

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

11252

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Civil Action No. 2011-CP-10-296

Appellate Case No. 2013-001576

JP Morgan Chase Bank, National Association,..... Respondent,

v.

Clorenda Mae White, John Henry White, Andrea
Denise White, as Legal Heir and as Personal
Representative of the Estate of Anthony Franklin White,
Melanie White, Jason White and Mark White, as Legal
Heirs of the Estate of Anthony Franklin White and
Charleston County Clerk of Court,

Defendants,

Of Whom John Henry White is the

Appellant.

RESPONDENT'S MOTION TO DISMISS APPEAL

RECEIVED

FEB 10 2014

SC Court of Appeals

Pursuant to Rule 240, SCACR, Respondent moves to dismiss this appeal on the grounds that the issues raised on appeal are not justiciable, for the following reasons:

1. "A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute." Pee Dee Elec. Coop. v. Carolina Power & Light Co., 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). Justiciability encompasses several doctrines, including ripeness,

mootness, and standing. Jackson v. State, 331 S.C. 486, 491, 489 S.E.2d 915, 917 n.2 (1997). Courts will not pass on moot and academic questions or make an adjudication where there remains no actual controversy. Jones v. Dillon-Marion Human Resources Dev. Comm'n, 277 S.C. 533, 536, 291 S.E.2d 195, 196 (1982).

2. Appellant has appealed the trial court's order of July 11, 2013, improperly identified in the Notice of Appeal as a July 10, 2013, order. (See Exhibit A—Notice of Appeal.)

3. The July 11, 2013, Order decreed that Appellant would be evicted at 5 p.m. on August 30, 2013, “*if Plaintiff JP Morgan Chase Bank, N.A., and Defendant John Henry White do not agree to a purchase price before that time.*” (See Exhibit B—July 11, 2013, Order, with emphasis added.)

4. The parties agreed on a purchase price of \$22,500. (See Exhibit C—Order filed August 30, 2013; Exhibit D—Order filed November 12, 2013). They agreed on that price on or before August 30, 2013. (See Exhibit C.) Appellant has not been evicted.

5. An appeal of the July 11, 2013, Order will have no practical effect, and thus the appeal should be dismissed. “A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for reviewing Court to grant effectual relief.” Mathis v. South Carolina State Highway Dept., 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973); see also Treasured Arts, Inc. v. Watson, 319 S.C. 560, 564, 463 S.E.2d 90, 92 (1995) (holding, where plaintiff sought to enjoin circuit solicitor from taking legal action to stop plaintiff's promotional campaign, that the issue on appeal related to injunctive relief was moot because the promotion had had expired while the appeal was pending).

6. Since the parties agreed on a purchase price, counsel for Respondent and Appellant have continued to work out details of the settlement, including but not limited to Appellant's securing financing or funding, and Respondent wishes to finalize the settlement on the agreed-upon terms, if possible. (See Exhibit E—December 20, 2013, letter of Dow A. Davidson.)

7. Respondent also received Appellant's motion for judgment by "default" on the same day of this filing. For the reasons set forth in this motion and in light of Respondent's letter of December 20, 2013, noting the parties' understanding as to a settlement in this action, Appellant's "default" motion should be denied. (See Exhibit E.) Respondent will timely respond to the new motion under the time provided by Rule 240, SCACR, in addition to the supporting grounds outlined herein.

8. Based on the grounds noted in Paragraph 7 above, in the alternative, Respondent respectfully requests, in the event this motion to dismiss is denied, that the Court set a deadline by which Respondent may file its initial brief and matters to be designated for inclusion in the Record on Appeal. See, e.g., Rule 208(a)(4) (noting that the Court may take action it deems proper when a respondent does not file an initial brief). Here, Appellant and Respondent have an understanding as recognized by the Court orders attached hereto. (Exhibits C and D.) Respondent informed this Court of that understanding. (Exhibit E.) During the time period between the Court's January 10, 2014, letter and this filing, Respondent has engaged in further efforts to finalize the settlement with Appellant.¹ By letter dated January 10, 2014, this Court

¹ For example, Respondent has worked on the form of the deed with Appellant and adopted changes suggested by Appellant as part of the settlement process. The finalization of the settlement and terms as recognized by the trial court's orders has been complicated by the fact that Appellant is now proceeding *pro se* (whereas at times before the trial court, including the

invited Respondent to file for any requested action via motion pursuant to Rule 240. Respondent now does so at the Court's invitation. (See Exhibit F—January 10, 2014, letter from the clerk of court.) Appellant's actions in filing this appeal and continuing to attempt to prosecute it are inconsistent with the trial court's orders noting the parties' agreement on price and the parties' understanding generally. Further, Appellant's filings with the Court are contrary to his own actions in working on the finalization of the settlement to date. As shown herein, the issues Appellant attempts to put before the Court are not justiciable. The appeal should be dismissed. Save that, Respondent should be provided a time to file its brief given the trial court's orders it abided by with respect to the parties' understanding.

Respectfully Submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Dow A. Davidson by ambw
B. Rush Smith III
SC Bar No. 12941
E-Mail: rush.smith@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
Tel: (803) 255-9492

Dow A. Davidson
SC Bar No. 80512
E-Mail: dow.davidson@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

February 10, 2014

time during which the Court issued the foreclosure judgment and held the sale of the subject property, Appellant had counsel).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Mikell R. Scarborough, Master-in-Equity

Civil Action No. 2011-CP-10-296
Appellate Case No. 2013-001576

JP Morgan Chase Bank, National Association, Respondent,

v.

Clorenda Mae White, John Henry White, Andrea
Denise White, as Legal Heir and as Personal
Representative of the Estate of Anthony Franklin White,
Melanie White, Jason White and Mark White, as Legal
Heirs of the Estate of Anthony Franklin White and
Charleston County Clerk of Court, Defendants.

Of Whom John Henry White is the Appellant.

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the **RESPONDENT'S MOTION TO DISMISS APPEAL** on Appellant by depositing copies of it in the United States Mail, postage prepaid, addressed to the below party:

John Henry White
1510 Grimball Road Ext.
Charleston, SC 29412

By: Lisa P. Whitehurst
Lisa Whitehurst
Administrative Assistant to B. Rush Smith III and
Dow A. Davidson
Nelson Mullins Riley & Scarborough, LLP

February 10, 2014

RECEIVED

FEB 10 2014

SC Court of Appeals

Exhibit A
(Notice of Appeal)

1120101141
RECEIVED

AUG - 5 2013

NELSON, MULLINS

151 Meeting Street

Charleston, S.C. 29401

Mr. Dow Davidson, Esq.

Post Office Box 1806

Charleston S.C. 29401-1806

J.P. Chase, N.A.

Appellate Case no. 2013-001576

Re: Case#2011-CP-296

Filed on July 19, 2013

August 2, 2013

v

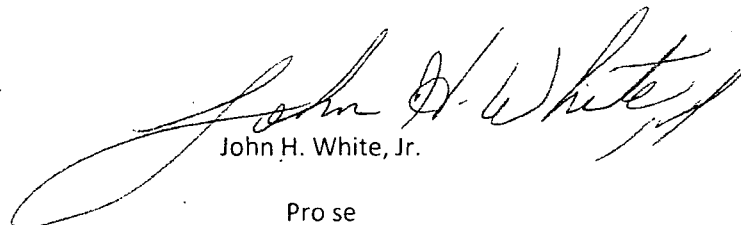
John H. White, Jr.

Appellant

Dear Mr. Davidson, Esq.:

I have enclosed a copy notice of appeal of the captioned matter to the South Carolina Court of Appeals record as the attorney of record. It is my pleasure to work with you in pursuing the same. I have also included a affidavit of pauperacy together with a petition to proceed in forma pauper.

Yours Truly,


John H. White, Jr.

Pro se

IN THE SOUTH CAROLINA COURT OF APPEALS

J.P. CHASE N.A.

APPELLEE

VERSUS

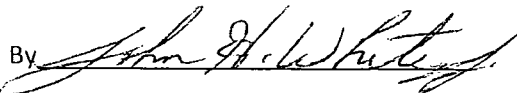
JOHN H. WHITE, JR.

APPELLANT

Appellate Case no.2013-001576

Filed on July 19, 2013

To the Appellee, JP Chase, N.A. THE UNDERSIGNED APPELLANT, John H. White, Jr. gives notice of appeal To the South Carolina Court of appeals from the judgement, orders and decision made and entered by the lower court judge, Honorable Mikel R. Scarborough, Master in Equity for Charleston County on July 10, 2013 and received by appellant on July 17, 2013, the transcript of which was received on July 17, 2013.

By 

Appellant/ pro se

1510 Grimball Rd. EXT.

Charleston, S.C.29412

(843)406-5089

Dow A. Davidson

Nelson, Mullins

Riley& Scarborough, LLP, LLP

J.P. Chase, N.A.

Appellate Case No. 2010=001576

V

Re: Case 2011-CP-296

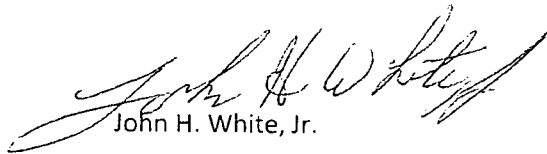
John H. White, Jr.

Filed on July 19, 2013 Certificate of Service (Counsel)

Appellant

August 2, 2013

Appellant undersigned John H. White, Jr. hereby certify that a copy of appellant's notice of appeal to the South Carolina Court of Appeals was served upon Dow A. Davidson, Esq. Nelson, Mullins, Riley and Scarborough, LLP 151 Meeting Charleston SC by depositing a copy of same in the U.S. Mail postage Pre paid on August 1, 2013.



John H. White, Jr.

Appellant/pro se

August 1, 2013

1510 Grimball Rd. Ext.

Charleston, S.C. 29412

(843) 406-5089

STATE OF SOUTH CAROLINA,

COUNTY OF CHARLESTON

pauper's

John H. White, Jr.

affidavit

Appellant/pro se

V

Chase, N. A.

Of John H. White, Jr.

appellant/pro se

Re: Appellate no. 2013-0015776

Personally appeared before me John H. White, Jr. who upon oath makes the following confirmation.

1.

That he currently is unable to pay court cost upon appeal, the pursual of appeal to the South Carolina

Court of Appeals involving the printing of documents nor brief on appeal as required by the South

Carolina Rules of appellate procedures.

2.

Further he says that he personally owns no real estate whatsoever nor any saving account no stock or bonds.

3.

His annual income for the past tax year was \$0 as such cannot afford to attain counsel.

4.

Up to the time of this affidavit his earnings for the period January 2013 to present is less than \$ 2,100.

Affiant is informed that under current poverty line standards he is a pauper as such and to proceed in

The Court of appeal without cost and allowed to proceed forma pauper within the rule of this court including

Including filing of brief and all other matter relative thereto.

Sworn to before me

This day of August 1, 2013

John H. White, Jr.

Appellant/pro se

Date August 1, 2013

Notary Public for South Carolina my Commission expires

Exhibit B
(07/11/2013 Order)

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



www3.charlestoncounty.org



Dow Ambrose Davidson
151 Meeting Street
Suite 600
Charleston, SC 294012239

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Master/Order-Defnt John White will be evicted on 8/30/13

CASE NO: 2011CP1000296

Chase Home Finance Llc , plaintiff, et al VS Julia Mae (no Longer White , defendant, et al

This judgment was entered on the 11th day of July, 2013, and a copy mailed first class on Friday, July 12, 2013, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

JPMorgan Chase Bank, National) Civil Action No. 2011-CP-10-296
Association,)
)
Plaintiff,)

vs.)

Clorenda Mae White, John Henry White,)
Andrea Denise White, as Legal Heir and)
as Personal Representative of the Estate)
of Anthony Franklin White, Melanie)
White, Jason White and Mark White, as)
Legal Heirs of the Estate of Anthony)
Franklin White and Charleston County)
Clerk of Court,)
)
Defendant.)

ORDER

FILED
2013 JUL 11 AM 10:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

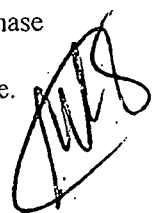
IT APPEARING that the property at issue in this matter was properly foreclosed upon as set forth in the Master in Equity's Order and Judgment of Foreclosure and Sale, which was filed on October 30, 2012; and

IT FURTHER APPEARING that Plaintiff JP Morgan Chase Bank, N.A. was the purchaser of the subject property at this court's December 4, 2012 foreclosure sale; and

IT FURTHER APPEARING that Plaintiff JP Morgan Chase Bank, N.A. and Defendant John Henry White have attempted to negotiate a sale of the foreclosed property; and

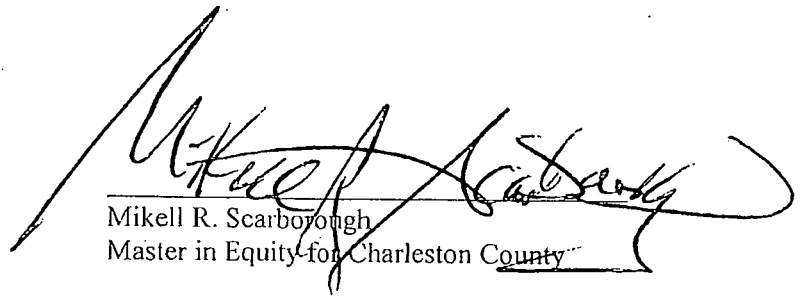
IT FURTHER APPEARING that there is no good cause to prolong the eviction process beyond August 30, 2013 if the parties cannot reach an agreement on a purchase price; it is hereby,

ORDERED, ADJUDGED, AND DECREED that Defendant John Henry White will be evicted from the subject property at 5:00 P.M. on August 30, 2013 if Plaintiff JP Morgan Chase Bank, N.A. and Defendant John Henry White do not agree to a purchase price before that time.



IT IS SO ORDERED.

July 11, 2013



Mikell R. Scarborough
Master in Equity for Charleston County

Exhibit C
(08/30/2013 Order)

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



www3.charlestoncounty.org

55



DOW AMBROSE DAVIDSON
151 MEETING ST. STE 600
CHARLESTON SC 29401-2233

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Master Order-eviction scheduled for 8/30/13 should be

CASE NO: 2011CP1000296

Chase Home Finance Llc , plaintiff, et al VS Julia Mae (no Longer White , defendant, et al

This judgment was entered on the 30th day of August, 2013, and a copy mailed first class on Tuesday, September 03, 2013, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

JPMorgan Chase Bank, National) Civil Action No. 2011-CP-10-296
Association,)
)

Plaintiff,)
)

vs.)
)

Clorenda Mae White, John Henry White,)
Andrea Denise White, as Legal Heir and)
as Personal Representative of the Estate)
of Anthony Franklin White, Melanie)
White, Jason White and Mark White, as)
Legal Heirs of the Estate of Anthony)
Franklin White and Charleston County)
Clerk of Court,)

Defendant.)

ORDER

BY _____

sub

2013 AUG 30 PM 12:16
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

IT APPEARING that the property at issue in this matter was properly foreclosed upon as set forth in the Master in Equity's Order and Judgment of Foreclosure and Sale, which was filed on October 30, 2012; and

IT FURTHER APPEARING that Plaintiff JP Morgan Chase Bank, N.A. (the "Bank") was the purchaser of the subject property at this court's December 4, 2012 foreclosure sale; and

IT FURTHER APPEARING that the Bank and Defendant John Henry White ("White") have reached an agreement in principle whereby Mr. White will purchase the foreclosed property from the Bank for \$22,500.00; and

IT FURTHER APPEARING that in order to finalize the sale of the foreclosed property the Bank and White need additional time beyond the August 30, 2013 eviction date set forth in this Court's July 11, 2103 Order; it is hereby,

ORDERED, ADJUDGED, AND DECREED that the eviction scheduled for August 30, 2013 should be cancelled and that the parties have until September 30, 2013 to complete the sale of the foreclosed property or further inform this Court of the need for additional time for

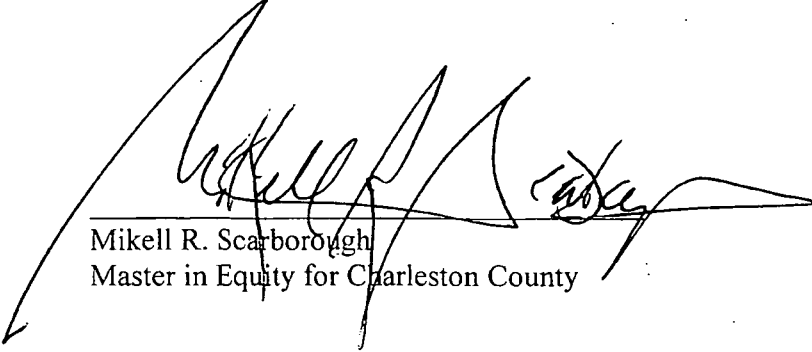
[Handwritten signature]

completion.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant John Henry White is still subject to eviction from the foreclosed property if the proposed sale cannot be completed.

IT IS SO ORDERED.

August 30, 2013



Mikell R. Scarborough
Master in Equity for Charleston County

Exhibit D
(11/12/2013 Order)

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



www3.charlestoncounty.org

RECEIVED

NOV 28 2013

NELSON, MULLINS

36



DOW AMBROSE DAVIDSON
151 MEETING ST STE 600
CHARLESTON SC 29401-2233

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Master Order- Defnt John White is still subject to eviction

CASE NO: 2011CP1000296

Chase Home Finance Llc , plaintiff, et al VS Julia Mae (no Longer White , defendant, et al

This judgment was entered on the 12th day of November, 2013, and a copy mailed first class on Wednesday, November 13, 2013, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

JPMorgan Chase Bank, National)
Association,)
)
Plaintiff,)

Civil Action No. 2011-CP-10-296

vs.)

ORDER

Clorenda Mae White, John Henry White,)
Andrea Denise White, as Legal Heir and)
as Personal Representative of the Estate)
of Anthony Franklin White, Melanie)
White, Jason White and Mark White, as)
Legal Heirs of the Estate of Anthony)
Franklin White and Charleston County)
Clerk of Court,)
)
Defendant.)

FILED
2013 NOV 12 PM 4:10
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

IT APPEARING that the property at issue in this matter was properly foreclosed upon as set forth in the Master in Equity's Order and Judgment of Foreclosure and Sale, which was filed on October 30, 2012; and

IT FURTHER APPEARING that Plaintiff JP Morgan Chase Bank, N.A. (the "Bank") was the purchaser of the subject property at this court's December 4, 2012 foreclosure sale; and

IT FURTHER APPEARING that the Bank and Defendant John Henry White ("White") have reached an agreement in principle whereby Mr. White will purchase the foreclosed property from the Bank for \$22,500.00; and

IT FURTHER APPEARING that in order to finalize the sale of the foreclosed property the Bank and White need additional time beyond the September 30, 2013 eviction date set forth in this Court's August 30, 2103 Order; it is hereby,

ORDERED, ADJUDGED, AND DECREED that the eviction scheduled for September 30, 2013 should be cancelled and that the parties have until November 15, 2013 to complete the sale of the foreclosed property or further inform this Court of the need for additional time for

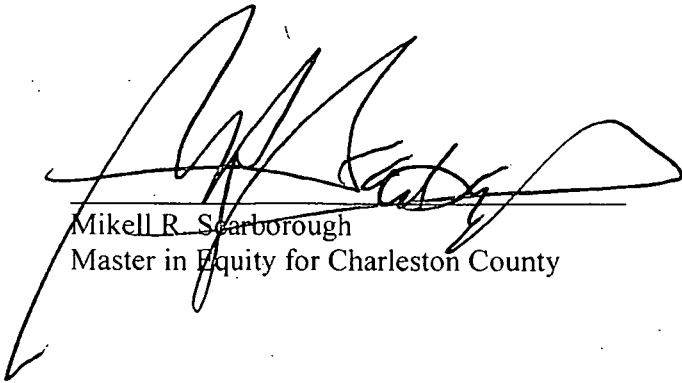


completion.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant John Henry White is still subject to eviction from the foreclosed property if the proposed sale cannot be completed.

IT IS SO ORDERED.

September 11, 2013



Mikell R. Scarborough
Master in Equity for Charleston County

Exhibit E
(12/20/2013 Letter to
Court of Appeals)

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

Attorneys and Counselors at Law

151 Meeting Street / Sixth Floor / Charleston, SC 29401-2239

Tel: 843.853.5200 Fax: 843.722.8700

www.nelsonmullins.com

Dow A. Davidson

Tel: 843.534.4123

Fax: 843.534.4253

dow.davidson@nelsonmullins.com

December 20, 2013

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

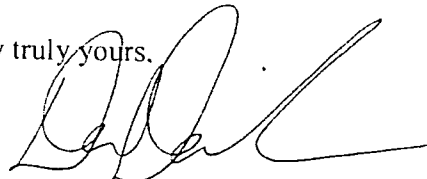
RE: JPMorgan Chase Bank, National Association v. Clorenda Mae White, et al.
Appellate Case No. 2013-001576
Case No.: 2011-CP-10-296
Our File No.: 11281/01741

Dear Ms. Kitchings:

I am writing to inform you that the parties to this appeal have reached a settlement agreement that will resolve all issues before the court. Because the settlement involves the sale of property to the appellant, there are a number of documents that must be reviewed and approved prior to finalizing the agreement. We anticipate the filing of a dismissal or withdrawal of this appeal in the next few weeks.

At this time, however, it is the parties' desire to have the current briefing schedule suspended to ensure that settlement efforts are not compromised and neither party is prejudiced by existing filing deadlines. In the unlikely event that the settlement cannot be completed as agreed to in principle, the parties will notify the court of our desire to move forward with briefing and the appeal.

Very truly yours,



Dow A. Davidson

DAD:mtk

cc: John Henry White

Exhibit F
(01/10/2014 Letter from
Court of Appeals)



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 10, 2014

Mr. Dow Ambrose Davidson
151 Meeting Street
Suite 600
Charleston SC 29401-2239

Re: JP Morgan Chase Bank v. Clorenda White
Appellate Case No. 2013-001576

Dear Counsel:

This will acknowledge receipt of your letter dated December 20, 2013 advising this Court that the parties have reached a settlement agreement, and to request that the current briefing schedule be suspended. Our records reflect that your initial brief was due to be served and filed on January 8, 2014. If you would like to request any further action by the Court, you must do so by filing the appropriate motion pursuant to Rule 240 of the South Carolina Appellate Court Rules.

Very truly yours,


CLERK

cc: John Henry White

11281/01741
RECEIVED

JAN 13 2014

NELSON, MULLINS