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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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.

70149

PETITION FOR REHEARING
ON THE ORDER DISMISSING THIS APPEAL

INTRODUCTION

Appellant Janice Cross herein petitions this Honorable Court for a re-hearing pursuant to Rules 221(a); 221(c); and 240(i) of the South Carolina Rules of Appellate Procedure with respect to the October 4, 2013 order of Chief Judge John Cannon Few which granted in error Respondent Deutsche Bank's motion to dismiss this appeal. The grant in part is *ex parte* to the wrong party, the record shows. This error alone is cause for reversal. Appellant requests a hearing *en banc* pursuant to Rule 219 SCACR.

With all due respect, the Court has erred egregiously and without cause in several ways that would deny this Appellant her right to full due process of law, including the fundamental right to be heard, as guaranteed to her not only by the Constitution of the state of South Carolina, but also by the Fifth and Fourteenth Articles of Amendment to the Constitution for the United States of America.

REVERSIBLE ERRORS

With all due respect, this Court has erred on numerous points of law and procedure that deny this Appellant her fundamental right to due process of law.

1. **First**, the Court's order granting dismissal of this appeal completely ignores Appellant's timely filed RETURN TO THE MOTION TO DISMISS THIS APPEAL AND A MEMORANDUM OF LAW IN OPPOSITION TO THE MOTION. It also ignores completely two previous filings by Appellant on which the above-cited Return is predicated. Why did the Court fail to hear these returns and the motion to reconsider?

2. **Second**, the Court's order is predicated on the previous error of the Court in its order of July 18, 2013 in which the Court stated in error that it had not received Appellant's Return to the Motion to Strike the Record on Appeal, when it very clearly had received it. See attachment.

3. **Third**, the Court is in error for ordering Appellant to produce **phantom documents that do not exist** in the lower court case file **and never did exist**. The Court ordered Appellant in error to include those phantom documents in an amended Record on Appeal. This Court has ordered Appellant to produce the impossible, even though the law does not admit of impossibilities.

Appellant cannot produce documents that do not exist. Phantom documents the Court ordered Appellant to produce that do not exist include Items 2, 3, 4, and 5 in the

July 18, 2013 order as Appellant clearly demonstrates in her unread and unheard returns and the unread and unheard motion for reconsideration.

4. **Fourth**, the July 18 order on which the October 04 order is based in effect mandated a **total re-write** of the Final Brief which is on file with this Honorable Court. This is a violation of Appellate Rule 211(b)(2). To order the purgation of documentation that very clearly IS of record and is critical to this appeal is to order purgation from the Final Brief of all references to the said documentation of record.

For example, the Court ordered the removal of deposition testimony of low-level "signing dummy" Jeffrey R. Stephan, although he confessed on pages 5 and 41 that he is a GMAC employee, not a MERS vice president. Appellant refers to this in several places in her Initial and Final Brief. His "assignment of mortgage" is a fraud to this day.

Appellant's Initial Brief quotes extensively from documentation the Court ordered expunged in error, documentation that has been in the lower court case file for several years and is critical to this appeal. To expunge the record without cause is to order a re-write of the Final Brief. **Doing so would destroy this appeal without cause.** Doing so would also violate the rules that allegedly govern this Honorable court.

The July 18, 2013 order, therefore, is an unconscionable order.

Rule 211(b)(2) clearly states that "no other changes may be made" to the Final Brief from the Initial Brief except for "obvious typographical errors and misspellings which were contained in the Initial Brief." Appellant's Final Brief, which has been on file with this Court for months, does in-fact match the Initial Brief exactly as required, except for the pagination which was added pursuant to the requirements of Rule 211(b)(1).

The Court previously denied Respondent's motion to strike the Initial Brief.

The Court has ignored these facts and has ignored its own rule by ordering that

the Record on Appeal be purged and the Final Brief in effect re-written to reflect the purgation of documentation that is critical to this appeal and that is referred to repeatedly in the Initial and Final Briefs.

5. **Fifth**, the July 18 order is impossible to obey in that it instructed Appellant to **add** documentation to the Record on Appeal **that does not exist**, and to expunge 80 or so pages of documentation that **do exist** in the lower court case file, thus requiring a complete and unwarranted re-write of the Final Brief. As such, the order violates not only the right to due process, including the right to be heard, but the rules of court as well.

6. **Sixth**, the Court's order of October 04 merely repeats the error of the July 18 order by alleging in error that Appellant failed to file an amended Record on Appeal as ordered, when the facts show that it was **impossible** for this Appellant to comply with the July 18 order. Accordingly, Appellant is being penalized for not doing the impossible.

The October 04 order completely ignores Appellant's timely filed RETURN TO THE MOTION TO DISMISS THIS APPEAL AND A MEMORANDUM OF LAW IN OPPOSITION TO THE MOTION.

Appellant cannot produce that which does not exist. There is no alchemy known to man by which this Appellant could possibly conjure into existence that which does not exist. Such creation *ex nihilo* ("out of nothing") is the prerogative of Providence, whether seen in the form of the mythical gods of the Greeks on Mount Olympus, or in the form of the triune God of the Hebrews on Mount Zion. Such creative energy is not within the power of mortal men and women, including this woman.

Appellant explains very clearly in the following filings that the documents her opponent is requesting and that the Court ordered are phantom. The Court, however, has ignored completely and ignored without cause these fundamental facts, to the detriment

of Appellant. With all due respect, a court, if anything, is expected to be fair and impartial, which it has not been, given the orders of July 18, 2013 and October 04, 2013.

This Court has **denied a hearing** on the following filings of this Appellant without cause, by one or more of the following actions: (1) ignoring the filings (2) alleging that the filings of record do not exist (3) ignoring Appellant's motion for reconsideration of a hearing that never took place in the first place, but should have.

7. **Seventh**, the Court erred in the September 03, 2013 letter of Deputy Clerk V. Claire Allen alleging that the motion for reconsideration filed by this Appellant timely on Aug. 06, 2013 could not be addressed pursuant to Rule 240(i).

Rule 240(i) could not possibly apply to Appellant's motion for reconsideration, because Appellant's RETURN TO RESPONDENT DEUTSCHE BANK AMERICAS' MOTION TO STRIKE THE ALLEGED "APPENDIX" TO THE RECORD ON APPEAL was never considered by the Court in the first place. There was no original hearing ever held that could be re-heard. Therefore, the motion for consideration should have been addressed, despite Ms. Allen's determination.

The deputy clerk is in error as her misapplication of the rule begs the question of an original hearing to begin with. The Court stated in error that it had not received a return to the motion, when it very plainly had. The motion was due to be heard for cause.

The October 04, 2013 order of the Court, however, squarely invokes Rule 240(i). Accordingly, all following three filings are due to be heard by the Court for the first time.

In her letter, Deputy Clerk Allen averred that Appellant's motion for reconsideration of Appellant's RETURN TO THE MOTION TO STRIKE could not be addressed by the Court pursuant to Rule 240(i), SCACR." However, the rule cannot apply, since a "hearing" never took place in the first place.

The July 18, 2013 order is in error in which Judge Cureton concludes, "The court did not receive an actual return." The attached copy of that return (p. 1) proves otherwise.

The following filings have never been heard or considered by this Court. Accordingly, the Court has denied Appellant's right to be heard, and the order is due to be reversed in favor of Appellant:

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.

Appellant respectfully moves this Honorable Court *en banc* to read the above filings for the first time, and to reverse the Court's grant (made in part, to the wrong party) of the motion to dismiss this appeal without so much as a hearing.

8. **Eighth**, the record also shows that Appellant did motion the Court for proper leave as provided for under Rule 212 for filing a supplement to the Record on Appeal, which supplement is critical to Appellant's case, and at the same time, would easily and satisfactorily fulfill the requirements of her opponent.

The record shows that the Court ignored Appellant's motion.

9. **Ninth**, the record also shows that the Court granted to the wrong Respondent the right to expunge proofs of insufficiency of process and insufficiency of service of process from the Record on Appeal on the separate lawsuit of Respondent H. Guy Gantt. Accordingly, the Court's grant of Respondent Deutsche Bank's motion to dismiss is in part a grant *ex parte* to the wrong party. Mr. Gantt nor his counsel moved the Court to

dismiss those proofs. The grant to the wrong party injures this Appellant without cause.

To expunge those proofs of insufficiency of process and insufficiency of service of process on the suit of Respondent H. Guy Gantt is to deny one of the several motions (the MOTION FOR ABATEMENT) that are the subject of this appeal. To deny these proofs without cause is to deny the motion they support without so much as a hearing. This, too, is a fundamental denial of due process of law.

10. **Tenth**, the record also shows that the August 8, 2011 eviction order of Edward B. Cottingham was made by a man who had no oath of office and yet sat in judgment on this civil case plus a murder case in Lexington County in clear violation not only of the statutes and Constitution of this state, but also of the United States. This is a threshold issue on appeal.

With all due respect, the Court has created the appearance of unjustly covering for one of its own within a court system that is controlled by a professional class, when the fact is that the law is supposed to belong to the People.

Appellant is aware that the above fact could make it difficult for her case to be taken up on *certiori* by the South Carolina Supreme Court and by the Fourth Circuit Court of Appeals in Richmond, but the federal district court is known to be a stickler for procedure and would consider the oath issue, Appellant believes.

The fact remains that the oath of office is a fundamental constitutional requirement for due process, and any violation of that requirement as has occurred in this case is an unwarranted denial by this Court of Appellant's fundamental right to due process of law.

Therefore, Appellant was ordered by this Court in error to expunge sworn testimony that verifies the lack of an oath of office and that supports page 329 of the

Record on Appeal. The sworn testimony is cited in several places in the Initial and Final Briefs and was filed timely **prior to** the execution of the eviction order which is subject of this appeal. See the First Issue on Appeal in Appellant's Final Brief where the matter is well documented.

It was impossible for Appellant to obey the July 18, 2013 order of this Court as explained in Appellant's unheard filings. By contrast, it was eminently possible for this Court to order a supplement to the Record on Appeal under Rule 212 and at the same time, to preserve this Appellant's fundamental right to full due process of law.

This Honorable Court could easily bring up the case file from the lower court pursuant to Rule 212 to verify if the documents it ordered Appellant to produce exist or not. This error of the Court is reversible.

Appellant repeatedly asked the Court to bring up the lower court case file in search of the phantom documents and pursuant to the rule, but the Court failed to do so.

11. **Eleven,** to dismiss this appeal would deny this Honorable Tribunal a very real opportunity to address the constitutionality of a state statute involving a German citizen and a citizen of this state in which the state citizen was sued by a foreign citizen in this venue, but Appellant was denied by the lower court of her right to compel that foreign citizen to appear in the venue in which it filed suit. The statute is thus unconstitutional *prima facie*, and the error of the circuit court reversible.

These errors of this Court compound the errors of the lower court and are due to be reversed.

THE ISSUES ON APPEAL

The October 04, 2013 order dismissing this appeal denies without cause Appellant's fundamental right to be heard. It denies the Thirteen Issues on Appeal

without a hearing as thoroughly argued and proved by Appellant in her Initial and Final Briefs and the Record on Appeal. Appellant herein summarizes the Issues on Appeal as they occur in the Final Brief.

1. **First Issue on Appeal** – Did the lower court err when it permitted a man without an oath of office to sit in judgment on this case?

2. **Second Issue on Appeal** – Did the circuit court err when it deprived Appellant of her right to answer the summons, the complaint and the affidavit of Respondent H. Guy Gantt timely?

3. **Third Issue on Appeal** – Did the circuit court err when it refused hearing and repeatedly obstructed Appellant from presenting her several motions at the August 1, 2011 hearing, including the Motion to Vacate a Void Judgment?

4. **Fourth Issue on Appeal** – Did the circuit court err in refusing to overturn judgment when Appellant produced proof that Respondent could not possibly have taken actual possession and delivery of the note and mortgage as of the date the lawsuit was filed, and so lacked standing to sue?

NOTE: The "assignment" was made on the day AFTER the lawsuit was filed by a low-level GMAC "signing dummy" who impersonated a vice president of Mortgage Electronic Registration Systems (MERS). GMAC has since confessed to fraud.

5. **Fifth Issue on Appeal** – Did the circuit court err in refusing to overturn judgment when the bogus assigning entity (MERS) has since confessed to fraud? (NOTE: GMAC as the moving party for Deutsche Bank has also consented since this Appeal was filed to the same **April 12, 2011** Consent Order of the Office of the Comptroller of the Currency and agreed to pay $4.2 billion in reparations. See Record on Appeal).

6. **Sixth Issue on Appeal** – Did the circuit court err in refusing to overturn

judgment when purported agents for Respondent forged a doctored copy of the alleged note eight months after suit was filed (see proofs in the Record on Appeal)?

7. **Seventh Issue on Appeal** – Did the circuit court err in refusing to overturn judgment when the "assignment of mortgage" violates the tax laws of the United States governing securitized asset trusts? (the original note and mortgage must be physically transferred in 90 days to the custodian, not "assigned" by a "signing dummy" 27 months later). The "assignment" is **bogus to this day** in the land records of Lexington County.

8. **Eighth Issue on Appeal** – Did the circuit court err in refusing to overturn judgment when the trial court allowed Deutsche Bank to disobey a lawful subpoena issued by the court itself, thus denying Appellant her right to enforced discovery of her best evidence, her best 30(b)(6) witness, and her right to face and examine her opponent under oath in the venue in which it filed suit?

9. **Ninth Issue on Appeal** – Did the circuit court err in refusing to overturn judgment when the master in equity did not attend a deposition he ordered; when he failed to order plaintiff to bring the deposition transcript forward to trial as he previously stated on the record they must do (see June 8, 2010 hearing transcript cited in the Record on Appeal); when he admitted at trial that he had never seen the deposition transcript; and when sworn testimony exists (that this Court ordered expunged) proving that the deposition transcript remains sealed to this day in the lower court case file?

10. **Tenth Issue on Appeal** – Did the circuit court err in refusing to overturn judgment when Appellant showed that the state court usurped exclusive federal jurisdiction *ab initio* in matters involving a jurisdiction of $75,000 or more between a citizen of this state and a citizen of a foreign state?

11. **Eleventh Issue on Appeal** – Did the circuit court err by acting with extreme

bias and as an unqualified tribunal?

12. **Twelfth Issue on Appeal** – Did the circuit court err in refusing to overturn judgment when purported agents for Deutsche Bank failed to obey state law at 36-3-501(b)(2)?

13. **Thirteenth Issue on Appeal** – Did the circuit court err with respect to the fact that a judgment is void and cannot be final when based on fraud on the court?

CONCLUSION

Appellant respectfully moves the Court to reverse the October 04, 2013 order dismissing this appeal and to rehear, to read and consider the several filings that the order ignores, as does the July 18, 2013 order on which the October 04, 2013 order is based. Those filings were never heard in the first place. The Court's failure to hear them is without cause and violates Appellant's right to full due process of law, including the fundamental right to be heard. This Court's errors are reversible.

Appellant moves the Court to reverse these errors and the order as cited and to rule in favor of Appellant, specifically, that the Final Brief and the Record on Appeal as submitted shall remain intact and a supplemental to the Record on Appeal shall be produced by Appellant that includes all of the additional pages of record Respondent has requested and the Court has ordered to be included in the Record on Appeal.

Janice Cross SO MOVES
THIS HONORABLE COURT.

Executed on October 21st, 2013

Respectfully submitted,

by: Janice Cross

Janice Cross, Real Party in Interest
c/o P.O. Box 2453
West Columbia, South Carolina

Attachments: 4

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Of Whom Janice Cross is, Appellant.

RETURN TO THE MOTION TO DISMISS THIS APPEAL
AND A MEMORANDUM OF LAW IN OPPOSITION TO THE MOTION

NOTICE REGARDING APPEAL

Appellant herein serves notice of her intent to file an interlocutory or other appeal pursuant to: (1) her RETURN TO THE MOTION filed on April 05, 2013 and April 23, 2013 (2) the Court's order of July 18, 2013 stating in error "This court did not receive an actual return" (3) Appellant's MOTION FOR RECONSIDERATION, and (4) the Court's letter of September 03, 2013 that the MOTION FOR RECONSIDERATION "cannot be addressed by the Court pursuant to Rule 240(i), SCACR."

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Of Whom Janice Cross is, Appellant.

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

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Of Whom Janice Cross is, Appellant.

RETURN TO RESPONDENT DEUTSCHE BANK AMERICAS' MOTION TO STRIKE THE ALLEGED "APPENDIX" TO THE RECORD ON APPEAL

INTRODUCTION AND REBUTTAL

Appellant petitions this Honorable Court to dismiss Respondent Deutsche Bank Americas' untimely motion to strike the "Appendix to Record on Appeal" on the grounds that it is erroneous in each of its points, to wit. This is a timely response

1. **Rebuttal of Respondent's point number 1**. Respondent Deutsche Bank persists in mischaracterizing the vary nature of this appeal as being restricted to the lower court's denial of her Rule 60(b) motion, when the order and judgment of the lower court

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Of Whom Janice Cross is, Appellant.

RETURN TO RESPONDENT DEUTSCHE BANK AMERICAS'
MOTION TO STRIKE THE RECORD ON APPEAL

INTRODUCTION

Appellant petitions this Honorable Court to dismiss Respondent Deutsche Bank Americas' untimely motion to strike the Record on Appeal for the following reasons. This is a timely return to the motion.

The motion by Respondent Deutsche Bank Americas as Trustee for RALI2007QS8 ("Respondent") is unreasonable as it is prejudicial, being based upon numerous inaccurate statements that could mislead the Court.

PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
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PROOF OF SERVICE FOR PETITION FOR REHEARING
ON THE ORDER DISMISSING THIS APPEAL

I certify that on this day I served a copy of the 11-page PETITION FOR REHEARING ON THE ORDER DISMISSING THIS APPEAL plus proof of service and attachments 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 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 October 21st, 2013 by: _____
John David Cross, Mailer and Server