

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master-in-Equity

The Honorable Mikell Scarborough

Case No. 2011-CP-10-2505
Appellate Case No. 2013-002175

RECEIVED

MAY 21 2014

SC Court of Appeals

Wells Fargo Bank, N.A., as trustee for WaMu
Mortgage Pass-Through Certificates Series 2006-PR I
Trust, Respondent,

v.

Marvin Smalley, Bay Club Homes Property Owners
Association, Inc., Defendants

Of Whom Marvin Smalley is Appellant.

Return to Appellant's Motion to Supplement the Record on Appeal

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Respondent Wells Fargo Bank, N.A., as trustee for WaMu Mortgage Pass-Through Certificates Series 2006-PR I Trust ("Respondent") files this Return to Appellant's Motion to Supplement the Record on Appeal. Respondent consents to the motion and the filing and service the Supplemental Record on Appeal with Trial Exhibits 6 and 7 included. However, this Return is necessary to clarify other misrepresentations and arguments advanced in Appellant's motion.

First, in the motion, Appellant requests an alternative argument that the documents for inclusion in the Supplemental Record should be stuck “as unnecessary and irrelevant.” See Motion p. 1. This argument is most troubling to Respondent. When Appellant served the Record on Appeal, counsel for Respondent advised counsel for Appellant that the record inadvertently omitted Trial Exhibits 6 and 7, which had been designated by Respondent. In response, Appellant’s counsel agreed to supplement the record to include these items designated by Respondent. See Letter dated 4.28.14, attached hereto as Exhibit A. Respondent advised this Court of that agreement the same day, and Appellant’s counsel was copied on that letter. Id. Despite that agreement with Respondent’s counsel, Appellant’s counsel now moves to exclude the items from the Record on Appeal. This cannot be allowed. This Court should require Appellant’s counsel to honor his agreement and file and serve the Supplemental Record on Appeal with Trial Exhibits 6 and 7 included.¹

Second, Trial Exhibits 6 and 7 are not “irrelevant” to this appeal as suggested by Appellant. See Motion p. 1. Specifically, Appellant argues the exhibits are irrelevant because “neither party cited these documents in their arguments.” Id. This argument illustrates Appellant’s misapprehension of our Appellate Court Rules.

The test for inclusion in the Record on Appeal is not whether the item is cited in briefing. Rather, the test is whether the items are relevant to the issue on appeal. See Rule 209(b) and (c), SCACR. Trial Exhibits 6 and 7 are without question relevant to the issues raised by Appellant in this appeal. In brief to this Court, Appellant challenged the foreclosure judgment on the basis that no evidence exists to support a


¹ Trial Exhibits 6 and 7 are attached to Appellant’s Motion to Supplement as Exhibits A and B.

finding that Appellant was in default under the note and mortgage. Trial Exhibit 6 was introduced in evidence at trial by Respondent to provide evidence of Appellant's default. Likewise, Appellant's brief seems to raise standing challenges to Respondent's ability to foreclose. See Appellant's Br. p. 2 (claiming the Respondent witness "could not testify as to the date of the assignment from the prior holder of the note to [Respondent]") (emphasis added). Trial Exhibit 7 is the assignment to Respondent and was in evidence at trial. Therefore, Trial Exhibits 6 and 7 are unequivocally relevant to the issue on appeal. Appellant's claim to the contrary borders on frivolous. Thus, this Court should reject this argument and order Appellant to file and serve the supplemental Record on Appeal with Trial Exhibits 6 and 7 included.

Third, Appellant claims Trial Exhibits 6 and 7 were omitted "because lack of clarity of the respondent's designation." See Motion p. 1. This claim is absurd and is a misrepresentation to this Court. Respondent's Designation included the transcript of the foreclosure hearing "with all exhibits." See Designation of Matters p. 2 ¶5, attached hereto as Exhibit B. "All exhibits" included Trial Exhibits 6 and 7. Thus, Appellant was required to include Trial Exhibits 6 and 7 in the Record on Appeal. See Rule 210(c), SCACR (mandating that the "Record on Appeal **shall include all matters designated to be included by any party under Rule 209 . . .**"). While Appellant included the other trial exhibits, Appellant failed to include Trial Exhibits 6 and 7. Thus, this Court should require Appellant's counsel to file and serve the Supplemental Record on Appeal with Trial Exhibits 6 and 7 included.

Fourth, Respondent again consents to the filing and service of the Supplemental Record on Appeal with Trial Exhibits 6 and 7 included.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:  _____

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May 21, 2014



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April 28, 2014

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
The South Carolina Court of Appeals
1015 Sumter Street - 5th Floor
Columbia, SC 29201

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MAY 21 2014

SC Court of Appeals

RE: Wells Fargo Bank, et al. v. Marvin Smalley, et al.
Case No.: 2011-CP-10-2505
Appellate Case No. 2013-002175
Our file no.: 11281/01800

Dear Ms. Kitchings:

I am in receipt of the Record on Appeal served by Appellant's counsel in the above-referenced matter. However, the Record on Appeal inadvertently omitted two items set forth in Respondent's Designation of Matters. Appellant's counsel has agreed to serve a corrected Record on Appeal to include the items initially omitted.

Until Appellant's counsel serves the corrected Record on Appeal, Respondent will be unable to complete its Final Brief. Respondent will file its Final Brief within twenty (20) days of service of the corrected Record on Appeal as provided in Rule 211, SCACR.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Michael J. Anzelmo

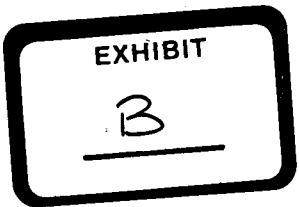
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APR 28 2014

SC Court of Appeals

MJA:jlee

cc: David K. Haller, Esq. (via E-Mail and U.S. Mail)



THE STATE OF SOUTH CAROLINA
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Master-in-Equity

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Mortgage Pass-Through Certificates Series 2006-PR I
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Respondent,

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Marvin Smalley, Bay Club Homes Property Owners
Association, Inc.,.....

Defendants

Of Whom Marvin Smalley is

Appellant.

RESPONDENT'S DESIGNATION OF MATTER FOR THE RECORD ON APPEAL

Pursuant to Rule 209, SCACR, Respondent Wells Fargo Bank, N.A., as trustee for WaMu Mortgage Pass-Through Certificates Series 2006-PR I Trust ("Respondent") designates the following material for inclusion in the record on appeal. Undersigned counsel certifies, pursuant to Rule 209(c), SCACR, that the designation contains no matter which is irrelevant to the appeal:

ORDERS

- 1. Master's Order and Judgment of Foreclosure Sale dated December 27, 2012.

2. Order of Reference dated June 14, 2011
3. Order denying Motion to Amend dated September 9, 2013.

PLEADINGS

4. Complaint

TRANSCRIPTS

5. Transcript dated November 19, 2012 with all exhibits.

MISCELLANEOUS AND OTHER MOTIONS:

6. Note
7. Mortgage
8. Motion to Amend dated January 14, 2013
9. Notice of Appeal

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Michael I. Anzelmo

B. Rush Smith III

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Attorneys for Respondent Wells Fargo Bank, N.A., as
trustee for WaMu Mortgage Pass-Through Certificates
Series 2006-PR I Trust

March 5, 2014

THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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SC Court of Appeals

The Honorable Mikell Scarborough

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Wells Fargo Bank, N.A., as trustee for WaMu
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Marvin Smalley, Bay Club Homes Property Owners
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Defendants.

Of Whom Marvin Smalley is

Appellant.

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Wells Fargo Bank, N.A., as trustee for WaMu Mortgage Pass-Through Certificates Series 2006-PR I Trust, 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 and hand delivery, to the following address(es):

Pleadings:

Return to Appellant's Motion to Supplement the Record on Appeal

Counsel Served:

David K. Haller, Esq.
115 River Landing Drive, Ste. 102
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Jennifer B. Lee
Administrative Assistant

May 21, 2014

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

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May 21, 2014

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1015 Sumter Street - 5th Floor
Columbia, SC 29201

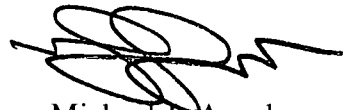
RE: Wells Fargo Bank, et al. v. Marvin Smalley, et al.
Case No.: 2011-CP-10-2505
Appellate Case No. 2013-002175
Our file no.: 11281/01800

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of a Return to Appellant's Motion to Supplement the Record on Appeal in the above-referenced matter. Please file the original and return a clocked-in copy to me via our courier. Should you have any questions, please do not hesitate to contact me.

By copy of this letter, I am hereby serving opposing parties.

Very truly yours,



Michael J. Anzelmo

MJA:jlee
Enclosures

cc: David K. Haller, Esq.

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