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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

S. Jackson Kimball, Special Circuit Court Judge

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

RECEIVED
MAR 18 2015
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, N.A., and
MIDLAND FUNDING, LLC,,

of whom:

CORA B. WILKS and
DAVID C. WILKS areAppellants.

PETITION FOR REHEARING

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


Other Counsel of Record:

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

The Appellant Petitioners petition for a rehearing of the matter above under Rules 221(a) and 240, S.C.A.C.R.

This Petition is based upon those certain points, factual and legal, which the Petitioners believe the Court to have overlooked or misapprehended, as set out in the accompanying Memorandum, a copy of which is attached hereto and incorporated herein.

March 17, 2015



John Martin Foster
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DAVID C. WILKS,
CHASE BANK, N.A., and
MIDLAND FUNDING, LLC,,

of whom:

CORA B. WILKS and
DAVID C. WILKS areAppellants.

CERTIFICATE OF SERVICE

I certify that I have served the **Petition for Rehearing** and its accompanying **Memorandum** on the following counsel or persons:


Michael J. Anzelmo
Benjamin Rush Smith, III
Nelson Mullins Riley & Scarborough, LLP
Attorneys for Respondent
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 below; or

by hand delivering copies of the same to the following persons, or by leaving the same at

that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, all pursuant to Rule 233(b), S.C.A.C.R.

March 17, 2015



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Post Office Box 106
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Attorney for Petitioners

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of whom:

CORA B. WILKS and
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MEMORANDUM OF PETITIONERS
ON PETITION FOR REHEARING

The Court filed its Opinion herein on March 4, 2015. The Petitioners herein submit herewith their Memorandum on the petition for a rehearing of this matter under Rules 221(a) and 240, S.C.A.C.R.

Rule 221(a), S.C.A.C.R. states, in relevant part:

A petition for rehearing . . . shall state with particularity the points supposed to have been overlooked or misapprehended by the court.

By this Memorandum, the Petitioners set out those points of the said Opinion herein which they believe to fall within the ambit of Rule 221(a).

FIRST GROUND:

The Petitioner-Appellants raised, by their verified Answer and Counterclaim the issue of the closing attorney at their mortgage loan having been previously suspended by the South Carolina Supreme Court. [RECORD ON APPEAL, p.20-22; Exhibits, p.22-47.] By its Motion to Dismiss this defense and Counterclaim, the Respondent cited the holding of our Supreme Court in *Matrix Financial Services Corp. v. Frazier*, 294 S.C. 134, 714 S.E.2d 532 (2011), which would limit such equitable relief to those mortgages filed after the issuance of that opinion, *i.e.*, in 2011. The Petitioners' mortgage was filed in 2005. The Circuit Court agreed, citing *Matrix, supra*, and *BAC Home Servicing, L.P. v. Kindler*, 398 S.C. 619, 731 S.E.2d 547 (2012) as confirming only a prospective application of equitable relief. [RECORD ON APPEAL, p. 4-5.] This appeal followed.

At the motion hearing [RECORD ON APPEAL, p.55, l.11-25], and in Appellants' Brief, they argued that the seriousness of the Respondents' violation of the procedures mandated by South Carolina created a distinction between their facts and those dealt with in *Matrix* and *BAC*.

This Court dismisses the argument of the Appellants and finds that the Appellants have raised an argument that has not been ruled on by the trial court. The Petitioners assume this finding to refer to their attempts, cited above, to distinguish *Matrix* and *BAC*.

Petitioners do not understand the Court to have cited the precedent on preservation of issues properly. The Court below clearly dealt with the issue at hand, citing the language of *Kindler* stating:

“ . . . Thus, regardless of whether an attorney participated in the closing of [the mortgage], BAC would not be barred from recovery by the illegality.” *Id.*

This case is governed by that holding.

[RECORD ON APPEAL, p. 4.]

The Petitioners argue that the issue at hand was properly raised, dealt with by the Circuit Court, and preserved for this Court's review. They further understand, and argue, that it is one matter for an appellant to overlook a lower Court's failure to deal with an issue; it is another matter entirely to state that the lower Court has failed to deal with an argument for the appellant's position on that issue.

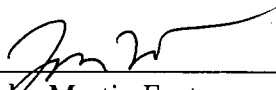
The issue at hand was properly preserved. This Court should deal with that issue squarely

in any decision rendered on this matter.

SECOND GROUND:

The Petitioners have set forth their argument in full by their Brief herein. The cases on which the lower Court relied dealt with apparent ignorance of our law, or inadvertent violation, by lenders. The use of an attorney suspended from practice to close the mortgage loan rises to the level of a willful violation. Willful violation of law raises an issue in equitable jurisprudence which should preclude the Respondent Bank from its relief. At the least, its existence entitles the Petitioners to a full consideration of the issues raised by such behavior.

March 17, 2015



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March 17, 2015

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

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SC Court of Appeals

Re: Deutsche Bank Natl. Trust Co., Respondent,
v. Cora B. Wilks and David C. Wilks, Appellants.

Appellate Case No. 2013-001524

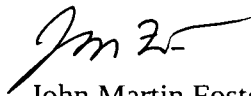
Dear Ms. Kitchings:

In accordance with Rules 221(a) and 240, S.C.A.C.R., enclosed herewith please find the original and seven (7) copies of the Appellant-Petitioners' Petition for Rehearing and Memorandum, 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 attorneys for the Respondent with copies of the said Petition and Memorandum, as evidenced by the Certificate of Service.

Please return the extra conformed copy of the Petition and Memorandum, with Certificate of Service 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: Michael J. Anzelmo
Benjamin Rush Smith, III
Nelson Mullins Riley & Scarborough, LLP
Attorneys for Respondent
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