

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell R. Scarborough, Master in Equity

Case No. 2006-CP-10-2859
Appellate Case No. 2012-212524

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SC Court of Appeals

Deutsche Bank National Trust Company, as
Trustee of Ameriquest Mortgage Securities, Inc.,
Asset Backed Pass Through Certificates, Series
2005-R4CGM under the Pooling and Servicing
Agreement dated as of May 1, 2005, without
Recourse.....Respondent,

v.

Vandora M. Huggins-Edwards a/k/a Vandora
H. Edwards; Sylvia Anne Lawrence a/k/a
Sylviatte Anne Lawrence; Glenn M. Huggins;
Michael Huggins; Donnell Huggins; Samuel
Huggins; Ira Huggins a/k/a Ira S. Huggins;
Derwin Huggins; Andrean Huggins Cotton
a/k/a Adrienne Huggins Cotton; Sharon H. Smack;
Dewayne Dixon; Kimberly Nelms; Timothy Nelms;
Jennifer Nelms; Michael A. Brown;
Demetrius Huggins Nelms, a minor;
Darius Simmons, a minor; Dondre Simmons, a minor;
Reginald Huggins; Joseph Huggins; Heather Huggins;
Barbara Huggins; any other Heirs-at-Law or devisees of
Ricky Henry Huggins, Deceased, their heirs,
Personal Representatives, Administrators, Successors and
Assigns, and all other persons entitled to claim through them;
any other Heirs-at-Law or devisees of Henry Buster Huggins, Jr.,
Deceased, their heirs, Personal Representatives, Administrators,
Successors and Assigns, and all other persons entitled to claim
through them; any other Heirs-at-Law or devisees of
Michelle Huggins, Deceased, their heirs, Personal Representatives,
Administrators, Successors and Assigns, and all other persons entitled
to claim through them; any other Heirs-at-Law or devisees
of Buster Huggins, Sr., Deceased, their heirs, Personal
Representatives, Administrators, Successors and

Assigns, and all other persons entitled to claim through them;
all unknown persons with any right, title or interest
in the real estate described herein; also any persons
who may be in the military service of the United States
of America, being a class designated as John Doe;
and any unknown minors or persons under a disability
being a class designated as Richard Roe; South Carolina
Department of Revenue; Safeway Finance; Ford Motor
Credit Company; General Motors Acceptance Corporation;
White Directory Holdings Carolina, Inc. d/b/a The Talking
Phone Book; Monogram Credit Card Bank of Georgia;
Michael Twitty; Deborah Twitty; the United States of America,
by and through its agency, the Internal Revenue Service;
and John C. Bigler..... Defendants,

Of whom Vandora M. Huggins-Edwards a/k/a Vandora
H. Edwards is the Appellant.

INITIAL BRIEF OF THE RESPONDENT

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National Trust Company, as Trustee of
Ameriquest Mortgage Securities, Inc., Asset
Backed Pass Through Certificates, Series
2005-R4CGM under Pooling and Servicing
Agreement dated as of May 1, 2005, without
recourse

August 19, 2013

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE APPELLANT PRESERVE ANY OF THE ISSUES FOR APPELLATE REVIEW?
- II. DID VANDORA HUGGINS ABANDON SEVERAL OF THE ISSUES RAISED IN HER APPEAL BY FAILING TO CITE ANY AUTHORITY IN SUPPORT OF THEM?
- III. DID VANDORA HUGGINS WAIVE HER OBJECTIONS TO THE TESTIMONY OF SHARON SMACK AND DAVID MERRILL BY NOT MAKING THEM AT THE TRIAL?
- IV. DID VANDORA HUGGINS WAIVE THE DEFENSES SHE NOW ARGUES ON APPEAL BY FAILING TO PLEAD THEM?
- V. DOES VANDORA HUGGINS'S FAILURE TO APPEAL THE PARTIAL SUMMARY JUDGMENT ORDER BAR HER APPEAL AS TO THE FORECLOSURE OF THE COTENANTS' INTERESTS IN THE SUBJECT PROPERTY?
- VI. DOES VANDORA HUGGINS'S FAILURE TO DESIGNATE JOHN BIGLER AS A RESPONDENT IN THIS APPEAL BAR HER APPEAL AS TO THE PORTIONS OF THE FINAL ORDER GRANTING HIM RELIEF?
- VII. IS VANDORA HUGGINS'S CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL AN APPROPRIATE GROUND FOR APPEAL?
- VIII. DID VANDORA HUGGINS FAIL TO REFUTE THE MASTER'S LEGAL CONCLUSIONS?

STATEMENT OF THE CASE

On July 24, 2006, Respondent Deutsche Bank National Trust Company, as Trustee of Ameriquest Mortgage Securities, Inc., Asset Backed Pass Through Certificates, Series 2005-R4CGM under the Pooling and Servicing Agreement dated as of May 1, 2005, without Recourse (“Deutsche Bank”) filed this foreclosure action against Appellant Vandora M. Huggins-Edwards (“Vandora Huggins”) concerning the real property at 1218 Gunn Avenue, Charleston, SC 29407 a/k/a Lots 322 and 323 (“Subject Property”). (Complaint.)

On September 7, 2006, The Clerk of Court referred the action to the Honorable Mikell R. Scarborough, Master in Equity for Charleston County (“Master”). (Orders of Reference.)

On September 10, 2008, Deutsche Bank filed a First Amended Complaint in the foreclosure action to add causes of action for quiet title, equitable subrogation, and partition, and to add the defendants necessary to quiet title to the Subject Property. (First Amd. Compl.) On December 9, 2010, Deutsche Bank filed a Second Amended Complaint to add a cause of action for encroachment and to add John Bigler as a defendant. (Second Amd. Compl.)

On December 31, 2010, Vandora Huggins filed an Answer. (Answer.) On February 1, 2011, John Bigler filed an Answer and Counterclaims or Cross-Claims. (Ans. Counterclaims or Cross-claims.)

On March 9, 2011, Deutsche Bank filed a Reply to John Bigler’s counterclaim. (Reply.) Vandora Huggins did not file a Reply to John Bigler’s cross-claim against her.

On October 18, 2011, Deutsche Bank filed a Motion for Default Judgment Upon Hearing as to the defendants who failed to respond to the Second Amended Complaint. (Mot. for Default Judgment Upon Hearing.)

On January 25, 2012, Deutsche Bank filed a Motion for Partial Summary Judgment on its equitable subrogation cause of action. (Mot. Part. Summ. J.)

On February 15, 2012, the Master entered a default judgment against the remaining defendants and granted Deutsche Bank's Motion for Partial Summary Judgment (hereinafter the "Partial Summary Judgment Order"). (Order.) The Partial Summary Judgment Order also granted Deutsche Bank's Motion for Default Judgment Upon Hearing. *Id.* No party filed a Rule 59(e) Motion or appealed from the Partial Summary Judgment Order.

The trial was held on February 28, 2012. Only the following parties appeared at trial:

- Deutsche Bank, through counsel;
- Vandora Huggins, through counsel;
- John Bigler, *pro se*;
- The guardian ad litem for Demetrius Huggins Nelms (minor), Darius Simmons (minor), Dondre Simmons (minor), Ira Huggins a/k/a Ira S. Huggins (incarcerated), and the class of unknown defendants designated as Richard Roe;
- The appointed attorney for the class of unknown defendants designated as John Doe;
- Samuel Huggins, *pro se* (who was in default for failure to answer) (Trial Tr. 37:21-24);
- Michael Huggins, *pro se* (who was in default for failure to answer) (Trial Tr. 38:12);

- Donnell Huggins, *pro se* (who was in default for failure to answer) (Trial Tr. 38:17);
- Sylvia Lawrence, *pro se* (who was in default for failure to answer) (Trial Tr. 39:4).

On April 5, 2012, the Master entered a Final Order from the trial. (Final Order.) No party filed a Rule 59(e) motion as to the Final Order. The Master entered a Supplemental Order on July 16, 2012. (Supp. Order.)

This appeal from the Final Order followed.

STATEMENT OF THE FACTS

This appeal involves the Master's resolution of serious title defects plaguing two properties in Charleston County by quieting title to them, redrawing the boundary lines between them to remove an encroachment, and then ordering the foreclosure of a mortgage on one of the properties.

On April 6, 2005, as part of cash-out refinancing¹, Vandora Huggins-Edwards and her mother, Lucille Huggins, executed and gave a promissory ("Note") to Ameriquist Mortgage Company in the amount of \$120,800.00. (Pl.'s Exhibit 16 to Trial Tr.) Representing that she was the sole owner of the Subject Property, Vandora Huggins gave to Ameriquist Mortgage Company a first lien real estate mortgage ("Mortgage") covering the Subject Property, which is fully described as:

¹ This loan transaction refinanced a previous first lien mortgage on the Subject Property given to NovaStar Mortgage by Buster Huggins, Sr. and Lucille Huggins (the parents of Vandora Huggins) on November 17, 2003, and recorded in the office of the RMC/ROD for Charleston County on November 25, 2003, in Book W476 at Page 168 (hereinafter "the NovaStar Mortgage"). (Partial Summ. J. Order ¶¶ 8-16.) The NovaStar Mortgage encumbered a 100% interest in the Subject Property jointly held by Buster Huggins, Sr. and Lucille Huggins. (Partial Summ. J. Order ¶¶ 8-9.) The proceeds from Ameriquist's loan to Vandora Huggins were used to completely satisfy the debt secured by the NovaStar Mortgage—out of the \$120,800.00 in mortgage loan proceeds from Ameriquist, the closing attorney disbursed \$92,490.22 to NovaStar. (Partial Summ. J. Order ¶¶ 15-16.)

ALL those two (2) lots of land, together with the buildings thereon, situate, lying and being on the public road or street known formerly as Seventh Avenue, but now known as Gunn Avenue, in the portion of Hillsboro called Maryville, in St. Andrews Parish, in the County of Charleston, State of South Carolina, and known and designated as Lot Nos. 322 and 323 on a plat of Hillsboro called Maryville, which plat is recorded in Plat Book "F", at Page 188 of Charleston County. Reference is hereby craved to said plat for a more complete and accurate metes and bounds description.

This being the identical property conveyed to Vandora H. Edwards a/k/a Vandora M. Huggins-Edwards by deed of Lucille Huggins, dated November 15, 2004 and recorded December 2, 2004, in Deed Book Y517 at Page 835.

Property Address: 1218 Gunn Avenue
Charleston, SC 29407

TMS# 418-05-00-279

The Mortgage was recorded in the Office of the Register Mesne Conveyance for Charleston County on April 27, 2005, in Mortgage Book R534 at Page 330. (Pl.'s Exhibit 17 to Trial Tr.) The Mortgage was assigned to Deutsche Bank by Assignment of Mortgage dated July 26, 2006, and recorded on August 21, 2006, in Book C598 at Page 671. (Pl.'s Exhibit 18 to Trial Tr.)

After Vandora Huggins defaulted on the repayment of the Note, Deutsche Bank filed this action for foreclosure of the Mortgage on the Subject Property. (Compl.) Thereafter, Deutsche Bank discovered the following two issues affecting title to the Subject Property. First, Vandora Huggins owned less than a 100% interest in the Subject Property, with the Subject Property also being partly owned by the intestate heirs of her father, Buster Huggins Sr. (hereinafter referred to as the "Cotenants"). (Final Order p. 3 ¶ 2.) Second, several improvements to the parcel next door (known as "Lot 324" with TMS # 418-05-00-280, and hereinafter referred to as the "Adjoining Property") encroached upon the Subject Property, including a portion of the house thereon, the back porch, the

patio, the walkway, and the driveway. (Final Order p. 3 ¶ 2.) Defendant John Bigler had obtained title to the Adjoining Property through a 2007 tax sale. (Final Order p. 8 ¶ 7.)

To address these title issues, Deutsche Bank amended its pleadings to assert causes of action for 1) quiet title to the Subject Property; 2) encroachment as to John Bigler and the Adjoining Property; 3) equitable subrogation seeking to make the interests of the Cotenants subject to the Mortgage; 4) foreclosure of the Mortgage on the Subject Property; and 5) if necessary, partition of the Subject Property. (Second Amd. Compl. ¶¶ 8-66.)

Vandora Huggins answered the Second Amended Complaint, admitting some allegations and denying others. (Ans. of Individual Def. Vandora Huggins M. Huggins-Edwards.) In her answer, she asserted only one affirmative defense: failure to state facts sufficient to constitute a cause of action. *Id.* She also attempted to make a motion pursuant Rule 12(b)(6) within the answer, but never requested a hearing or otherwise pursued this motion. *Id.*

Defendant John C. Bigler answered the Second Amended Complaint and asserted claims (couched as counterclaims against Deutsche Bank and cross-claims against his co-defendants) seeking the reformation of the deeds in his chain of title to the Adjoining Property to give him an ownership interest in half of Lot 323 of the Subject Property. (Ans. Counterclaim or Cross-Claim ¶¶ 14-29.) In the alternative, Bigler asserted a claim for an easement implied by prior use as to the encroachment upon the Subject Property. *Id.* at ¶¶ 30-39. Finally, Bigler asserted a cause of action to quiet his Tax Deed to the Adjoining Property. *Id.* at ¶¶40-48.

On January 5, 2012, Deutsche Bank filed a motion for partial summary judgment on its equitable subrogation claim. (Pl.'s Mot. P. Summ. J.) On February 15, 2012, the Master entered an order granting Deutsche Bank's motion for partial summary judgment. (Partial Summ. J. Order.) In the Partial Summary Judgment Order, the Master made the following undisputed findings of fact:

- The interests of the Cotenants in the Subject Property were subordinate and subject to the NovaStar Mortgage (Partial Summ. J. Order ¶ 11);
- The proceeds from Ameriquest's loan to Vandora Huggins were used to completely satisfy the debt secured by the NovaStar Mortgage—out of the \$120,800.00 in mortgage loan proceeds from Ameriquest, the closing attorney disbursed \$92,490.22 to NovaStar (Partial Summ. J. Order ¶ 15);
- Ameriquest assigned all of its rights and interest in the Mortgage to Plaintiff by Assignment of Mortgage (Partial Summ. J. Order ¶ 17);

In the Partial Summary Judgment Order, the Master made the following conclusions of law:

- Ameriquest satisfied the elements of equitable subrogation and would have been entitled to be equitably subrogated to all of the rights previously held by NovaStar in the subject property, including its encumbrance of the interests of every one of the Cotenants in the subject property (Partial Summ. J. Order pp. 5-6);
- Because Ameriquest assigned all of its rights and interest in the Mortgage to Plaintiff by an Assignment of Mortgage, Plaintiff now stands in the shoes of Ameriquest as to its rights and privileges, including its subrogation to the rights of NovaStar (Partial Summ. J. Order p. 6);
- Deutsche Bank's Mortgage constituted a first priority lien that encumbered the interests of all of the Cotenants in the subject property to the extent of the \$92,490.22 NovaStar debt that was satisfied (Partial Summ. J. Order p. 6).

Neither Vandora Huggins nor any other party filed a Rule 59(e) motion or appealed from the Partial Summary Judgment Order.

The trial on February 28, 2012, was conducted in four phases. The first phase of trial concerned John Bigler's counterclaim and cross-claim to quiet his tax title to the

Adjoining Property. (Trial Tr. 11:16 to 25:6.) Bigler put forth the testimony of Mary Scarborough, Charleston County Delinquent Tax Collector, who testified as to the propriety of the tax sale proceedings concerning the Adjoining Property and her office's compliance with the statutory tax sale notice requirements. (Trial Tr. 14:20 to 25:6.) Counsel for Vandora Huggins cross-examined the Tax Collector as to her method of determining who to send delinquent tax notices to and her distribution of the tax sale overage (Trial Tr. 21:19 to 23:1), but did not object to any of the Tax Collector's testimony or the admission of any of John Bigler's exhibits.

The second phase of trial concerned Deutsche Bank's claim for quiet title to the Subject Property. (Trial Tr. 25:6 to 40:9.) Deutsche Bank offered into evidence several publicly recorded deeds in the chain of title to the Subject Property, the death certificates of Buster Huggins Sr. and those of his children and grandchildren who predeceased him, and the probate court records from the Estate of Michelle Y. Huggins, all of which were admitted without objection. (Trial Tr. 25:18 to 26:8, 28:14 to 29:9, 30:3 to 31:2, 31:21 to 32:11, 34:19 to 35:18, 36:5-18.) Finally, Deutsche Bank put forth the testimony of Sharon Smack, the granddaughter of Buster Huggins Sr., who testified as to the identity of the living issue of Buster Huggins Sr. and the issue of the children and grandchildren who predeceased Buster Huggins Sr. (Trial Tr. 26:9 to 34:18.) The other defendants who attended the trial (despite being in default)—Samuel Huggins (Trial Tr. 38:2-3), Michael Huggins (Trial Tr. 38:12), Donnell Huggins (Trial Tr. 38:17), and Sylvia Lawrence (Trial Tr. 39:4)—confirmed the accuracy of Sharon Smack's testimony when later questioned by the Court. (Trial Tr. 38:2 to 39:15.)

Vandora Huggins did not cross examine Sharon Smack (Trial Tr. 33:23) or object to any of her testimony at the trial (Trial Tr. 26:13 to 34:18). After Deutsche Bank rested its case as to its quiet title cause of action, Vandora Huggins did not challenge Deutsche Bank's case for quiet title or refute any of the evidence admitted into the record. (Trial Tr. 37:14.)

The third phase of trial concerned Deutsche Bank's claim for foreclosure of the Subject Property. (Trial Tr. 40:13 to 54:22.) Deutsche Bank put forth the testimony of David Merrill, an employee of Deutsche Bank's servicer, American Home Mortgage Servicing Inc. (Trial Tr. 41:7 to 54:21.) Through Mr. Merrill's testimony, Plaintiff offered into evidence the original Note (Trial Tr. 44:10 to 45:9), original Mortgage (Trial Tr. 45:10 to 46:8), and original Assignment of Mortgage into Deutsche Bank (Trial Tr. 46:9 to 47:11), and the Court admitted these instruments into evidence. Vandora Huggins did not object to the admissibility of these documents. (Trial Tr. 45:5, 46:6, 47:10.) Mr. Merrill testified that Vandora Huggins defaulted on the repayment of her loan under the terms of the Note and Mortgage (Trial Tr. 47:12 to 47:24) and testified as to the precise amount of the debt due at the time of the trial (Trial Tr. 48:8 to 49:20). Mr. Merrill testified as to his company's provision of pre-foreclosure notices to Vandora Huggins and its proper acceleration of the Note. (Trial Tr. 49:21 to 51:6.) Vandora Huggins made no objections to any of Mr. Merrill's testimony or to any exhibits introduced through his testimony. (Trial Tr. 41:7 to 51:8.)

Vandora Huggins cross-examined Mr. Merrill only as to Lucille Huggins's co-signature on the Note (Trial Tr. 51:13-21), Lucille Huggins's interest in the Subject Property (Trial Tr. to 51:22 to 52:6), the loan delinquency notices being addressed to

Lucille Huggins in addition to Vandora Huggins (Trial Tr. 52:7-18), and Mr. Merrill's awareness of the title issues with the Subject Property (Trial Tr. 52:23 to 53:15). But Vandora Huggins challenged none of his testimony from the direct examination.

During the foreclosure phase of trial, Deutsche Bank's counsel provided an Affidavit of Attorney's Fees to the Master. (Trial Tr. 40:20-25.) Vandora Huggins made no objection to the affidavit at the time it was offered or to the amount of the attorney's fees requested. (Trial Tr. 40:20-25, 53:23 to 54:16.)

The fourth and final phase of trial concerned the encroachment of the house and other improvements on the Adjoining Property across the boundary line of the Subject Property. (Trial Tr. 54:23 to 115:22.) In its pleadings, Deutsche Bank sought an injunction for the removal of the improvements to the extent they encroached upon the Subject Property. (Second Amd. Compl. ¶¶ 36-42.) At trial, however, Deutsche Bank conceded that it would have an adequate remedy at law if the Master were to redraw the boundary line between the two properties and require John Bigler to pay fair market value for a strip of land from the Subject Property wide enough to remove the encroachment. (Trial Tr. 9:10-17, 81:21 to 82:7.) John Bigler, however, sought reformation of the legal descriptions in the deeds in his chain of title to the Adjoining Property to add half of Lot 323 to the Adjoining Property without paying for it, or at least an easement in the alternative. (Ans., Counterclaims or Cross-claims of Def. John C. Bigler ¶¶ 14-39.)

Deutsche Bank put forth at trial the testimony of Charles F. "Chuck" Dawley, Jr., R.L.S., a land surveyor with the Dawley Surveying Company (Trial Tr. 66:5 to 81:13), and Jennifer C. Perry, a licensed appraiser with the appraisal firm of Sass, Herrin and

Associates (Trial Tr. 55:5 to 65:24). Both witnesses were qualified and admitted as expert witnesses in their respective fields (56:19-21, 67:22-23) without objection from Vandora Huggins (Trial Tr. 56:17, 67:21).

Mr. Dawley testified as to his survey of both the Subject Property and Adjoining Property for this case. (Trial Tr. 67:25 to 68:10.) Deutsche Bank offered into evidence two plats drafted by Mr. Dawley: one plat of the two properties as they were at the time of trial showing the encroachment (Trial Tr. 68:11 to 69:20) and another plat of the two properties showing a proposed new boundary line that would eliminate the encroachment (Trial Tr. 69:21 to 70:16). Mr. Dawley testified that the proposed redrawing of the boundary line would comply with local zoning regulations, including setback and lot size requirements. (Trial Tr. 70:17 to 72:2.) Vandora Huggins did not object to the admissibility of either plat (Trial Tr. 69:1, 70:14-15) or to any of Mr. Dawley's testimony. Vandora Huggins cross-examined Mr. Dawley with only a single question about Mr. Dawley's references to past plats of the properties. (Trial Tr. 80:7-12.)

Ms. Perry testified as to her expert opinion of the value of the Subject Property before and after the proposed redrawing of the boundary line as set forth in Mr. Dawley's proposed plat, as well as the diminution in value to the Subject Property that would result from the proposed redrawing of the boundary line. (Trial Tr. 56:22 to 60:20.) Vandora Huggins did not object to Ms. Perry's testimony or cross-examine her. (Trial Tr. 63:12.) Deutsche Bank then rested its case. (Trial Tr. 82:17.)

Thereafter, Mr. Bigler put on his case concerning his claims for reformation of the deeds in the chain of title to the Adjoining Property and for an easement in the alternative. (Trial Tr. 84:11 to 115:22.) Perplexingly, Vandora Huggins's only cross-

examination questions for John Bigler seemed to support John Bigler's claim for taking land away from her property without paying for it. (Trial Tr. 113:9 to 115:7.) John Bigler then rested his case. (Trial Tr. 115:21-22.)

Vandora Huggins put forth no case in her defense to the claims of either Deutsche Bank or John Bigler.

In her closing statement at trial, Vandora Huggins did not dispute her mortgage debt, her default on the repayment of that debt, or Deutsche Bank's right to foreclose. (Trial Tr. 121:22 to 125:25.) She alleged in her closing statement that the mortgage company who originated her loan failed to conduct a title search (Trial Tr. 122:14-20), yet she had not offered any such evidence at trial. Then Vandora Huggins used the majority of her closing statement (again, perplexingly) to support John Bigler's claim for taking a strip of her property free of charge. (Trial Tr. 122:24 to 125:19.) In the final portion of her closing statement, Vandora Huggins consented to the manner in which the Master quieted title to the Subject Property. (Trial Tr. 125:20-25.)

In the Final Order from trial entered on April 5, 2012, the Master quieted title to the Subject Property in the following individuals and percentages:

- Vandora Huggins-Edwards (28/36th or 7/9th undivided interest)
- Samuel Huggins (1/36th undivided interest)
- Michael Huggins (1/36th undivided interest)
- Ira Huggins a/k/a Ira S. Huggins (1/36th undivided interest)
- Donnell Huggins (1/36th undivided interest)
- Glenn M. Huggins (1/36th undivided interest)
- Sylvia Anne Lawrence a/k/a Sylviette Anne Lawrence (1/36th undivided interest)
- Andrean Huggins Cotton a/k/a Adrienne Huggins Cotton (1/180th undivided interest)

- Sharon H. Smack (1/180th undivided interest)
- Dewayne Dixon (1/180th undivided interest)
- Derwin Huggins (1/180th undivided interest)
- Reginald Huggins (1/144th undivided interest)
- Joseph Huggins (1/144th undivided interest)
- Heather Huggins (1/144th undivided interest)
- Barbara Huggins (1/144th undivided interest)
- Kimberly Nelms (1/1260th undivided interest)
- Timothy Nelms (1/1260th undivided interest)
- Jennifer Nelms (1/1260th undivided interest)
- Michael Brown (1/1260th undivided interest)
- Demetrius Huggins Nelms (1/1260th undivided interest)
- Darius Simmons (1/1260th undivided interest)
- Dondre Simmons (1/1260th undivided interest)

(Final Order pp. 6-7.) Based on the unappealed findings of fact and conclusions of law from the Partial Summary Judgment Order, the Master held that the interests of all of these individuals in the Subject Property were subject to the Mortgage and to Deutsche Bank's foreclosure claim. (Final Order p. 7.)

The Master also quieted John Bigler's tax title to the Adjoining Property. (Final Order p. 7.) The Master rejected John Bigler's claim for an easement implied by prior use (Final Order pp. 11-12), but resolved the encroachment issue by 1) reforming the legal descriptions in the deeds in the chain of title to the Adjoining Property to move the boundary line dividing the Adjoining Property and the Subject Property ten (10) feet toward the east to give the Adjoining Property an additional ten (10) foot by one-hundred (100) foot strip of land, and 2) granting John Bigler the option of purchasing an additional fifteen (15) feet toward the east, for a total of twenty-five (25) extra feet (or one half of Lot 323). (Final Order pp. 9-13.)

Finally, the Master granted Deutsche Bank a judgment of foreclosure and sale as to the Subject Property against Vandora Huggins and the co-tenants in whom title had been quieted in the first part of the Final Order, thereby permitting the eventual purchaser at foreclosure sale to acquire a 100% undivided interest in the Subject Property free and clear. (Final Order pp. 13-19.)

As to portion of Final Order granting Deutsche Bank relief on its claims, Vandora Huggins attempts to argue the following issues on appeal that she failed to raise at the trial court level:

- That Deutsche Bank's claims are barred by res judicata (Appellant's Br. p. 8);
- That Deutsche Bank's claims are barred by the statute of frauds (Appellant's Br. p. 2, 4.)
- That Deutsche Bank's claims are barred by the doctrine of unclean hands because her loan was closed through the unauthorized practice of law without the supervision of a licensed attorney (Appellant's Br. pp. 3, 4, 9, 10, 11);
- That Ameriquest failed to conduct a title search prior to Vandora Huggins's loan closing (Appellant's Br. p. 4);
- That the Master's Final Order constituted a taking of her property without just compensation in violation of the Fifth Amendment (Appellant's Br. pp. 9, 12);
- That the Master erred in granting Deutsche Bank's motion for partial summary judgment as to its equitable subrogation claim by Order entered on February 15, 2012 (Appellant's Br. p. 5, 11);
- That she received ineffective assistance of counsel at the trial court level (Appellant's Br. pp. 1, 5, 8, 12);
- That her loan was predatory (Appellant's Br. Argument # 5 in Table of Contents);
- That the assignment of mortgage into Deutsche Bank was fraudulent (Appellant's Br. Argument # 9 in Table of Contents, pp. 4-6);

- That the Master erred in awarding of attorneys' fees to Deutsche Bank (Appellant's Br. Argument # 5 in Table of Contents, p. 14);
- That the Master erred in permitting John Bigler an option to purchase an extra strip of land (Appellant's Br. p. 2);
- That the Master erred in not also entering a foreclosure judgment against her deceased mother, Lucille Huggins (Appellant's Br. p. 3);
- That the Master erred in foreclosing out the interest of the cotenants in the Subject Property because no written contract existed between Deutsche Bank and those individuals (Appellant's Br. p. 3);
- That the Master erred in not setting a minimum bid for the foreclosure sale or foreclosure sale price (Appellant's Br. pp. 5-6).

As to portion of Final Order granting John Bigler relief on his claims, Vandora Huggins attempts to argue the following issues on appeal that were never raised at the trial court level:

- That John Bigler lacked standing (Appellant's Br. Argument # 3 in Table of Contents, pp. 1, 2);
- That John Bigler's claims are barred by res judicata (Appellant's Br. Argument # 3 in Table of Contents);
- That the Master's Final Order constituted a taking of her property without just compensation in violation of the Fifth Amendment (Appellant's Br. p. 12);
- That John Bigler's title was defective due to defects in the notices issued by the Charleston County Delinquent Tax Collector (Appellant's Br. Argument # 8 in Table of Contents, pp. 2, 7-8);
- That John Bigler's use of the judicial system to quiet title to the Adjoining Property is illegal (Appellant's Br. p. 13).

Also for the first time on appeal, Vandora Huggins attempts to object to the admissibility and credibility of the testimony of Sharon Smack (Appellant's Br. p. 3, 13-14) and to the admissibility of certain testimony by David Merrill (Appellant's Br. p. 3).

STANDARD OF REVIEW

The Court may affirm for any ground appearing in the record. Rule 220(c), SCAR; *see also Mortgage Elec. Sys., Inc. v. White*, 384 S.C. 606, 614, 682 S.E.2d 498, 502 n. 2 (Ct. App. July 13, 2009)(citing *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000)).

“A mortgage foreclosure is an action in equity.” *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). In an appeal from an action in equity, tried by a judge alone, the Court may find facts in accordance with its own view of the preponderance of the evidence. *Lowcountry Open Land Trust v. Charleston S. Univ.*, 376 S.C. 399, 407, 656 S.E.2d 775, 779 (Ct. App. 2008). “However, this broad scope of review does not require an appellate court to disregard the findings below or ignore the fact that the trial judge is in the better position to assess the credibility of the witnesses.” *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001).

“Moreover, the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings.” *Id.* at 38788, 544 S.E.2d at 623.

ARGUMENT

I. None of the issues raised on appeal are preserved for appellate review.

Vandora failed to preserve any of the issues raised in her appeal for review by this Court. “It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved.” *Pye v. Estate of Fox*, 369 S.C. 555, 565, 633 S.E.2d 505, 510 (2006). “If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.” *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); *see also*

Rule 59(e), SCRPC. This preservation requirement “prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.”

Id.

The only issue on the appeal that Vandora Huggins raised at the trial court level was whether the mortgage company who originated her loan failed to conduct a title search. (Trial Tr. 122:14-20.) However, she failed to plead this issue and never offered any evidence in support of it at trial. The first and only time it was mentioned was in her closing argument. The Master did not rule on or even address this issue in the Final Order, and Vandora Huggins failed to file a Rule 59(e) motion to preserve it.

As to the remainder of the issues raised in her appeal, Vandora Huggins did not plead or raise any of them at trial and the Master did not rule on them². Vandora Huggins never filed a Rule 59(e) motion to alter or amend the Final Order. Therefore, none of the issues that Vandora Huggins has raised on appeal are preserved for appellate review, and the Court must affirm the Final Order.

II. Vandora Huggins abandoned several of the issues raised in her appeal by failing to cite any authority in support of them.

Vandora Huggins abandoned several of the issues raised in her appeal by failing to cite any authority in support of them. When an appellant fails to cite any supporting

² Although the Final Order awarded attorney’s fees to Deutsche Bank and granted John Bigler an option to purchase additional land from the Subject Property (two issues raised in the Appellant’s Brief), Vandora Huggins did not dispute those two aspects of the case at trial; therefore, they were not “at issue” at the trial court level and thus not preserved for review. To the extent the Court finds that these two issues were preserved, the Master’s ruling on these issues should be affirmed because Vandora never objected or put forth evidence in opposition concerning those issues. Further, Vandora Huggins has not argued or shown that the Master abused his discretion in awarding the attorney’s fees. *Donahue v. Donahue*, 299 S.C. 353, 365, 384 S.E.2d 741, 748 (1989)(“An award of attorneys’ fees and costs is a discretionary matter not to be overturned absent abuse by the trial court.”).

authority for his or her position and makes only conclusory arguments, the appellant abandons the issue on appeal. *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct. App. 2006).

Vandora Huggins cites no authorities in support of the following arguments and has thereby abandoned these issues:

- That Deutsche Bank's claims are barred by res judicata (Appellant's Br. p. 8);
- That Deutsche Bank's claims are barred by the statute of frauds (Appellant's Br. p. 2, 4.)
- That Ameriquest failed to conduct a title search prior to Vandora Huggins's loan closing (Appellant's Br. p. 4);
- That the Master's Final Order constituted a taking of her property without just compensation in violation of the Fifth Amendment (Appellant's Br. pp. 9, 12);
- That she received ineffective assistance of counsel at the trial court level (Appellant's Br. pp. 1, 5, 8, 12);
- That her loan was predatory (Appellant's Br. Argument # 5 in Table of Contents);
- That the assignment of mortgage into Deutsche Bank was fraudulent (Appellant's Br. Argument # 9 in Table of Contents, pp. 4-6);
- That the Master erred in awarding of attorneys' fees to Deutsche Bank (Appellant's Br. Argument # 5 in Table of Contents, p. 14);
- That the Master erred in permitting John Bigler an option to purchase an extra strip of land (Appellant's Br. p. 2);
- That the Master erred in not also entering a foreclosure judgment against her deceased mother, Lucille Huggins (Appellant's Br. p. 3);
- That the Master erred in not setting a minimum bid for the foreclosure sale or foreclosure sale price (Appellant's Br. pp. 5-6);
- That John Bigler's claims are barred by res judicata (Appellant's Br. Argument # 3 in Table of Contents);

- That the Master's Final Order constituted a taking of her property without just compensation in violation of the Fifth Amendment (Appellant's Br. p. 12);
- That John Bigler's use of the judicial system to quiet title to the Adjoining Property is illegal (Appellant's Br. p. 13);
- That the testimony of Sharon Smack was inadmissible hearsay and lacked credibility (Appellant's Br. p. 3, 13-14);
- That certain testimony by David Merrill was inadmissible (Appellant's Br. p. 3).

Therefore, the Master's Final Order could not be reversed based on any of these issues.

III. Vandora Huggins waived any objections to the testimony of Sharon Smack and David Merrill.

Vandora Huggins waived any objections to the testimony of Sharon Smack and David Merrill by not making them at trial. "The failure to make an objection at the time evidence is offered constitutes a waiver of the right to object." *Cogdill v. Watson*, 289 S.C. 531, 537, 347 S.E.2d 126, 130 (Ct. App. 1986).

Vandora Huggins did not object to any of the testimony of Sharon Smack at trial (Trial Tr. 26:13 to 34:18) and admits so in her brief (Appellant's Brief p. 1). Further, these objections on appeal are incompatible with her concession at trial that Ms. Smack's testimony was "an accurate reflection of the heirs of both Buster Huggins, Jr. and Buster Huggins, Sr." (Trial Tr. 125:24-25.)

Vandora Huggins likewise made no objections to any of Mr. Merrill's testimony or any exhibits introduced through his testimony (Trial Tr. 41:7 to 51:8), and she admits this in her brief as well (Appellant's Brief p. 1).

Therefore, the Final Order could not be reversed based on issues raised for the first time on appeal as to the admissibility or credibility of the testimony of Sharon Smack or David Merrill.

IV. Vandora Huggins waived the defenses she now argues on appeal by failing to plead them.

Vandora Huggins has waived the defenses she now asserts on appeal to the claims of Deutsche Bank and John Bigler because she never pleaded these defenses. “The failure to plead an affirmative defense is deemed a waiver of the right to assert it.” *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 n. 4 (Ct. App. 2009).

In her answer to the Deutsche Bank’s Second Amended Complaint, Vandora Huggins asserted only one affirmative defense: failure to state facts sufficient to constitute a cause of action. Vandora Huggins filed no Reply to the cross-claims of John Bigler against her. Vandora Huggins therefore waived all other affirmative defenses to the claims of both Deutsche Bank and John Bigler. The Final Order could not be reversed based on any of the defenses raised for the first time in this appeal.

V. Vandora Huggins’s failure to appeal the Partial Summary Judgment Order bars her appeal as to the foreclosure of the Cotenants’ interests in the Subject Property.

Vandora Huggins’s failure to appeal from the Partial Summary Judgment Order is fatal to her appeal as to the foreclosure of the Cotenants’ interests in the Subject Property based on equitable subrogation.

On a motion for partial summary judgment, “the court ... shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted” and “make an order specifying the facts that

appear without substantial controversy...” Rule 56(d), SCRPC. “Upon the trial of the action the facts so specified shall be deemed established...” *Id.*

“A portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case.” *Ulmer v. Ulmer*, 369 S.C. 486, 490, 632 S.E.2d 858, 861 (2006). “An unappealed ruling is the law of the case and requires affirmance.” *Shirley’s Iron Works, Inc. v. City of Union*, 403 S.C. 560, 743 S.E.2d 778, 785 (2013).

In the Partial Summary Judgment Order, the Master made the following undisputed findings of fact:

- The interests of the Cotenants in the Subject Property were subordinate and subject to the NovaStar Mortgage (Partial Summ. J. Order ¶ 11);
- The proceeds from Ameriquest’s loan to Defendant Vandora M. Huggins-Edwards a/k/a Vandora H. Edwards were used to completely satisfy the debt secured by the NovaStar Mortgage—out of the \$120,800.00 in mortgage loan proceeds from Ameriquest, the closing attorney disbursed \$92,490.22 to NovaStar (Partial Summ. J. Order ¶ 15); and
- Ameriquest assigned all of its rights and interest in the Mortgage to Plaintiff by Assignment of Mortgage (Partial Summ. J. Order ¶ 17).

Based on these undisputed facts, the Master concluded as a matter of law that Deutsche Bank, as assignee of Ameriquest, should be equitably subrogated to the rights previously held by NovaStar, including its encumbrance of the interests of every one of the Cotenants in the subject property to the extent of the \$92,490.22 NovaStar debt that was satisfied. (Partial Summ. J. Order pp. 5-6.)

Because Vandora Huggins failed to file a Rule 59(e) motion or appeal from the Partial Summary Judgment Order, its findings of fact were binding on the Master at trial and its conclusions of law became the law of the case.

Therefore, Vandora Huggins is barred from appealing the portions of the Final Order concerning equitable subrogation and the foreclosure of the Cotenants' interests in the Subject Property. Further, Vandora Huggins states in her Appellant's Brief that she "would affirm the Master's Court order equitably subrogating to Deutsche Bank Trustee..." (Appellant's Br. Argument #1 in the Table of Contents.)

VI. Vandora Huggins's failure to designate John Bigler as a Respondent in this appeal bars her appeal as to the portions of the Final Order granting him relief.

A party whose interests might be adversely affected by the appeal should be designated as a respondent in an appeal. Rule 202(a), SCACR. Although John Bigler was served with a Notice of Appeal, Bigler was not named as a Respondent and therefore has not filed a Respondent's Brief as to the portion of the appeal concerning his claims. Deutsche Bank should not be responsible for defending on appeal the relief that the Master granted to another party. Thus, the portions of the Final Order pertaining to John Bigler's claims must be affirmed unless he is properly joined as Respondent in this action.

VII. Vandora Huggins's claim of ineffective assistance of counsel is not an appropriate ground for appeal.

Ineffective assistance of counsel is not a recognized ground for appeal in a civil action, but rather a claim raised in a criminal action by a convicted defendant that their attorney's performance was so ineffective that it violated his or her Sixth Amendment rights. Therefore, Vandora Huggins's ineffective assistance of counsel argument is not a ground for reversal of the Final Order.

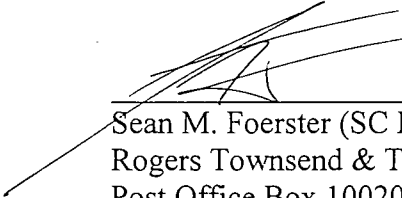
Assigns, and all other persons entitled to claim through them;
all unknown persons with any right, title or interest
in the real estate described herein; also any persons
who may be in the military service of the United States
of America, being a class designated as John Doe;
and any unknown minors or persons under a disability
being a class designated as Richard Roe; South Carolina
Department of Revenue; Safeway Finance; Ford Motor
Credit Company; General Motors Acceptance Corporation;
White Directory Holdings Carolina, Inc. d/b/a The Talking
Phone Book; Monogram Credit Card Bank of Georgia;
Michael Twitty; Deborah Twitty; the United States of America,
by and through its agency, the Internal Revenue Service;
and John C. Bigler..... Defendants,

Of whom Vandora M. Huggins-Edwards a/k/a Vandora
H. Edwards is the Appellant.

PROOF OF SERVICE

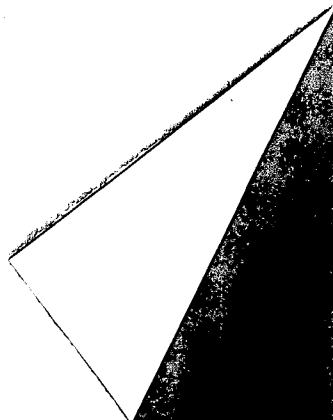
I HEREBY CERTIFY that I have served the Initial Brief of the Respondent on
August 19, 2013, by depositing a copy of each in the United States Mail, postage prepaid,
addressed to the each of following parties of record:

Vandora M. Huggins
1218 Gunn Avenue
Charleston, South Carolina 29407



Sean M. Foerster (SC Bar # 77466)
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Attorneys for Respondent Deutsche Bank
National Trust Company, as Trustee of
Ameriquest Mortgage Securities, Inc., Asset
Backed Pass Through Certificates, Series
2005-R4CGM under Pooling and Servicing
Agreement dated as of May 1, 2005, without
recourse



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell R. Scarborough, Master in Equity

RECEIVED

AUG 20 2013

Case No. 2006-CP-10-2859
Appellate Case No. 2012-212524

SC Court of Appeals

Deutsche Bank National Trust Company, as
Trustee of Ameriquest Mortgage Securities, Inc.,
Asset Backed Pass Through Certificates, Series
2005-R4CGM under the Pooling and Servicing
Agreement dated as of May 1, 2005, without
Recourse..... Respondent,

v.

Vandora M. Huggins-Edwards a/k/a Vandora
H. Edwards; Sylvia Anne Lawrence a/k/a
Sylviatte Anne Lawrence; Glenn M. Huggins;
Michael Huggins; Donnell Huggins; Samuel
Huggins; Ira Huggins a/k/a Ira S. Huggins;
Derwin Huggins; Andrean Huggins Cotton
a/k/a Adrienne Huggins Cotton; Sharon H. Smack;
Dewayne Dixon; Kimberly Nelms; Timothy Nelms;
Jennifer Nelms; Michael A. Brown;
Demetrius Huggins Nelms, a minor;
Darius Simmons, a minor; Dondre Simmons, a minor;
Reginald Huggins; Joseph Huggins; Heather Huggins;
Barbara Huggins; any other Heirs-at-Law or Devisees of
Ricky Henry Huggins, Deceased, their heirs,
Personal Representatives, Administrators, Successors and
Assigns, and all other persons entitled to claim through them;
any other Heirs-at-Law or Devisees of Henry Buster Huggins, Jr.,
Deceased, their heirs, Personal Representatives, Administrators,
Successors and Assigns, and all other persons entitled to claim
through them; any other Heirs-at-Law or Devisees of
Michelle Huggins, Deceased, their heirs, Personal Representatives,
Administrators, Successors and Assigns, and all other persons entitled
to claim through them; any other Heirs-at-Law or Devisees
of Buster Huggins, Sr., Deceased, their heirs, Personal
Representatives, Administrators, Successors and

Assigns, and all other persons entitled to claim through them;
all unknown persons with any right, title or interest
in the real estate described herein; also any persons
who may be in the military service of the United States
of America, being a class designated as John Doe;
and any unknown minors or persons under a disability
being a class designated as Richard Roe; South Carolina
Department of Revenue; Safeway Finance; Ford Motor
Credit Company; General Motors Acceptance Corporation;
White Directory Holdings Carolina, Inc. d/b/a The Talking
Phone Book; Monogram Credit Card Bank of Georgia;
Michael Twitty; Deborah Twitty; the United States of America,
by and through its agency, the Internal Revenue Service;
and John C. Bigler..... Defendants,

Of whom Vandora M. Huggins-Edwards a/k/a Vandora
H. Edwards is the Appellant.

**RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL**

The Respondent proposes the following be included in the Record on Appeal:

1. Complaint – filed July 24, 2006;
2. Order of Reference – filed September 7, 2006;
3. First Amended Lis Pendens, Summons, & Complaint – filed September 10, 2008;
4. Second Amended Lis Pendens, Summons, & Complaint – filed December 9,
2010;
5. Answer of Individual Defendant Vandora M. Huggins-Edwards, filed December
31, 2010;
6. Answer & Counterclaims (Or Cross-Claims) of Defendant John C. Bigler,
Correction of Deed Easement By Prior Use, Quiet Title – filed February 3, 2011,

7. Plaintiff's Reply to the Answer and Counterclaim of Defendant John C. Bigler, filed March 9, 2011;
8. Plaintiff's Notice of Motion and Motion for Partial Summary Judgment with Affidavit of David J. Merrill – filed January 5, 2012;
9. Order Granting Partial Summary Judgment – filed February 15, 2012;
10. Full Trial Transcript, from trial held on February 28, 2012, with all exhibits admitted into evidence at trial;
11. Final Order – filed April 5, 2012;
12. Supplemental Order – filed July 16, 2012.

I certify that this designation contains no matter which is irrelevant to this appeal.



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Attorneys for Respondent Deutsche Bank
National Trust Company, as Trustee of
Ameriquest Mortgage Securities, Inc., Asset
Backed Pass Through Certificates, Series
2005-R4CGM under Pooling and Servicing
Agreement dated as of May 1, 2005, without
Recourse

August 19, 2013

SC Court of Appeals
AUG 20 2013
RECEIVED

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell R. Scarborough, Master in Equity

Case No. 2006-CP-10-2859
Appellate Case No. 2012-212524

Deutsche Bank National Trust Company, as
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Asset Backed Pass Through Certificates, Series
2005-R4CGM under the Pooling and Servicing
Agreement dated as of May 1, 2005, without
Recourse.....Respondent,

v.

Vandora M. Huggins-Edwards a/k/a Vandora
H. Edwards; Sylvia Anne Lawrence a/k/a
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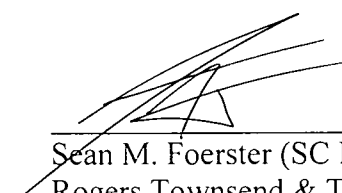
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Michael Twitty; Deborah Twitty; the United States of America,
by and through its agency, the Internal Revenue Service;
and John C. Bigler..... Defendants,

Of whom Vandora M. Huggins-Edwards a/k/a Vandora
H. Edwards is theAppellant.

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the Designation of Matter of the Respondent on August 19, 2013, by depositing a copy of each in the United States Mail, postage prepaid, addressed to the each of following parties of record:

Vandora M. Huggins
1218 Gunn Avenue
Charleston, South Carolina 29407



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Post Office Box 100200(29202)
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Attorneys for Respondent Deutsche Bank National Trust Company, as Trustee of Ameriquet Mortgage Securities, Inc., Asset Backed Pass Through Certificates, Series 2005-R4CGM under Pooling and Servicing Agreement dated as of May 1, 2005, without recourse