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SC Court of Appeals

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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. 2013-001412

HSBC Bank USA, National Association, as
Trustee for MLCC 2007-2Respondent,

vs.

S. Russell Fielden; Deborah M. Fielden; and Coastal States
Bank.....Defendants,

Of whom

S. Russell Fielden and Deborah M. Fielden, are..... Appellants.

**RESPONDENT’S MOTION TO CORRECT
RECORD ON APPEAL AND MOTION TO STAY TIME TO FILE FINAL BRIEF**

Respondent HSBC Bank USA, National Association, as Trustee for MLCC 2007-2 (“Respondent”) hereby moves to correct the Record on Appeal submitted by Appellants S. Russell Fielden and Deborah M. Fielden (“Appellants”) on the grounds that the proposed Record on Appeal omits documents designated for inclusion by Respondent, includes matters not presented to the lower court, and fails in other material aspects to comply with the South Carolina Appellate Court Rules. Additionally, Respondent hereby moves to stay the time for it to be required to file its final brief until such time as the below noted deficiencies are corrected.

FACTS

On February 7, 2014, Respondent served Appellants with the Initial Brief of the Respondent along with its Designation of Matter to be Included in the Record on Appeal. On March 18, 2014, Appellants filed and served a Record on Appeal. On March 19, 2014, Appellants filed and served a “corrected” Record on Appeal. Respondent now seeks an order of the Court requiring Appellants to fix several serious deficiencies in the Record on Appeal.

ARGUMENT

Appellants must correct the following deficiencies in the Record on Appeal filed on March 19, 2014:

1. Appellants improperly omitted several documents from the Record on Appeal that were designated for inclusion by Respondent in its Designation of Matter.

“The Record on Appeal shall include all matter designated to be included by any party under Rule 209 ...” Rule 210(c), SCACR. Appellants failed to include the following documents in the Record on Appeal that Respondent requested through its Designation of Matter:

- Appellants’ Answer and Counterclaim filed November 29, 2010. Appellants only included an unfiled copy of this document. Respondent requests that a filed copy of Appellants’ Answer and Counterclaim be included in the Record on Appeal. Additionally, pages 33 to 38 in the Record on Appeal is identified as part of the “Appellant’s Answer & Counterclaims to Complaint,” however, pages 33 to 38 are in fact a copy of Appellant’s First Set of Requests for Production to Plaintiff and Respondent requests pages 33 to 38 be stricken from the Record on Appeal;

- Respondent's Reply to Appellants' Answer and Counterclaim filed December 22, 2010. Appellants only included an unfiled copy of this document. Respondent requests that a filed copy of Respondent's Reply to Appellants' Answer and Counterclaim filed December 22, 2010 be included in the Record on Appeal;
- Appellants' Motion to Dismiss filed February 14, 2013. Appellants only included an unfiled copy of this document. Respondent requests that a filed copy of Appellants' Motion to Dismiss filed February 14, 2013 be included in the Record on Appeal; and
- Plaintiff's Exhibits 1, 2 and 5 of the Transcript of Hearing dated February 18, 2013 contained in Appellants' proposed Record on Appeal are incomplete or not exact copies of the Exhibits. Respondent requests that complete and exact copies of these exhibits be included in the Record on Appeal.

Respondent respectfully requests an order requiring Appellants to correct the Record on Appeal by including these documents.

2. Appellants' proposed Record on Appeal improperly includes matter not presented to the lower court.

"The Record shall not, however, include matter which was not presented to the lower court or tribunal." Rule 210(c), SCACR. The following documents included by Appellants' in the Record on Appeal were never presented to the lower court and must be stricken from the record:

- Page 55 of Appellants' proposed Record on Appeal contains a filed order in an unrelated case and is improper to include in the Record on Appeal and should be stricken from the Record on Appeal;

- Pages 56 to 58 of the Appellants' proposed Record on Appeal contains an unsigned and unfiled copy of an order and should be stricken from the Record on Appeal; and
- Page 350 of the Appellants' proposed Record on Appeal contains a document not presented to the lower court and should be stricken from the Record on Appeal.

Respondent respectfully requests an order striking these documents from the Record on Appeal.

3. The proposed Record on Appeal Fails to Comply with the South Carolina Appellate Court Rules in Other Material Aspects.

Appellants' proposed Record on Appeal fails to comply with the South Carolina Appellate Court Rules as follows:

- The index for the proposed Record on Appeal improperly identifies documents as "Altered" documents. The Index should list all documents without characterization or commentary by the Appellants; and
- Plaintiff's Exhibit 6 and Defendant's Exhibit 1 of the Transcript of Hearing dated February 18, 2013 contained in Appellants' proposed Record on Appeal are incomplete or not exact copies of the Exhibits. Respondent requests that complete and exact copies of these exhibits be included in the Record on Appeal.

Respondent respectfully requests an order requiring Appellants to correct the Record on Appeal to satisfy these requirements.

CONCLUSION

For these reasons, Respondent respectfully moves for an order requiring Appellants to correct the Record on Appeal and respectfully moves for an order staying the time for Respondent to be required to file its final brief until such time as the Record on Appeal is corrected.

Respectfully submitted,

March 25, 2014



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

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vs.

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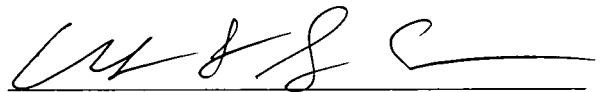
Of whom

S. Russell Fielden and Deborah M. Fielden, are..... Appellants.

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the **RESPONDENT'S MOTION TO CORRECT RECORD ON APPEAL AND MOTION TO STAY TIME TO FILE FINAL BRIEF** on Appellants S. Russell Fielden and Deborah M. Fielden and other Defendants by depositing copies of it in the United States Mail, postage prepaid, on March 25, 2014, at the addresses shown on the attachment listing Other Counsel of Record and Parties.

March 25, 2014



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LICENSED IN SOUTH CAROLINA



March 25, 2014

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

RE: HSBC Bank USA, National Association, as Trustee for MLCC 2007-2 v. S. Russell Fielden; Deborah M. Fielden; CoastalStates Bank AND Coastal State Bank v. S. Russell Fielden and Deborah M. Fielden
Appellate Case # 2013-001412
Civil Action# 2010-CP-07-2927
Our File # 511227.448

Dear Ms. Kitchings:

Enclosed are the original and seven (7) copies of the Respondent's Motion to Correct Record on Appeal and Motion to Stay Time to File Final Brief, along with a Proof of Service. Please return a filed copy of the document to me in the enclosed self-addressed, postage pre-paid envelope provided for your convenience. Also included is my firm's check for \$25 representing the filing fee.

By copy of this letter, I am serving a copy of the Respondent's Motion to Correct Record on Appeal and Motion to Stay Time to File Final Brief and Proof of Service on all parties to this appeal.

Thank you for your assistance in this matter.

With kind personal regards, I am

Sincerely yours,

A handwritten signature in black ink, appearing to read "Charles", written over a horizontal line.

Charles S. Gwynne Jr.

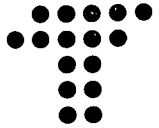
/dm
Enclosures as stated

cc:

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