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**Mar 01 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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RESPONDENT'S REPLY TO APPELLANT'S RETURN TO RESPONDENTS'S  
RENEWED MOTION TO DISMISS

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(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” or “Respondent”), by and through its undersigned attorney, and pursuant to Rule 240(f) of the South Carolina Appellate Court Rules, hereby submits its reply to Terry Lennette Grant’s (“Appellant” or “Grant”) return to Respondent’s renewed motion to dismiss appeal, averring as follows:

**BRIEF PROCEDURAL HISTORY**

On December 11, 2023, Deutsche Bank filed a motion to dismiss this appeal alleging, inter alia, that Appellant has repeatedly ignored the South Carolina Rules of Appellate procedure throughout the pendency of this appeal. On February 9, 2024, the Court of Appeals issued an Order denying Deutsche Bank’s motion and denying Appellant’s motion to stay and request for sanctions. The February 9, 2024, Order required Appellant to “serve and file an amended initial brief and designation of matter that complies with Rules 208 and 209 of the South Carolina Appellate Court Rules within ten days of the date of this order. The 10-day deadline expired February 19, 2024, with Appellant having failed to serve and file her amended initial brief and designation of matter in compliance with this Court’s explicit instruction in the February 9, 2024 Order. Respondent renewed its motion to dismiss on February 22, 2024. On February 26, 2024, a week after this Court’s deadline had expired, Appellant filed an amended initial brief, amended designation of matter, and return to Respondent’s motion to dismiss. Based upon Appellant’s continued blatant disregard for the SCACR and this Court’s explicit direction and based upon the continuing deficiencies in Appellant’s amended initial brief and amended designation of matter, this Court should dismiss the appeal.

## ARGUMENT AND CITATION OF AUTHORITY

In her return to the renewed motion to dismiss, Appellant asserts that she never ignored the guidance and explicit instruction of the Court and that “Respondent is merely pointing out minor technicalities to circumvent replying to facts and evidence that clearly supports Appellant, position that’s on appeal”.

Initially, it is hard to fathom how Appellant can assert that she complied with the Court’s explicit instructions when her amended initial brief and amended designation of matter were filed a week after she was instructed to file them in a formal order issued by this Court. These untimely filings were made without so much as a request for additional time pursuant to SCACR Rule 263 or explanation as to why the deadline was ignored. Appellant could have easily complied with this Court’s February 9, 2024, as she was aware of the deficiencies in her original initial brief and designation of matter as outlined in the Respondent’s first motion to dismiss. Appellant requested leave to submit an amended initial brief and designation of matter in lieu of dismissing her appeal in her return to Respondent’s first motion to dismiss filed December 18, 2023, two months before the deadline set by this Court’s February 9, 2024 order. Relying on a New York Law Review article, Appellant asserts that, “since pro se litigants often are unable to comply with procedural rules, exceptions are carved out in practice”. Appellant ignores that this law review article is non-binding and contravenes the established South Carolina jurisprudence regarding complying with the SCACR and explicit instructions of this Court. Appellant further ignores that this Court has been extremely gracious with her in granting Appellant opportunities to cure her non-compliance with the SCACR. The point upon which Appellant has exhausted the good graces of this Court has been reached and Appellant should be held to account for her continued ignoring of the SCACR and this Court’s explicit instructions.

Further, the SCACR and this Court's orders are not "minor technicalities" or mundane details. "[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.").

Despite being given ample opportunity to serve and file an amended initial brief and designation of matter that comply with the SCACR, Appellant has yet again ignored this Court's guidance and explicit instruction, and the Court should dismiss her appeal accordingly. *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).

Even had they been timely served and filed, Appellant's amended initial brief and amended designation of matter do not comply with the SCACR. While the amended brief removed the improper table of exhibits, the brief still references exhibits throughout the body of the document. It is unclear whether these are references to documents Appellant wishes to reference as part of the record on appeal or exhibits to filings or evidentiary exhibits entered at hearings in the case below. Appellant's amended initial brief still includes authorities which are not binding or persuasive. Eleven of the cases cited by Appellant are from foreign jurisdictions such as Ohio, California, Florida, Connecticut, and the 11<sup>th</sup> Circuit of the United States Court of Appeals. Appellant provides no context in the body of her brief as to how these authorities apply to this case or relate to binding South Carolina jurisprudence.

A more fundamental problem with Appellant's amended initial brief is Appellant's continued engagement in mudslinging and spurious allegations of fraud and misrepresentation against Respondent's counsel. While it is not prudent to address each of Appellant's assertions in this reply, it suffices to state that there have been no fraudulent filings or misrepresentations made on behalf of the Respondent. Appellant made these same assertions in her filings below, and no judge has ever agreed with her on these points. Appellant appears to believe that, because the Special Referee ruled against her, the ruling must have been the result of fraud and/or misrepresentations by Respondent or Respondent's counsel. Appellant further attempts to raise affirmative defenses, such as res judicata, which she did not raise in her responsive answers which were submitted in this case while Appellant was represented by counsel. Ironically, the Special Referee found that the doctrines of res judicata and "law of the case" barred appellant's challenges to Respondent's reformation of mortgage and establishment of an easement causes of action. These doctrines would not apply to Respondent's foreclosure action where 1) Respondent's prior

foreclosure was explicitly dismissed pursuant to SCRCRCP Rule 60(b) *without* prejudice and, 2) Appellant did not raise this issue as an affirmative defense in her responsive pleadings. The facts and evidence were thoroughly reviewed by the Special Referee in granting judgment in favor of Respondent. Appellant's amended initial brief falls far short of reciting an appellate issue that the Respondent could be expected to brief.

Appellant's amended designation of matter to be included in the record on appeal also fails to comply with Rule 209(b) and (c), SCACR. Appellant's amended designation is wholly confusing as it continues to refer to documents as exhibits with specific numbers which do not correspond to any numbered exhibit submitted in the case below. The amended designation includes items that are impertinent to this appeal such as proposed orders which were never entered (Item 8), and items that were never submitted in the case below such as a duplicitous satisfaction of a prior mortgage given by Appellant in favor of Mortgage Electronic Registration Systems, Inc., as nominee for GreenPoint Mortgage Funding, Inc. (Item 14). The amended designation also includes inappropriate and inaccurate commentary on certain items such as Items 19 through 21. These deficiencies are by no means exhaustive but are sufficient to illustrate that the amended designation does not comply with the SCACR.

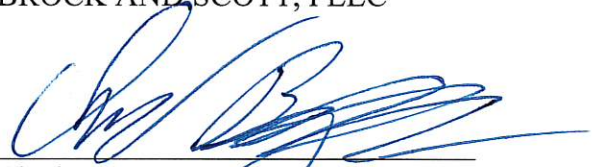
### **CONCLUSION**

For the foregoing reasons, Deutsche Bank respectfully requests that this appeal be dismissed 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  
2006-5 NovaStar Home Equity Loan Asset-  
Backed Certificates, Series 2006-5*

Dated: March 1, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on MARCH 1<sup>ST</sup>, 2024, she served a copy of Respondent's Reply to Appellant's Return to Respondent's Renewed 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



Ilina Bobb  
BROCK & SCOTT, PLLC