

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Charles B. Simmons, Jr. Master-In-Equity

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Case No. 2012 – CP-23-7781  
Appellate Case No.: 2013-000610

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The Bank of New York Mellon Trust Company N.A. f/k/a The Bank of New York Mellon Trust Company, NA as successor in interest to JPMorgan Chase Bank, National Association, f/k/a JP Morgan Chase Bank, as Trustee for certificateholders of Nomura Asset Acceptance Corporation Mortgage Pass-Through Certificates, Series 2003 A2.....Respondent,

v.

Sonya D. Hawthorne .....Appellant.

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**RESPONDENT’S RETURN TO APPELLANT’S  
MOTION TO RECALL REMITTITUR AND REINSTATE CASE**

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The Bank of New York Mellon Trust Company N.A. f/k/a The Bank of New York Mellon Trust Company, NA as successor in interest to JPMorgan Chase Bank, National Association, f/k/a JP Morgan Chase Bank, as Trustee for certificateholders of Nomura Asset Acceptance Corporation Mortgage Pass-Through Certificates, Series 2003 A2 (the “Respondent”) submits this Return to Appellant’s “Motion to Recall Remittitur and Reinstate Case.” For the reason’s that follow, Appellant’s motion should be denied.

## BACKGROUND AND PROCEDURAL HISTORY

This is a mortgage foreclosure action. Plaintiff filed its complaint on January 29, 2010. Appellant, proceeding pro se, filed an Answer on February 24, 2010. After the parties engaged in extensive discovery, a final foreclosure hearing was held on January 30, 2013. Following the foreclosure trial, the Master-in-Equity granted Plaintiff's request for foreclosure and ordered the property sold. Appellant then filed a "Motion to Vacate Foreclosure Judgment and Sale Date." The Master-in-Equity heard arguments on that motion and ultimately denied her requested relief. The subject property was scheduled to be sold on the April 4 sales date. In an effort to stop the April 4 judicial sale, Appellant filed her first bankruptcy petition on March 1, 2013. (Exhibit A). Her first bankruptcy petition was dismissed on March 14, 2013. (Exhibit B) A supplemental foreclosure hearing was held on September 27, 2013, and the purpose of this order was to supplement the previous judgment figures and sale to reflect the current amount due. The Master-in-Equity granted the supplemental order and it was filed on September 30, 2013. Following the supplemental foreclosure hearing, Appellant filed a second bankruptcy petition on May 3, 2013. *In re Briggs*, Case No. 13-02646-hb, (Bankr. D.S.C.). Appellant's second bankruptcy petition was dismissed via a court order entered on July 25, 2013. In its order, the court found that Appellant had "not shown adequate cause for her failure to complete her filing in this case in a timely manner." Thus, the order prohibited Appellant from "refiling under any reorganization chapter of the Bankruptcy Code for a period of 180 days." Following the Bankruptcy's Court order, Appellant filed an appeal with the District of South Carolina. She failed to file her initial brief by the due date of November 18, 2013. The subject property is scheduled to be sold on December 2, 2013.

## DISCUSSION

### I. The Remittitur was Correctly Issued

Appellant seems to suggest that the automatic stay, 11 U.S.C. § 362, of the Bankruptcy Code is relevant to the current matter before the court. Appellant's bankruptcy case was dismissed on July 25, 2013. On August 9, 2013, this Court issued a Remittitur. Appellant argues that her failure to file the appropriate transcripts and briefs should be excused. Appellant conveniently fails to mention that her bankruptcy petition has been dismissed due to her failure "to complete her filings in this matter." Appellant's attempt to mislead the court as to the status of her bankruptcy petition is disingenuous, at best. Respondents position is that the appeal of the bankruptcy order does not stay the foreclosure. 11 U.S.C. § 362(c)(2)(A)-(B) provides that the stay continues until "the time the case is closed" or "the time the case is dismissed." In our case, the bankruptcy has been dismissed and the trustee has filed her report closing the case. Additionally, case law supports a finding that the stay no longer applies in this situation. For example, the Eighth Circuit has concluded that "[o]nce the bankruptcy proceeding is dismissed, neither the goal of a successful reorganization nor the debtor's right to the automatic stay continues to exist." *Olive Street Inv., Inc. v. Howard Sav. Bank*, 972 F.2d 214, 216 (8th Cir. 1992). Furthermore, my client's position as to the collateral supports a finding that the stay no longer applies in light of the bankruptcy court's dismissal. The defendant's previous bankruptcy cases have been dismissed so quickly that my client did not have the opportunity to even move for relief from the stay. The defendant should not be able to forestall the foreclosure judgment by securing multiple dismissals of her bankruptcy petition.

For the foregoing reasons, Appellant's arguments related to the "automatic stay" are without merit.

II. Appellant has failed to file the bond required to stop the judicial sale

Even assuming the Court erred by dismissing her appeal due to her failure to file necessary transcripts and initial briefs, Appellant's argument still fail on an alternative ground. Appellant's main purpose through these dilatory tactics is to forestall the sale of her home. However, she has failed to comply with the appropriate procedure to secure the requested relief.

S.C. Code Ann. § 18-9-170 (1976) controls a portion of Appellant's motion. It provides, in part, that:

If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution . . . .

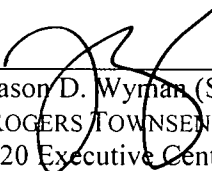
S.C. Code Ann. § 18-9-170 (1976).

In other words, it is Appellant's duty to give a bond in conformity with the statute in order to stay the sale of the mortgaged premises. *E.g., C-Sculptures, LLC, No. 3 v. Brown*, 393, S.C. 27, 32, 709 S.E.2d 705, 707 (Ct. App. 2011); *Carsten v. Wilson*, 241 S.C. 516, 522, 129 S.E.2d 431, 435 (1963); *Muckenfuss v. Fishburne*, 68 S.C. 41, 46 S.E. 537 (1903); *Stanley v. Stanley*, 35 S.C. 94 (1891).

In the present case, Appellant has not provided this Court with a bond executed by two sureties. Because Appellant has failed to give the required bond, her appeal does not stay the sale. Her motion should be denied for these same reasons.

#### CONCLUSION

For the foregoing reasons, Respondent would aver there is no new evidence, material fact or principal law that has been introduced since the previous denial and would respectfully request that the Appellant's Motion again be denied.

  
\_\_\_\_\_  
Jason D. Wyman (SC Bar # 100271)  
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P.O. Box 100200  
Columbia SC 29202-3200  
Telephone (803) 771-7900  
Rogers Townsend & Thomas, PC and its staff are debt  
collectors.

Dated: 11/25/13

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Charles B. Simmons, Jr. Master-In-Equity

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Case No. 2012 – CP-23-7781  
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The Bank of New York Mellon Trust Company N.A. f/k/a The Bank of New York Mellon Trust Company, NA as successor in interest to JPMorgan Chase Bank, National Association, f/k/a JP Morgan Chase Bank, as Trustee for certificateholders of Nomura Asset Acceptance Corporation Mortgage Pass-Through Certificates, Series 2003 A2.....Respondent,

v.

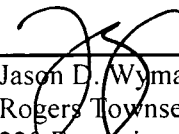
Sonya D. Hawthorne .....Appellant.

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PROOF OF SERVICE

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I certify that I have served the **RESPONDENT’S RETURN TO APPELLANT’S MOTION TO RECALL REMITTITUR AND REINSTATE CASE** on Appellants by depositing a copy in the United States Mail, postage prepaid, on November 25, 2013, addressed to Appellant Sonya D. Hawthorne, 9 Crossbow Way, Greenville, SC 29607.

  
\_\_\_\_\_  
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Columbia SC 29202-3200  
Telephone (803) 771-7900  
Attorneys for Respondent

**U.S. BANKRUPTCY COURT  
District of South Carolina**

Case Number: 13-01262-HB

**ORDER DISMISSING CASE ON MOTION OF DEBTOR(S)**

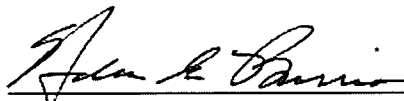
The relief set forth on the following pages, for a total of 2 pages including this page, is hereby **ORDERED**.

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**FILED BY THE COURT  
03/14/2013**



Entered: 03/14/2013

  
US Bankruptcy Judge  
District of South Carolina

**EXHIBIT**

**A**

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH CAROLINA

IN RE:	)	CHAPTER 13
	)	
Sonya Hawthorne Briggs	)	CASE NO: 13-01262-HB
	)	
	)	ORDER DISMISSING CASE ON MOTION OF
	)	DEBTOR(S)
	)	
Debtor(s).	)	
	)	

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An order for relief under 11 U.S.C. § 101 et seq. Chapter 13 having been entered, and a subsequent motion to dismiss the case as to Debtor having been filed by the Debtor,

IT IS ORDERED that:

1. The case of the Debtor be, and it hereby is, dismissed;
2. Any fees due to the Clerk of Court pursuant to 28 U.S.C. §1930 and the appendix thereto, shall be paid within ten (10) days of the entry of this order, unless otherwise ordered by the court.

**U.S. BANKRUPTCY COURT  
District of South Carolina**

Case Number: **13-02646-hb**

**Order**

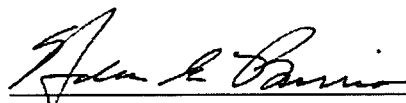
The relief set forth on the following pages, for a total of 2 pages including this page, is hereby ORDERED.

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**FILED BY THE COURT  
07/25/2013**



Entered: 07/26/2013

  
US Bankruptcy Judge  
District of South Carolina

**EXHIBIT  
B**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

IN RE:

Sonya Hawthorne Briggs,

Debtor(s).

C/A No. 13-02646-HB

Chapter 13

**ORDER**

**THIS MATTER** is before the Court pursuant to the issuance of an Order Dismissing Case and Rule to Show Cause entered on June 4, 2013.<sup>1</sup> The Order dismissed Debtor's case for failure to file necessary schedules, statements, and a plan and for repetitive, unproductive filings.<sup>2</sup> The Order dismissed the current case but required Debtor to appear before the Court on July 25, 2013, at 10:00 a.m. at the Donald Stuart Russell Federal Courthouse, 201 Magnolia Street, Spartanburg, South Carolina 29306-2355 to show cause as to why the dismissal should not be with prejudice, or why sanctions should not be imposed. The Order provided that a prejudice period would be imposed to bar a refiling under any reorganization chapter of the Bankruptcy Code unless an objection was filed on behalf of the Debtor within ten (10) days of the entry of the Order explaining her actions. Debtor filed an objection<sup>3</sup> and appeared at the July 25, 2013 hearing to explain the failure to file documents and her unproductive cases.

Based on the record in this and the Debtor's prior case, and the evidence presented during the Debtor's appearance at the July 25 hearing, the Court finds that the Debtor has not shown adequate cause for her failure to complete her filings in this case in a timely manner.

**IT IS HEREBY ORDERED** that the dismissal is **with prejudice** to bar a refiling under any reorganization chapter of the Bankruptcy Code for a period of **180 days**.

<sup>1</sup> Doc. No. 26, filed June 4, 2013.

<sup>2</sup> C/A No. 13-01262-HB, Doc. Nos. 1 and 18. The Debtor previously filed a Chapter 13 case on March 1, 2013, which was voluntarily dismissed on March 14, 2013.

<sup>3</sup> Doc. No. 30, filed June 14, 2013.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

In re:

SONYA HAWTHORNE BRIGGS

Debtor(s)

Case No. 13-02646-hb

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CHAPTER 13 STANDING TRUSTEE'S FINAL REPORT AND ACCOUNT

Gretchen D. Holland, chapter 13 trustee, submits the following Final Report and Account of the administration of the estate pursuant to 11 U.S.C. § 1302(b)(1). The trustee declares as follows:

- 1) The case was filed on 05/03/2013.
- 2) The plan was confirmed on NA.
- 3) The plan was modified by order after confirmation pursuant to 11 U.S.C. § 1329 on NA.
- 4) The trustee filed action to remedy default by the debtor in performance under the plan on NA.
- 5) The case was dismissed on 06/04/2013.
- 6) Number of months from filing to last payment: 0.
- 7) Number of months case was pending: 3.
- 8) Total value of assets abandoned by court order: NA.
- 9) Total value of assets exempted: NA.
- 10) Amount of unsecured claims discharged without payment: \$0.00.
- 11) All checks distributed by the trustee relating to this case have cleared the bank.

**Receipts:**

Total paid by or on behalf of the debtor \$0.00  
Less amount refunded to debtor \$0.00

**NET RECEIPTS: \$0.00**

**Expenses of Administration:**

Attorney's Fees Paid Through the Plan \$0.00  
Court Costs \$0.00  
Trustee Expenses & Compensation \$0.00  
Other \$0.00

**TOTAL EXPENSES OF ADMINISTRATION: \$0.00**

Attorney fees paid and disclosed by debtor: \$0.00

**Scheduled Creditors:**

Creditor Name	Class	Claim Scheduled	Claim Asserted	Claim Allowed	Principal Paid	Int Paid
ASSET ACCEPTANCE LLC	Unsecured	NA	4,345.22	4,345.22	0.00	0.00
BCC FINANCIAL	Unsecured	1,750.00	NA	NA	0.00	0.00
CHASE Bank One	Unsecured	6,665.00	NA	NA	0.00	0.00
DILLON LAW FIRM	Unsecured	3,505.00	NA	NA	0.00	0.00
GECRB	Unsecured	2,253.00	NA	NA	0.00	0.00
GREENVILLE CNTY TAX COLLECTOR	Priority	NA	NA	NA	0.00	0.00
Internal Revenue Service	Priority	NA	NA	NA	0.00	0.00
LVNV FUNDING LLC	Unsecured	1,941.00	NA	NA	0.00	0.00
LVNV FUNDING LLC	Unsecured	14,795.00	NA	NA	0.00	0.00
LVNV FUNDING LLC	Unsecured	2,954.00	NA	NA	0.00	0.00
NATIONAL ACTION FINANCIAL SEF	Unsecured	15,955.00	NA	NA	0.00	0.00
OCWEN LOAN SERVICING	Priority	156,475.00	NA	NA	0.00	0.00
OXFORD LAW LLC	Unsecured	8,332.00	NA	NA	0.00	0.00
RJM Acquisitions LLC	Unsecured	NA	90.83	90.83	0.00	0.00
SALLIE MAE ON BEHALF OF	Priority	19,924.00	8,896.61	8,896.61	0.00	0.00
SHAFER LAW FIRM	Unsecured	292.00	NA	NA	0.00	0.00
SOUTH CAROLINA STUDENT LOAN C	Priority	2,405.00	4,263.45	4,263.45	0.00	0.00
Tasha B Thompson, Esquire	Priority	NA	NA	NA	0.00	0.00
US DEP. EDUCATION	Unsecured	4,107.00	NA	NA	0.00	0.00
US DEPARTMENT EDUCATION	Priority	3,948.00	NA	NA	0.00	0.00

<b>Summary of Disbursements to Creditors:</b>			
	<u>Claim Allowed</u>	<u>Principal Paid</u>	<u>Interest Paid</u>
<b>Secured Payments:</b>			
Mortgage Ongoing	\$0.00	\$0.00	\$0.00
Mortgage Arrearage	\$0.00	\$0.00	\$0.00
Debt Secured by Vehicle	\$0.00	\$0.00	\$0.00
All Other Secured	\$0.00	\$0.00	\$0.00
<b>TOTAL SECURED:</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Priority Unsecured Payments:</b>			
Domestic Support Arrearage	\$0.00	\$0.00	\$0.00
Domestic Support Ongoing	\$0.00	\$0.00	\$0.00
All Other Priority	\$13,160.06	\$0.00	\$0.00
<b>TOTAL PRIORITY:</b>	<b>\$13,160.06</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>GENERAL UNSECURED PAYMENTS:</b>	<b>\$4,436.05</b>	<b>\$0.00</b>	<b>\$0.00</b>

<b>Disbursements:</b>	
Expenses of Administration	<u>\$0.00</u>
Disbursements to Creditors	<u>\$0.00</u>
<b>TOTAL DISBURSEMENTS :</b>	<b><u>\$0.00</u></b>

12) The trustee certifies that, pursuant to Federal Rule of Bankruptcy Procedure 5009, the estate has been fully administered, the foregoing summary is true and complete, and all administrative matters for which the trustee is responsible have been completed. The trustee requests a final decree be entered that discharges the trustee and grants such other relief as may be just and proper.

Dated: 08/09/2013

By: /s/ Gretchen D. Holland

\_\_\_\_\_  
Trustee

**STATEMENT:** This Unified Form is associated with an open bankruptcy case, therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

**U.S. BANKRUPTCY COURT  
District of South Carolina**

Case Number: **13-02646-hb**

**ORDER ON MOTION TO RECONSIDER**

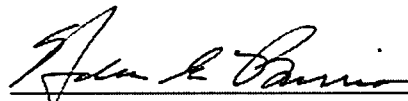
The relief set forth on the following pages, for a total of 2 pages including this page, is hereby ORDERED.

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**FILED BY THE COURT  
07/25/2013**



Entered: 07/26/2013

  
US Bankruptcy Judge  
District of South Carolina

**EXHIBIT**

**C**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Sonya Hawthorne Briggs,

Debtor(s).

CASE NO: 13-02646-HB

Chapter 13

**ORDER UPON MOTION TO  
RECONSIDER ORDER OF  
DISMISSAL**

Before the Court is the motion of the Debtor(s), filed on June 18, 2013 to reconsider an Order of Dismissal entered June 4, 2013. The matter having been considered by the Court,

**IT IS ORDERED** that the motion is denied and the Order of Dismissal entered June 4, 2013 remains in effect.

### Notice Recipients

District/Off: 0420-7  
Case: 13-02646-hb

User: weathers  
Form ID: pdf01

Date Created: 7/26/2013  
Total: 3

**Recipients of Notice of Electronic Filing:**

tr	Gretchen D. Holland	gdh@upstate13.com
aty	Gretchen D. Holland	gdh@upstate13.com

TOTAL: 2

**Recipients submitted to the BNC (Bankruptcy Noticing Center):**

db	Sonya Hawthorne Briggs	9 Crossbow Way	Greenville, SC 29607
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TOTAL: 1

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

In Re: Sonya Hawthorne Briggs,	)	Civil Action No.: 6:13-2985-HMH-JDA
	)	
Sonya Hawthorne Briggs,	)	
	)	
Appellant,	)	<b><u>ORDER</u></b>
	)	
vs.	)	
	)	
Gretchen D. Holland, <i>Chapter 13</i>	)	
<i>Trustee,</i>	)	
	)	
Appellee.	)	
	)	

Appellant brought this action as an appeal from the Bankruptcy Court. [Doc. 1.] On November 4, 2013, the Court filed an Order setting forth a briefing schedule in this case. [Doc. 8.] Appellant's brief was due by November 18, 2013. [*Id.*] To date, Appellant has yet to file her brief. As Appellant has failed to file her initial brief, it appears to the Court that she wishes to abandon this action. Therefore,

IT IS ORDERED that Appellant shall have through December 10, 2013, in which to file her brief. Appellant is advised that if she fails to respond, this action will be subject to dismissal for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b), and for failure to comply with this Court's orders, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.1982). See *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989). The dismissal will be considered an adjudication on the merits, i.e., *with prejudice*.

<b>EXHIBIT</b>
<b>D</b>

IT IS SO ORDERED.

s/Jacquelyn D. Austin  
United States Magistrate Judge

November 20, 2013  
Greenville, South Carolina

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LICENSED IN SOUTH CAROLINA



November 25, 2013

Jenny Abbott Kitchings, Clerk  
SC Court of Appeals  
PO Box 11629  
Columbia, SC 29211

RE: The Bank of New York Mellon v. Sonya D. Hawthorne  
Appellate Case No.: 2013 - 000610

Dear Madam Clerk:

Please find enclosed for filing the original and seven (7) copies of the *Respondent's Return to Appellant's Motion to Recall Remittitur and Reinstate Case* in the above referenced matter. Please file and return the additional clocked copy to me in the envelope provided for your convenience.

By copy of this letter, I am hereby serving the Appellant with a copy of same.

Sincerely,

A handwritten signature in cursive script that reads "Regina Dunlap".

Regina Dunlap  
Paralegal to Jason D. Wyman

JDW:rd

Enclosure

cc:

Sonya D. Hawthorne  
9 Crossbow Way  
Greenville, SC 29607