

NO. 01-23-00575-CV

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IN THE COURT OF APPEALS  
FOR THE FIRST DISTRICT OF TEXAS

FILED IN  
1st COURT OF APPEALS  
HOUSTON, TEXAS  
1/10/2024 6:32:36 PM

DEBORAH M. YOUNG  
Clerk of The Court

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

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 NO. 1  
TRIAL COURT CAUSE NO. 1201046

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APPELLANTS' REPLY TO APPELLEE'S BRIEF

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January 10, 2024

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## **APPELLANTS' REPLY TO APPELLEE'S BRIEF**

Appellants Lana M. Strange and Robert F. Strange hereby file their Reply to Appellee's Brief pursuant to Rule 38.3 of the Texas Rules of Appellate Procedure and respectfully show the Court as follows:

1. Appellee claims that since it has evicted Appellants from the subject property this appeal is moot – not true. Why? Because Appellee violated the law in the process of evicting Appellants and, as such, the eviction was wrongful. Since the eviction was wrongful, Appellants are entitled to regain possession of the subject property and Appellee be held accountable for its misconduct.

2. Appellee claims that it “ ... decided to seek a comfort order first by filing an emergency motion for relief in the bankruptcy court on or about August 1, 2023.” That was a smart move on Appellee's part; however, it does not excuse nor cover up the fact that Appellee had actual knowledge that Appellant Robert F. had filed for bankruptcy protection on July 11, 2023 in Case No. 23-32598 (Chapter 13) yet Appellee's legal counsel cavalierly contacted the Harris County Court Clerk on July 12, 2023, paid a \$130.00 fee, and requested that a writ of possession be issued against Appellants in defiance of the automatic stay provision of the federal bankruptcy code – this material fact is undisputed.

3. The instant case hinges on this Court's interpretation of 11 U.S.C. 362(b)(22). Appellants assert that they are protected under the automatic stay provision of the federal bankruptcy code because of the plain language of 11 U.S.C. 362(b)(22) which requires that "... the debtor reside as a tenant **under a lease or rental agreement ...**" - it is undisputed that no lease or rental agreement exists between the parties. Appellee asserts that Appellants are not protected under the automatic stay provision of the federal bankruptcy code because of the language in the Deed of Trust between the parties which makes Appellants classified as tenants- at-sufferance if they stay in possession of the subject property after a foreclosure sale. Appellee strains the bankruptcy code by claiming that the word "tenant" in "tenant-at-sufferance" is good enough to strip Appellants' of their automatic stay protection – not true. 11 U.S.C 362(b)(22) is artfully crafted to exclude tenants in a typical landlord-tenant relationship from being protected while at the same time protecting prior owners who lost their property as the result of a foreclosure sale. These are two distinct sets of tenants who are intended to be treated very differently. As such, Appellee violated the automatic stay provision of the federal bankruptcy code as well as Appellants' due process rights when Appellee wrongfully evicted Appellants under the authority of a writ of possession which was illegally obtained.

## **PRAYER**

Appellants respectfully request that the Court grant Appellants' appeal and remand this matter to trial court with the instruction that: (1) the judgment rendered on July 06, 2023 be deemed void ab intio, (2) Appellants' be awarded the subject property, and (3) the trial court set a hearing to determine what further damages Appellants are entitled to as well as for such other and further relief, both at law and in equity, to which Appellants are entitled.

Respectfully submitted,  
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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served upon Appellee through its counsel of record on January 10, 2024.

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/s/ Robert C. Vilt  
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