

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Master-in-Equity

Appellate Case No. 2016-000292

RECEIVED
FEB 17 2017
SC Court of Appeals

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

82544

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 RENEWED MOTION TO STRIKE/ CORRECT
RECORD ON APPEAL AND MOTION TO STAY TIME TO FILE FINAL BRIEF**

Respondent Branch Banking and Trust Company (“Respondent”) hereby renews its Motion to Strike/ Correct the Amended Record on Appeal submitted by Appellants Wilton H. Cain and Cassandra M. Durrah-Cain (“Appellants”) on the grounds that the Amended Record on Appeal fails to meet the requirements of Rules 210(c) and 210(e), SCACR, in that it omits documents designated for inclusion by Respondent, includes matters not presented to the lower court, and fails to comport with the content and formatting requirements as outlined in Rule 210(c). Additionally, as Respondent is unable to properly cite to the Record, 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. An Amended Record on Appeal was filed by the Appellant on January 30, 2017 after a deficiency letter was issued by the Court. The Amended Record on Appeal still did not comply with the South Carolina Appellate Court Rules. 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 Amended Record on Appeal filed on January 30, 2017:

- 1. Despite filing the Amended Record on Appeal and including most documents that were designated for inclusion by Respondent in its Designation of Matter, Appellants still improperly omitted several documents from the Amended Record on Appeal.**

“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 unaltered or complete documents in the Record on Appeal that Respondent requested through its Designation of Matter:

- a) 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;

- b) BB&T Complaint for foreclosure, October 4, 2010. While Appellants did include a copy of the Complaint in the Amended Record filed, it contains hand written notations which do not appear on the original Complaint filed;
- c) 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 Amended Record on Appeal by including these documents or the entirety of these documents in their original, unaltered form.

2. Appellants' Amended 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 Amended Record on Appeal were never presented to the lower court and must be stricken from the record:

- a) Appellants’ Amended Record on Appeal still 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’ Amended Record on Appeal still 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' Amended Record on Appeal still contains a letter from counsel for Respondent to Appellants, dated September 28, 2010, which was never presented to the lower court and should, therefore, be stricken from the Record on Appeal;
- d) Appellants' Amended Record on Appeal still 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' Amended Record on Appeal still 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' Amended Record on Appeal still 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;
- g) Appellants' Amended Record on Appeal now contains print outs of emails appearing to be addressed to the lower court from the Appellant and addressed to counsel for the Respondent from the Appellant, which were never presented to the lower court and should be stricken from the Record on Appeal;
- h) Appellants' Amended Record on Appeal now contains a letter from Appellant to the lower court regarding the transcript(s) of hearing, which was never presented to the lower court and should be stricken from the Record on Appeal; and
- i) Appellants' Amended Record on Appeal now contains a letter from Appellant to counsel for the Respondent, dated August 28, 2010, 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 Amended Record on Appeal.

3. The Amended Record on Appeal still fails to comply with the South Carolina Appellate Court Rules in other material aspects.

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

- a) The pages of Appellants' Amended Record on Appeal are still not numbered or not numbered consecutively. Respondent requests that each page of the Record be clearly numbered and numbered consistently, so as to allow proper citation to the Record in the Final Briefs;
- b) The index for the Amended Record on Appeal is buried in the middle of the documents received from Appellant and the index 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) The documents in the Amended Record on Appeal are not properly classified in the index, nor are they arranged in the correct order, pursuant to Rule 210(C), SCACR.

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,



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

February 16, 2017

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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 STRIKE/
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 February 16, 2017, at 6476 N. Highway 17,
Awendaw, SC 29429.



Erica G. Lybrand (SC Bar # 79052)

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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 is an original and 7 copies of Respondent's Renewed Motion to Strike/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".

Karissa Richardson
Paralegal for Erica G. Lybrand

Enclosures

cc:

Wilton H. Cain
Cassandra M. Durrah-Cain
6476 North Hwy 17
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