

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

64351

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Edward B. Cottingham, retired judge from the Fourth Judicial Circuit
James O. Spence, master in equity for the Eleventh Judicial Circuit

Case No. 2011-197766
(Case No. C/A 2009-CP-32-05140 from Lexington County)

Deutsche Bank Trust Company Americas
As Trustee for RALI2007QS8, Respondent,
H. Guy Gantt, Intervenor, Respondent,

v.

Janice Cross, South Carolina National Bank, N.A., Defendants,
Of Whom Janice Cross is, Appellant.

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AUG 06 2013

SC Court of Appeals

MOTION FOR RECONSIDERATION OF THE COURT'S ORDER OF JULY 18, 2013
AND FOR INSTRUCTIONS ON HOW TO FILE AN INTERLOCUTORY APPEAL

INTRODUCTION

Appellant petitions this Honorable Court to reconsider its order of July 18, 2013 based upon fatal flaws in the Court's order in which it granted the motion to strike certain elements of Appellant's Brief and the actual Record on Appeal based on the misguided motion of Mark Wierman and Respondent Deutsche Bank Trust Company Americas.

The Court predicated its order on the false premise that this Appellant had not filed a Return to opposing counsel's misguided motion to strike certain documents that

manifestly do appear in the lower case file, which if removed at this point, would destroy this appeal.

In the event the Court denies Appellant's Motion for Reconsideration, Appellant asks the Court for instructions on how she may file an interlocutory appeal with the South Carolina Supreme Court.

This Appellant on April 23, 2013 did in-fact file a Return to her opponent's misguided motion to strike the alleged "appendix" to the actual Record that appears in the lower case file and is quoted from extensively in Appellant's filings and in her Brief.

With all due respect, the Court is simply in gross error for stating that Appellant had not filed a return. For proof, Appellant herein attaches a copy of her clocked copy titled, "RETURN TO RESPONDENT DEUTSCHE BANK AMERICA'S MOTION TO STRIKE THE ALLEGED 'APPENDIX' TO THE RECORD ON APPEAL"

Appellant specifically rebutted each and every one of opposing counsel's points in her Return to opposing counsel's Motion to Strike ("Motion to Strike"), but the Court has not even read her Return to the motion. The so-called appendix contains items that are critical to this appeal and that the Appellant quotes from extensively not only in her lower court case filings, but in the Initial Brief itself, a Brief that this Court already let stand when opposing counsel asked the Court to strike the Brief as well.

Opposing counsel has made a habit of asking the Court to strike not only the Brief but the Record on Appeal, even though the documents from the record appear throughout the lower court case filings and are a part-and-parcel with the actual record.

Consequently, the Court's order unjustly eviscerates the appeal itself without cause and impairs Appellant's right to full due process of law, including the fundamental right to be heard.

THE *EX PARTE* NATURE OF THE COURT'S ORDER

The Court in effect has granted standing *ex parte* to an alleged Deutsche Bank counsel who has no standing to strike proofs of insufficiency of process and insufficiency of service of process on behalf of a separate Respondent altogether that did not motion the Court in the matter.

That Respondent is represented by separate counsel who has not requested that those proofs be struck. In fact, Respondent H. Guy Gantt has filed no brief and no motion at all in this case.

To eviscerate the proofs of insufficiency of process and insufficiency of service of process proposed by a counsel who has no standing in the matter is a simple travesty of justice and would destroy one of the several motions under appeal before this Court. See Final Brief and the 13 Issues on Appeal. The Court's order effectively guts at least 2-3 of the 13 important Issues on Appeal without cause as argued in Appellant's Brief, and would require a rewrite of that Brief without cause that will destroy this appeal.

MISLEADING THE COURT

Appellant has made a habit of misleading this Honorable Court. The April 23, 2013 Return to the Motion to Strike proves that opposing counsel has either knowingly or in ignorance misled this Honorable Court into believing that Appellant has failed to include documents from the lower court case file which simply do not exist. Appellant has proved this in her Return to the Motion to Strike.

The Appellate Rules state that where there is a controversy as to which documents occur or do not occur in the lower court case file, that the Court of Appeals is to bring up the case file from the lower court and to examine the file. From the Court's order of July

18, 2013, it is apparent that this has never been done. Instead, the Court has relied incorrectly to the detriment of Appellant on false statements made by an opposing counsel who was not present in the lower court proceedings and who has no firsthand knowledge of those filings.

ITEMS THE COURT HAS ORDERED THAT DO NOT EXIST

(1) In item 4 of its order, the Court merely repeats the erroneous statements of opposing counsel by ordering that the “January 11, 2011 record of hearing be included in the record on appeal.” The fact of the matter is that there WAS no January 11, 2011 hearing that opposing counsel is requesting and the Court is thus ordering.

The Court is instructing Appellant to produce something that does not exist. It is ordering the impossible. Appellant states this clearly in her Return to the Motion to Strike, a return that is of record but the Court has not read.

(2) As to Item 5 in the order, once again, counsel is asking Appellant to produce something that does not exist. Consequently, for a second time, the Court has ordered Appellant to produce an item that simply does not exist. Appellant cannot admit to or produce that which does not exist. It is impossible.

(3) As to Item 2, there WAS no “Notice Regarding the Memorandum of Law in Support of the Motion to Dismiss.” The Rules of Appellate Procedure specifically state that Proof of Service pages should not be included in the Record on Appeal, if by chance that is what opposing counsel is asking for. Appellant does not know what “notice” he is referring to and cannot read opposing counsel’s mind.

Appellant asks the Court and her opponent this question: Is opposing counsel alleging that he was not served a copy of the Memorandum of Law in question, when the

fact is that he was not even involved in the proceedings at that time and has no firsthand knowledge of the facts of the matter?

The myriad proofs of service of the many certified mailings in the matter are in the lower court case file and are to be brought up by the Court of Appeals in this venue by rule if there is a controversy.

Counsel is requesting something that the Rules of Court specifically disavow. If he is in-fact requesting a copy of the Proof of Service, then the Appellate Rules themselves deny his request, and so should this Honorable Court.

With all due respect, had the Court read Appellant's rebuttal in her Return to the Motion to Strike, the Court would have been aware that counsel is asking for things that either do not exist or are not required by the rules that govern this matter.

OTHER FACTS THE COURT HAS NOT CONSIDERED

(1) If the Court had actually read Appellant's Return to the Motion to Strike, the Court would have perhaps realized that all of the last 80 pages of the Amended Record on Appeal do appear in the lower court case filings and are quoted extensively in Appellant's case filings and in her Brief.

The only exception this Appellant is aware of is the copy of a 1099-A that is germane to this case and involves the ongoing fraud. It is germane for several reasons:

(a) It shows that Respondent Deutsche Bank was never the actual owner of the note and mortgage (Freddie Mac allegedly was), and if somehow it was, then the bank received insurance money and could not possibly have been injured. GMAC Mortgage certainly had no standing to **acquire** property it did not own and had no interest in.

(b) Hence, the 1099-A is the basis for imposition of an unjust tax obligation not

only on this Appellant, but on her husband as well as she has stated in the Return to the Motion to Strike, although her husband was excluded by the lower court from defending against the action as an allegedly disinterested party. The 1099-A's prove unequivocally that he did in-fact have an interest in defending against this case and will be a party to the action if Appellant must file in federal district court for remedy, for he, too, has been injured.

(c) The 1099-A is fraudulent wherein it shows GMAC mortgage either unlawfully acquiring title to the property in question or alleging that this Appellant had abandoned her home. The "A" in 1099-A stands for "**Acquisition**" or "**Abandonment.**" Appellant filed an affidavit that appears in the Record on Appeal in which she flatly denied that she ever abandoned her home. **Nor did GMAC or Freddie Mac ever "Acquire" it.**

Appellant originally had those 80 or so pages included in her 500-page Record on Appeal and was ready to mail the Record to opposing counsel when she mistakenly paused in the matter, as Appellant clearly explained in her Return to the Motion to Strike.

(2) The **sworn deposition testimony** of "robo-signer" Jeffrey R. Stephan appears in those last 80 pages and are critical to this appeal. Appellant quotes from the depositions many times in the lower court case files and several times in Appellant's Brief. Mr. Stephan's name as an impersonator of a MERS Vice President still appears to this day on the **fraudulent assignment of mortgage** in the land records for Lexington County, a bogus assignment that was made on the day after the lawsuit was filed. The entire process on which this case is based is fraudulent *ab initio*.

To exclude the pages now would be to eviscerate the appeal itself and would cause Appellant to have to rewrite a terribly weekend Final Brief, when the Appellate Rules of Court plainly state that the Final Brief must match the Initial Brief, which if the

Court will examine the two, it will find to be the case.

In addition, lawsuits against Jeffrey Stephan by the Ohio Attorney General also appear in those 80 or so pages and are likewise quoted in Appellant's brief and throughout her lower court case filings.

Also appearing in those 80 or so pages in the alleged "appendix" (the rules allow for an "appendix") are various newspaper filings in the public domain covering the "robo-signing" scandal that was all over the national news. Those articles are located in and are referred to in the lower court case files and in Appellant's Brief, despite opposing counsel's misguided protestations to the contrary. The pages also contain important case law that support Appellant's case and that can inform the reasoning of this Court..

(3) With all due respect to the Court, it appears that opposing counsel is being shown deference by the Court, on the one hand, even though he is in gross error in these matters, and that the Appellant's case, including the Final Brief that the Court previously let stand when it denied opposing counsel's Motion to Strike that brief, will be eviscerated, on the other hand, if she must now remove pages that the Court already sanctioned that are quoted from and referred to in her Initial Brief.

The Initial and Final Briefs alike have always contained references to pages 1-500 that occur in the Record on Appeal. To change the Record on Appeal now would require Appellant to rewrite her Final Brief, and would eviscerate the appeal altogether.

(4) As to Item 7 in the order, Appellant already included the MERS stipulation and consent to the issuance of a consent order and accompanying consent order in the Record on Appeal. See her Return to the Motion to Strike. Opposing counsel is in error.

In addition, opposing counsel already included the requested documents in his own Initial Brief on file with the Court. Therefore, he is asking for the documents to be

included twice in the record.

(5) As to the \$25 billion settlement between the 50 States and Attorneys General, the agreement is but a direct extension of the frauds perpetrated under Rule 60(b) as Appellant has argued in this appeal that involves Mortgage Electronic Registration Systems Inc. (MERS) and the mortgage providers it represented.

Appellant and her husband in June did receive a meager settlement check of approximately \$1,500 in partial compensation for the frauds perpetrated by the above-named parties against them. See enclosure. The settlement, however, in no way impairs Appellant from seeking further remedy, per the agreement itself. Instead, the settlement is ongoing proof of the fact of these frauds as Appellant has argued in this appeal.

Accordingly, the admission of fraud by MERS as reflected in the mortgage settlement is part-and-parcel to Appellant's timely argument of fraud under Rule 60 of the South Carolina Rules of Civil Procedure.

Consequently, Appellant and her husband reserve the right to complete a forensic audit of the account to include the appropriate Federal Reserve bank forms (FAS forms – Appellant knows the particular form numbers to subpoena) and to file suit against the parties for these injuries, either in state court or federal district court with the help of legal counsel.

It seems to this Appellant that the Court has granted opposing counsel a waiver of time to produce certain documents in his case based upon erroneous and impossible requests, while at the same time it has denied Appellant the fundamental right to full due process of law based upon its own lack for reading the Return to the Motion to Strike.

DENIAL OF DUE PROCESS

Finally, by the Court ordering that the record on appeal shall not include (2) “excerpts from verified statement IN RE: the writ of supercedeas,” and (3) “proofs of insufficiency of process,” the Court is seriously undermining Appellant’s due process of law rights in at least two additional ways:

(1) The order denies Appellant’s right to be heard by a duly seated and elected judge, a right that she was categorically denied in the lower court proceeding. In so doing, the Court creates the appearance of covering for a judge who sat in judgment in this case and also on a murder case in Lexington county without having an oath of office. He was not qualified. This verified fact involves the very first of the 13 Issues on Appeal.

If the Court eviscerates the sworn verification, then it eviscerates this critical Issue on Appeal as argued in Appellant’s Brief. The lack on the part of the presiding judge to have a verified oath of office on and for the record occurred well before the August 1, 2011 hearing, not after it. Accordingly, the sworn verification is critical to this Issue on Appeal. It has never been rebutted by affidavit, and so it stands as the truth.

(2) **Insufficiency of process and insufficiency of service of process.** If the Court’s order successfully denies the important proofs of insufficiency of process and insufficiency of service of process that constitutes yet another one of the 13 Issues on Appeal argued in Appellant’s Brief, then the Court would be involved in twice denying Appellant’s right to respond timely to the suit and to the motion of Respondent H. Guy Gantt without his even asking that the motion now on appeal be struck.

The Court is acting *ex parte*. It would be effectively striking this critical Issue on Appeal from the Final Brief itself that is further corroborated by unrebutted affidavit

found elsewhere in the Record on Appeal. But the affidavit will become moot if the proofs are missing from the appeal based upon an *ex parte* order and the mere whim of an opposing counsel who does not even represent the Respondent in question.

Respondent H. Guy Gantt made no such request to strike the proofs regarding the manifest insufficiency of process and insufficiency of service of process as this Court has granted to the wrong Respondent, in effect, *ex parte*. This damages Appellant's case.

The facts clearly show by un rebutted Affidavits of record that this Appellant was allowed a mere **5 days** between the time she received service of process and the time the lower court scheduled a hearing in the matter.

The facts of record show that Respondent H. Guy Gantt and/or his counsel knowingly withheld service of process in the matter for **15 days**, thus impairing Appellant's fundamental right to respond. The record shows that Appellant did notice the parties and the Court that she would be taking the full 30 days to answer the complaint and the motion of H. Guy Gantt as cited in the summons and complaint itself, but her right was truncated to a mere 5 days, the record and the transcripts show. This is a fundamental Issue on Appeal that the Court is destroying with its order.

Her original motion in that matter is one of several motions now on appeal before this Court. To strike the proofs of insufficiency of process and insufficiency of service of process is to strike that motion and will kill another one of the 13 important Issues on Appeal itself that are before this Court.

The proofs of insufficiency of process and of service of process pertain to one of the several motions this Appellant tried to present to the presiding "judge," but was denied the fundamental right to be heard.

Appellant was denied the right to answer the motion, the summons and the

complaint of H. Guy Gantt before being forcibly evicted from her home, and was injured without cause. Appellant did not abandon her home. See affidavit in Record on Appeal.

All of the above facts are clearly set forth in Appellant's Final Brief, which the Appellate Rules of Court state must be identical to the Initial Brief, except for pagination from the Record on Appeal. By rule, it is not supposed to be re-written.

To eviscerate the Record on Appeal now without the Court even reading Appellant's Return to the Motion to Strike is to purge the actual record itself, and is rightfully subject to an interlocutory appeal.

CONCLUSION

Accordingly, Appellant asks the Court to reconsider its Order of July 18, 2013; to read the Return to the Motion to Strike; to "weigh and consider" its merits; and to reverse the order in favor of the Appellant.

Appellant again asks the Court to accept her Final Brief and Record on Appeal as submitted and as written, and to allow Appellant to include those additional pages as ordered by placing them into a Supplemental Record on Appeal as provided for under the South Carolina Rules of Appellate Procedure.

Appellant agrees to add the pages required by the Court in its July 18, 2013 order in the form of a Supplemental Record on Appeal as expressly provided for under the Appellate Rules of Procedure.

Appellant asks for a minimum of 30 days to compile the said Supplemental Record on Appeal and to serve it on opposing counsel, and an additional 30 days beyond that date in which to come up with the \$800 to \$1000 she will need to file the multiple copies of the Final Brief and the Record on Appeal and Supplemental as required.

Appellant works a full-time day job and manages a household and respectfully requests these extensions of time.

In the alternative, Appellant requests instructions from the Court on the protocols she must follow in filing an interlocutory appeal in the matter

**Janice Cross SO MOVES
THIS HONORABLE COURT.**

Executed on August 6th, 2013

Respectfully submitted,

by: Janice Cross
Janice Cross, Real Party in Interest

Attachments and enclosures:

Copy of settlement check in the amount of \$1,484
Cover page of proposed Supplemental Record on Appeal
Copy of Appellant's April 23, 2013 Return to the Motion to Strike the Record on Appeal

PROOF OF SERVICE FOR THE MOTION FOR RECONSIDERATION

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Edward B. Cottingham, retired judge from the Fourth Judicial Circuit
James O. Spence, master in equity for the Eleventh Judicial Circuit

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Deutsche Bank Trust Company Americas
As Trustee for RALI2007QS8, Respondent,

H. Guy Gantt, Intervenor, Respondent,

v.

Janice Cross, South Carolina National Bank, N.A., Defendants,

Of Whom Janice Cross is, Appellant.

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SC Court of Appeals

PROOF OF SERVICE FOR THE MOTION FOR RECONSIDERATION

I certify that on this day I served a copy of the 12-page MOTION FOR RECONSIDERATION AND FOR INSTRUCTIONS ON FILING AN INTERLOCUTORY APPEAL by regular mail plus a copy of page 1 of the May 23, 2013 RETURN TO THE MOTION TO STRIKE THE RECORD ON APPEAL, plus the cover page of the proposed Supplemental Record on Appeal to the following – (1) Deutsche Bank Trust Company Americas as Trustee for RALI2007QS8, in care of Mark Wierman, BRADLEY ARANT BOULT CUMMINGS LLP, 100 Tryon St., Suite 2690, Charlotte, NC 28202 (2) H. Guy Gantt, c/o Henry Taylor, 3618 Sunset Blvd., Suite D, West Columbia, SC 29169.

Executed on August 6, 2013

by: 
John David Cross, Mailer and Server