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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Kristi F. Curtis, Circuit Court Judge

Case No. 2019-CP-10-4503
Appellate Case No. 2023-001844

Deutsche Bank Trust Company Americas, as Trustee for Residential
Accredit Loans Inc., Pass-Through Certificates 2007 QH2.....Respondent,

v.

Ashley Johnson Beshara as Trustee of the Revocable Trust Agreement for
2235 Shoreline Drive originally dated the 3rd day of March 2010; Shoreline
Farms Community Association, Inc.; Wells Fargo Bank, N.A.; Cadle
Rock Joint Venture, L. P. an Ohio Limited Partnership, Curtis Rogers and
Julie Rogers, Defendants,

Of whom Curtis Rogers, Julie Rogers and Ashley Johnson Beshara as
Trustee of the Revocable Trust Agreement for 2235 Shoreline Drive originally
dated 3rd day of March 2010 are.....Appellants,
AND

Ashley Johnson Beshara as Trustee of the Revocable Trust Agreement for 2235
Shoreline Drive originally dated 3rd day of March 2010, Third-Party Plaintiff,

v.

Nationstar Mortgage, LLC, Curtis Rogers, and Julie Rogers.....Third-Party Defendant.

**FINAL REPLY BRIEF OF APPELLANT
ASHLEY JOHNSON BESHARA AS TRUSTEE IN REPLY
TO RESPONDENT**

April 16, 2025.

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I. RESPONDENT DEUTSCHE’S ASSERTION THAT RULE 40(j), SCRPC AND RULE 41(a), SCRPC, ARE NOT COMPATIBLE WITH ONE ANOTHER AND CANNOT BE READ OR INTREPRETED AND BEING IN HARMONY WITH ONE ANOTHER IS WITHOUT MERIT.

Respondent, Deutsche Bank Trust Company America’s (“Deutsche”) in its initial brief states:

“neither the text nor the purpose of Rule 40(j) are consistent with Appellants’ contention...Rule 40(j) does not state that, upon a second implementation of this procedure, the action is dismissed with prejudice and a decision on the merits has been entered. Rather, it...*directly implies that a party may implement this procedure more than once* through a motion. Moreover, irrespective of whether a complaint is struck as a matter of right or by motion, the matter may be “restored.” Appellants’ reading of Rule 40(j) is in direct conflict with the text, which clearly allows multiple orders striking complaints from dockets and subsequent restoration of those complaints...it cannot be credibly asserted that orders dismissing or striking cases from the active docket under Rule 40(j) are somehow subject to the two-dismissal rule under Rule 41, which is a completely separate Rule prescribing its own processes.” (Resp In. Br. Pg. 6-7)¹

“In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes. If a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced.” *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26 (2003) “In interpreting a statute and a rule of civil procedure we follow the cardinal rule that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute or rule. The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.” *Marichris, LLC v. Derrick*, 384 S.C. 345, 352-53, 682 S.E.2d 301 (Ct. App. 2009) (citations omitted). “The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly.

¹ Deutsche also assert Appellants have waived the right to raise issue with the multiple Rule 40(j) motions of Deutsche, Nationstar, and/or its predecessors. Our supreme court addressed this issue in *Maxwell* stating consenting to a Rule 40(j) motion result in waiver of issues subsequently. See. *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26 (2003) (Footnote 2).

Our supreme court has held that a statute shall not be construed by concentrating on an isolated phrase. It is well settled that statutes dealing with the same subject matter are in pari materia and must be construed together, if possible, to produce a single, harmonious result.” *Oulla v. Velazques*, 427 S.C 428, 441, 831 S.E.2d 450 (Ct. App. 2019).

The Notes of Rule 40, SCRCF state:

“a party may strike the case from the docket by agreement under Rule 40(j) which is more restrictive than the former Rule 40(c)(3)... Rule 40(j) is the final section of the rule and substantially revises the procedure *for dismissing a case* previously found in Rule 40(c)(3). Rule 40(j) now requires all adverse parties to consent to the *dismissal* in writing, but, the consent also operates to toll the statute of limitations for one year after the case is stricken from the docket as to each consenting party. Any remaining portion of the statute of limitations begins to run one year after the case was stricken unless the case has previously been restored to the General Docket. A party moving to restore a case must give 10 days notice of the motion, and upon being restored the case is placed on the General Docket where it proceeds as a newly filed action on the General Docket. *A case can also be dismissed voluntarily under Rule 41(a).*” Rule 40, SCRCF (Note to 1994 Amendment).

Rule 40(J), SCRCF, and Rule 41(a), SCRCF deal with the same subject matter, namely dismissal of actions, the two rules should be read together to produce a single harmonious result. The Note to the 1994 Amendment emphasizes this legislative intent, by clearly stating the Rule 40(J) is a “procedure for dismissing a case” and goes on to state that where a matter is restored to the general docket by motion “it proceeds as a newly filed action” The note then goes on to note the rule effect is analogous to Rule 41(a), by stating in the next sentence “A case can also be dismissed voluntarily under Rule 41(a).”

In this case Deutsche’s assertion in its brief that “it cannot be credibly asserted that orders dismissing or striking cases from the active docket under Rule 40(j) are somehow subject to the two-dismissal rule under Rule 41, which is a completely separate Rule prescribing its own processes.” Ignores the express language of the Note to the 1994

Amendment of Rule 40, SCRCPP; the Deutsche's assertion conflicts with our rules of construction and interpretation regarding the Rules of Civil Procedure and ignores legislative intent.

CONCLUSION

Based upon the allegations, facts and arguments set forth herein above, as well as Appellants' initial brief, Appellant respectfully requests this Court issue a decision reversing the findings and rulings of the circuit court found in the July 10, 2023 Order which granted Deutsche and Nationstar's Motion for Summary Judgment as to all of Appellant's counterclaims asserted against Deutsche and third-party claims asserted against Nationstar.

RESPECTUFLY SUBMITTED,

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