

KORN LAW FIRM, P. A.
POST OFFICE BOX 11264,
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29211
(803) 252-5817

April 3, 2013

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED

APR 04 2013

Re: Deutsche Bank v. Laura Toney, et al
Case No. 2007-CP-38-807
File No. F27-02370

SC Court of Appeals

Dear Sir or Madam:

Please permit this letter to serve as a brief response to the Appellant's Reply dated March 28, 2013 in the above noted matter. The Appellant incorrectly states that page 9 from the Transcript of Hearing held August 27, 2008 was not included on Respondent's Designation of Matter. I have included a copy of the filed Designation of Matter and highlighted the portion wherein Respondent specifically cited page 8, line 15 through page 10, line 14 to be included in the Record on Appeal. Therefore, the entirety of page 9 was to be included and Appellant's contention that page 9 was not included in the Designation of Matter is a categorically false statement.

The Appellant has filed at least 5 grievances against Respondent's counsel, all of which were dismissed as being unfounded. I was notified by my client that Ms. Toney apparently filed a complaint with the FBI and Federal Trade Commission and I have provided a response to my client on those matters.

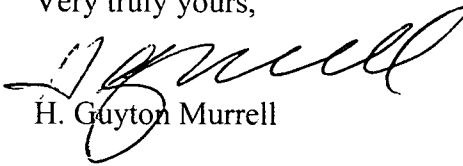
I would also make the Court aware that the Appellant filed a duplicative action in Orangeburg County in an attempt to re-litigate these issues despite exclusive jurisdiction being with the South Carolina Court of Appeals. This is also a pattern and practice for which the Appellant has previously been sanctioned. The duplicative case Appellant filed in Orangeburg County (Laura T. Toney a/k/a Laura A. Toney v. Deutsche Bank, et al, Case No. 2012-CP-38-1108) was dismissed by Order of the Honorable Diane Goodstein filed January 18, 2013 and imposing sanctions on Ms. Toney. I have enclosed a copy of the order. Ms. Toney has filed a motion to reconsider the dismissal.

As stated in Respondent's motion, the transcript page that was omitted by the Appellant from the Record on Appeal contains critical testimony by one of her witnesses

that I would argue was very damaging to her case. The Appellant has been repeatedly sanctioned for her vexatious litigation and it is Respondent's argument that the omission of this portion of the transcript is a continuation of that pattern and practice of bad faith litigation. As stated in the motion, Respondent would request that the appeal be dismissed or that Appellant be required to file and serve a Record that complies with the Appellate Rules and includes all of the designated matter in a proper form.

Your attention in this matter is very much appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to read "H. Murrell", written in a cursive style. The signature is positioned above the printed name of the signatory.

H. Guyton Murrell

cc:

Laura Toney
P.O. Box 722
Bishopville, SC 29010

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECORDED

APR 04 2013

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

SC Court of Appeals

O. Davie Burgdorf, Master-in-Equity

RECEIVED

JUN 12 2012

SC Court of Appeals

Case No. 2007-CP-38-807

Deutsche Bank National Trust Company as Trustee
for the Holders of New Century Home Equity Loan
Trust, Series 2005-A, Asset Backed Pass-Through
Certificates, Respondent,

v.

Laura Toney, LaSalle Bank National Association, as
Trustee for the registered holders of Structured Asset
Securities Corporation, Structured Asset
Investment Loan Trust, Mortgage Pass-
Through Certificates, Series 2004-11 and LaSalle Bank
National Association, Trustee for Lehman Brothers
Structured Asset Investment Loan Trust Sail 2005-2
of whom
Laura Toney is, Appellant.

**RESPONDENT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

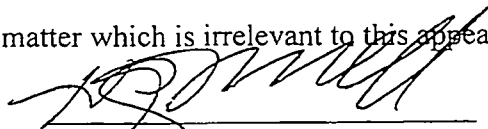
Respondent proposes the following to be included in the Record on Appeal:

1. Order filed December 17, 2007;
2. Order filed January 10, 2008;
3. Order filed March 26, 2008;
4. Order filed September 4, 2008;
5. Order filed December 11, 2008;
6. Order filed March 23, 2011;

7. U.S. Bankruptcy Court Order filed February 15, 2007, Case No.07-00234-jw;
8. U.S. Bankruptcy Court Order filed February 26, 2007, Case No.07-00234-jw;
9. U.S. Bankruptcy Court Order filed March 27, 2007, Case No.07-00234-jw;
10. U.S. Bankruptcy Court Order filed May 15, 2007, Case No.07-01978-dd;
11. Order dissolving TRO filed April 2, 2007, Case No. 2007-CP-31-066;
12. Complaint;
13. Motion filed January 30, 2008;
14. Motion filed April 14, 2008;
15. Return filed April 21, 2008;
16. Motion for Sanctions filed April 21, 2008;
17. Motion filed December 22, 2008;
18. Return filed December 31, 2008;
19. Affidavit of Service filed August 9, 2007;
20. Affidavit of Default filed December 17, 2007;
21. Affidavit of Michael May filed August 25, 2008;
22. Affidavit of Tracey Kirkpatrick filed August 25, 2008;
23. Affidavit of Attorney Fees;
24. Transcript of May 6, 2008 hearing, P. 6, lines 14 – 19; p. 10, line 1 – p. 11, line 9; p.16, lines 11 –17; p. 22, line 2 – p. 23, line 6;
25. Transcript of August 27, 2008 hearing, p. 5, line 16 – p. 7, line 21; p. 8, line 15 – p. 10, line 14; p. 24, line 21 – p. 61, line 13; p. 69, line 1 – p. 73, line 23; p. 80, line 10 – p. 81, line 3; p. 107, line 23 – p. 111, line 20; p.112, line 5 – line 16; p. 113, line 25 – p. 129, line 21;
26. Transcript of August 27, 2008 hearing, Exhibit 9;
27. Transcript of August 27, 2008 hearing, Exhibit 10;
28. Transcript of August 27, 2008 hearing, Exhibit 11;
29. Transcript of August 27, 2008 hearing, Exhibit 12;
30. Transcript of August 27, 2008 hearing, Exhibit 13;
31. Transcript of September 16, 2008 hearing, p. 16, line 11 – p. 37, line 24; p. 45, lines 4-14;
32. Transcript of September 16, 2008 hearing, Exhibit 3;
33. Transcript of February 8, 2011 hearing, p. 19, line 7 – p. 23, line 13;
34. Schedule B of Appellant's Chapter 13 Plan, Case No.06-05381-dd;
35. Letter dated February 11, 2009 with attachments;
36. HUD Settlement Statement

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

June 12, 2012


H. Guyton Murrell
Korn Law Firm
Attorney for Respondent Deutsche Bank
1300 Pickens Street
PO Box 12369
Columbia, SC 29211-2369
803-252-5817

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2012-CP-38-1108

Laura T. Toney a/k/a Laura Ann Toney

Deutsche Bank National Trust Company, et al.,

PLAINTIFF(S),

DEFENDANT(S).

F27-02370

Submitted by: Korn Law Firm, P.A.	Attorney for : <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: _____

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk : _____

ATTEST: TRUE COPY
Winnje B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE [X] COURT OF COMMON PLEAS
[] FAMILY COURT

Laura T. Toney a/k/a Laura Ann Toney,
[] Plaintiff)
vs.)
Deutsche Bank National Trust Company, et al.,)
[X] Defendant(s))
Check box above indicating submitting party.)

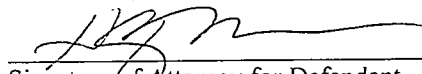
CASE NO. 2012-CP-38-1108
MOTION INFORMATION
FORM AND COVER SHEET

<u>Name, S.C. Bar no. and address of Plaintiffs attorney.</u> Laura T. Toney a/k/a Laura Ann Toney, Pro Se Post Office Box 722 Bishopville, SC 29010	<u>Name, S.C. Bar no. and address of Defendant's attorney.</u> H. Guyton Murrell Korn Law Firm, P.A. 1300 Pickens Street Columbia, SC 29201 Telephone: 803-252-5817 Fax: 803-231-2060 email: guyton.murrell@kornlawfirm.com
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[] MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
[] FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
[X] PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information
Nature of Motion: Order of Dismissal
Estimated Time Needed: n/a Court Reporter Needed: No

SECTION II: Motion Type
 Written Motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed Order


 Signature of Attorney for Defendant

16 Jan 2013
 Date Submitted

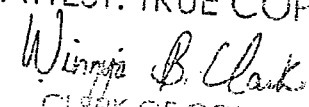
FILED FOR RECORD
 WITH E.A.B. CLERK
 CLERK OF COURT
 ORANGE COUNTY, SC
 2013 JAN 18 AM 11:30

SECTION III: Motion Fee
 Paid-Amount: \$25.00
 EXEMPT:
 Rule to show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief Motion to Stay Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SRCP)
 Proposed Order submitted at request of the court; or, reduced to writing from motion made in open court per judge=s instructions.
 Name of Court Reporter: _____
 Other:

JUDGE'S SECTION
 Motion fee to be paid upon filing of the attached Order.
 Other: _____

JUDGE _____
 CODE: _____ DATED: _____

CLERK'S VERIFICATION
 Collected by: _____ Date Filed: _____
 (print name)
 MOTION FEE COLLECTED: _____
 CONTESTED—AMOUNT DUE: _____

ATTEST: TRUE COPY

 Winifred B. Clark
 CLERK OF COURT
 ORANGE COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Laura T. Toney a/k/a Laura Ann Toney,

PLAINTIFF,

vs.

Deutsche Bank National Trust Company as Trustee for the Holders of New Century Home Equity Loan Trust, Series 2005-A, Asset Backed Pass-Through Certificates, LaSalle Bank National Association, as Trustee for the registered holders of Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2004-11 and LaSalle Bank National Association, Trustee for Lehman Brothers Structured Asset Investment Loan Trust Sail 2005-2 and all persons unknown claiming any legal or equitable right, title, estate, lien or interest in the property described in the complaint adverse to plaintiff's title thereto referred to as Doe,

DEFENDANT(S).

F27-02370

IN THE COURT OF COMMON PLEAS

C/A NO:2012-CP-38-1108

ORDER OF DISMISSAL

FILED FOR RECORDED
MINNIEA S. CLARK
CLERK OF COURT
ORANGEBURG, SC
2013 JAN 18 AM 11:30

This is an action as to certain real property located in Orangeburg County. The property was the subject of a prior foreclosure action, Deutsche Bank v. Laura T. Toney, et al, Case No. 2007-CP-38-807. The Plaintiff is the former owner of the subject real property and has filed the current action alleging that the prior foreclosure action was invalid. The complaint alleges causes of action for negligence, mortgage fraud, actions to set aside the deed, wrongful foreclosure, quiet title and slander of title. The Defendant Deutsche Bank (Deutsche) was the mortgage holder in the prior foreclosure action and LaSalle Bank (LaSalle) held a second mortgage encumbering the subject real property.

ATTEST: TRUE COPY

Wynne D. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

The action was commenced with the filing of the lis pendens, summons and complaint on August 10, 2012. The Defendant Deutsche filed a motion to dismiss on August 29, 2012. Plaintiff filed an amended lis pendens, summons and complaint on September 12, 2012. Defendant LaSalle filed a motion to dismiss on October 10, 2012.

The motion to dismiss was scheduled for hearing on November 14, 2012. Notice of hearing was sent to all parties on November 8, 2012 and the notice of hearing was filed with the court on November 13, 2011. The court received a letter from the Plaintiff immediately prior to the scheduled motion hearing requesting a continuance.

Appearing at the hearing was H. Guyton Murrell as counsel for Defendant Deutsche and Michael Anzelmo as attorney for Defendant LaSalle. The Plaintiff Laura Toney did not appear. Based upon the hearing notice filed of record as well as the letter received from the Plaintiff, the court finds that all parties were provided due and adequate notice of the motion hearing. The court further finds that no adequate grounds for a continuance were offered by the Plaintiff and her request for a continuance is denied. The grant or denial of a continuance lies with the sound discretion of the trial court. *M & M Group, Inc. v. Holmes*, 379 S.C. 468, 666 S.E.2d 262 (S.C. App. 2008) citing *State v. Tanner*, 299 S.C. 459, 385 S.E.2d 832 (1989).


The motion to dismiss filed by Defendant Deutsche alleges several grounds why the current action should be dismissed. Counsel for Defendant Deutsch presented evidence to the court that the prior foreclosure action referenced by the Plaintiff in her pleadings is currently on appeal and the South Carolina Court of Appeals has exclusive jurisdiction of matters related to or affected by the appeal under Rule 205 SCACR. The findings and rulings by the trial court in the previous case would also bar the Plaintiff

from attempting to relitigate those issues in the current action under the doctrine of res judicata.

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata, "a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit. *Judy v. Judy*, 393 S.C. 160, 712 S.E.2d 408 (2011) citing *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106 (1999). Res judicata requires the following elements to be proven: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in a former suit. *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 419 S.E.2d 217 (1992).

In the present case, all of the elements for res judicata are present. The parties are identical in that both the mortgagor and mortgagee in the prior foreclosure action are the parties in this action. The identity of the subject matter is also the same. The final elements of res judicata are also met in that the trial court in the prior case adjudicated the issue of whether Deutsche had a valid mortgage lien and was entitled to foreclosure. The record in the prior case reflects that Plaintiff herein was personally served with the foreclosure pleadings and failed to file and serve a responsive pleading.

Counsel for Defendant Deutsche Bank further argued judicial estoppel would bar the current action based on Plaintiff's statements in her previously filed bankruptcy cases. Specifically, Plaintiff filed schedules in her bankruptcy with the subject mortgage listed as a valid lien to be cured under the terms of the proposed plan as well as stating that she had no counterclaims or setoffs to declare as assets.



A review of the pleadings in this action show the current action filed by Plaintiff is inextricably linked and related to the prior foreclosure action and the previous litigation related to that case. Even if the pending appeal did not bar the current action, the causes of action raised by the Plaintiff in this matter would clearly constitute compulsory counterclaims that should have been raised in the prior litigation. The causes of action to quiet title and slander of title are dependent upon Plaintiff having a current title interest. The prior foreclosure action divested Plaintiff of her interest in the property. Therefore, the court finds that the Defendant Deutsche's motion to dismiss the current action with prejudice is granted. As the case is being dismissed in its entirety, the pending motion to dismiss filed by Defendant LaSalle is moot.

Defendant Deutsche also moved for sanctions including a bar against Plaintiff filing any further new actions in this matter. The current action was filed by Plaintiff as a self represented litigant. The Plaintiff in this action has been repeatedly sanctioned as a bad faith litigant in prior litigation by the United States Bankruptcy Court and the state civil courts of South Carolina. The prior bad faith litigation by Plaintiff is set forth in detail in the order filed September 4, 2008 in the related foreclosure case currently under appeal. Although the court finds that the current action is barred and grants the motion by Defendant Deutsche to dismiss the current action with prejudice, the court declines to impose the sanction requested.

The court does find that the Plaintiff Laura T. Toney a/k/a Laura Ann Toney should be sanctioned by being required to pay the attorney fees and costs incurred by respective counsel for Defendant Deutsche and Defendant LaSalle in this matter. Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, the signature of an attorney or

a party to a pleading constitutes a certification that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for the purpose of delay. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or its own initiative, may impose upon the person who signed it ... the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee. *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 19, 633 S.E.2d 722, 729 (2006). The court has reviewed the attorney fees affidavits submitted by respective counsel and applied the factors set forth in *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989) and related cases. The court finds that Plaintiff Laura Toney shall pay attorney fees and costs incurred by Defendant Deutsche Bank in the amount of \$ 1479.00 to attorney H. Guyton Murrell at his office address of Post Office Box 11264, Columbia South Carolina 29211 within 90 days of this order being served by mail upon Plaintiff at the address listed with the Orangeburg County Clerk of Court. The court further finds that Plaintiff Laura Toney shall pay attorney fees and costs incurred by Defendant LaSalle Bank in the amount of \$ 1,125.20 to attorney Michael Anzelmo at his office address of Post Office Box 11070, Columbia, South Carolina 29211 within 90 days of this order being served by mail upon Plaintiff at the address listed with the Orangeburg County Clerk of Court.

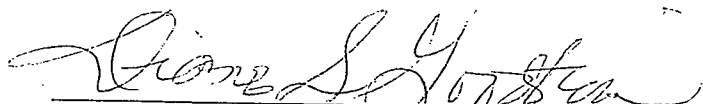
THEREFORE, IT IS ORDERED that this case is dismissed with prejudice.


IT IS FURTHER ORDERED that Plaintiff Laura T. Toney a/k/a Laura Ann Toney shall pay attorney fees and costs incurred by Defendant Deutsche Bank in the

amount of \$ 1479.⁰⁰ to attorney H. Guyton Murrell at his office address of Post Office Box 11264, Columbia South Carolina 29211 within 90 days of this order being served by mail upon Plaintiff at the address listed with the Orangeburg County Clerk of Court.

IT IS FURTHER ORDERED that Plaintiff Laura Toney shall pay attorney fees and costs incurred by Defendant LaSalle Bank in the amount of \$ 6,125.⁰⁰ to attorney Michael Anzelmo at his office address of Post Office Box 11070, Columbia, South Carolina 29211 within 90 days of this order being served by mail upon Plaintiff at the address listed with the Orangeburg County Clerk of Court.

IT IS SO ORDERED.


The Honorable Diane Goodstein
Presiding Judge 1st Judicial Circuit

 Jan 6 2013
December 6, 2012
Sumner, South Carolina