

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

The Honorable Gordon G. Cooper

Master in Equity

Appellate Case No. 2017-002200

Circuit Court Case No. 2010-CP-42-05847

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OCT 10 2018
SC Court of Appeals

**Wells Fargo Bank, N.A. as Trustee
for Bear Stearns Asset Backed
Securities I Trust 2004-BO1**

Respondent

v.

**Betty L. Tangeman, Barry D. Mallek, Alice R. Mallek,
Donald Coggins, and Jr Delbert R. Tangeman**

Defendants

of whom

Delbert R. Tangeman is the

Appellant

**RESPONDENT'S RETURN TO APPELLANT'S MOTION TO STRIKE FROM
RESPONDENT'S RECORD ON APPEAL ITEMS 1-8**

Respondent Wells Fargo Bank, N.A. as Trustee for Bear Stearns Asset Backed Securities I Trust 2004-BO1 (“Wells Fargo”), through undersigned counsel, hereby submits the following return to Appellant’s Motion to Strike from Respondent’s Record on Appeal Items 1–8 (hereinafter “Motion”) and states as follows:

1. On **April 2, 2018**, pursuant to SCACR 209, Wells Fargo filed its Designation of Matter to be Included in the Record on Appeal.

2. Since that time, Appellant has sought an extension of time to file his Reply brief, without initially paying the filing fee (April 20, 2018); an additional extension of time to file a Reply brief in compliance with applicable rules (June 18, 2018), and an extension of time to file the Record on Appeal, again without paying the filing fee (August 20, 2018).

3. In Appellant’s August 20, 2018 motion for extension of time to file the Record on Appeal, Appellant indicated he was “working on it, but simply requests a little more time.”

4. Rather than utilize the time the Court afforded to properly assemble, file, and serve the Record on Appeal in conformity with SCACR 210, Appellant used the time the Court afforded – and that he claimed he needed – to prepare and file the underlying Motion, seeking to strike eight (8) documents from Wells Fargo’s Designation of Matter. In other words, Appellant took advantage of the extension of time this Court afforded him to file this frivolous Motion.

5. Appellant did not even bother paying the filing fee in connection with the Motion, now for the third time in this appeal. Appellant receives an additional extension of time from this Court each time he fails to pay a filing fee, which furthers his goal of endlessly delaying this straightforward and meritless appeal, which has now lasted approximately one (1) year.

6. Appellant is wasting the time, energy, and resources of this Court and of Respondent Wells Fargo.

7. The Court should deny the Motion for any number of the below reasons:
 - a. SCACR 210(c) requires Appellant to include in the Record on Appeal “all matter designated to be included *by any party.*” (emphasis added). Appellant has not followed the Rule.¹
 - b. SCACR 240(d) requires Appellant to serve the Motion on Respondent. Appellant certified to the Court that he did so, but that is not true. Appellant has not followed the Rule.²
 - c. SCACR 240(d) requires Appellant to pay a filing fee. Appellant has not followed the rule.

8. More importantly, there is absolutely no basis in the rules, nor any cause whatsoever, to strike items from Wells Fargo’s Designation of Matter. Indeed, Wells Fargo would be unable to file and serve a Final Brief in compliance with SCACR 211 if items from its Designation of Matter were stricken.

9. Further underscoring the absurdity of the Motion is the fact that one of the documents Appellant seeks to strike is Appellant’s Motion to Reconsider and Open the Case. The trial court’s ruling on Appellant’s Motion to Reconsider is the *sole issue on appeal.*

10. Wells Fargo has filed a motion to supplement the record to include the documents it has designated. Wells Fargo is, therefore, responding to this Motion only out of an abundance

¹ On this point, Appellant also failed to certify, pursuant to SCACR 210(g), that the Record on Appeal “contains all material proposed to be included by any of the parties.” Although the Court did not issue Appellant a notice for this deficiency, Appellant plainly did not follow this rule.

² Indeed, Appellant did not even serve his improper Record on Appeal on Respondent as required by SCACR 210(a). As with the underlying Motion, Appellant certified to the Court that he did so, but that is not true. Appellant is misrepresenting the facts to the Court. In order to stay abreast of this frivolous appeal, Respondent has to regularly monitor the electronic docket. That is unfair and prejudicial.

of caution and only after being informed that the Court would be considering the Motion despite Appellant's blatant failure to follow myriad rules.

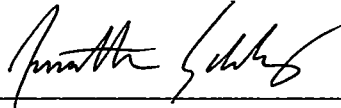
11. Although *pro se* appellants should certainly be afforded some latitude, that latitude must have limits. A respondent should not be unfairly prejudiced by an appellant's continued failure to follow the rules.

12. Because Wells Fargo is forced to file a return to the underlying Motion – despite Appellant's (a) failure to pay the filing fee, (b) failure to follow the rules regarding the content of the Record on Appeal, (c) failure to certify his compliance of same, and (d) failure to serve the Motion – Wells Fargo requests that the Court award it its reasonable costs and fees incurred in responding to Appellant's frivolous Motion. Appellant took advantage of the Court's extension of time, premised on a need for additional time to assemble a Record on Appeal, to prepare and file the underlying Motion. Fees and costs are warranted in this circumstance.

WHEREFORE, for the reasons stated above, Respondent requests as follows:

- a. That the Court deny Appellant's Motion to Strike from Respondent's Record on Appeal Items 1–8;
- b. That the Court award Wells Fargo its cost and fees incurred in responding to this frivolous Motion; and
- c. That the Court issue such other and further relief as it deems appropriate.

This the 9th day of October, 2018.



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Trustee for Bear Stearns Asset Backed Securities I
Trust 2004-BO1*

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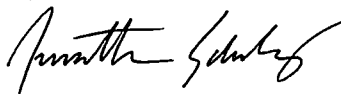
I hereby certify that a copy of the foregoing **RESPONDENT'S RETURN TO APPELLANT'S MOTION TO STRIKE FROM RESPONDENT'S RECORD ON APPEAL ITEMS 1-8** was sent via first-class U.S. Mail, postage prepaid, and addressed as follows:

Delbert R. Tangeman
104 Riverside Lane
Duncan, SC 29334
Appellant

Delbert R. Tangeman
102 Oak Ridge St.
Spartanburg, SC 29306
Appellant

John B. Kelchner, Esq.
James D. Floyd, Esq.
Hutchens Law Firm
P.O. Box 8237
Columbia, SC 29202
Attorney for Respondent

This the 9th day of October, 2018.



Jonathan E. Schulz (SC Bar No. 79850)



Jonathan Schulz
Direct Dial: (704) 338-6127
E-mail: jschulz@bradley.com

October 9, 2018

VIA FEDEX OVERNIGHT

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

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Re: *Wells Fargo Bank, N.A. as Trustee for Bear Stearns Asset Backed Securities I Trust 2004-BO1 v. Betty L. Tangeman, Barry D. Mallek, Alice R. Mallek, Donald Coggins, and Jr Delbert R. Tangeman*
South Carolina Court of Appeals Case No. 2017-002200

Dear Ms. Kitchings:

In connection with the above appeal, enclosed for filing please find one (1) original and six (6) copies of Respondent Wells Fargo's Return to Appellant's Motion to Strike from Respondent's Record on Appeal Items 1-8.

Thank you for your assistance. Please do not hesitate to contact me should you have any questions or concerns about the above.

Best regards,

Jonathan Schulz

Enclosures

cc: Delbert Tangeman (with encl. via US Mail)
John B. Kelchner (with encl. via US Mail)

ORIGIN ID: QWGA (704) 338-6127
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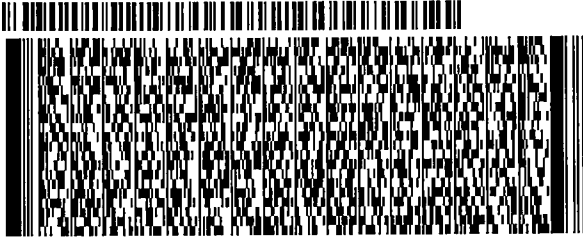
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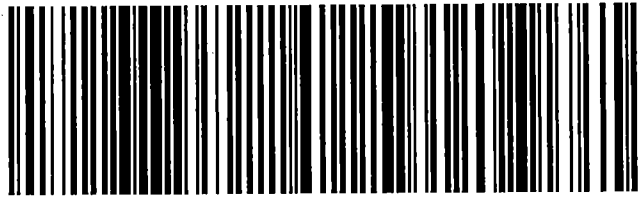
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SC Court of Appeals

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