

Other Counsel of Record:
McMicheal Taylor Gray
J. Pamela Price
January Taylor
Brian Lawrence Campbell
John P Fetner

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Arguments

1. Because respondent never presented relevant documents in any prior hearing or in the initial Lis Pendens. Relevant Documents i.e. a copy of the original promissory note, statement of balance, validation of debt. Respondent is not the owner of the debt and not the entitled to foreclose on the mortgage. *Union National Bank of Columbia v. Cook*, 110 SC 99, 96 S.E. 489 (1918); *Talbert v. Talbert*, 97 SC 136, 81 S.F. 644 (1914). SC Code Ann sect 19-5-510; SC Rules of Evidence Rule 803(6) and 803(7).
2. Because Respondent did not present a qualified witness to validate and or certify the “debt validation” nor the lost note. South Carolina Community Bank violated RESPA USC 12.
3. Because Appellant appeared at the hearing and submitted a motion to vacate and void judgement and foreclosure, Appellant objected to Respondent’s debt validation. Per SC Code Ann 19-5-510 The unliquidated amount of the debt is “hearsay and therefore inadmissible.”
4. Because Master -in-Equity did not allow Appellant to present the 2017 -CP-40-03489 order that he dismissed without prejudice. Appellant was not allowed to present crucial evidence to this case.

5. Claims and liabilities of the prior predecessor in interest are not a part of this record.

6. Because the Master-in Equity did not order Respondent to produce an original Promissory note, as per after Appellant presented Affidavit of Lost Note executed by South Carolina Community Bank.

CONCLUSION 2

For the reasons stated above, the Appellant respectfully requests that this court vacate and void the foreclosure order issued by Richland County Master-in Equity, The Honorable Joseph M. Strickland.

November 18,2024

Respectfully Submitted,
Angela T. Franks (Pro Se)
P.O. Box 983
Columbia, SC 29202
803 466-3005

TABLE OF AUTHORITIES

CASES

Cox v. Frierson 316 S.C. 469, 457 S.E. 2d 392 (1994)

Renmy v. Dobbs House, Inc. 275 S.C. 562, 567-274 S.C.2d 290,293
(1981)

Union National Bank of Columbia v. Cook 110 S.C. 99,96 S.E. 484 (1918)

Twelfth RMA Partners, LP v. National Safe Corp.,335 S.C. 635,518 S.F 2d
44

BB & T of South Carolina v Fleming, 360 S.C. 341, 601 S.E 2d 540 (2004)

Adams v Madison Realty & Development Inc.,853 F, 2d 163 (3d Cir 1988

Southern Atlantic Financial Services, Inc v. Middleton 356 S.C. 4446,4590
S.E. 2d 27 (2003).

Matrix Financial Services Corp. v Frazier,394 S. C. 134 714 S. E. 2d 532
(2011).

Wachovia Bank, N. A. v Coffey, 389 S.C. 68,689 S. E. 2d 244(Ct. App 2010)

Rosemond v. Campbell

Dixie Wood Preserving Co. v Albert Gerston & Associates, 244 S.C. 57,135

Langel v Betz, 250 N. Y.159,164 N. E. 890 (1928.)

South Carolina Community Bank v Salon Poz

Statutes

S.C. Code Ann Sect.14-11-110

S.C. Code Ann Sect.37-10-105c

S.C. Code Ann Sect.10-105 (c)

S.C. Code Ann Sect. 37-10-102

S.C. Code Ann Sect. 19-5-510

S.C. Code Ann Sect. 37-1-102 (c) (d)

S.C. Code Ann Sect. 37-5-203

U.S.C Sect. 612 of 12 of RESPA (12 U.S Code 2605

Fair Debt Collection Practices Act PL11-203

Title X 124 Statute 2092 (U. S. Code 1692, 807 Section (2(A), Section 6 (RA)

South Carolina Rules of Civil Procedure

1. Rule 11
2. Rule 53 (e) (1), (2) (5)
3. Rule 38
4. Rule 71 (d) 1, (a) (d) (e)
5. Rule 21
6. Rule 7
7. Rule 5.3

SC ACR

8. Rule 407 1.4 (b), 4.1 (a) 8.4
9. Rule 2009-05-22-01

STATEMENT OF ISSUES ON APPEAL

1. DID THE MASTER-IN-EQUITY ERR IN FAILING TO DISMISS THIS FORECLOSURE ACTION BASED ON RES JUDICATA? THE CASE WAS DISMISSED WITHOUT PREJUDICE IN 2017.(CASE No.2017-CP-40-03489).
2. DID THE MASTER-IN-EQUITY ERR IN AWARDING THE UNLIQUIDATED AMOUNT WHEN APPELLANT (PRO SE) APPEARED AND OBJECTED TO THE FORECLOSURE BECAUSE OF THE ABSENCE OF THE PROMISSORY NOTE, AND THE LACK OF DEBT VALIDATION DOCUMENTS SUPPORTING THE TIMELY REQUEST FOR DEBT VALIDATION BY THE APPELLANT.
3. DID THE MASTER IN EQUITY ERR IN NOT ACCEPTING THE APPELLANT'S COPY OF THE AFFIDAVIT OF LOST NOTE EXECUTED BY SOUTH CAROLINA COMMUNITY BANK?
4. DID THE MASTER-IN-EQUITY ERR IN NOT REQUIRING OPPOSING COUNSEL TO PRODUCE A VALIDATED DEBT, AND NOT HAVING OPPOSING COUNSEL PRODUCE A QUALIFIED WITNESS TO BE CROSS EXAMINED. ARGUMENT BY COUNSEL BEFORE THE COURT IS NOT EVIDENCE. (SC Code Ann Section 19-5-510, SC Rules of Evidence Rule 803(6) & (7).
5. DID THE MASTER IN EQUITY ERR IN NOT REQUIRING THE RESPONDENT'S COUNSEL PRODUCE EVIDENCE OF DEBT?
6. DID THE MASTER-IN-EQUITY ERR WHEN NOT REQUIRING OPPOSING COUNSEL TO PROVIDE A SEPARATE CERTIFICATE OF EXPENSES RELATED TO SERVICING THE MORTGAGE.

7. DID THE MASTER-IN-EQUITY ERR IN NOT OFFERING APPELLANT NOTICE OF "NO TRANSCRIPT" AND NO COURT REPORTER?
8. DID THE MASTER-IN-EQUITY ERR IN NOT ALLOWING ADDITIONAL DOCUMENTS FROM APPELLANT DISPLAYING MORTGAGE SERVICER'S REFUSAL TO RESPOND TO A QUALIFIED WRITTEN REQUEST UNDER RESPA?
9. DID THE MASTER-IN-EQUITY ERR IN NOT REQUESTING A COURT REPORTER TO CREATE A RECORD OF THE HEARING? APPELLANT OBJECTED TO THE BIASED RECORD OF HEARING CREATED BY OPPOSING COUNSEL.
10. DID THE MASTER-IN-EQUITY ERR IN NOT ALLOWING DOCUMENTS RELATED TO RESPA VIOLATIONS COMMITTED BY RESPONDENT AND PREVIOUS MORTGAGE OWNER, SC COMMUNITY BANK?
11. DID THE MASTER -IN-EQUITY ERR IN NOT ALLOWING APPELLANT TO INCLUDE IN THE RECORD CLAIMS AND COMPLAINTS FROM THE 2017 CASE?

STATEMENT OF THE CASE

On December 30, 2004 Elliott E Franks, III (hereinafter Elliott) and Angela T Franks (hereinafter Appellant) executed a deed for the purchase of a duplex property located at 1205 Columbia College Drive, Columbia, South Carolina 29203 for \$65,000 from Robert Clarkson. This property was financed by SC Community Bank Sumter St. Columbia S.C. 29201

Elliott died on October 16, 2008. On or about August 16, 2010, at the demand of South Carolina Community Bank, the loan was refinanced for the principal sum of \$56,000 and a deed was executed. South Carolina Community Bank did not offer Appellant better terms. The loan closing was supervised by Hugh Cooper (a local real estate attorney).

Over the course of the loan, Appellant experienced significant financial hardships because of two tenants moving and not paying past rent. During this time several robberies and vandalisms occurred resulting in unexpected repairs.

On October 17, 2014, Appellant refinanced property with SC Community Bank. The amount refinanced was \$56,334 at 6.52% variable simple interest rate as published by the Federal Home Loan Bank of Atlanta as the index changes. During this closing, Appellant was presented with a Commercial Promissory note to sign and the bank ordered an appraisal. No lawyer was present during the re-financing as required by law in South Carolina.

In October 2015, Columbia, and surrounding areas experienced a 100-year flood which was widespread throughout the state. The Governor declared major portions of the state a disaster area. The tenants at that time were employed in the hospitality industry were laid off and unable to pay rent. They subsequently had to move.

Appellant was able to bring the loan current in 2017. On May 10, 2018 in a letter sent certified with return receipt. SC Community Bank refused to respond to a Qualified Written Request for debt validation and a complete

accounting of Appellant's loan since the origination date of December 2004 – January 2018.

During this period South Carolina Community Bank (hereinafter Bank) sold the mortgage to Wilmington Savings Fund Society, FSB dba Christiana Trust. At this time Wilmington Savings Bank now acquires the liability of the previous servicer. Appellant continued to negotiate with SC Community Bank upon the sale to Wilmington Savings Bank. No response was given to Appellant regarding the request for a complete accounting with a payoff.

In April 2017 Appellant was served with a Lis Pendens. Appellant was making payments to the bank. This order Consent Stipulation of Dismissal of Complaints and Counterclaims and Cancellation of Lis Pendens was dismissed. During the previous hearing no evidence was presented by Respondent regarding their lost note. Appellant was urged to participate in a forbearance agreement. WSF still had not responded to Qualified Written Request pursuant to RESPA.

Appellant successfully completed the forbearance agreement by sending certified funds with return receipt requested to Kondaur Capital Corporation. The lender agreed to modify certain terms of the loan, but no loan modification was ever made.

After successfully completing forbearance, Appellant continued to make loan payments. Appellant never received notice nor an option of any loan modification on the loan.

On September 06, 2019, Appellant filed a Chapter 13 Bankruptcy. At the time of filing Appellant was current on the loan. US Bank purchased the loan without proof of the note and subject to all of Appellant's previous claims against South Carolina Community Bank and Wilmington Saving Fund. Respondent referenced a note several times in the complaint.

March 13, 2020, South Carolina experienced COVID-19, a world-wide Pandemic. Our state was locked down except for essential work personnel. . Appellant evicted the current tenants on March 06, 2020 for non-payment

of rent as well as alleged illegal activities. Appellant had no choice but to leave the unit vacant. On March 13, 2020, the Governor declared a lock-down. Appellant could not prepare the unit for a new tenant. Shortly thereafter a nation-wide eviction moratorium was issued. The unit was vacant and Appellant received no rent.

In April 2020, Appellant requested assistance from US Bank as COVID-19 had negatively impacted many small landlords. US Bank's assistance was minimal.

US Bank was charged Appellant a loss mitigation fee when no modification had been extended as promised for the earlier forbearance agreement completion.

Respondent requested that the bankruptcy automatic stay be lifted because of no equity in the property. No response has been made to the initial three Qualified Written Requests. How could Respondent state a number? Respondent was in possession of the most recent appraisal of \$94,000 dated September 29, 2014.

THE SUBJECT MATTER OF THIS CASE ARE AS FOLLOWS:

- 1. The breach of South Carolina Community Bank when it refused three times to respond to Appellant's Qualified Written Request for Debt Validation pursuant to RESPA.**
- 2. The liability of each successive owner of the loan.**
- 3. The affidavit of loss note by SC Community Bank.**
- 4. The failure of SC Community Bank to File the note with the Clerk of Deeds.**
- 5. The failure of Kondaur Capital to adhere to the loan modification promises of the successful completion of the forbearance agreement.**

STANDARD OF REVIEW

Appellant is asking the SC Court of Appeals to review all causes of actions in this case:

1. Affidavit of loss note – opposing counsel’s motions were all based upon original note, though no note was presented.
2. Appellant’s objection to debt validation.
3. Previous mortgage servicer’s RESPA violation breach of refusal to respond to qualified written request.
4. Appellant’s successful completion of forbearance agreement no receipt of favorable loan moderation terms.
5. Respondent’s motion filed on June 06, 2022 requesting payments of all rents from the assignment of mortgage which was based upon the original note and mortgage.
6. Respondent is not entitled to enforce said note pursuant to SC Code Ann Section 36-3-309.
7. Respondent violated the terms of protection of the automatic stay. Appellant was in an active Chapter 13 Bankruptcy protection in June 06. 2022.

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US BANK TRUST
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Respondent,

v.

Angela T Franks,

Appellant,

PROOF OF SERVICE

I, Angela T. Franks (a Pro Se litigant) certify that I have served the Initial Brief of Appellant on All parties by depositing a copy of it in the United States mail postage pre- paid on December 09,2024 to the address of attorney(s) of record, J. Pamela Price c/o MTG 3550 Engineering Drive, Suite 260 Peachtree Corners, GA 30092

November 18, 2024



Angela T Franks
Post Office Box 983
Columbia, SC 29202
803-466-3005

Other Counsel of Record:
McMicheal Taylor Gray
J.Pamela Price

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SC Court of Appeals

DESIGNATION OF MATTERS TO BE INCLUDED IN THE RECORD OF APPEAL

I, Appellant Angela T. Franks propose that the following documents be included in the record of Appeal:

1. Order – copy of 2017 (2017-CP-40-03489) order dismissing case without prejudice
2. Order – copy of 2022 (2022-CP-4002905) order for foreclosure
3. Letter to the Honorable Joseph M Strickland
Richland County Master-In-Equity.
4. Notice of Intent to Appeal.
5. Affidavit of Lost Note executed by SC Community Bank
6. Deed of Distribution – Case #: 2008-ES-32-01297
7. Copy of Commercial Promissory Note dated 10/17/2014. (No attorney present at closing)
8. Copy of Business Loan Agreement 10/17/2014
9. Copy of Qualified Written Request letter to S.C community Bank
Copy of Appraisal for Refinancing submitted by The Appraisal Group of South Carolina 09/29/2014.
- 10 Copy of Loan Modification – Kondaur Capital no signature of lender.
- 11 Copies of e-mails from Kondaur Capital
12. Copies of cancelled checks to demonstrate successful completion.
13. Copy of Qualified Written Request to S.C Community Bank, indicating Bank's refusal to respond to the third Qualified Written Request.
14. Copy of Telephone log to SN Servicer – Skylar Robinson
15. Copy of emails to US Bank for a request for assistance during COVID
16. Copy of Loan Modification Application and denial to SN SERVICING.
17. Copy of Notice Tapped to door of above referenced property by First Alliance. Third Party REO-SN on May 24, 2022

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US BANK TRUST
NATIONAL ASSOCIATION,

Respondent,

v.

Angela T Franks,

Appellant,

PROOF OF SERVICE

I, Angela T. Franks (a Pro Se litigant) certify that I have served the Initial Brief of Appellant on All parties by depositing a copy of it in the United States mail postage pre- paid on December 09,2024 to the address of attorney(s) of record, J. Pamela Price c/o MTG 3550 Engineering Drive, Suite 260 Peachtree Corners, GA 30092

November 18, 2024



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Joseph M. Strickland, Master-in-Equity
Civil Action Number: 2022-CP-40-02905


Appellate Case No.: 2024-000917

U.S. Bank Trust National Association, as Trustee of the Tiki Series IV Trust,
..... Respondent
v.
Angela T. Franks,
..... Appellant

PROOF OF SERVICE

I certify that I have, on February 7, 2025, served a copy of the motion to dismiss of the respondent, U.S. Bank Trust National Association, as Trustee of the Tiki Series IV Trust, by mailing it to the pro se Appellant and emailing it to other counsel of record at the address noted below:

Angela T. Franks, P.O. Box 983, Columbia, SC 29202
January N. Taylor, Esq. (jtaylor@mtglaw.com)



Dean A. Hayes, SC Bar #66066
Co-Counsel for Respondent U.S. Bank Trust
National Association, as Trustee of the Tiki
Series IV Trust