

No. 19-694

In The SUPREME COURT OF THE UNITED STATES

Darrell K Saunders

Vinita K Saunders,

Applicant/Petitioner,

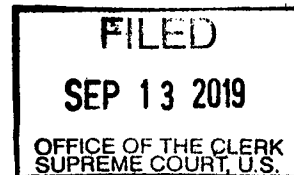
v.

Deutsche Bank National Trust Company

As Trustee for CDC Mortgage Capital Trust

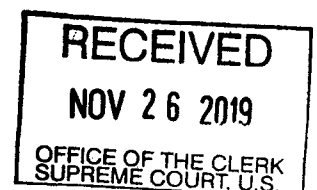
2003-HE3, Mortgage,

Respondent.



PETITION FOR WRIT OF CERTIORARI

Darrell K Saunders
Vinita K Saunders
2410 Haywood Ave.
Chesapeake, Virginia 23324
757-652-8828
darrellksaunders@gmail.com



I. Question Presented

When an individual follows the rules of the Court in mailing an Appeal, but due to the policies of the 3rd party Commercial Mail Carrier, the delivery date is listed as 2nd day delivery in lieu of next day delivery due to the delivery truck having left for the day, is the individual denied their due process of law per Article XIV of the Constitution?

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III Petition for Writ of Certiorari

Darrell K. Saunders and Vinita K. Saunders respectfully petition this Court for a Writ of Certiorari to review the Judgement of the Virginia Supreme Court and it's dismissal of the case without a hearing.

IV Jurisdiction

The Petitioners invoke this Court's jurisdiction under 28 U.S.C. §1257, having timely filed this petition for a Writ of Certiorari within the time limit allowed.

V Constitutional Provisions

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VI Statement of the Case

A Foreclosure was held on a property owned by Ethel Benton but the residents are her daughter, Vinita Saunders and son in law, Darrell Saunders. An unlawful detainer action was originally filed in the Chesapeake General District Court by representatives of Deutsche Bank. Evidence was presented by the defendant showing the Substitute Trustee for Deutsche Bank did not follow the State Codes for filing accurate information and notifications. The specific code stated the Substitute trustee must file an instrument of appointment prior to exercising any instrument. Since the instrument of appointee was not recorded until just before the foreclosure sale then all actions taken prior are not valid. The Appointment letter sent to the defendant and also recorded originally with the Clerk's Office had been removed by an Appointment letter issued to Equity Trustees on November 10, 2015. The current Appointment letter from Deutsche Bank was dated June 6, 2016 and recorded in the Clerk's Office on July 12, 2016. All actions taken by the Trustee prior to July 12, 2016 are not valid according to Va. Code § 55-59 Item Number 9 "The instrument of appointment shall be recorded in the office of the clerk wherein the original

deed of trust is recorded PRIOR to or at the time of recordation of any instrument in which a power, right, authority or duty conferred by the original deed is exercised". The trustee never gave the defendant the updated appointment letter before the foreclosure. With the amount of fraud that has occurred, no person should deal with a firm unless proof is given that the firm is legitimate.

The days prior to the Foreclosure, Darrell Saunders talked with the trustee representative Travis Salisbury notifying him that a Bankruptcy had been filed. Mr. Salisbury said "The Foreclosure sale would be stopped". In August the defendants received a notice that the sale had actually taken place.

Another call was placed to Mr. Salisbury in which he said "I figured you had no other alternatives and thus proceeded with the sale". In the later trial it was shown that the defendants could obtain a loan and thus purchase the house since they were not on the loan given to Ethel Benton, the owner of the property. The defendant was never given an opportunity to save the house.

A continuance was granted at the first hearing by the Judge on advice for defendant get counsel. Attorney Karan Carnegie represented the defendants to ask to have the trial moved from General District Court to the Circuit Court. Under advice from Karen Carnegie, the defendants did not appear for the second hearing due to her request to move the case. In lieu of Ms. Carnegie's request the Judge ruled in favor of the Plaintiff.

Ms. Carnegie could not represent the defendants at the Circuit Court trial due to Maternity Leave and the defendants could not locate counsel that performed litigation on Mortgage issues. The defendants represented themselves at trial. The defendants provided to the Plaintiff's attorney the Plaintiff's Interrogatories answers, but not in the time frame requested. On July 16, 2016 an email was sent to the Attorney for the Plaintiff saying that the trustee had a recording stating all calls were recorded and to have a copy for the Defendant which was never provided. Defendant asked the Judge to rely on documents submitted at the general District Court but the Judge refused. Defendant requested for the Judge to rely on the information provided by the Plaintiff for defense and the Judge refused. The defendant

requested to rely on Virginia State Codes and the Judge refused. The defendant requested an extension so that the Plaintiff could review the answers to the Interrogatories and the Judge refused.

The Judge ruled in favor of the Plaintiff and the Defendant requested an appeal at which time the Judge said to appeal to the Virginia Supreme Court.

The Plaintiff presented a Motion for Summary Judgement which contained a reference to *Gemmell v. Svea Fire & Ins. Co.*, 166 Va.95,100; 184S.E. 457,459(1936) state states according to the Plaintiff that the case asserts the appellate proceeding is a continuation of the General district Court proceedings. The Judge erred in not allowing the Defendant to rely on the documents presented to the General District court. The Defendant requested to use records of the Clerk or Court. The Plaintiffs Motion for Summary Judgement states that according to Va. Code § 8.01-389 all documents recorded among the records and certified by the Clerk of Court are evidence of the validity of the matters asserted. The Judge erred in not allowing the defendant to use both the Plaintiffs Motion for Summary which already contained the Substitute Trustee assignment showing it was

not recorded prior to actions being taken or allowing the records of the Clerk of Court to be used. The Defendant presented the appropriate Virginia Code to the Judge, Va. Code § 55-59, which states “The instrument of appointment shall be recorded in the office of the clerk wherein the original deed of trust is recorded PRIOR to or at the time of recordation of any instrument in which a power, right, authority or duty conferred by the original deed is exercised”, showing all actions taken by the Trustee should have been voided and thus the foreclosure overturned. The Judge erred in not allowing a Virginia Code to be referenced.

The Defendant presented the appropriate Virginia Code to the Judge, Va. Code § 55-58.1, Section A, which states the trustee must be a resident of Virginia. The Trustee appointment letter is to a resident of Pennsylvania and employed by a law firm shown to be in Maryland. The Judge erred in not allowing a Virginia Code to be referenced.

The Defendant presented the appropriate Virginia Code to the Judge, Va. Code § 55-59.2, which states in Section 1, that the foreclosure sale must

be advertised by the trustee once a week for two weeks prior to the foreclosure sale. Section E states that "Failure to comply with the requirements for advertisement contained in this section shall render a sale of the property VOIDABLE by the court The Judge erred in not allowing a Virginia Code to be referenced.

In the District Court references were made that the trustee told the defendants the foreclosure sale would be stopped. The defendant asked for the recording of the phone call and never received it. The Judge erred in not continuing the case until the Plaintiff provided the defendant with the recordings proving the trustee never gave the defendant a chance to provide a bid and purchase the property.

VII Reasons for Granting the Writ

The Appeal to the Supreme Court of Virginia was mailed and stamped being within Rule 5:5(c) of the Code of Virginia. The package was mailed on the correct date but due to the time of day and the last truck leaving the facility, Fed Ex would not stamp the package with an overnight delivery label as requested. The package was sent having the first business date

allowed by Fed Ex as possible. The Appeal would have arrived the same day as delivered regardless of whether it was stamped Next Day or 2nd Day. A request for filing an extension was sent to the Supreme Court of Virginia as requested by the Court Clerk. The Supreme Court dismissed the petition even though it was stamped on a date per the Rules of the Court and delivered the first business day available.

This case presents the Court with an opportunity to give Darrell and Vinita Saunders the due process of law to not be deprived of their property per Amendment XIV of the Constitution

VIII Conclusion

The petitioners, Darrell and Vinita Saunders respectfully requests the Court issue a Writ of Certiorari to review the Judgement of the State of Virginia. If deemed by the Court, Remand of the case to the Supreme Court of Virginia is appropriate.

Dated this 13th day of September, 2019

Respectfully

Darrell K Saunders

Vinita K Saunders

2410 Haywood Ave

Chesapeake, Virginia 23324

757-652-8828

Email:

darrellksaunders@gmail.com

IX Appendix

Lower Court Ruling

VIRGINIA

In the Supreme Court of Virginia held at the Supreme Court Building in
the City of Richmond

Darrell Saunders, et al., Appellants,

Against Record No. 181509

Circuit Court No. CL17004357-00

Deutsche Bank National Appellee,

Trust Company, as Trustee, etc,

From the Circuit Court of the City of Chesapeake

Finding that the appeal was not perfected in the manner provided by law
because the appellants failed to timely file the petition for appeal, the Court
dismisses the petition filed in the above-styled case, Rule 5:17(a)(1).

Teste:

Douglas B. Robelen, Clerk

“s/”

IX Appendix

Lower Court Ruling

VIRGINIA

In the Circuit Court for the City of Chesapeake

Deutsche Bank National Trust Company)

As Trustee For CDC Mortgage Capital Trust)

2003-HE3, Mortgage Pass-Through Certificates)

Series 2003-HE3) Circuit Court

N No. CL17004357-00

Plaintiff/Appellee)

v.)

Vinita Saunders and Unknown Occupants)

Defendants/Appellants)

FINAL ORDER

This matter came before the Court on the Motion for Summary Judgement filed by Plaintiff/Appellee Deutsche Bank National Trust Company, as Trustee for CDC Mortgage Capital Trust 2003-HE3, Mortgage Pass-Through Certificates, Series 2003-HE3 ("Plaintiff"), by counsel. It appearing to the Court that Plaintiff is entitled to the requested relief it is accordingly hereby ordered, adjudged, and decreed that:

- A. Plaintiff's Motion for Summary Judgement is Granted; based on failure of defendants to file responsive pleading & to file an answer to request for Admissions. "s/"
- B. Plaintiff is awarded a judgement for possession of the property that is the subject of this unlawful detainer action, commonly known as 2410 Haywood Avenue, Chesapeake, Virginia 23324 (the property);
- C. Upon receipt of a written request from Plaintiff's counsel, the Clerk of the Circuit Court shall issue a writ of possession in execution of this judgement pursuant to Virginia Code § 8.01-470 and -471;
- D. Upon receipt of a proper request, the Circuit Court Clerk of Court or General District Court Clerk of Court, whichever is holding it, shall release any appeal bond posted by Defendant to the person that tendered it;

E. The Circuit Court Clerk of the Court shall forward a copy of this order to all parties of record; and

F. This order is final.

Entered this 22 day of August, 2018

Judge Brown

Circuit Court Judge

“s/”

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHESAPEAKE

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR CDC
MORTGAGE CAPITAL TRUST 2003-HE3,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2003-HE3,

Plaintiff / Appellee.

v.

VINITA SAUNDERS AND UNKNOWN
OCCUPANTS,

Defendants / Appellants.

Case No. CL17004357-00

FINAL ORDER

This matter came before the Court on the Motion for Summary Judgment filed by Plaintiff/Appellee Deutsche Bank National Trust Company, as Trustee for CDC Mortgage Capital Trust 2003-HE3, Mortgage Pass-Through Certificates, Series 2003-HE3 ("Plaintiff"), by counsel. It appearing to the Court that Plaintiff is entitled to the requested relief it is accordingly hereby

ORDERED, ADJUDGED, AND DECREED that:

A. Plaintiff's Motion for Summary Judgment is GRANTED; *based on failure of defendants to file any, & to file an Answer to Request for Admissions, 8/22/18*

responsive pleading
B. Plaintiff is awarded a judgment for possession of the Property that is the subject of this unlawful detainer action, commonly known as 2410 Haywood Avenue, Chesapeake, Virginia 23324 (the "Property");


C. Upon receipt of a written request from Plaintiff's counsel, the Clerk of the Circuit Court shall issue a writ of possession in execution of this judgment pursuant to Virginia Code § 8.01-470 and -471;

1/3

- D. Upon receipt of a proper request, the Circuit Court Clerk of Court or General District Court Clerk of Court, whichever is holding it, shall release any appeal bond posted by Defendant to the person that tendered it;
- E. The Circuit Court Clerk of the Court shall forward a certified copy of this Order to all parties of record; and
- F. This Order is **FINAL**.

Entered this 22 day of August, 2018.


Circuit Court Judge

CERTIFIED TO BE A TRUE COPY
OF THE RECORD IN MY CUSTODY
ALAN P. KRASNOFF, CLERK
CIRCUIT COURT, CHESAPEAKE, VA
BY: 
DEPUTY CLERK

*See attached
endorsement*

ASK FOR THIS:

all m

Andrew B. Pittman (VSB No. 47295)
Allison Melton (VSB No. 75192)
TROUTMAN SANDERS LLP
222 Central Park Avenue, Suite 2000
Virginia Beach, Virginia 23462
Telephone: (757) 687-7500
Facsimile: (757) 687-7510
E-mail: andrew.pittman@troutmansanders.com
E-mail: allison.melton@troutmansanders.com
*Co-Counsel for Plaintiff/Appellee Deutsche Bank
National Trust Company, as Trustee for CDC Mortgage
Capital Trust 2003-HE3, Mortgage Pass-Through
Certificates, Series 2003-HE3*

JB
8/22/18

SEEN AND _____:

No longer representing D: JB
Karen Carnegie, Esq.
308 George Washington Hwy N, Suite 4
Chesapeake, VA 23323

SEEN AND _____:

No appearance
Vinita Saunders
2410 Haywood Avenue
Chesapeake, VA 23324

SEEN AND _____:

declined to sign
Darryl Saunders
2410 Haywood Avenue
Chesapeake, VA 23324

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Thursday the 15th day of August, 2019.*

Darrell Saunders, et al.,

Appellants,

against Record No. 181509
 Circuit Court No. CL17004357-00

Deutsche Bank National
Trust Company, as Trustee, etc.,

Appellee.

From the Circuit Court of the City of Chesapeake

On July 8, 2019 came the appellants, who are self-represented, and filed a motion
for stay in this case.

Upon consideration whereof, the Court denies the motion.

A Copy,

Teste:

By:

Douglas B. Robelen, Clerk

Deputy Clerk

FILED IN CLERK'S OFFICE
2019 SEP -9 AM 10:51
CHESAPEAKE CIRCUIT COURT
BY _____ D.C.