

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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AUG 16 2016

SC Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Case No. 2016-001526

The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the benefit of Certificateholders of Popular ABS, Inc. Mortgage Pass-Through Certificates Series 2006-E, .....

Respondent,

v.

Charles Taylor, Burgess Brogdon Bldg. Supply,  
Palmetto Health Alliance, .....

of Whom Charles Taylor is the

Appellant.

**MOTION TO STRIKE IMPROPER DESIGNATIONS**

Pursuant to Rules 209, 210, and 240 of the South Carolina Appellate Court Rules, Respondent The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the benefit of Certificateholders of Popular ABS, Inc. Mortgage Pass-Through Certificates Series 2006-E (“Respondent”) moves this Court for an order striking matter that Appellant Charles Taylor (“Appellant”) improperly designated for inclusion in the record on appeal in this case. Specifically, Appellant incorrectly designated three letters that are irrelevant to the appeal and were not presented to the trial court. See App.’s Designation at p.3, ¶¶ 20–22. Further, to the

extent Appellant seeks to include two photographs, those are similarly inappropriate for the record if they were not included as part of the one of the other designated filings. *See id.* at ¶¶ 17–18.

Rule 210(c) expressly provides that the record on appeal must not include matter not presented to the lower court. Rule 210(c), SCACR (“The Record shall not . . . include matter which was not presented to the lower court or tribunal.”). In violation of Rule 210(c), Appellant cites to two letters related to discovery and a letter forwarding the lower court’s Order lifting a stay that was entered on January 4, 2016, due to then-ongoing settlement discussions. When Appellant failed to comply with the prerequisites to the loan modification he initially accepted, the stay was lifted. Accordingly, not only are the designated letters irrelevant to the appeal, they were not “presented” to the lower court as part of Appellant’s argument on the motions which led to the Order currently on appeal. Because Appellant may not properly rely on these letters at this juncture and may not include these pages in the record on appeal, Respondent moves this Court for an Order striking any reference to these letters from Appellant’s Initial Brief and from his designation of matter to be included in the record on appeal.

Further, in designating two undated photographs, Appellant’s designation fails to comply with Rule 209 of the South Carolina Appellate Court Rules. Rule 209 requires Appellant “to set forth *with specificity* those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal.” Rule 209(a), SCACR (emphasis added). Rule 209 further provides that “[t]he Designation must *clearly identify* what the party desires to have included in the Record on Appeal, and the Designation may only propose to include [material] which may be properly included in the Record on Appeal [See Rule 210(c)].” Rule 209(b), SCACR (emphasis added) (second alteration in original). While there are purported exhibits to several of the “memorandums” filed with the lower court, Appellant fails to specific whether the

two photographs listed as “Exhibits” in the designation are, in fact, one or more of the exhibits actually submitted to the lower court. The designation is the designation is not clear, and Respondent cannot determine with any certainty what “excerpts and exhibits” Appellant is proposing. Thus, Respondent moves this Court for an Order directing Appellant to file an amended designation of matter, which specifies all documents and specific pages that Appellant proposes for inclusion in the record on appeal (and which does not include any improper matter). Otherwise, neither Respondent nor the Court can determine whether all matter designated is proper, prior to assembly of the record on appeal.

Respondent respectfully requests that this Court grant its motion to strike, directing Appellant to file an amended designation of matter that specifies the material to be included and identifies the pleading to which it was attached to document that it was presented to the lower court.

***SIGNATURE PAGE ATTACHED***

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Popular ABS, Inc. Mortgage Pass-Through Certificates Series  
2006-E

Columbia, South Carolina

8/16, 2016

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Popular ABS, Inc. Mortgage Pass-Through Certificates  
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Charles Taylor, Burgess Brogdon Bldg. Supply, Palmetto  
Health Alliance

of Whom Charles Taylor is the..... Appellant

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PROOF OF SERVICE

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I certify that I have served a copy of Motion to Strike Improper Designations by United States Mail, prepaid, on August 16, 2016, addressed to:

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August 16, 2016

## Hand Delivered

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Sumter Street  
Columbia, SC 29201

RECEIVED  
AUG 16 2016  
SC Court of Appeals

Re: Bank of NY Mellon v. Charles Taylor, et al.  
Case No. 2016-001526  
Our File No. 36266/01512


Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Motion to Strike Improper Designations in the above-referenced matter. We would appreciate your filing the original and returning a clocked copy to us via our courier.

By copy of this letter, we are hereby serving a copy of same on *pro se* Appellant and counsel.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact us.

Very truly yours,



Sarah B. Nielsen

SBN:cr  
Enclosures

cc: Charles Taylor, *pro se*  
S. Nelson Weston, Jr., Esq.