

# FINKEL LAW FIRM LLC

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REPLY TO:  
CHARLESTON LITIGATION

January 8, 2016

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JAN 11 2016

SC Court of Appeals

Via Regular and Certified Mail R.R.R.

Cornell Riley  
100 Madison Ave.  
Ladson, South Carolina 29456  
*Plaintiff Pro Se*

RE: The Bank of New York Mellon Trust Company, N.A., not in its individual capacity  
but solely as trustee on behalf of the FDIC 2013-N1 Asset Trust v. Cornell Riley  
Case No.: 2015-001543  
Our File No.: 65050.48466

Dear Mr. Riley:

In our correspondence dated December 28, 2015, we asked you to supplement your Designation of Matter to include the transcript from the hearing at which the Respondent's Motion for Summary Judgment was heard on April 16, 2015 before Judge Goodstein. To date, we have not heard back from you regarding our request.

Consider this our formal request that you supplement your Designation of Matter with the corresponding transcript within ten (10) days of receipt of this letter.

Otherwise, we will have no choice but to file a motion with the Court of Appeals compelling you to supplement the Appellant's designation of matter the appropriate transcript. A copy of the transcript that we received is enclosed for your convenience.

With kind personal regards, we are

Sincerely,

FINKEL LAW FIRM LLC

  
Magalie A. Creech

CC: ~~The Honorable Jenny Abbott Kitchings~~ →

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STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

COURT OF COMMON PLEAS  
2014-CP-18-01007

BANK OF NEW YORK MELLON )

TRANSCRIPT OF RECORD

VS. )

CORNELL RILEY )

APRIL 16, 2015  
ST. GEORGE, SC

B E F O R E :

THE HONORABLE DIANE S. GOODSTEIN

A P P E A R A N C E S :

MAGALIE AMELIA ARCURE, ESQUIRE  
Attorney for the Plaintiff

CORNELL RILEY  
Defendant Appearing Pro Se

Ruth L. Mott, RPR, CRR  
Certified Court Reporter

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SC Court of Appeals

1 THE CLERK: Next is bank of New York Mellon versus  
2 Cornell Riley. Judge, we have three motions here, Mr.  
3 Riley's motion for sanctions, failure to comply with  
4 discovery requests; Mr. Riley also has a second motion for  
5 leave to amend the counterclaim; and the bank has a motion  
6 for summary judgment.

7 THE COURT: Okay.

8 CLERK OF COURT: Judge, Mr. Riley's motion for leave to  
9 amend the counterclaim was filed first.

10 THE COURT: All right. Yes, ma'am.

11 MS. ARCURE: May it please the Court, Your Honor,  
12 Magalie Arcure for the plaintiff.

13 THE COURT: Got it, and I think what I'll do is just,  
14 I'll hear the motions. The first one that appears that was  
15 filed was the second motion for leave to amend the  
16 counterclaim. Yes, sir.

17 MR. RILEY: Good morning, ma'am. I filed the second  
18 motion to amend based on the federal real estate settlement  
19 and relief act. Back in March I sent out a QWR based on that  
20 act to the plaintiff, and according to that act they have 20  
21 days to reply and 60 days to resolve; and I have no  
22 resolution, and I didn't get a reply to a portion of it. So  
23 that's why I added that to the counterclaim. It's portion  
24 No. 8 on the counterclaim. It's in bold on the new  
25 amendment.

1 THE COURT: Okay. All right. Thank you. Yes, ma'am.

2 MS. ARCURE: Thank you, Your Honor. Just by way of  
3 background, we've been before you a couple of times on this  
4 matter but this case proceeded -- began as a foreclosure  
5 action in which Mr. Riley filed a counterclaim based on the  
6 bank's refusal of his personal check to reinstate the loan.  
7 Subsequently, Mr. Riley reinstated with certified funds, as  
8 required by the terms of the note and mortgage, and the  
9 foreclosure was dismissed; however, the counterclaim remained  
10 pending, and he amended it to state one for a cause of action  
11 for breach of contract, again based on the rejection of the  
12 personal funds to reinstate. And now Mr. Riley has moved to  
13 further amend to add the violation of RESPA as a  
14 counterclaim, or as just a cause of action; and based on the  
15 documentation that's attached to the motion, it shows that  
16 the plaintiff did in fact respond to his correspondence and  
17 sent him the documentation, the payment history for the  
18 subject loan. And based on the very documents he's attached  
19 to that motion, it shows that the plaintiff did in fact  
20 respond, which they're required to do, and that there isn't  
21 any dispute as to that.

22 And I'll wait until we get into the summary judgment  
23 motion -- excuse me, I'm a bit nauseous this morning, Your  
24 Honor. I can get through it. But at any rate, it would be  
25 prejudicial to the plaintiff in this matter if this

1 counterclaim would proceed based on the fact that they  
2 clearly responded, and what Mr. Riley contends is not an  
3 adequate response is the subject matter of this litigation.

4 THE COURT: Okay. Great. Thank you. Yes, sir, do you  
5 wish to respond?

6 MR. RILEY: With regards to the summary, or are we still  
7 on the amendment?

8 THE COURT: The motion to amend.

9 MR. RILEY: Well, only response I have to that is I'm  
10 treating that right now as separate. I have a response for  
11 the summary as far as their evidence that they sent in; but  
12 based on the act, that's why I'm adding that to it. When I  
13 went back over my records, I noticed it and saw that they  
14 never responded appropriately to it. I have their response  
15 letter to that particular request that I sent out to them,  
16 and it doesn't answer the entire request; so, therefore,  
17 that's why I went ahead and --

18 THE COURT: Gotcha. All right. I'm going to have to  
19 take a look at the response, so that one I'm going to have to  
20 take a few minutes to look at, so I'll let you know my  
21 decision about that one.

22 All right. And the next motion that was filed appears  
23 to be the motion for summary judgment. Yes.

24 MS. ARCURE: Thank you, Your Honor. The plaintiff filed  
25 this motion for summary judgment in addition to a supporting

1 affidavit which attaches the subject note, the mortgage, the  
2 assignments of mortgage which show the chain of title into  
3 the current plaintiff, payment history, the default letters,  
4 and it essentially states that the loan had been in default  
5 since June 1st of 2013. At the time Mr. Riley attempted to  
6 reinstate, which was some nine months later, he attempted to  
7 reinstate with a personal check. That check was returned to  
8 him and requested certified funds to reinstate, which he  
9 subsequently did, and the default was cured. None of that  
10 was in dispute. The notice of default was sent to the  
11 property address. The terms of the note and mortgage state  
12 that the notice is deemed to have been given when it's mailed  
13 to the borrower. I think Mr. Riley contends he never  
14 received it, but that is irrelevant to the governing  
15 documents which state that once they've provided notice of  
16 the default, it's deemed to have been received when it's been  
17 sent to the last known address, which here was the property  
18 address where Mr. Riley stills lives.

19 Furthermore, the notice requirements with respect to the  
20 default require that the lender give notice to the borrower  
21 prior to acceleration, and it must specify the default, the  
22 action required to cure the default, not less than 30 days  
23 from the notice by which the notice of default to cure is  
24 given, and it must state that the failure to cure the default  
25 may result in acceleration of the debt. The default letters

1 attached to the affidavit contain all of that language and  
2 further notify the borrower of the right to reinstate the  
3 loan after acceleration and to assert any defense they may  
4 have in a subsequent foreclosure action. Upon providing that  
5 notice the lender may accelerate the debt upon 30 days'  
6 expiration after the default without any further notice, and  
7 that's exactly what happened here. The debt was accelerated,  
8 and when Mr. Riley reinstated nearly eight -- excuse me, 13  
9 months after the default date, the default was cured.

10 And based on this set of facts, Your Honor, there's no  
11 issue of material fact that the lender complied with the  
12 terms of the note and mortgage, as did Mr. Riley when he  
13 reinstated by certified funds; and based on the foregoing,  
14 there is no issue of material fact, and the plaintiff  
15 respectfully submits that it's entitled to summary judgment.

16 And I would further point to Mr. Riley's response to the  
17 reinstatement proposal, which I believe was filed prior to  
18 his reinstatement, in which he states that the defendant  
19 brings to the Court's attention that defense is willing to  
20 accept the restoration proposal of the plaintiff to reinstate  
21 the mortgage, but defense strongly stands against a closing  
22 of its counterclaim and asserts that this foreclosure matter  
23 before the Court would not have been brought if plaintiff had  
24 not violated the mortgage contract in March and April of 2014  
25 by rejecting full legal tender payment that would have been

1 brought -- that would have brought the mortgage current at  
2 that time and before this foreclosure case was filed with the  
3 Court. He admits that at that point the loan was in default  
4 and that he had not cured that default, so based on the  
5 express terms of the note and mortgage, we believe there is  
6 no issue of material fact with respect to the parties'  
7 requirements with respect to reinstating the loan.

8 THE COURT: Okay. Yes, sir.

9 MR. RILEY: Your Honor, I didn't -- I just heard the  
10 letter that I wrote, and I did write it, but I didn't hear in  
11 that any admission of in fact default. Furthermore, with  
12 regards to reinstating with certified funds. Those were not  
13 funds that I sent out to the bank. It's called South  
14 Carolina HELP organization. Whether they sent certified  
15 funds or not, I don't know; but whatever funds they sent to  
16 them, that's what they accepted because they have a preset  
17 agreement with a lot of lenders and mortgage servicers, so  
18 that's how it was reinstated. It wasn't reinstated because I  
19 took my personal check, went to the bank and turned it into a  
20 certified check and sent it back to them, so it's kind of  
21 misleading that way. So they took the payments from South  
22 Carolina HELP, which is still going on right now, which put  
23 me into a five-year contract with South Carolina HELP, second  
24 mortgage essentially; and that's how we're getting to that  
25 point.

1 With regards to the letter of the law and the rules as  
2 far as them mailing out the notice of acceleration or notice  
3 of default, it does say they have to mail it, not just they  
4 have to type it up and leave it in the file. I submitted an  
5 affidavit from my attorney in fact that signed the mortgage  
6 because I was out of the country in Iraq or Afghanistan at  
7 the time when the mortgage was actually signed, so I had an  
8 attorney in fact sign it for me. I was on the phone doing  
9 it, as much as I could stay on the phone between the mortars  
10 and driving; but, nevertheless, I have an affidavit from her  
11 basically saying that this notice never was received, and  
12 it's to my belief -- I believe it's a fabrication, something  
13 that was entered into the mortgage record sometime after May  
14 the 27th, whether it was recently or way back then.

15 There were numerous occasions that the plaintiff had a  
16 chance to actually submit that to me although. The QWR was  
17 one. They could have sent that saying this is the reason why  
18 we sent your check back because all it said in the  
19 explanation letter was certified funds are required, not that  
20 you're in acceleration, certified funds are required; so  
21 that's been submitted to the Court long time ago. So I sent  
22 a reply back saying, according to this portion of the  
23 contract, you can't reject my payment, and please explain to  
24 me why are you rejecting the payment. They sent me back this  
25 package in response, this FedEx package in response, with all

1 the history of the payments in it, a letter, but that --  
2 those letters that she's submitted for the summary was not a  
3 part of it, was not in here, not in this original FedEx'ed  
4 package. There was a letter in January and a letter in  
5 March, and neither was in this package to respond to that  
6 letter; so if it was there, I'd imagine they would have sent  
7 it then.

8       Furthermore, and this is going to be a part of my motion  
9 for sanctions, but if you will remember, case 1634 which I  
10 dismissed to pursue this one, when you was asking me about  
11 the note or the letter from Secretary of State office, which  
12 I did have at that date and time, I just -- it was shuffled  
13 in my files, but I had it there; but that was one incidence  
14 where I asked for discovery which that letter should have  
15 been a part of, that's with her summary for judgment, but I  
16 never did get it. Then I asked for discovery again, which  
17 they received the discovery requests, request for production,  
18 February the 20th. March the 20th I didn't get anything,  
19 March the 25th I didn't get anything, and then finally later  
20 on March 27th I received a package with those notices in  
21 there of which me and my attorney in fact never saw before.

22       So I know that you've already allowed this to go to a  
23 jury trial sometime in the summer, whenever it goes; but I  
24 think right now we're at the point where the breach of  
25 contract and whether or not they actually mailed this out

1 should be a matter before the jury to decide who's  
2 preponderance is greater because it never existed, and to my  
3 point it never existed to this date until we saw it in March  
4 in that package that we just got from the attorneys.

5 THE COURT: Okay. Any response?

6 MS. ARCURE: Just a couple things. With respect to Mr.  
7 Riley's discovery, he did send us responses to requests for  
8 admission in which he did admit that he had not made the  
9 required payments due and owing under the note and mortgage,  
10 and that was in his response No. 5; and that was, again,  
11 prior -- I believe at that point it was prior to his  
12 reinstatement. So, again, it's not in dispute that he was in  
13 default, and he was aware of that default because he was  
14 attempting to cure that default; and so based on this set of  
15 facts, Your Honor, I simply do not see how they give rise to  
16 any cause of action. And I feel compelled to state that I'm  
17 very sympathetic to how frustrating the foreclosure process  
18 is and was for Mr. Riley, but under this set of facts the  
19 bank did exactly what they're supposed to do, and I really --  
20 I would urge Mr. Riley, if he intends to continue with this  
21 litigation, to speak with an attorney because the terms of  
22 the note and mortgage do provide for reimbursement of the  
23 plaintiff's reasonable attorney fees and costs when it takes  
24 legal action to protect its interest in the property and its  
25 rights under the note and mortgage. And clearly the note and

1 mortgage state that they have the right to certified funds  
2 for reinstatement, and so based on that, Your Honor, I would  
3 again submit that summary judgment is proper.

4 THE COURT: Let me ask you this question: Mr. Riley  
5 talks about an affidavit by his lawyer that says that the  
6 notice was never sent. Would you respond to that?

7 MS. ARCURE: Mr. Riley submitted an affidavit by Twilla  
8 Cobb. She is the -- she executed the note and mortgage under  
9 a power of attorney. It's not disputed that he's the obligor  
10 and the mortgagor under those instruments.

11 THE COURT: Right.

12 MS. ARCURE: She submitted an affidavit stating that she  
13 didn't get notice of default, and I would submit that under  
14 Rule 12(f) she's not a party to this case and can't offer  
15 testimony; but regardless, even if it were admitted, it  
16 states they never received default, which again is not  
17 relevant because the terms of the mortgage state that once  
18 the default has been mailed, the notice has been given.

19 THE COURT: Okay. Got it. All right. Let me hear the  
20 motion for sanctions.

21 MR. RILEY: The motion for sanctions, normally I  
22 probably would have filed a motion to compel, but based on  
23 the history of how the plaintiff has responded to my  
24 requests, I felt the motion for sanctions would be more  
25 appropriate. When I go back, I say that -- I mentioned 1634,

1 again, which I have that the State Department did actually  
2 send them the documents which they ignored. I sent in a  
3 request to the attorneys for the plaintiff, asking for their  
4 consent to take the original discovery requests for 1634 and  
5 if they would have them transferred to 1007 so I wouldn't  
6 have to send out more requests for production, admissions and  
7 interrogatories. I got no reply to that. Not that they are  
8 legally obligated to reply, but it would have been courtesy,  
9 nice to say, no, we're not going to do it or submit another  
10 one; so then I in turn submitted another one, but I only  
11 submitted a request for production. That was back in  
12 February. And, again, according to the SC RCP they violated  
13 that and didn't reply to me on that. So as it's been a  
14 history of just not complying or maybe just, I don't know,  
15 maybe toying with me because I'm pro se, I figured they  
16 should know better, so there's no need for me to submit  
17 motion to compel for people that obviously professional --

18 THE COURT: I gotcha. Thank you. Yes, ma'am.

19 MS. ARCURE: With respect to I believe the set of  
20 discovery Mr. Riley's referring to, I did send -- I did serve  
21 my responses yesterday. They are the documents which were  
22 attached to the motion for summary judgment. It's all the  
23 same documentation. And that was an oversight on my part  
24 because, when he mailed them into our office, they were with  
25 other documents which were styled as an offer for settlement,

1 and they were mislabeled. So when I looked at our file, I  
2 saw that we had sent discovery and gotten discovery back, and  
3 I thought discovery was complete; but I'm happy to hand over  
4 a copy of what we sent yesterday. It's responses to the  
5 requests for production, which is everything that was  
6 attached to the affidavit in support of summary judgment.

7 THE COURT: And when was that sent?

8 MS. ARCURE: The summary judgment?

9 THE COURT: The summary judgment attachment documents.

10 MS. ARCURE: The affidavit was mailed in on March 26.

11 THE COURT: And mailed to Mr. Riley at the same time?

12 MS. ARCURE: Yes. Yes, we filed them with the Court and  
13 mailed them to Mr. Riley concurrently.

14 THE COURT: Gotcha. Okay. Got it. I've got it. Let  
15 me look at it, guys; and what I'll probably do is send  
16 just -- I don't know that I'll do the orders myself, but I  
17 will certainly advise both sides of my decision promptly.  
18 Thank you so much. Appreciate it.

19 --- END OF TRANSCRIPT OF RECORD ---  
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1 CERTIFICATE OF REPORTER  
2 STATE OF SOUTH CAROLINA  
3 COUNTY OF DORCHESTER

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JAN 11 2016

SC Court of Appeals

4  
5 I, the undersigned Ruth L. Mott, Certified Court  
6 Reporter for the State of South Carolina, do hereby certify  
7 that the foregoing is a true, accurate and complete  
8 transcript of record of all the proceedings had and evidence  
9 introduced in the matter of the above-captioned case,  
10 relative to appeal, in the 1st Judicial Circuit Court for  
11 Dorchester County, South Carolina, on the 16th of  
12 April, 2015.

13 I further certify that I am neither related to nor  
14 counsel for any party to the cause pending or interested in  
15 the events thereof.

16 December 31, 2015

17   
18 Ruth L. Mott

19 Certified Court Reporter  
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DFB/MAA

The Honorable Jenny Abbott Kitchings  
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JAN 11 2016

SC Court of Appeals

