

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Diane S. Goodstein
Circuit Court Judge

Case No. 2012-CP-38-01108
Appellate Case No. 2013-001414

RECEIVED

MAY 27 2014

SC Court of Appeals

Laura T. Toney, Appellant.

v.

Deutsche Bank National Trust Company, as trustee for the holders of New Century Home Equity Loan Trust, series 2005-A, asset backed pass-through certificates; LaSalle Bank National Association, trustee for Lehman Brothers Structured Asset Investment Loan Trust Sail 2005-2; All persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the Complain, adverse to Plaintiff's Title thereto; referred to as Doe, Respondents,

Respondent LaSalle Bank's Return to Appellant's Motion to Reinstate Appeal

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Respondent LaSalle Bank National Association, trustee for Lehman Brothers Structured Asset Investment Loan Trust Sail 2005-2 ("LaSalle Bank") submits this return to the motion to reinstate the appeal filed by Appellant Laura T. Toney ("Toney"). This Court should deny the motion for the reasons set forth below. This Court dismissed the appeal because Toney failed to file and serve her Initial Appellant's Brief and Designation of Matter within the time mandated by Rules 208(a)(1) and 209 of the South Carolina Appellate Court Rules ("SCACR") despite being in possession of the

applicable transcript since January 28, 2014, when LaSalle Bank provided Toney the transcript free of charge. Toney's wholesale failure to comply with our appellate court rules warranted dismissal of the appeal, and this Court properly did so. Reinstatement of the appeal would thwart our appellate court rules, allow Toney to further delay this meritless appeal, and prejudice LaSalle Bank.

As a reminder, this appeal had been pending for nearly one year without Toney obtaining the transcript or filing a brief prior to LaSalle Bank moving to dismiss the appeal. Toney filed the Notice of Appeal in this matter on June 24, 2013. Toney took no steps to obtain the transcript, and, as a result, on October 29, 2013, this Court directed Toney to advise when she received the transcript or to file her Initial Appellant's Brief and Designation of Matter within thirty days, if the transcript was previously received. Toney failed to do so. Instead, Toney advised this Court that she attempted several times to secure the transcript from the court reporter but had been unsuccessful. Rather than allow Toney to further delay the appeal, LaSalle Bank, despite not being required to do so, obtained the transcript from the court reporter with ease and provided Toney with a copy of the same, free of charge, on January 28, 2014. LaSalle Bank copied this Court on the communication sending the transcript to Toney. LaSalle Bank even advised Toney that her briefing deadline was triggered by her receipt of the transcript. Toney still failed to file Initial Appellant's Brief and Designation of Matter. As a result, LaSalle Bank filed a motion to dismiss the appeal on March 19, 2014. This Court dismissed the appeal on May 19, 2014.

Now in her motion to reinstate, Toney claims she did not file her Initial Appellant's Brief and Designation of Matters because she "was under the impression

from the Court that her appeal was held in abeyance. . . ” based on a letter from this Court on April 16, 2014. See Motion ¶1, 2. This argument strains credibility and borders on frivolous. Toney’s Initial Appellant’s Brief and Designation of Matters were due for filing and service prior to the filing of LaSalle Bank’s motion to dismiss the appeal and prior to the Court’s April 16th letter on which Toney relies.¹

LaSalle Bank ordered, paid for, and provided Toney the transcript free of charge, despite that being her obligation as Appellant. After being provided the transcript, the deadline for filing of Toney’s Initial Appellant’s Brief and Designation of Matters was no later than March 4, 2014. Toney failed meet that deadline. Thus, this Court’s April 16th letter was wholly irrelevant to the deadline for filing and service of Toney’s Initial Appellant’s Brief and Designation of Matters. Therefore, Toney’s claim of confusion based on that letter is manifestly without merit. This Court should deny the motion to reinstate.

This Court should also analyze the motion to reinstate in light of the fact that Toney is an abuser of the court system who consistently files frivolous actions that waste judicial time and resources. In fact, the trial court sanctioned Toney in this action due to Toney’s bad faith attempt to pursue yet another frivolous action against LaSalle Bank. See Order dated 1.06.13, attached hereto as Exhibit B. This conduct continues with the claims advanced in Toney’s motion to reinstate.


¹ LaSalle Bank moved to dismiss the appeal for the reasons stated above on March 19, 2014. On March 28, Toney filed and served a return to the motion to dismiss and a motion for an extension of time to file her Initial Appellant’s Brief and Designation of Matters. In response to the extension request, this Court advised Toney that “the motion to dismiss filed by the respondent holds all filing deadlines for this appeal in abeyance. Therefore, your extension request is not necessary” See Letter dated April 16, 2014, attached hereto as Exhibit A. Thus, this Court advised that the extension to file the brief was unnecessary. The letter had no impact on the motion to dismiss or the deadline for Toney’s Initial Appellant’s Brief and Designation of Matters.

As is evident from Toney's motion to reinstate, she has no desire to comply with her obligations as appellant, pursue this appeal in good faith, or to file her Initial Appellant's Brief and Designation of Matter because Toney continues to persist with her meritless argument that she cannot obtain the transcript and that she never received it from LaSalle Bank. See Motion ¶3, 7, 8. This Court cannot allow this claim to support reinstatement of this appeal. LaSalle Bank was able to obtain the transcript on an expedited basis with one letter to the court reporter. Moreover, LaSalle Bank then freely gave the transcript to Toney at the address Toney uses in communications with this Court and the address to which LaSalle Bank used for all other communications with Toney.

Thus, dismissal of the appeal was warranted and proper by this Court. Toney advances no legitimate reason to reinstate the appeal. Moreover, the appeal has now been pending for 337 days without Toney filing her Initial Appellant's Brief or Designation to Matters. It is clear from Toney's actions, filings, and claims in this motion that this appeal is intended solely to delay and to prejudice LaSalle Bank by causing LaSalle bank to incur unnecessary costs (such as having to order the transcript even though not required to do so), delay in advancing the appeal, and continued efforts to dispose of this frivolous appeal. Therefore, LaSalle Bank requests that this Court deny the motion to reinstate this appeal and not afford Toney any additional time to delay this meritless appeal.

{Signature Page Follows}

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:  _____

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Attorneys for LaSalle Bank National Association,
trustee for Lehman Brothers Structured Asset
Investment Loan Trust Sail 2005-2

Columbia, South Carolina

May 27, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
Diane S. Goodstein, Circuit Court Judge

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SC Court of Appeals

Case No. 2012-CP-38-01108
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Laura T. Toney, Appellant.

v.

Deutsche Bank National Trust Company, as trustee for the holders of New Century Home Equity Loan Trust, series 2005-A, asset backed pass-through certificates; LaSalle Bank National Association, trustee for Lehman Brothers Structured Asset Investment Loan Trust Sail 2005-2; All persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the Complain, adverse to Plaintiff's Title thereto; referred to as Doe, Respondents,

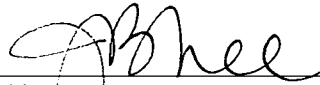
PROOF OF SERVICE

I, the undersigned of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for LaSalle Bank National Association, trustee for Lehman Brothers Structured Asset Investment Loan Trust Sail 2005-2, 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 LaSalle Bank's Return to Appellant's Motion to Reinstate Appeal

Counsel Served:
Laura Toney
Post Office Box 722
Bishopville SC 29010

Chris S. Truluck
Korn Law Firm, P.A.
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211

A handwritten signature in black ink, appearing to read "J. B. Lee", written over a horizontal line.

Jennifer B. Lee
Administrative Assistant

May 27, 2014

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
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Michael J. Anzelmo
Tel: 803.255.9312
Fax: 803.255.9024
michael.anzelmo@nelsonmullins.com

May 27, 2014

RECEIVED

MAY 27 2014

SC Court of Appeals

Hand Delivered

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

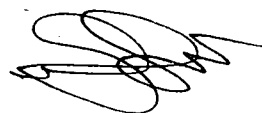
RE: Laura T. Toney a/k/a Laura Ann Toney v. Deutsche Bank National Trust
Company As Trustee For the Holders of New Century Home Equity Loan
Trust, Series 2005-A, Asset Backed Pass-Through Certificates; et al.
Civil Action No.: 2012-CP-38-01108
Our File No.: 11281/01670

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Respondent LaSalle Bank's Return to Appellant's Motion to Reinstate 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: Laura Toney
Chris S. Truluck, Esq.



EXHIBIT

A

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

April 16, 2014

Laura T. Toney
PO Box 722
Bishopville SC 29010

Re: Laura Toney v. Deutsche Bank
Appellate Case No. 2013-001414

Dear Ms. Toney:

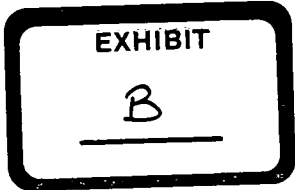
We have received your "Reply to Respondent's Motion to Dismiss Appeal and Motion to Request an Extension to File the Appellant's Initial Brief and Designation of Matter", including your filing fee. Please be advised that the motion to dismiss filed by the respondent holds all filing deadlines for this appeal in abeyance. Therefore, your extension request is not necessary and we are returning your money order to you.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Henry Guyton Murrell, Esquire
Michael J. Anzelmo, Esquire
Christopher Stephen Truluck, Esquire



STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Laura T. Toney a/k/a Laura Ann Toney,

PLAINTIFF,

vs.

Deutsche Bank National Trust Company as Trustee for the Holders of New Century Home Equity Loan Trust, Series 2005-A, Asset Backed Pass-Through Certificates, LaSalle Bank National Association, as Trustee for the registered holders of Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2004-11 and LaSalle Bank National Association, Trustee for Lehman Brothers Structured Asset Investment Loan Trust Sail 2005-2 and all persons unknown claiming any legal or equitable right, title, estate, lien or interest in the property described in the complaint adverse to plaintiff's title thereto referred to as Doe,

DEFENDANT(S).

F27-02370

IN THE COURT OF COMMON PLEAS

C/A NO:2012-CP-38-1108

ORDER OF DISMISSAL

FILED FOR RECORD
WINNIFRED CLARK
CLERK OF COURT
ORANGEBURG, SC

2013 JAN 18 AM 11:30

This is an action as to certain real property located in Orangeburg County. The property was the subject of a prior foreclosure action, Deutsche Bank v. Laura T. Toney et al, Case No. 2007-CP-38-807. The Plaintiff is the former owner of the subject real property and has filed the current action alleging that the prior foreclosure action was invalid. The complaint alleges causes of action for negligence, mortgage fraud, actions to set aside the deed, wrongful foreclosure, quiet title and slander of title. The Defendant Deutsche Bank (Deutsche) was the mortgage holder in the prior foreclosure action and LaSalle Bank (LaSalle) held a second mortgage encumbering the subject real property.

ATTEST: TRUE COPY

Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

The action was commenced with the filing of the lis pendens, summons and complaint on August 10, 2012. The Defendant Deutsche filed a motion to dismiss on August 29, 2012. Plaintiff filed an amended lis pendens, summons and complaint on September 12, 2012. Defendant LaSalle filed a motion to dismiss on October 10, 2012.

The motion to dismiss was scheduled for hearing on November 14, 2012. Notice of hearing was sent to all parties on November 8, 2012 and the notice of hearing was filed with the court on November 13, 2011. The court received a letter from the Plaintiff immediately prior to the scheduled motion hearing requesting a continuance.

Appearing at the hearing was H. Guyton Murrell as counsel for Defendant Deutsche and Michael Anzelmo as attorney for Defendant LaSalle. The Plaintiff Laura Toney did not appear. Based upon the hearing notice filed of record as well as the letter received from the Plaintiff, the court finds that all parties were provided due and adequate notice of the motion hearing. The court further finds that no adequate grounds for a continuance were offered by the Plaintiff and her request for a continuance is denied. The grant or denial of a continuance lies with the sound discretion of the trial court. *M & M Group, Inc. v. Holmes*, 379 S.C. 468, 666 S.E.2d 262 (S.C. App. 2008) citing *State v. Tanner*, 299 S.C. 459, 385 S.E.2d 832 (1989).

The motion to dismiss filed by Defendant Deutsche alleges several grounds why the current action should be dismissed. Counsel for Defendant Deutsch presented evidence to the court that the prior foreclosure action referenced by the Plaintiff in her pleadings is currently on appeal and the South Carolina Court of Appeals has exclusive jurisdiction of matters related to or affected by the appeal under Rule 205 SCACR. The findings and rulings by the trial court in the previous case would also bar the Plaintiff

from attempting to relitigate those issues in the current action under the doctrine of res judicata.

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata, "a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit. *Judy v. Judy*, 393 S.C. 160, 712 S.E.2d 408 (2011) citing *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106 (1999). Res judicata requires the following elements to be proven: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in a former suit. *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 419 S.E.2d 217 (1992).

In the present case, all of the elements for res judicata are present. The parties are identical in that both the mortgagor and mortgagee in the prior foreclosure action are the parties in this action. The identity of the subject matter is also the same. The final elements of res judicata are also met in that the trial court in the prior case adjudicated the issue of whether Deutsche had a valid mortgage lien and was entitled to foreclosure. The record in the prior case reflects that Plaintiff herein was personally served with the foreclosure pleadings and failed to file and serve a responsive pleading.

Counsel for Defendant Deutsche Bank further argued judicial estoppel would bar the current action based on Plaintiff's statements in her previously filed bankruptcy cases. Specifically, Plaintiff filed schedules in her bankruptcy with the subject mortgage listed as a valid lien to be cured under the terms of the proposed plan as well as stating that she had no counterclaims or setoffs to declare as assets.

A review of the pleadings in this action show the current action filed by Plaintiff is inextricably linked and related to the prior foreclosure action and the previous litigation related to that case. Even if the pending appeal did not bar the current action, the causes of action raised by the Plaintiff in this matter would clearly constitute compulsory counterclaims that should have been raised in the prior litigation. The causes of action to quiet title and slander of title are dependent upon Plaintiff having a current title interest. The prior foreclosure action divested Plaintiff of her interest in the property. Therefore, the court finds that the Defendant Deutsche's motion to dismiss the current action with prejudice is granted. As the case is being dismissed in its entirety, the pending motion to dismiss filed by Defendant LaSalle is moot.

Defendant Deutsche also moved for sanctions including a bar against Plaintiff filing any further new actions in this matter. The current action was filed by Plaintiff as a self represented litigant. The Plaintiff in this action has been repeatedly sanctioned as a bad faith litigant in prior litigation by the United States Bankruptcy Court and the state civil courts of South Carolina. The prior bad faith litigation by Plaintiff is set forth in detail in the order filed September 4, 2008 in the related foreclosure case currently under appeal. Although the court finds that the current action is barred and grants the motion by Defendant Deutsche to dismiss the current action with prejudice, the court declines to impose the sanction requested.

The court does find that the Plaintiff Laura T. Toney a/k/a Laura Ann Toney should be sanctioned by being required to pay the attorney fees and costs incurred by respective counsel for Defendant Deutsche and Defendant LaSalle in this matter. Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, the signature of an attorney or

a party to a pleading constitutes a certification that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for the purpose of delay. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or its own initiative, may impose upon the person who signed it ... the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee. *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 19, 633 S.E.2d 722, 729 (2006). The court has reviewed the attorney fees affidavits submitted by respective counsel and applied the factors set forth in *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989) and related cases. The court finds that Plaintiff Laura Toney shall pay attorney fees and costs incurred by Defendant Deutsche Bank in the amount of \$ 1479.00 to attorney H. Guyton Murrell at his office address of Post Office Box 11264, Columbia South Carolina 29211 within 90 days of this order being served by mail upon Plaintiff at the address listed with the Orangeburg County Clerk of Court. The court further finds that Plaintiff Laura Toney shall pay attorney fees and costs incurred by Defendant LaSalle Bank in the amount of \$ 1,125.20 to attorney Michael Anzelmo at his office address of Post Office Box 11070, Columbia, South Carolina 29211 within 90 days of this order being served by mail upon Plaintiff at the address listed with the Orangeburg County Clerk of Court.

THEREFORE, IT IS ORDERED that this case is dismissed with prejudice.

IT IS FURTHER ORDERED that Plaintiff Laura T. Toney a/k/a Laura Ann Toney shall pay attorney fees and costs incurred by Defendant Deutsche Bank in the

amount of \$ 1479.⁰⁰ to attorney H. Guyton Murrell at his office address of Post Office Box 11264, Columbia South Carolina 29211 within 90 days of this order being served by mail upon Plaintiff at the address listed with the Orangeburg County Clerk of Court.

IT IS FURTHER ORDERED that Plaintiff Laura Toney shall pay attorney fees and costs incurred by Defendant LaSalle Bank in the amount of \$ 1,125.⁰⁰ to attorney Michael Anzelmo at his office address of Post Office Box 11070, Columbia, South Carolina 29211 within 90 days of this order being served by mail upon Plaintiff at the address listed with the Orangeburg County Clerk of Court.

IT IS SO ORDERED.



The Honorable Diane Goodstein
Presiding Judge 1st Judicial Circuit

Jan 6 2013
December 6, 2012
Sumner, South Carolina