

79694

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

RECEIVED

MAY 26 2016

SC Court of Appeals

Appellate Case No. 2015-001543

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,

Respondent,

v.

Cornell Riley,

Appellant.

**RESPONDENT'S MOTION FOR ORDER DETERMINING REMAINING DEADLINES
AND APPELLANT'S COMPLIANCE WITH RULE 210, SCACR**

Undersigned counsel for Respondent 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 respectfully moves before the Court for an Order determining whether Appellant's pending Motion for Enlargement of Time to Serve the Record on Appeal is granted and, if so, requiring Appellant to supplement the Proposed Record so that it is in conformity with Rule 210, SCACR. Respondent also seeks an Order clarifying the remaining deadlines as applicable.

The Appellant's Reply Brief was served on February 13, 2016, and the related proof of service accompanying the Motion and Proposed Record on Appeal is dated April 1, 2016. Pursuant to Rule 210(a), SCACR, the deadline for Appellant to serve the Record on Appeal

would have been March 14, 2016. Respondent timely filed a Return to Appellant's Motion for Enlargement of Time to Serve the Record on Appeal, in which it requested that the Court issue an Order specifying the deadline for Respondent's Final Brief to be filed in light of Appellant's pending Motion for Enlargement, and requesting an Order determining whether the Proposed Record submitted by Appellant is in conformity with Rule 267, SCACR. The Court has not yet ruled on the Appellant's pending Motion for Enlargement of Time to Serve the Record on Appeal.

Moreover, the Proposed Record submitted to the Court by Appellant is not in conformity with Rule 210(c), SCACR, because it is not arranged in the proper order and includes incomplete copies of the documents referenced in the index. Specifically, the Proposed Record omits the Order Granting Respondent's Motion for Summary Judgment, which is the subject of this appeal, and does not include the exhibits attached to Respondent's Affidavit in Support of Summary Judgment or the corresponding coversheets to the motions. One of the transcripts included in the Proposed Record is underlined, and the copy of the Proposed Record received by Respondent was double sided and bound with tape and glue.

In light of the deficiencies in the Proposed Record, and the uncertainty as to whether the Court shall even grant the Appellant's pending Motion for Enlargement of Time to Serve the Record on Appeal, Respondent seeks an Order addressing the following questions:

- (1) Whether Appellant's Motion for Enlargement of Time to Serve the Record on Appeal is granted or denied;
- (2) If Appellant's pending Motion for Enlargement of Time to Serve the Record on Appeal is granted, the deadline by which Appellant must submit a complete Record on Appeal in conformity with the applicable Rules of Appellate Procedure; and

Bank of New York Mellon Trust v. Cornell Riley
Appeal from Dorchester County Court of Common Pleas
Appellate Case No. 2015-001543


(3) If Appellant's pending Motion for Enlargement of Time to Serve the Record on Appeal is granted, the deadline by which the Respondent must serve its Final Respondent's Brief.

To facilitate the foregoing, Respondent has included complete copies of the Order Granting Respondent's Motion for Summary Judgment and Respondent's Affidavit in Support of Summary Judgment as enclosures in its courtesy copy of the instant Motion to Appellant.

Respondent is also requesting, by separate Motion, a thirty (30) day extension of time in which to serve the Respondent's Final Brief and permission to file same outside the deadlines set by Rule 211, SCACR, as applicable.

Respectfully submitted,

FINKEL LAW FIRM LLC


Magalie A. Creech (S.C. Bar 78855)
Post Office Box 41489
Charleston, South Carolina 29423
Telephone: (843) 577-5460
Facsimile: (866) 800-7954
mcreech@finkellaw.com
Attorneys for Respondent

May 23, 2016

CC:
Cornell Riley
100 Madison Ave.
Ladson, South Carolina 29456

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2015-001543

RECEIVED

MAY 26 2016

SC Court of Appeals

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,

Respondent,

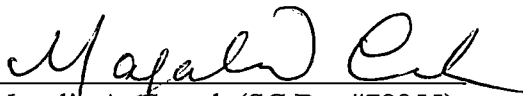
v.

Cornell Riley,

Appellant.

PROOF OF SERVICE

I certify that I have served the *Respondent's Motion for Order Determining Remaining Deadlines and Appellant's Compliance with Rule 210, SCACR* by depositing a copy of same in the United States Mail, postage prepaid, on May 23, 2016, addressed to Appellant of record, Cornell Riley, 100 Madison Ave., Ladson, South Carolina 29456.


Magalie A. Creech (SC Bar #78855)
FINKEL LAW FIRM LLC
Post Office Box 41489
Charleston, South Carolina 29423
Telephone: (843) 577-5460
Facsimile: (866) 800-7954
mcreech@finkellaw.com
Attorney for Respondent

May 23, 2016



MAGALIE A. CREECH
MCREECH@FINKELLLAW.COM

May 23, 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
REPLY TO:
CHARLESTON LITIGATION
MAY 26 2016
SC Court of Appeals

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
Appellate Case No.: 2015-001543
Our File No.: 65050.48466

Dear Ms. Kitchings:

Enclosed for filing is the *Respondent's Motion for Order Determining Remaining Deadlines and Appellant's Compliance with Rule 210, SCACR* and related *Proof of Service* in the above-referenced case, along with six (6) copies, which we kindly ask you to file and return in the attached, self-addressed, stamped envelope.

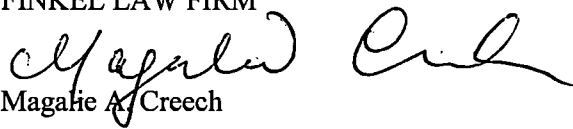
Also, please find enclosed check number 60808, in the amount of \$25.00, per filing fee.

Should you have any questions concerning this matter, please do not hesitate to contact our office at your earliest convenience.

With kind personal regards, we are

Yours very truly,

FINKEL LAW FIRM


Magalie A. Creech

w/o enclosures

CC: Cornell Riley (w/enclosures)

COLUMBIA
1201 Main Street, Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
Tel: (803) 765-2935
Fax: (803) 252-0786

CHARLESTON
Litigation, Real Estate &
REO
4000 Faber Place Drive, Suite 450
Post Office Box 41489 (29423)
North Charleston SC 29405

CHARLESTON
Foreclosure
4000 Faber Place Drive, Suite 450
Post Office Box 71727 (29415)
North Charleston, SC 29405
Tel: (843) 577-5460

FINKEL
LAW FIRM LLC

P.O. Box 41489
Charleston, SC 29423

DFB/MAC

The Honorable Jenny Abbott Kitchings,
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

MAY 26 2016

SC Court of Appeals