

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Edward B. Cottingham, retired judge from the Fourth Judicial Circuit
James O. Spence, master in equity for the Eleventh Judicial Circuit

Case No. 2011-197766
(Case No. C/A 2009-CP-32-05140 from Lexington County)

Deutsche Bank Trust Company Americas
As Trustee for RALI2007QS8, Respondent,
H. Guy Gantt, Intervenor, Respondent,
v.
Janice Cross, South Carolina National Bank, N.A., Defendants,
Of Whom Janice Cross is, Appellant.

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APR 23 2013
SC Court of Appeals

RETURN TO RESPONDENT DEUTSCHE BANK AMERICAS' MOTION TO
STRIKE THE ALLEGED "APPENDIX" TO THE RECORD ON APPEAL

INTRODUCTION AND REBUTTAL

Appellant petitions this Honorable Court to dismiss Respondent Deutsche Bank Americas' untimely motion to strike the "Appendix to Record on Appeal" on the grounds that it is erroneous in each of its points, to wit. This is a timely response

1. Rebuttal of Respondent's point number 1. Respondent Deutsche Bank persists in mischaracterizing the very nature of this appeal as being restricted to the lower court's denial of her Rule 60(b) motion, when the order and judgment of the lower court

itself cites several motions that are the subject of this appeal. Respondent continues to mislead the Court.

In addition, the appeal addresses the lower court's clear denial of Appellant's right to file a timely answer to the motion, the summons, and the complaint of Respondent H. Guy Gantt, a respondent who has failed to plead at all in response to this appeal. Respondent Deutsche Bank cannot answer for Mr. Gantt, who is represented separately by a different counsel, Henry Taylor.

Appellant filed the Record on Appeal timely and in good faith on March 6, 2013 in compliance with the Order of the Court and served Respondent Deutsche Bank timely. Respondent is in error on this point, misleading the Court.

2. Rebuttal of Respondent Deutsche Bank's point no. 2 and subpoints (a-g).

Respondent Deutsche Bank is not only in error, but is in gross error by alleging that the following items that appear in the record on appeal were somehow not presented to the lower court and do not exist in the lower court case file, when they very plainly do exist in the case file. They clearly were presented timely to the lower court and were presented timely to Respondent Deutsche Bank itself in the course of the lower court proceedings.

Respondent Deutsche Bank is represented by different counsel in this appeal than was present in the lower court proceedings. Counsel in this appeal simply has no firsthand knowledge of those events. Counsel's contention that the matters were somehow not so presented strikes not only at this Appellant's right to be heard, but also at her integrity. The many proofs of service in the lower court case file are not falsehoods, nor do the many certified mail numbers lie. Appellant is frankly mystified as to why present counsel persists in misleading this Court in these matters.

a. Respondent mischaracterizes the "appendix" in the matter as an appendix,

when the facts show that Appellant so labeled the final 80 pages or so in the Record on Appeal as an “appendix” so as to differentiate them from those 420 pages that her process server initially mailed to opposing counsel timely on **March 6, 2013**.

Moreover, Appellant’s petition of March 27, 2013 already speaks to the matter. Appellant did in-fact request leave of the Court to include those pages in the Record on Appeal for a variety of reasons, not the least of which is that Appellant’s initial failure to include them was an oversight. Appellant’s Initial Brief quotes extensively from the pages of the so-called “appendix,” and it would do violence to Appellant’s Final Brief itself to exclude them after-the-fact.

The March 27, 2013 motion cited in the above paragraph is titled, REQUEST FOR LEAVE OF THE COURT TO FILE THE FINAL BRIEF AND FINAL RECORD ON APPEAL OUT OF TIME AS SUBMITTED, AND FOR EXTENSION OF TIME TO FILE MULTIPLE COPIES AS REQUIRED.

Therefore, for opposing counsel to allege that this Appellant has not properly asked leave of this Court with reference to the so-called “appendix” in the matter is, to say the least, a mystery. In the above motion, Appellant explained why those pages are not an appendix at all, but are part-and-parcel to her Initial Brief.

b. Appellant’s original Exhibit EE (**R. 419-429**). This exhibit is in the lower case file and contains excerpts from the sworn deposition testimony of “robo signer” Jeffrey Stephan, a low level “signing dummy” who worked for GMAC Mortgage LLC, not MERS (Mortgage Electronic Registrations Systems). Mr. Stephan and GMAC are the exact same cast of characters who have acted in fraud in this case and in the exact same way, just as they acted in fraud in the two cases from the above-cited depositions.

Lower court filings and the Brief are replete with cites from Exhibit EE. To strike

the sworn testimony of Jeffrey Stephan would do violence to Appellant's Brief itself, for it quotes Mr. Stephan's admission that he does not work for MERS, although his name and sworn signature as an alleged MERS "vice president" appear on the fraudulent assignment of note and mortgage that is of record. Appellant designated the matter.

The fraudulent assignment of the note and mortgage is a major cloud on the land records for Lexington County and is due to be expunged by the judicial process from those records. **In other words, the assignment of record is a lie.**

b. The 1099-A. Appellant already addressed the 1099-A issue as being an extension of the frauds involving newly discovered evidence under Rule 60(b). She did properly request leave of this Court on March 27, 2013 to add it. It shows that Freddie Mac may well be the actual investor in the matter, not Deutsche Bank. And if Deutsche Bank did receive insurance money, it could not have been injured

Secondly, it originates from GMAC's Waterloo, Iowa office, the same office that first issued a copy of the note bearing the lone signature of Gloria Peters of GMAC's Homecomings Financial before the copy of that note was doctored well-after-the-fact in this matter. This is well documented in Appellant's Brief and the Record on Appeal.

GMAC and the law firms are the real moving parties, not Deutsche Bank.

Thirdly, the 1099-A falsely implies that Appellant "abandoned" her home, when the facts of record show she did not. The "A" in 1099-A stands for "acquisition" or "abandonment." GMAC had no legal standing to "acquire" the real property, on the one hand, and the claim that she abandoned is clearly fraudulent, on the other hand (Exhibit 8 -- R. pp. 335-339). So, either way, the newly discovered 1099-A is relevant under Rule 60(b), and Appellant did in-fact ask proper leave of this Court to add it. Respondent errs.

Finally, Appellant's husband likewise received a 1099-A as a clearly interested

party, but was denied the right to join Appellant in speaking to a matter in which he clearly has an interest, and possible tax liability. The 1099-A is quite relevant.

c. Exhibit HH. This exhibit is in the lower court case file and is addressed in Appellant's Brief. It shows a pattern of fraud by Respondent Deutsche Bank, which is why it is relevant. Deutsche Bank Ag (**a foreign citizen based in Frankfurt, Germany**) was sued by the United States in federal district court in New York for the same type of mortgage fraud as occurred in this exact case.

d. The Ohio Attorney General's case against GMAC and "robo signer" Jeffrey Stephan. Again, these are the exact same cast of characters in this case who were sued by the Ohio AG for the exact same frauds the same parties perpetrated in Ohio. Therefore, it is relevant case law for the Court to consider in this appeal and shows a pattern of fraud. Appellant refers to the case repeatedly in lower case filings and in her Brief.

Again, Appellant cannot understand why Respondent Deutsche Bank takes such a dim view of relevant case law. Respondent would deprive this Honorable Court of the facts and reasoning of other courts that could influence the jurisprudence of our State.

Justice is best served by presenting the Court the facts it needs for formulating a fair and reasonable judgment not only in this case, but perhaps as a valuable precedent.

e. Notice of Mortgage Settlement. Again, Appellant did properly ask leave of the Court to add this newly discovered evidence. It informs the Court, and it demonstrates a pattern of fraud in the national "robo signing" scandal that bears directly on this case.

f. Exhibit II. Unrelated action? Respondent misleads the Court again on precedent and would deny the Court access to comprehensive information that appeared in newspaper articles in the **public domain** concerning the national "robo signing" scandal directly affecting this case. This Exhibit very clearly **does** appear in the lower court case

file and mentions the name of GMAC Mortgage and Jeffrey Stephan **over and over** **again**. They are the exact same cast of characters involved in the frauds in this very case.

g. Again, Respondent takes a dim view of the importance of case law in helping this Court to formulate its best judgment. The cases in the exhibit address the exact same issues by other courts that occur in this case and are referred to in Appellant's Brief.

3. **Certification.** Again, Appellant has explained the nature of the "appendix" as being part-and-parcel to her Brief and if the Court so instructs, will update the Certification in terms of the date itself. Appellant was simply concerned that she not be perceived by the Court as amending the certification and date without asking leave of the Court. Appellant's failure to include those pages in the Record on Appeal was an honest mistake that Appellant made out of deference to the Court so as not to be perceived as defying the Court. Appellant has requested proper leave of the Court in the matter.

The pages of the so-called "appendix" are part-and-parcel to Appellant's Initial Brief. Respondent Deutsche Bank previously asked this Court to strike the brief itself, a motion this Court denied. Accordingly, this **third** motion to strike should also be denied.

Respondent Deutsche Bank appears to have no real answer for the frauds involving the note copy and the **bogus and belated** assignment of the note and mortgage, including the denial by the lower court of Appellant's fundamental right to be heard.

The deposition of GMAC's Juan Antonio Aguirre was never brought forward to trial by the trial court or by Respondent Deutsche Bank as clearly required by the lower court at the June 8, 2010 hearing that Appellant thoroughly documents in this case.

The Edward B. Cottingham court denied Appellant's fundamental right to be heard not only on this critical matter, but also with reference to ALL her motions.

Appellant's Brief and the Record on Appeal prove these facts.

4. Leave of the Court. Respondent Deutsche Bank is simply wrong in alleging that appellant did not request proper leave of the Court with reference to the entire Record on Appeal. Her March 27, 2013 motion itself stands in rebuttal to Respondent's false claim, a claim that clearly misleads the Court and which is curious for its logic.

5. Matters not presented to the lower court? Present counsel was not present during the lower court proceedings and is simply in error for alleging that Appellant has presented numerous matters not presented to the lower court and to Respondent Deutsche Bank itself by certified mailings of record. The various proofs of service are not lies, as opposing counsel appears to be suggesting, and so impugns the honesty of this Appellant and her process server.

As to Respondent's designation of matter, the Record on Appeal is fully 500 pages long, and comprehensive.

Exactly which items in the Record on Appeal did Respondent Deutsche Bank designate that are not addressed in its Reply Brief? Let Respondent designate from its Reply Brief those items that are unavailable to present counsel in the Record on Appeal, and Appellant may provide them in a supplement to the Record on Appeal. For example, Respondent wants a copy of the 15-page copy of the mortgage, which is but a stock form.

Appellant is not sure why this request is relevant, but the MIN number that appears on page one of the copy of the mortgage of record is the number that Appellant expects to use in the very near future by means of a forensic audit that will track the securities fraud that has occurred in this matter, and which may make Respondent Deutsche Bank even more liable than it is now.

Appellant has already asked the Court for more time to come up with the funds to publish the multiple copies of her Final Brief and the Record on Appeal, and can also

produce a supplemental at that time to satisfy what appears to be the whim of opposing counsel. It would be an additional expense which this Appellant is not unwilling to incur if she has the additional funds to produce the multiple copies that will be required.

CONCLUSION

Accordingly, Respondent Deutsche Bank's motion to strike the alleged "appendix" to the Record on Appeal is in gross error, is misleading, and would do violence to Appellant's case and Final Brief already on file with the Court.

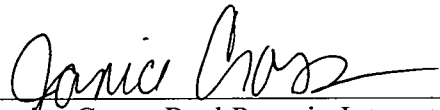
Respondent's Final Reply Brief was due on March 26, 2013. The record clearly shows that not a single item cited in Respondent's misguided motion to strike the alleged "appendix" to the Record on Appeal in any way impaired Respondent from filing its Final Brief timely as required.

Accordingly, Appellant moves the Court to dismiss Respondent Deutsche Bank's motion to strike the "appendix" to the Record on Appeal as untimely, unreasonable, and a real threat to Appellant's right to full due process of law, including the fundamental right to be heard.

**Janice Cross SO MOVES
THIS HONORABLE COURT.**

Executed on April 23rd, 2013

Respectfully submitted,

by: 
Janice Cross, Real Party in Interest

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Edward B. Cottingham, retired judge from the Fourth Judicial Circuit
James O. Spence, master in equity for the Eleventh Judicial Circuit

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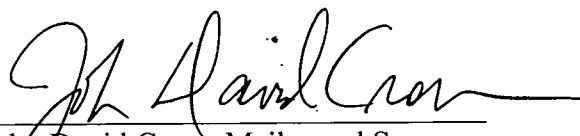
SC Court of Appeals

PROOF OF SERVICE
OF RETURN TO RESPONDENT DEUTSCHE BANK AMERICAS'
MOTION TO STRIKE ALLEGED 'APPENDIX' TO THE RECORD ON APPEAL

I certify that on this day I served a copy of Appellant's 8-page RETURN TO RESPONDENT DEUTSCHE BANK AMERICAS' MOTION TO STRIKE THE ALLEGED 'APPENDIX' TO THE RECORD ON APPEAL plus proof of service upon the following parties by means of USPO regular mailings: (1) Deutsche Bank Trust Company Americas as Trustee for RALI2007QS8, in care of Mark Wierman, BRADLEY ARANT BOULT CUMMINGS LLP, 100 N. Tryon St., Suite 2690, Charlotte, NC 28202, and (2) H. Guy Gantt, c/o Henry Taylor, Esq., 3618 Sunset Blvd., Suite D, West Columbia, SC 29169.

Executed on April 23rd, 2013

by:


John David Cross, Mailer and Server
in care of P.O. Box 2453
West Columbia, South Carolina 29171