

No. \_\_\_\_\_

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**IN THE SUPREME COURT OF THE UNITED STATES**

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**WAYNE A. POWE AND REGINA Y. POWE,**

**Petitioners**

**v.**

**DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR  
RESIDENTIAL ASSET SECURITIZATION TRUST SERIES 2004-A7  
MORTAGE PASS-THROUGH CERTIFICATES 2004-G,**

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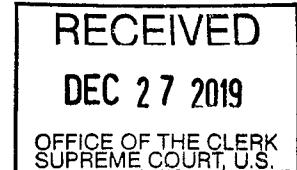
**Respondent**

**APPELLANTS' EMERGENCY MOTION FOR  
STAY UNDER 28 U.S.C. § 2101(F)**

COME NOW Petitioners Regina Y., Powe and Wayne A. Powe and file this Emergency Motion for Stay Under 28 U.S.C. 2101(f), and in support thereof would show the Court as follows:

**I. FACTS**

1. The U.S. District Court for the Eastern District of Texas entered a judgment against Petitioners on April 24, 2018. Petitioners appealed that judgment to the Fifth Circuit Court of Appeals. The Fifth Circuit affirmed the judgment of the Eastern District Court on October 1, 2019, and issued a mandate on October 23, 2019.



2. Petitioners plan to file a petition for writ of certiorari with the U.S. Supreme Court, which is due to be filed by December 30, 2019.

3. Prior to the appeal, the Eastern District Court issued an order dated November 29, 2018 staying enforcement of its judgment during any appeal under FRCP 62(b), conditioned on Petitioners posting a supersedeas bond. (See Exhibit A). The District Court entered a December 3, 2018 order amending the amount of the supersedeas bond to a cash bond in the amount of \$25,000.00 and ordering Petitioners to deposit \$2,800.00 into the register of the court during the appeal process. (Exhibit B). Petitioners posted the cash bond and have thereafter made every monthly deposit with the Eastern District Court.

4. Respondent Deutsche Bank has recently filed with the County Clerk in Collin County, Texas a notice of foreclosure sale, which states that a foreclosure sale of the subject real property of Appellants will be conducted on January 7, 2020. (See Exhibit C - R. Powe aff. ¶ 2 and Exhibit 1 thereto).

5. In response to the notice of foreclosure sale, on December 13, 2019, Petitioners filed in the Eastern District Court an Emergency Motion to Enforce Stay Suspending Enforcement of Judgment and Motion for Preliminary Injunction and for an Expedited Hearing on or Submission of Motion. In this motion, Petitioners sought an order from the District Court enforcing the Rule 62(b) stay and enjoining the January 7, 2020 foreclosure sale.

6. In response, Deutsche Bank took the position that a Rule 62(b) stay does not extend to a petition for writ of certiorari to the Supreme Court, and that the District Court did not have jurisdiction to determine Petitioners' motion. On December 20, the District Court ruled that it did not have jurisdiction to hear the motion. (Exhibit D).

7. Petitioners also had filed a motion in the Fifth Circuit seeking a stay. However, when Regina Powe called the Fifth Circuit on December 23, 2019 to request a hearing on the motion, she was told that the Fifth Circuit would not hear the motion because the case is closed. (Exhibit E).

8. Time is of the essence in this matter because the foreclosure sale is set for January 7, 2020.

## **II. AUTHORITY**

9. 28 U.S.C. 2101 (f) provides:

In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

10. Petitioners request that this Court enter a stay of enforcement of the District Court's April 24, 2018 judgment on the same conditions as the District Court's stay, requiring Petitioners to deposit a \$2,800.00 payment into the registry of the court each month. This stay should remain in effect until Petitioners exhaust their appeal remedies in the Supreme Court. Petitioners request that they be allowed to continue to make this monthly deposit in the District Court as they have been doing for the past 12 months. Petitioners made their December 2019 deposit in the District Court.

11. The requested stay will fully protect Deutsche Bank while Petitioners are seeking relief in the Supreme Court. Petitioners, on the other hand, Appellants will be irreparably harmed if the January 7, 2020 foreclosure sale of their residence occurs. *Johnson v. U.S. Dept. of Agriculture*, 734 F.2d 774, 789(11th Cir. 1984); *Alcaraz v. Wachovia Mortg. FSB*, 592 F.Supp.2d 1296, 1301(E.D.Cal. 2009)(Losing one's home through foreclosure is an irreparable injury.).

12. Petitioners further request that the Court enter an order enjoining Deutsche Bank from conducting a foreclosure sale of the subject property while the stay is in effect.

WHEREFORE, PREMISES CONSIDERED, Petitioners respectfully request that the Court enter a stay of enforcement of the District Court's April 24, 2018 judgment on the same conditions as the District

Court's stay with a \$2,800.00 monthly deposit to be made in the District Court, enter an order enjoining Deutsche Bank from conducting any foreclosure sales, with such stay and order remaining in effect until such time as Petitioners exhaust their appeal remedies with the Supreme Court. Petitioners request such other and further relief to which they may be justly entitled.

Dated December 27, 2019.

Respectfully submitted,

By: Regina Y. Powe  
Regina Y. Powe

By: Wayne A. Powe  
Wayne A. Powe

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#### CERTIFICATE OF CONFERENCE

On December 17, 2019 I conferred by phone with counsel for Appellees Philip W. Danaher regarding this motion. Mr. Danaher stated that he is opposed to the foregoing motion.

Regina Y. Powe  
Regina Y. Powe

**CERTIFICATE OF SERVICE**

I certify that on the 27<sup>th</sup> day of December, 2019, I served the foregoing instrument via regular mail to the following:

**Mackie Wolf Zientz and Mann, P.C.**

Mark D. Cronenwett

Philip W. Danaher

14160 North Dallas Parkway. Suite 900

Dallas, TX 75254

214-635-2650

214-635-2686 (Fax)

By: Regina Y. Powe  
Regina Y. Powe