

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master-In-Equity, Circuit Court Judge

Case No. 2010-CP-42-2514

Deutsche Bank National Trust
Company as Trustee on Behalf
of Morgan Stanley ABS
Capital I, Inc. Trust 2006-HE6
Mortgage Pass-Through
Certificates, Series 2006-HE6,

Respondent,

v.

Robert Mantooth, Mortgage
Electronic Registration
Systems, Inc., solely as
Nominee for Decision One
Mortgage Company, LLC and
Upper Beaver Creek
Homeowners Association,
Inc.,

Appellant.

INITIAL BRIEF OF APPELLANT

Robert Mantooth
104A Franklin Avenue, #176
Spartanburg, SC 29301
(864) 237-9458
Appellant

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TABLE OF CONTENTS

Table of Authorities III

Judicial NoticeIV

Statement of Issues on Appeal (1).....V

Statement of the Case (1)V

Facts (1)V

Statement of Issues on Appeal (2)..... VI

Statement of the Case (2) VI

Facts (2)VI

ConclusionVII

Arguments

1. THIS CASE WAS REMOVED, NOTED AS ENDED, AND RESTORED TO THE ACTIVE DOCKET PURSUANT TO SCRCP 40(j) WITHOUT WRITTEN CONSENT FROM ALL ADVERSE PARTIES, IN DIRECT VIOLATION OF THE RULE.

2. ON APRIL 28, 2015 A RE-INSTATEMENT HEARING WAS HELD AT THE MASTER IN EQUITY COURTROOM. KORN LAW FIRM, WHO REPRESENTS THE PROPER PLAINTIFF, WAS NOT PRESENT. THEREFORE, THIS HEARING SHOULD HAVE RESULTED IN A DEFAULT RULING FOR THE APPELLANT, ROBERT MANTOOTH.

TABLE OF AUTHORITIES

STATUTES

South Carolina Rules of Civil Procedure 40(j)

RULE 40

GENERAL DOCKET, TRIAL ROSTERS, AND CALL OF CASES FOR TRIAL

(j) Case Stricken From Docket by Agreement. A party may strike its complaint, counterclaim, cross-claim or third party claim from any docket one time as a matter of right, provided that all parties adverse to that claim, counterclaim, cross-claim or third party claim agree in writing that it may be stricken, and all further agree that if the claim is restored upon motion made within 1 year of the date stricken, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the claim is restored. A party moving to restore a case stricken from the docket shall provide all parties notice of the motion to restore at least 10 days before it is heard. Upon being restored, the case shall be placed on the General Docket and proceed from that date as provided in this rule.

JUDICIAL NOTICE

Appellant, who is unschooled in the law, asks that the court take Judicial Notice of the enunciation of principles as stated in “Haines v. Kerner, 404 U.S. 519,” wherein the court has directed that those who are unschooled in law making pleadings and/or complaints shall have the court look to the substance of the pleadings rather than the form. Furthermore, Appellant hereby requests the court and judge notify him of any *sua sponte* right or remedies that Appellant may have overlooked or may overlook.

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN RESTORING THIS CASE TO THE ACTIVE DOCKET

STATEMENT OF THE CASE

On August 11, 2014, Judge Gordon G. Cooper issued and signed a Judgment in a Civil Case citing SCRCP 40(j), ordered it ended, and filed it with the Clerk of Court of Spartanburg County, all in violation of the rule.

Pursuant to SCRCP 40(j) as defined, Appellant is an adverse party whose consent was to be obtained in writing before the dismissal could occur. Appellant, to date, has not given his consent in writing or otherwise to either remove the case from the active docket or restore the case to the active docket.

FACTS

On April 28, 2015, Judge Gordon G. Cooper heard the Motion to Restore the Case to the Active Docket. When Appellant objected, Judge Cooper stated he, himself, filled the 40(j) dismissal. Judge Gordon G. Cooper is not an adverse party to this action and cannot enter a 40(j). Judge Cooper also noted that the case had ended in the 40(j) order. It was only at the hearing, when appellant continued his objections, that Judge Cooper stated that he made a mistake by checking the section that ended the case although there were numerous writings and requests from Appellant dating back to October 28, 2012 requesting any all signatures required under SCRCP 40(j).

2. DID THE TRIAL COURT ERR IN RESTORING THE CASE TO THE ACTIVE DOCKET WITHOUT THE PROPER PLAINTIFF BEING PRESENT BEFORE THE COURT?

STATEMENT OF THE CASE

On May 11, 2010, the Korn Law Firm, P.A. filed a foreclosure action on behalf of Deutsche Bank National Trust Company, as Trustee on Behalf of Morgan Stanley ABS Capital I, Inc. Trust 2006-HE6, Mortgage Pass-Through Certificates, Series 2006-HE6.

On August 11, 2014, Judge Gordon G. Cooper issued and signed a Judgment in a Civil Case citing SCRCP 40(j), ordered it ended, and filed it with the Clerk of Court of Spartanburg County.

While the case was stricken from the active docket, Judge Cooper allowed debt buyer/debt collector/interloper, Butler & Hosch to submit a notice of appearance on March 11, 2015, and additionally, signed an order for said interloper, amending the caption of the case, on March 27, 2015, changing the Plaintiff, which continues to be prejudicial and harmful to Appellant, Robert Mantoath.

FACTS

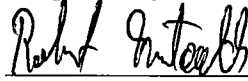
On April 28, 2015, Judge Gordon G. Cooper heard the Motion to Restore the Case to the Active Docket without the proper Plaintiff before the Court, as evidenced in the transcript. Plaintiff should have been defaulted and the case should not have been restored to the active docket.

CONCLUSION

For the reasons stated above, this Court should reverse the judgment of the circuit court.

June 3, 2015

Respectfully submitted,



Robert Mantooth
104A Franklin Avenue, #176
Spartanburg, SC 29301
(864) 237-9458
Appellant

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v.

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Electronic Registration
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Nominee for Decision One
Mortgage Company, LLC and
Upper Beaver Creek
Homeowners Association,
Inc.,

Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Brief and Designation of Matter to be Included in the Record on Appeal on Deutsche Bank National Trust Company by depositing a copy of it in the United States Mail, postage prepaid, on June 3, 2015, addressed to their attorney(s) of record, Butler & Hosch, PLLC, Post Office Box 7128, Columbia, South Carolina, 29202.

Robert Mantooth
Robert Mantooth
104A Franklin Avenue, #176
Spartanburg, SC 29301
Appellant

June 3, 2015

The Honorable Tanya A. Gee
Clerk, SC Court of Appeals
PO Box 11629
Columbia, SC 29211

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RE: Deutsche Bank National Trust Company, et al, Respondent, v. Robert Mantooth, Appellant, Case No. 2010-CP-42-2514

Dear Ms. Gee:

Enclosed for filing is the Initial Brief of Appellant along with the Designation of Matter to be Included in the Record on Appeal and Proof of Service for same on Respondent. An additional copy is enclosed to be returned to Appellant in the return envelope provided.

Sincerely,



Robert Mantooth
104A Franklin Avenue, #176
Spartanburg, SC 29301
(864) 237-9458
Appellant, pro per

cc: Dean A. Hayes
Robert P. Jackman
Butler & Hosch, PLLC
P.O. Box 7128
Columbia, SC 29202
Attorneys for Respondent

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R. Mantooth
104 A Franklin Ave #176
Spartanburg, SC 29301

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