

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Clyde N. Davis, Jr., Special Referee

Case No. 2009-CP-46-03996
Appellate Case No. 2013-001930

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JUN 09 2014

SC Court of Appeals

JPMorgan Chase Bank, National Association, Respondent,

v.

Leah B. Sample and JP Morgan Chase Bank, National
Association s/b/m to Providian National Bank, Defendants

Of Whom Leah B. Sample is Appellant.

Respondent's Return to Appellant's Motion to Reinstate the Appeal

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Respondent JPMorgan Chase Bank, National Association ("Chase") files this Return to the Motion to Reinstate the Appeal filed by Appellant Leah B. Sample ("Sample"). Sample fails to satisfy the good cause standard necessary to reinstate the appeal. Therefore, this Court should deny the Motion to Reinstate the Appeal.

On May 5, 2014, Chase moved to dismiss this appeal due to Sample's failure to serve the Record on Appeal and file proof of that service with this Court as required by Rule 210(a), SCACR. Sample did not file a return to the motion to dismiss. Thus, this

Court properly dismissed the appeal via order dated May 22, 2014.¹ See Wise v. S.C. Dept. of Corrections, 372 S.C. 173, 173, 642 S.E.2d 551, 551 (2007) (stating that “[w]henver it appears that an appellant has failed to comply with the requirements of the SCACR, an order of dismissal **shall** be issued”) (emphasis added).

Rule 260(a), SCACR, provides that “[a] case **shall not** be reinstated except by leave of court, **upon good cause shown**, after notice to all parties.” (emphasis added). Thus, when the moving party fails to establish “good cause,” our Appellate Court Rules do **not** allow this Court to reinstate the appeal. Here, Sample’s motion fails to establish good cause to reinstate the appeal.

Sample claims reinstatement is proper because of “personal and family issues.” See Motion p. 1. Sample, however, does not state how those alleged issues precluded the service of the Record on Appeal or otherwise link those issues to the failure to serve the Record on Appeal.² Thus, this Court has no basis to judge whether those issues could satisfy the “good cause” required by Rule 260(a), SCACR. This Court, therefore, “shall” deny the motion and remit the appeal to the trial court.

Moreover, Sample chose to initiate this appeal and challenge the trial court’s order. By choosing to pursue this appeal, our appellate court rules impose certain obligations, requirements, and deadlines on Sample and counsel. In particular, Rule 210(a), SCACR, required Sample to serve the Record on Appeal on all parties “within

¹ In the Motion to Reinstate, Sample claims the appeal was dismissed “for failure to timely file and serve the Appellant’s final brief and record on appeal.” See Motion to Reinstate p. 1. This is inaccurate as set forth above.

² If counsel needed additional time to serve the Record on Appeal, counsel only had to ask counsel for Chase for an extension of time. Counsel for Chase would have willingly consented to an extension to allow counsel for Sample to address the issues mentioned in the Motion to Reinstate. Counsel for Sample never did so.

thirty (30) days after service of the last brief.” Further, the rule mandated that “[p]roof of service of the Record **shall** be immediately filed with the clerk of the appellate court.” (emphasis added). Sample has failed to comply with this rule. As of the date of this filing, Sample has yet to serve the Record on Appeal despite Chase’s brief being served on March 24, 2014.

Sample claims that Chase served its Initial Respondent’s Brief “upon counsel for Appellant at his former address” on March 24, 2014. See Motion p. 1. This is manifestly false. Chase served the brief at the address contained on Sample’s Notice of Appeal. Sample’s Notice of Appeal provided an address of

David B. Sample
2424 India Hook Road
Suite 160
Rock Hill, South Carolina 29732

See Notice of Appeal, attached hereto as Exhibit A. This address has been used by this Court in corresponding with Sample’s counsel in this appeal. See Letter to Sample dated 9.23.14, attached hereto as Exhibit B. Moreover, Sample’s counsel never provided counsel for Chase with any other address for service of appellate filings, etc. Service of Chase’s Initial Respondent’s Brief on the address provided by Sample in the Notice of Appeal created a presumption of proper service under Rule 5(b)(1), SCRPC, which Sample has offered no evidence to rebut. In addition, service was complete upon mailing under our Appellate Court Rules. Because service was presumed and complete upon mailing, Sample was required to timely serve the Record on Appeal. Sample failed to do so. Any claim to the contrary cannot constitute “good cause” to reinstate this appeal.

To hold otherwise would cause prejudice to Chase and all respondents in future appeals. Chase fully complied with its obligations under the Appellate Court Rules. Sample has not complied with her obligations on more than one occasion (failure to serve the Record on Appeal and failure to file a Return to the Motion to Dismiss). Reinstatement of the appeal would allow an appellant, such as Sample, to disregard her obligations as Appellant and miss deadlines with this Court but have the appeal reinstated with no “good cause” shown. That result would cause significant delay in the appeal that causes Chase, and all other respondents in an appeal such as this, to incur additional financial damages. Chase suffers financial prejudice each month this appeal remains active.

This litigation arose because Sample was in default under their Note and Mortgage, which required Chase to initiate the foreclosure action. Each month this appeal remains active is another month in which Sample still fail to pay her monthly mortgage payment while living in the property for free. Such an arrangement prejudices Chase because the foreclosure action cannot proceed until this appeal is resolved. Moreover, Chase would be prejudiced by the future costs associated with defending a meritless appeal and the likelihood of incurring the costs associated with Sample failing to follow the Appellate Court Rules (as Sample has proven will occur), should the appeal resume.

This Court rightly dismissed the appeal and should not reinstate it. Therefore, this Court should deny the motion to reinstate the appeal and remit the action to the trial court to allow the litigation to proceed.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:  _____

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Attorneys for JPMorgan Chase Bank, National
Association

Columbia, South Carolina

June 9, 2014

EXHIBIT
A

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
CIRCUIT COURT

Clyde N. Davis, Jr., Special Referee for York County

Cases No. 2009-CP-46-03996

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SC Court of Appeals

JPMorgan Chase Bank,
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Respondent,

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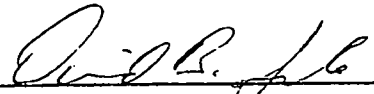
Leah B. Sample,

Appellant.

NOTICE OF APPEAL

Leah B. Sample appeals the Special Referee's Order Denying Defendant's Motion to Set Aside Foreclosure Sale and Supplemental Order issued by The Honorable Clyde N. Davis, Jr. by Order dated July 20, 2013 and filed July 25, 2013.

August 23, 2013


David B. Sample
2424 India Hook Road
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(803) 981-9900
Attorney for Appellant

Other Counsel of Record:
Andrew M. Sullivan
Post Office Box 2065
Columbia, South Carolina 29202
Attorney for Respondent
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APPEAL FROM YORK COUNTY
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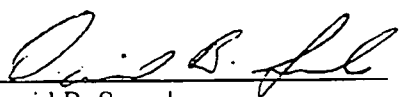
v.

Leah B. Sample,

Appellant.

CERTIFICATE OF SERVICE

I certify that I have served the Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid, on August 23, 2013, addressed to the Respondent's attorney of record, Andrew M. Sullivan, P.O. Box 2065, Columbia, SC 29202.



David B. Sample
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(803) 981-9900
Attorney for Appellant

RET'D SEP 24 2013



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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September 23, 2013

Mr. David B. Sample
2424 India Hook Road
Suite 160
Rock Hill SC 29732

Re: JP Morgan Chase Bank v. Leah Sample
Appellate Case No. 2013-001930

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

JP Morgan Chase Bank, National Association, Respondent,

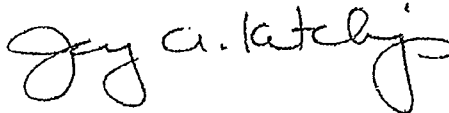
v.

Leah B. Sample and JP Morgan Chase Bank, National Association s/b/m to Providian National Bank, Defendants,

Of Whom Leah B. Sample is the Appellant.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jay A. Kately".

CLERK

cc: Andrew Michael Sullivan

RETD AUG 27 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
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Cases No. 2009-CP-46-03996

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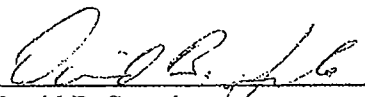
Leah B. Sample,

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Attorney for Appellant

Other Counsel of Record:
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Columbia, South Carolina 29202
Attorney for Respondent
(803) 252-3340

STATE OF SOUTH CAROLINA

COUNTY OF YORK

JPMorgan Chase Bank, National Association

PLAINTIFF,

VS.

Leah B. Sample and JPMorgan Chase Bank,
National Association s/b/m to Providian
National Bank

DEFENDANTS.

(090268.00910)

IN THE COURT OF COMMON PLEAS

CASE NO. 2009-CP-46-03996

**SPECIAL REFEREE'S ORDER
DENYING DEFENDANT'S MOTION TO
SET ASIDE FORECLOSURE SALE AND
SUPPLEMENTAL ORDER**

FILED - RECEIVED
2013 JUL 25 PM 12:06
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

Upon motion of the Defendant, Leah B. Sample, by and through her counsel, David Sample, this Court convened at 10:00AM the 23rd day of May, 2013, for hearing to determine whether there was sufficient cause to set aside: (1) the sale of the mortgaged premises, the subject in this foreclosure action, which occurred on February 5, 2013; and, (2) the Supplemental Motion and Order to the Special Referee's Order and Judgment of Foreclosure and Sale filed on January 11, 2013. Attending on behalf of the Plaintiff, JPMorgan Chase Bank, National Association, was Andrew M. Sullivan of the Scott Law Firm, P.A.

Following the oral arguments presented, the testimony offered and the facts ascribed to by the respective counsels for each party at hearing and upon consideration of same by this Court, I find insufficient grounds to grant the Defendant relief from either the foreclosure sale or the Supplemental Order as petitioned. I find that once an attorney makes an appearance in a case and provides an address to opposing counsel and the Clerk of Court, it is incumbent upon the attorney to notify opposing counsel and the Clerk of any change in address. To rule otherwise

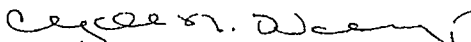
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would place an unreasonable burden on opposing counsel and the Clerk of Court to check the Attorney Information System before sending any hearing notice or other correspondence in the case.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant's Motion to Set Aside Foreclosure Sale and Supplemental Order is **DENIED**.

IT IS FURTHER ORDERED that the foreclosure sale occurring on February 5, 2013 remains valid and in effect with the highest bidder at sale free to enforce its rights consistent with those afforded it by any and all applicable laws.

AND IT IS SO ORDERED.


The Honorable Clyde N. Davis, Jr.
Special Referee for York County

York, South Carolina
July 20, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
CIRCUIT COURT

Clyde N. Davis, Jr., Special Referee for York County

Cases No. 2009-CP-46-03996

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National Association,

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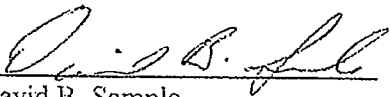
v.

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Appellant.

CERTIFICATE OF SERVICE

I certify that I have served the Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid, on August 23, 2013, addressed to the Respondent's attorney of record, Andrew M. Sullivan, P.O. Box 2065, Columbia, SC 29202.



David B. Sample
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Attorney for Appellant

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Of Whom Leah B. Sample is Appellant.

PROOF OF SERVICE

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for JP Morgan Chase Bank, National Association, do hereby certify that I have served all parties in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

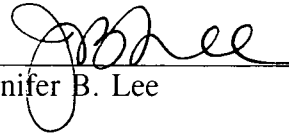
Pleadings:

Respondent's Return to Appellant's Motion to Reinstate the Appeal

Party Served:

David B. Sample
2424 India Hook Road
Suite 160
Rock Hill, SC 29732

David B. Sample
Attorney at Law
1506 Ebenezer Road
Rock Hill, SC 29732

A handwritten signature in cursive script, appearing to read "J. Lee", is written over a horizontal line.

Jennifer B. Lee

June 9, 2014