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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2012-CP-46-03040
Appellate Case No. 2013-001524

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,

v.

Cora B. Wilks, David C. Wilks, Chase Bank USA,
N.A., and Midland Funding, LLC, Defendants,

Of whom Cora B. Wilks and David C. Wilks are Appellants.

Motion to Dismiss the Appeal


Pursuant to Rules 210(a) and 240 of the South Carolina Appellate Court Rules, Respondent Deutsche Bank National Trust Company, as Trustee for J.P. Morgan Mortgage Acquisition Trust 2007-CH1, Asset Back Pass Through Certificates, Series 2007-CH1 (“Respondent”) moves to dismiss the appeal filed by Appellants Cora B. Wilks and David C. Wilks (“the Wilks”) because the Wilks have failed to serve the Record on Appeal. This failure warrants dismissal of the appeal.

Our Appellate Court Rules requires an appellant, such as the Wilks, to serve the Record on Appeal on counsel for respondent “[w]ithin thirty (30) days

after service of the last brief. . . .” Rule 210(a), SCACR. This service rule is mandatory. Id. (establishing that “the appellant **shall** serve a copy of the Record on Appeal on each party who has served a brief”) (emphasis added). “Proof of service of the Record **shall** be immediately filed with the clerk of the appellate court” to confirm compliance with the service mandate. Id. (emphasis added).

Respondent served its Initial Brief on counsel for the Wilks on March 17, 2014. Rule 210(a), SCACR, required the Wilks to serve the Record (and file proof of service with the Court) no later than April 16, 2014. The Wilks failed to do so.¹ Therefore, this Court should dismiss the appeal.

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By: 
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Attorneys for Respondent Deutsche Bank National Trust Company, as Trustee for J.P. Morgan Mortgage Acquisition Trust 2007-CH1, Asset Backed Pass Through Certificates, Series 2007-CH1

Columbia, South Carolina

May 5, 2014

¹ As of the date of this motion, Respondents have not been served with the Record on Appeal.

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v.	
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Of whom Cora B. Wilks and David C. Wilks are	Appellants

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Deutsche Bank National Trust Company, as Trustee for JPMorgan Acquisition Trust 2007-CH1, Asset Backed Pass Through Certificates, Series 2007-CH1, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Motion to Dismiss the Appeal

Counsel Served:

John Martin Foster
Post Office Box 106
Rock Hill, SC 29731

A handwritten signature in cursive script, appearing to read "J. Lee", written in black ink.

Jennifer B. Lee
Administrative Assistant

May 5, 2014

Nelson Mullins

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May 5, 2014

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1015 Sumter Street - 5th Floor
Columbia, SC 29201


RE: Deutsche Bank v. Wilks, Cora and David, et al.
Appellate Case No. 2013-001524
Our File No.: 11281.01675

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of a Motion to Dismiss the Appeal in the above-referenced matter. Please the original and return a clocked-in copy to me via our courier. Should you have any questions, please do not hesitate to contact me.

By copy of this letter, I am hereby serving opposing parties.

Very truly yours,



Michael J. Anzelmo

MJA:jlee
Enclosures

cc: John Martin Foster

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