

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**  
NOV 27 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 RENEWED 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 renewed 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 continually 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. A Supplemental Motion to Dismiss was filed on October 4, 2017 relating to this Amended Record and its failure to correct the deficiencies as noted in Respondents Motion to Dismiss. Another "Third Amended Record on Appeal" was then filed on or about October 13, 2017. As a result, the Court denied Respondent's Motions to Dismiss on November 8, 2017. However, this new 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 Recorded Mortgage recorded September 20, 2007, is not included in the new Third Record as requested by Respondent in its Designation of Matter;
- b) Pages 25 and 16 of the Transcript are not included, despite Respondent's designation of the entire transcript;
- c) Appellants' new Third Record still includes documents not designated for inclusion by any party, namely, the Answer (pp. 50-53) and Remittitur (p.2);
- d) 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
- e) The page numbers of the record are, specifically with regard to the transcript, cut off or marked on, making it difficult to ascertain the page numbers.

"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, fails to properly organize the documents or index, and fails to include identifiable page numbers on each page. Additionally, this is now

the fourth 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.*

November 27, 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 RENEWED 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 November 27, 2017, at 8111 Jareds Landing Rd, Adam Run, SC 29426.



Erica G. Lybrand (SC Bar # 79052)

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November 27, 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 Renewed 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".

Karissa Richardson  
Paralegal for Erica G. Lybrand

Enclosures

cc:

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