

**APPELLANT'S NOTICE OF OPPOSITION TO
NOTICE OF APPEARANCE OF COUNSEL**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Philip E. Wright, Special Referee

Case No. 2013-002373

H & R Block Bank, FSB,

Respondent

v.

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 Servicing, Inc. s/b/m to Option One Mortgage Corporation, Defendants,

Appellant

Of Whom Ziraili M. Elbey is the Appellant.

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Come now Appellant, Ziraili M Elbey, a natural born woman on the land, not an attorney, hereby states that more than two hundred and forty days (240+) after the filing of Appellant's SCACR 208 initial brief, SCACR 209 designation of matters and other pertinent materials previously documented in this case, is filing a timely opposition to NOTICE OF APPEARANCE OF COUNSEL representing Nationstar Mortgage LLC (hereafter refers as NSMLLC), as another Respondent in Appellant's case no. 2013-002373. The only Respondent in this Appellate case is H & R Block Bank, FSB as seen in the caption above and as seen in the caption of the SC Court of Common Pleas lawsuit **complaint** filed by H & R Block Bank, FSB in case no. 2011-CP-29-00035, dated January 14, 2011 which resulted in a foreclosure. (See exhibit "A" first pg 'only') [total/full copy previously filed in compliance with SCACR 209]

NSMLLC never signed a written contract nor requested foreclosure arbitration to contract with Appellant, Ziraili M Elbey; therefore, H & R Block Bank, FSB in case no. 2011-CP-29-00035 dated January 14, 2011 was the only Plaintiff in the aforementioned foreclosure case. No contract existed between NSMLLC and this Appellant. Pursuant to S.C.Code Ann. § 15-48-10(a). *See, e.g., Alderman v. Bivin*, 233 S.C. 545, 552, 106 S.E.2d 385, 389 (1958) (A contract may be rescinded on grounds of unilateral mistake if the mistake was "induced by the fraud, deceit, misrepresentation, concealment, or imposition in any form of the party opposed in interest to the reformation or rescission, without negligence on the part of the party claiming the right."); *Richardson's Restaurants, Inc. v. National Bank of S.C.*, 304 S.C. 289, 297, 403 S.E.2d 669, 673 (Ct.App.1991) ("At common law, a party to a contract cannot avoid it on the ground that he/she/it made a mistake if there has been no misrepresentation, there is no ambiguity in the terms of the contract, and the other party has no **notice** of the mistake and acts in good faith. An erroneous impression taken up from the suggestion of the party's own mind does not relieve him/her/it from the contract.") (citations omitted); *see also Smothers v. United States Fidelity & Guar. Co.*, 322 S.C. 207, 210, 470 S.E.2d 858, 860 (Ct.App.1996) ("It is the general rule that a court of equity will not, where a mistake of law is disclosed, grant relief from the consequences thereof in the absence of fraud or undue influence."). Appellant, Ziraili M. Elbey never signed written **contract** with NSMLLC nor did **foreclosure arbitration** occur in the conduct of this case. This request will violate SCACR 209 & 210(c), the Record on Appeal since the designation of matters were previously submitted in a timely manner. This request is a thinly-veiled attempt to circumvent due process of this Appellant's case. It is untimely, improper and should be denied as NSMLLC was not a Plaintiff in the lower court.

For these reasons, Notice of Appearance of Counsel request for NSMLLC as Respondent in case no. 2013-002373 should be denied.

October 07th, 2014

By: 

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

Cc: File
Brock & Scott, PLLC
McGuireWoods

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Case No. 2013-002373

H & R Block Bank, FSB,

Respondent

v.

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 Servicing, Inc. s/b/m to Option One Mortgage Corporation, Defendants,

Appellant

Of Whom Ziraili M. Elbey is the Appellant.

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PROOF OF SERVICE

I certify that Brock & Scott, PLLC, Attn: Chad Burgess, 3800 Fernandina Rd., Ste 110, Columbia, South Carolina, 29210 and Benjamin Milam, McGuireWoods at 100 North Tryon Street, Suite 2900, Charlotte, NC 28202-4011 received a copy of the **APPELLANT'S NOTICE OF OPPOSITION TO NOTICE OF APPEARANCE OF COUNSEL** by depositing a copy of it in the U.S. Mail, postage prepaid, on October 07th, 2014 addressed to above counsel listed and this Appellate Court.

October 07th, 2014

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

Certificate of Appellant

The undersigned hereby certifies that the **APPELLANT'S NOTICE OF OPPOSITION TO NOTICE OF APPEARANCE OF COUNSEL** contain all material as listed and copies previously submitted and proposed to be included by any of the parties and not any other material.

October 07th, 2014

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

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H&R Block Bank,

Plaintiff,

EXHIBIT "A"

COMPLAINT

vs.

(Non-Jury)

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).

**FORECLOSURE
OF REAL ESTATE
MORTGAGE**

(Deficiency Judgment Demanded as to Defendant
Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey))

2011 JUN 14 10:10:13

The Plaintiff above named, complaining of the Defendant(s) herein alleges that:

1. Plaintiff, H&R Block Bank, is a business entity duly authorized to conduct business in the State of South Carolina.
2. Upon information and belief, the Defendant Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey is a resident and citizen of the County of Lancaster, State of South Carolina; Defendant WKFC Living Trust Under Trust Agreement Dated June 4, 2010 by and through its Trustee Wellesley K. Clayton is a trust organized under the laws of the State of South Carolina which owns real property in the State of South Carolina; and, Defendant American Home Mortgage Servicing, Inc. s/b/m to Option One Mortgage Corporation is a business entity and is duly authorized to conduct business in the State of South Carolina.
3. The real property hereinafter described, that is the subject of this action, is situated and located in the County of Lancaster, State of South Carolina, and this Court has proper jurisdiction over the subject matter and the parties of this action.
4. Heretofore, on March 29, 2006, Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey) (hereinafter "Borrower(s)") made, executed, and delivered to Option One Mortgage Corporation (hereinafter "Lender") a certain Fixed Rate Note in writing (hereinafter "Note"), wherein and whereby Ziraili

Ziraili M Elbey

9789 Charlotte Highway, 400-191, Ft. Mill, SC 29707

October 07, 2014

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

RE: #1 H & R Block Bank, FSB, Respondent v. Ziraili M. Elbey, Appellant
Appellate Case No. 2013-002373

RE: #2 Appellant's Opposition of Notice to Notice of Appearance of Counsel brief

Dear Clerk of Court:-

Please find seven copies of the above mentioned brief submitted in a timely manner to answer the Notice of Appearance of Counsel.

Enclosed is a self-stamped envelope and copies to be stamped and returned to this writer. Thank you for your assistance to this matter.

Sincerely yours,

By: Ziraili M Elbey
Ziraili M Elbey, In Propria Persona
9789 Charlotte Highway, #400-191
Indian Land, South Carolina 29707
803-233-2665

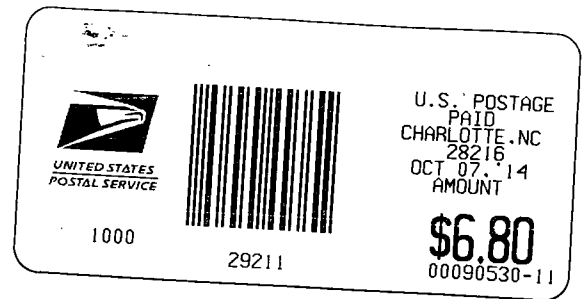
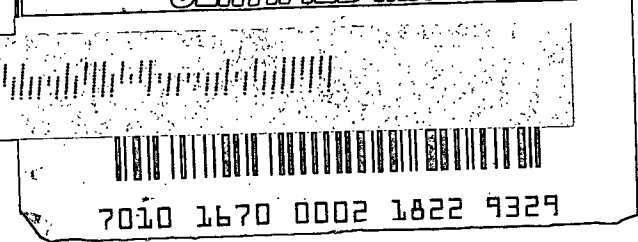
cc: Proof of service

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SC Court of Appeals

M. Elbey
289 Charlotte
400-91
E Hill, SC 29107



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SC Court of Appeals

Clerk of Court
% Jenny Abbott Kitching
SC Court of Appeals
P.O. BOX 11629
Columbia, SC 29211