

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  
OCT 04 2017  
SC Court of Appeals

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

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 SUPPLEMENTAL MOTION TO DISMISS  
AND MOTION TO STAY TIME TO FILE FINAL BRIEF**

Pursuant to Rule 240(a), SCACR, Respondent Branch Banking and Trust Company files this supplemental motion to dismiss the above-captioned appeal in its entirety. The basis for this motion is that Appellants Wilton H. Cain and Cassandra M. Durrah-Cain have failed to properly file and submit a complete Record on Appeal, impacting Respondent's ability to move forward in this matter.

**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 being given the opportunity to correct deficiencies in the initial Record. On February 17, 2017, this Court issued an Order Granting Respondent's Motion to Strike, providing Appellants until April 19, 2017 to file a Second Amended Record on Appeal correcting deficiencies in First Amended Record on Appeal. Appellant's Second Amended Record on Appeal, dated April 15, 2017, still failed to comply with the SCACR.

Respondent then filed a Motion to Dismiss or, in the Alternative, Motion to Correct Record on Appeal and Motion to Stay Time to File Final Brief April 27, 2017. The Motion to Correct Record on Appeal was granted July 7, 2017, by Order providing Appellant with a deadline of August 7, 2017, to amend the Second Record on Appeal. Appellant failed to serve the Third Amended Record on Appeal by the deadline, and a Motion for Extension of Time was not filed until September 8, 2017. Respondent filed a Renewed Motion to Dismiss on September 12, 2017, due to Appellants failure to file a corrected Record. That motion is still pending.

Thereafter, on or about September 20, 2017, Appellant filed a Third Amended Record on Appeal: This Third Amended Record on Appeal still fails to comply with the South Carolina Rules of Appellate Procedure. Respondent files this supplemental Motion to Dismiss as a result.

## **ARGUMENT**

The appeal should be dismissed as a result of Appellants' continuing failure to correct the Record on Appeal. The following deficiencies still exist in the Third Amended Record on Appeal ("Third Record"):

- a) The Order for Deficiency Judgment, filed September 19, 2011, is not included in the Third Record as requested by Respondent in its Designation of Matter;
- b) Only a small portion of the January 14, 2016 Hearing Transcript is included in the Third Record, despite the entire 27 page transcript being designated for inclusion;
- c) Page one of the Per Curiam Opinion of South Carolina Court of Appeals, Case No. 2011-205089, was included in the Third Record, but the first page is missing;
- d) Appellants' Third Record still contains portions of their brief (Table of Authorities) which is improper to include in the Record on Appeal;
- e) Appellants' Third Record includes documents not designated for inclusion by any party, namely, the Answer, Remittitur, and Assignment of Mortgage;
- f) The index to the Third Record is still improperly formatted and is confusing, making it difficult to navigate and confirm the documents are present; and
- g) The document fails to conform to Rule 267, SCACR.

“The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267... Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate by appellant. Each page of the Record on Appeal shall be numbered consecutively beginning with the index.” Rule 210(c), SCACR.

Appellants' Third Record fails to include complete copies of all material designated for inclusion, includes material not designated by any party, contains portions of the brief not appropriate for inclusion, fails to properly organize the documents or index, and fails to comply with Rule 267 in the formatting of the Record. Additionally, this is now the third chance that

Appellants have had to submit a correct record. As such, Respondent believes that this appeal should be dismissed in its entirety for failure to abide by the Appellate Court Rules.

### CONCLUSION

Respondent respectfully moves for an order dismissing the appeal and respectfully moves for an order staying the time for Respondent to be required to file its final brief until such time as this Motion is ruled upon.

Respectfully submitted,



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

October 4, 2017

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Of whom

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PROOF OF SERVICE

I HEREBY CERTIFY that I have served the **RESPONDENT'S SUPPLEMENTAL MOTION TO DISMISS 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 October 4, 2017, at 8111 Jareds Landing Rd, Adam Run, SC 29426.



Erica G. Lybrand (SC Bar # 79052)

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October 4, 2017

RECEIVED  
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SC Court of Appeals

**VIA HAND DELIVERY**

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 Supplemental Motion to Dismiss 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 a clocked copy to our courier.

With kind regards, I remain

Cordially yours,

A handwritten signature in black ink, appearing to read "K. Richardson", written over a horizontal line.

Karissa Richardson  
Paralegal for Erica G. Lybrand

Enclosures

cc:

Wilton H. Cain  
Cassandra M. Durrah-Cain  
8111 Jareds Landing Rd  
Adam Run, SC 29426