THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Appellate Case No. 2015-000799
Circuit Court Case No. 2010-CP-10-10122

US Bank National Association, as Trustee for the holders of Bear Stearns ARM Trust, Mortgage Pass-Through Certificates, Series 2005-4, ... Respondent,

v.

Anne B. Glassburn; Donivon D. Glassburn; The Bank of New York Mellons 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.

REPLY IN SUPPORT OF RESPONDENT'S MOTION TO STRIKE REFERENCES TO FACTUAL MATERIALS NOT CONTAINED IN THE RECORD

Respondent seeks to strike from Appellants' briefs all discussions of evidence that was never presented to the circuit court. In opposing this straightforward motion, Appellants' argument reflects a fundamental misunderstanding of the very material they have improperly attempted to introduce on appeal.

As catalogued in Respondent's motion, Appellants rely heavily in their appellate filings on new facts and new arguments that arise from federal litigation in the District of Columbia. But because Appellants never actually submitted anything from that case to the circuit court here, their arguments cannot be considered on appeal. Rules 210(c), 210(h), SCACR.

Appellants now argue that they "did not need to" admit into evidence anything from that other litigation because they are citing "a judgment entered" against Respondent and accompanying news articles about it. (Appellants' Opp'n at 2.) To them, admitting evidence of a judgment from a different court is an "evidentiary nicety" that they can ignore. (*Id.*)

This is incorrect for several reasons. First, the South Carolina Rules of Civil Procedure, the South Carolina Rules of Evidence, and the South Carolina Uniform Enforcement of Foreign Judgments Act all contemplate the presentation of foreign judgments into evidence at the trial level. *See, e.g.*, Rule 9(e), SCRCP (pleading requirements for judgments rendered by other courts); Rule 803(22) & (23), SCRE (discussing hearsay exceptions for judgments); S.C. Code Ann. §§ 15-35-920 to -930 (requiring a party who seeks to enforce a foreign judgment to actually file the judgment and serve it on the adverse party). If Appellants' argument was correct, all of these rules and statutes would be unnecessary surplusage. *See CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (rejecting a construction that would render any portion of a statute as "surplusage, or superfluous").

Second, the material cited throughout their appellate filings is not a "judgment," as they mischaracterize in their opposition memorandum, but instead is a "consent judgment." (*See* Ex. A, First Two Pages of Consent Judgment Resolving *United States v. Bank of America Corp.*, Case No. 1:12-cv-361-RMC (D.D.C.).) As such, it is neither law nor a judgment rendered after a court weighed evidence in light of the law, but is akin to a contract that "may not be modified by the court, even while power otherwise exists, without the parties' consent." *M. v. Hunt*, 657 F.2d 55, 59–60 (4th Cir. 1981). Because the consent judgment was a contract entered between the parties to that federal litigation, it could not be considered in this case without first being admitted into evidence in order for the circuit court to consider its signatories' intent.

Third and finally, the signatories' intent was unambiguous: the consent judgment was ***not*** to be considered as evidence against the bank in any other proceedings. The recitals at the beginning of the consent judgment expressly spell this out, as those parties agreed that they were executing it "without trial or adjudication of issue of fact or law" and "***without this Consent Judgment constituting evidence against Defendant***." (Ex. A, at 2 (emphasis added).) Because the parties to the federal litigation agreed that the consent judgment would not constitute evidence adverse to Respondent, Appellants cannot legitimately rely on the consent judgment as a basis for their arguments to this Court. *See, e.g.*, *Johnson v. Robinson*, 987 F.2d 1043, 1046–47 (4th Cir. 1993) ("The binding force of a consent decree comes from the agreement of the parties. A federal district court may not use its power of enforcing consent decrees to enlarge or diminish the duties on which the parties have agreed and which the court has approved.").

In addition to being incorrect about the requirement that they actually present the consent judgment to the circuit court in order for it to be considered by this Court, Appellants are equally incorrect with their argument that Respondent's motion to strike is untimely. The Appellate Court Rules do not require that a motion to strike be filed at any certain point, and it would have been less efficient for Respondent to file one motion to strike after Appellants filed their improper opening brief, and then a second motion after Appellants filed their improper reply brief.

Accordingly, for the reasons discussed above, as well as in its original motion, Respondent respectfully moves for an order striking from Appellants' filings all references to facts and purported evidence that was never presented to the trial court, and for the Court to disregard those improper materials and references in its review of this case.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: _____

S. Sterling Laney, III
South Carolina Bar 6933
550 South Main Street, Suite 400
Greenville, South Carolina 29601
(864) 255-5400
slaney@wcsr.com

M. Todd Carroll
South Carolina Bar 74000
1727 Hampton Street
Columbia, South Carolina 29201
(803) 454-6504
todd.carroll@wcsr.com

Attorneys for Respondent

December 17, 2015
Columbia, South Carolina

Exhibit A

First Two Pages of Consent Judgment Resolving *United States v. Bank of America Corp.*, Case No. 1:12-cv-361-RMC (D.D.C.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

BANK OF AMERICA CORP. *et al.*,

Defendants.

12 0361

Civil Action No. _____

CONSENT JUDGMENT

WHEREAS, Plaintiffs, the United States of America and the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, the Commonwealths of Kentucky, Massachusetts, Pennsylvania and Virginia, and the District of Columbia filed their complaint on March 12, 2012, alleging that Wells Fargo & Company and Wells Fargo Bank, N.A. (collectively, "Defendant") violated, among other laws, the Unfair and Deceptive Acts and Practices laws of the Plaintiff States, the False Claims Act, the Financial

Institutions Reform, Recovery, and Enforcement Act of 1989, the Servicemembers Civil Relief Act, and the Bankruptcy Code and Federal Rules of Bankruptcy Procedure;

WHEREAS, the parties have agreed to resolve their claims without the need for litigation;

WHEREAS, Defendant, by its attorneys, has consented to entry of this Consent Judgment without trial or adjudication of any issue of fact or law and to waive any appeal if the Consent Judgment is entered as submitted by the parties;

WHEREAS, Defendant, by entering into this Consent Judgment, does not admit the allegations of the Complaint other than those facts deemed necessary to the jurisdiction of this Court;

WHEREAS, the intention of the United States and the States in effecting this settlement is to remediate harms allegedly resulting from the alleged unlawful conduct of the Defendant;

AND WHEREAS, Defendant has agreed to waive service of the complaint and summons and hereby acknowledges the same;

NOW THEREFORE, without trial or adjudication of issue of fact or law, without this Consent Judgment constituting evidence against Defendant, and upon consent of Defendant, the Court finds that there is good and sufficient cause to enter this Consent Judgment, and that it is therefore ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355(a), and 1367, and under 31 U.S.C. § 3732(a) and (b), and over Defendant. The Complaint states a claim upon which relief may be granted against Defendant. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b)(2) and 31 U.S.C. § 3732(a).

PROOF OF SERVICE

I, the undersigned Legal Secretary of the law offices of Womble Carlyle Sandridge & Rice LLP, Attorneys for Respondent, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by mailing a copy of the same, postage prepaid, to the following address(es):

Pleading: Reply in Support of Respondent's Motion to Strike References to Factual Materials Not Contained in the Record

Parties Served:

David Haller
Haller Law Firm, PC
115 River Landing Drive, Suite 102
Charleston, SC 29492

Amanda Reece
Reece Law Firm, LLC
217 Lucas Street, Unit J
Mount Pleasant, SC 29464

Attorneys for Appellants

Edwin T. Mathis

December 17, 2015

WOMBLE CARLYLE SANDRIDGE & RICE
A LIMITED LIABILITY PARTNERSHIP

1727 Hampton Street
Columbia, SC 29201

Telephone: (803) 454-6504
Fax: (803) 454-6509
www.wcsr.com

Direct Dial: 803-454-7730
Direct Fax: 803-381-9130
E-mail: Todd.Carroll@wcsr.com

December 17, 2015

The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: US Bank National Association v. Anne B. Glassburn
Appellate Case No. 2015-000799

Dear Ms. Kitchings:

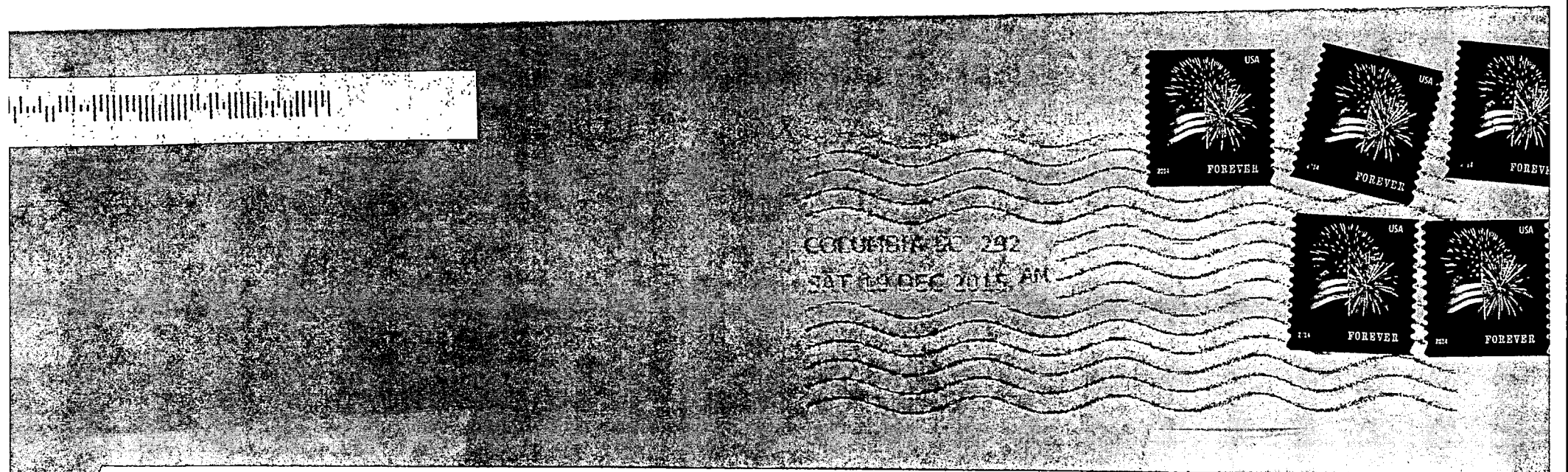
Enclosed for filing please find the Reply in Support of Respondent's Motion to Strike Reference to Factual Materials Not Contained in the Record. Please file the original and return a clocked copy to us.

With kind regards, I remain

Very truly yours,

M. Todd Carroll

Enclosure
cc: David K. Haller
Amanda Reece



WOMBLE
CARLYLE
SANDRIDGE
& RICE
A LIMITED LIABILITY
PARTNERSHIP

1727 Hampton Street
Columbia, SC 29201

RECEIVED
DEC 21 2015
SC Court of Appeals

The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211