

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.

**Respondent's Return to Appellants' Motion to Reinstate the Appeal**

Pursuant to Rule 240(e) 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 Return to the Motion to Reinstate the Appeal filed by Appellants Cora B. Wilks and David C. Wilks ("the Wilks"). This Court should deny the Motion to Reinstate the Appeal. The Wilks fail to satisfy the good cause standard necessary to reinstate the appeal.

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Rule 260(a), SCACR, provides that “[a] case **shall not** be reinstated except by leave of court, **upon good cause shown**, after notice to all parties.” (emphasis added). Thus, when the moving party fails to establish “good cause,” our Appellate Court do **not** allow this Court to reinstate the appeal. Here, the Wilks’ motion fails to establish good cause to reinstate the appeal.

In the petition, the Wilks admit “that the deadline for preparation and filing<sup>1</sup> the Record on Appeal was missed.” See Motion p. 1 ¶2. Notably, counsel admitted “[h]e has **no adequate excuse** for this oversight, other than inadvertence.” Id. (emphasis added). This admission certainly cannot establish the “good cause” required by Rule 260(a), SCACR. No cause cannot equal “good cause” sufficient to reinstate an appeal. This Court, therefore, “shall” deny the motion and remit the appeal to the trial court.

Moreover, the Wilks chose to challenge the trial court’s order dismissing their action. By choosing to pursue this appeal, our appellate court rules impose certain obligations, requirements, and deadlines on the Wilks and counsel. In particular, Rule 210(a), SCACR, required the Wilks to serve the Record on Appeal on all parties “within thirty (30) days after service of the last brief.” Further, the rule mandated that “[p]roof of service of the Record **shall** be immediately filed with the clerk of the appellate court.” (emphasis added).

The Wilks failed to comply with the requirements of this rule. As a result, this Court properly dismissed the appeal. See Wise v. S.C. Dept. of Corrections, 372 S.C. 173, 173, 642 S.E.2d 551, 551 (2007) (stating that “[w]henver it appears that an

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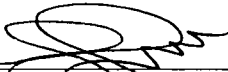
<sup>1</sup> The Wilks motion states “filing.” However, the appeal was dismissed for the Wilks failure to serve the Record on Appeal.

appellant has failed to comply with the requirements of the SCACR, an order of dismissal shall be issued”) (emphasis added). If this Court were to allow reinstatement of the appeal on the insufficient grounds advanced by the Wilks, then such an order would remove the mandatory requirements imposed by Rule 210(a), SCACR, and render Rule 260(a), SCACR, without effect. The Court should decline to do so.

Lastly, the Wilks claim Respondent would not be prejudiced by reinstatement. See Motion p. 2 ¶5. This is manifestly false. Respondent is prejudiced in three ways. First, Respondent suffers financial prejudice each month this appeal remains active. This litigation arose because the Wilks were in default under their Note and Mortgage, which required Respondents to initiate the foreclosure action. Each month this appeal remains active is another month in which the Wilks still fail to pay their monthly mortgage payment while living in the property for free. Such an arrangement prejudices Respondent because the foreclosure action cannot proceed until this appeal is resolved. Second, Respondent would be prejudiced by having to litigate on an uneven playing field, namely that the Wilks would be able to operate this appeal without having to adhere to the Appellate Court Rules while Respondent would not be afforded the same latitude. Third, Respondent would be prejudiced by the future costs associated with defending a meritless appeal and the likelihood of incurring the costs associated with the Wilks’ failing to follow the Appellate Court Rules as the appeal proceeded. This Court rightly dismissed the appeal and should not reinstate it.

Therefore, this Court should deny the motion to reinstate the appeal and remit the action to the trial court to allow the litigation to proceed.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:  \_\_\_\_\_

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Acquisition Trust 2007-CH1, Asset Backed Pass  
Through Certificates, Series 2007-CH1

Columbia, South Carolina

June 5, 2014

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM YORK COUNTY  
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**SC Court of Appeals**

Deutsche Bank National Trust Company, as Trustee for  
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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

**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 Return to Appellants' Motion to Reinstate the Appeal

Counsel Served:

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



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Jennifer B. Lee  
Administrative Assistant

June 5, 2014

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June 5, 2014

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

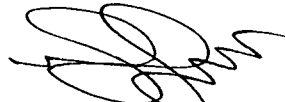
RE: Deutsche Bank v. Wilks, Cora and David, et al.  
Appellate Case No. 2013-001524  
Our File No.: 11281.01675

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Respondent's Return to Appellants' Motion to Reinstate 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**

*With offices in the District of Columbia, Florida, Georgia, Massachusetts, North Carolina, South Carolina, Tennessee and West Virginia*