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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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MAR 14 2017

SC Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, III, Master-in-Equity for York County

Case No.: 2015-CP-46-03068

Appellate Case No. 2016-002161

The Bank of New York Mellon fka The Bank of New York, as Trustee (CWALT 2004-2CB),.....Respondent,

v.

Tara B. Barfield a/k/a Tara Burdiss Barfield,.....Appellant.

**RESPONDENT’S MOTION FOR INVOLUNTARY DISMISSAL OF APPEAL OR, IN THE ALTERNATIVE, MOTION FOR CORRECTION OF APPELLANT’S DESIGNATION OF MATTER, AND MOTION TO STRIKE**

Appellant served her Initial Brief and Designation of Matter on February 13, 2017. The Designation of Matter contains 16 separate items which Appellant proposes to be included in the Record on Appeal. Appellant certifies to this Court that the “designation contains no matter which is irrelevant to this appeal.”

Rules 209 and 210, SCACR, address the content of a party’s designation of matter. Initially, Rule 209 states that “the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)].” Rule 209(b), SCACR. This rule also states, “A party

shall not include any matter in his Designation which is not relevant to the appeal.” [Id.] Turning to Rule 210(c), parties are instructed that the “Record shall not . . . include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR. This rule also provides that the Record on Appeal “shall include all matter designated to be included by any party under Rule 209 . . . .” Rule 210(c), SCACR.

Respondent now moves to dismiss this appeal on the grounds that Appellant’s Designation of Matter does not comply with Rules 209 and 210, in that Appellant has designated material that was not presented to the lower court, and which is not relevant to this appeal.

Respondent takes issue with the following items that have been designated by Appellant:<sup>1</sup>

**9) Real Estate Settlement Procedures Act (RESPA) Qualified Written Request (QWR) dated March 9, 2016**

This item is not relevant to this appeal, and this item was not presented as evidence to the trial court. Appellant filed her Answer and Defenses on March 9, 2016. Appellant filed the above-referenced QWR on the same date. However, the QWR was not mentioned in Appellant’s Answer, and Appellant’s pleadings in the lower court do not raise any issues concerning the QWR, or Respondent’s response to the QWR. Appellant’s second issue on appeal, wherein she mentions the QWR, alleges a violation of the Truth in Lending Act (TILA), and that Respondent did not provide a “Written Notice of Consumer Debt Assignment.” Appellant alleges that the TILA violations occurred in 2012 and 2015. The fact that Appellant may have written a QWR on the same date Appellant served her Answer does not have any bearing on whether Respondent violated the TILA in 2012 or 2015. For these reasons, the QWR would not be relevant to the issue raised by Appellant.

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<sup>1</sup> The numbers in this list refer to the numbered items in Appellant’s Designation.

Moreover, Appellant did not introduce the QWR as evidence at the hearing on this matter. In fact, Appellant did not introduce any evidence at the summary judgment hearing. Appellant did not attend the hearing. Co-Defendant Samuel C. Barfield attended the hearing, but he is not the debtor, and he was not representing his wife, the appellant in this Court. [Exhibit A; Transcript, p. 24] Therefore, this QWR was not presented to the lower court as required by Rule 210(c), SCACR.

Respondent requests that this appeal be dismissed for Appellant's failure to comply with the rules. If this appeal is not dismissed, the QWR should be stricken from the Designation, and all references to the QWR should be stricken from the Initial Brief.

**10) Real Estate Settlement Procedures Act (RESPA) Qualified Written Request (QWR) dated May 10, 2016**

Upon information and belief, this document was never filed with the lower court. This document was not presented at the hearing in opposition to Plaintiff's motion for summary judgment. This document has not been presented to the lower court as required by Rule 210(c), SCACR. In addition, for the reasons stated above, even if this QWR had been filed with the lower court, it is not relevant and would not have any bearing on any issues raised by Appellant.

**11) Real Estate Settlement Procedures Act (RESPA) Qualified Written Request (QWR) dated March 22, 2016**

Upon information and belief, this document was never filed with the lower court. This document was not presented at the hearing in opposition to Plaintiff's motion for summary judgment. This document has not been presented to the lower court as required by Rule 210(c), SCACR. In addition, for the reasons stated above, even if this QWR had been filed with the lower court, it is not relevant and would not have any bearing on any issues raised by Appellant.

**15) Affidavit of Non Eligibility – 2009-CP-46-1735**

This document was not filed with the lower court, and it was not presented to the lower court by Appellant. At the hearing on Respondent's motion for summary judgment, the co-Defendant referred to affidavits that had been filed in the "original case" that had been "dismissed due to a loan modification". [Exhibit A; Transcript, p. 15-16] The lower court informed the co-Defendant that the affidavits had "not been submitted in opposition of this motion, and they are not part of the record in this case." Co-Defendant acknowledged that the affidavits were "not in this case". [Id.] Therefore, these documents should be stricken from Appellant's Designation, and any reference to the documents in Appellant's Initial Brief should be stricken.

**16) Affidavit of Indebtedness – 2009-CP-46-1735**

This document was not filed with the lower court, and it was not presented to the lower court by Appellant. At the hearing on Respondent's motion for summary judgment, the co-Defendant referred to affidavits that had been filed in the "original case" that had been "dismissed due to a loan modification". [Exhibit A; Transcript, p. 15-16] The lower court informed the co-Defendant that the affidavits had "not been submitted in opposition of this motion, and they are not part of the record in this case." Co-Defendant acknowledged that the affidavits were "not in this case". [Id.] Therefore, these documents should be stricken from Appellant's Designation, and any reference to the documents in Appellant's Initial Brief should be stricken.


**Conclusion**

This Court is permitted to issue an order of dismissal "[w]henver it appears that an appellant . . . has failed to comply with the requirements of these Rules . . . ." Rule 260(a),

SCACR. Respondent respectfully requests that this appeal should be dismissed for the reasons stated herein. Appellant has included materials in her Designation that are not relevant to this appeal, and that were not presented to the lower court. To some extent, Appellant has relied on these materials in the Initial Brief. If this matter is not dismissed, Appellant should be required to remove these items from the Designation, and Appellant should be required to resubmit an Initial Brief excluding any mention or reliance on the materials.

Respondent understands that the time for submitting its initial brief will be held in abeyance pending a ruling on this motion. To the extent Respondent's clock is running, Respondent requests that the deadline for filing its Initial Brief be held in abeyance until such time as this motion is ruled upon. In the event that this appeal is not dismissed, Respondent requests that the deadline for submission of its Initial Brief be set for 30 days from the time this motion is ruled upon.

RILEY POPE & LANEY, LLC



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(803) 799-9993  
Attorney for Respondent

March 14, 2017



APPEARANCES

**Pete Balthazor, Esquire**  
Riley, Pope & Laney, LLC  
2838 Devine Street  
Columbia, South Carolina 29205  
Attorney for the Plaintiff

Also Present:  
Samuel Barfield

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EXHIBITS

(There were no exhibits marked in the hearing.)



1 THE COURT: All right. Are you Mr. Barfield?

2 MR. BARFIELD: Yes, sir.

3 THE COURT: All right. This is case number CP-2015-  
4 46-3068, The Bank of New York Mellon against  
5 Tara B. Barfield, Samuel C. Barfield and  
6 others. Present and representing the plaintiff  
7 is Mr. Paul Balthazor of Riley, Pope and Laney.  
8 Also present is the defendant Mr. Samuel  
9 Barfield. No one else has appeared. So, if  
10 you're ready to proceed Mr. Balthazor, go  
11 ahead.

12 MR. BALTHAZOR: Yes, Your Honor. May it please the  
13 court, good morning. Pete Balthazor here on  
14 behalf of the Plaintiff in this matter. This  
15 is a foreclosure action pending in York County.  
16 The property is located in York County. I  
17 think the Plaintiff has filed a couple of  
18 motions. It just occurred to me this morning  
19 while I was still at the office that I did have  
20 a motion to strike the request for a jury, and  
21 I've also got a Motion for Summary Judgment  
22 pending. There's multiple defendants in the  
23 case. Mr. Barfield is one of the defendants  
24 and is present here and filed an answer. Mr.  
25 Barfield, I do not believe, asked for a jury



1 **THE COURT:** No, sir. Not unless it's -- as the  
2 rules says, the adverse party may serve  
3 opposing affidavits not later than two days  
4 before the hearing. It goes on to say, it  
5 talks about the form of affidavits. Supporting  
6 and opposing affidavits shall be made of  
7 personal knowledge and shall set forth such  
8 facts as would be admissible in evidence and  
9 shall show affirmatively that the affiant is  
10 competent to testify to the matter stated  
11 therein. Sworn or certified copies of all  
12 papers or parts thereof referred to in an  
13 affidavit shall be attached thereto and served  
14 therewith. In other words, any documents that  
15 are attached to such an affidavit would have to  
16 be either certified copies or notarized copies  
17 of documents, and we have none of that.

18 **MR. BARFIELD:** What about copies of affidavits that  
19 are already in the record?

20 **THE COURT:** What affidavits are you talking about?

21 **MR. BARFIELD:** Can I bring them to you?

22 **THE COURT:** Just tell me what they are. You say in  
23 the record. Are they filed?

24 **MR. BARFIELD:** They're filed, and what they are they  
25 are filed in the original case but it's the



1 same parts.

2 **THE COURT:** Is the before the prior case was  
3 dismissed due to a loan modification?

4 **MR. BARFIELD:** Yes, sir, before that.

5 **THE COURT:** No, sir. I think those are not -- I'm  
6 not going to consider those. That case no  
7 longer exists.

8 **MR. BARFIELD:** I mean, the case may no longer exist  
9 but the reason that I was asking ---

10 **THE COURT:** Well, those affidavits are not submitted  
11 in this case. They have not been submitted in  
12 opposition of this motion, and they are not  
13 part of the record in this case. Go ahead.

14 **MR. BARFIELD:** Other than that, that's all I have.  
15 Yeah. I mean, they're not in this case, but  
16 they are in the record for the other case and  
17 they do directly contradict exactly what they  
18 say.

19 **THE COURT:** Well, I'm not going to consider it. Go  
20 ahead. Any other argument? This is your time.

21 **MR. BARFIELD:** Well, I don't have anything that's in  
22 the record in this case. I do have responses  
23 from the Plaintiff to qualify written responses  
24 that have been in, one that I just got in and  
25 one that we just got yesterday that also



1 statute. And the Jesinoski decision -- I'm not  
2 sure you've seen that yet, but it does plainly  
3 state ---

4 **THE COURT:** I have not.

5 **MR. BARFIELD:** It does plainly -- I have a copy if  
6 you'd like.

7 **THE COURT:** No, sir. Because I think you just  
8 wasted -- you're reliance upon this line of  
9 logic is misplaced. Furthermore, you're not  
10 the debtor.

11 **MR. BARFIELD:** Right.

12 **THE COURT:** And you have no standing to challenge  
13 the debt. And you're not a lawyer.

14 **MR. BARFIELD:** No, sir. I'm not.

15 **THE COURT:** Thus, you are not representing your  
16 wife.

17 **MR. BARFIELD:** No. No, I'm not. But she had  
18 brought that up in her answer, in her original  
19 answer.

20 **THE COURT:** Well, the whole purpose of what I just  
21 read to you out of the Rule 56 of the South  
22 Carolina Rules of Civil Procedure is to show  
23 that one cannot rely upon an unverified answer  
24 in response to a Motion for Summary Judgment if  
25 that motion is supported by affidavits and



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The Bank of New York Mellon fka The Bank of New York, as Trustee (CWALT 2004-2CB),.....Respondent,

v.

Tara B. Barfield a/k/a Tara Burdiss Barfield,.....Appellant.

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**CERTIFICATE OF SERVICE**

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I do hereby certify that I served the Respondent's Motion for Involuntary Dismissal of Appeal or, in the Alternative, Motion for Correction of Appellant's Designation of Matter, and Motion to Strike upon the parties below herein by depositing a copy of same, this date, in the U.S. Mail, first class postage prepaid, and addressed as follows:

Tara B. Barfield a/k/a Tara Burdiss Barfield, *Pro Se*  
5088 Mariana Court  
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Kimberly R. Bickford  
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Columbia, South Carolina  
March 14, 2017

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March 14, 2017

(Via Hand-Delivery)  
Ms. Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

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**SC Court of Appeals**

Re: The Bank of New York Mellon fka The Bank of New York, as Trustee (CWALT 2004-2CB) vs. Tara B. Barfield a/k/a Tara Burdiss Barfield, Samuel C. Barfield, SouthTrust Bank, N.A., Beneficial Financial I Inc., CACH, LLC, and The South Carolina Department of Revenue  
Calendar No.: 2015-CP-46-03068  
Appellate Case No.: 2016-002161  
Our File No.: 4028.00915

Dear Ms. Kitchings:

Please find enclosed the original and one (1) copy of the Respondent's Motion for Involuntary Dismissal of Appeal or, in the Alternative, Motion for Correction of Appellant's Designation of Matter, and Motion to Strike, with Certificate of Service in the above-referenced matter. Please file the enclosed documents and return one (1) filed copy with my courier.

Thank you,



Peter M. Balthazor

PMB/krb

Enclosures

Cc: Tara B. Barfield a/k/a Tara Burdiss Barfield, *Pro Se* (via USPS)