

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY

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

Appellate Case No. 2015-001416

RECEIVED
MAR 04 2016
SC 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,

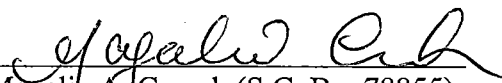
Of whom Joseph F. DeBoskey is the Appellant,

Appellant.

RESPONDENT'S RETURN TO APPELLANT'S MOTION TO STRIKE

Respectfully submitted,

FINKEL LAW FIRM LLC


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February 29, 2016

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MEMORANDUM

Undersigned counsel for Respondent Deutsche Bank National Trust Company as Indenture Trustee for MortgageIT Trust 2004-1 hereby submits the instant Return and supporting Memorandum to Appellant's Motion to Strike the Respondent's Initial Brief filed in this matter. The cited grounds for Appellant's Motion are that threefold: First, he claims that the Respondent's Initial Brief was filed with the Court of Appeals on February 16, 2016, thirty-one (31) days after service of the Appellant's Initial Brief; second, he claims that the signature is invalid because page thirteen (13) of the Respondent's Initial Brief references a Motion to Amend Caption, and page fourteen (14) contains an incorrect header; and third, he claims that Respondent's Initial Brief raises issues not raised by Appellant in his Initial Brief. For the reasons set forth herein, Appellant's Motion should be denied.

As to the first cited grounds for the Motion, Respondent's Initial Brief was timely pursuant to Rule 262, SCACR. It is immaterial that the date the Court of Appeals received and entered Respondent's Initial Brief for filing was February 16, 2016. Rule 262(a)(2), SCACR, provides that filing may be accomplished by "depositing the document in the U.S. mail, properly addressed to the clerk, with sufficient first class postage attached," and that the "date of filing shall be the date of delivery or *the date of mailing*." See Rule 262(a)(2), SCACR (emphasis added). Rule 262(b) states that "[s]ervice by mailing is complete upon mailing." See Rule 262(b). The certificate of service and proof of mailing plainly show that the Respondent's Initial Brief was timely and properly filed on February 11, 2016. Therefore, there is no basis to strike the Respondent's Initial Brief on the grounds that it is untimely, and Appellant's Motion should be denied.

The second grounds for Appellant's Motion are that the last two pages of Respondent's Initial Brief contain typographical errors and thus purportedly invalidate the signature of Respondent's counsel. This too is immaterial and not a proper basis to strike Respondent's Initial Brief under any applicable rule of procedure. Rule 211(b)(2), SCACR permits a party to correct obvious typographical errors and misspellings in the initial brief. *See* Rule 211(b)(2), SCACR. Indeed, the incorrect caption on the last page of the brief was an inadvertent scrivener's error of Respondent's counsel that will be corrected with the submission of the Respondent's Final Brief. Similarly, the second half of the final sentence in paragraph three (3) of page thirteen (13) was inadvertently included in Respondent's Initial Brief. As pointed out by the Appellant, there was no motion or order amending a caption in the lower court. Respondent will delete the second portion of this sentence in its entirety in its Final Brief.

Appellant incorrectly asserts that as a result of the above-referenced errors, the signature page of Respondent's Initial Brief fails to comply with Rule 267(f), SCACR. A review of the plain language of this Rule clearly establishes the falsity of this argument. Rule 267(f) provides:

The signature of a party or attorney constitutes a certificate by him that he has read the document or paper; that to the best of his knowledge, information and belief there is good ground to support it; and it is not interposed for delay.

Rule 267(f), SCACR.

The arguments made by Respondent are based upon valid, supporting legal authority and are not interposed for delay. Respondent's counsel truthfully certified that she had read the document and there is good ground to support the arguments made therein. The fact that two inconsequential scrivener's errors appear in the Respondent's Initial Brief does not render the signature invalid, and there is absolutely no legal authority to support Appellant's untenable claim to the contrary. Therefore, Appellant's claim that obvious scrivener's errors in

Respondent's Initial Brief invalidate Respondent's signature is without merit and the Motion should be denied.

As to the third cited grounds for the Motion, Appellant contends that Respondent's Initial Brief should be stricken because it raises issues not raised by Appellant in his Initial Brief. This argument is unavailing because there is no requirement limiting the responding party in an appeal to those issues asserted by the appealing party. Specifically, Rule 208 provides that the respondent's brief shall conform to the same requirements governing the appellant's initial brief, "except that a statement of the issues or of the case need not be made, *unless the respondent is dissatisfied with the statement of the issues or of the case by appellant.*" Rule 208(b)(2) (emphasis added). "A respondent may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, whether those reasons have been presented to or ruled on by the lower court." *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 914 (2010). The Rule further provides that "[i]f a respondent does include his own statement of the case, he shall be bound by the matters stated or alleged in his statement of the case." Rule 208(b)(2). Finally, Rule 208 permits the respondent's brief to contain argument asking the court to affirm for any ground appearing in the record as provided by Rule 220(c), SCACR.¹ See Rule 208(b)(2).

CONCLUSION

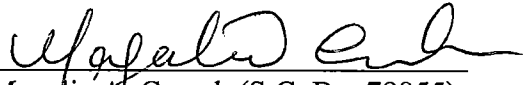
Respondent's Initial Brief was timely served and filed under the applicable rules of Appellate Procedure. Furthermore, the scrivener's errors contained in Respondent's Initial Brief will be corrected with the submission of Respondent's Final Brief and do not invalidate the signature of Respondent's brief under Rule 267(f), SCACR. None of the foregoing are proper

¹ "The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR.

grounds to strike the properly submitted Respondent's Final Brief. Therefore, Appellant's Motion to Strike has no basis in law or in fact and should be denied.

Respectfully submitted,

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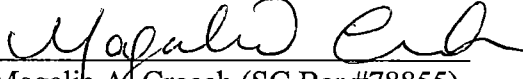
Defendants,

Of whom Joseph F. DeBoskey is the,

Appellant.

PROOF OF SERVICE

I certify that I have served the *Respondent's Return to Appellant's Motion to Strike* by depositing a copy of same in the United States Mail, postage prepaid, on February 29, 2016, addressed to Appellant of record, Joseph F. DeBoskey, 115 Caribou Cove, Anderson, South Carolina 29621.


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February 29, 2016



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REPLY TO:
CHARLESTON LITIGATION

February 29, 2016

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

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MAR 04 2016

SC Court of Appeals

RE: Deutsche Bank v. Joseph DeBoskey
Appellate Case No.: 2015-001416
Our File No.: 56430. 47496

Dear Ms. Kitchings:

Enclosed for filing is the *Respondent's Return to Appellant's Motion to Strike* and related *Proof of Service* in the above-referenced case, along with six (6) copies, which we kindly ask you to file and return in the attached, self-addressed, stamped envelope.

Should you have any questions concerning this matter, please do not hesitate to contact our office at your earliest convenience.

With kind personal regards, we are

Yours very truly,

FINKEL LAW FIRM



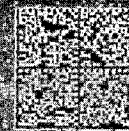
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CC: Joseph DeBoskey

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