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Dec 11 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Benjamin C.P. Sapp, Special Referee

Case No. 2023-001394

Deutsche Bank National Trust Company as Trustee
for NovaStar Mortgage Funding Trust,
Series 2006-5 NovaStar Home Equity Loan
Asset-Backed Certificates, Series 2006-5,

Respondent,

v.

Terry Lennette Grant,

Defendants,

Of whom, Terry Lennette Grant is the Appellant.

MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT

Chad W. Burgess, Esq.
(S.C. Bar No.: 72520)
BROCK & SCOTT, PLLC
3800 Fernandina Road, Suite 110
Columbia, South Carolina 29210
(803) 454-3540
Attorney for Respondent

NOW COMES Respondent Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5 NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5 (“Deutsche Bank”), by and through its undersigned attorney, and pursuant to Rule 260 of the South Carolina Appellate Court Rules, hereby moves this Court for an Order dismissing the instant appeal filed by Terry Lennette Grant (“Appellant”), averring as follows:

BRIEF PROCEDURAL HISTORY

Appellant initiated her appeal on May 23, 2023. Throughout this appeal, Appellant has repeatedly ignored the South Carolina Rules of Appellate procedure¹. Appellant was specifically directed on November 1, 2023 to file her initial brief and designation of matter along with a motion to file out of time within ten (10) days or the appeal would be dismissed. Appellant failed to submit her initial brief and designation of matter along with a motion to file out of time as set forth in this Court’s November 1, 2023 letter, but rather filed a motion to file out of time on November 15, 2023, and her initial brief and designation of matter on November 16, 2023. Even if Appellant’s initial brief and designation of matter had been timely filed as directed in this Court’s November 1, 2023 letter, these filings are so deficient as to render it impossible for Respondent to brief any issues on appeal. Therefore, this Court should dismiss the appeal. In the alternative, Respondent respectfully requests that this Court issue an Order requiring the borrower to resubmit her brief and designation of matter to comply with the South Carolina Rules of Appellate Procedure.

¹ Because of Appellant’s blatant disregard for the Rules of Appellate procedure, this Court was repeatedly forced to issue deficiency letters, a letter notifying Appellant that the transcript was overdue, a letter notifying Appellant that the time to file her initial brief and designation of matter has expired and a second notice that Appellant had failed to pay the required filing fee for the appeal.

ARGUMENT AND CITATION OF AUTHORITY

Because Appellant has ignored this Court's guidance and explicit instruction, and because Appellant's filings are so deficient as to make it impossible for Respondent to issue its brief, the Court should dismiss her appeal.

"[T]he Appellate Court Rules 'are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.'" *Forner v. Butler*, 319 S.C. 275, 276 n.1, 460 S.E.2d 425, 426 n.1 (1995) (quoting *Henning v. Kaye*, 307, S.C. 436, 436, 415 S.E.2d 794, 794 (1992)). "Whenever it appears that an appellant . . . has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court." Rule 260(a), SCACR. All litigants, whether pro se or represented by counsel, are held to the same standards and are expected to adhere to the Rules of the Court. *See State v. Barnes*, 407 S.C. 27, 31, 753 S.E.2d 545, 547 (2014) ("Appellant [who moved to be allowed to proceed pro se] acknowledged he understood he would be held to the same standards as an attorney regarding the rules of court and of evidence.").

Through her repeated deficiencies at every step of the appellate process, Appellant has demonstrated that she is unable to adhere to the Rules of the Court. In her November 1, 2023 letter, the Clerk notified Appellant that, "[w]ithin ten (10) days of the date of this letter you must serve and file the initial brief and designation of matter along with a motion to file out of time, or this appeal will be dismissed". More than ten days passed, and Appellant failed to submit her initial brief, designation of matter, or motion to file out of time. Rather, Appellant filed her motion

to file out of time on November 15, 2023, and her initial brief and designation of matter on November 16, 2023. Even if the Appellant's initial brief and designation were timely submitted, they are so deficient as to make it impossible for Respondent to brief the issues.

Appellant's initial brief consists of rambling incoherent statements of Appellant's dissatisfaction with Respondent's efforts to foreclose its mortgage and the numerous rulings that were not in Appellant's favor. Appellant's brief does not comply with the applicable rules of appellate procedure. Initially, Appellant includes a table of exhibits containing reference to 58 purported exhibits to the brief. This table of exhibits, and the attaching of any exhibits to an appellate brief, is highly improper and not in compliance with any rule of appellate procedure. There is no indication as to whether any of Appellant's purported exhibits were introduced or considered by the Special Referee and some of the purported exhibits are simply filings or proposed orders submitted in this case and in prior foreclosure actions regarding the subject mortgage loan. Appellant includes a Table of Authorities in name only as the authorities cited are not binding or persuasive and Appellant provides no context in the body of her brief as to what legal arguments these authorities are being used to support.

More problematic is that Appellant's brief contains no statement of issues on appeal, statement of the case, or standard of review as required by Rule 208(b)(1)(B), (C), and (D), SCACR. Without these required contents, it is impossible for Respondent to frame its initial brief and designation of matter to be included in the record on appeal. The deficiencies in Appellant's brief also make it impossible for this Court to decipher what error(s) Appellant asserts were made by the trial court. The role of the appellate court is not to retry issues decided against a party in the lower court, but to examine the record and determine if the lower court committed error in its ruling(s). Appellant's brief wholly prevents the appellate court from carrying out this purpose.

Appellant's designation of matter to be included in the record on appeal also fails to comply with Rule 209(b) and (c), SCACR. Appellant's designation of matter includes items that are not clearly identified such as item 4 which lists "Answers" with no further clarification and item 7 which lists "Allonges one dated June 25, 2012 and the other surface January 13, 2023". Further, item 10 attempts to incorporate the highly inappropriate exhibits Appellant purported to attach to her brief.

Based upon the foregoing, this Court should dismiss the Appeal. *Harkins v. Greenville Cnty.*, 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000) (affirming trial court decision where appellant failed to satisfy burden of presenting an adequate record on appeal); *Milton v. Richland Cnty.*, No. 2015-MO-046, 2015 S.C. Unpub. LEXIS 45, at 6, 2015 WL 4642832 (S.C. Aug. 5, 2015) (dismissing appeal "[b]ecause [p]etitioner failed to submit a sufficient record, th[e] case present[ed] nothing more than a dispute of a hypothetical character"); *Epps v. Epps*, No. 2012-UP-146, 2012 S.C. App. Unpub. LEXIS 207, at *1 (S.C. Ct. App. Mar. 7, 2012) (dismissing an appeal because procedural defects precluded meaningful review of the appeal). In the alternative, this Court should issue an Order directing Appellant to resubmit her initial brief and designation of matter confirming to the South Carolina Appellate Court Rules.

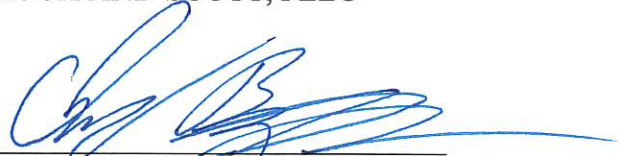
CONCLUSION

For the foregoing reasons, Deutsche Bank respectfully requests that this appeal be dismissed or, in the alternative, that this Court issue an Order directing Appellant to resubmit her initial brief and designation of matter to conform to the South Carolina Appellate Court Rules, and requests such other relief this Court deems just and proper.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

BROCK AND SCOTT, PLLC



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*Attorney for Respondent Deutsche Bank
National Trust Company as Trustee for
NovaStar Mortgage Funding Trust, Series
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Backed Certificates, Series 2006-5*

Dated: December 11, 2023

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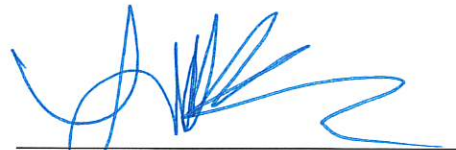
Of whom, Terry Lennette Grant is the Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 11, 2023, she served a copy of Respondent's Motion to Dismiss Appeal and Memorandum in Support, and Certificate of Service by Mail upon the person below by depositing the same in the U.S. Mail with proper postage affixed and addressed as follows:

Terry Lennette Grant
PO Box 21936
Hilton Head Island, SC 29925

Terry Lennette Grant
226 Wild Horse Road
Hilton Head Island, SC 29926



Lauren Browder
BROCK & SCOTT, PLLC