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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Joe M. Crosby, Master-in-Equity

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JAN 07 2016

SC Court of Appeals

Case No. 2011-CP-22-00342

Appellate Case No. 2015-002484

TD Bank, N.A., Successor by merger to Carolina First
Bank, N.A., Respondent,

v.

Sunil v. Lalla and Sharon W. Lalla, Appellants.

MOTION TO DISMISS

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondent TD Bank, N.A., Successor by merger to Carolina First Bank, N.A. (hereinafter "TD Bank"), hereby moves to dismiss the above-captioned appeal filed by Appellants Sunil V. Lalla and Sharon W. Lalla ("Appellants"). Appellants have failed to comply with the Appellate Court Rules, specifically Rule 208, by failing to file their Initial Brief.¹

Procedural Background and Analysis

On March 15, 2011, TD Bank commenced the underlying action by filing and serving a foreclosure complaint against Appellants due to Appellants' failure to pay pursuant to the terms of their Note and Mortgage. Appellants answered and asserted affirmative defenses to the

¹ The undersigned received the Court's January 6, 2016, letter regarding the transcript. There is no transcript. Appellants' brief should have been filed December 29, 2015. No brief was filed and no extension was sought. The appeal should be dismissed.

foreclosure and counterclaims. A final foreclosure hearing was held on December 10, 2012. By order dated May 10, 2013, the Master-in-Equity held that TD Bank was not entitled to the relief sought in the complaint.

TD Bank timely filed a Motion to Alter or Amend the May 10th Order on June 7, 2013. On February 4, 2015, the trial court reversed and vacated its earlier decision and issued an Order Granting TD Bank's Motion to Alter or Amend and Foreclosure Judgment and Order of Sale ("Foreclosure Order") ruling in favor, in toto, for TD Bank. Appellants filed their Notice of Appeal from the Foreclosure Order on February 17, 2015. The Appellate Case No. for that appeal is 2015-000295. Briefing is now complete in that appeal, and it is ready for consideration.

On June 23, 2015, TD Bank filed a Motion for Leases, Rents, and Appointment of Receiver, seeking the appointment of a receiver to protect TD Bank's interests in the property and the rents derived therefrom during the pendency of the appeal. A hearing was held on this Motion on September 14, 2015. Neither Appellants nor their counsel attended the hearing. There was no transcript made of the hearing. On November 12, 2015, the trial court entered its Order Appointing Receiver ("Receiver Order"). On November 24, 2015, TD Bank requested that Appellants comply with the requirements of the Receiver Order by noon on November 25, 2015. After Appellants failed to respond, TD Bank filed a Motion for Appellants to Show Cause Why They Have Refused to Comply with Court's Order Appointing Receiver on November 25, 2015. Also on November 25, 2015, Appellants filed their Notice of Appeal from the Receiver Order, which is the subject of this appeal bearing Appellate Case No. 2015-002484.

Pursuant to Rule 208(a)(1) of the Appellate Court Rules of South Carolina, Appellants' Initial Brief in this matter was required to be filed and served by Tuesday, December 29, 2015.

However, to date, Appellants have failed to file or serve their Initial Brief or seek any extension to do so. Accordingly, this appeal must be dismissed because Appellants failed to timely serve and file their Initial Brief with this Court. Dismissal of Appellants' appeal is required under the Rules. See Rule 208(a)(4), SCACR ("Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal . . .").

Conclusion

For the foregoing reasons, TD Bank respectfully requests that the Court dismiss this appeal.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Tara C. Sullivan

Thomas William McGee, III, SC Bar No. 11317

E-Mail: billy.mcgee@nelsonmullins.com

A. Mattison Bogan, SC Bar No. 72629

E-Mail: matt.bogan@nelsonmullins.com

Tara C. Sullivan, SC Bar No. 79806

E-Mail: tara.sullivan@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Respondent TD Bank, N.A., Successor by merger to Carolina First Bank, N.A.

Columbia, South Carolina

January 7, 2016.

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APPEAL FROM GEORGETOWN COUNTY
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Case No. 2011-CP-22-00342
Appellate Case No. 2015-002484

TD Bank, N.A., successor by merger to Carolina First
Bank, N.A., Respondent,
v.
Sunil V. Lalla and Sharon W. Lalla, Appellant.

PROOF OF SERVICE

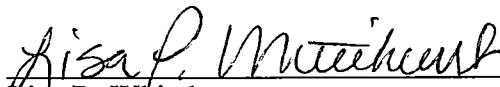
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for TD Bank, N.A., successor by merger to Carolina First Bank, N.A., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

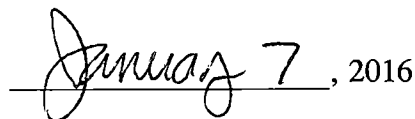
Motion to Dismiss

Counsel Served:

S. Jahue Moore, Esquire
Moore Taylor Law Firm
Post Office Box 5709
West Columbia, SC 29171



Lisa P. Whitehurst
Administrative Assistant


_____, 2016

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.9079
www.nelsonmullins.com

Tara C. Sullivan
Tel: 803.255.9591
Fax: 803.255.9079
tara.sullivan@nelsonmullins.com

January 7, 2016

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

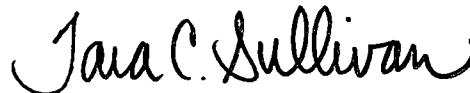
RE: TD Bank, NA, Successor by merger to Carolina First Bank, N.A., Respondent
v. Sunil V. Lalla and Sharon W. Lalla, Appellants
Appellate Case No. 2015-002484
Our File No. 04387/01834

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Respondent's Motion to Dismiss in regard to the above-referenced matter. We would ask that you file the original and return a clocked-in copy to us via our courier. Also enclosed is our check in the amount of \$25.00 as the required filing fee.

By copy of this letter to counsel of record, we are serving them with a copy of this motion.

Very truly yours,



Tara C. Sullivan

TCS:lpw
Enclosures
cc: S. Jahue Moore, Esquire

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SC Court of Appeals