

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

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MAR 23 2015

S. Jackson Kimball, Special Circuit Court Judge

SC Court of Appeals

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' Petition for Rehearing

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 Backed Pass Through Certificates, Series 2007-CH1 ("Deutsche Bank"), files this Return to Appellants' Petition for Rehearing of the Panel's unanimous, unpublished opinion of Deutsche Bank National Trust Company, as Trustee for J.P. Morgan Mortgage Acquisition Trust 2007-CH1, Asset Backed Pass Through Certificates, Series 2007-CH1 v. Cora B. Wilks, David C. Wilks, et al., Op. No. 2015-UP-110 (S.C. Ct. App. filed March 4, 2015) (Shearouse

Adv. Sh. No. 9 at 18) (“the Opinion”). The petition should be denied because Appellants’ fail to raise any issue that the Panel overlooked or misapprehended in rendering the Opinion. To the contrary, the Panel addressed the argument advanced by Appellants and found it to be unpreserved for appellate review, and, even if preserved, the Panel found the Appellants’ argument failed on the merits.

In the petition, Appellants’ claim the Panel overlooked the fact that Appellants properly preserved their appellate argument for review. See Petition p. 2. This argument lacks merit. This Court properly addressed Appellants’ argument and found the argument unpreserved. See Opinion p. 1.

This appeal addressed the trial court’s grant of Deutsche Bank’s motion to dismiss the Appellants’ counterclaim. {Order; R. 2-5}. Before the trial court Deutsche Bank argued that Matrix Financial Services v. Frazer, 394 S.C. 134, 714 S.E. 532 (2011), barred the Appellants’ counterclaim. {Id.}. Appellants’ sole argument before the trial court was that Wachovia Bank, N.A. v. Coffey, 389 S.C. 68, 698 S.E.2d 244 (Ct. App. 2010), supported denial of Deutsche Bank’s motion to dismiss their counterclaim. {Tr. of Hearing at 3–4, R. at 54-55}.¹ Importantly, Appellants failed to argue that the Matrix rule did not apply because the lender closed the loan with disbarred counsel. {Id.}.

The trial court rejected Appellants’ argument and held Matrix controlled the Appellants’ counterclaims. {Order at 2, R. at 3}. The trial court did not rule on any

¹ Despite this argument, counsel for the Wilkses acknowledged at the hearing “that because Matrix is a later case in a line of cases and because it is the Supreme Court, it may be viewed as implicitly overruling or limiting [Coffey].” {Tr. of Hearing at 4, R. at 55}.

argument that the Matrix rule did not apply because the lender closed the loan with disbarred counsel. {Id.}.

On appeal, Appellants shifted gears and solely argued that Matrix did not apply because Deutsche Bank committed a willful violation of the law because “the mortgage transaction in question was closed by—or with the connivance of—disbarred counsel.” {Appellants’ Br. at p. 7}. The trial court never heard or ruled upon this new argument. Appellants did not file any Rule 59, SCRCP, motion. Therefore, Appellants failed to preserve it for appellate review. See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 779–80 (2004) (holding that (1) “[i]ssues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court” and (2) when the trial court does not rule on an issue, the party must file a Rule 59(e), SCRCP, motion in order to preserve the issue for appellate review). The Panel considered Appellants’ appellate argument and found it unpreserved. The Panel expressly and correctly ruled as such. See Opinion p. 1. Therefore, the Panel should deny the petition for rehearing.

Appellants also maintain the Panel erred in ruling on the merits of their argument. See Petition p. 3. That argument lacks merit. In addition to the ruling on the preservation issue, the Panel also considered and rejected Appellants’ argument on the merits. See Opinion p. 1, n. 1 (“We also find Appellants’ argument fails on the merits” and cited Matrix). The Panel correctly ruled.

In Matrix, the South Carolina Supreme Court held that “[a]ll real estate and mortgage loan closings must be supervised by an attorney” and that “closing a loan without the supervision of an attorney constitutes the unauthorized practice of law.”

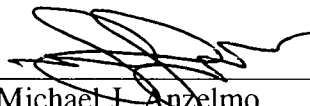
Matrix Fin. Servs. Corp., 394 S.C. at 138–39, 714 S.E.2d at 534. The Matrix rule only applied “to all filing dates after the issuance of this opinion,” which was August 8, 2011. Id. at 140, 714 S.E.2d at 535. That filing date is “the date the document a party seeks to enforce was filed.” BAC Home Loan Servicing, L.P. v. Kinder, 398 S.C. 619, 624, 731 S.E.2d 547, 549-50 (2012).

In the present appeal, Appellants “acknowledge[d] that their mortgage was filed June 1, 2005, prior to the issuance and prospective application of Matrix, August 8, 2011.” {Appellants Br. at 5}. Thus, the Panel correctly rejected Appellants’ argument and properly affirmed the trial court’s application of Matrix.

Conclusion

Based on the foregoing, the Panel did not overlook or misapprehend any argument advanced by Appellants. The petition of rehearing should be denied.

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Columbia, South Carolina

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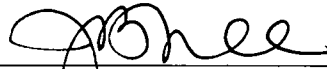
PROOF OF SERVICE

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' Petition for Rehearing

Counsel Served:

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

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

Jennifer B. Lee
Administrative Assistant

March 23, 2015

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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 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' Petition for Rehearing 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 counsel.

Very truly yours,



Michael J. Anzelmo

MJA:jlee
Enclosures

cc: John Martin Foster