

**THE STATE OF SOUTH CAROLINA**  
**The Court of Appeals**

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**APPEAL FROM BERKELEY COUNTY**  
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

---

Case No. 2010-CP-08-3514

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Branch Banking and Trust Company.....Respondents,

v.

Wilton H. Cain and Cassandra <sup>Durrah-</sup> Cain.....Appellants,

**RECORD ON APPEAL**

---

*Wilton H. Cain August 28, 2012*

Wilton H. Cain and Cassandra M. Cain  
2886 Palmer Drive  
Charleston, SC 29414  
8435534649  
Appellants

**RECEIVED**  
AUG 31 2012  
SC Court of Appeals

**RECORD ON APPEAL INDEX**

1. **ORDERS:** .....pages 2 – 9
  - a. **Form 4 Order, Judgment of Foreclosure and sale and notice of Sale**–filed 6/30/11  
Page 2
  - b. **Proposed Order granting Appraisal dated 9/28/11 Judge Kristi Harrington, page 3**
  - c. **Order Rescinding Order granting Appraisal after Deficiency Judgment dated 10/27/11  
Page 4**
  - d. **Order denying Motion to Reconsider Order Rescinding appraisal dated 11/9/11  
page 5**
  - e. **Order Granting Motion for designation of Matter filed Out of Time 2/1/12 page 6**
  - f. **Order extending time for Respondent to file Initial Brief and Designation of  
Matter dated 2/29/12 page 7**
  - g. **Order declining to act on Appellants Motion to Deny De Novo hearing dated  
5/1/12 page 8**
  - h. **Order Dismissing Appellants Appeal dated 8/22/12 page 9**
2. **PLEADING:**.....PAGES 10 - 16
  - a. **Petition and Proposed Order for Appraisal after Deficiency Judgment dated  
9/6/11 page 10**
  - b. **Verification for Application for Appraisal dated 9/6/11 page 11**
  - c. **Motion to reconsider Order to Rescind Order for Appraisal dated 11/1/11 pages  
12 and 13**
  - d. **Respondents Motion for extension of time for filing Initial Brief and Designation  
of Matter dated 2/6/12 page 14**
  - e. **Motion to deny De Novo hearing filed 3/24/12 page 15**
  - f. **Motion to accept filing Designation of Matter out of time dated 2/1/12 page 16**
3. **TRANSCRIPT:**.....PAGE 17
  - a. **Signed statement THERE IS NO TRANSCRIPT PAGE 18**
4. **CERTIFICATE ON RECORD ON APPEAL PAGE 19**
5. **PROOF OF SERVICE FOR RECORD ON APPEAL PAGE 20**

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

FORM 4  
JUDGMENT IN A CIVIL CASE

*Harmon*

IN THE COURT OF COMMON PLEAS

CASE NO. 10-CP-08-3514

Branch Banking and Trust Company,  
PLAINTIFF(S) vs

Wilton H. Cain; Cassandra M. Durrah-Cain; Liberty  
Hall Residential Property Owners Association, Inc.;  
DEFENDANTS

CHECK ONE:

FILED  
11 JUN 03 AM 9:53  
CLERK OF COURT  
BERKELEY COUNTY, SC

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other - \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other - \_\_\_\_\_

- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  Affirmed;  Reversed;  Remanded;  Other - \_\_\_\_\_
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order. (Formal order to follow)  
 Statement of Judgment by the Court:

THE PROPERTY WHICH IS THE SUBJECT OF THIS ACTION SHALL BE SOLD AT PUBLIC SALE PURSUANT TO THE JUDGMENT OF FORECLOSURE AND SALE.

Dated at Marion, Ceran, South Carolina, this 28 day of June, 2011

Robert E. Wain  
PRESIDING JUDGE/MASTER/SPECIAL REFEREE

This judgment was entered on the 30 day of June, 2011, and a copy mailed first class this 30 day of June, 2011 to attorneys of record or parties (when appearing pro se) as follows:

Mary P. Brown  
Clerk or Officer of the Court

CIVIL CASE NUMBER  
10-CP-08-3514

STATE OF SOUTH CAROLINA )  
)  
COUNTY OF BERKELEY )  
)  
Branch Banking and Trust Company )  
PLAINTIFF(S) )  
)  
)  
VS. )  
)  
Wilton H. & Cassandra M. Durrah-Cain )  
DEFENDANT(S) )

Petition and Proposed Order for Appraisal after  
Deficiency Judgment

2011 SEP 29 PM 4:11  
MARY P. HANCOCK  
CLERK OF COURT  
BERKELEY COUNTY, SC

IT APPEARING to the Court that pursuant to South Carolina Code of Laws § 29-3-660 ET SEQ. , that an Affidavit and Verified Petition for Order of Appraisal executed by the Defendant, has been duly and properly filed in the above captioned matter with the Office of the Clerk of Court for Berkeley County, a copy of said is attached hereto;

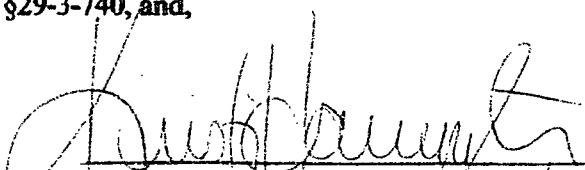
NOW, THEREFORE, on motion of Defendant, in accordance with South Carolina Code of Laws § 29-3-710, which allows for the appointment of three appraisers, one to be appointed by the Defendant, one to be appointed by the Plaintiff and one to be appointed by the Court, IT IS ORDERED that:

- 1. JOE ADAMS 843 7975222  
TRICOUNTY APPRAISALS INC, be appointed Appraiser by the Defendant;
- 2. \_\_\_\_\_, be appointed Appraiser by the Plaintiff; and,
- 3. \_\_\_\_\_ be appointed Appraiser by this Honorable Court.

IT IS FURTHER ORDERED that pursuant to the South Carolina Code of Laws §29-3-740, the appraisers are to deliver a copy of said appraisal to the Office of the Clerk of Court for Berkeley County within thirty (30) days; and,

IT IS FURTHER ORDERED that the deficiency judgment be stayed pending the outcome of the appraisal and the application of §29-3-740, and,

IT IS SO ORDERED.

  
Presiding Judge 9/28/11

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF Berkeley  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-08-3514

Branch Banking and Trust Company

Wilton H. & Cassandra M. Durrah-Cain

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court: The Order Granting an Appraisal after Deficiency Judgment signed September 28, 2011 is hereby RESCINDED.

ORDER INFORMATION

This order  ends,  does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Wilton H. Durrah-Cain      2/15/11      10/27/11  
 Circuit Court Judge      Judge's Date      Date

2011 OCT 2 PM 1:48  
 CLERK OF COURT  
 BERKELEY COUNTY

209

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY  
IN THE COURT OF COMMON PLEAS

FILED  
2011 NOV -9 PM 1:56

JUDGMENT IN A CIVIL CASE  
CASE NO: 2010CP0803514

MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

**Branch Banking And Trust Company vs. Wilton H Cain**

**CHECK ONE:**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy:  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order;  Statement of Judgment by the Court:

**Pro Se Defendant's Motion to Reconsider/Appeal Order to Rescind Order of Appraisal/And Issue Order for Appraisal is Hereby DENIED**

Dated at Moncks Corner, South Carolina, this 9th day of November, 2011.

Court Reporter:

  
PRESIDING JUDGE - Judge Kristi Harrington

This judgment was entered on the \_\_\_ day of November, 2011, and a copy mailed first class this \_\_\_ day of November, 2011, to attorneys of record or to parties (when appearing pro se) as follows:



# The South Carolina Court of Appeals

TANYA A. GEE  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

February 1, 2012

Wilton H. Cain  
Cassandra Durrah-Cain  
2886 Palmer Drive  
Charleston, SC 29414

Re: Branch Banking v. Cain, Wilton  
Case Tracking #: 2011205089

Dear Mr. Cain:

The following Order has been endorsed on your "Motion that the Court Accept Filing of Designation of Matter Out of Time" in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.  
For the Court

By s/ Tanya A. Gee  
Clerk

February 1, 2012."

Please be advised the Appellants' Designation of Matter has been received and is accepted as filed. All parties are advised that the Respondent's Initial Brief and Designation of Matter must be served and filed on or before February 13, 2012.

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

TAG/ec

cc: Samuel C. Waters, Esquire

95

# The South Carolina Court of Appeals

Branch Banking and Trust Company, Respondent,

v.

Wilton H. Cain and Cassandra Durrah-Cain, Appellants.

---

The Honorable Kristi Lea Harrington  
Berkeley County  
Trial Court Case No. 2010-CP-08-03514

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ORDER

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For good cause having been shown, the time for serving and filing the Respondent's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until March 14, 2012.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE  
For the Court

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

cc: Wilton H. Cain  
Cassandra Durrah-Cain  
Samuel C. Waters, Esquire  
Jason D. Wyman, Esquire

**FILED**

*Waters 3/29/12*

# The South Carolina Court of Appeals

Branch Banking and Trust Company, Respondent,

v.

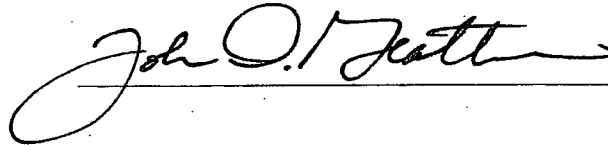
Wilton H. Cain and Cassandra Cain, Appellants.

The Honorable Kristi Lea Harrington  
Berkeley County  
Trial Court Case No. 2010-CP-08-03514

## ORDER

In response to the argument set forth in Respondent's Initial Brief, Appellants have filed a "motion to deny de novo hearing." After careful consideration, we decline to act on the motion because the issue is more appropriate for this Court's review when a panel considers the merits of this appeal. Nothing in this order prevents Appellants from setting forth the issue in their reply brief. Any reply brief shall be filed within fifteen days.

IT IS SO ORDERED.



Columbia, South Carolina

cc: Wilton H. Cain  
Cassandra Durrah-Cain  
Samuel C. Waters, Esquire  
Jason D. Wyman, Esquire

**FILED**  
Waters 5/1/10

# The South Carolina Court of Appeals

Branch Banking and Trust Company, Respondent,

v.

Wilton H. Cain and Cassandra Durrah-Cain, Appellants.

Appellate Case No. 2011-205089

~~The Honorable Kristi Lea Harrington~~  
Berkeley County  
Trial Court Case No. 2010CP0803514

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## ORDER

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Appellant has failed to provide an original proof of service for the record on appeal, as required by Rule 210 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

cc:  
Wilton Cain and Cassandra Cain

FILED  
Harter 8/22/12

9

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )  
 )  
 Branch Banking and Trust Company )  
 PLAINTIFF(S) )  
 VS. )  
 Wilton H. and Cassandra M. Cain )  
 Defendants )

IN THE COURT OF  
 COMMON PLEAS  
 Doc.No. 10-CP-08-3514

Petition and Proposed Order for  
 Appraisal after Deficiency  
 Judgment

FILED  
 2011 SEP - 6 PM 3:40  
 CLERK OF COURT  
 BERKELEY COUNTY

That Pursuant to South Carolina Code of Laws §§29-3-680 thru 29-3-760 hat the real estate subject to the Plaintiffs foreclosure action has been foreclosed upon by Robert B. Watson, Master in Equity for Berkeley County, with final sale held on September 2, 2011 in which a deficiency judgment against the Defendant, Wilton and Cassandra Cain, was sought; now comes the Defendant in this matter, and makes application within thirty (30) days after the sale of said mortgaged property, applying by verified petition to the Clerk of Court for Berkeley County, which is the County in which the Decree and Order for Sale was taken, for an Order of Appraisal of said property which is hereby listed as follows:

Brief Legal Description of Real Estate: 259 Clayburne Drive Goose Creek, SC 29445 This being the same property conveyed to Wilton H. Cain and Cassandra M. Durrah-Cain by deed of Centex homes dated September 19, 2007 and recorded on September 20, 2007 in book 6868 at page 155 in the office of the ROD for Berkeley County, South Carolina.

PERSONALLY appeared before me, Wilton H. Cain who, being duly Sworn, deposes and says as follows:

1. That Pursuant to §29-3-680 the Defendant Wilton H. Cain is timely requesting an order of appraisal in the above-filed action. *DOT ADAMS*
2. That pursuant to §29-3-710, the Court appoint TRICOUNTY APPRAISALS INC as one designated appraiser for the Petitioner. *343 787 5222*
3. That upon information and belief the mortgaged property was sold for a figure significantly beneath its appraised value and is thereby subject to §29-3-740 which states that the amount for which the property was sold beneath its appraised value should be deducted from the amount of any deficiency judgment.
4. That pursuant to §29-3-740, the return of the appraisers shall be filed and recorded by the Clerk of Court as a judgment of the Court.
5. That this property at 259 Clayburne Drive had PMI (insurance) from RMI CERT # 0726007538 (I BELIEVE number correct).
6. Mortgage Insurance reimburses Lender for loses it may incur if Borrower default on loan.
7. That the plaintiff testified in court the coverage was 25%, that the court insure that deficiency judgment reflects insurance payment to lender from PMI insurance carrier.

Affiant/Defendant  
 SWORN to before me this *6<sup>th</sup>* day of *Sept*, 20 *11*. NOTARY  
 PUBLIC FOR SOUTH CAROLINA  
 My Commission Expires: *October 20, 2013*

*Wilton H. Cain*  
*2886 Palmer Drive*  
*Charleston, SC*

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )  
 )  
 )

IN THE COMMON PLEAS  
COURT NINTH JUDICIAL  
CIRCUIT

Branch Banking and  
Trust----- )  
 )  
Plaintiff, )  
 )  
vs. )  
 )

VERIFICATION

Wilton H. and  
Cassandr M.  
Durrah-Cain---  
----- )  
 )  
Defendant. )

Docket No. 10-CP-08-825

2011 SEP -6 PM 3:40  
FILED  
CLERK OF COURT  
BERKELEY COUNTY, SC

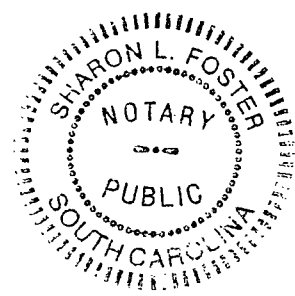
I, Wilton H. Cain appearing first before the Notary Public, state that I am  
the (Defendant) in this matter. I have prepared attached (Petition/Application for Appraisal/order)  
and know or believe the contents and allegations are true to the best of my  
knowledge, except for those matters stated which are alleged on information and belief.

Sworn to before me this  
6<sup>th</sup> day of September, 2011

Notary Public of South Carolina  
My Commission expires: October 20, 2013

Wilton H. Cain  
2886 Palmer Drive  
Charleston, SC  
29414

Sharon Foster  
NOTARY PUBLIC  
State of South Carolina  
My Commission Expires October 20, 2013  
*Sharon A. Foster*



STATE OF SOUTH CAROLINA

CIVIL CASE NUMBER 10-CP-08-3514

COUNTY OF BERKELEY

BRANCH BANKING AND  
TRUST COMPANY  
PLAINTIFF

MOTION TO RECONSIDER /  
APPEAL ORDER TO RESCIND  
ORDER OF APPRAISAL/ AND  
ISSUE ORDER FOR APPRAISAL  
OCT 27 2011 BY JUDGE  
K HARRINGTON

VS.

WILTON H.& CASSANDRA M.  
DURRAH-CAIN  
DEFENDANTS

PURSUANT TO S.C. CODE OF LAW 29-3-680 A PETITION/APPLICATION FOR APPRAISAL AFTER DEFICIENCY JUDGMENT WAS FILED BY DEFENDANTS ON SEP 6,2011 PETITION WAS TIMELY AND PROPERLY FILED IN THE CLERK OF COURT OFFICE.

AFTER MAKING NUMEROUS INQUIRES AS TO THE OUTCOME OF THE PETITION WITH THE CLERK OF COURT, BEING INFORMED THE JUDGE HAD IT. ON OCT 28, 2011 THE DEFENDANTS RECEIVED BY MAIL TWO ORDERS ONE GRANTING APPRAISAL DATED SET 28, 2011 , WHICH DEFENDANTS HAD NEVER RECEIVED NOR HAD KNOWLEDGE IT HAD BEEN SIGNED, THE OTHER AN ORDER RESCINDING ORDER FOR APPRAISAL SIGNED OCT 27,2011.

DEFENDANTS FIND RECEIVING BOTH ORDERS AT THE SAME TIME STRANGE, THAT THE COURT WOULD SIGN AN ORDER AND HOLD TO SEND IT WITH AN ORDER RESCINDING IT.

DOES THE COURT FIND IT SIGNED THE ORDER FOR APPRAISAL IN ERROR.

THE COURT IN ITS ORDER TO RESCIND THE ORDER OF APPRAISAL STATED { THIS ACTION CAME TO TRAIL OR HEARING BEFORE THE COURT. THIS ISSUES HAVE BEEN TRIED OR HEARD AND A DECISION RENDERED} THIS DEFENDANT HAS NO KNOWLEDGE OF ANY HEARING OR TRAIL BEING HELD NO KNOWLEDGE OR NOTICE OF ANY HEARING TO BE HELD. ON WHAT DATE WAS HEARING OR TRAIL HELD IN THIS COURT. WAS PLAINTIFF PRESENT.

THIS IS AN EQUITY ISSUE IF A HEARING OR TRAIL WAS HELD DEFENDANTS RIGHTS TO HAVE KNOWLEDGE OF SAME SHOULD HAVE BEEN ENFORCED BY COURT.

WHAT EVIDENCE CONVINCED TO COURT IT ERROR IN SIGNING ORDER OF APPRAISAL ON SEP 28, 2011. AND TO ISSUE ORDER TO RESCIND.

1. DEFENDANT REMINDS COURT THAT THE STATUTORY LANGUAGE REQUIRES SIGNATURE TO BE ON THE PAGE WITH HIGHLIGHTED STATEMENT NOT NEXT OR PRECEDING PAGE. DOCUMENTS ISSUED AT CLOSURE AND THERE IS NO SIGNATURE ON THE REQUIRED PAGE WITH WAIVER LANGUAGE. (PAGE ATTACHED)

2. AT HEARING HELD ON SEP 2 2011 IN MASTER OF EQUITY COURT PLAINTIFF WAS NOTIFIED AS TO THE DEFENDANTS INTENT TO FILE APPLICATION FOR APPRAISAL AND STATED DEFENDANT HAD RIGHT FILE AND WERE NOT WAVED.

3. DEFENDANTS CANCELLING OR WAVING A RIGHT TO APPRAISAL IS CONSIDERED COVERED BY EQUITABLE DOCTRINE WITHOUT PREJUDICE MUST BE EXPLICITLY UNDERSTOOD AND WITH KNOWLEDGE . AND NOT WITH TRICKERY.

4. DEFENDANT NEVER INTENDED TO WAIVE RIGHT FOR APPRAISAL AT MORTGAGE SIGNING. NOR AT ANY OTHER TIME.

5. FURTHER TO SOUTH CAROLINA SUPREME COURT RULED (AFFIRMED) CONTRACTUAL WAIVER OF APPRAISAL RIGHTS IS INVALID AS CONTRARY TO PUBLIC POLICY IN S C N MORTGAGE CORP VS. WHITE 1995 47 S C L REV,37

REQUEST ORDER TO RESCIND ORDER FOR APPRAISAL TO BE RESCINDED ISSUED OCT 27,2011 AND ORDER FOR APPRAISAL BE ISSUED. FURTHER ORDER THAT DEFICIENCY JUDGMENT BE STAYED PENDING THE OUTCOME OF THE APPRAISAL AND ITS APPLICATION

  
WILTON H.CAIN DEFENDANT

2886 PALMER DR.  
CHARLESTON, SC  
8435534649

\_\_\_\_\_  
JUDGE

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2010-CP-08-3514

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

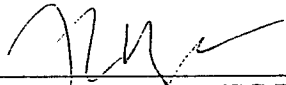
v.

Wilton H. Cain; Cassandra M. Cain;  
Liberty Hall Residential Property Owners, Association, Inc.....Defendants,

of whom Wilton H. Cain and Cassandra M. Cain are the .....Appellants.

**MOTION FOR EXTENSION OF TIME**

Due to counsel's heavy workload at this time, Respondent respectfully requests a 30 day extension on filing the Initial Brief of the Respondent and Designation of Matter to be Included in the Record on Appeal, which are due on February 13, 2012.

  
\_\_\_\_\_  
Jason D. Wyman (SC Bar # 100271)  
Rogers Townsend & Thomas PC  
220 Executive Center Drive – Suite 109 (29210)  
P.O. Box 100200  
Columbia SC 29202-3200  
Telephone (803) 771-7900  
Attorneys for Respondent Branch Banking and  
Trust Company

February 6, 2012

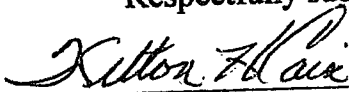
Appellants submits this Reply (return) to Respondents "Return to Appellants Motion to Deny De Novo Hearing". It is the Court that determines the compliance with the Rules not the opposing party. The Appellants are not experts with the form, yet it was clearly the Appellants intention for it to be a motion to Deny Respondent Request for a De Novo Hearing. The Appellants in their motion stated the facts and arguments so it would be clear why Appellants believed Respondent Request for a De Novo should be denied.

Out of caution so that it is abundantly clear it was a motion to deny Respondent request for a De Novo hearing. In Appellants requests before the Circuit Court the Respondents failed under Rule 240. Respondents failed to REQUEST STAY OF TIME (B), NO RETURN (E), NO REPLY (F) the Respondent failed to be an active party to the petition before the court ( application for an Appraisal).

In the Circuit Court Ruling On Appellants Petition for a Appraisal and Motion to Reconsider there are no genuine issue of material facts missing the Court viewed the fact and made a ruling in favor of a non moving party. (Whatley v. Cova. Ins. Co. 189 F. 3d 1310, 1313 ( 11<sup>th</sup> Cir.1999). The court should consider the Appellants factual determination are correct unless a CONTESTING PARTY shows by a preponderance of evidence that the determination by the Court was unreasonable or clearly erroneous. The Court attention is Called to the fact that there was NO CONTESTING PARTY TO THE PETITION FOR APPRAISAL BEFORE THE CIRCUIT COURT. ( Concrete Pipe and Prods. V. Construction Laborers Pension Trust, 508,U.S. 602,623 1993 and Alexander v. Fulton County, 207 F.3d 1303,1326 (11<sup>th</sup> Cir.2000))

For the foregoing reasons, The Appellants respectfully request the Court to accept the Appellants earlier filing on March 20, 2012 as a Motion to Deny Respondent request for a De Novo hearing and not a reply, Appellants request Respondent request for a De Novo Hearing be Denied.

Respectfully submitted,



Wilton Cain and Cassandra Cain

2886 palmer Drive  
Charleston, SC

March 24, 2012  
(843) 553-4649

**MOTION THAT COURT ACCEPT FILING OF  
DESIGNATION OF MATTER OUT OF TIME  
( case tracking# 2011205089)**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM BERKELEY COUNTY  
COURT OF COMMON PLEAS

---

KRISTI HARRINGTON, CIRCUIT COURT JUDGE

---

CASE NO. 2010-CP-0803514

---

Branch Banking and Trust Company      Respondent

V.

Wilton H. And Cassandra M. Cain      Appellant

---

**MOTION THAT THE COURT ACCEPT FILING OF  
DESIGNATION OF MATTER OUT OF TIME**

The Appellant request the Court extend the filing time and accept Appellant Motion and Designation of Matter for the record and Notice there are no Transcripts in this case. Under Rule 263 the Court had the authority to grant extension of time.

The Appellant is representing self and was not aware of the requirement for separate motion on Designation of Matter, Appellant has however previous furnished Court with all the information on the case, and the Filing of the Notice and Brief were timely



Wilton H. And Cassandra M. Cain  
2886 Palmer Dr. Charleston, SC  
29414  
(843) 553 4649

**MOTION THAT COURT ACCEPT FILING OF  
DESIGNATION OF MATTER OUT OF TIME  
( case tracking# 2011205089)**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM BERKELEY COUNTY  
COURT OF COMMON PLEAS

---

KRISTI HARRINGTON, CIRCUIT COURT JUDGE

---

CASE NO. 2010-CP-0803514

---

Branch Banking and Trust Company      Respondent

V.


Wilton H. And Cassandra M. Cain      Appellant

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**MOTION THAT THE COURT ACCEPT FILING OF  
DESIGNATION OF MATTER OUT OF TIME**

The Appellant request the Court extend the filing time and accept Appellant Motion and Designation of Matter for the record and Notice there are no Transcripts in this case. Under Rule 263 the Court had the authority to grant extension of time.

The Appellant is representing self and was not aware of the requirement for separate motion on Designation of Matter, Appellant has however previous furnished Court with all the information on the case, and the Filing of the Notice and Brief were timely

  
Wilton H. And Cassandra M. Cain  
2886 Palmer Dr. Charleston, SC  
29414  
(843) 553 4649

**NOTICE THAT THERE IS NO  
TRANSCRIPT IN THIS CASE**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**CASE TRACKING #2011205089**

APPEAL FROM BERKELEY COUNTY  
COURT OF COMMON PLEAS

KRISTI HARRINGTON, CIRCUIT COURT JUDGE

CASE NO. 2010-CP-0803514

BRANCH BANKING AND TRUST COMPANY

RESPONDENT,

V.

WILTON H. CAIN AND CASSANDRA M. CAIN

APPELLANT,

**THERE IS NO TRANSCRIPT**

AS I STATED IN THE BRIEF OF APPEAL THERE WAS NO COURT HEARING FOR  
EITHER ORDER ISSUED ON OCTOBER 27, 2011 OR NOVEMBER 9, 2011 JUDGE KRISTI  
HARRINGTON ISSUED ORDER AFTER VIEW OF FILE WITHOUT A HEARING.

AFTER REQUESTING ADDITIONAL INFORMATION FROM JUDGE KRISTI  
HARRINGTON COURT BY EMAIL , THE ADMINISTRATIVE ASSISTANT/LAW CLERK  
STINSON WOODWARD FERGUSON EMAILED ME STATING THERE WAS NO  
HEARING JUDGE HARRINGTON ISSUED A FORM ORDER WITHOUT A HEARING.--

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WILTON H. CAIN AND CASSANDRA M. CAIN  
2886 PALMER DRIVE CHARLESTON, SC 29414

843 553 4649

APPELLANT

CC. SAMUEL WATERS CSC, BAR 5958  
ROGERS TOWNSEND AND THOMAS, PC  
P.O.BOX 100200, COLUMBIA, SC 29202  
ATTORNEY FOR BRANCH BANKING AND TRUST COMPANY

**CERTIFICATE**

**I WILTON H. CAIN CERTIFY THAT THIS IS THE RECORD ON APPEAL**

- 1a. Form 4 Order, Judgment of Foreclosure and sale and notice of Sale—filed 6/30/11  
Page 2**
- 1b. Proposed Order granting Appraisal dated 9/28/11 Judge Kristi Harrington, page 3**
- 1c. Order Rescinding Order granting Appraisal after Deficiency Judgment dated  
10/27/11 Page 4**
- 1d. Order denying Motion to Reconsider Order Rescinding appraisal dated 11/9/11  
page 5**
- 1e. Order Granting Motion for designation of Matter filed Out of Time 2/1/12 page  
6**
- 1f. Order extending time for Respondent to file Initial Brief and Designation of  
Matter dated 2/29/12 page 7**
- 1g. Order declining to act on Appellants Motion to Deny De Novo hearing dated  
5/1/12 page 8**
- 1h. Order Dismissing Appellants Appeal dated 8/22/12 page 9**
- 2. PLEADING:.....PAGES 10 - 16**
  - 2a. Petition and Proposed Order for Appraisal after Deficiency Judgment dated  
9/6/11 page 10**
  - 2b. Verification for Application for Appraisal dated 9/6/11 page 11**
  - 2c. Motion to reconsider Order to Rescind Order for Appraisal dated 11/1/11 pages  
12 and 13**
  - 2d. Respondents Motion for extension of time for filing Initial Brief and  
Designation of Matter dated 2/6/12 page 14**
  - 2e. Motion to deny De Novo hearing filed 3/24/12 page 15**
  - 2f. Motion to accept filing Designation of Matter out of time dated 2/1/12 page 16**
- 3. TRANSCRIPT:.....PAGE 17**
  - 3a. Signed statement THERE IS NO TRANSCRIPT PAGE**
- 4. CERTIFICATE ON RECORD ON APPEAL PAGE 18 AND 19**
- 5. PROOF OF SERVICE FOR RECORD ON APPEAL PAGE 20**

**I CERTIFY THIS IS THE RECORD ON APPEAL AND THIS RECORD CONTAIN RELEVANT INFORMATION TO THIS APPEAL, FURTHER I CERTIFY THAT THE RESPONDENTS TOOK NO PART AND FILED NO PETITION OR MOTIONS WITH REFERENCE TO APPRAISAL THEY WERE SILENT THEY WERE ABSENT.**

*Wilton H. Cain Appellant*

**WILTON H. CAIN AND CASSANDRA M. CAIN  
2886 PALMER DRIVE  
CHARLESTON, SC  
8435534649**

**AUGUST 28, 2012**

**THE STATE OF SOUTH CAROLINA**  
**The Court of Appeals**

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**APPEAL FROM BERKELEY COUNTY**  
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

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Case No. 2011-205089

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Branch Banking and Trust Company.....Respondents,

v.

Wilton H. Cain and Cassandra M. Cain.....Appellants,

**PROOF OF SERVICE**

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I certify that I have served the RECORD ON APPEAL tracking No.2011-205089 on Respondents by depositing a copy in the United States Mail, postage prepaid, on August 28, 2012, addressed to Jason D. Wyman(SC Bar# 100271) Roger Townsend & Thomas PC at 220 Executive Center Drive (29210) P.O. Box 100200 Columbia SC 29202-3200.

Wilton H. Cain August 28, 2012

Wilton H. Cain Appellants  
2886 Palmer Drive  
Charleston, SC 29414