

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

FEB 17 2015

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

SC Court of Appeals

Diane S. Goodstein, Circuit Court Judge

75073

Case No. 2008-CP-38-1024
Appellate Case No. 2014-001683

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

Motion to Strike

Pursuant to Rules 240, 208(a)(3), 208(b)(5), and 263 of the South Carolina Appellate Court Rules, Respondent Wells Fargo Bank, N.A. (“Wells Fargo”) moves this Court to strike the untimely Initial Reply Brief of Appellant. In the alternative, Wells Fargo requests that this Court strike the portions of the Initial Reply Brief and attached Appendices that exceed the allowable page limits for a reply brief.

Wells Fargo served Appellant with its Initial Respondent’s Brief on January 26, 2015. See Respondent’s Certificate of Service, attached hereto as Exhibit A. Rule 208(a)(3), SCACR, provides that “[a]n appellant may file and serve a brief in reply to the brief of respondent. If a reply brief is prepared, appellant **shall**, within ten (10) days after service of respondent’s brief . . .” file and serve the reply brief (emphasis added). Under this rule, Appellant was required to serve any reply brief no later than February 6, 2015. Appellant did not serve her Initial Reply Brief until February 12,

2015. See Appellant's Certificate of Service, attached hereto as Exhibit B. Appellant did not file a motion for an extension of time or the required filing fee had such motion been made. Thus, the deadline remained February 6, 2015. As a result, Appellant's Initial Reply Brief is untimely. This Court should grant the motion and strike the Initial Reply Brief.

In the alternative, this Court should strike all pages of the Initial Reply Brief and attached Appendices that exceed the 25 page limit imposed by Rule 208(b)(5), SCACR. Appellant's Initial Reply Brief totals 24 pages. However, Appellant attached 18 volumes of an "Appendix" to the brief that total several hundred pages of documents, comments, and argument. To the extent these Appendices are part¹ of the Initial Reply Brief, such filings exceed the page limitations for reply briefs. This Court should strike the Appendices.

If, however, Appellant intends² for these Appendices to constitute the Record on Appeal, this Court should order Appellant (1) to include all matters designated by Respondent, (2) present the Record on Appeal in the form required by Rule 210, SCACR, and (3) remove all comments and argument from the Record on Appeal.

First, the Appendices/Record on Appeals does not contain several of the items set forth in Wells Fargo's Designation of Matters. See Designation of Matters, attached hereto as Exhibit D. Appellant failed to include:

¹ It is unclear what Appellant intends with the Appendices. Appellant served them with the Initial Reply Brief and calls them Appendices to the Initial Reply Brief, so it is reasonable for Wells Fargo to assume Appellant intends them as support for her Initial Reply Brief.

² In her cover letter dated February 12, 2015, Appellant claims she filed the Appendices "so that [she] would not have to reprint the Appendices as the Record on Appeal." See Appellant's Letter dated February 12, 2015, attached hereto as Exhibit C.

1. The full deposition of Appellant, Item 7. Appellant included a portion of the deposition. However, Wells Fargo designated the entire deposition.
2. Wells Fargo's Motion for Summary judgment with Exhibits dated June 28, 2013, Item 8. Appellant failed to include any of the designated Exhibits. Moreover, Appellant included comments and argument related to this designated item. See Appendix Vol. 1, Ex. 322.
3. Letter dated March 31, 2014, serving order granting motion for partial summary judgment, Item 9. Appellant did not include this designated item.
4. Appellant's motion styled as "Defendant Dorothy Sistrunk Objects to Order Granting Partial Summary Judgment, Due to the Plaintiff's Misstatement of Facts, Mischaracterization of Facts and in Some Instances Outright Lies" dated April 7, 2014, Item 10. Appellant did not include this designated item.
5. Appellant's Notice of Appeal dated July 30, 2014, Item 14. Appellant did not include this designated item.
6. Letter from Sistrunk to Court of Appeals dated September 22, 2014, Item 15. Appellant did not include this designated item.


Appellant should be ordered to include these items in the Record on Appeal. See Rule 210(c), SCACR ("The Record on Appeal **shall include all matters designated** to be included **by any party**").

Moreover, the Appendices/Record on Appeal does not comply with Rule 210, SCACR. It is not arranged in the proper order as required by Rule 210(c), SCACR, or comply with Rule 210(d), (e), and (g). Also, Appellant failed to meet the requirement that "[e]ach page of the Record on Appeal shall be numbered consecutively beginning

with the index.” Without such numbering reference to the Record on Appeal, briefing cannot be completed. Should this Court accept the Appendices as the Record on Appeal, then this Court should order Appellant to serve and file a corrected Record on Appeal in the form required by Rule 210, SCACR.

Lastly, throughout the Appendices/Record on Appeal, Appellant makes comments related to the designated item or presents argument related to the designated item. Such is improper. Argument is limited to the briefing presented to the Court. Should this Court accept the Appendices as the Record on Appeal, then this Court should order Appellant to serve and file a corrected Record on Appeal in the form required by Rule 210, SCACR, and without any extraneous comments or argument included.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
Michael J. Anzelmo
SC Bar No. 72933
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, South Carolina 29201
803.799.2000

Attorneys for Wells Fargo Bank, N.A.

Columbia, South Carolina

February 17, 2015



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

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JAN 26 2015

SC Court of Appeals

Case No. 2008-CP-38-1024

Appellate Tracking No. 2014-001683

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

Proof of Service

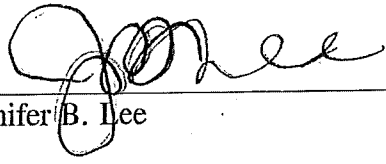
I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Plaintiff Wells Fargo Bank, N.A., do hereby certify that I have served all parties in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by certified United States Mail, return receipt requested, postage prepaid, to the following address(es):

Pleadings:

Initial Brief of Respondent

Party Served:

pro se Defendant
Ms. Dorothy Sistrunk
423 Bayne Street
Orangeburg, SC 29115

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

Jennifer B. Lee

January 26, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Diane Shafer Goodstein, Circuit Court Judge

2014-001683

Wells Fargo Bank, N.A., Respondent,
v.
Dorothy Sistrunk, Appellant.

PROOF OF SERVICE

I certify that I served a copy of my "Reply Brief" on Wells Fargo Bank, N.A., along with 18 Appendices, by depositing a copy of it in United Parcel Service (UPS), prepaid, on February, 12, 2015, addressed to Wells Fargo's attorney/s of record that are listed below per their approved request by the Appellate Court to extend time to February 2, 2015. Therefore, 10 days hence is February 12, 2015.

Today's Date: February 12, 2015

/s/ Dorothy Sistrunk
Dorothy Sistrunk
423 Bayne Street
Orangeburg, South Carolina 29115
(803) 268-0716

Attorney Michael Anzelmo
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Elizabeth Scott Moise
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401 -2239
(803)853-5200

 **Dorothy Sistrunk**

423 Bayne Street • Orangeburg, SC 29115 • Ph: 803-268-0716 • Fx: 803-534-6727

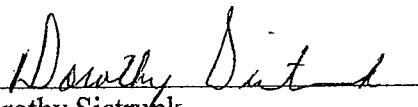
February 12, 2014

The Honorable Jenny Abbot Kitchings & V. Claire Allen
Clerk of Court & Deputy Clerk of Court; Respectively,
South Carolina Court of Appeals
POB 11629
Columbia, SC 29211

RE: Wells Fargo Bank, N.A. v. Dorothy Sistrunk
Civil Action Case #2008-CP-38-1024
Appellate Case #2014-001683

Ms. Kitchings and/or Ms. V. Claire Allen,

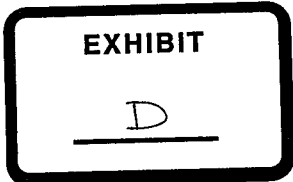
I am still new at this so...please advise me of errors and/or any incorrect protocol. In accordance with Wells Fargo's approved request by the Appellate Court to Extend Time to February 2, 2015 and *Appellate Court Rules 208(a)(3); (b)(1)(3)-(5) & 267(a)-(e)*; I am enclosing my "**Reply Brief**" that meets the requirements of the February 2, 2015 approved date of Extended Time. Ten (10) days hence is February 12, 2015. I am also sending 18 Appendices in an effort to expedite matters so that I would not have to reprint the Appendices as the Record on Appeal. I am not rich and finding financial resources is becoming more difficult. A copy of my "**Reply Brief**" to the Appellate Court that is not punched, bound or stapled has also been served on all parties listed below; along with the 18 Appendices. Thank you.

/s/ 
Dorothy Sistrunk

CC:

Attorney Michael Anzelmo
SC Bar No. 72933
1320 Main Street / 17th Floor
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THE STATE OF SOUTH CAROLINA
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APPEAL FROM ORANGEBURG COUNTY JAN 26 2015
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge **SC Court of Appeals**

Case No. 2008-CP-38-1024

Appellate Case No. 2014-001683

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

Respondent's Designation of Matter to be Included in the Record on Appeal

Pursuant to Rule 209, SCACR, Wells Fargo Bank, N.A. ("Respondent")
designates the following materials for inclusion in the record on appeal:

1. Order Granting Partial Summary Judgment filed March 31, 2014
2. Order Denying Motion to Alter or Amend filed April 11, 2014
3. Order Denying Motion for New Trial and Motion to Vacate [Wells Fargo's] Partial Summary Judgment Order dated July 17, 2014
4. Complaint dated June 27, 2008
5. Answer dated July 17, 2008
6. Amended Answer and Counterclaims dated July 31, 2008
7. Deposition of Dorothy Sistrunk
8. Wells Fargo's Motion for Summary Judgment with Exhibits dated June 28, 2013

9. Letter dated March 31, 2014, serving Order Granting Motion for Partial Summary Judgment on Sistrunk
10. Motion styled as "Defendant Dorothy Sistrunk Objects to Order Granting Partial Summary Judgment, Due to the Plaintiff's Misstatement of Facts, Mischaracterization of Facts and in Some Instances Outright Lies" dated April 7, 2014
11. Motion styled as Notice of Motion and Motion to Vacate [Well Fargo's] Partial Summary Judgment Order Pursuant to Rule 60(b), SCRPC for Extrinsic Fraud dated May 28, 2014
12. Sistrunk's Statement of Facts dated May 28, 2014 related to Sistrunk's Rule 60 motion
13. Motion styled as Notice of Motion and Motion for a New Trial dated June 9, 2014
14. Notice of Appeal dated July 30, 2014
15. Letter from Sistrunk to Court of Appeals dated September 22, 2014

Undersigned counsel certifies the above items are relevant to the appeal.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Michael J. Anzelmo

SC Bar No. 72933

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Charleston, South Carolina 29401-2239

Attorneys for Wells Fargo Bank, N.A.

Columbia, South Carolina
January 26, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
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**SC Court of Appeals
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SC Court of Appeals

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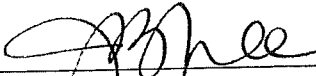
I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Plaintiff Wells Fargo Bank, N.A., do hereby certify that I have served all parties in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by certified United States Mail, return receipt requested, postage prepaid, to the following address(es):

Pleadings:

Respondent's Designation of Matter to be Included in the Record on Appeal

Party Served:

pro se Defendant
Ms. Dorothy Sistrunk
423 Bayne Street
Orangeburg, SC 29115


Jennifer B Lee

January 26, 2015

THE STATE OF SOUTH CAROLINA
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Wells Fargo Bank, N.A., Respondent,

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I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Plaintiff Wells Fargo Bank, N.A., 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 certified United States Mail, return receipt requested, postage prepaid, to the following address(es):

Pleadings:

Motion to Strike

Party Served:

pro se Defendant
Ms. Dorothy Sistrunk
423 Bayne Street
Orangeburg, SC 29115



Jennifer B. Lee

February 17, 2015

Nelson Mullins

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Attorneys and Counselors at Law
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RECEIVED

FEB 17 2015

Michael J. Anzelmo
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Fax: 803.255.9024 **SC Court of Appeals**
michael.anzelmo@nelsonmullins.com

February 17, 2015

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, N.A. v. Dorothy Sistrunk
Wells Fargo Matter #: 0362522-01
Case No.: 08-CP-38-1024
Appellate Case No.: 2014-001683
NMRS File No.: 10275/01528

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of a Motion to Strike 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 the opposing party.

Very truly yours,



Michael J. Anzelmo

MJA:jlee
Enclosures

cc: Ms. Dorothy Sistrunk