

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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DEC 15 2016

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity
The Honorable Joseph M. Strickland

Appellate Case No. 2015-000367

Royals Portfolio, LLC, an assignee of Bank of America, N.A., formerly known as NationsBank, N.A., which is Successor in Merger to NCNB South Carolina, Respondent,

v.

Charlie Kelly and Dorothy Simpson, Appellants.

**APPELLANTS' MOTION TO STRIKE PORTIONS OF RESPONDENT'S
DESIGNATION AND INITIAL BRIEF**

and

**MOTION TO HOLD TIME FOR APPELLANTS' REPLY BRIEF IN ABEYANCE
PENDING A DECISION ON THE MOTION**

Pursuant to Rules 208, 209, 210, and 240 SCACR, Appellants Charlie Kelly and Dorothy Simpson ("Appellants") move to strike portions of Respondent Royals Portfolio, LLC's ("Respondent") Designation of Matter and portions of Respondent's Initial Brief citing to and discussing the improperly designated documents. Appellants also move the Court for an order holding the time for serving and filing Appellants' Reply Brief in abeyance until the Court rules on the motion to strike.¹ For the reasons stated below, the matters designated and discussion of

¹ As a further basis for holding the time for serving and filing Appellants' Reply Brief in abeyance, the undersigned counsel for Appellants is currently on maternity leave until January 2, 2017. Counsel sent the Court a letter dated October 3, 2013, regarding maternity leave.

and citations to them in the Respondent's Initial Brief are improper, and the Court should grant Appellants' motions.

PROCEDURAL AND FACTUAL BACKGROUND²

This is an appeal from a Judgment of Foreclosure and Sale of a residence occupied by Appellants. On November 28, 2012, Respondent filed a Complaint for foreclosure of a mortgage on Appellants' residence. On September 10, 2014, a non-jury trial took place before the Honorable Joseph M. Strickland, Master in Equity for Richland County. Appellants contested the foreclosure and made a motion to stay the proceedings until Respondent complied with *In re Mortg. Foreclosure Actions*, 396 S.C. 209, 720 S.E.2d 908 (2011), Supreme Court Administrative Order No. 2011-05-02-01, (the "2011 Order"), requiring good faith foreclosure intervention in foreclosure proceedings for residential property.

On January 25, 2015, Judge Strickland filed a Master's Decree and Judgment of Foreclosure and Sale in favor of Royals Portfolio. On January 26, 2015, Judge Strickland filed an Order Denying Defendants' Motion to Stay Foreclosure Action, finding the 2011 Order did not apply in this case. On February 23, 2015, Appellants filed a Notice of Appeal for both Orders.

After the Master's issuance of the January 2016 Orders that are at issue in this appeal, the parties continued to submit filings to the Master regarding the ordered sale of the property. (Exh. A). Some of these filings are the improperly designated documents at issue in this motion. These filings are unrelated to the Orders on appeal and were not reviewed or received by the Master prior to his decisions in the Orders on appeal.

² For a full discussion of the procedural and factual background of this case, see Appellants' Initial Brief.

ARGUMENT

Respondent's designation of matter to be included in the Record on Appeal includes the following designations that Appellants move to strike: "Defendants' Motion to Stay Sale (dated April 16, 2005³) with Exhibits and Order denying Motion." (Exh. B, Resp't Designation of Matter). The motion to stay sale, accompanying exhibits and order denying the motion ("designated documents") were filed *after* the Master issued the Orders at issue on appeal and *after* the Notice of Appeal was filed. Therefore, they are not properly included as part of the Record on Appeal.

Respondent discusses these post-order and post-appeal events in two paragraphs on page 6 of its brief. *See* Resp't Initial Br. p. 6. Appellants also seek to have those paragraphs stricken from Respondent's brief, along with all citations or references to the designated documents. *See* Rule 208(b)(4), SCACR ("The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be *properly included* in the Record on Appeal" (emphasis added)).

Under Rule 210(c), SCACR, the "Record shall not, however, include matter which was not presented to the lower court or tribunal." The designated documents were not "presented to the lower court or tribunal" for its review or consideration in issuing the Orders on appeal. Therefore, they are not properly part of the Record on Appeal in this case.⁴

³ The correct year is 2015. (Exh. A). This action was not filed until 2012. "2005" is a typo by Respondent.

⁴ Respondent cannot argue to the contrary because it previously filed a motion to strike a portion of Appellants' designation, which this Court denied, arguing that matter not presented to the Master in reaching the appealed decision is not properly part of the Record. (Oct. 26, 2016 Order). Respondent argued in that motion, "Appellants have designated and cited matters that were not presented to the Master in reaching the appealed decision and, therefore, those designations and citations are improper and should be stricken." (Resp't Mot. to Strike p. 4). While Respondent

Documents filed after the issuance of Orders on appeal and after the filing of a notice of appeal are not relevant to this Court's review of the Orders. Under Rule 209(b), SCACR, "[a] party shall not include any matter in his Designation which is not relevant to the appeal." The issues on appeal concerns the proper interpretation of the 2011 Order and whether Respondent complied with the Order. *See* App. Initial Br. The designated documents concern whether the Master should stay a foreclosure sale and, therefore, are also not relevant because they are unrelated to the issues on appeal and cannot effect this Court's decision.

Prior to filing this motion, Counsel for Appellants requested the Respondent remove the designated documents and remove from its brief all discussion of or reference or citation to the designated documents. Respondent refused and stated that the matters in the documents are undisputed and establish the current status of the foreclosure action. Both of these grounds for refusal are irrelevant to whether a document is properly part of the Record on Appeal under Rules 209 and 210, SCACR. Whether a document is disputed is not the standard for whether it is properly part of the Record. Further, the current status of the foreclosure action is irrelevant to the issues of the interpretation of the 2011 Order and whether Respondent complied with it.

Respondent did not present to the lower court the designated documents prior to the Court issuing the Orders on appeal, and the documents are irrelevant to the appeal. Therefore, they are not proper matter to be included in the record on appeal or to be discussed in and cited to in Respondent's brief. Rules 208, 209 and 210, SCACR.

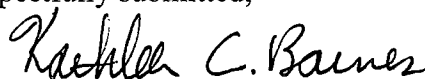
was incorrect that Appellants had not presented their designated matters to the Master, in this motion it is indisputable that the designated documents at issue were not presented to the Master in reaching the appealed decisions because they were filed after the appealed orders and after the notice of appeal.

CONCLUSION

For the reasons stated above, Appellants request the Court grant their motion to strike (1) the above-discussed portions of Respondent's Designation of Matter and (2) all citations to and discussion of the documents in Respondent's Initial Brief, including the two paragraphs on page 6. Appellants also request the Court order that their reply brief and any counter-designation shall be served and filed within 10 days after Respondent serves its amended designation and brief.

December 13, 2016

Respectfully submitted,



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Attorneys for Appellants

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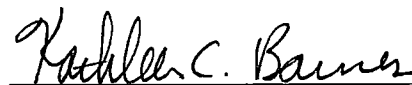
Charlie Kelly and Dorothy Simpson, Appellants.

PROOF OF SERVICE

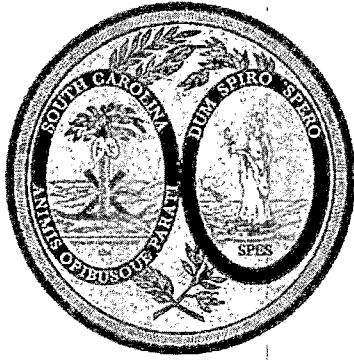
The undersigned certifies that a copy of the foregoing *Appellants' Motion to Strike Portions of Respondent's Designation and Initial Brief and Motion to Hold Time for Appellants' Reply Brief in Abeyance Pending a Decision on the Motion* has been served upon the following counsel of record by mailing one copy by United States Mail, addressed as shown below this ___ day of December, 2016.

Robert L. Widener
Paul D. Harrill
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211

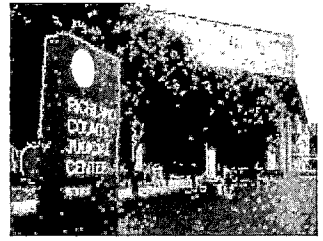
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Richland County 5th Judicial Circuit Public Index



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| Summary Ct Dockets

Switch View

Royals Portfolio LLC , plaintiff, et al vs Charlie Kelly , defendant, et al

Case Number:	2012CP4007878	Court Agency:	Richland County Common Pleas	Filed Date:	11/28/2012
Case Type:	Common Pleas	Case Sub Type:	Foreclosure 420	File Type:	Jury
Status:	Appeal	Assigned Judge:			
Disposition:	Judgment	Disposition Date:	01/26/2015	Disposition Judge:	Strickland, Joseph M.
Original Source Doc:		Original Case #:			
Judgment Number:	2012CP4007878	Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Royals Portfolio LLC	Verification/Verified	Filing		10/12/2016-11:01		
Royals Portfolio LLC	Master/Order for Deficiency Judgment	Order		09/27/2016-11:40		
Royals Portfolio LLC	Assignment of Bid	Filing		09/27/2016-11:34		
Royals Portfolio LLC	Master's Report of Sale and Disbursements and Order Of Confi	Filing		09/27/2016-11:34		
Royals Portfolio LLC	Affidavit/Publication	Filing		08/02/2016-09:24		
Simpson, Dorothy	Motion to Use Cash Collateral (Bankruptcy)	Filing		01/06/2016-12:09		
Royals Portfolio LLC	Affidavit/Publication	Filing		12/30/2015-09:29		
Royals Portfolio LLC	Affidavit/Publication	Filing		05/05/2015-14:08		
Royals Portfolio LLC	Certificate Of Service	Filing		04/17/2015-16:31		
Royals Portfolio LLC	Motion/Motion Filing Fee	Filing		04/16/2015-14:59		
Kelly, Charlie	Motion to Stay Sale	Motion		04/16/2015-13:50	04/16/2015-13:50	
Simpson, Dorothy	Affidavit of Undertaking For Dorothy Simpson	Filing		04/16/2015-11:43		
Kelly, Charlie	Affidavit of Undertaking For	Filing		04/16/2015-11:43		

	Charlie Kelly				
Kelly, Charlie	Filing/Notice of Appeal	Filing		02/23/2015-16:16	
Royals Portfolio LLC	Verification/Verified	Filing		01/29/2015-13:06	
Kelly, Charlie	Judgment/Deficiency	Judgment		01/26/2015-15:42	
NCNB South Carolina	Judgment/Deficiency	Judgment		01/26/2015-15:42	
NCNB South Carolina	Judgment/Deficiency	Judgment		01/26/2015-15:42	
Simpson, Dorothy	Judgment/Deficiency	Judgment		01/26/2015-15:42	
Bank of America N A	Judgment/Deficiency	Judgment		01/26/2015-15:41	
Kelly, Charlie	Judgment/Deficiency	Judgment		01/26/2015-15:41	
Simpson, Dorothy	Judgment/Deficiency	Judgment		01/26/2015-15:41	
Bank of America N A	Judgment/Deficiency	Judgment		01/26/2015-15:41	
NationsBank N A	Judgment/Deficiency	Judgment		01/26/2015-15:41	
Kelly, Charlie	Judgment/Deficiency	Judgment		01/26/2015-15:41	
NationsBank N A	Judgment/Deficiency	Judgment		01/26/2015-15:41	
Simpson, Dorothy	Judgment/Deficiency	Judgment		01/26/2015-15:41	
Simpson, Dorothy	Judgment/Deficiency	Judgment		01/26/2015-15:27	
Royals Portfolio LLC	Judgment/Deficiency	Judgment		01/26/2015-15:27	
Kelly, Charlie	Judgment/Deficiency	Judgment		01/26/2015-15:27	
Royals Portfolio LLC	Judgment/Deficiency	Judgment		01/26/2015-15:27	
Royals Portfolio LLC	TMS# 37200-06-04	Filing		01/26/2015-15:26	
Royals Portfolio LLC	2800 McCords Ferry Road Eastover SC	Filing		01/26/2015-15:26	
Royals Portfolio LLC	Master/Decree and Judgment Of Foreclosure & Sale	Order		01/26/2015-15:25	
Royals Portfolio LLC	Order Denying Defendants' Motion To Stay Foreclosure Action/	Order		01/26/2015-13:23	01/26/2015-13:23
Royals Portfolio LLC	Affidavit of Robert Eisman	Filing		10/09/2014-13:50	01/26/2015-13:50
Royals Portfolio LLC	Affidavit of Attorney Fees	Filing		10/09/2014-13:50	01/26/2015-13:50
Royals Portfolio LLC	Certificate Of Service	Filing		10/09/2014-09:45	01/26/2015-09:45
Kelly, Charlie	Letter in Regards to Affidavit Filed For Robert Eisman	Filing		10/03/2014-09:08	01/26/2015-09:08
Kelly, Charlie	Motion For Continuance	Motion		09/09/2014-11:36	01/26/2015-11:36
Royals Portfolio LLC	Motion/Motion Filing Fee	Filing		09/09/2014-11:05	01/26/2015-11:05
Kelly, Charlie	Notice of Substitution of Counsel	Filing		06/24/2014-14:23	01/26/2015-14:23
Royals Portfolio LLC	Summons and Order Of Appointment/Judge Strickland	Order		06/13/2014-10:02	01/26/2015-10:02
Royals Portfolio LLC	Affidavit of Eddy L. Lane	Filing		05/13/2014-10:09	01/26/2015-10:09

Kelly, Charlie	Motion For Continuance	04/21/2014	16:23	01/26/2015	16:23
Royals Portfolio LLC	Motion/Motion Filing Fee	04/21/2014	10:11	01/26/2015	10:11
Royals Portfolio LLC	Form 4 Order this matter is hereby Referred to Master-in-Equ	01/15/2014	15:02	01/26/2015	15:02
Royals Portfolio LLC	Counsel's Certification Regarding Compliance With South Caro	01/10/2014	09:50	01/26/2015	09:50
Harrill, Paul D.	Notice of Motions Roster Publication Sent	12/18/2013	09:03	01/26/2015	09:03
Harrill, Paul D.	Notice of Motions Roster Publication Sent	12/18/2013	09:03	01/26/2015	09:03
Harrill, Paul D.	Notice of Motions Roster Publication Sent	12/18/2013	09:03	01/26/2015	09:03
Harrill, Paul D.	Notice of Motions Roster Publication Sent	12/18/2013	09:03	01/26/2015	09:03
Harrill, Paul D.	Notice of Motions Roster Publication Sent	12/18/2013	09:03	01/26/2015	09:03
Harrill, Paul D.	Notice of Motions Roster Publication Sent	12/18/2013	09:03	01/26/2015	09:03
Schumacher, William Frederick	Notice of Motions Roster Publication Sent	12/18/2013	09:03	01/26/2015	09:03
Schumacher, William Frederick	Notice of Motions Roster Publication Sent	12/18/2013	09:03	01/26/2015	09:03
Schumacher, William Frederick	Notice of Motions Roster Publication Sent	12/18/2013	09:03	01/26/2015	09:03
Royals Portfolio LLC	Motion to Compel Discovery Responses	11/27/2013	09:14	01/15/2014	09:14
Royals Portfolio LLC	Motion/Motion Filing Fee	11/26/2013	16:29	01/26/2015	16:29
Royals Portfolio LLC	Motion to Strike Jury Trial Deman of Defendants	11/26/2013	13:37	01/26/2015	13:37
Royals Portfolio LLC	Order/Order Filing Fee	11/25/2013	10:55	01/26/2015	10:55
Harrill, Paul D.	Notice of Case Roster Publication Sent	11/14/2013	13:09	01/26/2015	13:09
Schumacher, William Frederick	Notice of Case Roster Publication Sent	11/14/2013	13:09	01/26/2015	13:09
Royals Portfolio LLC	Motion/Motion Filing Fee	07/31/2013	14:57	01/26/2015	14:57
Kelly, Charlie	Motion to Compel Plaintiff to Comply With Supreme Court Admi	07/31/2013	10:11	01/15/2014	10:11
Royals Portfolio LLC	Affidavit of William B. Buland	07/10/2013	16:49	01/26/2015	16:49
Royals Portfolio LLC	Motion/Motion Filing Fee	07/10/2013	15:23	01/26/2015	15:23
Royals Portfolio LLC	Motion For Summary Judgment	07/10/2013	16:47	01/15/2014	16:47
Royals Portfolio LLC	Verification/Verified	02/26/2013	13:36	01/26/2015	13:36
Royals Portfolio LLC	Reply to Counterclaim of Defendants	02/14/2013	14:32	01/26/2015	14:32
Simpson, Dorothy	Answer & Counterclaim of	01/15/2013	09:06	01/26/2015	09:06

	Dorothy Simpson and Charlie Kelly					
Royals Portfolio LLC	Service/Affidavit Of Service on Charlie Kelly	Filing		12/03/2012-15:58	01/26/2015-15:58	
Royals Portfolio LLC	Service/Affidavit Of Service on Dorothy Simpson	Filing		12/03/2012-15:58	01/26/2015-15:58	
Royals Portfolio LLC	Certificate/Certificate of Exemption from ADR	Filing		11/28/2012-15:54	01/26/2015-15:54	
Royals Portfolio LLC	Lis Pendens Filed	Filing		11/28/2012-13:55	01/26/2015-13:55	
Royals Portfolio LLC	Summons & Complaint	Filing		11/28/2012-13:50	01/26/2015-13:50	

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas
Joseph M. Strickland, Master In Equity

Case No. 2012-CP-40-7878
Appellate Case No. 2015-000367

rec'd 12-7-16
KCB

Royals Portfolio, LLC, an assignee of Bank of America, N.A.,
formerly known as NationsBank, N.A., which is
Successor by Merger to NCNB South Carolina, Respondent,

v.

Charlie Kelly and Dorothy Simpson, Appellants.

Designation of Matter to Be Included in Record on Appeal

Respondent proposes the following additional matters be included in the Record on Appeal:

- Defendants' Motion to Stay Sale (dated April 16, 2005) with Exhibits and Order Denying Motion Notice of Mortgagor's Right to Foreclosure Intervention (dated October 17, 2013)
- Counsel's Certification Regarding Compliance with South Carolina Supreme Court Administrative Order 2011-05-02-01 and the HMP (dated January 10, 2014)
- Motion in SC Supreme Court for TRO with Affidavit and Order Granting TRO (both dated 5/4/09)
- Administrative Order No. 2009-05-22-01
- Administrative Order No. 2011-05-02-01
- 10/1/14 email from P. Harrill to trial court with Proposed Order and Eisman Affidavit with Exhibits
- 10/2/14 email and letter from P. Curiale to trial court
- 10/2/14 email from P. Harrill to trial court
- 10/3/14 email from P. Harrill to trial court with Answers to Interrogatories

I certify that this designation contains no matter which is irrelevant to this appeal.



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(803) 799-9800
Attorneys for Respondent

December 5, 2016
Columbia, SC

EXH. B

BARNES

LAW FIRM | LLC

Kathleen C. Barnes

Admitted: Georgia | South Carolina

December 13, 2016

The Honorable Jenny Abbott Kitchings
Clerk of Court for the Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Via U.S. Mail

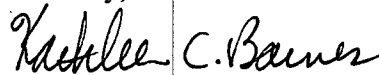
Re: *Royals Portfolio, LLC v. Charlie Kelly and Dorothy Simpson*
Appellate Case No. 2015-000367

Dear Mrs. Kitchings:

Enclosed for filing please find the original and seven copies of Appellants Charlie Kelly and Dorothy Simpson's Motion to Strike Portions of Respondent's Designation and Initial Brief and Motion to Hold Time for Appellants' Reply Brief in Abeyance Pending a Decision on the Motion in the above-referenced case. Also enclosed is proof of service and the \$25 motion filing fee. Please file the documents and return a file-stamped copy to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, I am serving all counsel of record with a copy of the same. If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,



Kathleen C. Barnes

Enclosures

cc: Robert L. Widener
Paul D. Harrill
Brian Boger (via email only)
Phillip Curiale (via email only)

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SC Court of Appeals

Barnes Law Firm, LLC
P.O. Box 897
Hampton, SC 29924

The Honorable Jenny Abbott Kitchings
Clerk of Court for the Court of Appeals
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