

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

68395

APPEAL FROM KERSHAW COUNTY  
Master-in-Equity

The Honorable Jeffery M. Tzerman

Case No. 2011-CP-28-0981

Appellate Case No. 2012-212971

CitiMortgage, Inc.,..... Respondent,

v.

Ellen R. Springer, Peggy S. Charles f/k/a Peggy S.  
Roberts, Defendants

Of whom Ellen R. Springer is.....

RECEIVED  
Appellant

MAY 15 2013

**Motion to Dismiss Appeal**

**SC Court of Appeals**

Pursuant to South Carolina Appellate Court Rules 240 and 260(a), Respondent CitiMortgage, Inc. (“CitiMortgage”) moves to dismiss the appeal filed by Appellant Ellen R. Springer (“Appellant”) on the ground that Appellant failed to comply with the Court’s letter dated April 9, 2013 (“the April 9 Letter”). This failure to comply with the Court’s directive merits dismissal of the appeal.

In the April 9 Letter, the Court noted deficiencies in Appellant’s Initial Brief and ordered her to correct those errors. See Letter dated April 9, 2013, attached hereto as Exhibit A. The deficiencies were violations of the Appellate Court Rules regarding briefing. Id. The Court did **not** authorize Appellant to re-write or alter the substance, arguments, or legal positions presented in her Initial Brief. Id. The Court simply

ordered Appellant to file the same Initial Brief again but with the requested corrections to the format of the brief.

Appellant failed to adhere to the Court's mandate in two ways. First, Appellant did not make the majority of the revisions required by the Court.<sup>1</sup> The second Initial Brief still is not properly paginated as required by Rule 208, SCACR. The second Initial Brief remains improperly titled. Thus, Appellant failed to comply with the April 9 Letter.

Second, and most importantly, Appellant did not limit her revisions to the items set forth in the letter. Appellant instead filed a completely new Initial Brief that differs greatly from the substance of her original Initial Brief. This second Initial Brief added new arguments, new facts, changed her legal position, makes new conclusions based on these changed positions, and eliminated some of the arguments presented in the original Initial Brief.<sup>2</sup> For instance, the original Initial Brief contained four argument sections. The second Initial Brief has eleven. The Statement of the Case and other factual sections are materially different, not just in presentation but also in substance. Throughout the second Initial Brief, new argument sections appear that were not presented in the original Initial Brief. In short, **Appellant filed a completely new brief that bears little or no resemblance to her original Initial Brief.** This is completely improper under the April 9 Letter and our Appellate Court Rules.

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<sup>1</sup> The Court requested three corrections. Appellant failed to make two of the three corrections.

<sup>2</sup> CitiMortgage had intended to list each of the changes in substance/argument/facts to show the differences in the original Initial Brief and the second Initial Brief. However, it soon became obvious that was a futile endeavor because the second Initial Brief has virtually nothing in common with the original Initial Brief.

Appellant's actions disregard the Court's April 9 Letter and Rules 208 and 267, SCACR. The rules provide that this Court "shall" dismiss an appeal when the Appellant fails to comply with the Appellate Court Rules. See Rule 260(a), SCACR. Appellant has failed to do so in this matter by ignoring the Court's mandates and instead filing a second Initial Brief that presents material differences from the original Initial Brief.<sup>3</sup> Appellant's failure to comply with the unequivocal directive in the April 9 Letter provides additional grounds for dismissal of the appeal. See, e.g., State v. Burton, 356 S.C. 259, 265 n. 5, 589 S.E.2d 6, 9 n. 5 (2003) ("A pro se litigant who knowingly elects to represent h[er]self assumes full responsibility for complying with substantive and procedural requirements of the law."). This appeal should be dismissed immediately.<sup>4</sup>

Based on the foregoing, Appellant has failed to comply with our Appellate Court Rules. Therefore, CitiMortgage requests dismissal of the appeal with prejudice.

*{Signature Page Follows}*


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<sup>3</sup> This is not the first time the Appellant has failed to comply with the Appellate Court Rules. As pointed out by CitiMortgage, Appellant failed to timely file her original Appellant's Brief in the first place. See Motion to Dismiss dated November 28, 2012, and Reply to Appellant's Return to Motion to Dismiss dated December 20, 2012. The Court denied CitiMortgage's request and allowed Appellant to file her original Initial Brief. Appellant should not be afforded another opportunity to submit her Initial Brief. Appellant's actions prove she cannot comply with the Appellate Court Rules as to submission of the Initial Brief.

<sup>4</sup> Should the Court decline to dismiss the appeal, CitiMortgage requests that, at a minimum, the Court issue an order advising which brief CitiMortgage should address in its Initial Respondents' Brief. As it currently stands, Appellant has filed two substantively different Initial Briefs with this Court. CitiMortgage is unsure as to which brief the Court will accept as the operative Initial Appellant's Brief. CitiMortgage believes the proper course is to dismiss the appeal as set forth above but needs clarification should that not be done. CitiMortgage further requests that the current deadline to respond (May 29, 2013) to Appellant's original brief be held in abeyance while the Court considers this motion. See Rule 240(b), SCACR.

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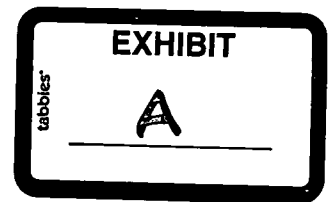
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Attorneys for CitiMortgage, Inc.

Columbia, South Carolina

May 15, 2013



## The South Carolina Court of Appeals

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April 17, 2013

Ellen R. Springer  
147-21 109th Avenue  
Jamaica NY 11435

Re: Citimortgage Inc. v. Ellen R. Springer  
Appellate Case No. 2012-212971

Dear Counsel:

Upon reviewing your appellant's initial brief, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The document is improperly paginated. Specifically, the pages are not consecutively numbered, as required by Rule 208, SCACR.
- You have not provided a designation of matter, as required by Rule 209, SCACR. The Court cannot accept the actual designated items at this time.
- Your brief is not properly titled. The title of your initial brief should be substantially in the format provided in Appendix C of the South Carolina Appellate Court Rules.

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

cc: Michael J. Anzelmo  
Allen Mattison Bogan  
Benjamin Rush Smith, III  
Jeffrey Marc Tzerman  
Joyce McDonald

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY  
Master-in Equity

Jeffery M. Tzerman, Circuit Court Judge

Case No. 2011-CP-28-0981

Appellate Case No. 2012-212971

CitiMortgage, Inc., ..... Respondent,

v.

Ellen R. Springer, Peggy S. Charles f/k/a Peggy S.  
Roberts, Defendants

Of whom Ellen R. Springer is, ..... Appellant.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for CitiMortgage, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Motion to Dismiss Appeal


**RECEIVED**

MAY 15 2013

**SC Court of Appeals**

Parties Served:

Ellen R. Springer  
147-21 109<sup>th</sup> Avenue  
Jamaica, New York 11435



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Jennifer Lee  
Administrative Assistant

May 15, 2013

# Nelson Mullins

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May 15, 2013

## Hand Delivered

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1015 Sumter Street - 5th Floor  
Columbia, SC 29201

RE: CitiMortgage, Inc. v. Ellen R. Springer  
Case No.: 2011-CP-28-0981  
Our file no.: 26019/01732

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of a Motion to Dismiss Appeal in the above-referenced matter. Please file the original and return a clocked-in copy to me via our courier. Should you have any questions, please do not hesitate to contact me.

By copy of this letter I am hereby serving the opposing party.

Very truly yours,



Michael J. Anzelmo

MJA:jlee  
Enclosures

cc: Ellen R. Springer, Pro se

**RECEIVED**

MAY 15 2013

**SC Court of Appeals**