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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

Case No.: 2017-CP-42-02834

Appellate Case No. 2018-001443

Phillip Francis Luke Hughes, on behalf of the Estate of Jane K. Hughes..... Respondent,

v.

Bank of America National Association .....Appellant.

APPELLANT'S MOTION FOR LEAVE TO FILE OUT OF TURN APPELLANT'S FINAL REPLY BRIEF

The undersigned counsel for Appellant Bank of America, N.A. ("Bank of America"), pursuant to Rules 240 and 263(b) of the South Carolina Appellate Court Rules, hereby submits this Motion for Leave to File Final Reply Brief of Appellant.

The grounds for this motion are that Appellant's docketing system only calendared Appellant's Final Brief and not did not include Appellant's Final Reply Brief. On December 27, 2018, Appellant properly filed Appellant's Final Brief with the Court and due to an administrative error the Appellant's Final Reply Brief was not calendared on Appellant's attorney's calendar and was not filed with the Court. Appellant's attorneys request that this Honorable Court allow Appellant's counsel to file out of turn its Final Reply Brief.

Appellant's counsel believes that no party will be prejudiced by this Honorable Court granting Appellant's motion for leave to file out of turn its Final Reply Brief.

This motion is not made for any unlawful or dilatory purpose.

For these reasons, Appellant respectfully requests that this Honorable Court grant this motion and allow Appellant to file its Final Reply Brief, a true and correct copy of which is attached hereto as Exhibit A.

Respectfully submitted, this 29th day of January, 2019.

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EXHIBIT A

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FINAL REPLY BRIEF OF APPELLANT

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INTRODUCTION

Respondent Phillip Francis Luke Hughes, on behalf of the Estate of Jane K. Hughes ("Hughes"), has pursued years of litigation against Bank of America, N.A. ("BANA") that he concedes is frivolous. The trial court dismissed each of Hughes' claims on multiple grounds: that the claims did not exist in South Carolina, that all claims were time barred, and that all claims were barred by *res judicata* and collateral estoppel. Despite this, the court later ruled that BANA's resulting Motion for Sanctions (the "Motion") was both "untimely and premature" and that BANA must wait until the conclusion of Hughes' appeal to move for sanctions. Therefore, the narrow issue before this Court is whether BANA's Motion was filed in a timely manner and should be considered on the merits by the lower court.

In opposition to BANA's appeal, Hughes first claims that BANA failed to preserve the timeliness issue because BANA neglected affirmatively to assert that its Motion was timely during lower court proceedings. To the contrary, BANA *did* affirmatively state that its Motion was timely in its Memorandum in Support of its Motion. Furthermore, even if BANA had not staked out this position—which was implicit in its very decision to pursue the Motion—BANA is not required to argue preemptively that its Motion was timely.

Hughes also argues that this Court should affirm that the Motion was both untimely and premature because Hughes' merits appeal of the dismissal of his claims was pending before the South Carolina Court of Appeals at the time of BANA's Motion. In fact, courts in South Carolina have expressly found that under the FCPSA, parties are not obligated to wait for the resolution of pending appeals and that the statute further requires that a motion for sanctions be filed within ten days of judgment in the lower court. Similarly, a Rule 11 motion must be filed in a timely fashion, which may be before a final resolution in the appellate court. As a result, BANA's Motion, seeking sanctions under the FCPSA and Rule 11, was timely and not premature.

Hughes further claims that the lower court considered BANA's "request" for sanctions at the Motion to Dismiss merits hearing and opted not to grant them, which Hughes claims constitutes a second and independent basis for the court's decision to deny BANA's Motion for Sanctions. A review of the hearing transcript, however, demonstrates that BANA's Counsel explicitly disclaimed it was moving for sanctions at that juncture. A review of the order granting BANA's Motion to Dismiss confirms that the trial court did not deny a purported request for sanctions when ruling on BANA's Motion to Dismiss.

Finally, Hughes argues that he did not receive sufficient notice of the basis for BANA's Motion. Hughes did not raise this issue in the lower court and it was not a part of the lower court's order, and Hughes therefore waived this argument. Furthermore, Hughes and his Counsel were on clear notice that BANA was seeking sanctions based on Hughes' second round of frivolous litigation as evidenced by the parties' communications, BANA's Motion and supporting memorandum, Hughes' opposition to the Motion, and the attendance of Hughes' Counsel at the Motion hearing.

Because BANA's Motion was timely, the decision of the trial court should be reversed and remanded for appropriate further proceedings.

ARGUMENT

I. HUGHES MISSTATES THE STANDARD OF REVIEW

Hughes claims that an abuse of discretion standard applies, reasoning that when "the appellate court agrees with the trial court's factual determinations in a decision to award sanctions, it consistently applies an abuse of discretion standard [of] review." (Hughes Br. 11) The trial court, however, made a determination of law (the timeliness of the Motion for Sanctions under Rule 11 and the FCPSA) to undisputed facts (when the Motion for Sanctions was filed), and thus,

the Court is "free to review whether the trial court properly applied the law to those facts" with a *de novo* review. *WDW Props. v. City of Sumter*, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (S. C. 2000); *see also Goldston v. State Farm Mut. Auto. Ins. Co.*, 358 S.C. 157, 166, 594 S.E.2d 511, 516 (S.C. Ct.App. 2004) (accord). In such cases, the appellate court is "not required to defer to the circuit court's legal conclusions." *Dreher v. Dreher*, 370 S.C. 75, 79, 634 S.E.2d 646, 648 (S.C. 2006). Based on a *de novo* review of law, the trial court's denial of BANA's Motion for Sanctions should be reversed and the case remanded for appropriate further proceedings.

II. BANA PROPERLY PRESERVED ALL ISSUES FOR APPEAL

Hughes argues that BANA failed to "preserve" the issues it seeks to raise on appeal because it did not affirmatively assert that its Motion was timely in lower court proceedings. (Hughes Br. 12–14)

Contrary to Hughes' contention, BANA *did* argue that its Motion was timely in its Memorandum In Support of Motion for Sanctions, explicitly stating that:

> This court retains jurisdiction to consider BANA's Motion for Sanctions despite Plaintiff appealing this Court's order on BANA's Motion to Dismiss. *See* SCACR Rule 205; *see also Pee Dee Health Care v. Estate of Thompson*, 418 S.C. 557, 571, 795 S.E.2d 40, 48 (S.C. 2016) (rejecting argument that sanctions motion should not be filed until after conclusion of the appeal); *In re Beard*, 359 S.C. 351, 358, 597 S.E.2d 835, 838 (noting that "a motion for sanctions [under the FCPSA] must be filed within ten days of the notice of entry of judgment").

(R. p. 335, n.2)

Even if BANA had not made clear its position that the Motion was timely—which is implicit in BANA's decision to file the Motion in the first place—the outcome would not change. South Carolina Appellate Court Rule 201 provides that "[a]ppeal may be taken, as provided by law, from any final judgment, appealable order or decision" and does not require that parties have argued or briefed issues ultimately ruled on by the lower court. Indeed, appellate courts routinely

review decisions by trial courts that were made on a *sua sponte* basis. *See, e.g.*, *Reliford v. Mitsubishi Motors Credit of Am.*, Inc., No. 2004-UP-537, 2004 WL 6336777, at *1 (S.C. Ct. App. Oct. 21, 2004) (considering the appeal of the lower court's *sua sponte* grant of summary judgment for the defendant on statute of limitations grounds). As a result, BANA was not required to preemptively argue that its Motion was timely filed.

Hughes' argument that BANA was obligated to file a Rule 59(e) motion prior to seeking an appeal of the trial court's Order is incorrect. Courts have held that, if the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a Rule 59(e) motion to alter or amend the judgment in order to preserve the issue for appellate review. *Spence v. Wingate*, 381 S.C. 487, 489–90, 674 S.E.2d 169, 170 (2009). Rule 59(e) is not applicable where, like here, an issue was ruled upon by the lower court. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) ("[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." (emphasis in original)); *Pye v. Estate of Fox*, 369 S.C. 555, 565, 633 S.E.2d 505, 510 (2006).

Hughes further argues that the issue regarding whether the trial court should have granted BANA's Motion on the merits is not properly before this Court because the trial court never reached the merits. However, BANA is not asking this Court to reach the merits since that was never ruled on by the lower court. The only issue ruled on by the lower court was the timeliness

of the sanctions motion. BANA requests that the trial court be reversed on this point and the matter remanded for a determination on the merits. (App. Br. 1, 9, 17)

III. THE LOWER COURT'S DECISION WAS NOT BASED ON JUDGE KELLY'S SUPPOSED CONSIDERATION OF SANCTIONS

Hughes argues that Judge R. Keith Kelly considered BANA's "request" for sanctions at the Motion to Dismiss hearing and opted not to grant them, which Hughes claims constitutes a second and independent basis for Judge Grace Gilchrist Knie's subsequent decision to deny BANA's Motion for Sanctions. (Hughes Br. 15–18) Hughes' position is incorrect on multiple fronts.

First, as noted in BANA's Appellant Brief, BANA's counsel never requested sanctions at the merits hearing but instead described the behavior of opposing counsel as "sanctionable." (*See* R. p. 525, lines 7-12) In fact, BANA's counsel specifically clarified that BANA had "not brought a motion for sanctions" at that time (which was before the ruling dismissing Hughes' claims on multiple grounds). (R. p. 525, lines 10–12) Likewise, Judge Kelly's Order on the Motion to Dismiss did not rule on sanctions, and he was under no obligation to *sua sponte* grant sanctions. (*See* R. pp. 5-15)

Second, even if BANA's Counsel had requested sanctions at the merits hearing, the trial court did not base its decision on this issue. Judge Knie's Order explicitly states that "[t]his matter is currently pending before the South Carolina Court of Appeals as Appellate Case Number: 2018-000568, and has not yet been fully adjudicated. ***Accordingly,*** Defendant's Motion for Sanctions is untimely and premature." (R. pp. 1-4 (emphasis added)) The trial court merely noted that BANA's counsel raised the issue of sanctions at the hearing in the course of describing Hughes' argument against sanctions—not as a basis for its ruling. [*Id.* (noting that "Plaintiff and his counsel objected to the granting of Defendant's Motion for Sanctions, arguing, in part, that the Court, when

presented with the opportunity to consider the same conduct for which Defendant presently seeks sanctions . . . declined to award sanctions.").

Third, even assuming that Judge Knie's decision was based on a "prior decision to decline to issue an award of sanctions," as Hughes claims, (Hughes Br. at 17), this Court should overturn the trial court's decision as error. In fact, BANA's counsel never requested that Judge Kelly impose sanctions, and Judge Kelly never ruled on the issue. Thus, it would be reversible error for the trial court to deny the motion on these grounds. *See Se. Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC*, 394 S.C. 97, 104, 713 S.E.2d 650, 654 (Ct. App. 2011) (a decision regarding sanctions can be overturned if the decision is controlled by an error of law or is based on unsupported factual conclusions).

BANA'S MOTION WAS TIMELY UNDER THE FCPSA AND RULE 11

1. BANA's Motion For Sanctions Was Timely Under The FCPSA

Hughes argues that BANA's Motion for Sanctions was premature under the FCPSA because it was filed while his appeal was pending. The FCPSA, however, does not require that parties delay in bringing a motion for sanctions until final resolution of an appeal, and in the context of post-judgment sanctions, courts require that the motion be filed within ten days of the judgment.

The FCPSA provides that an attorney may be sanctioned for "filing a frivolous pleading, motion or document" (§15-36-10(A)(4)(a)), "making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts" (§15-36-10(A)(4)(b)), or "making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law." (§15-36-10(A)(4)(c)).

The FCPSA also provides an avenue for sanctions after the resolution of the case. Pursuant

to § 15-36-10(C)(1)(a) and (c), an attorney and party shall be sanctioned under the FCPSA if, "[a]t the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party," the court finds that: "(a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law" or "(c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based." S.C. Code Ann. § 15-36-10(C)(1)(a) and (c).

The South Carolina Supreme Court has held that "sanctions may be awarded under FCPSA regardless of whether or not the case has been tried to verdict so long as the trial court finds by a preponderance of the evidence that the party should be sanctioned under the terms of the Act." *Holmes v. E. Cooper Cmty. Hosp., Inc.*, 408 S.C. 138, 153, 758 S.E.2d 483, 491 (S.C. 2014).

The FCPSA does not require that parties delay in bringing a motion for sanctions until final resolution of the appeal, and Hughes points to no authority for this point. To the contrary, courts that have considered the timing of a motion under the FCPSA have held that the motion must be brought at the latest, within ten days of entry of judgment. Indeed, "[m]otions made pursuant to the FCPSA are post-trial motions, and thus, a party has ten days after the filing of a court order to file a motion pursuant to the FCPSA." *See Holmes*, 408 S.C. at 160–61, 758 S.E.2d at 495. Courts reason that "because a trial judge retains jurisdiction pursuant to Rule 59(e), SCRCP, to alter or amend a judgment within ten days of its issuance, a motion for sanctions would be timely if filed

within ten days of judgment." *Id.* (citing *Rutland v. Holler, Dennis, Corbett, Ormond & Garner (Law Firm)*, 371 S.C. 91, 96, 637 S.E.2d 316, 319 (Ct. App. 2006)).

Here, the trial court dismissed Hughes' Complaint in its entirety and, as Hughes concedes, "entered its [notice of entry of judgment] on March 20, 2018." (Hughes Br. at 22 n.2) BANA moved for sanctions on March 29, 2018, nine days after the trial court disposed of Hughes' case—within the timeframe required for filing a motion for sanctions after an entry of judgment by *Rutland* and *Holmes*. Accordingly, BANA's Motion under the FCPSA was timely filed, and the trial court's decision should be reversed and remanded for further consideration of the merits of the Motion.

2. BANA's Motion For Sanctions Was Timely Under Rule 11

Hughes argues that the Supreme Court's very recent remand in *Pee Dee Health Care, P.A. v. Estate of Thompson* renders BANA's Motion for Sanctions untimely and premature. (Hughes Br. 19) Contrary to Hughes' reading of *Pee Dee*, the South Carolina Supreme Court largely upheld the Court of Appeals' prior decision that a Rule 11 Motion must be brought within a reasonable time after the discovery of the sanctionable behavior—further justifying the timeliness of BANA's Motion for Sanctions under Rule 11. *Pee Dee*, 818 S.E.2d 758, 767 (S.C. 2018).

In *Pee Dee*, the Supreme Court opined that "we cannot disagree with the court of appeals' holding 'that a party must file a motion for sanctions pursuant to Rule 11 within a reasonable time of discovering the alleged improprieties.'" *Id.* Accordingly, the Supreme Court held that "we agree with the court of appeals. . . that a Rule 11 motion is untimely if the circuit court—considering all relevant circumstances in the context of the litigation—determines the motion was not filed in a reasonable period of time after the discovery of the alleged misconduct." *Id.*

The Supreme Court then determined that it was reasonable for counsel in *Pee Dee* to wait for the resolution of three pending appeals before filing a motion for sanctions because counsel's specific circumstances justified the delay. *Id.* at 766. In particular, counsel for the defendant believed that a "sanctions motion would only exacerbate the already contentious litigation, further delaying a decision on the merits and costing his client more money." *Id.* Based on these specific circumstances, the Supreme Court found that it was not unreasonable for the defendant's counsel to wait until the resolution of the appeals to file a motion for sanctions, noting that counsel had made the understandable determination that filing the sanctions motion before then would not serve the purpose of "deterring future litigation abuse, but rather would only encourage more abusive behavior." *Id.* at 766.

In reaching this decision, the South Carolina Supreme Court clarified that its determination regarding timeliness of the motion for sanctions "[began] with the premise that early filing—and quick resolution—of legal claims is always to be promoted." *Id.* at 765. Nothing in *Pee Dee* suggested that a party was *obligated* to wait until the resolution of any pending appeals before filing a motion for sanctions. To the contrary, the court implied that a party would have to provide separate justification if it waited until resolution of an appeal to file a Rule 11 motion. *Id.* at 766.

Consistent with the Supreme Court's decision in *Pee Dee*, BANA's Motion was timely filed in accordance with the Supreme Court's mandate that a Rule 11 Motion be pursued "within a reasonable time of discovering the alleged improprieties." *Id.* at 767. For BANA to wait until after the appeals process to file its Motion would risk a ruling that its delay was unreasonable under the circumstances, especially where BANA intended for its Motion to serve as an immediate

deterrent of further litigation abuse.[1] *Id.*; *see also Griffin v. Sweet*, 136 N.C. App. 762, 765, 525 S.E.2d 504, 506 (2000) (finding that the plaintiff failed to file his motion for Rule 11 sanctions within a reasonable time of detecting the alleged impropriety where he waited over thirteen months after the supreme court denied the defendants' petition for discretionary review); *Rice v. Danas, Inc.*, 132 N.C. App. 736, 514 S.E.2d 97 (1999) (finding that the motion for sanctions was not timely filed where the defendant claimed it was aware of the plaintiff's sanctionable conduct prior to filing its answer but waited until after the jury verdict to file its motion for sanctions).

Because BANA's Motion was filed within a reasonable time of Hughes and his Counsel's sanctionable behavior, the Motion was timely and should be considered on the merits.

IV. HUGHES WAIVED ANY ARGUMENT THAT HE DID NOT HAVE SUFFICIENT NOTICE OF BANA'S MOTION

Hughes claims that BANA did not give "adequate notice of its intent to seek sanctions on certain grounds"—in particular, that BANA failed to provide notice that it was pursuing sanctions against Hughes regarding his breach of fiduciary duty, conversion, and SCUTPA claims, and on the basis that he filed claims knowing they were barred by the statute of limitations. (Hughes Br. 37) He does not dispute that BANA provided notice of each of these issues in its Memorandum in Support of its Motion, which was filed on May 28, 2018, but argues that BANA should have also made these arguments in its underlying Motion, filed on March 29, 2018.[2] [*Id.*]

Hughes did not raise this issue in the lower court and it was not a part of the lower court's order, and Hughes therefore waived this argument. As Hughes points out in his response (Hughes

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[1] It would also be unreasonable to require BANA to file a motion for sanctions under the FCPSA pursuant to the ten-day time limit and then require that BANA wait to file a separate Rule 11 motion until after the resolution of Hughes' appeal.

[2] Hughes also concedes that BANA provided sufficient notice that it was pursuing sanctions against Hughes based on his frivolous fraud claims.

Br. 13), issues and arguments are preserved for appellate review only when they are raised to and/or ruled upon by the lower court. *E.g.*, *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); *Pye*, 369 S.C. at 564, 633 S.E.2d at 510 (holding that because an issue was raised for the first time on appeal and was not ruled upon by the trial judge, it was not preserved for review). Despite submitting an opposition to BANA's Motion and attending the hearing on the Motion, Hughes never argued that the Motion should be denied because he was not afforded sufficient notice under the FCPSA and Rule 11. (*See generally* R. pp. 372-451; R. pp 494-518) The trial court likewise did not deny BANA's Motion on this basis. (*See* R. pp. 1-4) Accordingly, Hughes' notice argument cannot be considered now.

Furthermore, Hughes and his Counsel had sufficient notice of BANA's Motion. Under the FCPSA, a "person is entitled to notice and an opportunity to respond before the imposition of sanctions." S.C. Code Ann. § 15-36-10(D). In particular, a court or party proposing a sanction pursuant to the FCPSA must "notify the court and all parties of the conduct constituting a violation, and upon notification, the attorney, party, or pro se litigant…has thirty days to respond to the allegations." *Id.* Under Rule 11, "a signing party or attorney is entitled to notice and an opportunity to respond prior to imposition of sanctions under Rule 11, SCRCP." *Burns v. Universal Health Servs. Inc.*, 340 S.C. 509, 514, 532 S.E.2d 6, 9 (Ct. App. 2000).

BANA complied with the requirements under the FCPSA and Rule 11. BANA's filed its Motion on March 29, 2018, two months before the hearing. The Motion clearly described Hughes' sanctionable conduct, including his decision to bring claims that were barred by the statute of limitations (R. pp. 287-288); claims for conversion and breach of fiduciary duty that he conceded were barred by *res judicata* and collateral estoppel (R. p. 290); and a claim under SCUTPA, which was barred by the clear language of the statute (R. pp. 288-289). BANA also discussed each of

these issues in its Memorandum, which was filed on May 28, 2018, four days before the hearing on the Motion. Hughes and his Counsel clearly had sufficient opportunity to respond: Hughes' Counsel filed an Opposition on May 30, 2018 and also attended the hearing on the Motion. (*See generally* R. pp 328-369; R. pp. 372-451; R. pp. 494-518) The trial court did not issue its decision until July 3, 2018—more than three months after BANA initially filed its Motion. The foregoing afforded Hughes with more than sufficient notice and opportunity to respond to BANA's Motion.[3]

The one case cited by Hughes only underscores this point. In *Burns v. Universal Health Servs. Inc.*, the court found that the sanctioned party was not provided with sufficient notice where "[n]o motion for sanctions was filed prior to the hearing" and the only notice provided was an oral motion for sanctions at the conclusion of a hearing on the defendant's motion to dismiss. 340 S.C. 509, 512, 532 S.E.2d 6, 8 (Ct. App. 2000). In contrast here, BANA filed a Motion for Sanctions and Memorandum in Support—which set forth significant detail and justification for imposing sanctions—and each party was given an opportunity to be heard at the Motion hearing.

CONCLUSION

For the reasons set forth above and in BANA's Appellant Brief, this Court should rule that BANA's Motion for Sanctions was timely and remand this matter to the trial court for appropriate further proceedings, including the entry of appropriate sanctions, and grant any such other relief as is just and reasonable.

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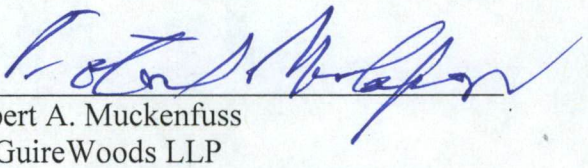
[3] Even before BANA filed its Motion, BANA made clear to Hughes' Counsel on multiple occasions that it believed his and his client's conduct was sanctionable. In particular, BANA's Counsel sent Hughes' Counsel a demand on March 21, 2018, informing Hughes' Counsel that BANA would file a sanctions motion if Hughes' Counsel refused to cover BANA's costs of defending Hughes' repeated, baseless lawsuits. BANA's Counsel also made clear during the federal proceedings that it considered Hughes' pleadings to constitute sanctionable behavior under Rule 11. Hughes even argues in his own Opposition that BANA's Counsel requested sanctions during the hearing on the Motion to Dismiss before Judge Kelly in February 2018.

Respectfully submitted, January 29, 2019,

MCGUIREWOODS LLP

By: 

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CERTIFICATE OF COUNSEL

I certify that the Final Reply Brief of Appellant complies with Rule 211(b) of the South Carolina Appellate Court Rules.

January 29, 2019

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PROOF OF SERVICE

I certify that I have served the Final Reply Brief of Appellant upon counsel of record for the Respondent by causing it to be deposited in the United States Mail, postage prepaid, on January 29, 2019, addressed to Brad D. Hewett and D. Michael Kelly, 500 Taylor Street, Post Office Box 8113, Columbia, South Carolina 29202.

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January 29, 2019

FEDERAL EXPRESS MAIL
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1220 Senate Street
Columbia, SC 29201

Re: ***Phillip Francis Luke Hughes, on behalf of the Estate of Jane K. Hughes vs. Bank of America National Association***
Spartanburg County Case Number: 2017-CP-42-02834
Court of Appeals Number: 2018-001443

Dear Ms. Kitchins:

Enclosed, please find the original and six (6) copies of Appellant's Motion for Leave to File out of Turn its Final Reply Brief along with the required $50 motion filing fee.

In addition, I have enclosed an original and seventeen (17) copies of Appellant's Final Reply Brief along with the required Proof of Service and Certificate of Counsel in connection with the above-referenced matter. Per the Court's rule, the original Final Reply Brief is unbounded for scanning purposes.

By copy of this letter, I am serving counsel of record for the Respondent via regular mail with a copy of Appellant's Motion for Leave to File out of Turn its Final Reply Brief and Appellant's Final Reply Brief.

I have enclosed a self-addressed stamped envelope for the returned filed copies. Should you require any additional information, please do not hesitate to contact our office. Thank you in advance for your kind consideration in this matter.

Sincerely,
McGuireWoods LLP

Antoine L. Robinson, NCCP
Sr. Litigation Paralegal

Enclosures
cc: D. Michael Kelly, Esq.
Brad D. Hewett, Esq.
Jamie N. Smith, Esq.