

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

RECEIVED

JAN 25 2016

The Honorable Richard L. Booth, Master in Equity

SC Court of Appeals

Appellate Case No. 2015-000349
Circuit Court Case No. 2010-CP-43-00823

Wells Fargo Bank, N.A., Respondent,

v.

Delores Prescott and Wells Fargo Financial Bank (SD), Defendants,

of whom

Delores Prescott is the Appellant.

RESPONDENT'S RESPONSE TO APPELLANT'S "NOTICE"


Appellant has filed a "Notice" with the Court asking Respondent to change one of the documents that it designated for inclusion in the Record on Appeal. In response, Respondent affirms that it accurately identified all documents that it seeks to have included in the Record. Moreover, to ensure that there are no further delays in the preparation of the Record and filing of final briefs, Respondent has attached a complete copy of the challenged document—which was Appellant's own motion to amend her responsive pleading—as Exhibit A to this response.

Signature Page Attached

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
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Columbia, South Carolina 29201
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Attorneys for Respondent

January 22, 2016
Columbia, South Carolina

Exhibit A

Appellant's Motion to Amend

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF SUMTER)

CASE NO.: 2010-CP-43-0823)

Wells Fargo Bank, N.A.,)

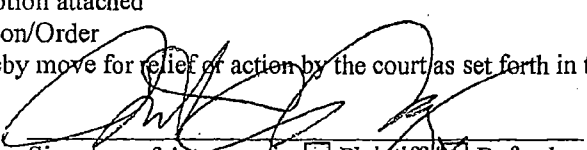
**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

Delores Prescott, et al.,)

Defendant.)

Defendant's Attorney: <u>Brooks A. Haselden</u> Bar No. <u>Wombyle, Carlyle & Sandridge & Rice, LLP</u> <u>550 S. Main Street</u> <u>Suite 400</u> <u>Greenville, SC 29601</u> E-mail: <u>bhaselden@wcsr.com</u> F: <u>864-239-5855</u> P: <u>864-255-5435</u>	Defendant's Attorney: <u>Robert C. Ray</u> , Bar No. <u>4653</u> Address: <u>306A Mills Ave, Greenville, SC</u> Phone: <u>864-233-4555</u> Fax <u>864-232-9730</u> E-mail: <u>bobraylaw@gmail.com</u> Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: <u>Amend Answer and Counterclaim</u> Estimated Time Needed: <u>30 min</u> Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief of action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	<u>September 20, 2013</u> Date submitted
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ 25.00 <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SUMTER)	2010-CP-43-0823
)	
Wells Fargo Bank, N.A)	MOTION TO AMEND ANSWER
)	AND COUNTERCLAIM
)	
Plaintiff,)	
)	
vs)	
)	
Delores Prescott and Wells Fargo)	
Financial Bank (SD))	
Defendants.)	
)	

NOW COMES, the Defendant, Delores Prescott, only, by and through her attorney, and hereby moves this Court for an Order granting this Defendant leave to amend her Answer and Counterclaim, as set forth in the proposed Amended Answer and Counterclaim attached hereto and incorporated by reference herein as [Exhibit A].

1. Plaintiff, Wells Fargo Bank, N.A (hereinafter "Plaintiff") filed a foreclosure Complaint on April 16, 2010.
2. Defendant Delores Prescott (hereinafter "Prescott") acting *pro se* answered the Complaint herself on May 18, 2010.
3. On March 28, 2011 Prescott went into Chapter 13 Bankruptcy, thereby automatically staying the foreclosure action.
4. On March 14, 2013, Prescott employed Robert C. Ray of the Greenville Bar. On that same date, counsel filed a Notice of Appearance and Substitution of Counsel.
5. Soon after Prescott hired counsel, Plaintiff changed its counsel to Womble, Carlyle, Sandridge & Rice of Greenville, S.C. and representatives of the law firm contacted Prescott's counsel.
6. Prescott's attorney has been negotiating Prescott's Amended Answer and Counterclaim with Plaintiff's new attorney since April 2, 2013.

7. Prescott seeks leave of the Court to file her Amended Answer and Counterclaim, a copy of which is attached.
8. The basis of Prescott's plea to the Court is newly discovered facts, equity and the fact that justice will not be done unless the Court can hear her Amended Answer and Counterclaim.
9. Because discovery remains open, and no trial date has yet been scheduled, the Plaintiff will not be prejudiced by Prescott's filing an amended answer.
10. Counsel for Prescott has requested the Plaintiff to consent to the Amended Answer and Counterclaim, but the Plaintiff refused to do so.

WHEREFORE, counsel for Defendant Prescott, respectfully requests that the Court grant the Defendant's motion for leave to amend and to allow the Defendant to amend her answer to assert the newly discovered issues and for such other further relief in favor of the Defendant as the Court deems just and appropriate.

Respectfully submitted,

By: 

Robert C. Ray
S.C. Bar #4653
Attorney for Defendant, Delores Prescott
306A Mills Avenue
Greenville SC 29605
Office: 864-233-4555
Fax: 864-232-9730

Greenville, SC
September 20, 2013

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER)

2010-CP-43-0823

Wells Fargo Bank, N.A.)

Plaintiff,)

vs)

Delores Prescott and Wells Fargo
Financial Bank (SD))

Defendants.)

CERTIFICATE OF SERVICE

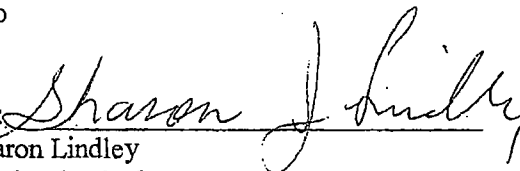
I, Sharon Lindley, Paralegal for Robert C. Ray, do hereby certify that on this date, September 20, 2013, I served all counsel of record with a copy of Defendant's Motion and Proposed Order to Amend Answer and Counterclaim, as herein below specified by *Electronic Transmission*, E-mail and mailing a copy of the same by United States Mail, postage prepaid, the following address:

Pleading: Motion and Order to Amend Answer and Counterclaim

Parties Served:

Brookes A. Haselden, Esq.
Womble Carlyle Sandridge & Rice, LLP
550 South Main Street
Suite 400
Greenville, SC 29601
Email: bhaselden@wcsr.com

Wells Fargo Financial Bank
Corporation Service Company/
Registered Agent for Wells Fargo
1703 Laurel Street
Columbia, SC 29201

By: 
Sharon Lindley
Paralegal to Robert C. Ray
Office: 864-233-4555
Fax: 864-232-9730

Greenville, SC
September 20, 2013

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SC Court of Appeals

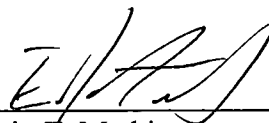
PROOF OF SERVICE

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: Respondent's Response to Appellant's "Notice"

Parties Served: Delores Prescott
10 Skytop Gardens, Apt. 23
Parlin, New Jersey 08859

Appellant



Edwin T. Mathis

January 22, 2016

WOMBLE
CARLYLE
SANDRIDGE
& RICE
A LIMITED LIABILITY
PARTNERSHIP



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Direct Fax: 803-381-9130
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January 22, 2016

RECEIVED
JAN 25 2016
SC Court of Appeals

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Wells Fargo v. Delores Prescott
Appellate Case No. 2015-000349

Dear Ms. Kitchings:

Enclosed please find Respondent's Response to Appellant's Notice. Please file the original and return a stamped copy in the enclosed envelope. Thank you.

With kind regards, I remain

Very truly yours,

M. Todd Carroll

MTC/tm
Enclosures

cc: Delores Prescott



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