

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable William C. Tindal, Special Referee

Case No. 2025-CP-29-00797

BOKF, N.A.,

Respondent,

v.

Joshua Ovalle,

Appellant,

RESPONDENT'S SECOND MOTION TO DISMISS APPEAL

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(S.C. Bar No.: 72520)
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Attorney for Respondent

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Oct 26 2026

SC Court of Appeals

NOW COMES Respondent BOKF, N.A. (“Respondent”), by and through its undersigned counsel, and, pursuant to Rule 260 of the South Carolina Appellate Court Rules, respectfully moves this Court to dismiss the appeal filed by Joshua Ovalle (“Appellant”). Appellant’s final brief violates Rule 211(b), SCACR, because it adds substantive arguments and supporting authority that did not appear in the initial brief served under Rule 208. Alternatively, Respondent requests an order requiring Appellant to file a final brief that complies with Rule 211(b), SCACR, or directing that the noncompliant additions be disregarded. In support of this Motion, Respondent states as follows:

BRIEF PROCEDURAL HISTORY

This residential mortgage foreclosure action concerns real property in Lancaster County, South Carolina. Respondent commenced the action on June 23, 2025, and the matter was referred to the Honorable William C. Tindal, Special Referee for Lancaster County, by Order of Reference filed July 8, 2025. The Special Referee entered an Order of Foreclosure in Respondent’s favor on September 17, 2025, and Appellant appealed on October 13, 2025. Appellant served his initial brief and designation of matter to be included in the record on April 6, 2026. After receiving notice that he had not timely submitted the record on appeal, Appellant filed and served the record, a motion for leave to file it out of time, and his final brief on October 7, 2026. As explained below, the final brief materially departs from the initial brief and does not comply with Rule 211(b), SCACR.

ARGUMENT AND CITATION OF AUTHORITY

Rule 211(b), SCACR, requires a final brief to remain identical in substance to the brief previously served under Rule 208. The final brief may conform references to the record on appeal

and correct typographical errors or misspellings, but it may not add arguments or supporting authority omitted from the initial brief.

Appellant's final brief exceeds the limited changes permitted by Rule 211(b), SCACR. It adds substantive arguments and citations to authority that did not appear in the initial brief, including new theories concerning the loan accounting and consideration for the underlying obligation. These additions do not merely conform citations to the record or correct typographical errors or misspellings; they materially alter the brief previously served under Rule 208. For example, the following argument appears for the first time on page 5 of Appellant's final brief:

Here, Respondent asserted that \$247,499.47 was due and owing (R. pp. 37-38), but its admitted exhibits contained no loan ledger, payment history, or other account statement showing all payments, debits, credits, and transactions associated with the corresponding Note. (R. pp. 115-139). Appellant specifically placed the accounting at issue (R. P. 57). In *Johnston v. Farmers & Merchants Bank*, 228 S.C. 600, 606, 91 S.E.2d 604, 607 (1956)¹, the Supreme Court held that the appellant was "entitled to an accounting from the date of the original note."

Appellant also raised matters concerning consideration of the underlying obligation (R. pp. 46-47, 54-59, 95-107). South Carolina law expressly recognizes that "[t]he drawer or maker of an instrument has a defense if the instrument is issued without consideration." S.C. Code Ann. §36-3-303(b). These matters, together with Appellant's admitted evidence, required meaningful consideration before the amount due and entitlement to foreclose were determined.

These arguments were not included in Appellant's initial brief and were not raised to the Special Referee at the foreclosure hearing. Appellant nevertheless asserts for the first time in his final appellate brief that he placed the Loan's accounting at issue, citing a portion of the record in which he used the word "accounting" while advancing sovereign citizen theory. The cited passage does not present the accounting argument now asserted in the final brief. Appellant stated:

¹ Citation referenced by Appellant is incorrect. The correct citation appears to be *Johnston v. Farmers and Merchants Bank*, 229 S.C. 603, 606, 93 S.E.2d 916, 917 (1956).

Perhaps they should not be in business. It's all a matter of accounting, checks and balances, debits and credits. That's what this whole system is based off of. And I don't want to get too deep into it, but essentially this special deposit was tendered to settle all accounts. It says right here, issued by special deposit for credits on account to settle all debt claims in full upon acceptance per that UCC refusal is discharged.

(R. p.57: 14-21). This passage refers to the sovereign citizen documents Appellant submitted in support of his claim that the debt was discharged. (R. pp. 63- 114). It does not raise a cognizable legal challenge to the Loan's accounting before the Special Referee and therefore does not preserve the accounting argument asserted for the first time in the final brief.

The violation is substantive, not technical. By adding arguments and authority at the final-brief stage, Appellant bypassed the briefing procedure established by the appellate rules and deprived Respondent of the orderly process those rules contemplate. The Court is therefore presented with a final brief materially different from the brief Appellant served under Rule 208.

Rule 260, SCACR, authorizes dismissal when a party fails to comply with the South Carolina Appellate Court Rules. Appellant first failed to timely submit the record on appeal and then filed a final brief that materially departed from the initial brief in violation of Rule 211(b), SCACR. These successive failures disrupted the orderly appellate process and placed before the Court arguments and authority that were not presented through the procedure required by the Rules. Under these circumstances, dismissal is warranted.

If the Court declines to dismiss the appeal, it should refuse to accept the noncompliant final brief and require Appellant, within a time fixed by the Court, to file a replacement final brief that is substantively identical to the initial brief and differs only as Rule 211(b) permits. *Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992). *See Also Matter of Sheek*, 434 S.C. 259, 862 S.E.2d 903 (2021).

Alternatively, the Court should disregard Appellant's noncompliant additions and confine its review to the issues and arguments properly presented in the initial brief served under Rule 208, SCACR. *Robinson v. Hassiotis*, 3614 S.C. 92, n.2, 610 S.E.2d 858, n.2 (Ct. App. 2005). This approach would preserve the briefing sequence established by the Rules, avoid an additional procedural step, and ensure that Respondent is not required to address substantive arguments and authorities that were absent when the initial brief was served.

CONCLUSION

For the foregoing reasons, Respondent BOKF, N.A. respectfully requests that the Court dismiss this appeal pursuant to Rule 260, SCACR. Alternatively, Respondent requests that the Court decline to accept Appellant's noncompliant final brief and order Appellant, within a time fixed by the Court, to file a replacement final brief that is substantively identical to his initial brief except for the changes expressly permitted by Rule 211(b), SCACR. If the Court does not require a replacement brief, Respondent requests that the Court disregard Appellant's noncompliant additions and confine its review to the issues and arguments properly presented in the initial brief. Respondent further requests such other and further relief as the Court deems just and proper.

Respectfully submitted,

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October 26, 2026

CERTIFICATE OF SERVICE

The undersigned certifies that, on October 26, 2026, Respondent's Final Brief was served on Appellant by depositing a copy thereof in the United States Mail, first Class, postage prepaid, addressed to:

Joshua Ovalle
8866 Ross Hill Road
Fort Mill, SC 29707

Date: October 26, 2026

Served By:

s/Chad W. Burgess
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