

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

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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NOV 05 2013

SC Court of Appeals

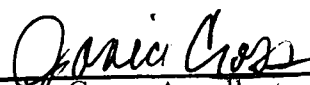
OBJECTION TO THE COURT ORDERS OF JULY 18, 2013 AND AUGUST 04, 2013

OBJECTION

Appellant Janice Cross objects to the orders of this Court dated July 18, 2013 and August 04, 2013 and petitions the Court for a rehearing pursuant to the South Carolina Rules of Appellate Procedure as cited in her timely filed PETITION FOR REHEARING ON THE ORDER DISMISSING THIS APPEAL.

November 5, 2013

mg.



Janice Cross, Appellant
c/o P.O. Box 2453
West Columbia, South Carolina

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**PROOF OF SERVICE OF REPLY BRIEF REBUTTAL TO DEUTSCHE BANK'S
"BRIEF IN OPPOSITION TO APPELLANT'S PETITION FOR REHEARING"**

I certify that on this day I served a copy of the 10-page REPLY BRIEF REBUTTAL OF DEUTSCHE BANK'S "BRIEF IN OPPOSITION TO APPELLANT'S PETITION FOR REHEARING" and proof of service by regular mail to the following – (1) Deutsche Bank Trust Company Americas as Trustee for RALI2007QS8, in care of Mark Wierman, BRADLEY ARANT BOULT CUMMINGS LLP, 100 N. 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 November 5, 2013

by: 
John David Cross, Mailer and Server

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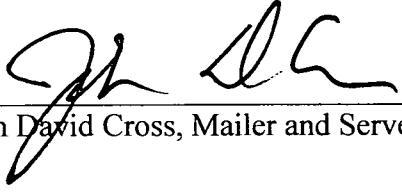
Appellant.

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PROOF OF SERVICE OF APPELLANT'S OBJECTION TO THE COURT ORDERS
OF JULY 18, 2013 AND AUGUST 04, 2013

I certify that on this day I served a copy of Appellant's one-page OBJECTION TO THE COURT ORDERS OF JULY 18, 2013 AND AUGUST 04, 2013 and proof of service by regular mail to the following – (1) Deutsche Bank Trust Company Americas as Trustee for RALI2007QS8, in care of Mark Wierman, BRADLEY ARANT BOULT CUMMINGS LLP, 100 N. Tryon St., Suite 2690, Charlotte, NC 28202 (2) H. Guy Gantt, c/o Henry Taylor, 3618 Sunset Blvd., Suite D, West Columbia, SC 29169.

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REPLY BRIEF REBUTTAL OF DEUTSCHE BANK'S "BRIEF IN OPPOSITION TO
APPELLANT'S PETITION FOR REHEARING"

INTRODUCTION

Appellant Janice Cross herein rebuts point-by-point Respondent Deutsche Bank's "BRIEF IN OPPOSITION TO APPELLANT'S PETITION FOR REHEARING." This is a timely rebuttal of each of Respondent's 15 points (errors) in order and as follows.

Appellant's recently filed motions and returns have been refused hearing by this Court without cause, as Appellant has clearly demonstrated in the filings.

Accordingly, Appellant objects to the Court's order of October 04, 2013 in this

matter, which in turn is predicated on the several reversible errors in the Court's order of July 18, 2013, an order which was and still is impossible for Appellant to comply with.

As a result of these errors in judgment, Appellant has been denied a hearing to-date on the following filings without cause:

1. **RETURN** TO RESPONDENT DEUTSCHE BANK AMERICAS' MOTION TO STRIKE THE ALLEGED "APPENDIX" TO THE RECORD ON APPEAL, filed timely on April 23, 2013.

2. **MOTION** FOR RECONSIDERATION OF THE COURT'S ORDER OF JULY 18, 2013 AND FOR INSTRUCTIONS ON HOW TO FILE AN INTERLOCUTORY APPEAL, filed timely on Aug. 06, 2013.

3. **RETURN** TO THE MOTION TO DISMISS THIS APPEAL AND A MEMORANDUM OF LAW IN OPPOSITION TO THE MOTION, filed timely on Sep. 13, 2013.

REBUTTAL OF RESPONDENT BRIEF'S SUNDRY ERRORS

1. **First error.** Respondent Deutsche Bank ("Respondent") persists in misleading the Court as to the nature and cause of this appeal. The appeal involves **several motions** as cited in the order of the lower court itself which is the subject of this appeal, not just the MOTION TO VACATE A VOID JUDGMENT. The record clearly shows that the lower court refused hearing on all of Appellant's several motions.

2. **Second error.** Respondent alleges in error that errors exist in "the Record on Appeal and other pleadings filed by Appellant Cross," yet fails to cite the alleged errors. Appellant has rebutted Respondent's claims, but this Court has failed to hear even for the first time the above-cited returns and motions this Appellant filed timely in the matter.

Appellant **objects** to the orders of the Court dated July 18, 2013 and October 4, 2013 for its manifest failure without cause to hear the several motions and returns as cited in her timely filed PETITION FOR REHEARING ON THE ORDER DISMISSING

THIS APPEAL. Appellant has been denied without cause her right to be heard.

3. **Third error.** Respondent fails to understand or to recognize the reversible errors by this Court that the Appellant has pointed out as cited in her timely filed PETITION FOR REHEARING.

4. **Fourth error.** Respondent fails to understand that Appellant filed her petition timely in compliance with information she obtained in person from Court intake personnel showing that she had until Monday, October 21, 2013 to file the PETITION FOR REHEARING. Appellant complied with Rule 219 requesting a hearing *en banc*.

5. **Fifth error.** See error number 4.

6. **Sixth error.** Respondent errs by refusing to admit that Appellant produced 11 substantive reasons in her timely filed PETITION FOR REHEARING as to why the Court erred in the October 04, 2013 order. The order in turn is predicated on reversible errors in the Court's July 18, 2013 order, not the least of which, is the Court's ordering Appellant to produce documentation for the Record on Appeal that does not exist.

Appellant cannot produce that which does not exist. Respondent is in gross order bordering on malfeasance for repeatedly misleading the Court about phantom documents which Respondent must clearly know by now does not exist in the lower court case file.

7. **Seventh error.** A repeat of the sixth error. The PETITION FOR REHEARING lists **11 reversible errors** this Honorable Court has committed in the matter, not the least of which its complete failure to recognize Appellant's timely filed motions and returns. Accordingly, Appellant **objects** to the Court's last two orders.

Another fundamental error by this Court is its grant *ex parte* to the wrong Respondent (Deutsche Bank) on the motion to strike Appellant's proofs from the Record on Appeal involving the insufficiency of process and insufficiency of service of process

in the lower court. The proofs pertain to the separate summons and complaint of Respondent H. Guy Gantt in support of Appellant's MOTION TO ABATE the lower court proceedings. Therefore, the MOTION TO ABATE was never heard by the lower court or by this Court.

The MOTION TO ABATE is one of several motions that are the subject of this appeal. If the proofs are ordered purged from the record in error at the request of the wrong party *ex parte* without a hearing, then the motion itself must be purged from the Record on Appeal (**R. pp 38-44**) along with all references to the proofs and to the motion as they are cited in Appellant's Initial and Final Briefs (see Second Issue on Appeal).

This Court has effectively ordered a re-write *ex parte* of the Final Brief, which is against all procedure and Appellate rules.

Secondly, Appellant's PETITION FOR REHEARING lists the 13 substantive **Issues on Appeal** that have never been effectively rebutted by Respondent in its Reply Brief or in its many motions to strike the Initial Brief and the Record on Appeal. Respondent has spent more time filing motions to strike and to dismiss than it has in rebutting Appellant's 13 substantive Issues on Appeal.

Appellant has a fundamental right to be heard with respect to the Issues on Appeal without having to wrangle repeatedly with a Respondent who appears to be bent on winning the case not on the merits, but on a misguided interpretation of procedure. Appellant's recent motions and returns in this venue have never been heard, and her several motions in the lower court venue likewise have never been heard.

8. **Eighth error.** Respondent slanders Appellant for alleged "tactics . . . used to delay the appeals process" and falsely alleges that "Appellant has routinely ignored this Court's procedural rules and orders, and has notably failed to produce a compliant

Record on Appeal.”

Again, Appellant has been ordered to produce phantom documentation that is not in the record. Appellant cannot produce that which does not exist and is unable to comply with the order. Accordingly, the charge of failing to comply is false, since the Court has refused hearing without cause on the motions and returns that prove Appellant’s claim.

9. **Ninth error.** Respondent persists in repeating this error regarding the timeliness of Appellant’s filings. The Court’s order of February 4, 2013 provided for timely service of the Record on Appeal, which extended through March 6, 2013. Again, Respondent seems to be unable to account for the shortened number of days in the month of February. Accordingly, Appellant served the document timely, but had accidentally left out the last 80 pages that are cited from repeatedly in Appellant’s Initial Brief.

10. **Tenth error.** This is a repeat of Respondents error number nine.

11. **Eleventh error.** Respondent persists in repeating the same error by falsely alleging that Appellant failed to produce **phantom documents** for the record on appeal as it requested in error and then ordered in error. Respondent also errs by falsely alleging that the 80 pages in the so-called “appendix” to the Record on Appeal do not exist in the lower court case file, when they very plainly have existed therein for several years and are cited extensively in Appellant’s Initial Brief and Final Brief.

The rules call for this Court to call up the record from the lower court case file and to verify these facts when they are in controversy, but the Court has failed to do so.

Secondly, Respondent persists in alleging in error that the proofs of insufficiency of process and insufficiency of process do not exist in the lower court case file regarding the summons and complaint of Respondent H. Guy Gantt, when they very well do exist. Moreover, Respondent Deutsche Bank lacks standing to ask the Court to purge those

proofs. To do so purges the MOTION TO ABATE which the said proofs support.

Thirdly, the **sworn testimony** that Respondent has demanded purged from the record (R. pp. 29-37) regarding the lack of an oath of the presiding officer in the lower court is a reversible error in that the issue of an oath is a threshold issue to fundamental due process of law, and the sworn testimony supports one of the exhibits (R. pp. 29-30).

In addition, the sworn testimony deals with other critical Issues on Appeal that would have to be expunged. Plus the sworn testimony is **sworn**, whereas Respondent's is not. Therefore, the sworn testimony stands unrebutted as the truth.

In addition, the sworn testimony was filed prior to the execution of the August 8, 2013 order which is the subject of this appeal. Therefore, it is timely and a fundamental part of the record. It is already referred to in several places in the Initial and Final Briefs (**which Briefs this Court previously ordered to let stand**), and is critical to this appeal.

12. **Twelfth error.** A repeat of previous errors falsely alleging that Appellant has somehow not complied with the Court's order to file an amended Record on Appeal.

First, Appellant has filed several motions and returns timely in response to the Court's orders of July 18, 2013 and October 04, 2013, but has not been heard.

Appellant **objects** to the July 18, 2013 and October 04, 2013 orders.

Secondly, Appellant has been ordered by the Court to produce phantom documents in repeating what can only be judged at this point to be false testimony by Respondent Deutsche Bank regarding documents that do not exist. The Court has ordered this Appellant to do the impossible. This error of the Court is a reversible error.

13. **Thirteenth error.** Respondent's claim that the existing Record on Appeal fails to comply with the South Carolina Rules of Appellate Procedure is false.

Respondent offers no proof of this claim. Opposing esquires routinely produce and accept

a second volume to the Record on Appeal, which this Appellant has offered in good faith to furnish for any additional pages Respondent may designate.

Appellant is unable, however, to produce a copy of the trial transcript, since a full transcript does not exist of record, only a condensed transcript that this Court will not accept pursuant to information this Appellant received previously from Court personnel.

Respondent ordered the trial transcript, not the Appellant, and yet refuses to produce it while demanding that Appellant produce it instead. It is not of record.

14. **Fourteenth error.** Any restatement of arguments by this Appellant in the recently and timely filed motions and returns had to be made since they were never heard by this Court to begin with. Appellant has a fundamental right to be heard.

The Court's order of October 04, 2013 is predicated on the errors of the Court's July 18, 2013 order. These errors are reversible. Appellant **objects** to both orders.

Respondent's would deny Appellant her right to full due process of law pursuant to the laws and the Constitution of this State as well as the 5th and 14th Articles of Amendment to the Constitution for the United States of America, including the fundamental right to be heard.

15. **Fifteenth error.** Respondent is responsible for holding up this appeal while wrongly accusing Appellant of "abuse." Respondent has spent more time filing motions to strike and to dismiss than it has in defending its own indefensible case involving forged documents, perjured testimony, and a fraudulent assignment of mortgage by a low-level signing dummy for GMAC named Jeffrey R. Stephan. The assignment is bogus to this day as it appears in the land records for Lexington County, and the judgment by an unqualified tribunal that refused to hear Appellant's several motions which are the subject of this appeal is due to be reversed.

CONCLUSION

In her filings and briefs, Appellant has asked this Court to remand the matter to the lower court for a hearing on the several motions that are the subject of this appeal.

Appellant has asked the Court to reverse the order of the lower court for an evidentiary hearing in which Respondent Deutsche Bank shall present the original note and mortgage for analysis by a forensic auditor. Appellant has produced many pages of evidence demonstrating forgery on a copy of the alleged original and a false assignment of the mortgage and underlying note that are still fraudulent to this day.

Respondent failed to bring the deposition to trial as ordered by a lower court that never even opened the transcript of a deposition that it had ordered and yet “was not familiar with” at trial and that remains unopened to this day, according to the timely filed sworn testimony this Court has ordered in error to be expunged from the Record.

If Deutsche Bank owned and possessed the original note and mortgage as it alleged in its original filing in the matter, only to produce a bogus assignment that was made on the day AFTER the lawsuit was filed, then what does Respondent Deutsche Bank have to hide by fighting so hard to deny this Appellant the simple right to a forensic analysis of the alleged originals at an evidentiary hearing of her several motions?

The case in the lower court was moved by the foreclosure law firm and by **GMAC, which has since signed the April 12, 2011 Consent Order and Decree since this appeal was filed**, just as Mortgage Electronic Registration Systems (MERS) did before the appeal was filed. GMAC and MERS’ relationship is reciprocal *prima facie*.

The “assignment” was made by low-level GMAC “signing dummy” Jeffrey R. Stephan impersonating a MERS vice president who admitted to fraud on pages 5 and 41 of the sworn deposition testimony that this Court has ordered expunged from the Record

A void judgment cannot be final based on fraud on the Court, and the MOTION TO VACATE A VOID JUDGMENT is due to be given a hearing by the lower court for the first time. The Rule 60(b) motion that is the subject of this appeal was timely brought.

Appellant's Thirteenth Issue on Appeal in her Final Brief cites case law that this Honorable Court needs to consider in which a void judgment cannot be final where there is fraud. One case is found on page 50 of Appellant's Final Brief in the wisdom of the Alabama Court of Civil Appeals in its case cited in Patterson v. GMAC MORTGAGE LLC, Ala. Civ. App. 2011 in which the issues are identical with those found in U.S. Circuit Court Judge Christopher A. Boyko's famous precedent against Deutsche Bank in 14 cases in Ohio.

All of these cases are identical to the issues in this case in which the Alabama court ruled that "the trial court never acquired subject-matter jurisdiction over the ejectment action". A fraudulent note and mortgage that were never even delivered in the first place until the day AFTER the lawsuit was filed never conferred jurisdiction to the lower court *ab initio*.

In her Final Brief, Appellant also cites precedent by this Honorable Court over the same issue of non-delivery in its 1987 ruling in South Carolina National Bank v. Halter (see Final Brief, p. 4 and p. 37).

As this Court must also be well aware, the Ninth Circuit Court of Common Pleas in Charleston in September just ruled against Deutsche Bank Trust Company Americas as Trustee in a foreclosure action identical to the particulars of this case and cited the United States Supreme Court's decision in Carpenter v. Longan, 83 U.S. 271, 16 Wall. 271, 21 L.Ed. 313 (1872) for authority. In her Final Brief, Appellant also cites SCOTUS with regard to void judgments.

In the instant matter now before the Court, it would be simple for this Court to order that Appellant's Final Brief and Record on Appeal shall stand as filed and to order Appellant to produce a Supplemental to the Record on Appeal to include those additional pages as ordered that are of record that are requested by Respondent Deutsche Bank.

Respondent's claim that it has somehow been prejudiced in the matter is without merit. Esquires routinely show each other courtesy in the filing of supplementals.

This Court to-date has ordered Appellant to produce the impossible, and then has refused hearing without cause. These errors are due to be reversed.

If Respondent Deutsche Bank has nothing to hide, then it has no cause to be concerned about the case being remanded to the lower court for an evidentiary hearing in which the several motions of Appellant shall be heard by a properly seated tribunal for the first time and a forensic analysis made of the allegedly original note and mortgage.

Appellant has been denied a hearing in the lower court and in this Court.

Accordingly, Appellant's timely filed PETITION FOR REHEARING OF THE ORDER DISMISSING THIS APPEAL and her previously filed returns and motions as cited are due to be heard by this Honorable Court as requested, and the Court's order dismissing this appeal is due to be reversed.

Executed on November 5th, 2013

Respectfully submitted,

by:



Janice Cross, Appellant
c/o P.O. Box 2453
West Columbia, South Carolina