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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of Common Pleas

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NOV 10 2015

Diane Shafer Goodstein, Circuit Court Judge

SC Court of Appeals

Case No. 2014-001683

Wells Fargo Bank, N.A.,

Respondent,

v.

Dorothy Sistrunk,

Appellant.

APPELLANT'S MOTION TO STRIKE
RESPONDENT'S REQUEST TO DUPLICATE
RECORDS THAT ARE ALREADY IN THE RECORD ON APPEAL

November 9, 2015

Dorothy Sistrunk
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Nelson Mullins Riley & Scarborough, LLP

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Comes now the Appellant, Dorothy Sistrunk, to file her Motion to Strike Respondent's Request to Duplicate Records That are Already in the Record on Appeal, i.e., Wells Fargo Bank, N. A., Respondent v. Dorothy Sistrunk, Appellant - Case 2014-001683.

I. A REVIEW OF RULE 240(c), SCACR

1. Rule 240(c), SCACR, states the following in pertinent parts; "[A]ll motions or petitions filed in an appellate court shall be in writing, shall state the grounds thereof, and shall comply with the requirements of Rule 267. The pages of the motion or petition and all supporting documents shall be consecutively numbered. Each motion or petition shall include the following:

- (1) A certificate or affidavit of service reflecting the date of service upon all parties. The original certificate or affidavit of service must be filed with the original motion or petition.
- (2) A memorandum with citation of authorities in support of the motion.
- (3) Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions."

2. Rule 240(d) states in pertinent parts; "[A]n original and six (6) copies of the motion shall be filed with the clerk of the appellate court, and a copy shall be served upon each party. The copies filed with the appellate court shall be accompanied by the filing fee set by order of the Supreme Court." Re: \$25.00

State v. Foster, 277 S.C. 211, 212, 284 S.E.2d 780, 780 (1981) ("Taken literally, the word 'shall' is mandatory.")

II. APPELLANT'S MOTION TO STRIKE RESPONDENT'S REQUEST TO DUPLICATE RECORDS THAT ARE ALREADY IN THE RECORD ON APPEAL BASED ON THE FOLLOWING GROUNDS OR REASONS.

A. Misrepresentation of facts.

3. **Ground or Reason #1:** As evidenced by the following, Respondent Wells

Fargo's attorney misrepresented the facts in his filed motion to require Appellant to include in the Record on Appeal all matters set forth in Wells Fargo's Designated of Matter that is dated October 12, 2015;

(a) Respondent's Exhibit 1 – [Large, bold, 48 point, “Times New Roman” Print] – Wells Fargo's Note – **WF00039-WF00041** is already included in the Record on Appeal. [See R. Vol. V-2, pp. 1661-1663] Additional documentation of fact can also be found in Vol. V-2. [See Indices xxi –xxvi & p. Bxii] {**Note: Type sizes and styles in subsections (a)-(e) are based on duplicating the type font size and style with Microsoft Word -2007**}

(b) Respondent's Exhibit 2 – [Large, bold, 48 point, “Times New Roman” Print] – *Wells Fargo's Mortgage* – **WF00043-WF00060** is already included in the Record on Appeal. [See R. Vol. V-2, pp. 1664-1682] Additional documentation of fact can also be found in Vol. V-2. [See Indices xxi-xxvi & p. Bxii-Bxiii]

(c) Respondent's Exhibit's 8 – [Large, bold, 26 point, “Times New Roman” Print] – *Wells Fargo's Affidavit* – **Affidavit in Support of Wells Fargo's Motion for Summary Judgment** is already included in the Record on Appeal. [[R. Vol. I-2, pp. 281-283] Additional documentation of fact can also be found in Vol. I-2. [See Index p. viii]

B. Untrue statement of facts.

4. **Ground or Reason #2:** Attempting to marginalize or discredit a Pro Se litigant's legal acumen is one thing. It is quite another thing to willfully and knowingly make untrue statements about the facts, for whatever reason. Since many of the documents the Appellant excluded were Designated Matters, the Appellant clearly stated the reasons for this exclusion was the lack of money to pay for the entire Record. This reality was worsened by the extra pages of indices the printers insisted had to be in every volume. Therefore, documents had to be removed to keep the Appeal affordable. Removed documents were listed that Notified the Appellate Court and Respondent. [See Vol. I-V, Indices xvi-xx]

5. **Ground or Reason #3:** To characterize truth and verifiable Statements of Fact, as incomprehensible arguments as the Respondent's attorney did in his "*Reply to Appellant's Return to the Motion to require Appellant to include in the Record on Appeal all matters set forth in Wells Fargo's Designation of Matter*", in ¶3, on p. 1, that is dated Oct. 22, 2015, is a failure to mention the reason, circumstance, condition, event or situation. According to *Black's Law Dictionary 4th ed, 1968, pg 1152*, this kind of misrepresentation is defined as an untrue statement of fact. {Attached Ex.s 396 & 397}

(a) "[M]ISREPRESENTATION. Any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts. **An untrue statement of fact. An incorrect or false representation. That which, if accepted, leads the mind to an apprehension of a condition other and different from that which exists.** Colloquially it is understood to mean a statement made to deceive or mislead." [Boldness and Underlining added for emphasis]

(b) ["I]t has always been understood - the inference, indeed, is one of the simplest in human experience — that a party's falsehood or other fraud in the preparation and presentation of his cause, his fabrication or suppression of evidence by bribery or spoliation, and all similar conduct is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause." (2 Wigmore, Evidence sec. 278, at 133 (Chadbourn rev. 1979).)

C. **Respondent's disingenuous behavior.**

6. **Ground or Reason #4:** If Respondent Wells Fargo genuinely desired truth, facts and law to settle this matter, the Respondent had every opportunity to take advantage of Rule 212(b), SCACR, and Supplement the Record of any and all missing Designated Matter that Respondent wanted in the Record on Appeal. Rule 212(b), SCACR makes it possible for the Respondent to accomplish this objective by clearly stating in pertinent parts;

“[W]ith the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences. Without such consent or after argument commences, a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so. In response to that motion, the other party(s) shall designate any supplemental materials which that party desires to add if the Court grants the motion.”

7. **Ground or Reason #5:** Disingenuous behavior is also evidenced by Respondent’s reference to Rule 210(c), SCACR in Respondent’s reply that is dated Oct. 22, 2015. Rule 210(c), SCACR clearly states the following in pertinent parts;

“[T]he Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267.” **[There is no specificity that identifies the Appellant as the party that must pay for and provide all the records. Therefore, each party is responsible for presenting matters to the Appellate Court.]**

8. When the Appellant Court reviews Rule 209(b)-(c), SCACR and considers a lay person’s understanding of the Rules, it becomes clear, at least to the Appellant, that Rule 209 refers to an individual responsibility; otherwise, there would be unnecessary duplication; like the unnecessary duplication that is occurring in this case. Party #1 presents Matters, Party #2 and so forth. This is further evidenced by use of the words [**he**] in 209(a) and [**the**] in Rule 209(b), SCACR. 209(c), clarifies matters for all concerned.

Rule 209(a), SCACR - “[A]t the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, **or other materials which *he* proposes to include in the record on appeal.** [Note: Boldness and Underlining added for emphasis.]

Rule 209(b), SCACR - “[T]he Designation must clearly identify what ***the* party desires to have included in the Record on Appeal,** and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. A party shall not include any matter in his Designation which is not relevant to the appeal.” [Note: Boldness and Underlining added for emphasis.]

Rule 209(c), SCACR – “[T]he Designation shall be accompanied by a certificate signed by ***the* party's counsel of record that the Designation contains no matter which is irrelevant to the appeal.**” [Note: **Boldness** and Underlining added for emphasis.]

9. There is no mentioning in the afore stated Rules, that the Appellant is responsible or any party is responsible for including every document all the party/ies want in the Record on Appeal. If this were the case, the language would have been specific and identified the Appellant. In addition, the Respondent has the responsibility to insure all of his/her Designated Matters are included, just like the Appellant and anyone else. Therefore, any such aggrieved party can take advantage of Rule 212(b), SCACR if any Designated Matter is missing or left out for any reason to Supplement the Record.

10. **Ground or Reason #6:** The only statement in Rule 210(c), SCACR that directly relates to this conflict is: “[T]he Record shall not, however, include matter which was not presented to the lower court or tribunal.”


III. CONCLUSION

11. Based on the grounds or reasons that have been presented, the evidence in the Appellant's Record on Appeal, that some of Wells Fargo's Designated Matters are included and based on the Appellate Court's Rules; as well as, the Appellant's uncontroverted and verified Statements of Facts the Appellant has filed in this Appeal, Wells Fargo's Exhibits 1, 2 & 8 should be stricken from the Motion and the remainder granted.

12. Since the Appellant desires to add Wells Fargo's Exhibits 2, 9 & 10 to the Record, if this Motion to Strike unnecessary duplication is granted and Wells Fargo's Motion to duplicate Designated Matters is denied and the remainder granted, the Appellant's Motion to Supplement the Record with Exhibits 2, 9 & 10 will follow shortly after the Appellate Court's decision.

November 9, 2015

Respectfully submitted,

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

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

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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 Respondent 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: **Reply to Appellant's Return to the Motion to Require Appellant to Include in the Record on Appeal All Matters Set Forth in Wells Fargo's Designation of Matter**

Party Served:

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



Kelli Diamond Martin

October 22nd, 2015.

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In The Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

SC Court of Appeals

Diane Shafer Goodstein, Circuit Court Judge

2014-001683

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

CERTIFICATE OF SERVICE

I certify that a copy of this Certificate of Service and a copy of the Appellant's Motion to Strike Respondent's Request to Duplicate Records That are Already in the Record on Appeal, has been mailed to Wells Fargo Bank, N.A.'s attorney/s that are listed below.

Today's Date: November 9, 2015

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

Attorney Michael Anzelmo
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Elizabeth Scott Moise
151 Meeting Street / Sixth Floor
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Charleston, SC 29401 -2239
(803)853-5200

Please note: No copy was sent to attorney Elizabeth Scott Moise. No brief has been filed.

 **Dorothy Sistrunk**

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

November 9, 2015

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

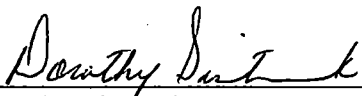
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SC Court of Appeals

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 enclosing a check for \$25.00 and my "**Motion to Strike Respondent Wells Fargo Request to Duplicate Records That are Already in the Record on Appeal**". After a diligent search of case law files in the public domain, I cannot find any case law that will support a *Motion to Duplicate Records that are in the Record on Appeal* or a *Motion to Strike* such request from a motion. Therefore, no Memorandum with Citations to Authorities can be written. In addition, no Notary Certification will be needed because no allegations are made that cannot be verified by the Appellate Court's own records. In accordance with *Rule 240(e), SCACR*, I am enclosing an original and six (6) copies of my *Motion to Strike*; paper clipped and not stapled, and I have also served a copy on all parties listed below.

Thank you.

Is 
Dorothy Sistrunk

CC:

Attorney Michael Anzelmo
SC Bar No. 72933
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Note: No copy will be sent to attorney Elizabeth Scott Moise. No "Brief" was ever filed.

Dorothy Sistrunk
423 Bayne Street
Orangeburg, SC 29115
Attention: Dorothy Sistrunk
1320 S. Main Street, 7th Floor
Orangeburg, SC 29115



first class

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NOV 10 2015

SC Court of Appeals

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