

**NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Joseph F. Strickland, Master in Equity Court Judge

**RECEIVED**

**Nov 30 2020**

**SC Court of Appeals**

Case No. 2014-CP-40-2063

U.S. Bank, National  
Association, as trustee for the  
Holders of the Banc of  
America Funding Corporation,  
2008-FTI,

Respondent,

V

Rhonda Lewis Meisner a/k/a  
Rhonda L. Meisner, Bank of  
America, N.A. and SCBT  
of whom Rhonda L. Meisner  
is the

Appellant.

Return to Respondent's Motion to Dismiss and Request for Extension of Time to  
file Final Briefs (First)

The appellant respectfully files her return to the Respondent's Motion to Dismiss.

The appellant disagrees with the Respondents that she has not indicated an extraordinary circumstance, based on the clear definition of the phrase "extraordinary circumstances" which warrant the Court of Appeals consideration of her inability to complete the record on appeal, during the second extension of time.

As noted by the respondents, the Appellant was unable to and in fact did not complete the record on appeal and requested a slight extension of two business days (which also included the

weekend) citing extraordinary circumstances, as noted in the Respondent's motion. The extraordinary circumstance noted was the failure of the Respondent to follow the appellate court rules, when they included in their designation of matter, items not presented to the lower court. This mistake was confounded by the appellant initially missing the rule violation by the Respondents and compounded by the inability to access the written record and the closure of the courts.

Extraordinary Circumstances mean "factors not normally incident to or foreseeable during an administrative proceeding or task. It includes circumstances *beyond a party's control* that normal prudence and experience could not foresee, anticipate or provide for." *Law Insider online quoting Black's legal dictionary* citation to 13 documents. (emphasis by appellant.)

The appellant avers an adversary's failure to follow the rules regarding the designation of matter is just such a process and is certainly out of the appellant's control. Here, the respondent's designated material that was not presented to the lower court, was difficult to determine whether or not it had been presented based on the inability to physically review the file, for the following reasons. Once a stamped copy of a discovery document could not be located in the appellant's files, she reviewed the online files that were scanned into the court's file, it was then necessary for the Appellant to call the Clerk of Court to try and find the filing online in the event the appellant missed the filings; call the Master in Equity's office to ask the staff to review the hard copy file, and finally call the Respondent to request a review of their files to see if a stamped copy of the designated material was in their files, and there was none found.

While the Respondent's error, may have been found more quickly during ordinary times because the appellant could view the physical file, the court house is closed and the appellant had to rely on others which put her request in que behind other requests. That is because, everyone

else also must rely on the Clerk's to look up things in their file instead of being able to view the files themselves. As such, the appellant avers, she has provided an extraordinary circumstance, and that is creation of a record on appeal during a pandemic when the Respondent's designate material not presented to the lower court for submission into the record and it takes multiple hours to resolve the situation. Additionally, there was no separate Order granting summary judgment which the clerk's and the Master in Equity had to clarify upon review of the records, it was included in the Order for Judgement and Sale; however, the appellant avers this was too unusual because the grant of summary judgment had to occur before the order and judgment of sale should have been processed.

Finally, this Court has determined that appeals should be decided on the merits and not on technical dismissals. This is one such appeal in that the appellant avers the Respondent never had standing it would be manifestly unfair for the Respondent to win, in part, based on their own failures to follow the rules.

For this and all references to case law, the appellant urges this Court to grant the extension and decide the case on the merits and not on the Respondent's request for dismissal.

November 30, 2020

*s/ Rhonda L. Meisner*

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Appellant

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PROOF OF SERVICE

Rhonda L. Meisner has served a copy of her Return to Respondent's motion to dismiss and request for additional time to serve the Final Brief by emailing a copy to [bcalub@mcguirewoods.com](mailto:bcalub@mcguirewoods.com).

November 30, 2020

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Appellant