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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

JUL 08 2016

The Honorable Diane Schafer Goodstein, Circuit Court Judge  
SC Court of Appeals

Case No. 2011-CP-18-1013

Appellate Case No. 2013-002066

Bank of New York Mellon, as Successor Trustee under Appellant,  
NovaStar Mortgage Funding Trust, Series 2004-1 .....

v.

Rachel R. Lindsay, Jeffrey Wayner, Tammy Wayner,  
Tiffany Spann-Wilder, Esq., The Steinberg Law Firm and  
United States of America acting by and through its agency,  
the Internal Revenue Service, Defendants,

Of Whom Rachel R. Lindsay is the Respondent.

Rachel R. Lindsay ..... Respondent,

v.

Saxon Mortgage Services, Inc. .... Appellant.

**MOTION FOR FEES AND COSTS**

B. Rush Smith III (SC Bar No. 12941)  
A. Mattison Bogan (SC Bar No. 72629)  
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Merritt G. Abney (SC Bar No. 71893)  
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Post Office Box 1806  
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(843) 853-5200

*Attorneys for Appellants*

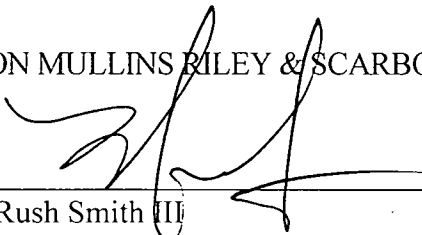
Pursuant to Rule 222 of the South Carolina Appellate Court Rules, Appellants Bank of New York Mellon, as Successor Trustee under NovaStar Mortgage Funding Trust, Series 2004-1 and Saxon Mortgage Services ("Appellants") hereby file this Motion for Fees and Costs. Appellants move this Court for an order taxing all recoverable costs and fees against Respondent Rachel Lindsay ("Respondent") as allowed by Rule 222(b), SCACR, in the above-captioned appeal.

This Court reversed the judgment of the circuit court in Unpublished Opinion No. 2015-UP-208, filed April 22, 2015. Accordingly, Appellants move to have costs taxed against Respondent herein. See Rule 222(a), SCACR ("When a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise."). This Court issued the remittitur to the circuit court on June 21, 2016, and, therefore, this Motion comes within the time period proscribed in Rule 222(d), SCACR. A sworn, itemized statement of fees and costs incurred by Appellants is attached to this Motion as Exhibit A as required by Rule 222(d), SCACR.

**[SIGNATURES ON FOLLOWING PAGE]**

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By: \_\_\_\_\_

  
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*Attorneys for Plaintiff The Bank of New York Mellon, as  
Successor Trustee under NovaStar Mortgage Funding  
Trust, Series 2004-1 and Third-Party Defendant Saxon  
Mortgage Services, Inc*

Charleston, South Carolina

July 6, 2016

**EXHIBIT A**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
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The Honorable Diane Schafer Goodstein, Circuit Court Judge

Case No. 2011-CP-18-1013

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Bank of New York Mellon, as Successor Trustee under NovaStar Mortgage Funding Trust, Series 2004-1 ..... Appellant,

v.

Rachel R. Lindsay, Jeffrey Wayner, Tammy Wayner, Tiffany Spann-Wilder, Esq., The Steinberg Law Firm and United States of America acting by and through its agency, the Internal Revenue Service, Defendants,

Of Whom Rachel R. Lindsay is the Respondent.

Rachel R. Lindsay ..... Respondent,

v.

Saxon Mortgage Services, Inc. .... Appellant.

**ITEMIZED STATEMENT OF FEES AND COSTS**

The Appellate Court is requested to tax the following costs against the Respondent:

COSTS AND FEES TAXABLE UNDER RULE 222(b), SCACR	NO. OF PAGES	RATE	REQUESTED	ALLOWED (For Court Use Only)
Cost of Hearing Transcript	37		\$198.75	
Filing Fee			\$25.00	
Cost of Printing or	680	.110	\$74.80	

Copying Final Brief				
Cost of Printing or Copying Record on Appeal	3667	.10	366.70	
Attorney's Fee Provided by Rule 222(b), SCACR			\$1,000.00	
Other (specify and explain)				
TOTAL			\$ 1,665.25	

I, Merritt G. Abney, Esquire, do swear or affirm that the foregoing costs are correct and were necessarily incurred in this action. A copy of this statement is mailed to opposing counsel.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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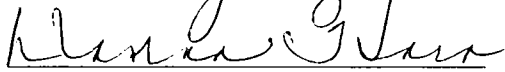
*Attorneys for Plaintiff The Bank of New York Mellon, as  
Successor Trustee under NovaStar Mortgage Funding  
Trust, Series 2004-1 and Third-Party Defendant Saxon  
Mortgage Services, Inc*

Charleston, South Carolina

July 6, 2016

SWORN to and subscribed before me this

6th day of July, 2016



Notary Public for South Carolina

My Commission Expires: 1-29-2017

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Rachel R. Lindsay, Jeffrey Wayner, Tammy Wayner, Tiffany Spann-Wilder, Esq., The Steinberg Law Firm and United States of America acting by and through its agency, the Internal Revenue Service, Defendants,  
Of Whom Rachel R. Lindsay is the Respondent.

Rachel R. Lindsay ..... Respondent,

v.

Saxon Mortgage Services, Inc. .... Appellant.

**PROOF OF SERVICE**


I HEREBY CERTIFY that I have served the **MOTION FOR FEES AND COSTS** on Respondents and Defendants by depositing copies of it in the United States Mail, postage prepaid, addressed to the below Counsel of Record:

G. Thomas Hill, Esq.  
Hill and Hill Law Firm  
6209 Savannah Highway  
PO Box 369  
Ravenel, SC 29470

*Attorney for Defendant and Third-Party Plaintiff  
Rachel R. Lindsay*

Matthew J. Modica, Esq.  
U.S. Attorney's Office  
151 Meeting Street, Suite 200  
Charleston, SC 29401

*Attorney for United States of America acting by and through  
its agency, the Internal Revenue Service*

By:   
Lydia Spry  
Administrative Assistant to Merritt G. Abney  
Nelson Mullins Riley & Scarborough, LLP

July 6, 2016

# Nelson Mullins

**Nelson Mullins Riley & Scarborough LLP**  
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July 6, 2016

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1015 Sumter Street - 5th Floor  
Columbia, SC 29201

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JUL 08 2016

SC Court of Appeals

RE: The Bank of New York Mellon, as Successor Trustee under NovaStar Mortgage Funding Trust, Series 2004-1 v. Rachel R. Lindsay, et al.  
Appellate Case No. 2013-002066  
Civil Action No.: 2011-CP-18-1013  
Our File No.: 33576/01503

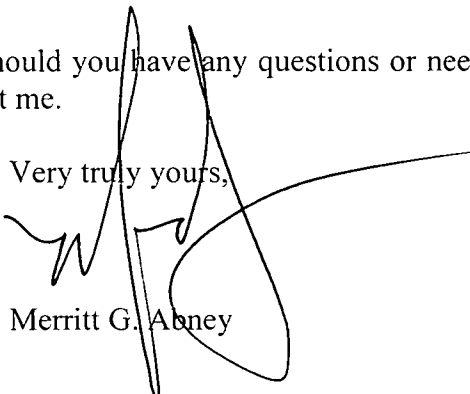
Dear Ms. Kitchings:

Enclosed are the original and seven (7) copies of a Motion for Fees and Costs and Proof of Service in the above-referenced matter. We would appreciate it if you would file the original documents and return clocked-in copies to us in the envelope provided.

We have also enclosed our firm's check in the amount of \$25.00 in payment of the required filing fee for this request.

By copy of this letter, we are serving this Motion and Proof of Service on all counsel of record.

Your consideration is most appreciated. Should you have any questions or need any additional information, please do not hesitate to contact me.

Very truly yours,  
  
Merritt G. Abney

MGA:ls  
Enclosures  
cc: G. Thomas Hill, Esq.  
Matthew J. Modica, Esq.

**Nelson  
Mullins**

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The Honorable Jenny Abbott Kitchings  
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