

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

**APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
The Honorable James O. Spence
Master in Equity**

**Appellate Case No. 2018-000436
Circuit Court Case No. 2016-CP-32-03572**

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APR 06 2018

SC Court of Appeals

**Deutsche Bank National Trust Company,
as Trustee for NovaStar Mortgage Funding
Trust, Series 2007-1 NovaStar Equity Loan
Asset Backed Certificates, Series 2007-1,**

Respondent/Appellant,

v.

**Patricia Owens a/k/a Patricia Ann Owens;
Tammy M. Bailey; South Carolina Department
of Motor Vehicles,**

Defendants,

of whom

**Patricia Owens a/k/a Patricia Ann Owens and
Tammy M. Bailey are the**

Appellants/Respondents.

**REQUEST FOR CLARIFICATION ON BRIEFING SCHEDULES, OR, IN
THE ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO FILE
INITIAL BRIEF OF RESPONDENT/APPELLANT**



Respondent/Appellant Deutsche Bank National Trust Company, as Trustee for NovaStar Mortgage Funding Trust, Series 2007-1 NovaStar Equity Loan Asset Backed Certificates, Series 2007-1 (“Deutsche Bank”) hereby files this Request for Clarification on Briefing Schedules, or, in the alternative, Motion for Extension of Time to File Initial Brief of Respondent/Appellant, and states as follows:

1. On March 12, 2018, Appellants/Respondents Patricia Owens a/k/a Patricia Ann Owens (“Owens”) and Tammy M. Bailey (“Bailey”) filed a Notice of Appeal with this Court.

2. Bailey and Owens’ Notice of Appeal indicates they are appealing from a November 28, 2017 Order (hereinafter “Summary Judgment Order”) and a February 12, 2018 Order (hereinafter “Order on Motion to Amend”).

3. On March 12, 2018, Bailey and Owens also filed a letter with the Court indicating that they requested the transcript of the January 31, 2018 hearing on their Motion to Alter or Amend.

4. On March 14, 2018, Deutsche Bank filed a Notice of Appeal.

5. Deutsche Bank’s Notice of Appeal indicates Deutsche Bank is appealing from the Summary Judgment Order only.

6. At the time Deutsche Bank filed its Notice of Appeal, the parties already possessed a transcript of the September 19, 2017 hearing on the parties’ Motions for Summary Judgment.

7. Where, as here, a case involves multiple notices of appeal, SCACR 206 provides, in relevant part, as follows: “Upon receipt of notification that the primary appellant has received the transcript of proceeding, the clerk of the appellate court shall establish a briefing schedule.”

8. Because Bailey and Owens filed their notice of appeal first, they are the “primary appellant.” *See* SCACR 206.

9. To date, Bailey and Owens have not notified the Court that they have received a transcript of the January 31, 2018 hearing.

10. To date, the Court has, therefore, not established a briefing schedule.

11. Even though Deutsche Bank is not appealing the Order on Motion to Amend – and therefore does not need the January 31, 2018 transcript to support its arguments on appeal – Deutsche Bank nevertheless understood that the parties would be filing crossing initial briefs at the same time, on a date to be set by the Court in its briefing schedule.

12. Therefore, Deutsche Bank hereby requests clarification and confirmation that a briefing schedule from the Court is forthcoming and that, at present, there is no deadline for the Initial Brief of Respondent/Appellant Deutsche Bank.

13. In the alternative, if the Court will not be issuing a briefing schedule per SCACR 206, and if the deadline for Deutsche Bank’s Initial Brief is pending,

Deutsche Bank hereby requests a thirty (30) day extension of time, through and including Friday, May 4, to serve and file Deutsche Bank's Initial Brief.

14. As noted, Deutsche Bank understood that SCACR 206 controlled cases involving cross-appeals, and that the Court would be setting a briefing schedule upon notice from Bailey and Owens that they obtained the January 31, 2018 transcript, which has not happened yet. In other words, Deutsche Bank has understood that it has no present deadline to file its Initial Brief.

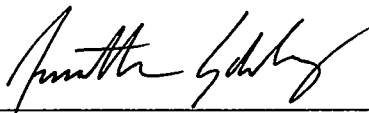
15. To the extent that Deutsche Bank's deadline to file an Initial Brief were somehow determined based on the date that Bailey and Owens obtained the transcript they requested, Deutsche Bank has had no way of knowing the date that Bailey and Owens obtained the transcript. Thus, Deutsche Bank could not even calculate its own deadline.

16. Based on the plain language of SCACR 206, Deutsche Bank also did not understand that its Initial Brief was due thirty (30) days after serving its Notice of Appeal. The parties' arguments in their initial briefs will involve common issues of fact and law, and it does not seem practical to have staggered briefing deadlines based on the date of each parties' notice of appeal. Deutsche Bank understood that SCACR 206 was meant to address this concern.

17. Accordingly, in the event that the Court does not clarify and confirm that it will set a briefing schedule at some point in the future and that Deutsche

Bank's deadline to file its Initial Brief is not presently pending, Deutsche Bank requests, in the alternative, a thirty (30) day extension of time, through and including Friday, May 4, to serve and file its Initial Brief.

Respectfully submitted this the 5th day of April, 2018.



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Trust, Series 2007-1 NovaStar Equity Loan
Asset Backed Certificates, Series 2007-1*

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PROOF OF SERVICE

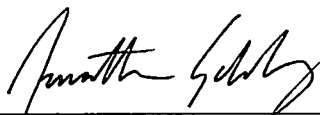
I hereby certify that a copy of the foregoing **REQUEST FOR CLARIFICATION ON BRIEFING SCHEDULES, OR, IN THE ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO FILE INITIAL**

BRIEF OF RESPONDENT/APPELLANT was sent via first-class U.S. Mail, postage prepaid, and addressed as follows:

Andrew S. Radeker
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Attorney for Appellants/Respondents

Mary R. Powers
Brock & Scott, PLLC
3800 Fernandina Rd., Suite 110
Columbia, South Carolina 29210
Attorney for Respondent/Appellant

This the 5th day of April, 2018.



Jonathan E. Schulz (SC Bar No. 79850)



Jonathan Schulz
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April 5, 2018

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APR 06 2018

SC Court of Appeals

VIA FEDEX OVERNIGHT

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

Re: *Deutsche Bank National Trust Company, as Trustee for NovaStar Mortgage Funding Trust, Series 2007-1 NovaStar Equity Loan Asset Backed Certificates, Series 2007-1 v. Patricia Owens a/k/a Patricia Ann Owens and Tammy M. Bailey*
Appellate Case No. 2018-000436

Dear Ms. Kitchings:

In connection with the above appeal, enclosed for filing please find one (1) original and seven (7) copies of Respondent/Appellant Deutsche Bank's Request for Clarification on Briefing Schedules, or, in the Alternative, Motion for Extension of Time to File Initial Brief of Respondent/Appellant. Please file the original, retain six (6) copies per SCACR 240(d), and return one (1) file-stamped copy in the enclosed pre-paid Federal Express envelope provided for your convenience.

I have also enclosed a check from my firm in the amount of twenty-five dollars (\$25.00) to pay for the filing fee.

Thank you for your assistance. Please do not hesitate to contact me should you have any questions or concerns about the above.

Best regards,

Jonathan Schulz

Enclosures

cc: Andrew S. Radeker (with encl. via US Mail)
Mary R. Powers (with encl. via US Mail)

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TO **MS. JENNY KITCHINGS, CLERK OF COURT**
SOUTH CAROLINA COURT OF APPEALS
1220 SENATE ST

COLUMBIA SC 29201

(803) 734-1890

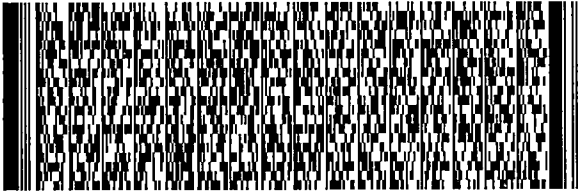
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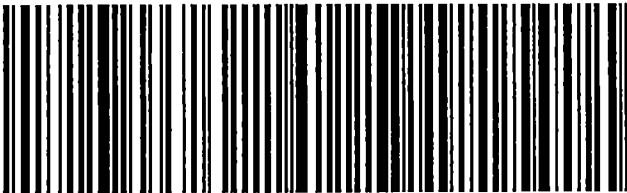
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