

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable R. Markley Dennis, Jr.

RECEIVED

DEC 19 2016
SC Court of Appeals

Appellate Case No. 2016-001496

David B. Powell and Carol Ann Powell.....Respondents,

v.

SunTrust Bank, Midland Funding LLC,
And Pavilion Place Property Owners' Association, Inc.....Defendants,

Of whom SunTrust Bank is the.....Appellant.

**NOTICE OF APPEARANCE AND MOTION TO ACCEPT LATE FILING
OF BRIEF AND SUPPLEMENTAL RECORD ON APPEAL**

The undersigned hereby certifies and advises this Court, the parties, and their attorneys, that John P. Seibels, Jr. of Seibels Law Firm, PA is appearing on behalf of Respondent David B. Powell in the above-captioned matter.

The Respondent herewith moves the Court to issue an order indicating it will accept a late filing of the Respondent David B. Powell's Brief and permit the Respondent, if he deems it necessary, to supplement the Record on Appeal.

This Motion is based upon the Affidavit of David B. Powell submitted separately hereto as Exhibit A. The Affidavit shows that the Respondents David B. Powell and Carol Ann Powell are divorced and that after his divorce, David B. Powell moved his residence. The Affidavit further shows that subsequent to the Order of Summary Judgment in favor of the Respondents,

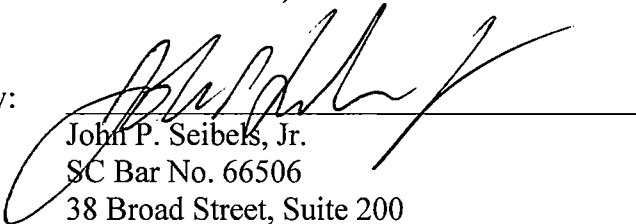
dated April 27, 2016, David A. Collins, counsel for the Respondents, was suspended from the practice of law.

Further, the Affidavit of Respondent David B. Powell shows that he first received notice of this appeal on Friday, December 9, 2016, upon which he immediately sought counsel, who immediately contacted Sean M. Foerster, counsel for the Appellant SunTrust Bank.

Because of this late notice to the Respondent David B. Powell, he also respectfully requests an extension of time to allow his counsel to study the Record on Appeal and supplement the Record if deemed necessary.

Respectfully submitted,

SEIBELS LAW FIRM, PA

By: 

John P. Seibels, Jr.

SC Bar No. 66506

38 Broad Street, Suite 200

Charleston, South Carolina 29401

843-722-6777

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jseibels@seibelsfirm.com

Attorney for Respondent David B. Powell

Charleston, SC
December 16, 2016

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CERTIFICATE OF SERVICE

I certify that I deposited **Notice of Appearance and Motion to Accept Late Filing of Brief and Supplemental Record on Appeal** in the United States Mail, postage prepaid, on December 16, 2016, addressed to the following:

Sean M. Foerster
SC Bar No. 77466
Rogers Townsend & Thomas, PC
1221 Main Street, 14th Floor (29201)
P.O. Box 100200
Columbia, SC 29202-3200
Phone No. (803) 771-7900
Email: sean.foerster@rtt-law.com
Attorneys for Appellant SunTrust Bank

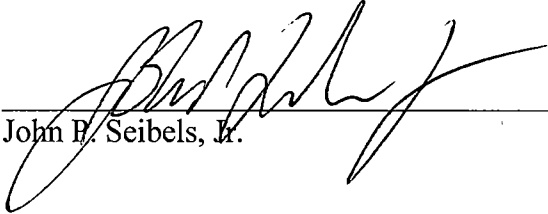
Carol Ann Powell
273 Forest Trail
Isle of Palms, SC 29451

Carol Ann Powell
735 Coleman Boulevard, Suite 414
Mount Pleasant, SC 29464

Peyre Thomas Lumpkin, Esquire

Office of Commission Counsel
1205 Pendleton Street, Suite 333
Columbia, SC 29201
(803) 734-1186
plumpkin@sccourts.org

December 14, 2016



John B. Seibels, Jr.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable R. Markley Dennis, Jr.

Appellate Case No. 2016-001496

David B. Powell and Carol Ann Powell.....Respondents,

v.

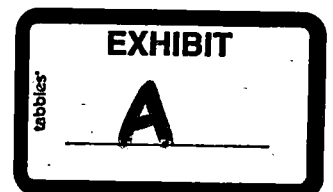
Sun Trust Bank, Midland Funding LLC,
And Pavilion Place Property Owners' Association, Inc. Defendants,

Of whom Sun Trust Bank is the.....Appellant.

AFFIDAVIT OF DAVID B. POWELL

PERSONALLY APPEARED before me David B. Powell, who, being duly sworn,
deposes and states as follows:

1. I am over the age of 21 and competent to give this affidavit.
2. I am the Respondent in the above-referenced Appellate matter, a fact that I only became aware of on Friday, December 9, 2016.
3. In the underlying case I was represented by David A. Collins, Esquire.
4. It was my understanding from David Collins that Sun Trust had 30 days from the date its Motion for Summary Judgment was denied on May 3, 2016, in which to file an appeal and that if it did not appeal the Judge's ruling the case was ended.
5. David Collins never contacted me in any way or at any time after we discussed the outcome of the Summary Judgment hearing so I assumed that the case was over and that the



lien that had been placed against my property located at 1001 Ocean Blvd., Isle of Palms, SC 28451 had been removed as was ordered by Judge Markley Dennis.

6. On November 18, 2016, I listed this property for sale with Jeff Cook Real Estate.

7. On December 8, 2016 I accepted an offer to sell said property.

8. On December 9, 2016, I was having a conversation with my girlfriend Julianna McQueen in which she asked me if I had any paperwork regarding the lien removal by Sun Trust. I explained to Julianna that the last time I spoke with David A. Collins, Esquire he advised me that we won our Motion for Summary Judgment and Sun Trust lost its Motion for Reconsideration. He further stated that Sun Trust had 30 days from the date of the judge's decision in which to file an appeal. He told me he would let me know if Sun Trust appealed. I never heard a word from him so in my mind the case was over.

9. Also on December 9, 2016, Julianna, recalling the previous lost sale of this home due to the Sun Trust lien that I never knew existed, decided to search the Charleston County Clerk of Courts website to make certain the case was closed. It was at this time that I learned that a Notice of Appeal had been filed by Sun Trust on July, 20, 2016.

10. Upon learning on December 9, 2016, of Sun Trusts Notice of Appeal, I immediately called the mobile telephone number of my attorney, David A. Collins to find out how it was possible that an Appeal had been filed in my case and yet he never bothered to tell me. I received his voice mail and left a message.

11. I then contacted the law office of David A. Collins. I was informed by the person that answered the phone that David A. Collins had been suspended from the practice of law on July 20, 2016, and no longer worked at the office.

12. Immediately after I hung up with his former office, David A. Collins returned my telephone call and informed me that he has been suspended from the practice of law because he “got involved with some shady characters” and “did some things I shouldn’t have.” After we got off of the telephone he sent me a text containing the contact information for the Receiver appointed by the Supreme Court, Peyre Lumpkin.

13. I then immediately contacted the office of Peyre Lumpkin regarding my case and was advised that a letter was sent addressed to me and my ex-wife at 273 Forest Trail, Isle of Palms, SC regarding the suspension of our lawyer David A. Collins from the practice of law. I advised the girl that I spoke with that I had never received a letter. I also advised her that I had not lived at that address since 2008, and that my ex-wife had not lived there for over 2 years. She advised me that she knew that we had never received the letter because it was returned to her office. I then asked her if she or anyone in her office had even attempted to locate us to which she replied “no” and explained that her office is very busy and beyond the initial letter no attempt is made to locate people in our situation.

14. Thereafter, I was advised by Atty. Lumpkin’s office that if I wanted my file I would need to sign an release, have my signature notarized and provide a copy of my driver’s license, all of which I did via fax on December 9, 2016. However, Atty. Lumpkin later that day advised me that while he would accept the faxed copy of my license, he needed me to mail him the original release before he would release my file to me. I mailed the original release the same day.

15. As of today’s date I do not have a copy of my file related to this case from the Receiver’s office.

16. Realizing that it would be quite some time before I would receive my file from the Receiver and that I am under a very limited time frame to resolve this matter, I contacted my friend, Kim Lagrand, a paralegal at Womble Carlyle Sandridge & Rice, LLP to ask her where I should go for help with this matter. Kim suggested her boss Henry E. Grimbball, Esquire was someone that could handle this matter for me.

17. It is my understanding that Kim spoke with Henry on December 9th and that she and he made a telephone call to Sean Foerster, the attorney for Sun Trust in an attempt to determine the status of the Appeal and what if anything had been done to contact me.

18. Attorney Foerster provided Henry and Kim with copies of the Appellate filings to date which show that a Notice of Appeal was filed in this case on July 20, 2016, and that my lawyer David A. Collins was copied on the pleading.

19. The file also contains a letter dated August 2, 2016 from David A. Collins to Sean Foerster, Esquire informing him that his law license was suspended on July 20, 2016, and advising him that Peyre Lumpkin was appointed by the Supreme Court as the Receiver of his cases. In the letter David Collins not only gives Peyre Lumpkin and incorrect address for me, he cautions him not to contact me stating I may have already retained another lawyer.

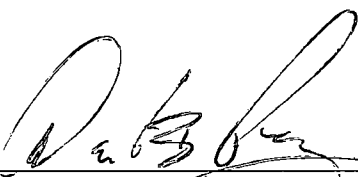
20. I never received any letter from David A. Collins informing me that he had been suspended on July 20, 2016, oddly enough, the same day this Appeal was filed by Sun Trust.

21. The file provided by Sean Foerster, Esquire, also contains an August 16, 2016, letter from the South Carolina Supreme Court to me advising that David A. Collins has been suspended from the practice of law and that I need to retain other counsel or I will be presumed to be proceeding pro-se. This letter is addressed to me at 273 Forest Trail, Isle of Palms, SC 29451. I have not lived at this address since July, 2015.

22. I have put a change of address in with the United States Post Office every time I have moved. My current address is The Riviera, 1425 Long Grove Drive, Apt. 101, Mt. Pleasant, SC 29464

[REMAINDER OF PAGE INTENSIONALLY LEFT BLANK]

FURTHER, your affiant sayeth naught



David B. Powell

December 14, 2016
Charleston, SC

SWORN to before me this 14 day of
December, 2016.



(SEAL)
Notary Public for South Carolina

My Commission Expires: 8-13-2018

THE
SEIBELS
LAW FIRM, P.A.

38 BROAD STREET, SUITE 200
CHARLESTON, SOUTH CAROLINA 29401

843.722.6777
fax 843.722.6781

December 16, 2016

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SC Court of Appeals

South Carolina Court of Appeals
Attention: Jenny A. Kitchings, Clerk
P.O. Box 11629
Columbia, SC 29211

Re: David B. Powell and Carol Ann Powell v. SunTrust Bank, Midland Funding LLC,
and Pavilion Place Property Owners' Association
Of whom SunTrust Bank is the Appellant.
Appellate Case No.: 2016-001496

Dear Ms. Kitchings:

Enclosed please find the original and five copies of the Respondent David B. Powell's Notice of Appearance and Motion to Accept Late Filing of Brief and Supplemental Record on Appeal regarding the above referenced matter.

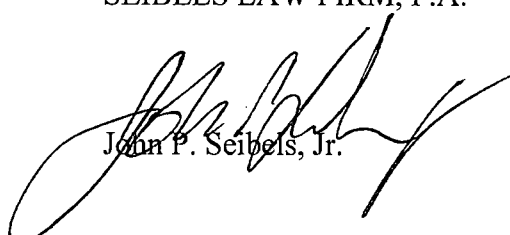
I also enclose a filing fee by way of a check in the amount of \$25.00, payable to the South Carolina Court of Appeals.

If there is anything else you think I should do immediately, please call or email me and advise.

With kind regards, I remain

Very truly yours,

SEIBELS LAW FIRM, P.A.


John P. Seibels, Jr.

JPSjr/elm
Enclosures

cc: Sean Foerster, Esq.
David B. Powell
Carol Ann Powell

South Carolina Court of Appeals
Attention: Jenny A. Kitchings, Clerk
December 16, 2016
Page 2

Peyre Thomas Lumpkin, Esquire
Office of Commission Counsel
1205 Pendleton Street, Suite 333
Columbia, SC 29201

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Seibels Law Firm, PA
38 Broad Street, Suite 200
Charleston SC 29401

B012

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TO:**

6411-1

South Carolina Court of Appeals
Attn: Jenny Kitchings, Clerk
PO Box 11629
Columbia SC 29211-1629



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SC Court of Appeals