

CAUSE NO. 01-23-00575-CV

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	FILED IN
IN THE COURT OF APPEALS	1st COURT OF APPEALS
For The First Court Of	HOUSTON, TEXAS
Appeals District Eastland, Texas	9/20/2023 9:20:36 AM
	DEBORAH M. YOUNG
	Clerk of The Court

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LANA M STRANGE  
ROBERT F STRANGE  
*Appellant*

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY,  
AS TRUSTEE, IN TRUST FOR REGISTERED HOLDERS OF LONG BEACH  
MORTGAGE LOAN TRUST 2004-4, ASSET-BACKED CERTIFICATES,  
SERIES 2004-4  
*Appellee*

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ON APPEAL FROM HARRIS COUNTY COURT AT LAW 1  
CAUSE NO. 1201046

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**MOTION TO DISMISS APPEAL FOR MOOTNESS**

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/s/ Michael Weems

Dominique Varner TBA #00791182

Email: dvarner@hwallp.com

Anthony Garcia TBA #24091639

Email: agarcia@hwa.com

Michael Weems TBA #24066273

Email mlw@hwa.com

HUGHES WATTERS ASKANASE, LLP

1201 Louisiana Street, 28<sup>th</sup> Floor

Houston, Texas 77002

(713) 759-0818 - Telephone

(713) 759-6834 - Facsimile

ATTORNEYS FOR DEUTSCHE BANK

NATIONAL TRUST COMPANY,

AS TRUSTEE, IN TRUST FOR REGISTERED

HOLDERS OF LONG BEACH MORTGAGE

LOAN TRUST 2004-4, ASSET-BACKED

CERTIFICATES, SERIES 2004-4

## APPELLEE’S MOTION TO DISMISS FOR MOOTNESS

Appellee Deutsche Bank National Trust Company, as Trustee, in the Trust for Registered Holders of Long Beach Mortgage Loan Trust 2004-4, Asset-Backed Certificates, Series 2004-4 (“Deutsche Bank”) moves to dismiss this appeal for mootness and would show as follows:

### FACTS SUPPORTING MOOTNESS

1. On February 20, 2023, the Justice Court Precinct 5, Place 2 in Cause No. 225200415232 granted judgment to Deutsche Bank possession of property 5531 Cedar Creek Drive Houston, TX 77056 (“Property”). **Ex. A – Feb 2023 Judgment.**

2. Appellants appealed the judgment to County Court.

3. On July 6, 2023, the Harris County Court at Law No. 1 in Cause No. 1201046 granted judgment to Deutsche Bank for possession of the Property. The Judgment further stated that to supersede the judgment, Appellants would have to post an \$80,000 bond. **Ex.**

**B – July 2023 Judgment.**

4. Appellants appealed the Judgment but did not post the bond.

5. On September 18, 2023, Appellants were evicted from the Property.

6. This appeal is now moot.

### APPLICABLE LAW

7. See, e.g., *Richardson v. Daka Invs., LLC*, 2021 Tex.App.LEXIS 8242 (Oct. 2021):

A case becomes moot when there ceases to be a justiciable controversy between the parties. *State ex rel. Best v. Harper*, 562 S.W.3d 1, 6 (Tex. 2018) (op. on reh'g). If a supersedeas bond is not filed, the judgment in a forcible entry and

detainer action may be enforced and a writ of possession may be executed, evicting the defendant from the property. *Brigandi v. American Mortg. Inv. Partners Fund I Trust*, No. 02-16-00444-CV, 2017 Tex. App. LEXIS 3544, 2017 WL 1428726, at \*3 (Tex. App.—Fort Worth Apr. 20, 2017, pet. dism'd) (per curiam) (mem. op.). The failure to supersede the judgment may render the appeal moot. *Id.* A forcible entry and detainer appeal becomes moot upon an appellant's eviction from the property unless the appellant asserts a potentially meritorious claim of right to current possession of the property or unless damages or attorney's fees remain at issue. *Gillespie v. Erker*, No. 02-20-00331-CV, 2021 Tex. App. LEXIS 1388, 2021 WL 733084, at \*1 (Tex. App.—Fort Worth Feb. 25, 2021, no pet.) (mem. op.).

8. Appellants are no longer in possession of the Property and did not supersede the county court's judgment granting Deutsche Bank possession.

9. "A judgment of a county court may not under any circumstances be stayed pending appeal unless, within 10 days of the signing of the judgment, the appellant files a supersedeas bond in an amount set by the county court." Tex. Prop. Code Ann. § 24.007; *Mitchell v. Wilmington Sav. Funds Soc'y, FSB*, No. 02-18-00089-CV, 2018 Tex. App. LEXIS 7918, 2018 WL 4626396, at \*1 (Tex. App.—Fort Worth Sept. 27, 2018, no pet.) (mem. op.).

10. As Appellants failed to post bond, they have no basis to argue they were entitled to any stay of the judgment granting Deutsche Bank possession of the Property. Accordingly, they can advance no potentially meritorious claim as the county court already adjudicated possession in Deutsche Bank's favor and there was no bond post to supersede said judgment.

11. This appeal is now moot.

Wherefore, premises considered, Deutsche Bank prays the Court dismiss this appeal as moot and for such further and other relief as the Court deems just.

Respectfully Submitted,

Hughes Watters Askanase, LLP

/s/ Michael Weems

State Bar No. 24066273

1201 Louisiana, 28<sup>th</sup> Fl

Houston, Texas 77002

Telephone: (713) 328-2822

[mlw@hwa.com](mailto:mlw@hwa.com)

**ATTORNEY FOR DEFENDANT  
DEUTSCHE BANK**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Motion was served on the below parties this 19<sup>th</sup> day of September, 2023.

Robert C. Vilt  
Vilt and Associates, P.C.  
5117 Richmond Ave Ste 1142  
Houston, TX 77056

/s/ Michael Weems  
Michael Weems

# EXHIBIT "A"

Case Number: 225200415232

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS  
TRUSTEE, IN TRUST FOR REGISTERED HOLDERS OF  
LONG BEACH MORTGAGE LOAN TRUST 2004-4, ASSET-  
BACKED CERTIFICATES, SERIES 2004-4

Represented by: Anthony Garcia

Represented by: Vilt, Robert C.; Vilt, Robert C.

Plaintiff

vs.

Lana M Strange; Robert F Strange

Defendant

Leased Premises: 5531 Cedar Creek Drive Houston TX 77056

Plaintiff(s)  Present  Not Present at Trial  
Defendant(s)  Present  Not Present at Trial

On 02/20/2023 the court heard the above-numbered and styled cause.

**DEFAULT JUDGMENT FOR PLAINTIFF** *Possession only*

The Plaintiff, being present, announced ready for trial. The Defendant, although having been duly cited and served with process, said citation with the officer's return thereon having been on file with the clerk of this court, failed to appear or answer in its behalf, and wholly made default. It is therefore decreed that judgment is entered for the Plaintiff for possession of the above described premises, and further, that the Plaintiff have judgment against the Defendant(s) for \$ \_\_\_\_\_ as rent owed, plus \$ \_\_\_\_\_ as attorney fees, all costs of court, together with post-judgment interest at a rate of 7.5% per annum from the date of judgment until paid, for which let execution issue. No writ of possession will issue before **FEBRUARY 28, 2023**. The Defendant(s) appeal bond is set at: \$ \_\_\_\_\_.

**JUDGMENT FOR PLAINTIFF** *Possession only*

The Plaintiff and Defendant, being present, announced ready for trial. The court, having heard the evidence, determined judgment is for the Plaintiff for possession of the above described premises. It is therefore decreed that judgment is entered for the Plaintiff for possession of the above described premises, and further, that the Plaintiff have judgment against the Defendant(s) for \$ -0- as rent owed, plus \$ -0- as attorney fees, all costs of court, together with post-judgment interest at a rate of 7.5% per annum from the date of judgment until paid, for which let execution issue. No writ of possession will issue before **FEBRUARY 28, 2023**. The Defendant(s) appeal bond is set at: \$ 100.

**JUDGMENT FOR DEFENDANT**

The Plaintiff and Defendant, being present, announced ready for trial. The court, having heard the evidence, determined judgment is for the Defendant for possession of the above described premises. It is therefore decreed that the Plaintiff take nothing and that judgment is entered for the Defendant(s) for \$ \_\_\_\_\_ as attorney fees, all costs of court, together with post-judgment interest at a rate of 7.5% per annum from the date of judgment until paid, for which let execution issue. The Plaintiff's appeal bond is set at \$500.00.

The court ORDERS that this case is **DISMISSED**:

- due to lack of jurisdiction.
- as Plaintiff did not appear.
- on motion of the  Plaintiff  Defendant.
- by agreement of the parties and that each side bears their cost incurred.

**The court denies all other relief not granted above.**

You may appeal this judgment by filing a bond, making a cash deposit, or filing a Statement of Inability to Afford Payment of Court Costs within 5 days after this judgment was signed. See Texas Rule of Civil Procedure 510.9(a).

If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting [www.texaslawhelp.org/exempt-property](http://www.texaslawhelp.org/exempt-property). / Si usted es una persona física (y no una compañía), su dinero o propiedad pudieran estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio [www.texaslawhelp.org/exempt-property](http://www.texaslawhelp.org/exempt-property).

Signed: 02/20/2023



*Bob Wolfe*

Justice of the Peace Precinct 5, Place 2

**Payment of Rent during the Pendency of Any Appeal:**

- The amount of rent to be paid each rental pay period during the pendency of any appeal is \$ \_\_\_\_\_.
- A portion of the rent is payable by a government agency, and the amount of rent to be paid each rental pay period during the pendency of any appeal is: \$ \_\_\_\_\_ by Defendant and \$ \_\_\_\_\_ by government agency.

Lana M Strange; Robert F Strange  
5531 Cedar Creek Drive  
Houston TX 77056

### NOTICE TO PARTIES INTENDING TO APPEAL

#### RIGHT TO REQUEST AN APPOINTMENT OF ATTORNEY

If you intend to appeal the Judgment of the Justice Court by filing a sworn statement of inability to pay, you have the right to request the appointment of an attorney to represent you in the proceedings in the County Civil Courts at Law. You may exercise this right after the sworn statement has been approved and the appeal perfected. You must make your request for the appointment of an attorney, in writing, to the County Civil Court at Law in which the appeal is filed.

An appointed attorney's representation is in the trial de novo in County Civil Court at Law. The County Civil Court at Law may terminate the representation for cause.

#### APPEAL BY PAUPER'S AFFIDAVIT OR SURETY BOND

You may appeal the judgment of the Justice Court by posting cash, posting a surety bond, or by filing a sworn statement of inability to pay no later than the 5th day after the date judgment is signed.

If you are the tenant and file a sworn statement of inability to pay or a surety bond to appeal an eviction for nonpayment of rent, you must pay the initial deposit of rent into the registry of the Justice Court within five (5) days of the date you file the sworn statement or surety bond. The rent must be paid by cashier's check or money order payable to the "Justice of the Peace."

**Your failure to pay the first deposit of rent into the Justice Court registry by the required date and time may result in the issuance of a writ of possession without a hearing.** Because the appeal has been perfected even though a writ of possession has issued, the transcript and original papers will be forwarded to the County Civil Court at Law for trial de novo.

#### RIGHT TO CONTEST PORTION OF RENT PAID BY GOVERNMENT AGENCY

If a government agency is responsible for all or a portion of the rent, either party may contest the determination of the portion of rent to be paid by the tenant. A contest must be filed with the Justice Court on or before the 5th day after the date the judgment in the eviction proceeding is signed. Not later than the 5th day after the contest is filed, the Justice Court will notify the parties and hold a hearing to determine the amount to be paid by the tenant under the terms of the rental agreement and applicable laws and regulations. If the tenant object to the Justice Court's ruling on the portion of rent to be paid, the tenant is required to pay only the portion that the tenant claims is owed until the issue is heard in the County Civil Court at Law. During the appeal, the tenant or the landlord may file a motion with the County Civil Court at Law to reconsider the amount of rent that the tenant must pay into the Registry of the Court.



# EXHIBIT "B"

Cause No. 1201046

FJNJ  
TRIAL  
6/30/23

**DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE, IN TRUST FOR REGISTERED HOLDERS OF LONG BEACH MORTGAGE LOAN TRUST 2004-4, ASSET-BACKED CERTIFICATES, SERIES 2004-4**

**IN THE COUNTY COURT**

**Plaintiff** §

§

**V.**

§

**AT LAW NO. 1**

§

**LANA M. STRANGE AND ROBERT F. STRANGE, JR.**

§

**AND ALL OTHER OCCUPANTS**

§

**Defendants**

§

**HARRIS COUNTY, TEXAS**

## JUDGMENT

On this day, came on to be heard the above entitled and numbered cause herein DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE, IN TRUST FOR REGISTERED HOLDERS OF LONG BEACH MORTGAGE LOAN TRUST 2004-4, ASSET-BACKED CERTIFICATES, SERIES 2004-4, is Plaintiff, LANA M. STRANGE AND ROBERT F. STRANGE, JR. AND ALL OTHER OCCUPANTS are Defendants; when came the Plaintiff appeared and announced ready for trial. Defendants did appear. The Court, after considering the pleadings and fully hearing the sworn evidence finds for the Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Defendants are adjudged guilty of forcible detainer and that the Plaintiff, DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE, IN TRUST FOR REGISTERED HOLDERS OF LONG BEACH MORTGAGE LOAN TRUST 2004-4, ASSET-BACKED CERTIFICATES, SERIES 2004-4 does have and recover of the Defendants LANA M. STRANGE AND ROBERT F. STRANGE, JR. AND ALL OTHER OCCUPANTS, possession of the following described

premises situated in the Harris County Court-at-Law, No. 1, HARRIS County, Texas, to wit: 5531 CEDAR CREEK DRIVE, HOUSTON, TX 77056 more particularly described as:

LOT THREE (3), IN BLOCK THIRTY (30) OF TANGLEWOOD, SECTION SIX (6), AN ADDITION IN HARRIS COUNTY, TEXAS ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 35, PAGE 26 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS.;


IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a Writ of Possession issue on or after the sixth day after entry of this judgment, to the proper officer commanding him/her to seize possession of the said described premises and deliver same to the Plaintiff and that an execution issue for removal of all personal property left and/or abandoned by Defendants remaining on the property;

You may appeal this judgement by filing a bond, making a cash deposit, or filing a Statement of Inability to Afford Payment of Court Costs within 5 days after this judgement was signed. See Texas Rule of Civil Procedure 510.9(a).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the appeal bond is hereby set at \$80,000.00.

This judgment is final, disposes of all claims and parties, and is appealable.

Entered this \_\_\_\_\_ day of 7/6/2023 2023

  
THE HONORABLE PRESIDING JUDGE  
HARRIS COUNTY COURT-AT-LAW NO. 1

FILED  
07/06/2023 11:51:12 AM  
Teneshia Hudspeth  
County Clerk  
Harris County, Texas  
donna.brodell

APPROVED & ENTRY REQUESTED:

HUGHES, WATTERS & ASKANASE, L.L.P

By 

Dominique Varner Email: dvarner@hwa.com TBA #00791182

Anthony A. Garcia Email: [agarcia@hwa.com](mailto:agarcia@hwa.com) TBA #24091639

**HUGHES, WATTERS & ASKANASE, L.L.P.**

Total Plaza

1201 Louisiana, 28th Floor

Houston, Texas 77002

(713) 759-0818 Telephone

(713) 759-6834 Telecopier

ATTORNEY FOR PLAINTIFF

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE, IN TRUST FOR  
REGISTERED HOLDERS OF LONG BEACH MORTGAGE LOAN TRUST 2004-4, ASSET-  
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