

ORIGINAL

IN THE SUPREME COURT OF OHIO

WELLS FARGO BANK, N.A.,

Plaintiff-Appellant,

v.

BRIAN HORN, et al.,

Defendants-Appellees.

\* Case No. 2013-1534  
\*  
\* On Appeal from the Lorain County  
\* Court of Appeals, Ninth Appellate  
\* District  
\*  
\* Court of Appeals  
\* Case No. 12CA010230  
\*  
\*  
\*

MEMORANDUM IN RESPONSE TO MOTION OF APPELLEE BRIAN HORN FOR  
NEW BRIEFING SCHEDULE

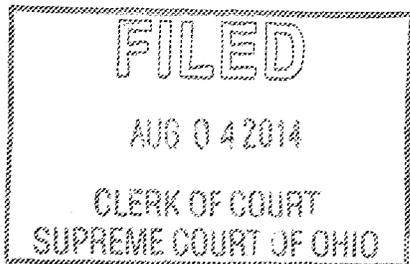
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On July 29, 2014, Defendant-Appellee Brian Horn filed a “Motion for New Briefing Schedule.” The Motion argues that Mr. Horn originally filed his brief in this case *pro se*, that Mr. Horn’s Appellee Brief does not adequately address the issues, that Mr. Horn has now retained counsel, and that because this case, being a discretionary appeal, necessarily implicates an issue of great general or public interest, and affects the citizens of this state, Mr. Horn should be permitted to file a new brief that actually addresses the issues at hand.

Plaintiff-Appellant Wells Fargo Bank, N.A. (“Wells Fargo”) acknowledges that Mr. Horn’s Brief does not address the issues raised by the Ninth District Court of Appeals’ opinion in this case. Moreover, Wells Fargo realizes that the Court itself is in the best position to determine whether it wishes to entertain a new round of briefing. Nonetheless, Wells Fargo requests the Court consider the following points:

1. Briefing is already closed. Wells Fargo filed its initial brief on May 23, 2014. Mr. Horn filed an Appellee Brief on June 23, 2014, and Wells Fargo filed its Reply Brief on July 1, 2014. Consequently, as opposed to “amending” the briefing schedule, Mr. Horn is actually seeking supplemental briefing, which would normally be barred by S.Ct.Prac.R. 16.08.<sup>1</sup>

2. Mr. Horn retained counsel only after filing his Appellee Brief. The Motion acknowledges that the Ninth District Court of Appeals reversed the Trial Court’s entry of summary judgment and ordered dismissal based upon grounds that Mr. Horn did not raise, that neither party briefed, and that were not raised during oral argument below. The Motion also acknowledges that the arguments contained in the Appellee Brief do not address the merits of the

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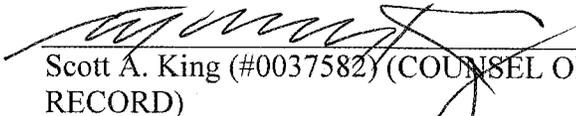
<sup>1</sup> In fact, Mr. Horn served Wells Fargo with a “Motion to Amend Brief” with a certificate of service indicating it was mailed on July 16, 2014 (a copy is attached as Exhibit A). The Motion to Amend Brief contains text virtually identical to the present motion.

While Mr. Horn failed to serve a notice of non-filing as required by S.Ct.Prac.R. 3.11(E), it appears that the Clerk rejected the Motion to Amend Brief.

Ninth District's holdings, but suggests that because Mr. Horn now has counsel, he should be given another chance to file a brief that addresses the issues at hand. Motion, 2. While Wells Fargo believes that it is important for this Court to address the merits of the Ninth District's rationale, there is a countervailing consideration: granting the Motion may encourage litigants who dislike the arguments presented in their original brief (whether filed *pro se* or by counsel) to seek new representation and then claim that their (or their new counsel's) better "understanding of the issues" justifies additional briefing.

3. "Amending" the schedule is not required. In the event the Court is inclined to grant the Motion, Wells Fargo stands by its original Brief. If a new Appellee Brief is permitted, then Wells Fargo requests the ability to file a supplemental Reply Brief to address any new arguments raised.

Respectfully submitted,



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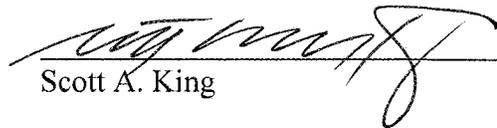
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon the following by U.S. ordinary mail, postage prepaid, this 4th day of August, 2014.

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IN THE SUPREME COURT OF OHIO

WELLS FARGO BANK, N.A.	*	CASE NO. 2013-1534
Appellant	*	On Appeal from the Lorain County Court of Appeals, 9 <sup>th</sup> District Case
-vs-	*	Nos. 12CA010230
BRIAN HORN, et al.	*	
Appellee.	*	

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MOTION OF APPELLEE BRIAN HORN TO AMEND BRIEF

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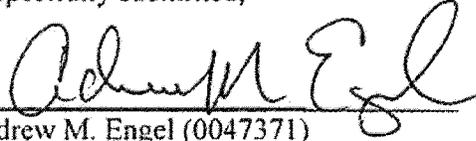
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EXHIBIT

A

Appellee Brian Horn moves the Court for leave to amend his brief for the reasons set forth in the accompanying memorandum.

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Counsel for Appellee Brian Horn

#### MEMORANDUM

Appellee recently retained counsel, but for much of these proceedings, he has appeared pro se. And although he prevailed in the Court of Appeals, it was not through his own doing. Although couched within the framework of one of Mr. Horn's assignments of error, the Court of Appeals undertook its standing analysis sua sponte.

This Court has now accepted the case on a proposition of law that will affect thousands of Ohioans, and indeed, will control virtually every civil lawsuit filed in the state. The issue will, on some level, require an analysis of general pleadings standards under the Rules of Civil Procedure. Like any decision of this Court, the outcome of the case will impact not just the

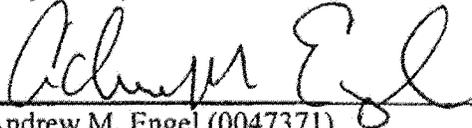
parties to it, but will guide lower courts and litigants well into the future.

Mr. Horn has filed a brief in this case, but it does not address the issues truly before this Court. It is but an attempt by an unsophisticated, pro se party to discuss the issues that he sees as important. Now that he has counsel, he understands that the issues before the Court are quite different from those he has identified as important.

Our judicial system is premised on full discussion of legal principles in an adversarial setting. To ensure a fair hearing of those issues, and protect the interests of all classes of persons impacted by the Court's decision, it is important that the legal arguments which support both sides of a controversy be fully developed. Although he tried, Mr. Horn's brief does not really develop the legal arguments which support the Court of Appeals's decision. The public interest would be well-served to permit Mr. Horn to amend his brief so that the Court can receive the benefit of complete briefing of both sides of the issues presented.

For these reasons, Appellee asks that the Court grant him leave to amend his brief herein.

Respectfully submitted,



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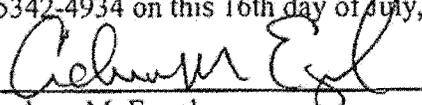
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Counsel for Appellee Brian Horn

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I hereby certify that a copy of the foregoing has been served upon Scott A. King, Esq. and Terry W. Posey, Esq., THOMPSON HINE LLP, THOMPSON HINE LLP, Austin Landing I, 10050 Innovation Drive, Suite 400, Dayton, Ohio 45342-4934 on this 16th day of July, 2014.

  
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Andrew M. Engel

