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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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OCT 27 2016  
SC Court of Appeals

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Dale E. Van Slambrook, Master-in-Equity

Appellate Case No. 2016-000292

Branch Banking and Trust Company.....Respondent,

vs.

Wilton H. Cain; Cassandra M. Durrah-Cain;  
Liberty Hall Residential Property Owners  
Association, Inc.....Defendants,

Of whom

Wilton H. Cain and Cassandra M. Durrah-Cain, are ..... Appellants.

**RESPONDENT’S MOTION TO CORRECT  
RECORD ON APPEAL AND MOTION TO STAY TIME TO FILE FINAL BRIEF**

Respondent Branch Banking and Trust Company (“Respondent”) hereby moves to correct the Record on Appeal submitted by Appellants Wilton H. Cain and Cassandra M. Durrah-Cain (“Appellants”) on the grounds that the proposed Record on Appeal omits documents designated for inclusion by Respondent, includes matters not presented to the lower court, and fails in other material aspects to comply with the South Carolina Appellate Court Rules. Additionally, Respondent hereby moves to stay the time for it to be required to file its final brief until such time as the below noted deficiencies are corrected.

## FACTS

On August 10, 2016, Appellants filed and served Respondent with the Record on Appeal. On September 12, 2016, Respondent filed and served its Initial Brief and Designation of Matter for Record on Appeal. Pursuant to the Rules, Appellant had until October 12, 2016, to file the Record on Appeal following Respondents' filing of the Initial Brief and Designation of Matter. No additional or revised Record on Appeal was filed. Respondent now seeks an order of the Court requiring Appellants to fix several serious deficiencies in the Record on Appeal.

## ARGUMENT

Appellants must correct the following deficiencies in the Record on Appeal filed on August 10, 2016:

**1. Appellants improperly omitted several documents from the Record on Appeal that were designated for inclusion by Respondent in its Designation of Matter.**

“The Record on Appeal shall include all matter designated to be included by any party under Rule 209 ...” Rule 210(c), SCACR. Appellants failed to include the following documents in the Record on Appeal that Respondent requested through its Designation of Matter:

- a) Judgment of Foreclosure and Sale, June 30, 2011;
- b) Order for Deficiency Judgment, September 19, 2011;
- c) Order (Appraisal Rights), December 1, 2015;
- d) Order Reducing Deficiency Judgment December 4, 2015;
- e) Order Confirming Deficiency Judgment and Denying Motion to Alter, Amend or Reconsider, January 26, 2016. While Appellants did include a copy of this Order in the Record filed, it contains hand written notations which do not appear on the original order filed;
- f) BB&T Complaint for foreclosure, October 4, 2010;

- g) Cain Promissory Note dated September 19, 2007;
- h) Cain Recorded Mortgage recorded September 20, 2007. Appellants include a few pages of this document in their Record, but not the complete document. Further, there are handwritten notations on the pages included which were not on the original recorded document;
- i) Per Curiam Opinion of South Carolina Court of Appeals, Case No. 2011-205089, September 24, 2014.
- j) Motion to Dismiss Deficiency Judgment, December 29, 2015;
- k) Brief Regarding Deficiency Judgment, January 7, 2016. Appellants included a portion of the Exhibit to the Brief in the Record but have not included the whole Brief or the whole Exhibit. Further, there are handwritten notations on the document in the Record presented by Appellants which did not appear on the original filing.

Respondent respectfully requests an order requiring Appellants to correct the Record on Appeal by including these documents or the entirety of these documents in their original, unaltered form.

**2. Appellants' proposed Record on Appeal improperly includes matter not presented to the lower court.**

“The Record shall not, however, include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR. The following documents included by Appellants' in the Record on Appeal were never presented to the lower court and must be stricken from the record:

- a) Appellants' proposed Record on Appeal contains portions of their brief which is improper to include in the Record on Appeal and should be stricken from the Record on Appeal;

- b) Appellants' proposed Record on Appeal contains a letter dated March 29, 2011, from BB&T to the Appellants which was never presented to the lower court and should, therefore, be stricken from the Record on Appeal;
- c) Appellants' proposed Record on Appeal contains a portion of a letter from counsel for Respondent to Appellants which was never presented to the lower court and should, therefore, be stricken from the Record on Appeal;
- d) Appellants' proposed Record on Appeal contains a portion of a Customer History Statement which was never presented to the lower court and should be stricken from the Record on Appeal;
- e) Appellants' proposed Record on Appeal contains an Unofficial Berkeley County Property Card which was never presented to the lower court and should be stricken from the Record on Appeal; and
- f) Appellants' proposed Record on Appeal contains a print out from Berkeley County's website as to Ownership & Location Information which was never presented to the lower court and should be stricken from the Record on Appeal.

Respondent respectfully requests an order striking these documents from the Record on Appeal.

**3. The proposed Record on Appeal Fails to Comply with the South Carolina Appellate Court Rules in Other Material Aspects.**

Appellants' proposed Record on Appeal fails to comply with the South Carolina Appellate Court Rules as follows:

- a) The pages of Appellants' proposed Record on Appeal are not numbered or not numbered consecutively. Respondent requests that each page of the Record be clearly numbered and numbered consistently;

- b) The index for the proposed Record on Appeal improperly numbers or identifies documents for inclusion in the Record. The Index should list all documents included and should identify the page number upon which each document begins; and
- c) Multiple documents in the Appellants' proposed Record on Appeal are partial documents and/or include handwritten notations which do not appear in the original document. Respondent requests that complete and exact copies of these exhibits be included in the Record on Appeal, without alteration.

Respondent respectfully requests an order requiring Appellants to correct the Record on Appeal to satisfy these requirements.

### CONCLUSION

For these reasons, Respondent respectfully moves for an order requiring Appellants to correct the Record on Appeal and respectfully moves for an order staying the time for Respondent to be required to file its final brief until such time as the Record on Appeal is corrected.

Respectfully submitted,



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Erica G. Lybrand (SC Bar # 79052)  
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ATTORNEYS FOR RESPONDENT  
*Rogers Townsend & Thomas, PC and its staff are debt collectors.*

October 26, 2016

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In the Court of Appeals

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Dale E. Van Slambrook, Master-in-Equity

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Of whom

Wilton H. Cain and Cassandra M. Durrah-Cain, are ..... Appellants.

**PROOF OF SERVICE**

I HEREBY CERTIFY that I have served the **RESPONDENT'S MOTION TO CORRECT RECORD ON APPEAL AND MOTION TO STAY TIME TO FILE FINAL BRIEF** on Appellants Wilton H. Cain and Cassandra M. Durrah-Cain by depositing copies of it in the United States Mail, postage prepaid, on October 26, 2016, at 6476 N. Highway 17, Awendaw, SC 29429.



Erica G. Lybrand (SC Bar # 79052)

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October 26, 2016

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OCT 27 2016

SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
The South Carolina Court of Appeals Clerk of Court  
1015 Sumter Street  
Columbia, SC 29201

RE: *Branch Banking and Trust Company v. Wilton H. Cain; Cassandra M. Durrah-Cain; Liberty Hall Residential Property Owners Association, Inc.*  
C/A # 2010-CP-08-03514  
RTT File # 504335-02111

Dear Ms. Kitchings:

Enclosed are an original and six copies of the Respondent's Motion to Correct Record on Appeal and Motion to Stay Time to File Final Brief and Proof of Service in the above referenced matter. Also enclosed is a check in the amount of \$25.00 representing the motion filing fee. Please file the original document, and return the clocked copy to me in the envelope provided for the Court's convenience.

With kind regards, I remain

Cordially yours,

A handwritten signature in black ink, appearing to read "K. Richardson", is written over a horizontal line.

Karissa Richardson  
Paralegal for Erica G. Lybrand

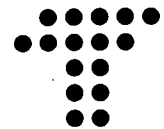
Enclosures

cc:

Joseph E. DaPore, Esquire  
PO Box 993  
Charleston, SC 29402

Wilton H. Cain  
Cassandra M. Durrah-Cain  
6476 North Hwy 17  
Awendaw, SC 29429

The Honorable Mary P. Brown  
Clerk of Court for Berkeley County  
P.O. Box 219  
Moncks Corner, SC 29461



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ATTORNEYS AT LAW

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**SC Court of Appeals**

**The Honorable Jenny Abbott Kitchings  
The South Carolina Court of Appeals Clerk of Court  
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