

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

RECEIVED

Mikell R. Scarborough, Master-in-Equity

DEC 14 2015

SC Court of Appeals

Case No. 2010-CP-10-10122

US Bank National Association, as Trustee for  
the holders of Bear Sterns Arm Trust, Mortgage  
Pass-Through Certificates, Series 2005-4,

Respondent,

v.

Anne B. Glassburn; Donivon D. Glassburn;  
The Bank of New York Mellon f/k/a The Bank  
of New York Indenture Trustee on behalf of the  
Note Holders, CWHEQ Revolving Home Equity  
Loan Trust Series 2007-A Trust; Tidelands  
Bank; Atlantic Bank and Trust,

Defendants,

Of Whom

Anne B. Glassburn and Donivon D. Glassburn are

Appellants.

APPELLANTS' REPLY TO RESPONDENT'S MOTION TO STRIKE

Appellants Anne and Donivon Glassburn respond to Respondent U.S.  
Bank's Motion to Strike as follows:

I. “The National Mortgage Settlement” is lingo for *United States v. Bank of America, et al*, Case 1:12-cv-00361-RMC, a judgment entered against Bank of America, Wells Fargo, and other banks and mortgage servicers in a suit brought by the Attorney General of the United States and the Attorneys General of several states, including South Carolina.<sup>1</sup> The case arises from the admitted misconduct of Wells Fargo and others in abusing mortgage consumers.

The findings of fact and conclusions of law of the United States District Court found in the *U.S. v. Bank of America* case is law, not evidence. As such, it was always in front of the court and did not need to be admitted into evidence. Hence, it was properly cited to the trial court in the Appellants’ Brief. Bluntly, the argument that it needed evidentiary niceties is silly.

II. Not only is the order in *U.S. v. Bank of America* a judgment of a court that did not need to be admitted into evidence, Respondent’s assertion to this Court that it was not raised below is completely incorrect. The Glassburns argued it in response to U.S. Bank’s Motion to Lift Stay and it was discussed no less than five times:

1. R. 96-97, 100 (Defendant’s Memorandum citing the case);
2. R. 102-103 (attaching a letter from the South Carolina Attorney General stating that a violation of the National Mortgage Settlement could, in the

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<sup>1</sup> See [www.nationalmortgagesettlement.com](http://www.nationalmortgagesettlement.com) (last checked December 9, 2015). “This Web site was developed and is hosted and maintained by the Attorneys General on the Executive Committee that negotiated the settlement. For questions regarding the settlement—signed by 49 states.” *Id.* The nickname was given to the judgment by the Attorneys General, not the Appellants.

General's opinion, be a basis for unfair and deceptive conduct under the South Carolina Unfair Trade Practices Act;

3. R. 113-115 (Defense counsel's argument against the motion);
4. R. 118 (Plaintiff's counsel discussing same); and
5. R. 131 (Defense counsel arguing the Motion to Reconsider on Lifting the Stay).

The National Mortgage Settlement was argued in the Initial Brief as requiring Wells Fargo to provide certain discovery in order for the Glassburns to properly apply for their second modification. This argument was raised below by the Glassburns in opposition to lift the stay, again in their Motion to Reconsider, and ruled on by the court.<sup>2</sup> Hence, not only is the basis of the motion legally incorrect, it is also factually inaccurate and disingenuous.

III. In their reply brief, Appellants argued the National Mortgage Settlement and cited the CBS News article in response to U.S. Bank's first made argument in its brief that, "In order for the Court to view the facts as the Glassburns argue them, the Court would have to first assume that a rational lender would ever suggest that a borrower should stop paying back a loan and, unbelievably that the borrower should spend his money 'on other things.'" Respondent's Brief at 12. Appellants are entitled to reply with this newly made argument with whatever legal sources they can obtain. U.S. Bank claimed it was not rational that it would have asked the Glassburns to stop making payments. In fact, it received billions of dollars to offer

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<sup>2</sup> The trial court heard the motion to reconsider its Order Lifting the Stay in this matter on the morning of trial and denied the same orally from the bench. R. at 135.

these modifications and it was subsequently enjoined for continuing the same misconduct alleged by the Glassburns. Respondent cannot have it every way it defines without regard to law or equity—yet, in essence, that is precisely what it is demanding from this Court.

IV. Respondent's motion is untimely. Respondent claimed in its initial brief that the arguments raised should have been stricken. Respondents' Brief 9-10. If it was truly concerned, it should have filed a motion then, before the record on appeal and final briefs were created and filed, and not wait a month to serve a motion. Whatever reasons the Respondent has to hide the National Mortgage Settlement and its found and admitted misconduct as it relates to borrowers such as the Glassburns, it should be ignored.

WHEREFORE for the reasons set forth herein, the motion should be denied with the costs and fees of the motion incurred by the Appellants assessed against the Respondent.

HALLER LAW FIRM, P.C.

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

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\_\_\_\_ day of \_\_\_\_\_, 2015

Charleston, South Carolina

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Of Whom

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Appellants.

\_\_\_\_\_  
PROOF OF SERVICE  
\_\_\_\_\_

I affirm that I served the Appellants' Reply to Respondent's Motion to  
Strike on counsel listed below at the addressed connected with their name by  
placing the same in the U.S. Mail, postage pre-paid, December 9, 2015.

HALLER LAW FIRM, P.C.



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9<sup>th</sup> day of December, 2015

Charleston, South Carolina

OTHER COUNSEL OF RECORD

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Attorney for the Respondent

# Haller Law Firm, P.C.

*Counselors at Law*

David K. Haller  
*Certified Civil Court Mediator*

December 9, 2015

Jenny Abbott Kitchings  
Clerk of the Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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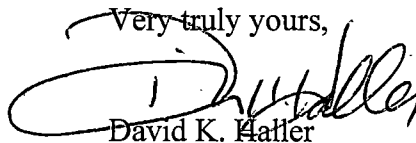
In Re: *U.S. Bank v. Glassburn*  
Case No.: 2015-00799

Dear Madame Clerk:

Enclosed for filing with your office, please find the original and seven copies of the Appellants' Reply to Respondent's Motion to Strike in the above matter. Please file the originals and return the copy to me in the enclosed self-addressed stamped envelope.

Thank you for your time and attention in this matter.

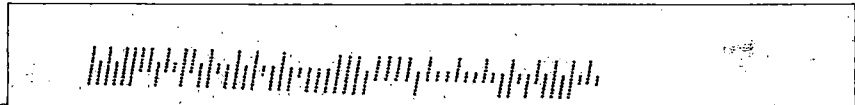
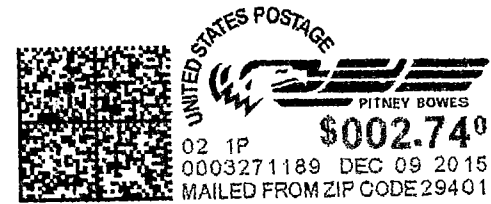
Very truly yours,



David K. Haller

Enclosure

cc: Sterling Laney, Esq.  
Amanda Reece, Esq.  
Client



**Haller Law Firm, P.C.**

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