

The South Carolina Court of Appeals

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

v.

Joseph F. DeBoskey; and Suntrust Bank, Defendants,

Of whom Joseph F. DeBoskey is the Appellant.

Appellate Case No. 2015-001416

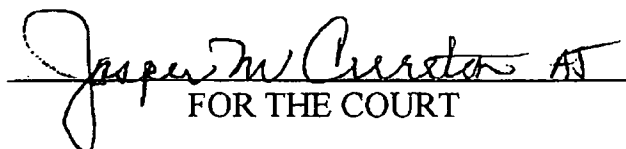
RECEIVED

NOV 10 2015

ORDER

SC Court of Appeals

After careful consideration, the motion for a continuance and motion requesting this court to "dispense with any requirement of an appeal bond" is denied.


FOR THE COURT

Columbia, South Carolina

cc:

Joseph F. DeBoskey

Magalie Arcure Creech, Esquire

FILED
10/27/15

Petition for Full Panel Review
Exhibit - 4

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

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NOV 10 2015

SC Court of Appeals

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

CLERK OF COURT

Exhibit 1

Petition for Full Panel Review
Exhibit - 1

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

RECEIVED

NOV 10 2015

SC Court of Appeals

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IT IS SO ORDERED.

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

Anderson, South Carolina

July 20, 2015

A TRUE COPY

SEP 15 2015

Paul D. ...
CLERK OF COURT

COMMON PLEAS AND
GENERAL SESSIONS

2015 JUL 24 AM 11:56

FILED-CLERK'S OFFICE
ANDERSON SC

Exhibit 1

Petition for Full Panel Review

Exhibit - 2

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,

Molly White

Molly White
Program Processor
Neighborhood Housing Corporation

RECEIVED
NOV 10 2012
SC Court of Appeals

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

Petition for Full Panel Review
Exhibit - 2

RECORDED

NOV 14 2012

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

SC Court of Appeals

Deutsche Bank National Trust Company as
Indenture Trustee for Mortgage1 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 :

Statement of Judgment

TRUE COPY
DEC - 3 2012

Robert 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:

MOTION FEE PAID
ENTER II

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

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

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

TRUE COPY
SEP 15 2015
Clerk of Court

Defendants.)

Pursuant to SCRCF 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.

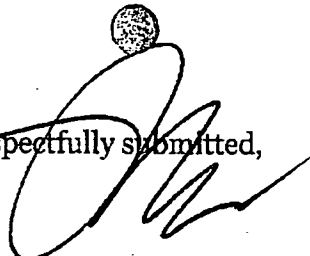
Relief Requested

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-
I,

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

FROM JUDGMENT

RECEIVED

JUN 30 2015

SC Court of Appeals

TRUE COPY

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 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 7, 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

Petition for Full Panel Review
Exhibit - 2

FINKEL
LAW FIRM LLC

MAGALIE A. CREECH
MCREECH@FINKELLLAW.COM

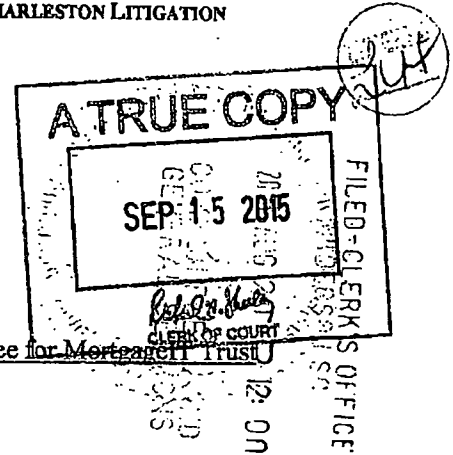
REPLY TO:
CHARLESTON LITIGATION

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), SCRPC 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

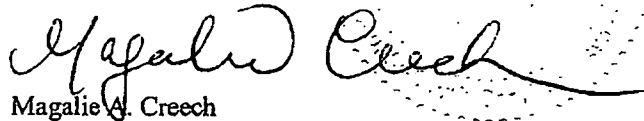
Exhibit 7-Page 1

Petition for Full Panel Review
Exhibit - 2

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

RECEIVED

NOV 10 2015

SC Court of Appeals

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

Petition for Full Panel Review
Exhibit - 2