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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APR 10 2015

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

**SC Court of Appeals**

R Knox McMahon, circuit court Judge

Civil Action No. 2011-CP-26-1718  
Appellate Case No. 2014-000331  
Appellate Case No. 2014-001736  
*Consolidated Appeal*

Bank of North Carolina, Successor in Interest to  
Beach First National Bank..... Respondent

v.

Waterfall Investors 2, LLC and Raymond E. Cleary, III . . . . .Appellants,

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**CONSENT MOTION TO SEAL CERTAIN DOCUMENTS  
TO BE INCLUDED IN THE RECORD ON APPEAL**

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Respondent Bank of North Carolina, successor in interest to Beach First National Bank (“**BNC**” or “**Respondent**”), with the consent of Appellants Waterfall Investors 2, LLC (“**Waterfall**”) and Dr. Raymond E. Cleary, III, D.D.S. (“**Cleary**”) (collectively, “**Appellants**”), hereby respectfully requests that the Court allow the parties to file under seal certain documents that were filed under seal in the Circuit Court pursuant to a February 5, 2014 Consent Confidentiality Order (attached hereto as **Exhibit 1**). In support of this Motion, BNC states as follows:

1. Judgment was entered against Appellants in the present action on November 7, 2013 in the amount of \$2,906,788.59.

2. Following the trial, BNC filed a Motion to Recover Attorney’s Fees and Costs that was opposed by Appellants.

3. Subsequently, a hearing was held on BNC’s post-trial motion whereby it was agreed that BNC would allow Appellants’ counsel to review the billing records of its counsel in this matter (the “Billing Records”), subject to a Consent Confidentiality Order.

4. The Billing Records contain information that is confidential in nature, both to BNC and its counsel, including billing rate information and detailed descriptions of time spent on the subject matter.

5. Appellants have designated the Billing Records to be included in the Record on Appeal

6. BNC and Appellants respectfully request that this Court allow the parties to file the Billing Records under seal, consistent with the Consent Confidentiality Order.

7. To permit the filing of the Billing Records under seal would be consistent with the factors set forth in Rule 41.1, SCRPC, and Ex parte Capital U-Drive-It, Inc., 369

S.C. 1, 12, 630 S.E.2d 464, 470 (2006), as doing so would maintain the confidentiality of the Billing Records pursuant to the trial court's Consent Confidentiality Order and would not adversely affect the public interest in any manner.

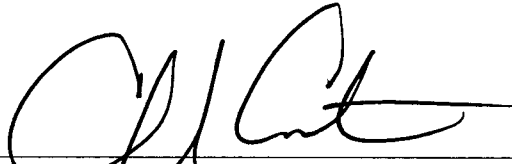
8. BNC and Appellants propose that a separate volume be created for the Billing Records, filed under seal, where the Billing records are numbered consecutively as provided for in the Designation of Record. At the place in the Record on Appeal where the Billing Records would normally appear, Appellants would include a reference that the Billing Records have been filed under separate volume, under seal to maintain their confidentiality.

9. The parties also respectfully move for an extension of time for Appellants to serve the Record on Appeal in this matter until fifteen (15) days after an Order is entered by this Court on the present Motion.

ACCORDINGLY, for the reasons set forth herein, BNC, with the consent of Appellants, ask that the Court GRANT this Consent Motion to Seal Certain Documents to Be Included in the Record on Appeal.

*[Signature Page to Follow]*

April 7, 2015  
Greenville, South Carolina



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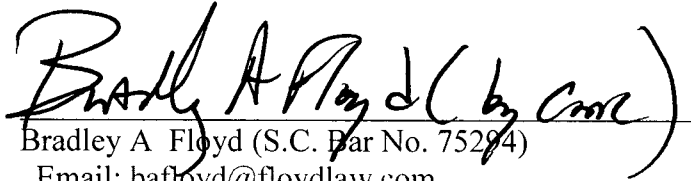
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*Attorneys for Respondent Bank of North Carolina,  
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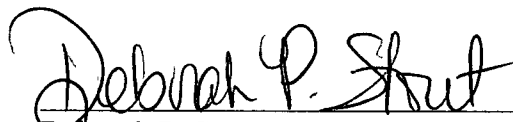
v.

Waterfall Investors 2, LLC and Raymond E. Cleary, III.. . . . Appellants,

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on the 8th day of April, 2015, she mailed a copy of the **Consent Motion to Seal Certain Documents to be Included in the Record on Appeal** by first-class mail, proper postage affixed, addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es).

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\_\_\_\_\_  
Deborah P. Stout  
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April 7, 2015

Ms Jenny Abbott Kitchings, Clerk  
The South Carolina Court of Appeals  
1015 Sumter St.  
Columbia, SC 29201

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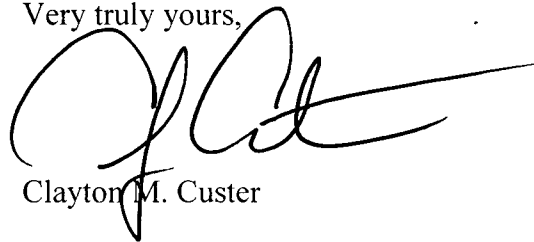
*RE Bank of North Carolina v Waterfall Investors  
Appellate Case No 2014-000331*

Dear Ms. Kitchings:

Attached please find the original and one copy of the **Consent Motion to Seal Certain Documents to be Included in the Record on Appeal** in Appellate Case No. 2014-000331. We have also included our check in the amount of \$25.00 which represents the filing fee.

By copy of this letter we are serving all parties with same

Very truly yours,



Clayton M. Custer

CMC/dps

cc: Bradley A. Floyd, Esq.  
Richard R. Gleissner, Esq

WYOMING  
CARLYLE  
SANDRIDGE  
& RICE  
A LIMITED LIABILITY  
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