

STATE OF SOUTH CAROLINA
In The Court of Appeals

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2012-CP-20-03040

DEUTSCHE BANK NATIONAL TRUST COMPANY
as Trustee for J.P. Morgan Mortgage Acquisition Trust
2007-CH1, Asset Backed Pass Through Certificates,
Series 2007-CH1, Respondent,

vs.

CORA B. WILKS,
DAVID C. WILKS,
CHASE BANK, N.A., and
MIDLAND FUNDING, LLC,

of whom
CORA B. WILKS and
DAVID C. WILKS are Appellants,

RESPONSE TO MOTION TO DISMISS

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The above-named Appellants respond, by their counsel, to the Motion filed by the Respondents, dated August 21, 2013 and received by counsel for Appellants on August 23, 2013.

The subject mailing to the Respondents, by Appellants, dated and mailed July 15, 2013, was prepared by Appellants' counsel. To his recollection, and according to his records, it contained a) the cover letter and Order appealed, as referenced in the Respondents' Motion, as well as b) the Notice of Appeal sent that date for filing with this Court. The Affidavit of Respondent's counsel to the above effect is attached hereto and incorporated herein.

The Appellants argue that this matter is analogous to a claim of failure of service. To that end, they would invoke the holding of *Moore v. Simpson*, 322 S.C. 518, ___, 473 S.E.2d 64,66 (Ct.App. 1996), which states:

The Plaintiff has the burden to establish that the court has personal jurisdiction over the defendant. *Jensen v. Doe*, 292 S.C. 592, 358 S.E.2d 148 (Ct.App. 1987). The plaintiff need only show compliance with the rules. *Roche v. Young Bros., Inc., of Florence*, 318 S.C. 207, 456 S.E.2d 897 (1995).

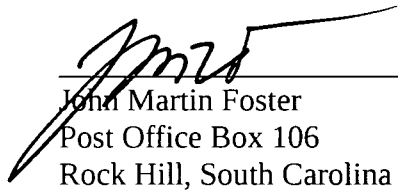
In the case at hand, the Appellants have mailed the requisite Notice of Appeal, and have certified that fact to this Court. They suggest that the Respondent's Motion is insufficient to overcome that presumption.

The Appellants would note that counsel for Respondents does not detail how the office of Respondent's counsel handles mail, nor how it is opened, nor how it is distributed. Since we are dealing with two competing versions of an event, they suggest such information is relevant to this controversy.

Without arguing with the precedent cited by the Respondent, the Appellants would point out that Respondent's counsel could have had no doubt, even if he received only the items alleged, that an appeal was intended. No explanation of Respondent's delay in filing its motion to dismiss is given, nor any explanation of the disposition of the mailed documents in the interim period between receipt of the same and the filing of its motion.

The Appellants respectively request the Respondent's Motion be denied.

July 15, 2013



John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
803 324-8100
Attorney for Appellants

Other Counsel of Record:

Michael J. Anzelmo
Benjamin Rush Smith, III
Nelson Mullins Riley & Scarborough, LLP
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vs.

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AFFIDAVIT ON RESPONSE TO MOTION TO DISMISS

Personally appeared before me the undersigned, who, being duly sworn, deposes and states as follows:

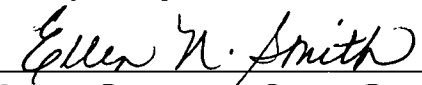
1. The Appellants have engaged the services of the counsel undersigned for the purpose of defending this action, and prosecuting this appeal, relating to foreclosure on their home.
2. Counsel is an attorney, licensed in and by the State of South Carolina, and engaged in the regular practice of litigation and appellate law in the State of South Carolina.
3. The subject mailing to the Respondents, by Appellants, dated and mailed July 15, 2013, was prepared by Affiant. Affiant drafted the documents included; he oversaw the making of the copies, preparation of the envelopes, the affixing of postage and the mailing. To his recollection, and according to his regularly kept records, it contained a) the cover letter and Order appealed, as referenced in the

Respondents' Motion, as well as b) the Notice of Appeal sent that date for filing with this Court.



John Martin Foster
Affiant

SWORN TO and subscribed before me
this day of September 3, 2013.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 03/31/14

STATE OF SOUTH CAROLINA
In The Court of Appeals

S. Jackson Kimball, Special Circuit Court Judge

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Series 2007-CH1, Respondent,

vs.

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of whom
CORA B. WILKS and
DAVID C. WILKS are Appellants.

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PROOF OF SERVICE


I certify that I have served the Response to Motion to Dismiss dated September 3, 2013, on the following counsel or persons of record:

Michael J. Anzelmo
Benjamin Rush Smith, III
Nelson Mullins Riley & Scarborough, LLP
Attorneys for Deutsche Bank
Post Office Box 11070
Columbia, S.C. 29211
803 255-9312

Wylie Westmoreland Clarkson
Korn Law Firm, PA
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by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out above, pursuant to Rule 262, S.C.A.C.R.

September 3, 2013


John Martin Foster
Post Office Box 106
Rock Hill, S. C. 29731-6106
803 324-8100
Attorney for Appellants

JOHN MARTIN FOSTER

Attorney at law

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223 East Main Street Suite 520	Rock Hill SC	803 324 8109 Fax
Rock Hill South Carolina 29730	29731-6106	jmfoster@comporium.net

September 3, 2013

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, SC 29211

Re: Deutsche Bank National Trust Company, Respondent
v. Cora B. Wilks and David C. Wilks, Appellants
Docket No. 12-CP-46-03040

Dear Ms. Kitchings:

Enclosed for filing is the original and seven (7) copies of our Response to the Respondent's Motion to Dismiss the Appeal in the above case. Also enclosed is our proof of service of the same on the respondents,

Please return a stamped copy of the above in the enclosed self-addressed envelope. Thank you, as always, for your cooperation and that of your staff.

Sincerely,



John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
803 324-8100
Attorney for Appellants

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jmf/
enclosures

Other counsel of record:

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