

ORIGINAL

IN THE SUPREME COURT OF OHIO

SRMOF 2009-1 Trust,	:	
	:	Case No. 2014-0485
Plaintiff-Appellee,	:	
	:	On Appeal from the Butler County
vs.	:	Court of Appeals, 12th Appellate District
	:	
Shari Lewis, et al.,	:	Court of Appeals Case Nos. CA201-11-239
	:	and CA2013-05-068
Defendant- Appellant.	:	

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**APPELLEE’S MEMORANDUM IN OPPOSITION TO MOTION TO STRIKE**

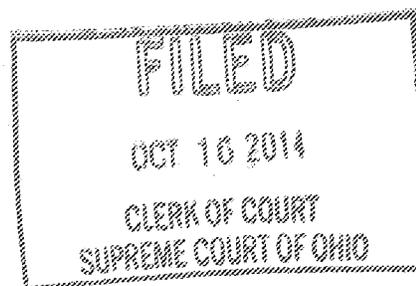
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 2009-1 Trust



Pursuant to Supreme Court Practice Rule 4.01(B), Appellee SMROF 2009-1 Trust (“Trust”) respectfully requests that the Court deny *Appellant’s Motion to Strike Appendix A-1* filed October 6, 2014 (the “Motion”).

Appendix A-1 is a self-authenticating, public record from the Summit County Fiscal Office Recording Department—the recorded Assignment of Mortgage (the “*McFerren* Assignment”) that was the subject of the case with which the instant matter has been certified to be in conflict, *BAC Home Loans Servicing, LP v. McFerren*, 9th Dist. Summit No. 26384, 2013-Ohio-3228. See *United States Bank N.A. v. Higgins*, 2d Dist. Montgomery No. 34963, 2012-Ohio-4086, ¶ 17 (notarized documents are self-authenticating); *Am. Tax Funding, LLC v. Whitlow*, 2d Dist. Montgomery No. 23182, 2010-Ohio-3333, n.2 (taking judicial notice of matters on public websites). It is one thing that demonstrates why this case is not in conflict with *McFerren*. See Trust’s Merit Br. Part III.A.

Appellant Shari Lewis did not offer a response in her Reply to the Trust’s argument that there is no conflict. Nor has she argued that the *McFerren* Assignment at Appendix A-1 is incorrect, incomplete, or inaccurate. She only argues, without citing supporting legal authority, that the *McFerren* Assignment should be stricken because there is supposedly nothing authorizing this Court to review it.

The Constitution vests this Court with plenary power to “review” the propriety of a conflict. Article IV Section 2(B)(2)(f) gives this Court the power to “review *and* affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B)(4) of this article.” (Emphasis added.) Article IV Section 3(B)(4) authorizes the judges of a court of appeals to certify the record of a case “to the supreme court for review *and* final determination.” (Emphasis added.) See also *State v. Palider*, 33 Ohio St.3d 68, 69, 514 N.E.2d 873 (1987),

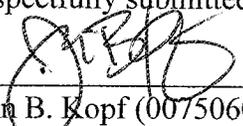
citing concurring opinion in *Coulson v. Coulson*, 5 Ohio St.3d 12, 18-21, 448 N.E.2d 809 (1983) (the Ohio Constitution provides the Supreme Court of Ohio with the power of “review” as well as “determination” of conflicts); S.Ct.Prac.R. 8.02(C) and 8.04 (the Court may dismiss a certified conflict case where there is no conflict).

Although the Trust has not located any decisional authority on the precise subject, the Constitution does not purport to restrict what this Court may refer to or use in order to “review” the propriety of a certified conflict. The Court’s power to review and control the resolution of purported conflicts in the law should not be so circumscribed that the Court cannot consider matters of public record that are directly related to the cases offered in conflict.

The Court should be unrestrained in its ability to fully compare the cases offered to determine whether they truly conflict. The *McFerren* Assignment was also part of the record in the *McFerren* appeal at T.d. 3 and 25. The Court should be allowed to compare the *McFerren* Assignment to the assignment of mortgage in this case for the purpose of reviewing whether the decisions are in direct conflict.

There is no constitutional or policy reason why this Court should turn a blind eye to a self-authenticating, public record that was part of the case allegedly in conflict. The Trust respectfully requests that the Court overrule Appellant’s Motion.

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 16, 2014, I served a copy of the foregoing Appellee's Memorandum in Opposition to Motion to Strike by ordinary U.S. Mail, postage prepaid, upon Andrew M. Engel, Esq., Kendo, Alexander, Cooper & Engle LLP, 7071 Corporate Way, Suite 201, Centerville, Ohio 45459, counsel for Defendant-Appellee Shari Lewis.

  
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