

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM COUNTY
Court of Common Pleas

FEB 13 2017

Mikell R. Scarborough, Master In Equity

SC Court of Appeals

Appellate Case No. 2016-001054

HSBC Bank USA, National Association, as Trustee for
the Holders of the Deutsche ALT-A Securities, Inc.
Mortgage Loan Trust, Mortgage Pass-Through
Certificates Series 2007-OA4, assignee of Bank of
America N.A., successor by merger to BAC Home
Loans Servicing L.P., f/k/a Countrywide Home Loans
Servicing, Inc.,

Appellant,

v.

Clifford L. Ryba; Beverly Ryba;
Regions Bank; First Federal Savings
and Loan Association of Charleston; Citibank (South
Dakota) N.A., and Carol Garfield Goldberg,

Defendants,

Of whom Carol Garfield Goldberg is the,

Respondent.

Motion to allow Amended Initial Brief of Appellant

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Appellant HSBC Bank USA, National Association, as Trustee for the Holders of the Deutsche ALT-A Securities, Inc. Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-OA4, assignee of Bank of America N.A., successor by merger to BAC Home Loans Servicing L.P., f/k/a Countrywide Home Loans Servicing, Inc. ("Appellant") respectfully moves this Court to allow the filing of an Amended Initial Brief of Appellant to include an inadvertently omitted

section. Respondent suffered no prejudice because Respondent previously served and filed the Initial Brief of Respondent addressing the issues raised in the Initial Brief of Appellant.

On November 15, 2016, Appellant filed and served its Initial Brief and Designation of Matters. The copy of the Initial Brief of Appellant filed with the Court and served on counsel for Respondent inadvertently omitted the Statement of Issues. The Statement of Issues had been drafted simultaneously with the brief by undersigned counsel for Appellant. That section was left out during compilation of the brief for filing and service and was not caught prior to filing and service.

Respondent, however, has not been prejudiced by that non-substantive omission. In the version that was filed and served, the Initial Brief of Appellant included “[a] statement of each of the issues presented for review” as contemplated by Rule 208(b)(1)(B), SCACR. The Initial Brief of Appellant provided each issue and the page on which each issue would appear in the brief:

Argument.....	8
I. This Court should reverse because the master erred in allowing Goldberg to maintain a defense to the foreclosure based on a claim of fraud.....	9
II. The removal of fraud from the master’s order renders the holder in due course argument irrelevant.....	12
III. This Court should reverse because the master’s requirement that Appellant be a holder in due course is irrelevant to whether a loan servicer can foreclose.....	13

See Initial Brief of Appellant, page i, filed November 15, 2016.

Moreover, the argument section of the Initial Brief of Appellant likewise clearly delineated the issues in the appeal to Respondent. On page 9 of the brief, Appellant set forth,

in bold font, the first issue of: **“This Court should reverse because the master erred in allowing Goldberg to maintain a defense to the foreclosure based on a claim of fraud.”** See Initial Brief of Appellant, page 9, filed November 15, 2016 (emphasis in original). On page 12 of the brief, Appellant set forth, in bold font, the second issue of: **“The removal of fraud from the master’s order renders the holder in due course argument irrelevant.”** Id. at page 12 (emphasis in original). On page 13 of the brief, Appellant set forth, in bold font, the third issue of: **“This Court should reverse because the master’s requirement that Appellant be a holder in due course is irrelevant to whether a loan servicer can foreclose.”** Id. at page 13(emphasis in original).


Thus, the Initial Brief of Appellant substantively complied with Rule 208(b)(1)(B), SCACR, by notifying Respondent with “[a] statement of each of the issues presented for review.” Those issues were set forth on the first page, marked as page i, of the brief, and Appellant repeated those issues throughout the brief.

While the Statement of Issues page was inadvertently omitted from the Initial Brief of Appellant, the brief unequivocally apprised Respondent of the issues in the brief and allowed Respondent to sufficiently identify the issues presented in the Initial Brief of Appellant. This is evident because Respondent filed a brief in response to the arguments presented in the Initial Brief of Appellant.

Thus, the issues are properly presented to this Court for appellate review. Appellant requests that this Court accept an original and one copy of an Amended Initial Brief of

Appellant in resolution of this motion.¹ Appellant certifies that it made no other alterations to the Initial Brief of Appellant in the Amended Initial Brief other than to include the Statement of Issues and reflect same in the Table of Contents.

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Columbia, South Carolina

February 13, 2017

¹ Appellant submitted an original and one copy of the Amended Initial Brief contemporaneously with the filing of this motion.

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Defendants,

Of whom Carol Garfield Goldberg is the,.....

Respondent.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley
& Scarborough LLP, attorneys for HSBC Bank USA, National Association, as Trustee for the
Holders of the Deutsche ALT-A Securities, Inc. Mortgage Loan Trust, Mortgage Pass-
Through Certificates Series 2007-OA4, assignee of Bank of America N.A., successor by
merger to BAC Home Loans Servicing L.P., f/k/a Countrywide Home Loans Servicing, Inc.,

do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified to the following address(es):

Pleadings: **MOTION to allow AMENDED INITIAL BRIEF OF APPELLANT**

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February 13, 2017

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February 13, 2017

Hand Delivered

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

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SC Court of Appeals

RE: HSBC Bank USA, National Association v. Clifford L. Ryba, et. al
South Carolina Court of Appeals, Charleston County
Appellate Case No. 2016-001054
Our File No. 42753.01607

Dear Ms. Kitchings:

Enclosed for filing in the above-reference matter please find the original and seven copies of Appellant's Motion to allow Amended Initial Brief of Appellant and check for the filing fee. Please return a clocked-in copy to us via our courier.

By copy of this letter, we are serving all counsel with these documents.

Very truly yours,



Michael J. Anzelmo

MJA:eh

Enclosures

cc: Erica G. Lybrand, Esquire
J. Kevin Holmes, Esquire

LAW OFFICES
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A REGISTERED LIMITED LIABILITY PARTNERSHIP

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SC Court of Appeals

Via Hand Delivery
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