

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

R. Markley Dennis, Jr., Presiding Judge, Ninth Judicial Circuit

Case No. 2012-CP-10-01844
Appellate Case No. 2014-001791

Deutsche Bank National Trust Company, as
Trustee of the IndyMac IMJA Mortgage
Trust 2007-A2, Mortgage Pass-Through
Certificates, Series 2007-A2 under the
Pooling and Servicing Agreement dated
August 1, 2007,

Appellants,

v.

Thomas C. Stevenson III and Irven M.
Stevenson, National Bank of South Carolina
nka Synovus Bank, South Carolina Department
of Revenue, and OneWest Bank FSB,
including its division known as Indy Mac
Mortgage Services,

Defendants,

Of which Thomas C. Stevenson III and Irven M. Stevenson are the Respondents.

MEMORANDUM ADDRESSING
CORRECTION OF CAPTION

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SEP 12 2014
SC Court of Appeals

Deutsche Bank National Trust Company, etc.
v. Thomas C. Stevenson III et al.
Case No. 2012-CP-10-01844
Appellate Case No. 2014-001791
MEMORANDUM ADDRESSING
CORRECTION OF CAPTION
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Appellants Deutsche Bank National Trust Company, as Trustee of the IndyMac IMJA Mortgage Trust 2007-A2, Mortgage Pass-Through Certificates, Series 2007-A2 under the Pooling and Servicing Agreement dated August 1, 2007 (“Deutsche Bank”), and OneWest Bank FSB, including its division known as Indy Mac Mortgage Services (“OneWest Bank/IndyMac”), by and through their undersigned counsel, submit the herein memorandum addressing correction of the caption on appeal.

Deutsche Bank and OneWest Bank/IndyMac are both represented by the undersigned, and both are appealing the orders of Judge Dennis. Deutsche Bank and OneWest Bank/IndyMac are not adverse and have no claims against one another. This action includes a third party complaint by Thomas C. Stevenson III and Irven M. Stevenson (“Defendants Stevenson”) against OneWest Bank/IndyMac. (Please see attached filing in U.S. District Court prior to remand.) The caption currently in use by the Court of Common Pleas apparently evolved to its current form following court orders by the U.S. District Court prior to remand as well as the Court of Common Pleas following remand. Deutsche Bank and OneWest Bank/IndyMac submit that the caption currently in use by the trial court incorrectly blends the captions of the first party and third party complaints, which is not what any court order would have required or intended, but nonetheless it has not been corrected and has been in use by the trial court and all counsel for more than two years.

Deutsche Bank and OneWest Bank/IndyMac respectfully contend that the caption on appeal should reflect that they are both Appellants. Respectfully, that status of the appealing

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parties is not correctly reflected in the caption set forth on the second page of the letter of the Clerk of the Court of Appeals dated August 25, 2014.

(SIGNATURE ON FOLLOWING PAGE)

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Deutsche Bank National Trust Company, etc.
v. Thomas C. Stevenson III et al.
Case No. 2012-CP-10-01844
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CORRECTION OF CAPTION
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September 10, 2014

Respectfully submitted,



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

2012-CP-10-1844

Deutsche Bank National Trust Company, as)
Trustee of the IndyMac IMJA Mortgage)
Trust 2007-A2, Mortgage Pass-Through)
Certificates, Series 2007-A2 under the)
Pooling and Servicing Agreement dated)
August 1, 2007,)

Plaintiff,)

vs.)

Thomas C. Stevenson III, Irven M.)
Stevenson, National Bank of South Carolina)
n/k/a Synovus Bank and South Carolina)
Department of Revenue,)

Defendants.)

Thomas C. Stevenson III and Irven M.)
Stevenson,)

Third-Party Plaintiffs,)

vs.)

Indy Mac Mortgage Services, a Division)
of OneWest Bank, FSB,)

Third-Party Defendant.)

(014773-00976 JJH)

BY _____
JULIE J. ARMSTRONG
CLERK OF COURT
2012 JUL -5 AM 10:47

FILED

THIRD-PARTY DEFENDANT ONEWEST BANK, FSB'S NOTICE OF REMOVAL

Third-Party Defendant OneWest Bank, FSB (erroneously sued in the name of its division, Indy Mac Mortgage Services) ("OneWest Bank"), pursuant to the provisions of 28 U.S.C. §§ 1331, 1441(c), and 1446, removes this action to the United States District Court for the District of South Carolina, Charleston Division, on the following grounds:



1. The Summons and the Complaint in this action, true copies of which are attached hereto, were filed in the Court of Common Pleas for Charleston County, South Carolina on March 16, 2012 (the "State Court Action").

2. On or about May 18, 2012, the Stevensons filed their Answer, Counterclaims and Third-Party Complaint ("Answer/TPC") in the State Court Action. Plaintiff was served with the Answer/TPC by return mail on May 18, 2012 and consents to removal. The record in the State Court Action does not indicate whether the South Carolina Department of Revenue ("SCDOR") or National Bank of South Carolina n/k/a Synovus Bank ("Synovus") have been served with the Answer/TPC.

3. OneWest Bank was served with the Summons and Answer/TPC on June 4, 2012.

4. The Answer/TPC asserts two causes of action against OneWest Bank. First, the Stevensons allege that OneWest Bank violated the South Carolina Unfair Trade Practices Act. Second, the Stevensons allege OneWest Bank breached the duty of good faith based on OneWest Bank's alleged failure to comply with HUD regulations and FHA guidelines. (Answer/TPC ¶¶53-66).

5. This case is properly removable pursuant to 28 U.S.C. § 1441(c) because federal question jurisdiction is present. Section 1441(c) was amended by the Federal Courts Jurisdiction and Venue Clarification Act of 2011 (the "Clarification Act"). The Clarification Act's provisions apply to actions commenced on or after January 7, 2012. Section 1441(c) now reads:

(1) If a civil action includes--

(A) a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), and

(B) a claim not within the original or supplemental jurisdiction of the district court or a claim that has been made non-removable by statute, the entire action may be removed if the action would be removable without the inclusion of the claim described in paragraph (B).

(2) Upon removal of an action described in paragraph (1), the district court shall sever from the action all claims described in paragraph (1)(B) and shall remand the severed claims to the State court from which the action was removed. Only defendants against whom a claim described in paragraph (1)(A) has been asserted are required to join in or consent to the removal under paragraph (1).

28 U.S.C. § 1441(c) (as amended by The Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, § 204, 125 Stat. 758).

6. Federal district courts have “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Additionally, “there is . . . another longstanding, if less frequently encountered, variety of federal ‘arising under’ jurisdiction, this Court having recognized for nearly a 100 years that in certain cases federal-question jurisdiction will lie over state-law claims that implicate significant federal issues.” *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308, 312 (2005).

7. The Stevensons’ claims against OneWest Bank in the Answer/TPC meet the standard for jurisdiction under § 1331. The third-party claims are based on OneWest Bank’s alleged failure to comply with HUD regulations and FHA Guidelines. See *Leggette v. Washington Mut. Bank, FA*, No. 3:03-CV-2909-D, 2005 WL 2679699, at *3 (N.D. Tex. Oct. 19, 2005) (concluding that complaint alleging state law breach of contract action based on violation of HUD regulations met standard for federal question jurisdiction).

8. This is a removal by a Third-Party Defendant based on the separate and independent cause of action raised by the Stevensons. The Complaint in this action seeks

foreclosure of a note and mortgage—an equitable remedy in South Carolina. The Answer/TPC seeks damages under the South Carolina Unfair Trade Practices Act, claiming OneWest Bank violated federal agency guidelines and federally supported loss mitigation programs—a legal remedy, and one separate and distinct from the foreclosure sought by the Plaintiff.

9. Nothing in this notice of removal shall be interpreted as a waiver or relinquishment of any of OneWest Bank's rights to assert any defense or affirmative matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person; (2) improper venue; (3) insufficiency of process; (4) insufficiency of service of process; (5) improper joinder of claims and/or parties; (6) failure to state a claim; (7) the mandatory arbitrability of some or all of the claims; (8) failure to join indispensable parties; or (9) any other pertinent defense available under the South Carolina or Federal Rules of Civil Procedure, any state or federal statute, or otherwise.

10. This Notice of Removal is being filed within the time-frame set forth in 28 U.S.C. § 1446.

11. This Court is part of the "district and division" embracing the place where this action was filed – Charleston County, South Carolina. See 28 U.S.C. § 1446(b).

12. A true and legible copy of all process, pleadings, orders, and other papers or exhibits of every kind now on file in the State Court is submitted with this Notice of Removal. See Exhibit A.

13. A Notice of Filing this Notice of Removal is being filed with the Clerk of Court for Charleston County, South Carolina and served upon all adverse parties.

14. OneWest Bank reserves the right to supplement this notice of removal by adding any jurisdictional defenses which may independently support a basis for removal.

WHEREFORE, OneWest Bank removes this action to the United States District Court
for the District of South Carolina, Charleston Division.

/s/ John J. Hearn

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I consent:

/s/ Lora Stuart Camp

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IndyMac IMJA Mortgage Trust 2007-A2,
Mortgage Pass-Through Certificates, Series
2007-A2 under the Pooling and Servicing
Agreement dated August 1,2007

July 3, 2012

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

R. Markley Dennis, Jr., Presiding Judge, Ninth Judicial Circuit

Case No. 2012-CP-10-01844
Appellate Case No. 2014-001791

Deutsche Bank National Trust Company, as
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Appellants,

v.

Thomas C. Stevenson III and Irven M.
Stevenson, National Bank of South Carolina
nka Synovus Bank, South Carolina Department
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including its division known as Indy Mac
Mortgage Services,

Defendants,

Of which Thomas C. Stevenson III and Irven M. Stevenson are the Respondents.

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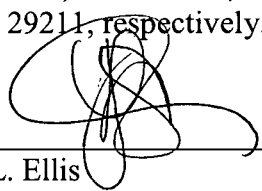
SEP 12 2014

PROOF OF SERVICE

SC Court of Appeals

I certify that on the 10th day of September 2014, I served the *Memorandum Addressing Correction of Caption* on J. Rutledge Young, Jr., Esq. of Duffy & Young, LLC, attorney of record for Respondents, Thomas M. Stevenson and Irven M. Stevenson; Tara E. Naful, Esq., of Adams and Reese, LLP, attorney of record for Defendant National Bank of South Carolina n/k/a

Synovus Bank (not a Respondent to this appeal) and Milton G. Kimpson, Esq., attorney for Defendant South Carolina Department of Revenue (not a Respondent to this appeal), by depositing a copy in the U.S. Mail, postage prepaid, to their offices at 96 Broad Street, Charleston, South Carolina 29401, 211 King Street, Suite 330, Charleston, South Carolina 29401, and Post Office Box 12265, Columbia, South Carolina 29211, respectively.



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September 10, 2014

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REPLY TO:
CHARLESTON LITIGATION

September 10, 2014

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

RE: *Deutsche Bank National Trust Company, as Trustee of the IndyMac IMJA Mortgage Trust 2007-A2, Mortgage Pass-Through Certificates, Series 2007-A2 under the Pooling and Servicing Agreement dated August 1, 2007 v. Thomas C. Stevenson III and Irven M. Stevenson, National Bank of South Carolina nka Synovus Bank, South Carolina Department of Revenue, and OneWest Bank FSB, including its division known as Indy Mac Mortgage Services*
Appellate Case No.: 2014-001791
Our File No.: 52310.47707

Dear Ms. Kitchings:

Enclosed please find a *Memorandum Addressing Correction of Caption* and the related *Proof of Service* which needs to be filed in connection with the above referenced matter. We would request that you please file same and return a file-stamped copy to our office in the enclosed envelope.

If you have any questions or concerns, please contact me at your convenience.

With kind personal regards, I am

Sincerely,

Jennifer L. Ellis
Litigation Paralegal

:jle
Enclosure

cc: J. Rutledge Young, Jr., Esq. (w/encl.)
Tara E. Nauful, Esq. (w/encl.)
Milton E. Kimpson, Esq. (w/encl.)

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SEP 12 2014

SC Court of Appeals

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