

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Philip E. Wright, Special Referee

Appellate Case No. 2013-002373

RECEIVED

DEC 20 2014

SC Court of Appeals

74623

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

Of whom Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey is the.....Appellant.

MOTION TO SUPPLEMENT THE RECORD ON APPEAL
AND SUPPORTING MEMORANDUM

Respondent, H&R Block Bank, FSB, through undersigned counsel, moves under Rule 212 of the South Carolina Appellate Court Rules to supplement the Record on Appeal filed in this action by Appellant, Ziraili M. Elbey a/k/a/ Ziraili Mohassan El Bey, and states as follows:

1. Appellant submitted what purports to be the Record on Appeal to this Court on or around November 12, 2014.

2. Pursuant to SCACR 210(c), Appellant was required to submit as part of the Record on Appeal all matter designated to be included by any party under SCACR 209.

3. The documents Appellant submitted to the Court failed to include all matters specified by Respondent in its Designation of Matter to Be Included in the Record on Appeal (“Designation”) served October 7, 2014. See Affidavit of Attorney attached hereto as Exhibit A. Most of the documents which Appellant did include from Respondent’s Designation appear to be incomplete or otherwise do not reflect the way the documents were presented to the trial court. See Affidavit of Attorney attached hereto as Exhibit A.

4. The matters in Respondent’s Designation are properly part of the Record on Appeal, and Respondent cannot complete its Final Brief unless the Record is supplemented to include all documents in its Designation.

5. Accordingly, Respondent seeks leave from this Court to file an Appendix to the Record that includes all matter listed in its Designation. A true copy of Respondent’s Designation is attached hereto as Exhibit B.

WHEREFORE, Respondent, H&R Block Bank, FSB respectfully requests that this Court grant it leave to supplement the Record on Appeal to include the matters listed in its Designation of Matter to Be Included in the Record on Appeal.

MEMORANDUM AND CITATION OF AUTHORITY

SCACR 210 provides that the Record on Appeal “shall include all matter designated to be included by any party under Rule 209,” but shall not include matter which was not presented to the lower court or tribunal. When a portion of an order, judgment, decision, or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be

included in the Record. SCACR 210. A party may move under SCACR 212 for leave to supplement the record.

The Appellant has failed to include most of the materials designated by Respondent in its Designation. See Affidavit of Attorney attached hereto as Exhibit A. Most of the materials which Appellant has included from Respondent's designation are incomplete or otherwise do not accurately reflect the way the documents were presented to the trial court. See Affidavit of Attorney attached hereto as Exhibit A.

In order to complete its final brief in the manner intended by the South Carolina Appellate Court Rules, Respondent must have the matters in its Designation properly submitted to the Court of Appeals.

CONCLUSION

Respondent respectfully requests that this Court grant it leave to supplement the record to include the matters listed in its Designation of Matter to Be Included in the Record on Appeal.

December 29, 2014



Chad W. Burgess, Esq. (SC Bar# 72520)
Brock and Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
(803) 454 3540

G. Benjamin Milam, Esq. (SC Bar#80311)
McGuireWoods LLP
201 North Tryon Street, Suite 3000
Charlotte, NC 28202
(704) 343-2000
Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Motion was served on the Appellant by depositing a copy thereof in the United States Mail, first class, postage prepaid, addressed to:

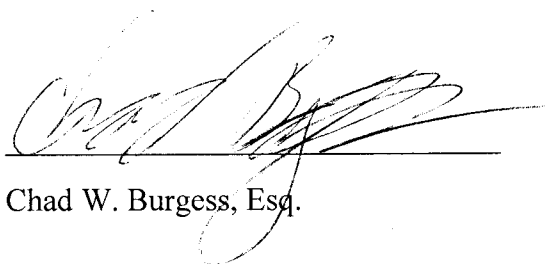
Ziraili M. Elbey
9789 Charlotte Highway, #400-191
Indian Land, South Carolina 29707
Appellant

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SC Court of Appeals

This the 27th day of December, 2014.



Chad W. Burgess, Esq.

EXHIBIT “A”

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
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Of whom Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey is the.....Appellant.

AFFIDAVIT OF ATTORNEY

BEFORE ME, an officer authorized to take oaths, this day personally appeared George Benjamin Milam, attorney, who, being first duly sworn, deposes and says:

1. I, George Benjamin Milam, have been retained as attorney for H&R Block Bank, FSB in the case styled H&R Block Bank, FSB v. Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey et al., Appellate Case No. 2013-002373, currently before the Court of Appeals.

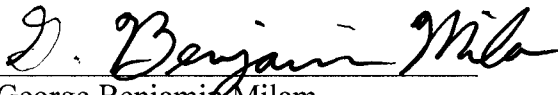
2. I have attained the age of majority and I am competent to testify to the matters stated herein.

3. Although the Appellant, Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey did not provide a copy of the Record on Appeal to Respondent, H&R Block Bank, FSB, I have obtained a copy of the Record on Appeal submitted to the Court of Appeals by Appellant.

4. I have reviewed the Record on Appeal submitted by Appellant. Appellant's submission does not include most of the matters designated by Respondent in its Designation of Matters to be Included in the Record on Appeal ("Designation"). Specifically, the Record on Appeal does not include: (1) Affidavit of Service on Defendant Elbey filed January 18, 2011; (2) Answer and Counterclaim; (3) Order of Reference; (4) transcript of August 22, 2012 Hearing; (5) Special Referee's Report and Judgment of Foreclosure and Sale; (6) Motion and Order of Stay due to Bankruptcy; (7) Motion and Order to Restore with Exhibit "A"; (8) Defendant's Refusal to Plaintiff's Offer to Contract filed August 9, 2013; (9) Defendant's Motion to Set Aside or Void Judgment filed August 20, 2013; (10) Defendant's Release Deficiency Demand and Foreclosure Judgment filed August 21, 2013; (11) Plaintiff's Motion to Strike and for Sanctions; (12) Supplemental Special Referee's Report and Judgment of Foreclosure and Sale; and (13) Order filed November 27, 2013.

5. Most of the matters which Appellant does include from Respondent's Designation are either incomplete or do not otherwise accurately reflect the way in which the documents were presented to the trial court.

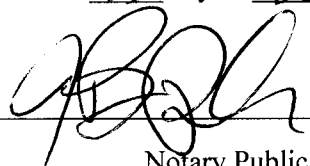
FURTHER AFFIANT SAYETH NOT.


Date: 12/23/2014
George Benjamin Milam
Attorney for H&R Block Bank, FSB

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

Sworn to and subscribed before me,

this the 23 day of December, 2014



Notary Public

February 14, 2016

My Commission Expires: _____

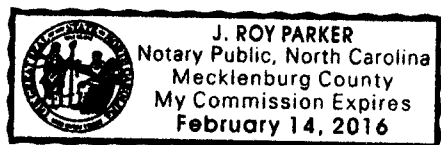


EXHIBIT “B”

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Philip E. Wright, Special Referee

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

Of whom Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey is the.....Appellant.

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Respondent proposes the following be included in the Record on Appeal:

1. Complaint;
2. Affidavit of Service on Defendant Elbey filed January 18, 2011;
3. Answer and Counterclaim;
4. Order of Reference;
5. Transcript of August 22, 2012 Hearing;
6. Special Referee's Report and Judgment of Foreclosure and Sale;
7. Motion and Order of Stay due to Bankruptcy;
8. Motion and Order to Restore with Exhibit "A";

9. Defendant's Answer to Plaintiff's Motion and Order to Restore filed August 5, 2013;
10. Defendant's Motion to Vacate Judgment of Foreclosure and Sale filed August 6, 2013;
11. Defendant's Refusal to Plaintiff's Offer to Contract filed August 9, 2013;
12. Defendant's Motion to Amend and Set Aside or Void Judgment filed August 20, 2013
13. Defendant's Release Deficiency Demand and Foreclosure Judgment filed August 21, 2013
14. Plaintiff's Motion to Strike and for Sanctions;
15. Transcript of October 24, 2013 Hearing with Exhibits;
16. Supplemental Special Referee's Report and Judgment of Foreclosure and Sale;
17. Order filed November 27, 2013;

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

October 7th, 2014



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Columbia, SC 29210
(803) 454 3540

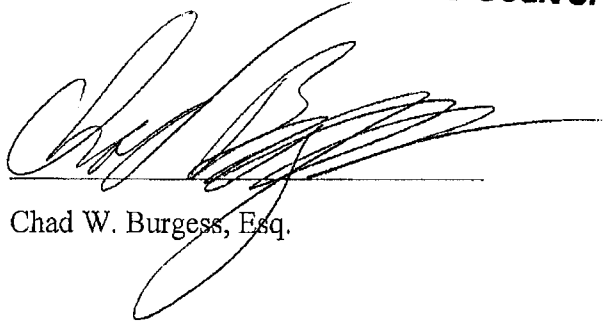
G. Benjamin Milam, Esq. (SC Bar#80311)
McGuireWoods LLP
201 North Tryon Street, Suite 3000
Charlotte, NC 28202
(704) 343-2000
Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned certifies that the Respondent's Designation of Matter to be Included in the Record on Appeal was served on the Appellant by depositing a copy thereof in the United States Mail, first class, postage prepaid, addressed to:

Ziraili M. Elbey
9789 Charlotte Highway, #400-191
Indian Land, South Carolina 29707
Appellant

This the 7th day of October, 2014.



Chad W. Burgess, Esq.

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SC Court of Appeals

**BROCK
& SCOTT
PLLC**

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THOMAS E. BROCK *
GREGORY A. SCOTT *
JAMES P. BONNER *
MARK A. PEARSON **
BRIAN L. CAMPBELL**
SEAN M. CORCORAN*

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WILMINGTON, NC
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FRANKLIN, TN

www.brockandscott.com

* Licensed in North Carolina

** Licensed in North Carolina and South Carolina

December 29, 2014

Via Hand Delivery

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

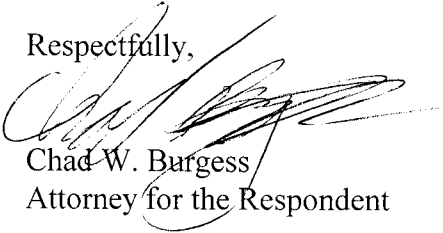
RE: H&R Block, FSB v. Ziraili M. Elbey
Appellate Case 2013-002373
B&S File No.: 10-19401

Dear Ms. Kitchings:

Enclosed please find the original and one copy of the Respondent's Motion to Supplement the Record on Appeal, Supporting Memorandum, and Exhibits along with the Certificate of Service and a check in the amount of \$25.00 for the filing fee. Please have a filed copy returned to me in the enclosed envelope.

Thank you for your kind assistance in this matter.

Respectfully,


Chad W. Burgess
Attorney for the Respondent

Enclosures

CC: Ziraili M. Elbey

*** THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE BEEN DISCHARGED IN A CHAPTER SEVEN BANKRUPTCY, WE ARE NOT SEEKING PERSONAL LIABILITY AGAINST YOU, BUT ARE PURSUING THE RIGHTS AGAINST THE PROPERTY AS PROVIDED IN THE SECURITY AGREEMENTS***