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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Master-in-Equity

Cynthia Graham Howe, Master-in-Equity

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

RECEIVED
APR 25 2018
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 appeal. Respondent respectfully requests this Court to dismiss the appeal because Burr 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 and this Court's instructions.

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 provides that "[p]roof of service of the Record

shall be immediately filed with the clerk of the appellate court.” Burr served his Initial Reply Brief on November 6, 2017. The initial deadline for Burr to serve the Record on Appeal and file proof of service was, therefore, December 6, 2017. Rule 210(a), SCACR. On December 28, 2017, Burr moved for an extension, arguing the deadline had been held in abeyance for much of December. This Court granted an extension on January 4, 2018, and set January 12, 2018, as the new deadline.

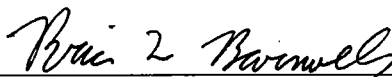
Burr failed to serve the Record on Appeal or file proof of service by the extended deadline. On January 25, 2018, the Court sent a letter to Burr’s counsel instructing him that the appeal would be dismissed if the Record on Appeal was not filed by February 5, 2018. On February 5, 2018, Burr’s counsel moved to be relieved as counsel. The Court granted Burr’s counsel’s motion on March 15, 2018. In the order granting the motion to be relieved, the Court held that the appeal would be held in abeyance until April 14, 2018, to allow Burr time to obtain new counsel. The Court further noted that if Burr did not obtain new counsel by April 14, 2018, which he did not, the appeal would continue with Burr proceeding pro se.

Giving Burr the benefit of the doubt, his deadline to file the Record on Appeal may have been held in abeyance until April 14, 2018. Even so, that deadline has passed and Burr has failed to fulfill his obligations under Rule 210(a), SCACR. Burr has repeatedly failed to comply with the Court’s deadlines in this appeal and in the underlying action. As of the filing of this motion, more than 138 days have passed since service of the last brief, but Burr still has not served the Record on Appeal or filed proof of service with the Court. Thus, this Court must 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)).

Accordingly, Respondent respectfully requests that this Court dismiss Burr’s appeal.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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April 25, 2018

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Master-in-Equity

The Honorable Cynthia Graham Howe

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PROOF OF SERVICE

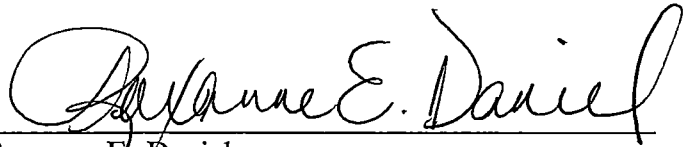
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins
Riley & Scarborough LLP, attorneys for Deutsche Bank National Trust Company, do hereby
certify that I have served all parties in this action with copies of the pleading(s) hereinbelow
specified to the following address(es):

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

Party Served:

U.S. Mail

Mr. James T. Burr
875 Whitehead Road
Lugoff, SC 29078



Roxanne E. Daniel
Administrative Assistant

April 25, 2018



NELSON MULLINS

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April 25, 2018

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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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 copies of Respondent's Motion to Dismiss Appeal and our check for \$25.00 for the filing fee. Please file the original and return a clocked-in copy to us via our courier.

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

Very truly yours,

Brian M. Barnwell

BMB:rd
Enclosure
cc: Mr. James T. Burr