

82511

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-In-Equity

Case No. 2016-000678

RECEIVED
FEB 16 2017
SC Court of Appeals

Deutsche Bank National Trust Company,
as Trustee for Soundview Home Loan Trust 2006-1,
Asset-Backed Certificates, Series 2006-1,

Respondent,

v.

Helen V. Thomas; Darrel A. Thomas;
Robert Lee Hutchinson; Nancy Lee Hutchinson;
Briarwood Association; and Sonja Michelle Furtick,

Defendants,

Of whom, Helen V. Thomas is the Appellant.

THIRD MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT

Chad W. Burgess, Esq.
(S.C. Bar No.: 72520)
BROCK & SCOTT, PLLC
3800 Fernandina Road, Suite 110
Columbia, South Carolina 29210
(803) 454-3540
Attorney for Respondent

NOW COMES Respondent Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-1, Asset-Backed Certificates, Series 2006-1 (“Deutsche Bank”), by and through its undersigned attorney, and pursuant to Rule 260 of the South Carolina Appellate Court Rules, hereby moves this Court for an Order dismissing the instant appeal filed by Helen V. Thomas (“Appellant”), averring as follows:

BRIEF PROCEDURAL HISTORY

Appellant’s appeal continues to be riddled with deficiencies and, once again, she fails to submit a sufficient record to the Court in spite of ample opportunity to do so.

Appellant initiated her appeal in March 2016. By September 2016, both Deutsche Bank and Appellant had submitted their designation of matters to be included in the record on appeal.¹ On October 28, 2016, Appellant submitted a Record on Appeal. In a letter dated October 31, 2016, the Clerk informed Appellant of deficiencies with her submission. On November 3, 2016, Appellant submitted an Amended Record on Appeal, which was still deficient as the Clerk informed her in a letter dated November 7, 2016. On November 7, 2016, counsel for Deutsche Bank informed the Court that the Amended Record on Appeal failed to include material designated by Deutsche Bank to be included in the Record. On November 15, 2016, the Clerk entered an Order allowing Appellant to correct the deficiencies by November 17, 2016 or the appeal would be dismissed.

On December 15, 2016, Deutsche Bank filed its second Motion to Dismiss Appeal, this time specifically addressing Appellant’s repeated deficiencies in the Record. The Court denied that Motion on February 1, 2017, but entered an Order with specific directions for Appellant to correct the record for appeal within twenty days. On February 7, 2017, Appellant filed her

¹ Appellant’s Amended Designation of Matter is attached hereto as **Exhibit A**. Deutsche Bank’s Designation of Matter to be Included in the Record on Appeal is attached hereto as **Exhibit B**.

Second Amended Record on Appeal. Once again, Appellant has failed to provide this Court with an adequate Record, continuing to needlessly delay the judicial process with her procedural ineptitude.

ARGUMENT AND CITATION OF AUTHORITY

While Appellant has submitted two amended records on appeal, her deficient submissions persistently violate this Court's guidance and explicit Orders. Accordingly, the Court should dismiss her appeal.

"[T]he Appellate Court Rules 'are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.'" *Forner v. Butler*, 319 S.C. 275, 276 n.1, 460 S.E.2d 425, 426 n.1 (1995) (quoting *Henning v. Kaye*, 307, S.C. 436, 436, 415 S.E.2d 794, 794 (1992)). "Whenever it appears that an appellant . . . has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court." Rule 260(a), SCACR. All litigants, whether pro se or represented by counsel, are held to the same standards and are expected to adhere to the Rules of the Court. *See State v. Barnes*, 407 S.C. 27, 31, 753 S.E.2d 545, 547 (2014) ("Appellant [who moved to be allowed to proceed pro se] acknowledged he understood he would be held to the same standards as an attorney regarding the rules of court and of evidence.").

Appellant continues to be unable to adhere to the Rules of the Court. In its February 1, 2017 Order, the Court directed Appellant that "the record on appeal *must* include *all* matters designated by both Appellant and Respondent." (emphasis added). In Respondent's Designation of Matter to be Included in the Record on Appeal filed September 8, 2016, Deutsche Bank made

an itemized list of twenty-six relevant documents to be included in the Record. *See* Ex. B, 1–2. Appellant’s Second Amended Record on Appeal contains only eight documents. *See* 2d Am. R. on Appeal, *Index*.

In its February 1, 2017 Order, the Court further directed Appellant to include a “certificate of counsel certifying the record contains all matters both parties designated to be included in the record.” Appellant’s Second Amended Record certifies “that the Second Amended Record on Appeal contains only the matters indicated on *my* Designation of Matters.” *See* 2d Am. R. on Appeal, at 31 (emphasis added). However, only four of the six documents listed in Appellant’s Amended Designation are included in the Second Amended Record on Appeal. *Compare* Ex. A, at 2 *with* 2d Am. R. on Appeal, *Index*.

Indifferent to two guidance letters and two Court Orders, Appellant’s Second Amended Record on Appeal fails to include “*all* matters designated by both Appellant and Respondent” in the Record on Appeal. Contrary to her certification, Appellant’s Second Amended Record on Appeal even neglects to include “only the matters indicated on *my* Designation of Matters,” 2d Am. R. on Appeal, at 31 (emphasis added), let alone certify that “the record contains all matters both parties designated to be included in the record.” Thus, after **four** failed opportunities to correctly provide a sufficient record pursuant to the express guidelines of this Court, Appellant continues to cause unnecessary delay and frustration by repeatedly neglecting to “provide material that complies with the Rules and facilitates appellate review,” *Forner*, 319 S.C. at 276 n.1, 460 S.E.2d at 426 n.1.

Accordingly, this Court should dismiss the Appeal because Appellant has failed four times to supply a sufficient record despite ample instruction from this Court. *Harkins v. Greenville Cnty.*, 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000) (affirming trial court decision


where appellant failed to satisfy burden of presenting an adequate record on appeal); *Milton v. Richland Cnty.*, No. 2015-MO-046, 2015 S.C. Unpub. LEXIS 45, at 6, 2015 WL 4642832 (S.C. Aug. 5, 2015) (dismissing appeal “[b]ecause [p]etitioner failed to submit a sufficient record, th[e] case present[ed] nothing more than a dispute of a hypothetical character”); *Epps v. Epps*, No. 2012-UP-146, 2012 S.C. App. Unpub. LEXIS 207, at *1 (S.C. Ct. App. Mar. 7, 2012) (dismissing an appeal because procedural defects precluded meaningful review of the appeal).

CONCLUSION

For the foregoing reasons, Deutsche Bank respectfully requests that this appeal be dismissed, preserves its right to have the full record available if the appeal proceeds, and requests such other relief this Court deems just and proper.

Respectfully submitted,

BROCK AND SCOTT, PLLC


Chad W. Burgess, S.C. Bar No.: 72520
3800 Fernandina Road, Suite 110
Columbia, South Carolina 29210
(803) 454-3540

*Attorney for Respondent Deutsche Bank
National Trust Company, as Trustee for
Soundview Home Loan Trust 2006-1, Asset-
Backed Certificates, Series 2006-1*

February 16, 2017

EXHIBIT A

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEALS FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-In-Equity

Case No. 2012-CP40-00009

Appellate Case No. 2016-000678

[DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE FOR SOUNDVIEW
HOME LOAN TRUST 2006-1 ASSET-BACKED
CERTIFICATES, SERIES 2006-1]

Respondent,

vs.

HELEN VALENCIA THOMAS, DARREL A THOMAS;
ROBERT LEE HUTCHINSON; NANCY LEE
HUTCHINSON; BRIARWOOD NEIGHBORHOOD
ASSOCIATION; AND SONJA MICHELLE FURTICK,

Defendants,

Of Whom HELEN VALENCIA THOMAS is the Appellant

AMENDED DESIGNATION OF MATTER

Chad W. Burgess,
SC Bar No. 72520
BROCK & SCOTT, PLLC
Westpark Center, 3800
Fernandina Rd, Suite 110
Columbia, SC 29210

Thomas, Helen Valencia
3002 Knightbridge Rd
Columbia, SC 29223

RECEIVED

MAY 23 2016
SC Court of Appeals


Appellant proposes the following be included in the Record on Appeal:

- | | |
|---------------------------------------------------------------------|----------|
| 1. MOTION TO DISMISS | 09-08-15 |
| 2. ORDER DENYING MOTION TO DISMISS | 09-23-15 |
| 3. MOTION TO RECONSIDERATION , MOTION TO DISMISS | 09-29-15 |
| 4. ANSWER OF HELEN VALENCIA THOMAS | 12-16-15 |
| 5. ORDER DENYING DEFENDANTS, MOTION TO RECONSIDER MOTION TO DISMISS | 03-04-16 |
| 6. MASTER/ORDER AND JURISDICTION FOR FORECLOSURE SALE | 03-08-16 |

I certify that this designation contains no matter which is irrelevant to this appeal.



Thomas, Helen Valencia
3002 Knightbridge Road
Columbia, SC 29223



Date

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEALS FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

MAY 23 2016

Joseph M. Strickland, Master-In-Equity SC Court of Appeals

Case No. 2012-CP40-00009

Appellate Case No. 2016-000678

[DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE FOR SOUNDVIEW
HOME LOAN TRUST 2006-1 ASSET-BACKED
CERTIFICATES, SERIES 2006-1]

Respondent,

vs.

HELEN VALENCIA THOMAS, DARREL A THOMAS;
ROBERT LEE HUTCHINSON; NANCY LEE
HUTCHINSON; BRIARWOOD NEIGHBORHOOD
ASSOCIATION; AND SONJA MICHELLE FURTICK,

Defendants,

Of Whom HELEN VALENCIA THOMAS is the Appellant

AMENDED DESIGNATION OF MATTER

PROOF OF SERVICE

I, Thomas, Helen Valencia certify that I am of such age and discretion to be competent to serve papers. That on the 23 day of May, 2016, I have served a copy of the documents listed below, by Certified Mail, sent to each of the following persons at the locations stated below, which is the last known location, and by depositing said envelope and contents in the U.S Mail.

Documents: - Amended Designation of Matters -Proof of Service

Party(ies) Served: Chad W. Burgess, SC Bar No. 72520

BROCK & SCOTT, PLLC Westpark Center,
3800 Fernandina Rd, Suite110, Columbia, SC 29210

By: Thomas, Helen Valencia Executrix 23 May 2016
Date
Thomas, Helen Valencia
3002 Knightbridge Road
Columbia, SC 29223

EXHIBIT B

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY CIRCUIT COURT
Joseph M. Strickland, Master-In-Equity

Appellate Case No.: 2016-000678

RECEIVED

SEP 08 2016

SC Court of Appeals

Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-1,
Asset-Backed Certificates, Series 2006-1,

Respondent,

v.

Helen V. Thomas; Darrel A. Thomas; Robert Lee Hutchinson; Nancy Lee Hutchinson;
Briarwood Association; Sonja Michelle Furtick,

Defendants,

Of whom, Helen V. Thomas is the Appellant.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Chad W. Burgess, Esq.
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, South Carolina 29210
(803) 454-3540
Attorney for Respondent

Helen V. Thomas
3002 Knightbridge Road
Columbia, South Carolina 29223
Pro Se Appellant

Respondent proposes the following be included in the Record on Appeal:

1. Complaint;
2. Affidavit of Service on Defendant Helen V. Thomas;
3. Answer of Helen V. Thomas and Darrel A. Thomas;
4. Plaintiff's Motion to Strike and for Sanctions;
5. Order of Reference;

6. Defendant's Notice of Removal
7. Defendant's Notice of Third Party Intervention;
8. Magistrate's Report and Recommendation;
9. Order adopting Report and Recommendation and Remanding the case to the State Court;
10. Defendant's Motion for Requests of Production and Declaration;
11. Defendant's Request for Admissions and accompanying documents dated April 3, 2015;
12. Plaintiff's Response to Defendant's Requests for Production;
13. Plaintiff's Response to Defendant's Requests for Admissions
14. Plaintiff's Motion for Summary Judgment
15. Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment including exhibits
16. Defendant's Objection to Plaintiff's Motion for Summary Judgment
17. Defendant's 1st Motion to Dismiss dated April 21, 2015 and accompanying documents;
18. Order Denying Defendant's First Motion to Dismiss filed April 28, 2015;
19. Defendant's Judicial Notice dated May 1, 2015 and accompanying documents;
20. Defendant's Second Motion to Dismiss filed September 8, 2015;
21. Order Denying Defendant's Second Motion to Dismiss filed September 23, 2015;
22. Defendant's Motion to Reconsider filed September 29, 2015;
23. Notice of Hearing filed February 8, 2016;
24. Transcript of February 23, 2016 Hearing including exhibits;
25. Order Denying Defendant's Motion to Reconsider filed March 4, 2016;
26. Master in Equity's Order and Judgment of Foreclosure and Sale (Granting Plaintiff's Motion for Summary Judgment) filed March 8, 2016;

I certify that this designation contains no matter which is irrelevant to this appeal.

September 8, 2016



Chad W. Burgess, Esq. (SC Bar No.: 72520)
Brock and Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
(803) 454 3540


CERTIFICATE OF SERVICE

The undersigned certifies that, on September 8, 2016, Respondent's Designation of Matter to be Included in the Record on Appeal was served on Appellant by depositing a copy thereof in the United States Mail, first Class, postage prepaid, addressed to:

Helen V. Thomas
3002 Knightbridge Road
Columbia, South Carolina 29223

RECEIVED
SEP 08 2016
SC Court of Appeals

September 8, 2016
Served By:



Kathryn Howell
Brock and Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
(803) 454 3540

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-In-Equity

Case No. 2016-000678

RECEIVED

FEB 16 2017

SC Court of Appeals

Deutsche Bank National Trust Company,
as Trustee for Soundview Home Loan Trust 2006-1,
Asset-Backed Certificates, Series 2006-1,

Respondent,

v.

Helen V. Thomas; Darrel A. Thomas;
Robert Lee Hutchinson; Nancy Lee Hutchinson;
Briarwood Association; and Sonja Michelle Furtick,

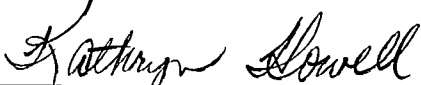
Defendants,

Of whom, Helen V. Thomas is the Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 16, 2017, she served a copy of Respondent's Third Motion to Dismiss Appeal and Memorandum in Support, and Certificate of Service by Mail upon the person below by depositing the same in the U.S. Mail with proper postage affixed and addressed as follows:

Helen V. Thomas
3002 Knightbridge Road
Columbia, South Carolina 29223



Kathryn Howell
BROCK & SCOTT, PLLC