

**OPPOSITION TO RESPONDENT'S
MOTION TO DISMISS**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 18 2014

SC Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Philip E. Wright, Special Referee

Case No. 2013-002-373

H & R Block Bank, FSB,

Respondent

v.

Ziraili M Elbey, a/k/a/ Ziraili
Mohassan El Bey,

Appellant

**OPPOSITION TO RESPONDENT'S
MOTION TO DISMISS**

The Appellant, a natural born woman on the land relies on the original Complaint for points and authorities in Opposition to the Respondent's Motion to Dismiss. (see Exhibit A-1 thru A-3)

The Respondent alleges that Appellant has submitted sham pleadings. This Appellant respectfully disagree. It is the Respondent recognized by the Special Referee that submitted sham pleading and order to foreclose on Appellant so stated on Record in the Court Transcript, dated October 24, 2013 .(see Exhibit B, B-1 thru B-3)

I certify that this designation contains no matter which is irrelevant to this appeal.

April 12, 2014

By: 

Ziraili M Elbey, *In Propria Persona*
9789 Charlotte Highway, #400-191
Ft. Mill, South Carolina, 29707
(803) 233-2665

**PROOF OF SERVICE OF OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS**

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Ziraili M Elbey, a/k/a/ Ziraili
Mohassan El Bey,

Appellant

**PROOF OF SERVICE OF OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS**

I certify that Brock & Scott, PLLC, Attn: Chad Burgess, 3800 Fernandina Rd., Ste 110, Columbia, South Carolina, 29210 received a copy of the Opposition to Respondent's Motion to Dismiss by depositing a copy of it in the U.S. Mail, postage prepaid, on April 14, 2014 addressed to H & R Block Bank, FSB, its attorneys of record, Brock & Scott.

April 12, 2014

By: _____



Ziraili M Elbey, *In Propria Persona*
9789 Charlotte Highway, #400-191
Ft. Mill, South Carolina, 29707

*Pls stamp & return
to sender - Thanks!*

THE STATE OF SOUTH CAROLINA
In The Court of Appeal

Ziraili M. Elbey, a/k/a Zirail Mohassan El Bey.,

Appellant, *In Propria Persona*'

v.

H & R BLOCK BANK, FSB,
Respondent

Appellee - Respondent

RECEIVED
NOV 19 2013
COURT OF APPEALS

Appellate Case No. 2013-002-373

Appeal From Lancaster County
Philip E. Wright, Special Referee

November 12, 2013

MOTION FOR LEAVE TO PROCEED In Forma Pauperis and **AFFIDAVIT** together with **COMPLAINT** pursuant to Rule 3(b).

On January 14, 2011, lawyers for Appellee/Respondent, H & R BLOCK BANK, FBS,(a servicer), executed a foreclosure summons, notices and initial complaint against Appellant. Appellant argues that Appellee/Respondent lacks legal standing to bring this action and fail to qualify under Section 33-23-140(B) after commencement of the suit; that Appellee/Respondent lacks "business certificate of authority to bring this foreclosure action as required by [S.C. Code Ann.] §33-15-101 and § 33-15-102 and the [S.C. Code Ann.] § 33-23-140 (B) (Supp. 36*36 1986). And, Appellant argues that Appellee/Respondent lacks jurisdiction under **SCRCP** 12(b)(6). Appellee/Respondent claims to be the holder in due course and the real party in interest under **SCRCP** and **Fed Rule 17(a)**. Appellant argues, that Ratification of Commencement and Real Party of Interest, (the original lender has to appear in court and grant power of attorney to a

EXHIBIT
A-1

servicer in order for a servicer to commence a foreclosure action in court. Appellee/Respondent claims to be the owner of the original mortgage and Note. Appellant argues that the original mortgage and note were separated and securitized, meaning original lender sold original mortgage and Note and now owned by multiple investors. Appellant argues that as of February 19, 2013, is holder and owner of current Mortgage Satisfaction with the Lancaster Register of Deeds and Lancaster Court of Common Pleas. Further, Appellee/Respondent placed a copy of altered, fraudulent Assignment, and altered, forged, fraudulent mortgage and NOTE securitized instruments within the summary judgment claim. Appellant argues "unclean hands" throughout the entire suit process, that not having or being the holder in due course as required under the South Carolina statutes (SCCC) UCC's that violates Title 18 sections 470 to 473 and 474 and the Counterfeit Detection Act of 1992, Public Law 102-550, in Section 411 of Title 31 of the Code of Federal Regulations. Appellee/Respondent motioned the Lancaster Court of Common Pleas in July 22, 2013 to restore the original foreclosure complaint case no. 2011-CP-29-00035 under SC Supreme Court Administrative Order of June 5, 1992 to initiate foreclosure sale with Special Referee's signing said order. Appellant argues that the Appellee/Respondent violated **SCRPC** Rule 12(b)(c) and **SCRPC** Rule 11 (c) and allege "unclean hands".

WEREFOR: Appellant request that this court to accept her Notice of Appeal and grants the Motion for Leave to proceed *In forma pauperis* and Affidavit pursuant to SCRCP Rule 3(b) together with the Complaint.

This 12th day of November 20 13


By 
Ziralli M Elbey, Appellant
In Propria Persona'

EXHIBIT
A-2

The State of South Carolina



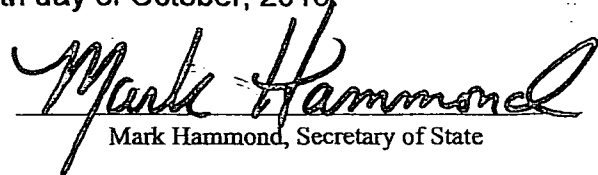
Office of Secretary of State Mark Hammond

Certificate of No Record

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

At this time, this office can find no record of a corporation using the name:
H&R BLOCK BANK, FSB

Given under my Hand and the Great
Seal of the State of South Carolina this
18th day of October, 2013,


Mark Hammond, Secretary of State

JUN 5, 1992

The Supreme Court of South Carolina

ADMINISTRATIVE ORDER FOR THE FAMILY COURTS

Pursuant to the provisions of Article V, Section 4 of the South Carolina Constitution, which vests the Chief Justice of the Supreme Court with administrative authority over the unified judicial system, the following administrative order affecting the Family Courts is adopted, and all rules or orders in conflict herewith are revoked. THEREFORE, IT IS ORDERED:

(a) Whenever a domestic relations or juvenile case has been filed and entered in the File Book for more than two hundred seventy (270) days without having been continued, tried or otherwise disposed of, the clerk of court shall strike the case from the File Book with leave to restore.

(b) No domestic relations or juvenile case may be continued beyond two hundred seventy (270) days from the file of filing except by written order of the Chief Administrative Judge upon a showing of good cause. Any order of continuance which continues a domestic relations or juvenile case beyond two hundred seventy (270) days shall state the reasons for the continuance and shall set the case for trial and final disposition at a time and date certain.

(c) Any case stricken from the File Book pursuant to paragraph (a) above shall be restored only upon the

EXHIBIT B

Jun. 16. 2010 10:34AM

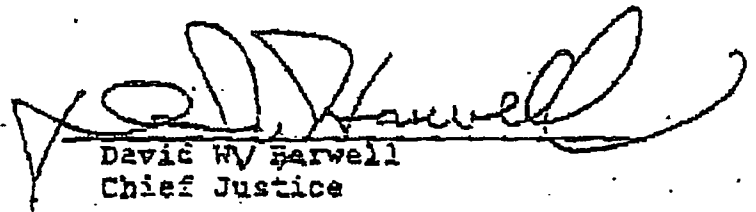
June 5, 1992

The Supreme Court of South Carolina

written order of the Chief Administrative Judge, obtained after written application is made and good cause shown why the case should be continued as a pending case, and provided that the order restoring the case to the File Book shall set the case for trial and final disposition at a time and date certain.

The striking of a case from the active docket is an administrative function only, and does not affect the merits of a case. Accordingly, all orders issued before such striking remain in full force and effect, unless limited by their terms. Additionally, voluntary or court-ordered discovery may be conducted pursuant to Rule 25, SCRFC even though a case has been struck from the File Book.

This order shall take effect immediately.



David W. Harwell
Chief Justice

June 5, 1992

Columbia, South Carolina

EXHIBIT
B

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

H&R Block Bank,

Plaintiff,

vs.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement
Dated June 4, 2010 by and through its Trustee
Wellesley K. Clayton and American Home
Mortgage Servicing, Inc. s/b/m to Option One
Mortgage Corporation,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-29-00035

MOTION AND ORDER TO RESTORE

FILED
OFFICE OF CLERK
LANCASTER, SC
13 AUG - 1 PM 4: 05

Chad W. Burgess, of Brock & Scott, PLLC, Attorneys for the Plaintiff, has moved before this Court to restore the above-captioned case. Based upon the record in this case, I make the following findings of salient fact and conclusion of law:

1. In the above-captioned action, at the request of the Plaintiff, the case was stricken from the file book by an Order of Stay filed previously with the Lancaster County Clerk of Court due to the Defendant, Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey) filing under Chapter 13 of the United States Bankruptcy Code.

2. The said Defendant has been discharged by order of the Bankruptcy Court dated January 14, 2013 (a copy attached hereto as Exhibit "A").

3. In the interest of judicial economy, justice and equity and for good cause shown, this case shall be restored pursuant to the Chief Justices' Administrative Order issued June 5, 1992.

4. This case has been referred to Mr. Phillip E. Wright, Special Referee for Lancaster County for final disposition, and a final hearing shall be held at such date and time as may hereinafter be set.

THEREFORE, based upon the motion of Chad W. Burgess, of Brock & Scott, PLLC, Attorney for the Plaintiff, and upon my review of the record in this case,

IT IS ORDERED that the above-captioned action shall be restored to the file book and active case roster.

EXHIBIT
B-1

1 July -- the August 1st pleading, I do not
2 understand and do not see why they were
3 mentioned, but maybe someone can assist me with
4 that. I'm looking at the Motion and Order to
5 Restore and that is ---

6 **THE COURT:** Yes, ma'am. I'm familiar with that and
7 I'm going to stop you at that point. The
8 Motion to Restore is an administrative matter
9 that is summarily handled by the Court on
10 motion of the Plaintiff when the bankruptcy has
11 expired. There is not requiring of a hearing
12 on that motion. There is no requiring for a
13 response on that motion. And I granted the
14 motion upon submission by the Plaintiff because
15 it is an administrative act and does not
16 require a hearing. So, that issue is moot.

17 **MS. EL BEY:** May I continue?

18 **THE COURT:** Not discussing that issue. You can move
19 to the next issue.

20 **MS. EL BEY:** I'm confused. So, I just need -- I
21 just need some clarification on ---

22 **THE COURT:** I've explained to you ---

23 **MS. EL BEY:** --- on this right here. The motion ---
24 well, anyway, I'll wait.

25 **THE COURT:** Well, the Court notes that the Defendant



1 has handed up a Supreme Court order relating to
2 family court forms rendered by Justice Toal in
3 February of 2006; that has absolutely nothing
4 to do with this action because, first, this is
5 not family court. Second, this is an
6 Administrative Order related to forms in the
7 family court and it has nothing to do with
8 this. So, I'm not going to introduce that as
9 anything in the record as it's completely
10 irrelevant. And that's an example of a sham
11 pleading.

12 **MS. EL BEY:** My objection to what has just been
13 stated by the Special Referee, the order that
14 was signed was based on the Chief Justice Order
15 of July -- June the 5th, 1992, and I am
16 definitely confused when I received this
17 because this is not a family court. This is
18 the Court of Common Pleas.

19 **THE COURT:** Ma'am, I am not here -- I am not here to
20 clarify your confusion.

21 **MS. EL BEY:** I don't understand. I don't understand
22 this, but here -- here is ---

23 **THE COURT:** Ma'am, I'm sorry. I'm sorry that you
24 don't understand.

25 **MS. EL BEY:** This is what it was based on. You



Ziraili M Elbey

9789 Charlotte Highway, 400-191, Ft. Mill, South Carolina 29707
April 14, 2014

Jenny Abbott Kitchings, Clerk
The South Carolina Court of Appeals
P.O. BOX 11629
Columbia, South Carolina 29211

RECEIVED

APR 18 2014

SC Court of Appeals

RE: Ziraili Elbey v. H & R Block Bank, FSB
Appellate Case No. 2013-002373

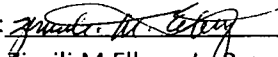
Dear Clerk Kitchings:-

Please be advised that the lawyers for the Respondent/Plaintiff agrees with Appellant's Initial Brief. Two (2) pleadings you should have 1) Opposition to Motion to Dismiss, and 2) the Final Brief which also addresses their Motion to Dismiss. Since, Respondent/Plaintiff lawyers fail to reply in a timely manner to Appellant's (initial brief) of January 23, 2014 according to Rule 208. It's been more than sixty (60+) days since Respondent's lawyers attempt to stall the Appellant's due process by filing a Motion to Dismiss on March 25, 2014. Appellant's Opposition to and Final Brief replies to lawyers Motion to Dismiss. [see pg 7, line 1-12].

I am returning the initial copy of the transcript originally received in the SC Court of Appeals on December 04, 2013 per Rule 210. Also, included in this mailing is fourteen (14) bound copies, and one unbound original copy of the final brief according to Rule 211, and Rule 267. All of the Record of Appeal materials have been sent previously according to the Rules, to the clerk who handles case no. 2013-002373 e.g. Orders, Compliant, Copy of Transcript and nineteen (19) other designated matter to be accepted as revised with a Motion to Amend Designation of Matter. These matters in the amended motion for Record on Appeal, dated February 03, 2014 of which no answer has been received by this Appellant to the motion have been submitted. Kindly make those revised Record of Appeal matters available for the judges.

Thank you for your assistance.

Sincerely yours,

By: 
Ziraili M Elbey, In Propria Persona'
9789 Charlotte Highway, #400-191
Ft. Mill, SC 29707
(803) 233-2665

Enclosures:

1 Copy of Transcript

7 Bound Copies of Opposition to Motion to Dismiss, & 14 Bound Copies of Final Brief

1 original unbound copy of the Opposition and the Final Brief

Cc: Jason L. Branham, Esquire
Brock & Scott, PLLC

Appellant, Ziraili M Elbey certify that the items, and final brief for case # 2013-002373 contains no matter which is irrelevant to this appeal, plus a certificate of service to respondent's lawyers.
04/14/2014.

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 3613950834 -0099
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@@ COLUMBIA SC 29211 Zone-2 Priority Mail 2-Day By Weight 1 lb. 8.50 oz. Expected Delivery: Thu 04/17/14 USPS Tracking #: 9114901230803325586006 Includes \$50 insurance		\$5.80
Issue PVI:		\$5.80

Total: \$11.76

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Sent To: *Chad Burgess, Brocke Scott Hill*
 Street, Apt. No. or PO Box No.: *300 Fernandina Pl, Se 110*
 City/State ZIP+4: *Keowee, SC 29210*

PS Form 3800, August 2006 See Reverse for Instructions