

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
The Honorable D. Garrison Hill

Appellate No.: 2013 - 001488
Civil Action No.: 2012-CP-23- 6148

Suntrust Bank.....Respondent

vs.

Bilal and Latoya Abdullah.....Appellant

**RESPONDENT'S MEMORANDUM IN OPPOSITION TO APPELLANT'S PETITION
FOR REHEARING**

S. Nelson Weston, Esquire
Adam Tesh, Esquire
Sheila M. Bias, Esquire
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street (29201)
P.O. Drawer 7788
Columbia, South Carolina 29202
803-771-4400

Counsel for Respondent Suntrust Bank

October 23, 2013

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INTRODUCTION

In the instant appeal, Appellant has had numerous deficiencies in the attempt to perfect this appeal. See Attachments to Memorandum in Support of Respondent's Motion to Dismiss. On October 4, 2013, this Court issued an Order dismissing this appeal based on Appellant's failure to pay the required filing fee and Respondent's Motion to Dismiss. The Remittitur in this matter has been issued. It is unclear exactly what date Appellant served and filed his Petition for Rehearing as the certificate of service is not dated; however, it is clear that his filing comes after the Court issued the Remittitur in this matter. Despite the confusing nature of Appellant's petition, Respondent has construed Appellant's grounds for rehearing as (1) the October 4, 2013, Order is "null and void" as unconstitutional because this Court lacks jurisdiction; (2) this Court erred in refusing to allow Appellant to proceed in forma pauperis; and (3) Appellant has timely submitted all documents necessary to perfect this appeal. Additionally, it appears Appellant has requested this Court adjudge Respondent liable for Appellant's alleged damages and for an entry of judgment in the amount of \$100,000.00 to redress Appellant's injuries. Appellant's contentions are without merit and do not necessitate rehearing on the matter. Appellant have yet to present compelling reasons as to why this appeal should not be dismissed or why his filings continue to not be in compliance with this Court's rules.¹

¹ The Petition for Rehearing is without a proper certificate of service indicating when the document was served upon Respondents. The date at the top of the front of the document states, "In this 13th year of the 2nd millennium, ~ 14th day of the 8th Lunar Cycle (October) aka October 14, 2013;" however Respondent did not receive the document from Appellant until October 22, 2013. Respondent would note we received an email copy of the document from the Appellate Case Manager assigned to this case on Friday, October 18, 2013.

ARGUMENT

Appellant has not stated compelling grounds to warrant rehearing.

First, Appellant is incorrect that this Court was without jurisdiction to issue the October 4, 2013 Order dismissing this appeal. This Court has jurisdiction over this matter pursuant to Rule 205, SCACR. The rule provides, “Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal . . .” Since Appellant has appealed this matter, this Court has exclusive jurisdiction over it. Accordingly, this Court’s orders and opinions—including the October 4, 2013 Order dismissing the appeal—are binding on this appeal.

With regard to the filing fee, Respondent has no control over Appellant’s filing fee or this Court’s decision as to whether to allow Appellant to proceed *in forma pauperis*. However, Respondent would respectfully note that the law on waiving filing fees is clear. As this Court cited in its August 29, 2013 Order, Ex Parte Martin, 321 S.C. 533, 471 S.E.2d 134 (1995), is the authority on this issue. As the South Carolina Supreme Court held in Martin, “In the absence of a statutory provision allowing a general waiver of filing fees, we conclude motions to proceed *in forma pauperis* may only be granted where specifically authorized by statute or required by constitutional provisions.” Id. Appellant has not identified a statutory or constitutional provision allowing him to proceed *in forma pauperis*; accordingly, this Court’s ruling as to the filing fee was proper.

Additionally, Appellant is incorrect in that he has timely submitted all documents necessary to perfect this appeal. As Respondent has argued previously, Appellant has failed to order the transcript in this matter. The transcript of this matter is crucial to an

accurate evaluation as to whether the trial court properly granted summary judgment. Respondent cannot present an adequate defense to the issues raised by Appellant without the transcript of the matter. The Appellate Court Rules require the appellant to order the transcript. Appellant has not ordered the transcript and accordingly has failed to perfect his appeal.²

Furthermore, Appellant has also failed to provide a proper certificate of service for his Initial Brief. Appellant's failure to provide proper certificates of service prejudice Respondent because we cannot accurately and timely present responsive documents pursuant to the South Carolina Appellant Court Rules. Most if not all of Respondent's obligations and responsive briefs are stated in terms of time frames which are measured from Appellant's service of his briefs. Appellant's systematic failure to provide proper certificates of services has, and should this appeal be reinstated, will continue to cause Respondent confusion, delay, and prejudice.

Finally, Respondent would respectfully request that this Court issue an order (1) denying Appellant's Petition for Rehearing, (2) denying Appellant's request for a judgment in his favor, and (3) finding Appellant is not entitled to \$100,000.00 in damages.

CONCLUSION

Based on the foregoing, Respondent's Motion to Dismiss, Respondent's Memorandum in Support of the Motion to Dismiss and supporting Exhibits, and Respondent's Reply to Appellant's Return to Respondent's Motion to Dismiss,

² Counsel for Respondent would note that at no point did I mislead the Court in my arguments with regard to Appellant's failure to perfect this appeal and any assertion to the contrary is simply not true. See Petition for Rehearing pg. 3 of 6.

Respondent respectfully requests this Court deny Appellant's Petition for Rehearing in its entirety.

Respectfully submitted,



S. Nelson Weston, Esquire

Adam Tesh, Esquire

Sheila M. Bias, Esquire

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Appellate No.: 2013-001488
Civil Action No.: 2012-CP-23-6148

SunTrust Bank.....Respondent

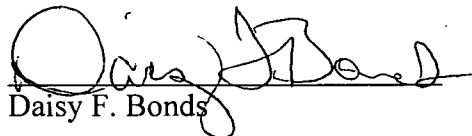
v.

Bilal and Latoya Abdullah.....Appellant

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., attorneys for Respondent SunTrust Bank, do hereby certify that I have this date served the foregoing Respondent's Memorandum in Opposition to Appellant's Petition for Rehearing by personally depositing a copy of the same in a United States Postal Service mailbox, postage prepaid, addressed to the following:

Bilal and Latoya Abdullah
7 Landing Lane
Simpsonville, South Carolina 29681


Daisy F. Bonds

Dated: October 23, 2013

October 23, 2013

Columbia
Direct Dial: (803) 576-3718
sbias@RichardsonPlowden.com

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: SunTrust Bank v. Bilal & LaToya Abdulla
Appellate No.: 2013-001488
C/A No.: 2012-CP-6148

Dear Ms. Kitchings:

As counsel for the Respondent SunTrust Bank, I have enclosed for filing an original and seven copies of Respondent's Memorandum in Opposition to Appellant's Petition for Rehearing in the above referenced matter, along with our original Certificate of Service. I would request that the additional copy of Respondent's Memorandum be stamped filed and returned to our courier.

We are this day serving a copy of Respondent's Memorandum on the *pro se* Appellant.

Thank you for your assistance and with kind regards, I am

Sincerely,

Sheila M. Bias

Sheila M. Bias
SC Bar # 100005

SMB/dfb

Enclosures

cc: Bilal & LaToya Abdullah (w/enclosure)
Adam Tesh, Esquire (w/enclosure)
S. Nelson Weston, Esquire (w/o enclosure)

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