

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas**

Gordon G. Cooper, Master-in-Equity

Case No. 2012-CP-42-3027

Appellate Case No. 2017-001238

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SC Court of Appeals

Deutsche Bank National Trust Company, as Trustee for Argent Securities, Inc.,
Asset-Backed Pas-Through Certificates, Series 2004-W11, Respondent,

v.

Geary Thomas Dooly, Eleanor S. Dooly and United States of America,
Defendants,

Of whom Geary Thomas Dooly is the Appellant.

RETURN TO APPELLANT'S MOTION TO REVISE RECORD ON APPEAL

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

Respondent Deutsche Bank National Trust Company, as Trustee for Argent Securities, Inc., Asset-Backed Pas-Through Certificates, Series 2004-W11 (“Deutsche Bank”) submits the following return to Appellant Gary Thomas Dooly’s (“Appellant”) Motion to Revise Record on Appeal of Respondent to Delete Supurflous [sic] Documents and Pages (“Appellant’s Motion”).¹

ARGUMENT

Appellant’s Motion arises in an appeal of a foreclosure action. Appellant defaulted on a home mortgage in February 2012, and has been engaging in dilatory tactics to stall foreclosure ever since. Now, Appellant “move[s] the Court for an Order for Respondent to remove all irrelevant documents and pages from Respondent’s ‘Designation of Matter to be included in the Record on Appeal.’” Appellant’s Mot., at 1. This Court should deny Appellant’s Motion.

The Record on Appeal “aids [the Court’s] proper understanding of the questions involved on appeal and is necessary to [the] disposition of these questions.” *Mauro v. Clabaugh*, 299 S.C. 184, 187, 383 S.E.2d 244, 246 (S.C. App. 1989). When forming the Record on Appeal, “[t]he Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal.” Rule 209(b), SCACR. The Designation is limited to relevancy in that “[a] party shall not include any matter in his Designation which is not relevant to the appeal.” *Id.* “If the parties . . . consider[] a fact relevant and worthy of mention in the brief, the parties should . . . include[] matter in the record to support that factual assertion.” *Forner v. Butler*, 319 S.C. 275, 276 n.1, 460 S.E.2d 425,

¹ As is custom, Deutsche Bank has attempted to resolve this matter outside of the Court via a letter to Appellant dated October 2, 2017. Deutsche Bank awaits Appellant’s response.

426 n.1 (S.C. App.1995). And, “[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.” Rule 220(c), SCACR.

Despite the significance and value of the Record, Appellant’s Designation of Matter for the Record on Appeal included only three items totaling five pages. *See* Appellant’s Designation. Appellant’s designation would leave most relevant facts on appeal unsupported. Even though “[w]here a portion of a page of the trial transcript, or a page of an exhibit or document, is to be included in the Record on Appeal, the entire page shall be included.” Rule 210(c), SCACR. And, “[w]hen a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record, to include the caption and signature(s).” *Id.* Thus, Appellant’s designation is hardly adequate.

Accordingly, to “aid[] [the Court’s] proper understanding of the questions involved on appeal,” *Mauro*, 299 S.C. at 187, 383 S.E.2d at 246, Deutsche Bank designated additional matters that included pleadings, orders, briefs, and the complete summary judgment transcript. *See* Respondent’s Designation.

Appellant’s appeal appears to challenge (1) whether the Master-In-Equity had authority and jurisdiction to grant Deutsche Bank’s motion for summary judgment; (2) whether the Master-In-Equity properly dismissed Appellant’s purported counterclaims, which were raised at summary judgment; and (3) whether this Court affirmed the Master-In-Equity’s earlier dismissal of Appellant’s previously asserted counterclaims. *See* Initial Br. Resp’t, at 1. Each designated matter is relevant to one of more of the challenges.

To address Appellant’s challenges to the court’s authority and jurisdiction, Deutsche Bank designated the Affidavit of Service on Appellant, the Form 4 and Orders on Deutsche Bank’s Motions to Dismiss and its Motion for Summary Judgment, and the necessary notices leading to

the summary judgment hearing and Appellant's multiple appeals. *Id.* Nos. 2, 10, 14–15, 17, 21–22, 24–25.

To address Appellant's challenges regarding the Master-In-Equity's earlier dismissal of Appellant's previously asserted counterclaims and this Court's affirmation of the dismissal, Deutsche Bank included the trial court pleadings, the motions and memoranda supporting Deutsche Bank's Motions to Dismiss, and this Court's Opinion resolving the earlier appeal. *Id.* Nos. 1, 2–9, 11–13, 16.

Finally, to address Appellant's challenges to the Master-in-Equity's grant of summary judgment, Deutsche Bank designated the complete transcript of the summary judgment hearing, as well as its motion and memorandum in support, and Appellant's response to Deutsche Bank's motion. *Id.* Nos. 18—20, 23.

Deutsche Bank's designation of these matters is justified. Indeed, "argument by counsel on a motion which is the subject of one or more exceptions on appeal constitutes 'relevant matter' under" the South Carolina Rules, especially where "the argument is necessary to an understanding of the issues on appeal." *Gilmore v. Ivey*, 290 S.C. 53, 60, 348 S.E.2d 180, 184 (S.C. App. 1986). While Appellant argues Deutsche Bank's designation "is irrelevant, superfluous, and will only server to burden the court," Appellant's Mot., at 2, in fact, Deutsche Bank's designation "aids [the Court's] proper understanding of the questions involved on appeal and is necessary to [the] disposition of these questions," *Mauro*, 299 S.C. at 187, 383 S.E.2d at 246. As such, Appellant's Motion is without merit and should be denied.

CONCLUSION

For the foregoing reasons, Deutsche Bank respectfully requests that the Court deny

Appellant's Motion, and that the Court grant it such other relief deemed proper and just.

Dated: October 3, 2017

Respectfully submitted,

**RESPONDENT DEUTSCHE BANK
NATIONAL TRUST COMPANY, AS
TRUSTEE FOR ARGENT SECURITIES,
INC. ASSET-BACKED PASS-THROUGH
CERTIFICATES, SERIES 2004-W11**

By: 

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Gordon G. Cooper, Master-in-Equity

Appellate Case No. 2017-001238

Deutsche Bank National Trust Company, as Trustee for Argent Securities, Inc., Asset-Backed
Pass-Through Certificates, Series 2004-W11

Respondent,

v.

Geary Thomas Dooly, Eleanor S. Dooly, and United States of America,

Defendants.

Of whom, Geary Thomas Dooly is the Appellant.

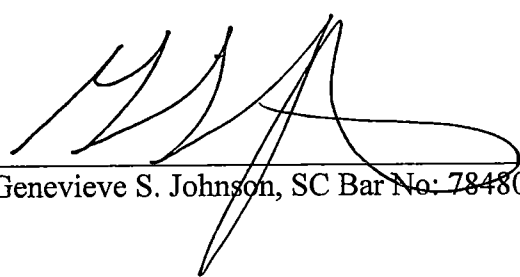
CERTIFICATE OF SERVICE

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OCT 03 2017
SC Court of Appeals

I, undersigned of the law offices of Brock & Scott, PLLC, attorneys for Respondent, do hereby certify that I have served a true and correct copy of the *RETURN TO APPELLANT'S MOTION TO REVISE RECORD ON APPEAL* by first-class, U.S. Mail with postage prepaid upon the following:

Geary Thomas Dooly
Eleanor S. Dooly
P.O. Box 3326
Spartanburg, South Carolina 29304
Pro Se Appellant

This 3 day of October, 2017.



Genevieve S. Johnson, SC Bar No: 78480



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October 2, 2017

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OCT 03 2017

SC Court of Appeals

Geary Thomas Dooly
P.O. Box 3326
Spartanburg, South Carolina 29304

Re: Deutsche Bank National Trust Company, as Trustee for Argent Securities Inc., Asset-Backed Pass-Through Certificates, Series 2004-W11 v. Geary Thomas Dooly, *et al.*
Case #: 2012-CP-42-03027
Appellate Case #: 2017-001238
B&S File #: 15-17508

Mr. Dooly,

As you are aware, we represent Deutsche Bank National Trust Company, as Trustees for Argent Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2004-W11, ("Deutsche Bank") in the above referenced matter. We have received a copy of your Initial Reply Brief and we are writing to address your concerns with the matters we have designated for the Record on Appeal (the "Record").

Foremost, we assert and reaffirm that our designation of matters for the Record is justified and relevant to the appeal under applicable South Carolina law and rules of procedure. See e.g., Rule 210, SCACR ("Where a portion of a page of the trial transcript, or a page of an exhibit or document, is to be included in the Record on Appeal, the entire page shall be included. When a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record, to include the caption and signature(s). . . .").

Nevertheless, as is custom, we are willing to work with you to reduce your costs. Deutsche Bank is willing to eliminate the following exhibits to documents otherwise designated for the Record:

- Exhibits B, C, and D of Designated Matter No. 1.-- Deutsche Bank's Complaint, dated July 19, 2012;

15-17508 FC01

- Exhibits A and B of Designated Matter No. 8-- Deutsche Bank's Memorandum in Support of its Motion to Dismiss, dated May 21, 2013; and
- Exhibits A and B of Designated Matter No. 13-- Deutsche Bank's Memorandum in Support of its Motion to Dismiss, dated December 6, 2013.

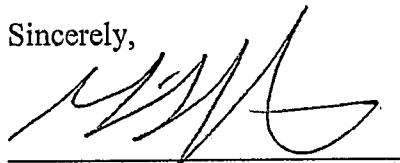
Deutsche Bank is also willing to remove the following designations from the Record:

- No. 4 Deutsche Bank's Reply to Answer and Counterclaim, dated September 20, 2012;
- No. 5 Deutsche Bank's Reply to Counterclaims of Defendants, dated September 24, 2012;
- No. 21 Notice of Hearing, dated May 4, 2017; and
- No. 22. Record of Hearing for Foreclosure Case, dated May 15, 2017.

Please note, in agreeing to remove these exhibits and documents from our designations, Deutsche Bank does not waive any defense it may assert to your Motion to Revise the Record on Appeal of Respondent.

Should our proposed revisions to the Record be amenable, please contact me at Genevieve.Johnson@brockandscott.com or at the address provided above.

Sincerely,



Genevieve S. Johnson
Attorney for Plaintiff
Brock & Scott, PLLC