

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

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

RECEIVED

Case No.: 2015-CP-46-03068

MAR 30 2017

Appellate Case No. 2016-002161

SC Court of Appeals

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

Respondent moved to dismiss this appeal on the grounds that Appellant included documents and materials in the Designation of Matter which were not presented to the lower court and which were not relevant to the appeal. Appellant filed a response in opposition to Respondent's motion. Appellant generally argues that the materials at issue are relevant and were presented to the lower court. Respondent now submits this Reply to Appellant's Opposition to Respondent's Motion for Involuntary Dismissal of Appeal.

The first three items at issue are Qualified Written Requests (QWR) sent by Appellant to Respondent. Appellant concedes that the QWRs are not relevant to this appeal and whether

Respondent violated TILA in 2012 or 2015. Moreover, Appellant originally certified that the Designation of Matter did not contain any matter which was irrelevant to the appeal. Therefore, these materials should be excluded from the Designation of Matter.

Appellant notifies this Court that her Initial Brief contained typographical errors concerning the dates of the QWRs. Regardless of the correct dates, Appellant misapprehends the concept of whether the materials were presented to the lower court. The fact remains that Appellant did not attend the hearing on Respondent's motion for summary judgment, and she did not present any materials for the lower court's review. Filing the QWRs with the lower court does not translate into presenting the lower court with those materials. Appellant cannot now rely on documents and arguments that were never presented to the lower court. To this extent, Appellant has not preserved for appeal any issues regarding QWRs. The lower court was not on notice and was not given a fair opportunity to rule on these issues or materials. See S.C. Dep't of Transp. V. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903 (2007) (stating an issue must have been raised to and ruled upon by the lower court in order to be preserved for appellate review). Appellant is attempting to bring issues and materials into this appeal which were not presented to the lower court, and were not raised to and ruled upon by the lower court. For these reasons, and for the reasons stated in Respondent's motion, this appeal should be dismissed unless the matters are stricken from the Designation of Matter, and these materials should not be considered in this appeal.

The two remaining documents at issue are apparently items that were filed in a 2009 civil action concerning foreclosure of the same real property. As pointed out in Respondent's motion, and as acknowledged by the co-Defendant at the hearing, the documents are not part of the

record of this case. Therefore, these materials should be stricken from the Designation of Matter, and they should not be considered in this appeal.

For the reasons stated herein, and in Respondent's motion for involuntary dismissal, Respondent respectfully requests that this appeal be dismissed. Appellant has "failed to comply with the requirements of these Rules," Rule 260(a), SCACR, by submitting materials that were not presented to the lower court and which are not relevant to this appeal.

RILEY POPE & LANEY, LLC



Peter M. Balthazor, SC Bar No. 68244
2838 Devine Street
Post Office Box 11412 (29211)
Columbia, South Carolina 29205
(803) 799-9993
Attorney for Respondent

March 29, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAR 30 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,

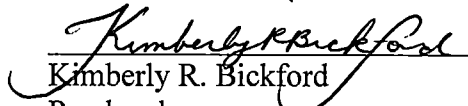
v.

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

CERTIFICATE OF SERVICE

I do hereby certify that I served the Respondent's Reply to Opposition to 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
Tega Cay, South Carolina 29708-7232


Kimberly R. Bickford
Paralegal

Columbia, South Carolina
March 29, 2017

RILEY POPE & LANEY, LLC
ATTORNEYS AND COUNSELORS AT LAW

2838 DEVINE STREET
POST OFFICE BOX 11412 (29211)
COLUMBIA, SOUTH CAROLINA 29205

TELEPHONE (803) 799-9993

FACSIMILE (803) 239-1414

March 29, 2017

Ms. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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

RECEIVED

MAR 30 2017

SC Court of Appeals

Dear Ms. Kitchings:

Please find enclosed the original and one (1) copy of the Respondent's Reply to Opposition to 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 in the enclosed self-addressed, stamped envelope.

Thank you,

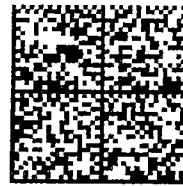


Peter M. Balthazor

PMB/krb

Enclosures

Cc: Tara B. Barfield a/k/a Tara Burdiss Barfield, *Pro Se*



US POSTAGE

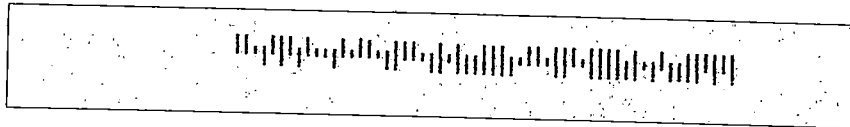
\$00.88⁰

First-Class

Mailed From 29205

03/29/2017

032A 0061836340



Riley Pope
& Laney, LLC ATTORNEYS AND COUNSELORS AT LAW

POST OFFICE BOX 11412
COLUMBIA, SOUTH CAROLINA 29211

TO:

Ms. Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate St
Columbia, SC 29201

RECEIVED

MAR 30 2017

SC Court of Appeals