

**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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JUN 18 2019

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 MOTION TO DISMISS

Respondent Wells Fargo Bank, N.A. as Trustee for Bear Stearns Asset Backed Securities I Trust 2004-BO1 ("Wells Fargo"), through undersigned counsel, hereby moves to dismiss Appellant Delbert R. Tangeman's appeal in its entirety and states as follows:

1. This *pro se* appeal was initiated in October 2017. Yet as of the date of this filing – approximately 20 months later – the briefing and record are not yet complete, there are no present deadlines for anything to happen, and the case is at a standstill with no end in sight.

2. The briefing and record are not yet complete for two reasons: (1) the Appellant refuses to follow the rules of this Court and continually fails to comply with the Orders of this Court, and (2) the Court continues to give this *pro se* appellant additional opportunities to litigate his appeal, despite his clear disinterest in doing so.

3. Wells Fargo certainly understands that *pro se* appellants should be afforded some latitude in navigating the rules of this Court. But that latitude must have limits. A respondent should not be stuck in an unresolved appeal in perpetuity (and unfairly prejudiced as a result) simply because an appellant refuses to follow the rules. In any event, a *pro se* appellant should be given no latitude to flout this Court's Orders.

4. The Appellant is wasting the time, energy, and resources of this Court and of Respondent Well Fargo. The time has come for this Court to dismiss this appeal. The below procedural history, as well as the current stalled posture of this case, mandate that conclusion.

**THE APPELLANT'S MYRIAD DEFICIENCIES
HAVE UNDULY DELAYED THESE PROCEEDINGS¹**

5. 10/24/17² – Appellant's initial Notice of Appeal was deficient, according to this Court, for three separate reasons: (1) failure to attach the order or judgment being appealed, (2)

¹ In accounting for the many ways in which this Appellant has wasted the time and resources of this Court and of Respondent Wells Fargo, it must be remembered that this appeal is the Appellant's *second* appeal in this case. The first appeal – assigned Case No. 2017-001799 – was initiated with the filing of an initial brief (not a notice of appeal) and was subsequently, and summarily, dismissed by this Court. (R. pp. A40–A49).

² For the Court's reference, the identified dates refer to the dates assigned to each case event, appearing on the left hand column of the electronic docket in this case.

failure to submit the correct filing fee, and (3) failure to provide proof of filing the notice of appeal with the trial court.

6. 11/01/17 – Appellant failed to order the underlying transcript, according to this Court, within the time allotted.

7. 12/08/17 – Appellant’s Initial Brief was deficient, according to this Court, for the following reasons: (1) Appellant failed to redact personal data identifiers and other sensitive information, (2) Appellant failed to file a Designation of Matter to be Included in the Record on Appeal, (3) Appellant failed to sign his Initial Brief, and (4) Appellant’s Initial Brief did not comply with SCACR 208 and 267.

8. 12/19/17 – Appellant’s motion for an extension of time to correct the deficiencies identified by the Court in its December 8, 2017 letter was itself deficient, according to this Court, for failure to submit the required filing fee. (*First Failure to Submit Filing Fee*)³

9. 01/04/18 – Although Appellant corrected the deficiencies identified by this Court in its December 8, 2017 correspondence, Appellant’s prior motion for an extension of time

³ Given the consistency with which the Appellant was notified of his obligation to submit a \$25.00 filing fee with a motion (as recounted herein), the Court must assume – *at some point* – that the Appellant’s continued failure to submit the filing fee is a purposeful attempt to delay these proceedings. Even a *pro se* party can (and should) be expected to not make the same mistake over and over and over again. It is a matter of pure fairness that this Court hold a *pro se* party to this minimal standard in the very least. One need not be a lawyer to follow directions.

remained deficient, according to this Court, for his continued failure to submit the necessary filing fee. (*Second Failure to Submit Filing Fee*)⁴

10. 04/25/18 – Appellant’s motion to file a reply brief out of time was deficient, according to this Court, for failure to submit the required filing fee. (*Third Failure to Submit Filing Fee*)

11. 04/25/18 – Appellant’s reply brief itself was deficient, according to this Court, for failure to comply with the form and content requirements of SCACR 208 and 267.

12. 06/08/18 – Appellant’s second attempt to file a reply brief was still deficient, according to this Court, for failure to comply with the form and content requirements of SCACR 208 and 267.

13. 08/21/18 – Appellant’s motion for an extension of time to file the Record on Appeal was deficient, according to this Court, for failure to submit the required filing fee. (*Fourth Failure to Submit Filing Fee*)

14. 10/01/18 – Appellant’s improper motion to strike the documents identified by Respondent on its Designation of Matter was deficient, according to this Court, for failure to submit the required filing fee. (*Fifth Failure to Submit Filing Fee*)

15. 10/25/18 – The Record on Appeal submitted by the Appellant – apart from not even including the documents identified by Respondent in its Designation of Matter – was deficient,

⁴ In its December 19, 2017 correspondence, this Court stated that the Appellant was required to pay the filing fee for his December 18, 2017 motion by December 29, 2017 “or your motion will not be considered.” The Appellant did not pay the filing fee by December 29, 2017. Instead, he paid the filing fee on January 9, 2018, and only after a second reminder set forth in the Court’s January 4, 2018 letter. Despite not doing what the Court instructed, and despite the Court’s express statement in its December 19, 2017 correspondence that it would not consider the motion in this circumstance, the Court not only considered the motion but granted it.

according to this Court, for failure to include a certificate of service and failure to list counsel for the Respondent on the cover page.

16. 10/25/18 – The Appellant’s proposed final briefs were deficient, according to this Court, because the content was identical to the previously filed Record on Appeal, rather than being identical to the initial briefs filed by the Appellant (but for citations to the Record on Appeal).

THE APPELLANT’S IMPROPER MOTIONS AND EXCESSIVE EXTENSION REQUESTS HAVE ALSO UNDULY DELAYED THESE PROCEEDINGS

17. 09/27/18 Motion to Strike – Despite the Appellant’s obligation to file and serve a Record on Appeal that includes “all matter designated to be included by any party,” SCACR 210(c), the Appellant filed a Record on Appeal that did not include the documents designated by the Respondent, and he simultaneously filed a “Motion to Strike” from the Record on Appeal the documents designated by the Respondent.⁵ The Appellant filed this motion after requesting and obtaining an extension of time to assemble the Record on Appeal. In other words, the Appellant used the extension of time afforded him by this Court, not to prepare and assemble the Record on Appeal but, instead, to file this frivolous motion. In so doing, the Appellant unquestionably took advantage of the leniency afforded to him, as a *pro se* litigant, by this Court. Further underscoring the absurdity of the Motion to Strike is the fact that one of the documents Appellant sought to strike was a motion he made before the trial court styled “Motion to Reconsider and Open the Case.” The trial court’s ruling on that motion is the sole issue on appeal. The filing of this frivolous Motion to Strike required Respondent to file not only a Return to the Motion to Strike

⁵ By excluding documents designated by the Respondent and simultaneously filing a motion to strike, the Appellant made clear that he understands his requirements under the applicable rules to include Respondent’s designated documents in the Record on Appeal. The Appellant simply made an intentional decision to not follow the rules. Again, a party need not be a lawyer to read and follow SCACR 210(c).

but also a separate Motion to Supplement the Record on Appeal, causing not only delay but also the expenditure of further legal fees. And despite Respondent's very reasonable request under these circumstances, the Court did not require the Appellant to pay for the Respondent's attorneys' fees.

18. 11/05/18 Motion to Amend Appellant's 'Designation of Matter' & 'Final Reply Brief' – At a time when the Appellant had already submitted a Record on Appeal (albeit without Respondent's designated documents) and had already submitted a Final Reply Brief (albeit in a deficient manner according to this Court), the Appellant sought to amend both filings in the following ways:

1. Ad page 6A “Notice of Hearing to open the case”
2. Ad Transcript ,
3. Order added, 3. Newly discovered evidence & applicable legal review, See p. 24”**Wicked Default**” & P. 28 “**Unclean Hands**”.
4. As in “Record on Appeal” & Exhibits.

(emphasis in original). Following the above sequence of letters, numbers and punctuation, the Appellant included a one-page “Index” listing the documents to be included in the Record on Appeal, a one-page document titled “Proof of Service of Appellant's Final Reply Brief,” a one-page document purporting to be a certificate of service of the underlying motion, and then a one-page document styled “Designation of Matter to be Included in the Appellant's Final Brief.” Respondent filed no return to this motion because it did not even understand what Appellant was asking this Court to do and did not want to waste any more time and energy on this appeal than has already been wasted, assuming that this Court would eventually dismiss the appeal in the very near future.

19. 12-31-18 Motion to Amend Appellant's Initial Reply Brief – After Appellant had already submitted a *Final* Reply Brief, he sought permission to amend his *Initial* Reply Brief. Notably, the motion did not explain how Appellant wanted to amend his Initial Reply Brief, nor

did it provide any argument or explanation for why an amended brief was needed or warranted. Respondent filed no return for the same reasons outlined above.

20. Despite being a *pro se* party, the Appellant has clearly figured out at this point that he can buy himself thirty additional days just by filing something that says “motion,” even if the filing itself makes no sense whatsoever (and even if he does not pay the filing fee for weeks later). The time has come for this Court to stop allowing this *pro se* litigant to play these games and take advantage of the system.

21. In addition to the above three substantively improper motions, the Appellant has further delayed these proceeding by seeking – and obtaining – five extensions of time during the 20-month life of this appeal. These motions for an extension were made on the following dates: 12/18/17, 04/20/18, 06/18/18, 08/20/18, and 12/31/18.

**THE APPELLANT’S CIRCUMVENTION OF COURT ORDERS
HAS UNDULY DELAYED THESE PROCEEDINGS**

22. Time after time, the Appellant has made deficient filings, the Court has instructed the Appellant to correct the deficiencies within a certain time frame (threatening dismissal in the event of non-compliance), and the Appellant – on the last day of the time frame – files a motion for an extension. The Appellant is making the motions, unfortunately knowing the Court will grant them, for the purpose of keeping this frivolous appeal alive.

23. 12/08/17 – The Court told the Appellant that his appeal “will be dismissed” if he failed to correct certain deficiencies in his Initial Brief by December 18, 2017. The Appellant did not correct the deficiencies by that date. Instead, on December 18, 2017 (the date for compliance), he filed a motion for an extension of time to fix the deficiencies. That motion was itself deficient, as noted in the Court’s December 19, 2017 letter. Nevertheless, the appeal was not dismissed.

24. 06/08/18 – The Court told Appellant to correct deficiencies in his Initial Reply Brief by June 18, 2018. The Appellant did not correct the deficiencies by that date. Instead, on June 18, 2018 (the date for compliance), he filed a motion for an extension of time to fix the deficiencies.

25. 12/03/18 – The Court told Appellant to serve and file a supplemental record on appeal as well as Appellant’s final briefs by January 2, 2019 “or this appeal will be dismissed.” The Appellant did not take those actions by that date. Instead, on December 31, 2018, the Appellant filed a motion for an extension of time to file a supplemental record on appeal. Importantly, the Appellant *did not* seek an extension of time to serve and file final briefs. And the Appellant *did not* file final briefs by January 2, 2019, as instructed by this Court “or this appeal will be dismissed.” Nevertheless, the appeal *was not* dismissed. It should have been dismissed then, and it should be dismissed now.

THE APPELLANT’S COMPLETE DISREGARD FOR THE COURT’S MOST RECENT ORDER HAS LEFT THIS CASE AT AN UNTENABLE STANDSTILL

26. 04/04/19 – The Court ordered the parties to serve and file final briefs by May 6, 2019. Respondent had already filed its final brief, so this directive applied to the Appellant only, as confirmed by the Clerk’s Office via phone.

27. May 6, 2019 has come and gone. But Appellant has never filed final briefs incorporating citations to the Record on Appeal.

28. Nothing has happened in this case since the Court’s April 4, 2019 directive because the briefing is not complete. And the briefing is not complete because the Appellant has failed to file final briefs.

29. If this Court ever gets to the point of reviewing the merits of this appeal, it would see just how frivolous this entire appeal is. And Respondent would be happy for the Court to simply make a merits determination if that could be done soon. But this case is not on track to

ever reach that point of review. And that is purposeful on the Appellant's part. Respondent truly hopes that, based on the above summary, the Court can see this clearly now.

30. The time has come for this appeal to be dismissed.

**THE APPELLANT SHOULD NOT BE AFFORDED
ANY MORE CHANCES TO LITIGATE HIS APPEAL**

31. Given the foregoing history, Respondent will go ahead and address the Appellant's inevitable responses to this Motion.

32. First, the Court should not entertain or permit, in any fashion whatsoever, the filing of a motion for an extension of time, by Appellant, to respond to this motion. The fact that Respondent is forced to file this motion, thereby giving the Appellant ten additional days to file a return, already keeps this case pending for ten more days than it should be pending. The Appellant's prior extension requests and other deficiencies have already dragged this case out long enough. Moreover, any extension request premised on a need for additional time should not be believed based on the foregoing procedural history.

33. Second, the Court should not accept from the Appellant, in response to this motion (and probably before the deadline to file a return to the motion), the submission of final briefs in compliance with this Court's April 4, 2019 order. The Appellant has already missed that deadline by about six weeks. During those six weeks, he very well could have submitted final briefs. He chose not to. He should not be permitted to file them now, only *after* Respondent has been forced to spend the time and money to prepare and file this motion. The Appellant's games have gone on long enough. The Respondent assumes (and hopes) the Court has grown tired of this *pro se* litigant abusing the leniency it has afforded him.

**THE APPELLANT SHOULD BE FORCED TO PAY THE RESPONDENT'S
FEES AND COSTS INCURRED IN PREPARING AND FILING THIS MOTION**

34. Finally, in addition to dismissing this appeal in its entirety, the Court should require the Appellant to pay the Respondent's fees and costs incurred in preparing and filing this motion.

35. This is not a circumstance where the Respondent made a discretionary decision to see if it could get a case or appeal dismissed in the early stages based on a procedural or technical argument.

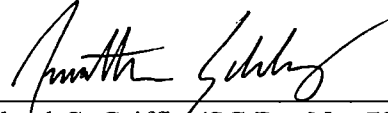
36. To the contrary, the Respondent was forced into this appeal by the Appellant, and then dragged through 20 months of procedural minutia, all unrelated to the merits of this completely frivolous appeal. Moreover, the Appellant has successfully navigated this case into a rut, whereby it will never reach a merits decision – and therefore will never end – unless Respondent filed this motion. Viewed in that light, Respondent had no choice but to file this motion.

37. Because the Appellant's actions forced the Respondent to file this motion, and given the other extraordinary circumstances outlined herein, the Appellant should be forced to pay the Respondent's attorneys' fees incurred in preparing and filing this motion pursuant to SCACR 222.

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

- a. That the Court dismiss this appeal in its entirety;
- b. That the Court order the Appellant to pay the Respondent's fees and costs incurred in the preparation and filing of this motion to dismiss; and
- c. That the Court issue such other and further relief as it deems appropriate.

This the 17th day of June, 2019.



Michael C. Griffin (SC Bar No. 72868)
Jonathan E. Schulz (SC Bar No. 79850)
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*Attorneys for Respondent Wells Fargo Bank, N.A. as
Trustee for Bear Stearns Asset Backed Securities I
Trust 2004-BO1*

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Defendants

of whom

Delbert R. Tangeman is the

Appellant

PROOF OF SERVICE

I hereby certify that a copy of the foregoing **RESPONDENT'S MOTION TO DISMISS** was sent via first-class U.S. Mail, postage prepaid, and addressed as follows:

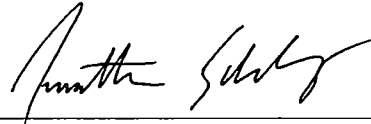
Delbert R. Tangeman

104 Riverside Lane
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Delbert R. Tangeman
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Appellant

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This the 17th day of June, 2019.



Jonathan E. Schulz (SC Bar No. 79850)



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June 17, 2019

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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JUN 18 2019

SC Court of Appeals

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 seven (7) copies of Respondent Wells Fargo's Motion to Dismiss. Please file the original, retain six (6) copies per SCACR 240(d), and return one (1) file-stamped copy in the enclosed pre-paid Federal Express envelope provided for your convenience.

I have also enclosed a check from my firm in the amount of twenty-five dollars (\$25.00) to pay for the filing fee.

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)
James D. Floyd (with encl. via US Mail)

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SOUTH CAROLINA COURT OF APPEALS
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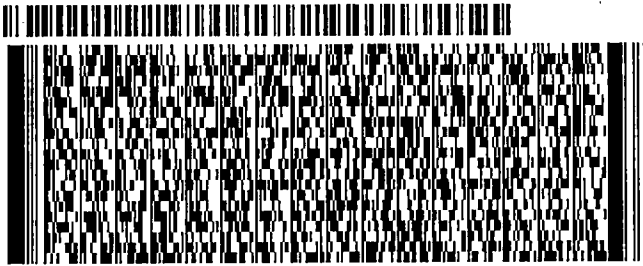
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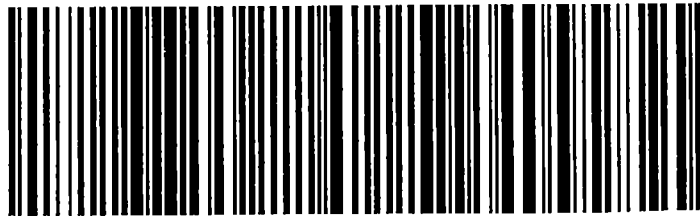
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SC Court of Appeals

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