THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Master-in-Equity

The Honorable Marvin H. Dukes, III

Case No. 2009-CP-07-04301

Daniel L. Junk and Christine H. Junk, ... Appellants,

v.

Mortgage Electronic Registration Systems, Inc., and John Does 1-5000,..... Respondents.

Case No. 2009-CP-07-05088

Bayview Loan Servicing, LLC, ... Respondent,

v.

Daniel Junk a/k/a Daniel L. Junk, Christine H. Junk and Oldfield Community Association, ... Defendants,

Of Whom Daniel L. Junk and Christine H. Junk are..... Appellants.

Motion to Dismiss Notice of Appeal filed February 20, 2013

Pursuant to Rules 240 and 269 of the South Carolina Appellate Court Rules, Respondents Mortgage Electronic Registration Systems, Inc. ("MERS"), Bayview Loan Servcing, LLC ("Bayview"), and CitiMortgage, Inc. ("CitiMortgage") (collectively "Respondents") file this Motion to Dismiss the Notice of Appeal filed on February 20,

2013, by Appellants Daniel L. Junk and Christine H. Junk ("the Junks"), in Appellate Matter No. 2011-192526. This Notice of Appeal seeks to appeal for a second time the order issued by the master on April 11, 2011 ("the April 11, 2011 Order"), in this matter. This is improper and warrants dismissal of the appeal.

This February 20, 2013 Notice of Appeal should be dismissed because this Court and the Supreme Court have previously held that the April 11, 20011 Order is not immediately appealable. Despite this ruling, the Junks seek to have this court address—for a second time—the master's April 11, 2011 Order in this second Notice of Appeal. See Notice of Appeal dated February 20, 2013 ("Appellants Daniel L. Junk and Christine H. Junk appeal the order of the Honorable Marvin H. Dukes, III dated April 11, 2011").[1] This Court should not allow such an appeal and should dismiss the appeal.

A brief recap of the background will assist the Court in its decision to dismiss the Junks' February 20, 2013 Notice of Appeal. As this Court is aware from the prior appeal, the master-in-equity issued an order on April 11, 2011, that, inter alia, (1) granted MERS' motion to dismiss the Junks' quiet title action without prejudice and (2) denied the Junks' motions to dismiss the underlying foreclosure action under Rules 12

[1] The Junks have admitted in the February 20, 2013 Notice of Appeal that that this is **the second appeal from the April 11, 2011 Order**. The Junks admit they filed the second Notice of Appeal because of the Supreme Court's denial of "Appellants Petition for a Writ of Certiorari to review this Court's dismissal of Appellants' **first** Notice of Appeal for this Order. . . ." Id. (emphasis added). Moreover, in a separate and independent appeal involving the Junks, these Respondents, and twenty-three additional parties that are not parties to this action, the Junks filed a motion that reiterated that this was the second appeal from the April 11, 2011 Order: "Appellants base their request for relief to amend on the Order of the South Carolina Supreme Court dated February 7, 2013 . . . denying Appellants' Petition for a Writ of Certiorari to review this Court's dismissal of Appellants' **first Notice of Appeal** in this matter, which was dismissed by this Court as not an appealable final judgment at that time on September 13, 2011 . . . ." See the Junks' "Petition to Amend Pending Initial Brief" in Appellate Matter No. 2012-210910. The Junks also acknowledged that this Court dismissed the first appeal of the April 11, 2011 Order "as not an appealable judgment." Id.

and 13, SCRCP. The April 11, 2011 Order did not address the substance of the Junks' quiet title claim or the Respondents' underlying foreclosure action. The effect of the April 11, 2011 Order was merely that the foreclosure issues would proceed to trial.

The Junks previously appealed the April 11, 2011 Order to this Court on May 12, 2011. See Notice of Appeal dated May 12, 2011 (setting forth that "Daniel L. Junk and Christine H. Junk appeal the order of the Honorable Marvin H. Dukes, III dated April 11, 2011"), attached hereto as Exhibit A. Respondents CitiMortgage, MERS, and Bayview filed a motion to dismiss the appeal, arguing that none of the master's rulings in the April 11, 2011 Order were immediately appealable. See Motion to Dismiss filed June 8, 2011, attached hereto as Exhibit B. The Junks disagreed and argued the master's April 11, 2011 Order was immediately appealable. See The Junks' Return to the Motion to Dismiss dated June 23, 2011 p. 1-2 ("The effect of the [April 11, 2011 Order] render (sic) each ruling immediately appealable . . .").

This Court ultimately found the April 11, 2011 Order was not immediately appealable and dismissed the appeal. See Order dated September 13, 2011. This Court dismissed solely on the issue of immediate appealability and on no other basis. This Court also denied the Junks' petition for rehearing of that order. See Order dated November 30, 2011.

The Junks then sought certiorari review of this Court's dismissal of the April 11, 2011 Order. Again, the Junks argued that the April 11, 2011 Order was immediately appealable. See Petition for a Writ of Certiorari dated December 30, 2011. Just as was the case before this Court, the sole issue before the Supreme Court was whether the April 11, 2011 Order was immediately appealable, and the merits of

the underlying quiet title and foreclosure actions were not at issue. See Return to the Junks' Petition for a Writ of Certiorari filed January 27, 2012. The Supreme Court denied the Junks' petition for a writ of certiorari and upheld this Court's dismissal based on appealability. See Order dated February 7, 2013.

In short, throughout the prior appeal of the April 11, 2011 Order, the Junks consistently argued to this Court and the Supreme Court that the order was a final decision and was immediately appealable.[2] Both this Court and the Supreme Court have rejected this position and previously ruled the April 11, 2011 Order is **not** immediately appealable.

The Supreme Court's decision to decline to exercise certiorari to review this Court's decision to dismiss the April 11, 2011 Order provides no basis to allow the Junks to maintain a new appeal of the April 11, 2011 Order. The Junks appear to reason that the Supreme Court's denial of certiorari has transformed the April 11, 2011 Order into an immediately appealable order. See The Junks' "Petition to Amend Their Initial Brief" filed in Appellate Matter No. 2012-210910. This argument lacks any merit. This Court and the Supreme Court limited their previous holdings to the immediate appealability of the April 11, 2011 Order.[3] The Supreme Court's denial of certiorari on the appealability issue does not alter that conclusion. The denial of

[2] To the extent that the Junks claim that the Supreme Court's decision to decline certiorari review of the April 11, 2011 Order constitutes a final ruling on the quiet title action, this argument lacks merit as set forth herein. Moreover, the Junks have, arguably, re-asserted the quiet title action as a counterclaim in the underlying foreclosure action. That foreclosure action and that counterclaim remain pending and un-ruled upon before the master. Thus, the Junks cannot reasonably assert the Supreme Court's action finally ruled on the dismissal of the quiet title action in the April 11, 2011 Order.

[3] Neither court addressed the underlying claims (i.e., the quiet title claim or the foreclosure action), which are still pending before the master.

certiorari only establishes finality in one regard—that the April 11, 2011 Order is not immediately appealable. It does not transform an otherwise not immediately appealable order into an order that is immediately appealable under Section 14-3-330 of the South Carolina Code.

Moreover, the master has not issued any ruling, order, or decision since the Supreme Court's denial of certiorari that impacts the April 11, 2011 Order and would allow immediate appellate review of that order at this time.[4] Therefore, the April 11, 2011 Order remains not immediately appealable. To hold otherwise would ignore our established precedent that unequivocally mandates that orders, such as the April 11, 2011 Order, are not immediately appealable and allow the Junks to circumvent our rules of practice. This Court should adhere to its original and well-reasoned dismissal of the Junks' appeal of the April 11, 2011 Order and dismiss this second appeal of that order.

Conclusion

Based on the foregoing, the Junks' February 20, 2013 Notice of Appeal should be dismissed.

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[4] If the master had issued a new ruling, then that new order, and **not** the April 11, 2011 Order, would be appealable to this Court.

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Columbia, South Carolina

April 12, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Master-in-Equity

The Honorable Marvin H. Dukes, III

Civil Action No.: 2009-CP-07-04301
Court of Appeals Tracking No.: 2011-92526

Daniel L. Junk and Christine H. Junk, ... Appellants,

v.

Mortgage Electronic Registration Systems, Inc., and John Does 1-5000,..... Respondents,

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Of Whom Daniel L. Junk and Christine H. Junk are..... Appellants.

Proof of Service

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Plaintiff, do hereby certify that I have served

all counsel in this action with a copy of the pleading(s) hereinbelow by all by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **Motion to Dismiss Notice of Appeal filed February 20, 2013**

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April 12, 2013