

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELY COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge
Robert E. Watson, Master-in-Equity

Case No. 2011-CP-08-03412
Appellate Case No. 2013-002378

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SC Court of Appeals

First Citizens Bank and Trust Company, Inc.,
successor-in-interest to the Federal Deposit Insurance
Corporation, receiver of Georgian Bank, Respondent,

Goose Creek II, LLC, James C. Wallace a/k/a James C.
Wallace, Sr., John S. Paulson a/k/a John Paulson, Jiri Jilich
a/k/a Jiri Jilich, Jr., James K. Price, Eastwood Homes, Inc.,
Charles Huff, as the Personal Representative of the Estate
of Richard P. Huff, Jr., Seamon, Whiteside & Associates, Inc.,
Monarch Plantation Homeowners' Association, Inc., Defendants,

Of whom Eastwood Homes, Inc., is, Appellant.

REPLY TO APPELLANT'S RETURN

Respondent First Citizens Bank and Trust Company, Inc., successor in interest to the Federal Deposit Insurance Corporation, receiver of Georgian Bank, (hereinafter, "FCB"), submits this Reply to Appellant Eastwood Homes, Inc.'s ("Eastwood") Return to FCB's Motion to Dismiss Appeal, by and through counsel and pursuant to Rule 240(f) of the South Carolina Appellate Court Rules.

Contrary to the assertions contained in Eastwood's Return, FCB's Motion to Dismiss Appeal is based on subsections 14-3-330(2)(a) and (2)(c) of the South Carolina

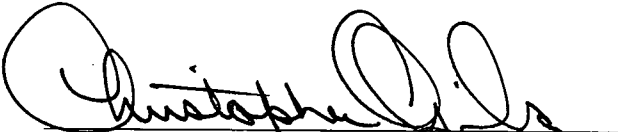
Code (2012). See FCB's Motion to Dismiss Appeal at p.6 (citing subsection 14-3-330(2)(a) to support its argument that Eastwood was required to immediately appeal Judge Harrington's Order). As Eastwood conceded in its Return, an order that falls under subsection 14-3-330(2)(a) "that is not immediately appealed may not be later appealed after final judgment." Eastwood's Return at p.5 (citing *Neeltec Enters. v. Long*, 397 S.C. 563, 567, 725 S.E.2d 926, 928 (2012)). Judge Harrington's Order was immediately appealable because it affected a substantial right of Eastwood by discontinuing Eastwood's suit against FCB, thus bringing the order under subsection 14-3-330(2)(a). See *Neeltec*, 397 S.C. at 566, 725 S.E.2d at 928 (providing "th[e] order effectively discontinued petitioner's suit against Long, thus bringing the order under 2(a)"). Accordingly, Eastwood's failure to immediately appeal Judge Harrington's Order compels a dismissal of its appeal pursuant to Rule 203(d)(3), SCACR.

CONCLUSION

Based on the foregoing arguments and FCB's Motion to Dismiss Appeal, FCB respectfully requests this Court to dismiss Eastwood's Notice of Appeal.

Respectfully submitted,

December 18, 2013



Christopher A. Ogiba (S.C. Bar No. 70666)

Lesley A. Firestone (S.C. Bar No. 10080)

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Charles Huff, as the Personal Representative of the Estate
of Richard P. Huff, Jr., Seamon, Whiteside & Associates, Inc.,
Monarch Plantation Homeowners' Association, Inc., Defendants,

Of whom Eastwood Homes, Inc., is, Appellant.

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED the Respondent's REPLY TO APPELLANT'S
RETURN on Appellant Eastwood Homes, Inc., by depositing a copy in the United States
Mail, postage prepaid, on December 18, 2013, addressed to their attorneys of record:

James Edward Bradley, Esquire
Moore, Taylor & Thomas, P.A.
Post Office Box 5709
West Columbia, SC 29171

and

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SC Court of Appeals

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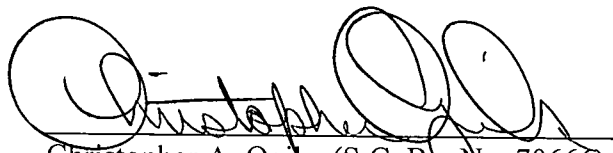
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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christopher Ogiba", written over a horizontal line.

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Lesley A. Firestone (S.C. Bar No. 10080)

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December 18, 2013

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December 18, 2013

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VIA OVERNIGHT DELIVERY

The Honorable Jenny Abbott Kitchings
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**RE: First Citizens Bank and Trust Company, Inc. vs. Goose Creek II, LLC, et al.
Berkeley County Court File No. 2011-CP-08-3412
Appellate Case No. 2013-002378**

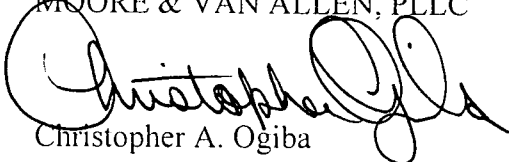
Dear Madam Clerk:

Enclosed please find an original and seven copies of the Respondent's **Reply to Appellant's Return and Proof of Service** in the above-referenced matter. Please file the originals and return a filed stamped copy to our office in the enclosed self-addressed stamped envelope. By copy of this letter, I am serving all counsel of record with a copy of the same.

Thank you for your assistance in this matter and please call me with any questions.

Yours very truly,

MOORE & VAN ALLEN, PLLC



Christopher A. Ogiba

CAO/ws

Enclosures

cc (w/enc.): James Edward Bradley, Esquire
James C. Adams, II, Esquire
Keating L. Simons, III, Esquire
David Popowski, Esquire
J. Scott Jacobson, Esquire
Melissa J. Perignat, Esquire
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James K. Price
Jiri Jilich

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