

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Marvin H. Dukes, III, Master in Equity

Case No. 2009-CP-07-04301

Daniel L. Junk and Christine H.
Junk,

Appellants,

v.

Mortgage Electronic Registration
Systems, Inc., and John Does 1-
5,000,

Respondents.

Case No. 2009-CP-07-05088

CitiMortgage, Inc.,

Respondent,

v.

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

Defendants,

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

Appellants,

-and-

Daniel L. Junk and Christine H. Junk,

Counterclaim Appellants,

v.

CitiMortgage, Inc.

Counterclaim Respondent.

-and-

Daniel L. Junk and Christine H. Junk,

Third-party Appellants,

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v.

Riley Pope & Laney, LLC , Heidi Carey, Esq.,
Roy Laney, Esq., T. Lowndes Pope, Esq.,
Bayview Loan Servicing, LLC, MERSCORP, Inc.,
Mortgage Electronic Registration Systems, Inc.,
Citi Master Servicing, Citigroup Global Markets
Realty Corp., Citigroup Mortgage Loan Trust, Inc.,
John Does 1-5,000, Jennifer Oakes, Robert G.
Hall, Security Connections, Inc., Krystal Hall,
Danielle Sterling, ABC Appraisal Group, Inc.,
Mark A. Ruplinger, Linda Heller, Harry Jones,
Colonial Coast Title Agency, Inc., Lawyers Title
Insurance Corporation, Corelogic, Inc. and American
Home Mortgage Holdings, Inc.

Third-party Respondents.

Supplemental Return to the Motion to Dismiss the Notice of Appeal filed February 20, 2013

Pursuant to Rules 240 of the South Carolina Appellate Court Rules, Appellants, Counterclaim Appellants and Third-party Appellants Daniel L. Junk and Christine H. Junk (“the Junks”) respectfully submit their Return to the Motion to Dismiss the Notice of Appeal filed February 20, 2013 (“Motion to Dismiss”).

Respondent/Counterclaim Respondent CitiMortgage Inc.’s (“CitiMortgage”) instant motion to dismiss should be denied. The motion is misleading the Court and is factually and procedurally incorrect.

In the Notice of Appeal dated March 23, 2012, initial Appellate Case No. 210910, that was consolidated in the instant appeal currently pending before this Court, the Junks specifically state that “*Daniel L. Junk and Christine H. Junk appeal the order of the Honorable Marvin Dukes, III, dated February 22, 2012, that, among other issues, finally decided Appellants’ Quiet Title action, Case No. 2009-CP-07-04301 which is currently pending Writ of Certiorari review in the South Carolina Supreme Court.*” The March 23 Notice of Appeal, was filed with a copy

of *both* the April 11 Order and the February 22 Order attached.

The April 11 Order consolidated the Junks' quiet title action with Bayview's foreclosure action. *See* Exhibit "A," p. 10, ln 6. It was and is the Junks' position that, because the April 11 Order directed the Junks to "assert whatever claims or issues they contend apply in their Answer to the Foreclosure Action's complaint[.]" which *at the time* was held by this Court and not to be immediately appealable, the subsequent dismissal of the Junks' quiet title action a second time in in the February 22 Order,¹ is now a final decision that is ripe for appeal as to the quiet title claims.

This Court's and the South Carolina Supreme Court's holding as to immediate appealability of the April 11 Order's first Notice of Appeal is not the issue before the Court in this Motion. The cases were consolidated; the April 11 Order was appealed and dismissed as not immediately appealable; rehearing was denied; Petition for Writ of Certiorari was filed; the Junks followed the direction of the court in its April 11 Order and brought their quiet title claim a second time along with other claims in their Answer to the foreclosure action; the court held a hearing on the quiet title claim a second time; and, in its February 22, 2012, Order that is pending appeal before this Court, dismissed the quiet title claim a second time without leave to amend. *Id*, FN 1. Notice of Appeal was filed a second time on March 23, 2012, and that Notice of Appeal included both the April 11 Order and the February 22 Order, specifically stating that the quiet title claim had now been decided and that it was a final appealable order as to the quiet title claims.; the Junks filed their Initial Brief in this Appeal addressing the April 11 Order quiet title decision; the Supreme Court denied Certiorari review; the Supreme Court filed the

¹ *See* Exhibit "A" February 22 Order dismissing Third-party Complaint, p.14, ¶D, "**D. The Junks' claim to quiet title to their property fails to state a claim for relief.** As previously discussed, the claim to quiet title fails to allege facts supporting a plausible inference that any of the Third-Party Defendants claim or might claim an interest in the Junks' property, and it is thus not sufficient to state a claim for relief against the Third-Party Defendants."

Remittitur; Respondents filed their Initial Return Brief; the Junks filed a Petition to Amend their Initial Brief and a third Notice of Appeal of the April 11 Order; the Court denies the Petition to Amend the Initial Brief. The third Notice of Appeal was filed for jurisdictional purposes because the remittitur to the lower court was without instructions and there are no further proceedings to be had in the quiet title action after its second dismissal by the court.

Third-party proceedings as directed by the court in the April 11 Order have been subsequently decided by the lower court – specifically, the dismissal of the Junks’ quiet title action in the February 22, 2012, Order (“February 22 Order”) – making the denial of the quiet title action appealable as a result. The second Notice of Appeal of the April 11 Order was dated March 23, 2012, and was filed and accepted by this Court with the Notice of Appeal of the February 22 Order dismissing the Third-party Complaint *which is the instant consolidated appeal*. The February 20 Notice of Appeal is the third filing of a Notice of Appeal of the April 11 Order. It was filed a third time on February 20, 2013, for jurisdictional purposes over the issues decided in the April 11 Order related to the quiet title action,² in conjunction with the Junks’ Petition to Amend their Initial Brief.

Respondents’ Motion to Dismiss misleads the Court in stating that the February 20 Notice of Appeal is the second filing of a Notice of Appeal of the April 11 Order. CitiMortgage admits that a new ruling after the April 11 Order would be appealable before this Court.

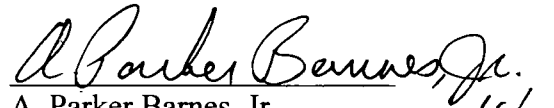
Respondent’s Motion, p. 5 FN4. *There has been a subsequent ruling on the issue* – the February 22 Order dismissing the quiet title a second time brought as a result of the court’s direction in the April 11 Order. To dismiss the February 20 Notice of Appeal would preclude the Junks

² In addition to dismissing the Junks’ quiet title action, the April 11 Order dismissed: i) the Junks’ Motion for MERS to Post a Bond; ii) the Junks’ Motion for Judgment on the Pleadings and Default Judgment; iii) the Junks’ Motions to Dismiss the Foreclosure pursuant to Rules 12(b)(6), 12(b)(8) & 13(a), SCRCP; and granted Bayview’s Motion to Substitute CitiMortgage as Plaintiff. *See Exhibit”B”*.

appellate review of the lower court's first decision denying the quiet title action.

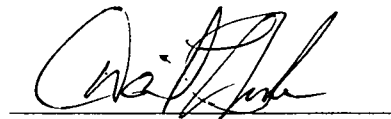
In conclusion, CitiMortgage's Motion to Dismiss the Notice of Appeal dated February 20, 2013 should be denied and the Junks request that the current deadlines to perfect the pending appeal be held in abeyance pending consideration of this Motion by the Court.

A.PARKER BARNES, JR., P.A.


A. Parker Barnes, Jr. (15/09)

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Signed on behalf of A. Parker Barnes, Jr.
with permission.

Columbus, Ohio
April 20, 2013

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

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

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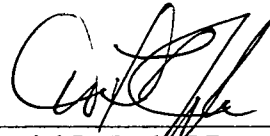
Bayview Loan Servicing, LLC, MERSCORP, Inc.,
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Hall, Security Connections, Inc., Krystal Hall,
Danielle Sterling, ABC Appraisal Group, Inc.,
Mark A. Ruplinger, Linda Heller, Harry Jones,
Colonial Coast Title Agency, Inc., Lawyers Title
Insurance Corporation, Corelogic, Inc. and American
Home Mortgage Holdings, Inc.

Third-party Respondents.

PROOF OF SERVICE

I certify that I have served the Appellants', Counterclaim Appellants' and Third-party Appellants' Supplemental Return to the Motion to Dismiss the Notice of Appeal dated February 20, 2013, on counsel listed below by depositing a copy of it in the United States Mail, postage prepaid, on April 20, 2013.

April 20, 2013



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{Service list on following page}

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