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Dec 23 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Benjamin C.P. Sapp, Special Referee

Case No. 2023-001394

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.

RESPONDENT'S RETURN TO APPELLANT'S MOTION TO FILE A SUR-REPLY

Chad W. Burgess, Esq.
(S.C. Bar No.: 72520)
BROCK & SCOTT, PLLC
3800 Fernandina Road, Suite 110
Columbia, South Carolina 29210
(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 to the “Request to Sur-Reply to Respondent’s Return to Appellant’s Motion to Reinstate Sur-Reply to Respondent’s Return” filed by Terry Lennette Grant (“Appellant” or “Grant”) on December 16, 2024. The caption of Appellant’s motion incorrectly references a motion to reinstate. Based upon the proposed sur-reply filed contemporaneously with her filing, Appellant’s motion requests that she be allowed to submit a sur-reply to Respondent’s reply to Appellant’s return to Respondent’s renewed motion to dismiss. Respondent opposes Appellant’s request to submit a sur-reply, averring as follows:

BRIEF PROCEDURAL HISTORY

This matter is an action to foreclose a mortgage on real property in Beaufort County, South Carolina. This appeal has twice been dismissed due to Appellant’s willful failure to abide by the South Carolina Appellate Court Rules (“SCACR” or “Rules”). Following each of the prior dismissals, this Court graciously reinstated the Appeal and gave Appellant multiple opportunities to cure the defects in her filings. On December 10, 2024, Respondent filed a renewed motion to dismiss based upon failures in, inter alia, Appellant’s filing of the Record on Appeal and her final brief. Appellant filed a return to Respondent’s renewed motion to dismiss on December 10, 2024. Respondent filed a reply to Respondent’s return on December 16, 2024. On that same date, Appellant filed a request to file a sur-reply together with a proposed sur-reply. Respondent’s reply

to Appellant's return does not raise any issue that would merit sur-reply by Appellant. Further, Appellant's motion does not cite any grounds for filing a sur-reply. Accordingly, Appellant's motion should be denied, and the court should reject her proposed sur-reply.

ARGUMENT AND CITATION OF AUTHORITY

The Rules provide for motions, returns to motions, and replies to returns. SCACR, Rule 240 (d), (e), (f). Because the Rules are silent as to the filing of sur-responses and sur-replies, a sur-reply may only be filed with leave of this Court. Appellant's request to file a sur-reply does not state grounds for her request as required by SCACR, Rule 240 (c), and the proposed sur-reply does not appear to be proper in scope.

Surreponses and surreplies should respond only to new legal theories or evidence that were raised for the first time in the brief filed immediately before the surreply or surresponse. If the reply does not raise new arguments and the surreply is merely responsive to prior issues, it may be denied. See, e.g., *Cashion*, 720 F.3d at 176 (“That [the defendant] failed to anticipate how the [plaintiff] would respond to his reliance on the [evidence presented] does not automatically entitle him to file a surreply.”); see also 2018 WL 3428696, at *1 n.3 (affirming district court's striking a surresponse); *Flood v. Univ. of Maryland Med. Sys. Corp.*, No. CIV.A. GLR-12-2100, 2014 WL 7363237, at *4 (D. Md. Dec. 23, 2014) (“[Plaintiff] has made no argument or showing that the information contained in her [surreesponse] regarding the aforementioned evidentiary challenges was not available to her at the time she originally responded to UMMS's Motion for Summary Judgment. For these reasons, the Court concludes that Flood's proposed surreply is unwarranted.”); *Douse*, 2009 WL 10678302, at *6 (finding that a plaintiff's proposed surreply was not well founded because it did not respond to any new arguments in the defendant's reply brief, but instead raised new arguments that could have been raised in plaintiff's initial response).

Moise, S. (2018). To “Sur” with Love. *South Carolina Lawyer*. 30-Sep S.C. Law. 52. Respondent's reply does not raise any new legal theories related to the pending motion to dismiss which would necessitate a sur-reply from Appellant.

Further, Appellant's proposed sur-reply merely serves to point fingers at Respondent for what Appellant incorrectly perceives as Respondent's failure to follow the Rules. This is a tactic Appellant has employed throughout the duration of this litigation. When called out for her failure to follow clear and unambiguous rules, or presenting misinformation to the Court (i.e., arguing that the subject loan transaction never took place despite having admitted executing the subject Note and Mortgage in numerous responsive pleadings submitted by her counsel) Appellant has often projected her actions onto others and argued that extreme repercussions be levied against opposing parties. For example, Appellant argues that Respondent should be precluded from filing a final brief or participating in oral argument based upon "Respondent's failure to file the Initial Brief and Designation of Matter, and the Final Brief". Appellant ignores that Respondent filed its initial brief and designation of matter on October 10, 2024, in compliance with this Court's September 10, 2024 Order and that Appellant's failure to follow the Rules in compiling the Record prevented Respondent from filing a final brief.

Another example of Appellant's projection can be found on page five of Appellant's proposed sur-reply where Appellant states, "Respondent's Designation of Matter does not include the Mortgage or the Note". This statement is an attempt to assert that Respondent failed to follow the Rules by omitting the most material of its evidentiary items (the subject Note and Mortgage) from its designation. The Note and Mortgage were incorporated as exhibits to Respondent's memoranda in support of in support of its motions, to Respondent's Affidavit in Support of Judgement filed April 2, 2021, and to other items included in Respondent's designation of matter. Indeed, copies of subject Note and Mortgage were included in the incomplete Record submitted by Appellant. Appellant's mistaken assertions that Respondent failed to follow the rules adds nothing to assist the Court in determining whether this appeal should be dismissed for a third time

based upon Appellant's repeated failure to follow the Rules. Therefore, Appellant's request should be denied and her sur-reply rejected.

CONCLUSION

Appellant's proposed sur-reply is not proper in scope and does not assist this Court in deciding Respondent's pending request to dismiss the appeal. Accordingly, Respondent respectfully requests that Appellant's motion be denied, that the proposed sur-reply be rejected, and for such other and further relief to be granted to Respondent as this Court deems appropriate.

Respectfully submitted,

BROCK AND SCOTT, PLLC

s/Chad W. Burgess

Chad W. Burgess, S.C. Bar No.: 72520

3800 Fernandina Road, Suite 110

Columbia, South Carolina 29210

(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-

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Dated: December 23, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 23, 2024, she served a copy of Respondent's Return to Appellant's Motion to File a Sur-Reply, and Certificate of Service 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



Lauren Browder
BROCK & SCOTT, PLLC