

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

RECEIVED

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

MAY 28 2014

SC Court of Appeals

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.

**Respondent’s Reply to Appellants’ Untimely Return to
Motion to Dismiss the Appeal**

Pursuant to Rule 240(f) 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”) files this reply to the untimely Return to the Motion to Dismiss the Appeal filed by Appellants Cora B. Wilks and David C. Wilks (“the Wilks”). This Return fails for two reasons. First, the Return is untimely. Second, this Court has already granted Respondent’s motion to dismiss, which renders the Return irrelevant.

On May 5, 2014, Respondent moved to dismiss the appeal because the Wilks failed to serve the Record on Appeal by the April 16, 2014, deadline imposed by Rule 210(a), SCACR. The Wilks deadline to file and serve a return to the motion to dismiss was May 15, 2014, per Rule 240(e), SCACR. The Wilks did not file and serve any return to the motion to dismiss. As a result, this Court granted the motion and dismissed the appeal on May 23, 2014. See Order dated May 23, 2014, attached hereto as Exhibit A.

The Wilks' Return¹ to the motion to dismiss was served on May 21, 2014. See Cover letter transmitting Return for filing at p. 1, attached hereto as Exhibit B; Proof of Service, attached hereto as Exhibit C. The due date for any Return was May 15, 2014. Thus, the Return was six (6) day untimely. Moreover, the Return is irrelevant because the Court has already granted the motion to dismiss.² Therefore, this Court should disregard the Return.

Lastly, any relief from the dismissal must be sought by the filing of the appropriate motion. Such relief must also be timely motion pursuant to Rule 221(b), SCACR. To allow such relief via an untimely return to a previously granted motion to dismiss would subvert the purposed behind our appellate court rules.

{Signature Page Follows}

¹ The signature page of the Return is dated February 3, 2012.

² Likewise, the Wilks' motion to serve the Record out of time is moot for the same reason—the appeal has been dismissed.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Michael J. Anzelmo

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803.799.2000

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 28, 2014

The South Carolina Court of Appeals

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.

Appellate Case No. 2013-001524

ORDER

Appellants have failed to serve the record on appeal as required by Rule 210 of the South Carolina Appellate Court Rules. The respondent has filed a motion to dismiss on this ground. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY Jay A. Kelly
CLERK

Columbia, South Carolina

cc:

John Martin Foster, Esquire
Michael J. Anzelmo, Esquire
Benjamin Rush Smith, III, Esquire

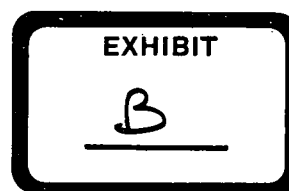
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5-23-14

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SC Court of Appeals



5/27/14
11281/267
BRS, MJA, MWS

JOHN MARTIN FOSTER

Attorney at law

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223 East Main Street Suite 520	Rock Hill SC	803 324 8109 Fax
Rock Hill South Carolina 29730	29731-6106	jmfoster@comporium.net

May 21, 2014

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Deutsche Bank National Trust Company, Respondent
v. Cora B. Wilks and David C. Wilks, Appellants
Docket No. 12-CP-46-03040

Dear Ms. Kitchings:

In accordance with Rules 210, 240 and 263(a), S.C.A.C.R., enclosed herewith please find:

the original and fifteen (15) copies of the Record on Appeal, together with Certificate of Service of the same; and

the original and seven (7) copies of the Appellants' Return to the Motion to Dismiss and their Motion to File Outside Time, as to serve the Record on Appeal, together with Certificate of Service for the same in the above referenced case.

I also enclose our check for the Motion fee of \$25.00.

By copy of this letter, I am serving the attorney for the Respondent with copies of the Record on Appeal and the said Return and Motion, as evidenced by the Certificates of Service.

Please return the extra conformed copy to my office in the enclosed self-addressed, stamped envelope. As always, thank you, and your staff, for your assistance in these matters.

Sincerely yours,

John Martin Foster

jmf/
enclosures
cc: Client File

Michael J. Anzelmo
Benjamin Rush Smith, III
Nelson Mullins Riley & Scarborough, LLP
Attorneys for Deutsche Bank
Post Office Box 11070
Columbia, S.C. 29211
803 255-9312



STATE OF SOUTH CAROLINA
In The Court of Appeals

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2012-CP-20-03040

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,

vs.

CORA B. WILKS,
DAVID C. WILKS,
CHASE BANK, N.A., and
MIDLAND FUNDING, LLC,

of whom
CORA B. WILKS and
DAVID C. WILKS are Appellants.

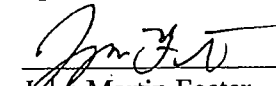
PROOF OF SERVICE

I certify that I have served the Return to Motion to Dismiss and Motion to File th Record on
Appeal Outside Time dated May 21, 2014, on the following counsel or persons of record:

Michael J. Anzelmo
Benjamin Rush Smith, III
Nelson Mullins Riley & Scarborough, LLP
Attorneys for Deutsche Bank
Post Office Box 11070
Columbia, S.C. 29211

by depositing the same with the United States mail, with sufficient first class postage attached,
properly addressed to the clerk of the Court, and with a copy also directed to the respective last known
address(es) of those attorney(s) and/or persons set out above, pursuant to Rule 262, S.C.A.C.R.

May 21, 2014



John Martin Foster
Post Office Box 106
Rock Hill, S. C. 29731-6106
803 324-8100
Attorney for Appellants

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

Deutsche Bank National Trust Company, as Trustee for
J.P. Morgan Mortgage Acquisition Trust 2007-CH1,
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Cora B. Wilks, David C. Wilks, Chase Bank USA,
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Of whom Cora B. Wilks and David C. Wilks are Appellants

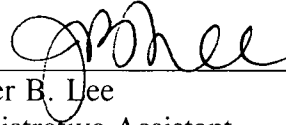
PROOF OF SERVICE

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: Respondent's Reply to Appellants' Untimely Return to
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", is positioned above a horizontal line.

Jennifer B. Lee
Administrative Assistant

May 28, 2014

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
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May 28, 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 Cse No. 2013-001524
Our File No.: 11281.01675

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Respondent's Reply to Appellants' Untimely Return to Motion to Dismiss the Appeal in the above-referenced matter. Please file 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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SC Court of Appeals