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**Jan 05 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Benjamin C.P. Sapp, Special Referee

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Case No. 2023-001394

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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.

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RETURN AND MEMORANDUM IN OPPOSITION TO APPELLANT'S  
MOTION FOR STAY

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Chad W. Burgess, Esq.  
(S.C. Bar No.: 72520)  
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(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 240(e) of the South Carolina Appellate Court Rules, hereby submits its Return and Memorandum in Opposition to the Motion to Stay filed by Terry Lennette Grant (“Appellant” or “Grant”), averring as follows:

**BRIEF PROCEDURAL HISTORY**

This matter is an action to foreclose a mortgage on real property in Beaufort County, South Carolina. Appellant initiated her appeal on September 3, 2023.

On or about September 16, 2006, Appellant was loaned the sum of \$680,000.00 by Novastar Mortgage, Inc., which was evidenced by a promissory note (“Note”) secured by a mortgage on real property owned by Appellant commonly known as 226 Wild Horse Road, Hilton Head Island, SC 29926 (“Mortgage”). The Note and Mortgage were signed by Appellant on September 18, 2006 (the Note and Mortgage shall hereinafter be referred to collectively as the “Loan”). The Mortgage was recorded on September 26, 2006, in the Beaufort County, South Carolina, public records in Book 2448, Page 823.

The Note and Mortgage were subsequently transferred to Deutsche Bank. The installments of principal and interest falling due from and after January 1, 2008, have not been paid, thereby placing Appellant in default under the terms of the Loan. As a result of Appellant’s default, foreclosure efforts were initiated and have been ongoing since 2009.

The initial foreclosure action was filed on December 1, 2009. *See* SC Civil Action Number 2009-CP-07-05612 (“2009 Foreclosure”). The 2009 Foreclosure was voluntarily dismissed on February 12, 2010, without apparent service of process on Appellant.

The second foreclosure action was filed on April 12, 2010. *See* SC Civil Action Number 2010-CP-07-01690 (“2010 Foreclosure”). The case was referred to The Honorable Marvin H. Dukes, III, as Master in Equity for Beaufort County, on June 15, 2010. Grant appeared in the 2010 Foreclosure *pro se* and no counterclaims were asserted. As a part of the 2010 Foreclosure, Deutsche Bank sought to reform the legal description of the Mortgage and sought an easement for ingress and egress for successors in title. On February 7, 2014, Judge Dukes entered an Order granting Deutsche Bank’s Motion for Partial Summary Judgment as to the reformation and easement causes of action (“2010 Summary Judgment Order”). Deutsche Bank was granted judgment as to its remaining cause of action for foreclosure in an Order entered May 28, 2014 (“2010 Foreclosure Order”). Respondent’s current counsel was not involved in the 2010 Foreclosure, or in any capacity or matter involving the Loan, prior to the entry of a consent order to substitute counsel on November 18, 2015. The 2010 Foreclosure Order was vacated, and the case was dismissed without prejudice on January 14, 2016. Notwithstanding the setting aside of the 2010 Foreclosure Order and the dismissal of the 2010 Foreclosure, the 2010 Summary Judgment Order reforming the Mortgage and granting an easement for ingress and egress remains in full force and effect. Grant did not appeal the 2010 Summary Judgment Order, and the same is now a final order.

Brock & Scott filed the instant action on June 29, 2016, on behalf of Deutsche Bank (“2016 Foreclosure”). Grant initially appeared in the 2016 Foreclosure through counsel William Sloan,

and was later represented by attorney Charles Houston. Both these attorneys were relieved as counsel.

Grant filed answers in the 2016 Foreclosure on October 28, 2016, July 21, 2017, December 7, 2017, and February 15, 2018. All of these answers consistently admit entering into the subject loan transaction and refute Grant's subsequent assertion that she never entered into the Note and Mortgage. Further, Grant asserted no counterclaims in the 2016 Foreclosure.

The 2016 Foreclosure was referred to The Honorable Marvin H. Dukes, III, as Master in Equity for Beaufort County, on March 15, 2017. Deutsche Bank filed a motion for summary judgment on July 15, 2021, and a renewed motion for summary judgment on September 7, 2022. Grant filed a motion for summary judgment on October 21, 2022. The parties' respective motions for summary judgment were scheduled for a hearing on November 30, 2022.

On November 28, 2022, just two days before the hearing on the parties' motions for summary judgment, Grant filed a *pro se* action in the United States District Court for the District of South Carolina (District Court Case Number 9:22-cv-04262, hereinafter "District Court Action") against fifty-five separate defendants Grant perceived as being involved in a conspiracy to foreclose on her home. Grant's District Court Action was essentially an improper collateral attack on the 2016 Foreclosure and an attempt to re-litigate the 2010 Summary Judgment Order granting Deutsche Bank's causes of action for reformation of mortgage and establishment of an easement for ingress and egress. Grant's District Court Action complaint was wholly comprised of ridiculous allegations and conclusions without any factual bases to support her claims. The fifty five defendants included Grant's closing attorney for the Loan, closing law firm, her attorney in the 2016 Foreclosure, an entity that held a prior mortgage on the subject property, law firms and individual employees that currently or previously represented Deutsche Bank, Judge Dukes, the

Beaufort County Administrator, and the Beaufort County Register of Deeds. Brock & Scott, PLLC, as well as eleven of its current and former employees, both attorneys and paralegals, were individually named in Grant's District Court Action.

Upon being named as a defendant in Grant's District Court Action, Judge Dukes recused himself from the 2016 Foreclosure by order entered December 1, 2022. Judge Dukes was later dismissed as a defendant in the District Court Action on February 9, 2023. On September 28, 2023, Grant's District Court Action was dismissed with prejudice as to all of her claims following motions to dismiss filed by virtually all of the remaining defendants.

Following Judge Dukes' recusal, the matter was referred to The Honorable Benjamin C.P. Sapp, as Special Referee, by order filed February 21, 2023. The Special Referee held a hearing on the parties' cross motions for summary judgment on May 4, 2023. Grant did not attend the hearing, but her purported attorney-in-fact, Vivian Michelle Woods, appeared. Deutsche Bank objected to Ms. Woods acting in a representative capacity for Grant and making arguments at the hearing, and the Special Referee inquired as to whether Ms. Woods was a South Carolina licensed attorney. Ms. Woods confirmed that she was not a South Carolina licensed attorney, but stated that she was present to submit the arguments made by Grant. The Special Referee confirmed that it would not be necessary for Ms. Woods to recite Grant's filings into the record and confirmed he would review Grant's filings in making his ruling. The hearing proceeded and each party was requested to submit proposed orders. The Special Referee ultimately adopted Deutsche Bank's proposed order which granted its motion for summary judgment and denied Grant's motion for summary judgment. The Special Referee's Order, filed June 28, 2023 ("2016 Foreclosure Order"), directed that the subject property be sold at foreclosure sale initially scheduled for September 7, 2023.

On July 7, 2023, Grant filed a motion to reconsider the 2016 Foreclosure Order. The Special Referee took the motion to reconsider under advisement and requested that the parties again submit proposed orders for his consideration. The Special Referee denied Grant's motion to reconsider by Order filed September 1, 2023, and Grant filed this appeal on September 5, 2023.

Because the 2016 Foreclosure Order directed the judicial sale of the subject property, it was not automatically stayed by this appeal pursuant to the general rule found in SCACR Rule 241(a). Notwithstanding, the September 7, 2023, foreclosure sale was cancelled to allow Grant an opportunity to request a stay and bond as outlined in SCACR Rule 241(b)(4) and SC Code §18-9-170. Because no such request was made, Deutsche Bank requested that the sale be rescheduled. The Special Referee issued a Notice of Sale which was filed on October 4, 2023, and served on Grant on October 4, 2023. The Notice of Sale was published in the Beaufort Gazette, a newspaper of general circulation in Beaufort County, South Carolina, for three consecutive weeks prior to the sale. The publication appeared in the paper on October 13, 2023, October 20, 2023, and October 27, 2023, as is shown by the Affidavit of Publication filed December 5, 2023.

At 4:43 PM on November 2, 2023, mere hours before the November 3, 2023 sale, Grant filed a motion specifically seeking a stay of the November 3, 2023, sale pursuant to Rule 62(d), SCRCR and Rule 241(c)(1), SCACR. Grant did not notify the Special Referee or Deutsche Bank of the request for a stay prior to the sale, Grant's motion was only discovered upon a cautionary review of the Clerk of Court's records by the Special Referee immediately prior to sounding the foreclosure sale. Counsel for Deutsche Bank attended the foreclosure sale, but Grant did not. The Special Referee reviewed and verbally denied Grant's motion for a stay and proceeded with the publicly held judicial sale at the Beaufort County Courthouse in compliance with the 2016 Foreclosure Order and the properly entered Notice of Sale. Deutsche Bank was the successful

purchaser. A formal order memorializing the Special Referee's ruling to deny Grant's motion to stay was entered November 21, 2023.

### **ARGUMENT AND CITATION OF AUTHORITY**

Initially, Appellant's request for a stay is moot. It is difficult to fathom how a stay may be put in place at this juncture because the event that Appellant seeks to have stayed, the foreclosure sale, occurred nearly two months prior to the filing of her instant motion.

“An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.” *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) (citing *Jackson v. State*, 331 S.C. 486, 489 S.E.2d 915 (1997)). “Mootness has been defined as follows: ‘A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for the reviewing Court to grant effectual relief.’” *Byrd v. Irmo High School*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) (quoting *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)).

*Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 602-603, 567 S.E.2d 514, 517 (Ct. App. 2002). Because Appellant's request for a stay is now moot, her motion should be denied.

More problematic to Appellant's request is that the Special Referee took up and denied a request for a stay prior to proceeding with the foreclosure sale as outlined above. In denying Appellant's prior request for a stay, the Special Referee found that, based upon the timing of her motion, Appellant deprived Deutsche Bank of sufficient notice and opportunity to respond to her request for a stay. The Special Referee further found that the timing of Appellant's request deprived the Court of an opportunity to afford Appellant relief as, even if the Special Referee had set a bond in the hours between the filing of her motion and the foreclosure sale, it would have been practically impossible for Appellant to post the bond prior to the sale in compliance with SC Code §18-9-170. The Special Referee had jurisdiction to entertain Appellant's prior motion to

stay pursuant to Rules 205 and 241, SCACR, and he properly declined to impose a stay. Because Appellant's current motion to stay is moot and duplicative of her previously denied motion, it should be summarily denied.

The remainder of Appellant's motion appears to be an improper request for sanctions and a summary vacating of the Special Referee's orders dated June 28, 2023 (granting Respondent's motion for summary judgment and denying Appellant's motion for summary judgment), September 1, 2023 (denying Appellant's motion to reconsider), and November 21, 2023 (denying Appellant's motion to stay the foreclosure sale) all while dispensing with proper appellate briefing. Grant's motion also references setting aside and vacating an order dated October 4, 2023, however, no order was entered on October 4, 2023. The only documents filed October 4, 2023, were the notice of the November 3, 2023, sale and certificate of service regarding said notice. Deutsche Bank's position is that Appellant's request is highly improper and nothing in Appellant's motion provides any legally cognizable grounds for relief of any kind. Deutsche Bank will refrain from pointing out the countless legal and factual inaccuracies contained within Appellant's motion at this time as doing so would be extraordinarily time-consuming and does not appear to be necessary to defend the motion.

### **CONCLUSION**

Appellant's motion to stay is moot, duplicative, and fails to provide any legally cognizable grounds for relief of any kind. As such, Deutsche Bank respectfully requests that Appellant's motion to stay be denied, 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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(803) 454-3540

*Attorney for 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*

Dated: January 5, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on JANUARY 5, 2024, she served a copy of Respondent's Return to Appellant's Motion to Dismiss, 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



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Lauren Browder  
BROCK & SCOTT, PLLC