

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Master-in-Equity

The Honorable Cynthia Graham Howe

Appellate Case No. 2017-000884
Civil Action No. 2012-CP-26-04695

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DEC 12 2017
SC Court of Appeals

Deutsche Bank National Trust Company, as
Trustee on Behalf of the Certificateholders of
Morgan Stanley ABS Capital I Inc. Trust 2004-NC8
for Mortgage Pass Through Certificates, Series
2004-NC8,

Respondent,

v.

James T. Burr a/k/a James Burr and Grand Strand
Water & Sewer Authority,
.....

Defendants

Of whom James T. Burr a/k/a James Burr is the
Appellant,

Appellant.

Respondent's Motion to Dismiss Appeal

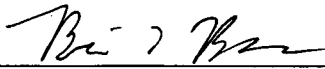
Pursuant to Rules 240 and 260(a) of the South Carolina Appellate Court Rules, Respondent Deutsche Bank National Trust Company, as Trustee on Behalf of the Certificateholders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC8 for Mortgage Pass Through Certificates, Series 2004-NC8 ("Respondent"), moves to dismiss Appellant James T. Burr a/k/a James Burr's ("Appellant") appeal. Respondent respectfully requests this Court to dismiss the appeal because Appellant has failed to timely serve the Record on Appeal and failed to file proof of service with this Court in the time period prescribed by the South Carolina Appellate Court Rules.

Rule 210(a) requires an appellant to serve the record on appeal on all parties “[w]ithin thirty (30) days after service of the last brief,” and “[p]roof of service of the Record shall be immediately filed with the clerk of the appellate court.” Appellant filed his Initial Reply Brief on November 6, 2017. (Proof of Service, Exhibit A.) The deadline for Appellant to serve the Record on Appeal and file proof of service was, therefore, December 6, 2017. Rule 210(a), SCACR.

Appellant failed to serve the Record on Appeal or file proof of service by the mandatory deadline. As of the filing of this motion, Appellant still has not served the Record on Appeal or filed proof of service with the Court. Nor has Appellant requested an extension of this deadline. Thus, this Court should dismiss his appeal. Rule 260(a), SCACR (“Whenever it appears that an appellant or a petitioner 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.” (emphasis added)). Indeed, the failure to comply with the Appellate Court Rules by failing to serve the Record on Appeal and file proof of service in the time prescribed by the rules requires the dismissal of the appeal. *McPherson v. Anderson*, 202 S.C. 312, 24 S.E.2d 516, 518 (1943) (“There is no dispute that the Transcript of Record was not served upon respondent and filed in the office of the Clerk of this Court within the time required by the rules. Nor did appellant undertake to apply to a Court of competent jurisdiction for additional time in which to perfect his appeal. Therefore, the motion of respondent to dismiss the appeal is granted.”); see also *Wise v. S.C. Dep’t of Corrections*, 372 S.C. 173, 173, 642 S.E.2d 551, 551 (2007) (“Whenever it appears that an appellant has failed to

comply with the requirements of the SCACR, an order of dismissal *shall* be issued.”
(emphasis added)).

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:  _____

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Attorneys for Respondent Deutsche Bank National Trust
Company

Columbia, South Carolina

December 12, 2017.

Exhibit A

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Cynthia Graham Howe, Master-in-Equity

Appellate Case No. 2017-000884

Deutsche Bank National Trust Company, as Trustee
on Behalf of the Certificateholders of Morgan Stanley
ABS Capital I Inc. Trust 2004-NC8 for Mortgage Pass
Through Certificates, Series 2004-NC8,.....Respondent,

v.

James T. Burr a/k/a James Burr and Grand Strand
Water & Sewer Authority; Defendants,

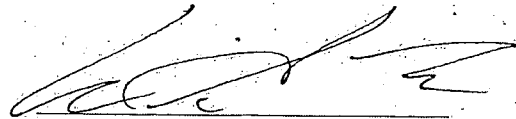
Of Whom James T. Burr a/k/a James Burr is.....Appellant.

PROOF OF SERVICE

I certify that I served the foregoing initial reply brief of appellant by depositing
a copy of it on the date shown below in the United States Mail, postage prepaid,
addressed as follows:

Michael J. Anzelmo, Esq.
Brian M. Barnwell, Esq.
Nelson Mullins Riley & Scarborough, LLP
Meridian/17th Floor
1320 Main Street
Columbia, SC 29211

November 6, 2017



Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
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APPEAL FROM Horry County
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SC Court of Appeals

Deutsche Bank National Trust Company, as Trustee on
Behalf of the Certificateholders of Morgan Stanley ABS
Capital I Inc. Trust 2004-NC8 for Mortgage Pass
Through Certificates, Series 2004-NC8,

Respondent,

v.

James T. Burr a/k/a James Burr and Grand Strand
Water & Sewer Authority,

Defendants

Of whom James T. Burr a/k/a James Burr is the
Appellant,

Appellant.

PROOF OF SERVICE

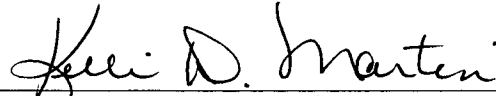
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins
Riley & Scarborough LLP, attorneys for Deutsche Bank National Trust Company, do hereby
certify that I have served all counsel in this action with copies of the pleading(s) hereinbelow
specified to the following address(es):

Pleadings: **Respondent's Motion to Dismiss Appeal**

Counsel Served:

U.S. Mail

Andrew S. Radeker, Esquire
Harrison & Radeker, P.A.
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Post Office Box 50143
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Kelli Diamond Martin
Administrative Assistant

December 12th, 2017.



NELSON MULLINS

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December 12, 2017

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SC Court of Appeals

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Deutsche Bank National Trust Company v. James T. Burr a/k/a James Burr and
Grand Strand Water & Sewer Authority
Appellate Case No. 2017-000884
Our File No. 33812/01626

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter please find the original and six (6) copies of *Respondent's Motion to Dismiss Appeal*. Also enclosed, please find our firm's check in the amount of \$25, which represents the filing fee for this *Motion to Dismiss Appeal*. Please return a clocked-in copy of each to us via our courier.

By copy of this letter to counsel, I am hereby serving him with a copy of this document.

Very truly yours,

Brian M. Barnwell

BMB:kdm
Enclosures
cc: Andrew S. Radeker, Esquire