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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE BROOKS B. GOLDSMITH

CASE NO.: 2018-CP-07-00409
APPELLATE NO.: 2020-000128

Gary Victory,

Appellant,

Vs.

Wells Fargo Bank, NA and
Mortgage Contracting Services, LLC,

Defendants.

Of Whom Mortgage Contracting Services, LLC is

Respondent

And

Mortgage Contracting Services, LLC

Respondent

Vs.

Ryan Davis d/b/a Davis Home Preservation,

Defendant.

NOTICE OF MOTION AND MOTION FOR CONFIRMATION

Amanda K. Dudgeon
SC Bar No. 72516
CHANDLER & DUDGEON, LLC
180 EAST BAY ST., SUITE 200
CHARLESTON, SC 29401
843-577-5412 (O)
843-577-5650 (F)
mandi@chandlerdudgeon.com
Attorneys for Wells Fargo Bank, NA

Pursuant to Rule 240, SCACR, Wells Fargo Bank, N.A. (hereinafter “Wells Fargo”), hereby respectfully moves this court for an order confirming that Wells Fargo is not a party to this appeal and need not respond to Appellant’s Initial Brief, as more fully set forth herein.

Summary of Argument

Wells Fargo is not a party to this appeal, as Appellant has not appealed Judge Goldsmith’s October 29, 2019 Order granting Summary Judgment to Wells Fargo. Further, the instant matter has been pending for nearly fourteen months, and Wells Fargo is not, and never was, listed as a “Respondent” in this appeal. Indeed, the caption from this matter, which has been confirmed by this Court, lists Mortgage Contracting Services, LLC (hereinafter “MCS”) as the sole Respondent. Any attempt by Appellant to include Wells Fargo in this appeal at this late stage would flagrantly circumvent applicable law and rules and be unduly prejudicial to Wells Fargo.

Factual Background & Procedural History

I. Underlying Matter

In the underlying matter, Defendant Wells Fargo, Defendant MCS, and Third-Party Defendant Ryan Davis d/b/a Davis Home Preservation (“Davis”) filed respective motions for summary judgment. On October 22, 2019, Judge Goldsmith signed an Order granting Summary Judgment to Davis. On October 29, 2019, Judge Goldsmith signed two separate Orders – one granting Summary Judgment to Wells Fargo and one granting Summary Judgment to MCS. On November 7, 2019, Plaintiff filed a Motion for Reconsideration, seeking reconsideration of the three Orders granting summary judgment to Wells Fargo, Ryan Davis, and MCS, respectively. On January 10, 2020, Judge Goldsmith denied Plaintiff’s Motion for Reconsideration in full.

II. Appellate Case

On January 27, 2020, Appellant filed his Notice of Appeal, appealing "... the Orders of the Honorable Brooks P. Goldsmith entitled 'Order Denying Motion for Reconsideration' filed January 10, 2020' and 'Order Granting Summary Judgment to Mortgage Contracting Services, Inc.' filed October 29, 2020." Appellant attached these two Orders to his Notice of Appeal. Appellant neither referenced the Order granting Summary Judgment to Wells Fargo in his Notice of Appeal nor attached it thereto (and, for that matter, Appellant neither referenced the Order granting Summary Judgment to Ryan Davis nor attached that Order). The caption on the Notice of Appeal (authored by Appellant) lists solely "Mortgage Contracting Services, LLC" as the Respondent (and neither lists Davis nor Wells Fargo as Respondents). Indeed, on January 29, 2020, the Deputy Clerk sent counsel for Appellant correspondence confirming the caption in this matter, listing MCS as the sole Respondent (attached hereto as Exhibit A).

Throughout the course of the following year, the appeal was dismissed, the matter was remitted to the lower court, and then the appeal was reinstated. On March 22, 2021 (nearly fourteen months after Appellant filed his Notice of Appeal), Appellant filed his Initial Brief and Designation of Matter (utilizing the same case caption that has been used throughout this appeal, which does not include Wells Fargo as a Respondent). On March 31, 2021, the undersigned contacted this Court requesting that the undersigned be removed as counsel of record for Respondent MCS¹. Counsel for Appellant thereafter indicated in e-mail correspondence that he had intended to appeal the Order granting Summary Judgment to Wells Fargo (attached hereto as

¹ The undersigned was inadvertently listed in C-Track as (additional) counsel for MCS. Jay Seibels, Esq. is also (properly) listed as counsel for MCS in C-Track. The undersigned at one point represented MCS in the underlying matter, but Mr. Seibels was substituted as counsel for MCS per an Order Substituting Counsel filed in the underlying matter on October 4, 2018. The undersigned thereafter appeared as counsel for Wells Fargo in the underlying matter on November 5, 2018.

Exhibit B). This email was the first indication from counsel for Appellant that he intended for Wells Fargo to be a party to the appeal.

Argument

Rule 202(a), SCACR, provides that “[t]he party appealing shall be known as the appellant and the adverse party as the respondent.” Appellant never perfected an appeal against Wells Fargo, and Wells Fargo is therefore not a respondent and has no obligation to participate in the appeal.

In Conner v. City of Forest Acres, 348 S.C. 454, 560 S.E.2d 606 (2002), the appellant failed to include two parties as respondents in the appellant’s notice of appeal and the court sent the appellant correspondence confirming the caption. The South Carolina Supreme Court held that the two parties were not part of the appeal and would be prejudiced by any amendment attempting to include them in the appeal (and therefore dismissed them from the action). Conner, 348 S.C. at 461-62, 560 S.E.2d at 610.

Here, no appeal was taken with respect to the Order granting Summary Judgment to Wells Fargo. Further, at no point has Wells Fargo been listed as a Respondent to this matter. The caption on the Notice of Appeal (which was confirmed via written correspondence from the Deputy Clerk) solely lists “Mortgage Contracting Services, LLC” as the Respondent. Accordingly, Wells Fargo is not a party to this appeal, and the Order dismissing the claims against Wells Fargo became a final order. See C.I.T. Corp. v. Corley, 13 S.E.2d 440, 441-42 (S.C. 1941); see also Atl. Coast Builders & Contractors, LLC v. Lewis, 730 S.E.2d 282, 285 (S.C. 2012) (“[A]n unappealed ruling, right or wrong, is the law of the case.”) Any attempt to drag Wells Fargo into the appeal at this late date would be highly prejudicial to Wells Fargo, and is not justified under the circumstances.

Conclusion

Based on the foregoing reasoning and citation of authority, Wells Fargo respectfully requests that this Court issue an order confirming that Wells Fargo is not a party to this appeal and need not respond to Appellant's Initial Brief. In the event the Court determines that Wells Fargo is a proper party to this appeal, Wells Fargo requests a thirty-day extension to file an Initial Brief of Respondent, with the thirty-days beginning to run upon the Court's entry of an Order in response to this Motion.

CHANDLER & DUDGEON, LLC

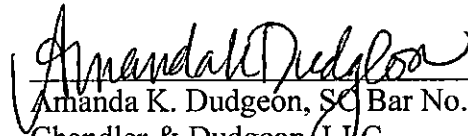

Amanda K. Dudgeon, SC Bar No. 72516
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Attorneys for Wells Fargo Bank, NA

EXHIBIT “A”

to

Gary Victory v. Wells Fargo Bank

Appellate Case No. 2020-000128



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 29, 2020

Mr. James H. Moss, Esquire
PO Drawer 507
Beaufort SC 29901-0507

Re: Gary Victory v. Wells Fargo Bank
Appellate Case No. 2020-000128

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

Gary Victory, Appellant,

v.

Wells Fargo Bank, NA and Mortgage Contracting Services, LLC, Defendants,

And

Mortgage Contracting Services, LLC, Third Party Plaintiff,

v.

Ryan Davis d/b/a Davis Home Preservation, Third Party Defendant,

Of Which Mortgage Contracting Services, LLC is the Respondent.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: John Page Seibels, Jr., Esquire
Brittany Tanya Bihun, Esquire
Kristen Bates Fehsenfeld, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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January 29, 2020

Mr. James H. Moss, Esquire
PO Drawer 507
Beaufort SC 29901-0507

Re: Gary Victory v. Wells Fargo Bank
Appellate Case No. 2020-000128

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The accompanying proof of service is not in compliance with the SCACR. Specifically, the proof of service does not state the date of service. Your proof of service should be substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: John Page Seibels, Jr., Esquire
Brittany Tanya Bihun, Esquire
Kristen Bates Fehsenfeld, Esquire

EXHIBIT “B”

to

Gary Victory v. Wells Fargo Bank

Appellate Case No. 2020-000128

Johdie Lee

From: Amanda K. Dudgeon
Sent: Wednesday, March 31, 2021 11:40 AM
To: Karen Cummins; sspencer@sccourts.org
Cc: Jim Moss; Jay Seibels
Subject: RE: Gary Victory v. Wells Fargo Bank (2020-000128)

Ms. Spencer,

I apologize. I thought Mr. Moss and I were in agreement when we last spoke. I will get in touch with him and we will make any appropriate filing necessary.

Thank you,

Mandi

Amanda K. Dudgeon
CHANDLER & DUDGEON LLC
P.O. Box 547
Charleston, SC 29402
843-577-5412 (direct)
843-577-5650 (fax)

Physical address:
180 East Bay St., Suite 200
Charleston, SC 29401

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From: Karen Cummins <karen@mossandkuhn.com>
Sent: Wednesday, March 31, 2021 11:29 AM
To: Amanda K. Dudgeon <mandi@chandlerdudgeon.com>; sspencer@sccourts.org
Cc: Jim Moss <jim@mossandkuhn.com>; Jay Seibels <jseibels@seibelsfirm.com>
Subject: RE: Gary Victory v. Wells Fargo Bank (2020-000128)

Dear Ms. Spencer

Mr. Moss asked me to relay that the basis for the appeal is that the Respondents, Wells Fargo and MCS were dismissed from the Circuit Court action as a result of Motions for Summary Judgment. Mr. Moss is appealing the Circuit Court ruling. It does not appear that Ms. Dudgeon has been relieved as counsel for Wells Fargo and as such, remains in this case.

Please contact Mr. Moss if you have any questions.

Karen M. Cummins, MPS, SCCP, PP

National and SC Certified Paralegal/Attorney Assistance, LLC
Moss, Kuhn, & Fleming, P.A.
Directly supervised by James H. Moss, Esquire
1501 North Street
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From: Amanda K. Dudgeon <mandi@chandlerdudgeon.com>
Sent: Wednesday, March 31, 2021 10:42 AM
To: sspencer@sccourts.org
Cc: Jim Moss <jjim@mossandkuhn.com>; Karen Cummins <karen@mossandkuhn.com>; Jay Seibels <jseibels@seibelsfirm.com>
Subject: RE: Gary Victory v. Wells Fargo Bank (2020-000128)

Dear Ms. Spencer:

Will you please remove me, Kristen Fehsenfeld, and Brittany Bihun from the attorney list in this case (Ms. Fehsenfeld and Ms. Bihun are former associates with my firm)? As set forth below, I am not counsel of record for the Respondent Mortgage Contracting Services ("MCS"). Rather, Jay Seibels is the attorney for MCS.

By way of background, the attached Order Substituting Counsel was filed in October 2018 in the underlying matter. Per that Order, Jay Seibels was substituted as counsel for MCS, and I (along with my firm, Chandler & Dudgeon, LLC), was relieved as counsel of record for MCS. It appears that because the Order Substituting Counsel did not expressly reference Kristen Fehsenfeld and Brittany Bihun (who were attorneys at Chandler & Dudgeon at the time), their names remained in the attorney list as counsel for MCS. While I remained counsel of record for Wells Fargo Bank, NA, in the underlying trial court matter, Wells Fargo was dismissed from the case and is neither a Respondent nor a party to this appeal. I have spoken with counsel for Appellant (copied) on this issue. Please let me know if you have any questions and if a more formal request is necessary. I appreciate your assistance.

Sincerely,

Mandi Dudgeon

Amanda K. Dudgeon
CHANDLER & DUDGEON LLC
P.O. Box 547
Charleston, SC 29402
843-577-5412 (direct)
843-577-5650 (fax)

Physical address:
180 East Bay St., Suite 200
Charleston, SC 29401

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From: Kristen B. Fehsenfeld <kristen@chandlerdudgeon.com>
Sent: Wednesday, March 17, 2021 9:18 AM
To: Amanda K. Dudgeon <mandi@chandlerdudgeon.com>; Johdie Lee <paralegal@chandlerdudgeon.com>
Subject: FW: Gary Victory v. Wells Fargo Bank (2020-000128)

From: Spencer, Shelby <sspencer@sccourts.org>
Sent: Monday, March 15, 2021 3:43 PM
To: jim@mossandkuhn.com; jseibels@seibelsfirm.com; bbihun@grsm.com; Kristen B. Fehsenfeld <kristen@chandlerdudgeon.com>; karen@mossandkuhn.com
Subject: Gary Victory v. Wells Fargo Bank (2020-000128)

Dear Counsel,

Attached is a copy of this Court's letter. If you have any questions or concerns, please do not hesitate to contact our office.

Warmly,

Shelby Spencer
Appeals Specialist II
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201
803.734.1890

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IN THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APR 20 2021

APPEAL FROM THE BEAUFORT COUNTY  
COURT OF COMMON PLEAS

**SC Court of Appeals**

HONORABLE BROOKS B. GOLDSMITH

CASE NO.: 2018-CP-07-00409  
APPELLATE NO.: 2020-000128

Gary Victory,

Appellant,

Vs.

Wells Fargo Bank, NA and  
Mortgage Contracting Services, LLC,

Defendants.

Of Whom Mortgage Contracting Services, LLC is

Respondent

And

Mortgage Contracting Services, LLC

Respondent

Vs.

Ryan Davis d/b/a Davis Home Preservation,

Defendant.

**CERTIFICATE OF SERVICE**

The undersigned certifies that Wells Fargo Bank, N.A.'s Notice of Motion and Motion for Confirmation to which this certificate is affixed, was served upon the party(s) to this action by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

James H. Moss, Esq.

  
**CHANDLER & DUDGEON**  
ATTORNEYS AT LAW

AMANDA K. DUDGEON

(843) 577-5412 (Direct)  
mandi@chandlerdudgeon.com

April 19, 2021

**Via U.S. Mail:**

The Honorable Jenny Abbot Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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**SC Court of Appeals**

Re: *Gary Victory v. Mortgage Contracting Services, LLC*  
Case No.: 2018-CP-07-00409  
Appellate Case No.: 2020-000128

Dear Mrs. Kitchings:

Please find enclosed for filing the original and seven (7) copies of Wells Fargo Bank, NA's Notice of Motion and Motion for Confirmation. Please file the enclosures and returned a clocked copy of each to me in the enclosed self-addressed stamped envelope.

By copy of this letter, and the above referenced enclosures, I am serving a copy on John P. Seibels, Jr., Esq., and James H. Moss, Esq.

With best regards, I am

Sincerely,



Amanda K. Dudgeon

Enclosures: as noted  
cc: John P. Seibels, Jr., Esq.  
James H. Moss, Esq.

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**CHANDLER & DUDDEON**  
ATTORNEYS AT LAW  
P.O. Box 517  
Charleston, SC 29402

The Honorable Jenny Abbot Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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