

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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FEB 03 2015

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

Alison Renee Lee, Circuit Court Judge

174927

Case No. 2011-CP-40-6103

Bank of New York Mellon Trust Company,
National Association f/k/a The Bank of New York
Trust Company, N.A. as successor to JPMorgan Chase
Bank N.A. s/b/m Bank One National Association as
Trustee for RAMP 2002RS5 Plaintiff,

v.

Chartrease Grier, Palmetto Health Alliance;
and Palmetto Richland Memorial Defendants,

v.

Chartrease Grier, Third-Party Plaintiff,Appellant,

v.

Nationwide Property & Casualty Insurance
Company; and Tonya D. Parks, Third-Party Defendants, Respondents.

MOTION TO AMEND THE RECORD ON APPEAL

Appellant, by and through her undersigned attorney, respectfully moves this Court for an Order permitting the removal of an audio recording in the Record on Appeal and substituting a transcribed version of the same in its place. Appellant requested the consent with Respondents' counsel, but the parties were unable to reach an agreement on this matter. Notwithstanding Respondents' unwillingness to consent, Appellant believes Respondents will suffer no prejudice from the amendment to the Record on Appeal requested herein.

In further support of this motion, Appellant respectfully submits the following:

The audio recording at issue is a condensed version of a telephone conversation that Respondents produced to Appellant in response to Appellant's Request for Production.¹ The condensed version of the recording was presented to the trial court as "Exhibit B" to *Grier's Reply to Third Party Defendants' Memorandum in Opposition to Grier's Motion to Amend*,² which was filed with the trial court on December 6, 2012. The recording was submitted to the trial court on a compact disc in the .wav file format. Appellant included the same recording in the Record on Appeal by affixing a compact disc containing the same to Page 738 in each bound copy of the Record on Appeal filed with the Court on September 29, 2014.

Appellant was then informed by the Court's record keeping division that the CD containing the audio recording could not be included in the Record in that form due to issues regarding the .wav file format, which is not compatible with the Court's procedure for archiving official appellate records. The Clerk of Court's office suggested that the issue could be resolved by having the audio recording transcribed, removing the CDs in each copy of the Record on Appeal, and inserting a copy of the transcription in place of the CDs. The transcription would be affixed to the original page 738 and would contain the same page number.

On January 27, 2015, Appellant's undersigned counsel sent a copy of both the audio recording³ and the transcription of the same to Respondents' counsel and requested their consent for the proposed substitution. A copy of Appellant's letter containing this

1 The original, unedited version of the recording produced to Appellant was labeled with Bates No. NW_0132.

2 This memorandum is included in the Record on Appeal, beginning at page 216.

3 For purposes of this request, the audio recording was transmitted to Respondents by e-mail only.

request and the accompanying transcription proposed as a substitute for the CDs included in the Record on Appeal is attached hereto as Exhibit A. Respondents' counsel refused to consent to the proposed plan, insisting instead that the issue could be resolved with a request that the CD of the recording that was submitted to the trial court be retrieved from the trial court's file and delivered to the Court pursuant to SCACR Rule 210(f).

Appellant is informed and believes, however, that replacing the CDs containing the recording with the transcribed version of the same, as set forth herein, is a preferable method for ensuring that the substantive content of the audio recording at issue is properly presented to the Court for consideration. Due to that the trial court's file contains the recording in the same .wav file format as the CDs submitted on Page 738 of the Record on Appeal, the trial court's copy would be met with the same formatting and compatibility issues. Additionally, the audio recording would not be archived and preserved with the Court's official records. As the content of the audio recording is critical to the Appellant's position in this appeal, Appellant would be prejudiced by the exclusion of the same.

Accordingly, Appellant respectfully requests that the Court allow Appellant to physically remove the CDs containing the audio recording on page 738 of each copy of the Record on Appeal filed with the Court and permit substitution of the attached transcription as page 738.

WHEREFORE, Appellant seeks an Order of the Court granting the relief set forth herein and any other relief the Court deems just and proper to facilitate the progression of this Appeal.

[SIGNATURE ON THE FOLLOWING PAGE]

Respectfully submitted,

MOON LAW FIRM

A handwritten signature in black ink, appearing to read "MOON", written over a horizontal line.

M. Allison Moon (SC Bar #73717)

Sarah E. Brown (SC Bar #81743)

P.O. Box 3785

Greenville, South Carolina 29608

Office (864) 217-1595

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Mike G. Wimer, admitted *pro hac vice*

Asheville Law Group

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Asheville, North Carolina 28806

Office (828) 350-9799

Attorneys for Appellant, Chartreuse Grier

January 30, 2015

Greenville, South Carolina

EXHIBIT A

MOON

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Greenville, South Carolina 29608

Tel (864)271-1595
Fax (864)551-2085
info@moonlawsc.com

27 January 2015

VIA U.S. MAIL & E-MAIL

Ms. Alana Odom Williams, Esquire
Ms. Elizabeth Herlong Brogdon, Esquire
Mr. Jay T. Thompson, Esquire
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street, 17th Floor
Columbia, SC 29201

Re: Bank of New York Mellon Trust Company, National Association f/k/a The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. s/b/m Bank One National Association as Trustee for RAMP 2002RS5, Plaintiff v. Chartrease Grier; Palmetto Health Alliance; and Palmetto Richland Memorial, Defendants,

Chartrease Grier, Appellant v. Nationwide Property and Casualty Insurance Company and Tonya D. Parks, Respondents,

Appellate Case No.: 2013-002403

Dear Counsel:

This letter is to request your approval to permit our office to substitute a transcription of an audio recording that was originally submitted in the Record on Appeal in the form of a compact disc. To clarify, the CD, which was inserted into page 738 in the Record on Appeal we previously submitted to the Court in the above-captioned matter, contained an audio recording of a March 11, 2011 telephone conversation between representatives from GMAC and Nationwide. Per this agreement, our office will remove the CD from each copy of the bound Record on Appeal, and it will be replaced with a transcription of the same. A copy of the proposed transcription is attached hereto for your review. We hope that this will alleviate the need to publish a supplement to the Record on Appeal and re-publish the final briefs with updated citations to the Record.

If you are amenable to this substitution, we ask that you please acknowledge the same by signing in the spaces provided below and returning the letter with your original signature to our office. We will then file the signed letter with the Court along with a request for approval to proceed with the plan set forth above. It is our understanding that if the parties are in agreement about this matter, the Court will accept your written approval in lieu of a formal motion. Once the Court confirms its approval of this substitution, someone from our office will arrange a visit to the Court to remove the CDs and insert the transcription on top of the existing page 738 in each of the Court's bound copies.

Ms. Alana Williams, et al.
27 January 2015
Page 2 of 2

We hope that we are able to resolve this as expeditiously as possible so that our case can move forward for consideration. If you have any questions or concerns, please do not hesitate to contact our office. Otherwise, I look forward to your returning this letter with your signature.

With kind regards,

MOON LAW FIRM



Sarah E. Brown

I, the undersigned counsel for Respondents Nationwide Property and Casualty Insurance Company and Tonya D. Parks, agree to the substitution to the Record on Appeal set forth above.

Nelson Mullins Riley & Scarborough, LLP,
Counsel for Respondents

Date

Enclosure

Transcribed Recording: Phone Call Between GMAC & Nationwide Representatives

[beep]

Stacy: This is Stacy, how may I help you?

GMAC Rep: Hi, my name is [inaudible 00:07]. I'm calling from the Insurance Office Center for GMAC Mortgage, LLC. This call will be monitored and recorded for quality assurance. I am calling to verify information on a homeowner's policy.

Stacy: Do you have the policy number?

GMAC Rep: Yes ma'am, that's...

[call edited]

Stacy: Anything else I can do for you?

GMAC Rep: I do have another policy, ma'am. Can you help me out with that as well?

Stacy: Go ahead.

GMAC Rep: That policy number is 6139HP340377.

Stacy: The name and address?

GMAC Rep: The name and address would be...the first name is spelled as C-H-A-R-T-R-E-A-S, and the last name Grier, and the property address, 6515 Easter Street, Columbia, South Carolina, 29203.

Stacy: Thank you. The renewal is running from 3/24/11 to 3/24/12.

GMAC Rep: Mm-hmm. Can I have the coverage on the dwelling?

Stacy: Yes. That is \$101,600.

GMAC Rep: \$101,600, and can I have the total annual premium on the policy?

Stacy: That is \$993.

GMAC Rep: \$993, and does the policy include guaranteed replacement cost and wind coverage?

Stacy: Just a moment.

Yes ma'am, it does.

GMAC Rep: Do you show GMAC Mortgage, LLC listed as the mortgagee?

Stacy: Yes, you are.

GMAC Rep: Let me just confirm that. That should read as GMAC Mortgage, LLC, ISAOA, P.O. Box 4025, Coraopolis, Pennsylvania, 15108, to the loan number 7434451613. Is that correct?

Stacy: Yes, ma'am.

GMAC Rep: The entire premium on the policy is due, am I correct?

Stacy: That is correct.

GMAC Rep: We will be making that payment through regular mail. I have the premium and the pay address as Nationwide Mutual Fire Insurance, P.O. Box 96040, Charlotte, North Carolina, 28296.

Stacy: That is correct.

GMAC Rep: Is that right?

Stacy: Yes, ma'am.

GMAC Rep: Can you fax us a copy of this policy as well, ma'am?

Stacy: Absolutely.

GMAC Rep: With the same fax number. That is 866-336-9021.

Stacy: OK.

GMAC Rep: That's all I needed, ma'am. Thank you very much for that, and have a wonderful day.

Stacy: You too.

GMAC Rep: Bye-bye.

Stacy: Bye-bye.

Transcription by CastingWords

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v.

Chartrease Grier, Third-Party Plaintiff,Appellant,

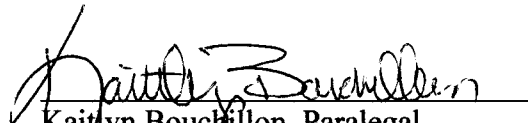
v.

Nationwide Property & Casualty Insurance
Company; and Tonya D. Parks, Third-Party Defendants, Respondents.

PROOF OF SERVICE

I, the undersigned paralegal of Moon Law Firm, attorneys for Appellant, do hereby certify that on the 30th day of January, 2015, I served all counsel in this action with a copy of the MOTION TO AMEND THE RECORD ON APPEAL by placing a copy of the same in the U.S. Mail, with due and proper postage affixed thereto, and addressed as follows:

Alana Odom Williams, Esq.
Elizabeth Herlong Brogdon, Esq.
Jay T. Thompson, Esq.
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street/17th Floor
Columbia, SC 29201


Kaitlyn Bouchillon, Paralegal
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January 30, 2015
Greenville, South Carolina

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30 January 2015

VIA U.S. MAIL & FACSIMILE

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Bank of New York Mellon Trust Company, National Association f/k/a The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. s/b/m Bank One National Association as Trustee for RAMP 2002RS5, Plaintiff v. Chartreuse Grier; Palmetto Health Alliance; and Palmetto Richland Memorial, Defendants,

Chartreuse Grier, Appellant v. Nationwide Property and Casualty Insurance Company and Tonya D. Parks, Respondents,

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Dear Ms. Kitchings,

Please find enclosed the original and six (6) copies of Appellant's Motion to Amend the Record on Appeal, along with Proof of Service of the same on counsel for Respondents. Please also find enclosed my firm's check in the amount of \$25.00 for the motion fee.

Please do not hesitate to contact me if you have any questions or concerns. We greatly appreciate the assistance of your office.

Sincerely,

MOON LAW FIRM

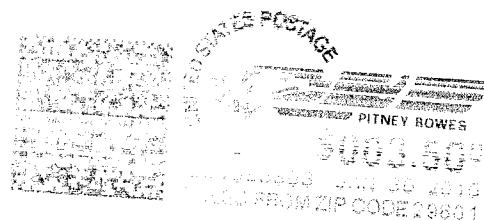

Kaitlyn Bouchillon
Paralegal
kaitlyn@moonlawsc.com

cc: Alana Odom Williams, Esq.
Elizabeth Herlong Brogdon, Esq.
Jay T. Thompson, Esq.

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Augusta Street, Suite 301
Greenville, SC 29601
The Honorable Jenny Abbott Kitchings
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