

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-in-Equity

Civil Action No.: 01-CP-10-1252

RECEIVED

OCT 22 2012

S.C. Supreme Court

HomEq Servicing Corporation f/k/a TMS Mortgage, Inc.,
d/b/a The Money Store,

Respondent,

v.

Jeanette B. Napier, Dale W. Phillips and NationsCredit
Financial Services Corporation d/b/a EquiCredit,
Chisolm Green Property Homeowners Association, Inc.,

Defendants,

Of whom
Jeanette B. Napier, is

Petitioner.

**RETURN IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

Weston Adams, III
Helen F. Hiser
McANGUS GOUDELOCK & COURIE LLC
Meridian 10th Floor
1320 Main Street
PO Box 12519
Columbia, SC 29211-2519
(803) 779-2300

*Attorneys for Respondent HomEq Servicing
Corporation*

Pursuant to Rule 242(f), SCACR, Respondent HomeEq Servicing Corporation f/k/a/ TMS Mortgage, Inc. d/b/a The Money Store hereby files its Return in opposition to Petitioner Jeanette B. Napier's Petition for Writ of Certiorari. This Court should deny Petitioner's request for review of the Court of Appeals' Opinion No. 2012-UP-405 in this case because petitioner failed to timely file and serve her Petition and, even if this Court decides to consider Petitioner's late-filed Petition, it does is not final and does not raise any issues that require review by this Court.

STATEMENT OF THE CASE

In an Opinion filed July 1, 2012, the Court of Appeals remanded this matter to the Master in Equity to consider Petitioner's post-trial letter/motion. (Exh A). Petitioner moved the Court of Appeals for rehearing, which was denied on August 7, 2012. (Exh B). Accordingly, Petitioner's Petition to this Court for certiorari review was due September 7, 2012. Petitioner sought an extension of time which was granted, making her Petition due on October 8, 2012. (Exh C). Petitioner failed to timely file her Petition and this Court dismissed her appeal. (Exh D). Thereafter, Petitioner mailed a copy of her Petition, post-marked October 15, 2012, to counsel who represented Respondent before the Master in Equity, (Exh E), but has never served the undersigned with her Petition. In addition, there is no proof of service indicating that she has served her Petition on the South Carolina Court of Appeals as required by Rule 242(c), SCACR.

ARGUMENT

Ms. Napier's Petition must be rejected because it was neither timely nor properly filed and served. Rule 242(c), SCACR provides that "[a] petition for writ of certiorari shall be served on opposing counsel and filed with proof of service with the Clerk of the Court of Appeals and the Clerk of the Supreme Court within thirty (30) days after the petition for rehearing or reinstatement is finally decided by the Court of Appeals." After obtaining a 30-day extension,

Petitioner failed to file and serve her Petition by October 8, 2012, or to seek an additional extension of time.¹ Petitioner's Petition is, therefore, untimely. This Court has already dismissed her appeal. (Exh C). Petitioner's attempt to file her Petition late should be rejected by this Court.

"The service of a notice of appeal is a jurisdictional requirement, and the time for service may not be extended by this Court." Hill v. South Carolina Dept. of Health & Env't'l Control, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010); Mears v. Mears, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) (holding that "[s]ervice of the notice of intent to appeal is a jurisdictional requirement"). Petitioner failed to serve counsel of record for Respondent with her Petition. Instead, she mailed a copy of her late-filed Petition to the Weston Adams Law Firm, which represented Respondent before the Master-in-Equity. However, counsel of record on appeal are the undersigned. Petitioner previously served the undersigned with her filings at the Court of Appeals but failed to properly serve her Petition. In addition, there is no indication that Petitioner served the Court of Appeals with her Petition.

Furthermore, Petitioner's attempt to serve the Petition on the Weston Adams Law Firm reveals that it was post-marked on October 15, 2012, a full seven days past the October 8, 2012 deadline. It appears that she attached postage to the envelope with a date of October 8, 2012; however, affixing postage does not constitute depositing in the U.S. Mail. Under Rule 262(b), service is complete upon mailing, not upon affixing postage.

Next, the remand order of the Court of Appeals, Opinion No. 2012-UP-405, is not appealable. It is not a final order, nor does it decide the merits of any part of this case or affect a substantial right of any of the parties. S.C. Code Ann. § 140-3-330. It merely remands this matter back to the Master-in-Equity directing him to consider Petitioner's May 11, 2007 letter

¹ In addition, it does not appear that she submitted either the Record on Appeal or an Appendix with her Petition.

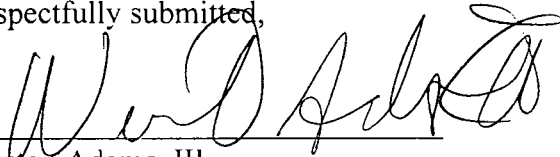
requesting post-trial relief. (Exh F). The relief Petitioner seeks in her Petition is substantially the same relief that she sought in her May 11, 2007 letter to the Master-in-Equity. The Master-in-Equity's resolution on remand may well address all of the issues raised in the Petition.

Finally, should this Court consider the substance of the Petition, it simply does not raise any issues that warrant this Court's review. The Petition does not raise a novel question of law. There is no dissenting opinion at the Court of Appeals, nor is the Court of Appeals' decision in conflict with any prior decisions of this Court. The Petition does not raise any substantial constitutional issues or federal questions. *See* Rule 242(b), SCACR. In short, Petitioner merely recites her points of appeal from the trial court to the Court of Appeals and asks this Court to decide her case rather than allow the remand. Thus, for these additional reasons, this Court should deny Petitioner's Petition.

CONCLUSION

For all of the reasons stated herein, this Court should deny Petitioner's Petition of Certiorari.

Respectfully submitted,



Weston Adams, III
Helen F. Hiser
McANGUS GOUDELOCK & COURIE LLC
Meridian 10th Floor
1320 Main Street
PO Box 12519
Columbia, SC 29211-2519
(803) 779-2300
Attorneys for Respondents

October 22, 2012

Exhibit A

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

HomEq Servicing Corporation
f/k/a TMS Mortgage, Inc. d/b/a
The Money Store, Respondent,

v.

Jeanette B. Napier, Dale W.
Phillips, NationsCredit
Financial Services Corporation
d/b/a EquiCredit, Chisolm
Green Property Homeowners
Association, Inc., Defendants,
of whom Jeanette B. Napier is
the Appellant.

Appeal From Charleston County
Mikell R. Scarborough, Master-In-Equity

Unpublished Opinion No. 2012-UP-405
Submitted May 1, 2012 – Filed July 11, 2012

REMANDED

Jeanette B. Napier, of Johns Island, pro se.

Weston Adams, III and Helen Hiser, both of
Columbia, for Respondent.

PER CURIAM: Jeanette Napier appeals the master-in-equity's order and judgment of foreclosure, arguing the master erred in (1) refusing to grant Napier's motion for a continuance, (2) calculating several fees and deficits in amending an earlier judgment against Napier, and (3) failing to reconsider its order. We remand.¹

We remand to the master for consideration of Napier's post-trial motion. See Rule 59(e), SCRCP ("A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order."); Rule 5(e), SCRCP ("The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk."); Rule 59(g), SCRCP ("A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion").²

REMANDED.

PIEPER, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

² In light of our disposition herein, we decline to address Napier's remaining arguments. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing an appellate court need not address all issues on appeal when the disposition of one issue is dispositive).

Exhibit B

The South Carolina Court of Appeals

HomEq Servicing Corporation f/k/a TMS Mortgage, Inc.
d/b/a The Money Store, Respondent,

v.

Jeanette B. Napier, Dale W. Phillips, NationsCredit
Financial Services Corporation d/b/a EquiCredit,
Chisolm Green Property Homeowners Association, Inc.,
Defendants, of whom Jeanette B. Napier is the Appellant.

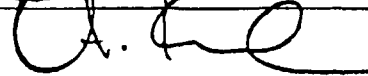
Appellate Case No. 2007-060200

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Jeanette B. Napier

Heidi B. Carey

Weston Adams, III

Helen Faith Hiser
William S. Koehler
Jillian M. Benson

FILED

1 Aug 2012

Exhibit C

The Supreme Court of South Carolina

Home Eq Servicing Corporation f/k/a TMS Mortgage,
Inc. d/b/a The Money Store, Respondent,

v.

Jeanette B. Napier, Dale W. Phillips, NationsCredit
Financial Services Corporation d/b/a EquiCredit,
Chisolm Green Property Homeowners Association, Inc.,
Defendants,

of whom Jeanette B. Napier is the Petitioner.

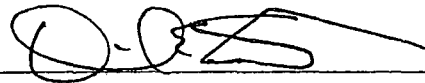
Appellate Case No. 2012-212918

ORDER

The time for serving and filing the Petition for Writ of Certiorari and Appendix is hereby extended until October 8, 2012.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

September 14, 2012

cc:

Heidi B. Carey

Weston Adams, III

Helen Faith Hiser

William S. Koehler

Jillian M. Benson

Jeanette B. Napier

The Honorable Jenny Kitchings

Exhibit D

The Supreme Court of South Carolina

Home Eq Servicing Corporation f/k/a TMS Mortgage, Inc.
d/b/a The Money Store, Respondent,

v.

Jeanette B. Napier, Dale W. Phillips, NationsCredit
Financial Services Corporation d/b/a EquiCredit, Chisolm
Green Property Homeowners Association, Inc.,
Defendants,

of whom Jeanette B. Napier is the Petitioner.

Appellate Case No. 2012-212918


The Honorable Mikell R. Scarborough
Charleston County
Trial Court Case No. 2001CP1001252

ORDER

Petitioner was granted an extension until October 8, 2012, to serve and file the petition for a writ of certiorari and appendix in this matter. The petition and appendix have not been received by this Court. Accordingly, this matter is dismissed.

FOR THE COURT

BY



CLERK

Columbia, South Carolina
October 16, 2012

cc: Weston Adams, III, Esquire
Helen Faith Hiser, Esquire
Ms. Jeanette B. Napier
The Honorable Jenny Abbott Kitchings

William S. Koehler
Jillian M. Benson
Mikell R. Scarborough
Julie J. Armstrong
Heidi B. Carey

Exhibit E

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Judge Mikell R. Scarborough Master In Equity

Case Number 01-CP-10-01252

Home Eq Servicing Corporation f/k/a/
TMS Mortgage Inc. d/b/a/ The Money
Store


Respondent

V.

Jeanette B. Napier, Dale W. Phillips
Nations Credit Financail Services
Corporation d/b/a/ EquiCredit, Chisolm
Green Property Homeowners Association.
Inc.

Defendants

PETITION FOR WRIT OF CERTIORARI


Jeanette B. Napier
5564 Stonoview Drive
Johns Island, S.C.29455
(843) 296-6673
Appellant

CERTIFICATION REGARDING REHEARING

This Is a Petition for Certiorari from an appeal filed with the South Carolina Court of Appeals in 2007. A request for Rehearing was submitted to the South Carolina Court of Appeals on July 26, 2012. It was denied. I have attached a copy, there is no date on the order.

Questions Presented for Review

1. Did the Trial Court Err in failing to allow me representation by an attorney after requesting a continuance?
2. Did the Trial Court Err in not looking back at the 2003 November order to determine what actually was charged for Escrow
And what was paid to the Mortgage Company during the Bankruptcy.
3. Did the trial Court err in not looking more closely at the charges for late fees from 2003 November order and what the Mortgage Company charged during the bankruptcy?
4. Did the Trial Court Err in failing to address all the charges to the escrow account which was submitted late in the hearing process
By the opposing counsel and had the grand total of \$51,854.15
5. Did the trial Court err in failing to allow my request to be heard and address issues of errors in the escrow that were discovered
The next day brought to the attention by disregarded by the trial court and forced me to file an appeal?

STATEMENT OF THE CASE

In 2004, January, the Appellant filed Bankruptcy. In December 2006 when the Bankruptcy ended the Appellant was seeking to refinance her balance on her arrears with her Mortgage Company. Starting in December 2006, she made repeated request for correct Payoffs. The attorney's office for the Plaintiff sent several payoffs each on (at least 5 asking for a different amount).

The mortgage company started foreclosure proceedings during this time. A Court date was set for May 9, 2007 in the Master in Equity Court for Charleston County.

The defense was trying to obtain new Counsel after just leaving Bankruptcy Court and was unable by the Court date to hire

Counsel due to the fact the two attorneys I wanted were committed already for the May 9, 2007 date. Thus I requested a continuance.

I was denied and at the end of hearing the Judge for the Master in Equity for Charleston County, South Carolina ordered the home sold.

The Judgment issued was for the amount of \$352,657.51. The Order rendered as dated May 9, 2007.

The Defendant was under due stress and went on with the hearing without Counsel not at 100% trying to deal with the Judge to see

What I considered discrepancies of the payoffs against the Federal Bankruptcy ending statement of what was actually due to the Mortgage Company.

I reviewed papers given to me during the hearing that itemized escrow. I had no time to study and upon review after the hearing

Discovered more discrepancies including the duplication of attorney fees. I immediately contacted the Master in Equity Court and Requested a new hearing. I was ignored by the Master in Equity.

On June 12, 2007, I filed a notice of appeal and served on all parties involved.

Summary of the Case

This is an appeal from the decision of the South Carolina Court of Appeals. I respect their decision to send me back to the Trial Court but as I understand if the Trial Court hears this motion and is ruled against me then I must again file an appeal. I know first that I am not an attorney, and I mean no disrespect to the trial Court or to the South Carolina Court of Appeals. I believe and wish that the Discrepancies and the errors made in my mortgage by a mortgage company known to have many victims would have and should have been heard by the Appeals Court.

I again stress my rehearing petition was inadequate and I wish I had been in a better place but I have been sick and unable to put full attention to rehearing request. My home has been in appeal status for years I am unable to move forward it has cost me a lot. But I still believe that the mortgage Company is wrong in their treatment of my mortgage and of the attempt to foreclose.

Argument in support of Petition

Again I apologize that I can't give specific law citations

Because I tried to obtain consul and presented the Judge with the names of both attorneys I had meet with should I have been defending Myself without consul?

But because I tried to get a continuance prior to hearing and was told to come to Court to discuss. He refused.

Because the Judge would not look back at the escrow, and the charges from the November 2003 order including late fees, as well as attorney fees, after a lengthy trial where I was counter suing the mortgage company in question and it was over several month.

In 2001, I entered a countersuit against the mortgage company for not paying my property taxes as agreed. This hearing lasted 6 months and I Was in and out of Court at least 6 times. Incurring \$12,750.00 in attorney fees. Escrow charges were \$7,983.20. Late charges were \$3,895.84. During the Bankruptcy filed in January 2004 till December 2006 total charges due the Mortgage Company were \$88,568.08 per their tiling of proof of Claim to the Federal Court in March of 2004. During the Bankruptcy I paid them \$44,024.20 of that amount.

Because the Judge did not recognize the additional attorney fees listed in the escrow accounting not the order.

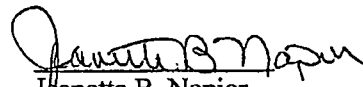
Upon going over the charges for the accounting of the \$51,854.15 handed to me well into the hearing and not prior to the hearing I The next day discovered an error which I immediately brought to the attention of the Master in Equity who ignored my attempts at a new hearing. Had he addressed it which is what the appeals court says he needs to do I would no be still fighting for my home.

Because the Judge allowed charges presented prior to November 2003 to be added to the escrow charges.

I brought to the Judges attention that the charges form prior servicer expenses from a previous servicer from 2000 which should have been Included in the original order from November 2003 he would not allow any discussion on anything prior to November 2003. But He allowed them to add fees from 2000 which should have been in the original order.

Conclusion

I pray that this Court will allow me to have the errors in charges finally corrected and not have to refile my appeal.


Jeanette B. Napier
5564 Stonoview Drive
Johns Island, S.C.29455
(843) 296-6673
Appellant

The South Carolina Court of Appeals

HomeEq Servicing Corporation f/k/a TMS Mortgage, Inc.
d/b/a The Money Store, Respondent,

v.

Jeanette B. Napier, Dale W. Phillips, NationsCredit
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Chisolm Green Property Homeowners Association, Inc.,
Defendants, of whom Jeanette B. Napier is the Appellant.

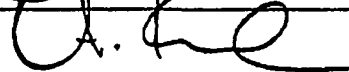
Appellate Case No. 2007-060200

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Jeanette B. Napier
Heidi B. Carey
Weston Adams, III

Exhibit F

May 11, 2007

Judge Mikell Scarborough
Master in Equity for Charleston County
Broad Street
Charleston, South Carolina 29401

Re: Case #01-CP-10-1252

Your Honor,

Attached please find the supplemental Master's Order and Judgement of Foreclosure and Sale you signed on the 9th of March, 2007.

On Thursday, I sat down to try and understand why the escrow advances had risen to \$25,000.00 more than they were in February 2007.

Ms Lee's office sent to me in Dec and Jan 07 and the first shows one amount, the next an increase and the one which I had requested since March and never received which was given to me during the hearing increases another 10,000 to 15,000.00.

Upon further investigation I saw that Ms. Lee had included the previous attorney fees and some of the new in the escrow disbursements. This means she charged me 16,000.00 (previously awarded \$12,746.94 plus \$4000.00) and then charged me \$14,548.79 which had been paid by the mortgage company to the Law Firm Direct. (this was \$12,746.94 plus an addition 1801.85 I'm assuming toward the \$4000.00 she said she wanted at this hearing. I should have only been charged \$16,000.00 once.

Your Honor I was very nervous and I felt like a few items were skipped over one for example was the \$7,241.35 which Ms. Lee said were charged to escrow as previous servicer expenses. During the hearing, Your Honor said, "you would not go back and talk about anything that was awarded previous to the December 2003 order." The mortgage was sold in 2001 to Litton and any previous servicer expense would have been addressed at the December 2003 hearing in the final order.

I would like to receive a breakdown from them for the additional \$4000.00 charged since the 2003 December hearing.

I am respectfully asking for this order to be vacated and a new order issued with the correct amount and also to allow me to address the fee issue and prior servicer expense.

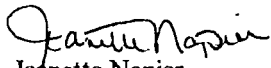
Again I was given the escrow advances and court cost during the hearing and not one item was with explanation as to what it was for.

My mortgage person and myself have spent alot of time and energy trying to get the correct payoff on my loan. This is not the correct payoff. There are errors that I humbly request to be corrected by the Court.

Again I am not an attorney and I have not obviously protected my best interest in this matter. I trust the court to do that now since this error has been exposed. I will await to hear from you.

I have also notified Ms. Lee of the errors.

Sincerely,


Jeanette Napier
5564 Stonoview Drive
Johns Island, S.C. 29455

Phone number (843) 296-6673\

cc: Ms Meridith Lee

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-in-Equity

Civil Action No.: 01-CP-10-1252

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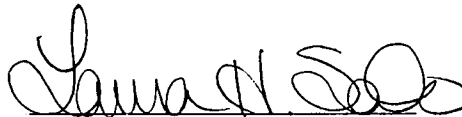
Of whom
Jeanette B. Napier, is

Petitioner.

PROOF OF SERVICE

I certify that I have served a copy of **Respondent's Return in Opposition Petition for Writ of Certiorari** on Jeanette Napier by depositing a copy of it in the United States Mail, postage prepaid, on this date, October 22, 2012, addressed as follows:

Jeanette Napier, *Pro Se*
5562 Stonoview Drive,
Johns Island, South Carolina 29455.



Laura H. Sabo
Paralegal to Weston Adams, III



ATTORNEYS AT LAW

Reply To
WESTON ADAMS, III
Direct Dial: (803) 227-2322
wadams@mgclaw.com
COLUMBIA

October 22, 2012

RECEIVED

OCT 22 2012

S.C. Supreme Court

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Supreme Court of South Carolina
1231 Gervais Street
Columbia, South Carolina 29201

RE: HomEq Servicing Corp. f/k/a TMS Mortgage, Inc. d/b/a The Money Store v.
Jeanette B. Napier, Dale W. Phillips, NationsCredit Financial Services Corp. d/b/a
EquiCredit, Chisolm Green Property Homeowners Association, Inc.
Our File No.: 20587.07016
Civil Action No. 01-CP-10-1252
Case Tracking No. 2007-60200

Dear Mr. Shearouse

Enclosed please find the original and seven (7) copies of Respondent's Return in Opposition Petition for Writ of Certiorari and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return the clocked-in copies via our courier. If you have any questions, please contact me.

If you have any questions, please contact me.

Yours truly,

Weston Adams, III

WAIII/lhs
Enclosures

cc: Jeanette Napier
Jonathan E. Green, Baker, Donelson
Gary Barnes, Baker, Donelson