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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

SEP 24 2015

SC Court of Appeals

Ellis B. Drew, Jr., Master-in-Equity

Appellant Court Case Number No. 2015-001416

Lower Court Case No. 2011-CP-04-3316

Deutsche Bank National Trust Company as
Indenture Trustee for MortgageIT Trust 2004-1

Respondent,

v.

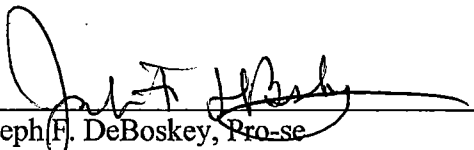
Joseph F. DeBoskey

Appellant.

PETITION FOR REVIEW

Joseph F. DeBoskey Appellant, PETITIONS this Court for review of an order rendered by the Honorable Ellis B. Drew, Jr. entered on July 20, 2015. A copy of the order is attached hereto.

Dated this 23th day of September, 2015


Joseph F. DeBoskey, Pro-se
115 Caribou Cove
Anderson, SC 29621
(864) 221-9057
Dawn810@bellsouth.net

**APPELLANT'S PETITION
FOR REVIEW OF ORDER OF CONTINUANCE**

JOSEPH F. DeBOSKEY, a self-represented litigant and the Appellant¹ herein, petitions this Court to review and lift any requirement for an appeal bond, vacate the said order and to suspend any further lower court action pending outcome of the Appeal. (a true copy is attached hereto as marked exhibit 1).

Rule 241 of the SCACR addresses the subject of bonding. It lays out a general principal that judgments under appeal are stayed. It goes on to provide specific exceptions from the general rule and supplies the procedures for dealing with bond at the trial and appellate court levels.

There was no emergency in this case. The lower court nevertheless listened to bond matters *ex parte*. It then issued an order that implicates – indeed, it purports to decide – both the appropriateness of an appeal bond and the amount thereof. The lower court considered neither the context of the appeal nor the broader impact of its ruling within the context of the South Carolina Supreme Court Administrative order 2011-05-02-01. Appellant therefore petitions this Court to lift any requirement for an appeal bond, vacate the said order and to suspend any further lower court action pending outcome of the Appeal..

FACTUAL AND PROCEDURAL BACKGROUND

Matters of record below which are pertinent to the matters raised in this Petition include the following:

¹ For convenience, the following designations are used: Appellee DEUTSCHE BANK NATIONAL TRUST COMPANY, as Indentured Trustee for MORTGAGEIT TRUST 2004-1, is referred to as “DEUTSCHE BANK” or as the “Bank.” Appellant JOSEPH F. DeBOSKEY is called “DeBOSKEY” or the “Homeowner.”

1. *The Filing and Nature of the Case Below* – This matter began as in 2011, when DEUTSCHE BANK brought suit below to foreclose on DeBOSKEY’s home.

2. *The Judgment Below* – DeBOSKEY did not answer. Default was entered, and the lower court entered its Judgment of Foreclosure on September 17, 2012. That order set a sale date for December of 2012.

3. *DeBOSKEY Enters the “Hardest Hit” Program* – DeBOSKEY then sought aid under the U.S. Treasury “hardest hit” program by applying to SC Mortgage HELP. He was placed with a local non-profit called NHC (the Neighborhood Housing Corporation). DeBOSKEY duly notified the Court of his entry into the program. DeBOSKEY also submitted his information to NHC, in line with U.S. Treasury program requirements (see letter of acknowledgment attached hereto and marked exhibit 2).

Based on these acts, the South Carolina Supreme Court Administrative order 2011-05-02-01 rule imposes a duty on the Bank – indeed, on all foreclosing parties – to cooperate: in this case to provide NHC with a loan itemization package.

3. *The Stay of the Case Below* – DeBOSKEY sought to stay all final acts in the case below, pending completion of his program application. On November 19, 2012, the lower court heard Defendant’s application for a stay and on December 3, 2012, issued a Statement from hearing suspending the sale and abating the case until the SC Mortgage HELP process was completed. The stay was designed to give the Bank time to assemble its paperwork and to submit the loan itemization package to NHC (see order attached hereto and marked exhibit 3).

4. *DEUTSCHE BANK Disregards its Duties* – More than two years have passed. DEUTSCHE BANK still has not sent NHC the loan itemization package. The Bank stands in violation of its duty to “gather and provide” program information. Its neglect has delayed the

DeBOSKEY's completion of the program and has delayed the judicial resolution of this case.

DeBOSKEY repeatedly contacted the servicer, the Bank, and opposing counsel and tried to force the Bank to comply with its duties under the HELP the program and under the South Carolina Supreme Court Administrative order 2011-05-02-01. Eventually, when the loan itemization package was long overdue, DeBOSKEY sought to sanction DEUTSCHE BANK for disregarding its obligations. The sanctions motion asked to have the Bank's case dismissed for willful violation of the "gather and provide" requirements as well as South Carolina Supreme Court Administrative order 2011-05-02-01 (see Motion attached and marked exhibit 4).

Hearing on the dismissal motion was held on May 12, 2015. At that time, DEUTSCHE BANK tried an "end-run" around the rules: it asked the lower court to simply dissolve the stay of final acts. The result of the hearing was an order denying DeBOSKEY any relief (see Order attached hereto and marked exhibit 5).

6. *Notice of Supplemental hearing filed* – Subsequent to the rendering of the Order denying DeBoskey's Motion for Relief, opposing counsel set a hearing to be held on July 6, 2015. The issues intended for that hearing were to be the updating of the judgment debt and the re-scheduling of a foreclosure sale.

7. *Homeowner's Counsel Withdraws* – On the afternoon of July 2, 2015, the DeBOSKEY's counsel orally advised him that he was withdrawing from this case and that would not attend any more hearings. DeBOSKEY's counsel said he would inform Bank counsel as well as the Court about this development.

Due to the Independence Day holiday, most professional offices and all judicial offices were closed on July 3 and over the weekend. DeBOSKEY's was therefore quite limited in terms of reaction time.

8. *The Lower Court Entertains Bonding ex parte* – On both July 2, 2015 and early on July 6, 2015, the DeBOSKEY contacted Judge Drew's judicial assistant, Ms. Donna McClellion, to determine the status of the hearing. DeBOSKEY received mixed messages. Ms. McClellion was unsure whether the hearing would be held but acknowledged she was aware DeBOSKEY's counsel had withdrawn. She furthered informed DeBOSKEY it was the intention of the Judge to discuss that filing of the appeal with opposing counsel prior to the hearing scheduled for that day.

The record shows that the lower court did speak with Plaintiff's counsel on July 6, 2015. The ex parte discussion extended far beyond the topics listed on the notice. A written ruling, titled as an Order of Continuance, was rendered that requires DeBOSKEY to post bond and sets an amount therefor, along with other matters (a true copy is attached hereto as marked exhibit 1).

9. *The Lower Court Signs a Bonding Order* – On July 20, 2015, the court below, Master in Equity Ellis B. Drew, J., entered its Order of Continuance and granted ex parte relief sought by the Bank. The Order, record, and papers from the hearing reflect a chaotic and uncertain atmosphere surrounding the proceeding.

The scope of the hearing, and the terms of the resulting Order have been questioned by all. Indeed, DEUTSCHE BANK's own counsel wrote to disclaim that matters had been decided. Nevertheless, there presently stands a written Order of the lower court, one which appears to decide a basis for and an amount for an appeal bond (see order attached hereto and marked exhibit 1).

10. *Pertinent Correspondence to this Petition* – In an on-going effort to determine whether or not a hearing was held on July 6th, 2015, DeBOSKEY has contacted both the court reporter and opposing counsel.

A) *Court Reporter* - Subsequent to July 6th, and in an attempt to determine whether a hearing was held Ex parte or not, DeBOSKEY contacted the court reporter Ms. Karen Senn. DeBOSKEY's request for transcripts of the aforementioned was met with the following response:

"The hearing was continued as you had filed an appeal, therefore there is no record"
(see response attached hereto and marked exhibit 6).

B) *Opposing Counsel – Ms. Magalie Creech* - Subsequent to July 6th, and in also in an attempt to determine whether a hearing was held Ex parte or not, DeBOSKEY contacted opposing counsel. Ms. Creech responded with a letter in which she made the following representations:² (see response attached hereto and marked exhibit 7)

i) *"An attorney from our Columbia office, Anthony Charles, appeared at the hearing"*

ii) *it is the Plaintiff's position that the filing of your Notice of Appeal does not stay the foreclosure action even if a bond were posted to stay the sale"*

11. *Authority of the Court of Appeals* – this court is vested with power to review bonding matters. it should vacate the lower court's order and to lift the appeal bond requirement in accordance with rule 241(d) of the SCACR.

² Opposing counsel seems now to be abandoning the order rendered as a result of the July 6th hearing. It is now her position that neither a notice of appeal, nor the posting of an appeal bond stays the foreclosure sale of which she so aggressively pursues. In addition, Ms. Creech has filed a Notice of Supplemental hearing for October 28, 2015, which calendars the same issues which were calendared at the hearing scheduled on July 6th, 2015. (see notice attached hereto and marked exhibit 8)

GROUNDS FOR THE PETITION

1. The Court must lift the appeal bond requirement and vacate the decision below in order to preserve its own jurisdiction to decide the presenting issue. The focal point of the parties' dispute for literally years now has been the duty *vel non* of a lender to furnish a loan itemization package. The trial court's stay first entered in 2012 was premised on DEUTSCHE BANK's legal duty to "gather and provide" the data required by a South Carolina's HELP program. The question posed on appeal is whether the Bank can proceed to a "final act" – here, to judicial sale – without first complying with federal program requirements and with the South Carolina Supreme Court Administrative order 2011-05-02-01.

2. *The General Rule as to Appeal Bond* – Courts of South Carolina, both by rule and by precedent, initially stay the decision below for the duration of appeal. Rule 241(a) lays out the baseline principle: an appeal has to stay any civil matters decided by order, judgment, decree or decision. The Rule reads in relevant part:

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court.

Case law confirms this as the general rule: an appeal acts as a stay. *See, e.g., Terry v. Terry*, 400 S.C. 453, 734 S.E.2d 646 (2012); *Estate of Connor*, – S.C. –, – S.E.2d –, Opin. No. 2009-UP-502 (Ct.App. October 29, 2009).

3. *Exceptions to the General Bond Rule* – There the general rule of course has some exceptions, so an Appellee can move to have certain kinds of disputes excluded from the general appellate stay. DEUTSCHE BANK seems to be trying to travel under the particular exceptions

found at Rule 241(b)(1) and (4):

The exceptions to the general rule are found in statutes, court rules, and case law. Where specific conditions must be met before the exception applies, those conditions must be strictly complied with. A list of some, but not all, of the exceptions to the general rule is:

- (1) Money judgments as provided in S.C. Code Ann. § 18-9-130.
- (4) Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170.

Although the automatic stay normally remains in effect for the duration of an appeal, it can be lifted by a duly entered order directed thereto. See, e.g., Estate of Connor, supra, Opin. No. 2009-UP-502.

The automatic stay thus remains in effect for the duration of an appeal unless lifted by a duly entered order directed thereto. Id. The procedures for imposing a bond and for challenging a bonding decision at both the trial court level and on appeal are laid out in Rule 241(c) and (d) of the SCACR.

4. *Precedential Support for DeBOSKEY's Position* – One case on point is *C-Sculptures, LLC v. Brown*, 393 S.C. 27, 709 S.E.2d 705 (S.C. App. 2011). In *C-Sculptures*, a contractor sued to enforce a mechanic's lien. The dispute went to contractual arbitration, where the homeowners lost on the merits. The contractor then sought to confirm its award and to enforce its claim by sale. At the lower court level, the homeowners lost again. When they appealed to this court, the contractor moved to require a bond in lieu of proceeding to sale. Its motion was denied both at the trial and appellate court level.

The *C-Sculptures* court noted that the nature of the question presented to a court affects how the general appellate stay rule and the exceptions thereto are applied. The confirmation of an arbitration award did not fall under a bonding exception. This was in spite of the fact that the ultimate remedy – the enforcement of a lien – involved the sale of real property. This Court therefore denied supersedeas.³

As in *C-Sculptures*, here a creditor seeks the judicial sale of a homeowner's real property to enforce its claim. As in *C-Sculptures*, here the question posed on appeal is collateral to the merits: *C-Sculptures* involved began as a lien foreclosure and morphed into an arbitration confirmation; this case began as a mortgage foreclosure and now turns on the SC HELP program. As in *C-Sculptures*, so here: no appeal bond should be required.

5. *Policy Support for DeBOSKEY's Position* – Policy as well as precedent supports DeBOSKEY's position. The matter on appeal is largely a question of administrative procedure under a state program; the other questions involve judicial procedure under the South Carolina Supreme Court Administrative order 2011-05-02-01. In order to preserve DeBOSKEY's rights in a federal program, and in order to preserve the Court's jurisdiction to determine the matters now before it, no bond is appropriate.

³ The contractor ultimately prevailed on appeal. *C-Sculptures, LLC v. Brown*, 394 S.C. 519, 716 S.E.2d 678 (S.C. App. 2011); *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 742 S.E.2d 359 (2013).

Moreover, an appeal bond is not needed here. The federal government has decided that no judicial sale can take place until the lender meets program requirements.⁴ Federal law of course takes precedence over our state rule on this matter. DEUTSCHE BANK cannot be heard to disregard the United States of America or to proceed with any "final act" until its compliance with federal program requirements are completed.

Thus, the supreme law of the land, the federal program, and the equities of this case itself all demonstrate an appeal bond to be improper and unwarranted here.

⁴ Significant issues of federal preemption are also at stake. The SC HELP program is a part of the South Carolina's Hardest Hit Fund program, called the South Carolina Homeownership and Employment Lending Program (SC HELP). The program was created and is administered by the U.S. Department of the Treasury.

SHOWING OF EXTRAORDINARY CIRCUMSTANCES

6. *Reason to Dispense with Further Consideration Below* – Rule 241(d) contemplates a typical situation where a supersedeas or stay application are considered at lower court in regular order. But the supersedeas issue was not heard in regular order, so this is not the ordinary case.

7. *No Emergency* – The lower court treated bonding as a matter of urgency, even while it continued its consideration the matters actually noticed for hearing. But no emergency was been pled, shown, or even claimed in this case. See SCACR 501 and Canon 3B(7). The lower court's act without notice thus raises a spectra of impropriety.

8. *Irregularities Below* – What is clear is that the Master in Equity did speak with Plaintiff's counsel on July 6, 2015. Their *ex parte* discussion extended far beyond the noticed matters. Its Order rendered after hearing addresses the amount of bond required for appeal and other matters, while deferring action on the agenda.

9. *The Ex Parte Issue* – South Carolina law can permit *ex parte* contact in civil cases under exigent circumstances. But *ex parte* application without need or cause is improper as a matter of law in this state. See, e.g., Canon 2 of South Carolina's Code of Judicial Conduct ("A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities"); *McSwain v. Holmes*, 269 S.C. 293, 237 S.E.2d 293 (1977): "We take this opportunity to advise the Bench and the Bar of the disfavor in which we regard *ex parte* orders and the stringent standards of necessity we demand of their issuance," quoting *Herring v. Retail Credit Co.*, 266 S.C. 455, 224 S.E.2d 663 (1976). "*Ex parte* communication is defined as 'prohibited communication between counsel and the court when opposing counsel is not present.' The Code of Judicial Conduct prohibits a judge from initiating, permitting or considering *ex parte*

communications unless the judge takes certain precautions, including but not limited to notifying the other parties of the substance of the ex parte communication and giving them an opportunity to respond.” *Fore v. Griffco of Wampee, Inc.*, 409 S.C. 360, 762 S.E.2d 37 (Ct.App. 2014), quoting BLACK’S LAW DICTIONARY, 597 (7th ed. 1999).

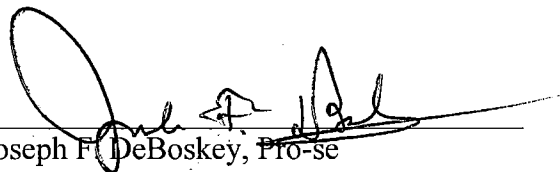
10. *Totality of Circumstances* – Given the schedule, the tenor, the merits and the product of the proceedings below, This Court should consider his petition and dispense with any requirement for an appeal bond, vacate the said order and to suspend any further lower court action pending outcome of the Appeal.

CONCLUSION

For all these reasons, this case on appeal stands inside the general rule of appellate stay. Exceptions to the general rule do not apply. The lower court’s order dated July 20, 2015, denominated as an Order of Continuance, is in procedural and substantive error and should be vacated..

This Court should dispense with any requirement of an appeal bond. The case should proceed through appeal with stay and without bond and to suspend any further lower court action pending outcome of the Appeal in accord with South Carolina’s rules and federal law.

Dated this 23rd day of September, 2015


Joseph F. DeBoskey, Pro-se
115 Caribou Cove
Anderson, SC 29621
(864) 221-9057
Dawn810@bellsouth.net

VERIFICATION OF JOSEPH F. DEBOSKEY

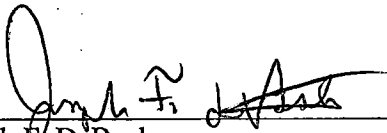
PERSONALLY APPEARED before me, Joseph F. DeBoskey, a real person and resident of Anderson South Carolina who being duly sworn does state as follows: I am the appellant in this case, I have read the Petition for Review and can and do verify under oath that to the best of my knowledge, the facts stated therein are true.

FURTHER AFFIANT SAYETH NOT.

RECEIVED

SEP 24 2015

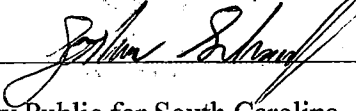
SC Court of Appeals



Joseph F. DeBoskey

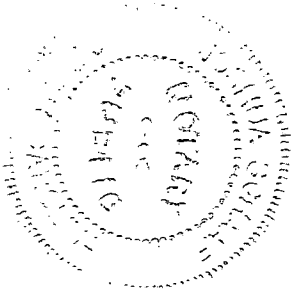
SWORN to before me this

17th day of September, 2015



Notary Public for South Carolina

My commission expires: 1176-22



JOSHUA SCHAAF
Notary Public
State of South Carolina
Commission Expires Nov. 16, 2022

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Ellis B. Drew, Jr., Master-in-Equity

RECEIVED

SEP 24 2015

SC Court of Appeals

Appellant Court Case Number No. 2015-001416

Lower Court Case No. 2011-CP-04-3316

Deutsche Bank National Trust Company as
Indenture Trustee for MortgageIT Trust 2004-1

Respondent,

v.

Joseph F. DeBoskey

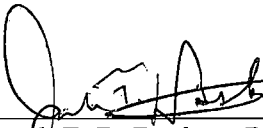
Appellant.

PROOF OF SERVICE

I certify that I served the respondent, Deutsche Bank National Trust Company as Indenture Trustee for MortgageIT Trust 2004-1, this Petition for Review and on all counsel of record by depositing a copy of it in the United States Mail, postage prepaid on September 23rd, 2015 addressed as below:

Finkel Law Firm
Magalie A. Creech
P.O. Box 71727
North Charleston, SC 29415

Dated this 23rd day of September, 2015



Joseph F. DeBoskey, Pro-se
115 Caribou Cove
Anderson, SC 29621
(864) 221-9057
Dawn810@bellsouth.net

67140.F37354

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Deutsche Bank National Trust Company as
Indenture Trustee for MortgageIT Trust 2004-1;

PLAINTIFF,

vs.

Joseph F. Deboskey; and SunTrust Bank,

DEFENDANT(S).



IN THE COURT OF COMMON PLEAS
C/A NO: 11-CP-04-3316

(NON-JURY MORTGAGE FORECLOSURE)

ORDER OF CONTINUANCE

On September 17, 2012, this Court issued its Order and Judgment of Foreclosure and Sale, which was filed on September 17, 2012. By Order filed June 3, 2015 this Court denied the Defendant Joseph Deboskey's ("Deboskey") motion for relief from the final judgment filed on September 17, 2012. A supplemental hearing was scheduled and held on July 6, 2015 for the sole purpose of updating the judgment debt and re-scheduling the foreclosure sale. This Court and Plaintiff have now been made aware that by petition dated June 27, 2015, Deboskey has filed an appeal of the June 3, 2015 Order denying his motion; however, Deboskey has not posted an appeal bond as required by South Carolina Appellate Rule 241 and S.C. Code. Ann. § 18-9-170.

THEREFORE IT IS ORDERED that this matter is continued provided that within 10 days of service of this order Defendant Deboskey posts the required appeal bond pursuant to Appellate Rule 241 and S.C. Code. Ann. § 18-9-170 in an amount of no less than 125% of the outstanding debt which, as of July 6, 2015, was \$229,936.54.

IT IS FURTHER ORDERED that should Deboskey fail to post the required bond within the 10 days provided, this Court, if so requested by Plaintiff, will advertise and sell the subject property pursuant to the Order and Judgment of Foreclosure and Sale filed September 17, 2012 as allowed by law.

IT IS SO ORDERED.

Ellis B. Drew, Jr.
Master in Equity, Anderson County

Anderson, South Carolina

July 20, 2015

FILED-CLERK'S OFFICE
ANDERSON SC
2015 JUN 24 AM 11:56
COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY
SEP 15 2015
Richard D. Hurling
CLERK OF COURT

Exhibit 1

November 28, 2012



Request for:

Joseph F. DeBoskey
115 Caribou Cove
Anderson, SC 29621

Loan # 0713900641

To whom it may concern:

Joseph F. DeBoskey began the SC HELP application process September 7, 2012. He is applying to receive financial help with the Hardest Hit Funds. Along with filling out the application, further documentation is needed in order to complete his file. He has gathered everything he can and is waiting for the required mortgage information. In order to complete his file, he needs an itemized Reinstatement letter. This letter should state the amount that is needed to bring his loan current in a broken down manner, i.e. P&I Payment amount, escrow payment amount, late charges, etc. He also needs an itemized monthly mortgage payment amount.

These are the last two documents that are needed to complete his file. Once his file is complete, I will then submit it to the next level of underwriting. There an underwriter will review his file in order to render a decision. The file cannot and will not be reviewed unless we have these documents. Please provide Mr. DeBoskey with the documents stated in order to submit his file to the next stage.

Thank you,

A handwritten signature in cursive script that reads 'Molly White'.

Molly White
Program Processor
Neighborhood Housing Corporation

310 Mills Avenue, Suite 105 • Greenville, SC 29605
O 864.631.2041 • F 864.752.1247 • Toll Free 855.812.2143
www.NHCGreenville.org

Exhibit 2

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF Anderson
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 11 CP-04-3316

Deutsche Bank National Trust Company as
 Indenture Trustee for Mortgage1T Trust 2004-1

Joseph F. Deboskey, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Bridget D. Swing	Attorney for : <input type="checkbox"/> Plaintiff	<input checked="" type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Telephone Conference with the court and counsel for the Plaintiff and Defendant took place on November 19, 2012. Foreclosure sale date currently set for December 4, 2012 is cancelled and suspended while Defendant awaits final response on his request for assistance from SC Mortgage Corp. No new sale date will be set at this time.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk : *Stay of Sale.*

A TRUE COPY

DEC - 3 2012

Rebecca King
 CLERK OF COURT

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

FPO

MOTION FEE PAID
ENTER
16

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

FILED CLERK'S OFFICE
IN THE COURT OF COMMON PLEAS
ANDERSON SC
C. A. NO.: 2011-CP-04-3316

2013 OCT 23 PM 3 27

Deutsche Bank National Trust)
Company as Indenture Trustee)
for Mortgage IT Trust 2004-1,)

COMMON PLEAS AND
GENERAL SESSIONS

Plaintiff,)

vs.)

Joseph F. Deboskey and SunTrust)
Bank,)

**Notice of Motion and Motion
for Relief from Judgment and
for Dismissal of Action and
Attorney's Fees and Costs**
A TRUE COPY
SEP 15 2015
Richard D. Hester
CLERK OF COURT

Defendants.)
_____)

Pursuant to SCRCP and the S. C. Court's May 2, 2011 Administrative Order, Defendant moves for an Order of this Court granting relief from the Court's September 17, 2012 Order; for dismissal of the within action and for attorney's fees and costs.

Factual Background

1. This action was commenced by Plaintiff to foreclose a real estate mortgage on property situate in Anderson County, South Carolina.
2. This matter was referred to the Master in Equity for Anderson County, SC with finality by Order of the Circuit Court and the Master in his September 17, 2012 Order retained jurisdiction of all matters connected herewith.
3. The Master In Equity's Court handles equitable issues and its purpose is to do equity between the parties.
4. This action resulted in a Decree of this Court dated September 17, 2012 directing the foreclosure of the subject mortgage. (See Exhibit A).
5. The foreclosure action stemmed from a default under Defendant Deboskey's

mortgage for the May, 2011 mortgage payment, the Complaint was filed on November 11, 2011.

6. Defendant Deboskey was eligible in May of 2011 for relief from SC HELP, a partnership between the U. S. Department of Treasury and the S. C. State Housing Finance and Development Authority.

7. Under the plan mentioned in Paragraph 4 above, Defendant Deboskey was eligible for up to Thirty Six Thousand and no/100 (\$36,000.00) Dollars to bring his first mortgage loan with Plaintiff current.

8. In order to complete the application process with SC HELP, and be approved for funds to reinstate his loan, it was necessary to obtain the amount due Plaintiff broken down into principal and interest, escrow payments, late charges and any costs and attorney's fees all itemized.

9. SC HELP and Deboskey began requesting the required information and breakdown from Plaintiff in September of 2011.

10. In November of 2012 there was an estimated Twenty five Thousand Five Hundred Fifty Seven and 73/100 (\$25,557.73) Dollars due Plaintiff in delinquent payments, cost, etc.

11. Since this foreclosure was begun, Defendant's Mortgage has been serviced by GMAC, Ocwen and Residential Credit Solutions, Inc.

12. Shortly after the commencement of this action in the fall of 2011, Defendant Deboskey, having been unsuccessful on his own in acquiring the needed breakdown of amount owed Plaintiff from Plaintiff on its services, hired legal counsel to assist him.

13. Defendant and his attorney have been requesting from Plaintiff or its various servicers the required breakdown or sums owed Plaintiff since before the institution of

the within action. (See Exhibit C attached correspondence in the form of letters and e-mails).

14. Plaintiff and its servicers have refused to provide the requested information and therefore Plaintiff is unable to receive the foreclosure assistance to which he is eligible and therefore remains unable to reinstate his loan with Plaintiff.

15. By Order of the Court dated December 3, 2012, the foreclosure sale of the subject property was suspended until further Order of the Court to allow Defendant time to obtain necessary information to get assistance from SCHELP. (See Exhibit B).

16. Defendant would assert that Plaintiff's actions in refusing to provide Defendant with the required information to obtain financial aid from SC HELP constitutes Bad Faith and violates the S. C. Supreme Court's Administrative Order dated May 2, 2011 requiring lenders to act in good faith during the Intervention process with the ultimate goal of resolution of the foreclosure action by means of loss mitigation.

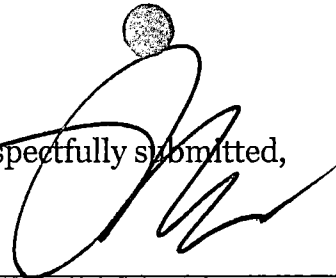
Relief Requested

1. Defendant moves the Court to reduce the arrearage on Defendant's indebtedness to delinquent payments due which were due in November of 2011, allow Defendant to pay the arrearage as of November, 2011 and resume payment on a reamortized schedule on the remaining balance of Defendant's loan.

2. Defendant moves the Court to dismiss the within action for failure of Plaintiff to deal in good faith with Defendant.

3. That the Court impose upon Plaintiff such sanctions as it deems necessary, together with attorney's fees for Movant's attorney, for Plaintiff's failure to comply with the S. C. Supreme Court's Administrative Order dated May 2, 2011.

Respectfully submitted,



M. P. Sherard, Jr.
McIntosh, Sherard, Sullivan &
Brousseau
P.O. Box 197
Anderson, SC 29622
Telephone 864-225-0001
E-mail: Marshalls@msslawfirm.net
Attorneys for Plaintiff

Dated: October 23, 2013

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Deutsche Bank National Trust Company as
Indenture Trustee for Mortgage Trust 2004-
1,

PLAINTIFF,

vs.

Joseph F. Deboskey; and SunTrust Bank,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-04-3316

JUN - 3 2015

ORDER DENYING
DEFENDANT JOSEPH F. DEBOSKEY'S
MOTION FOR RELIEF
FROM JUDGMENT

RECEIVED

JUN 30 2015

SC Court of Appeals

COMMON PLEAS AND
GENERAL SESSIONS

2015 JUN - 3 AM 8:54

FILED-CLERK'S OFFICE
ANDERSON SC

This matter came before the Court for a hearing on May 12, 2013 on a Motion for Relief from Judgment and Dismissal of Action filed by Defendant Joseph F. Deboskey ("Deboskey" or "Defendant"). Deboskey was represented by attorney Marshall P. Sherard, Jr. Plaintiff Deutsche Bank National Trust Company ("Deutsche Bank" or "Plaintiff") was represented by attorney Sean A. O'Connor. For the reasons set forth herein, Deboskey's motion is denied.

I. PROCEDURAL HISTORY

This is an action for foreclosure on real property. The monthly payments due on the subject note and mortgage have been in default since May 1, 2011. The Summons, Lis Pendens, Complaint, and Notice of Foreclosure Intervention were filed November 10, 2011. Defendant was served November 14, 2011. Plaintiff served Defendant a Denial of Foreclosure Intervention pursuant to S.C. Supreme Court Administrative Order 2011-05-02-01 on January 18, 2012, due to Defendant's failure to respond to the Notice of Foreclosure Intervention within thirty days. Thereafter, Defendant served Plaintiff a Motion for More Definite Statement pursuant to Rule 12(e), SCRPC on February 3, 2012, which was denied at a hearing held on May 11, 2012. A

Certification of Compliance with S.C. Supreme Court Administrative Order 2011-05-02-01 was filed on February 21, 2012.

Pursuant to Order entered on June 11, 2012, the matter was referred to the Master in Equity for Anderson County. Plaintiff filed an Affidavit of Non-military Service and Default for Defendant on August 13, 2012, based on his failure to serve an Answer to the Complaint. An Order and Judgment of Foreclosure and Sale was entered on September 17, 2012. Defendant filed the instant Motion on October 23, 2013.

II. STANDARD

A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief. Bowers v. Bowers, 304 S.C. 65, 67 403 S.E.2d 127, 129 (Ct. App. 1991). Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge. Coleman v. Dunlap, 306 S.C. 491, 494 413 S.E.2d 15, 17 (1992). Rule 60, SCRPC, is entitled "Relief from Judgment or Order," and subsection (b) states in pertinent part as follows:

- (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
- (1) mistake, inadvertence, surprise, or excusable neglect;
 - (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
 - (3) fraud, misrepresentation, or other misconduct of an adverse party;
 - (4) the judgment is void;
 - (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken.

Rule 60(b), SCRCP. (Emphasis added).

III. FINDINGS AND CONCLUSIONS OF LAW

The Court finds as a threshold matter that Defendant's Motion is procedurally defective on two grounds. First, it fails to cite any rule of civil procedure upon which the Motion is purportedly based; second, the Motion was made more than one year after the final judgment was entered on September 17, 2012. Because a request for relief from a final judgment or order must be made upon motion pursuant to Rule 60, SCRCP, Defendant's motion should be denied. Furthermore, the Motion must be denied because it violates the express one-year deadline within which a party must make a Motion pursuant to Rules 60(b)(1), (2), and (3) SCRCP.¹

Significantly, Defendant's Motion is devoid of *any* allegations which would warrant relief from judgment pursuant to Rule 60, SCRCP and its subparts. Instead, Defendant's Motion appears to be based on a request for equitable relief pursuant to the S.C. Supreme Court Administrative Order 2011-05-02-01 ("Administrative Order"). However, Defendant did not respond to the Denial of Foreclosure Intervention or otherwise object to the Certification of Compliance with the Administrative Order filed on February 21, 2012. The Administrative Order does not provide a defaulting party with any additional mechanism through which relief from entry of judgment can be obtained, or otherwise alter the South Carolina Rules of Civil Procedure. The time for Defendant to object to or otherwise challenge Plaintiff's compliance with the Administrative Order has long passed, and there is simply no basis under Rule 60, SCRCP to set aside the judgment. Because Defendant has not cited, and cannot cite, any of the


¹ Defendant's Motion does not allege that the judgment is void; therefore Rule 60(b)(4) would not serve as possible grounds for the motion. Similarly, Defendant Motion does not allege any of the Rule 60(b)(5), SCRCP grounds for relief are applicable.

Rule 60(b) grounds for relief, nor has he alleged that the judgment is void, the instant Motion must be dismissed as untimely.

III. CONCLUSION

Defendant Motion is procedurally defective, as it was filed outside the applicable one-year deadline after entry of final judgment. Accordingly the Motion must be, and is hereby, denied. Further, even if it had been timely filed, the Motion fails as a matter of law because the S.C. Administrative Order of 2011 does not provide Defendant any additional grounds upon which to seek relief from the judgment in this action. Accordingly the Motion must be, and is hereby, denied.

IT IS SO ORDERED!



Ellis B. Drew, Jr.
Master-in-Equity
County of Anderson

 June 2, 2015

FILED-CLERK'S OFFICE
ANDERSON, SC.
2015 JUN -3 AM 8:54
COMMON PLEAS AND
GENERAL SESSIONS



Subject: Fw: 2011-CP-04-03316 Deutsche Bank v Joseph F. DeBoskey, et al

From: joe deboskey (dawn810@bellsouth.net)

To: deboskyw@bellsouth.net;

Date: Friday, July 31, 2015 3:08 PM

On Friday, July 31, 2015 2:01 PM, Karen Senn <ksenn@andersoncountysc.org> wrote:

Dr. DeBoskey, I received your requests for a transcript of the July 6, 2015 hearing. This hearing was continued as you had filed an appeal, therefore there is no record.

Thank you,

Karen T. Senn
Court Reporter
Master in Equity

Exhibit 6

FINKEL
LAW FIRM LLC

MAGALIE A. CREECH
MCREECH@FINKELLLAW.COM

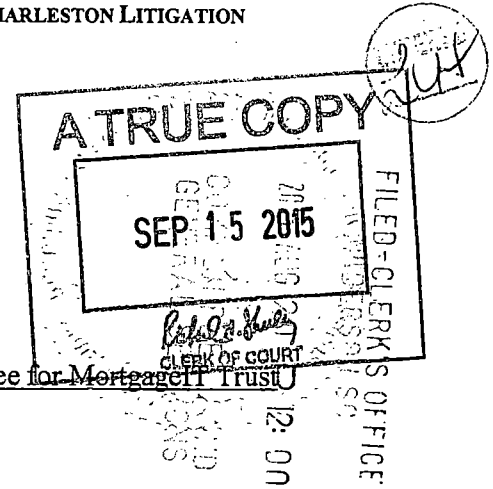
REPLY TO:
CHARLESTON LITIGATION

August 17, 2015

Via Regular and Certified Mail R.R.R.

Joseph F. DeBoskey
115 Caribou Cove
Anderson, South Carolina 29621
Defendant Pro Se

RE: Deutsche Bank National Trust Company as Indenture Trustee for Mortgage Trust
2004-1 v. Joseph F. DeBoskey, et al.
Case No.: 2011-CP-04-3316
Our File: 70680.487496



Dear Mr. DeBoskey:

I am in receipt of your email correspondence dated August 11, 2015 and August 14, 2015.

On June 22, 2015, a *Notice of Supplemental Hearing* was served upon your counsel of record, Marshall P. Sherard, Jr., Esquire. I have enclosed a copy herewith. The notice provided that the hearing was to be held on July 6, 2015. An attorney from our Columbia office, Anthony Charles, appeared at the hearing. You did not appear and no one appeared on your behalf. In light of the foregoing and the *Notice of Appeal* you filed *pro se*, the Honorable Judge Drew continued the hearing and asked our attorney to prepare an *Order of Continuance*. Therefore, the hearing did not go forward. Judge Drew requested that the *Order of Continuance* include specific provisions regarding the posture of the foreclosure action. The *Order of Continuance* was prepared in accordance with the directive of the Court, and entered on July 24, 2015.

The Plaintiff's supplemental hearing has been rescheduled for September 15, 2015 at noon. Enclosed please find the corresponding *Notice of Supplemental Hearing* for service upon you. The original will be filed by separate cover to the Clerk of Court.

As I understand it, Mr. Sherard filed a *Motion to be Relieved* in the appellate case. We were served with a copy on July 9, 2015 and have filed a return thereto stating we have no objection. However, it appears that Mr. Sherard is still listed as your attorney of record in the circuit court.

Finally, it is the Plaintiff's position that the filing of your *Notice of Appeal* does not stay the foreclosure action even if a bond were to be posted to stay the sale. The *Judgment of Foreclosure* was entered on September 17, 2012. Subsequently, through your counsel, a *Motion for Relief from Judgment* pursuant to Rule 60(b), SCRCF was filed on October 23, 2013. The *Motion for Relief from Judgment* was denied as untimely by Order entered on June 2, 2015. As a result, the time to appeal the *Judgment of Foreclosure* expired appeal thirty days after receipt of the written notice of entry of the *Judgment of Foreclosure* pursuant to Rule 203(b)(2), SCACR.

COLUMBIA
1201 Main Street, Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
Tel: (803) 765-2935
Fax: (803) 252-0786


Exhibit 7-Page 1

CHARLESTON
Foreclosure
4000 Faber Place Drive, Suite 450
Post Office Box 71727 (29415)
North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 725-0015

Therefore, your appeal from the denial of the *Motion for Relief from Judgment* does not stay the original judgment of foreclosure. We are prepared to address this argument at supplemental hearing on September 15, 2015.

Sincerely,

FINKEL LAW FIRM LLC



Magalie A. Creech

Enclosures

CC: The Honorable Ellis B. Drew, Anderson County Master in Equity
Clerk of Court, Anderson County

NOTICE REQUIRED BY FEDERAL FAIR DEBT COLLECTION PRACTICES ACT: This firm collects debts for mortgage lenders and other creditors, and any information obtained will be used for that purpose. However, If you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt but only as an attempt to enforce a lien.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Deutsche Bank National Trust Company as
Indenture Trustee for MortgageIT Trust 2004-1,

PLAINTIFF,

vs.

Joseph F. Deboskey; and SunTrust Bank,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

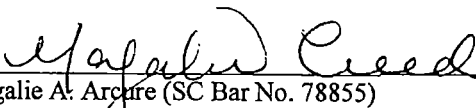
CASE NO.: 2011-CP-04-3316

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT a supplemental hearing will be held before the Honorable Ellis B. Drew, Jr., Anderson County Master in Equity, on Wednesday, October 28, 2015 at 11:00 a.m. This hearing will be held at the Anderson County Courthouse, 100 South Main Street, 3rd Floor, Courtroom #2, Anderson, South Carolina.

Respectfully submitted,

FINKEL LAW FIRM LLC


Magalie A. Arcure (SC Bar No. 78855)
P.O. Box 41489
Charleston, SC 29423
Phone: (843) 577-5460
Facsimile: (843) 577-5135

Dated: September 10, 2015

Exhibit 8

**Joseph F. DeBoskey
115 Caribou Cove
Anderson, South Carolina 29621**

September 22, 2015

RECEIVED

Via: United States Mail (Express Mail)

SEP 24 2015

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of the Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: Appellate Case No. 2015-001416

**Deutsche Bank National Trust Company as Indenture Trustee for
MortgageIT Trust 2004-1 v. Joseph F. DeBoskey and Suntrust Bank.
Case No. 2011-CP-04-3316**

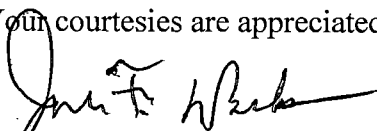
Dear Ms. Kitchings,

Enclosed for filing one (1) original and six (6) copies of the Appellant's Petition for Review in the above referenced case. I have also enclosed the following:

- (1) Verification of Joseph F. DeBoskey
- (2) Proof of service of the Petition for Review to the Respondents.
- (3) A money order in the amount of \$25.00 for the filing fee.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me at your convenience.

Your courtesies are appreciated,



Joseph F. DeBoskey, Pro Se
115 Caribou Cove
Anderson, SC 29621
(864) 221-9057
Dawn810@bellsouth.net

RECIPIENT The sender has requested notification upon delivery telephone: _____



www.usps.gov

www.usps.gov

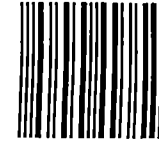


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Date Accepted 7/23/15	Scheduled Date of Delivery Month: 11 Day: 11	Return Receipt Fee \$ -	
Time Accepted 9:06 AM	Scheduled Time of Delivery <input checked="" type="checkbox"/> Noon <input type="checkbox"/> 3 PM	COD Fee \$ -	Insurance Fee \$ -
Flat Rate <input type="checkbox"/> or Weight 2.3 lbs. ozs.	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Total Postage & Fees \$ 20.05	
	Int'l Alpha Country Code	Acceptance Emp. Initials LHL	

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Delivery Attempt Mo. Day	Time	<input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Delivery Date Mo. 9 Day 24	Time 10:10	<input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature

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NO DELIVERY
 Weekend Holiday Mailer Signature

FROM: (PLEASE PRINT) PHONE (716) 221-0710

Joseph DeFazio
115 Columbus Ave
Anderson SC 29621

TO: (PLEASE PRINT) PHONE ()

RECEIVED
SEP 24 2015
SC Court of Appeals

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