

No. 01-23-00606-CV

IN THE FIRST COURT OF APPEALS
HOUSTON, TEXAS

FILED IN
1st COURT OF APPEALS
HOUSTON, TEXAS
1/22/2024 2:27:17 PM
DEBORAH M. YOUNG
Clerk of The Court

Kirk McCloud and Letina McCloud, *Appellants*

v.

Deutsche Bank National Trust Company, as Trustee, in trust for
registered holders of Long Beach Mortgage Loan Trust 2006-5, Asset-
Backed Certificates 2006-5, and Select Portfolio Servicing Inc., *Appellees*

From the 165th Judicial District Court of Harris County, Texas
Trial Court Cause No. 2022-29461

Appellants' Motion for Rehearing

Appellants KIRK MCCLOUD and LETINA MCCLOUD hereby ask the Court to
reconsider its dismissal of this Appeal for want of prosecution and reinstate the appeal
so they may pay the Harris County District Clerk for the record needed for this Appeal.
The dismissal occurred through no fault of the Appellants, as their attorney has been
dealing with his father's medical issues and the procedures in place for his staff to
address service email from courts failed, which have since been corrected.

1. Benjamin K. Sanchez, counsel for Appellants, has been dealing with major health conditions of his father, who has been in and out of the hospital and moved to a nursing home. Mr. Sanchez's father is dying due to lung and bladder cancers and other serious issues involving his heart, kidney, and blood. During the time of the Court Clerk's October 2023 letter, Mr. Sanchez was with his father at HCA-North Cypress hospital. Then, during the time of the Court Clerk's November 2023 letter, Mr. Sanchez was with his father at Houston Methodist-Willowbrook hospital. Mr. Sanchez's father is now in a nursing home undergoing palliative care and dialysis, as he is not eligible for any further medical procedures or surgeries to save or prolong his life. Mr. Sanchez and his father have been informed and understand that it is just a matter of time before his condition worsens to the point of needing hospice care and then passing.

2. Mr. Sanchez never personally saw the Clerk letters. He would have seen to it that the records were ordered and paid and he been made aware of Clerk letters. Mr. Sanchez does have a team at his firm, but the person responsible for handling receipt and recording of the service emails at the time failed in this case. Mr. Sanchez terminated that legal assistant earlier this month based on other errors, as Mr. Sanchez did not know about the errors in this case yet. Mr. Sanchez has instituted a back-up plan for service emails so that they go through a legal assistant but then reviewed daily by the assigned paralegal.

3. Mr. Sanchez is prepared to order and pay for the clerk record and reporter record immediately and therefore asks the Court to reconsider its order of dismissal and reinstate this case to allow Appellants a 15-day opportunity to provide proof that they have paid for the records necessary to move this Appeal forward.

4. Appellants should not be punished for the mistake of their counsel's employee. Appellants and their counsel believe they have meritorious appeal and want the opportunity to continue with this Appeal. The failure to pay for the Clerk's Record was not intentional or done with conscious indifference to this Court.

5. For these reasons, Appellants ask the Court to reinstate this Appeal and allow them 15 days from the reinstatement to show proof of payment for the records herein.

Respectfully submitted,

/s/ Benjamin K. Sanchez

Benjamin K. Sanchez (TBN 24006288)

Douglas S. Alford (TBN 24132234)

Attorneys for Appellants,

Kirk McCloud and Letina McCloud

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Unsworn Declaration of Benjamin K. Sanchez

My name is Benjamin K. Sanchez. My date of birth is May 11, 1969, and my law firm's address is 150 W. Parker Rd., Ste. 201, Houston, TX 77076. I declare under penalty of perjury that I have read the facts in this document, and they are within my personal knowledge and true and correct. Executed in Harris County, Texas on January 22, 2024, by /s/ Benjamin K. Sanchez.

Certificate of Compliance

I certify that this document contains 704 total words, by /s/ Benjamin K. Sanchez

Certificate of Service

I certify that this document was served on Appellees' counsel via Texas E-Filing Manager on January 22, 2024, by /s/ Benjamin K. Sanchez

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Benjamin Sanchez on behalf of Benjamin Sanchez
Bar No. 24006288
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Envelope ID: 83649886
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Associated Case Party: Kirk McCloud

Name	BarNumber	Email	TimestampSubmitted	Status
Benjamin Sanchez	24006288	service@sanchezlawfirm.com	1/22/2024 2:27:17 PM	SENT

Associated Case Party: Letina McCloud

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Associated Case Party: Select Portfolio Servicing Inc.

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