

79983

Deutsche Bank National Trust Company as
Trustee for First Franklin Mortgage Loan
Trust 2006-FFI Pass-Through Certificates,
Series 2006-FFI,

Respondent,

v.

Dora S. Morrow, Ray Martin, and Lease and
Rental Management Corp. d/b/a Auto Use and
Auto Loan, a Massachusetts Corporation,
Southern New Hampshire Bank and Trust
Company, a New Hampshire Bank, and
Edman Hackworth,

Defendants.

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JUN 22 2016

SC Court of Appeals

Edman Hackworth,

3rd Party Plaintiff,

v.

John Morrow

3rd Party Defendant.

John Morrow and Dora Morrow,
Of whom John Morrow and Dora Morrow are
the

3rd Party Plaintiffs,

Appellants,

v.

Edman Hackworth and Debbie Hackworth,
Of whom Edman Hackworth is a

3rd Party Defendants,
Respondent.

APPELLANTS' PETITION FOR REHEARING

Appellants hereby petition for rehearing in accordance with Rule 221 and 240 of
the South Carolina Appellate Court Rules. Appellants make this Motion on the grounds
that:

I. ERROR PRESERVATION IS DOUBTFUL ENOUGH THAT IT WOULD BE GOOD PRACTICE FOR THE APPELLANT COURTS TO REACH THE MERITS OF THE ISSUE.

“It is axiomatic that an issue cannot be raised for the first time on appeal.” State v. Haygood, 409 S.C. 420, 430, 762 S.E.2d 69, 74 (Ct.App. 2014). However, our courts have also held that:

This is not a ‘gotcha’ game aimed at embarrassing attorneys or harming litigants, but rather is an adherence to settled principles that serve an important function. Though our appellate courts should follow longstanding precedent and resolve an issue on preservation grounds when it clearly is unpreserved, *it is good practice for us to reach the merits of an issue when error preservation is doubtful* (emphasis supplied).

Id., at 430, 74.

Our courts have further held that:

Error preservation rules do not require a party to use the exact name of a legal doctrine in order to preserve an issue for appellate review. Instead, a litigant is only required to fairly raise the issue to the trial court, thereby giving it an opportunity to rule on the issue.

State v. Brannon, 388 S.C. 498, 502, 697 S.E.2d 593, 595-96 (2010).

The trial court understood that it was reviewing the Contract of Sale dated August 23, 2013, and the letter from Bank of America dated November 27, 2013, and determining whether those agreements were enforceable (*See R. pp. 99-105*). The trial court expressly stated that it was ruling on “a Motion pursuant to S.C.R.C.P. 43” to determine whether the alleged Settlement Agreement was enforceable pursuant to that rule (*See R. p. 20*); and it held that the settlement agreement “resolves the judgment entered against Morrow and ends the pending foreclosure on Ms. Morrow,” and that Dora

Morrow would be required to comply with the settlement agreement by signing all documents required to effectuate the short sale (*See R. p. 21*).

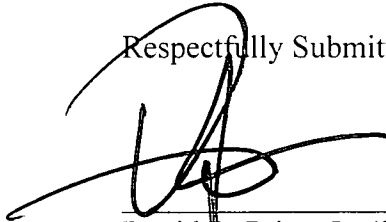
The trial court, therefore, not only had an opportunity to rule on the issue of enforceability pursuant to Rule 43(k), it expressly ruled on the issue, so that any error of law regarding the ruling was not clearly unpreserved for review. At a minimum, error preservation regarding this fundamental issue is doubtful enough that it would be good practice for the appellate courts to reach the merits of the issue. *See State v. Haygood* (holding that defendant's hearsay argument was preserved for review where magistrate cited the excited utterance exception to overrule defendant's objection under the Confrontation Clause). *See also State v. Brannon* (holding that the issue of whether defendant was seized under the Fourth Amendment so that he would be entitled to direct verdict on the charge of resisting arrest was properly preserved where he argued that an arrest was not being made when he ran from police, even though defendant did not use the terms "seizure" or "Fourth Amendment" when arguing for directed verdict).

The additional issue of whether the enforcement could be enforced against Deutsche Bank was the proper subject of Dora Morrow's Rule 59 motion filed on May 7 since the issue was not ruled upon by the trial court (*See R. pp. 146-147*). The issue of whether the settlement agreement was enforceable as to Deutsche Bank was argued by Dora Morrow not only in the written motion for relief from order, but also in the letter dated April 30, 2014, from counsel for the Morrows (*See R. pp. 192-193*). The additional issue of whether the order enforcing settlement was void as against public policy was properly raised by Dora Morrow by Rule 60 motion.

II. APPELLANT JOHN MORROW WAS NOT A PARTY TO THE MOTION TO ENFORCE SETTLEMENT, AND THEREFORE DID NOT HAVE AN OPPORTUNITY TO RAISE THE ISSUE AT TRIAL.

The issues on appeal were affirmatively raised by John Morrow, who was also a party affected by alleged settlement agreement but was not made a party to the original Motion to Enforce Settlement, by Rule 60 motion (*See R. p. 146-147*). When Appellant's Motion for Relief from Order was heard by the trial court on September 19, 2014, Appellants' counsel again raised the issue of enforceability, expanding on that argument by pointing out to the court that the alleged settlement agreement expired by its own terms in September of 2013, and that there had never been a meeting of the minds between Respondent, Appellants, and Deutsche Bank (*See R. p. 112, line 10-p. 113, line 15*). This was the first opportunity that John Morrow was procedurally in position to raise the fundamental issues on appeal, which relate to the enforceability of the alleged settlement agreement pursuant to Rule 43(k).

Respectfully Submitted,



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Date:

6/21/2014



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ATTORNEYS AT LAW

DAVID R. PRICE, JR.

SAMUEL B. TOOKER

June 21, 2016

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JUN 22 2016

SC Court of Appeals

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

RE: Deutsche Bank v. Dora S. Morrow, et. al.
Case No.: 2010-CP-23-1321
Appellate Case No.: 2014-002381

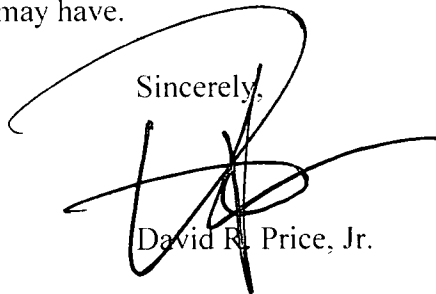
Dear Ms. Kitchings:

Enclosed you will find an original and six (6) copies of the *Appellants' Petition for Rehearing* in connection with the above referenced matter along with the Certificate of Service of same.

By copy of this letter to Respondent's Counsel, Thomas Elihue Dudley, III, Matthew Tillman and Daniel Q. Orvin, I am serving them a copy of same.

Thank you for your assistance. Please feel free to contact my office with any questions or concerns you may have.

Sincerely,



David R. Price, Jr.

DRP/dcb

Enclosures

Cc: Clients
Thomas Elihue Dudley, III, Esq.
Matthew Tillman, Esq.
Daniel Quigley Orvin, Esq.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLECOUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity Judge

Case No.: 2010-CP-CP-23-1321
Appellate Case No.: 2014-002381

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JUN 29 2016
SC Court of Appeals

Deutsche Bank National Trust
Company as Trustee for First
Franklin Mortgage Loan Trust
2006-FFI Pass-Through
Certificates, Series 2006-FFI,

Plaintiff,

v.

Dora S. Morrow, Ray Martin,
and Lease and Rental
Management Corp. d/b/a Auto
and Trust Company, a New
Hampshire Bank, and Edman
Hackworth.

Defendants.

Edman Hackworth,

3rd Party Plaintiff,

v.

John Morrow,

3rd Party Defendant.

John Morrow and Dora
Morrow,

3rd Party Plaintiffs,

Of whom John Morrow is the

Appellant

v.

Edman Hackworth and Debbie
Hackworth,

3rd Party Defendants,

Of whom Edman Hackworth

is the

Respondent.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing APPEALANTS' PETITION FOR REHEARING in this action was served upon Counsel for Edman Hackworth, Thomas E. Dudley, III, Esq. and Jason James Andrighetti, Esq., via facsimile and by placing copies of same in the United States Mail this date, with sufficient postage affixed thereto, addressed as follows:

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Date: June 21, 2016

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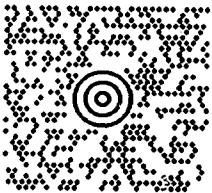

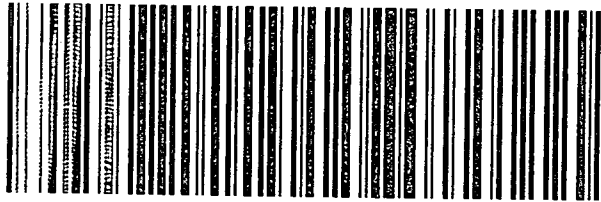

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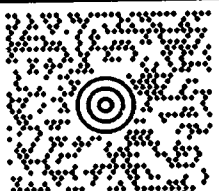

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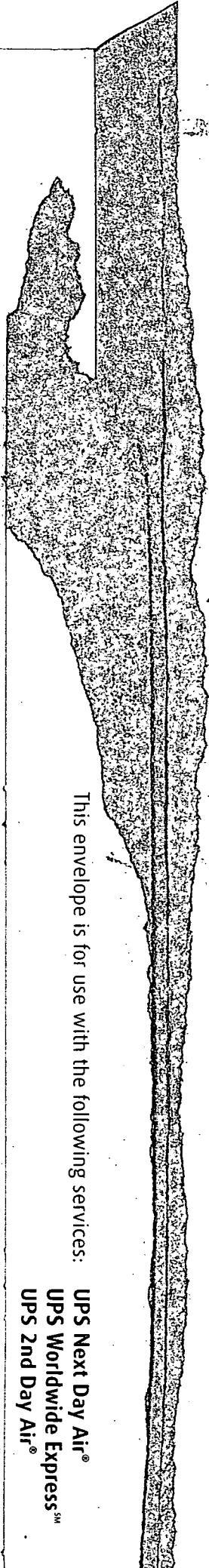


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