

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
James "Jay" B. Jackson, Jr., Master in Equity Judge

Case No.: 2013-002517

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MAR 13 2014

SC Court of Appeals

71554

CitiMortgage, Inc.,

Respondent,

v.

King David Corbitt,

Appellant.

RESPONDENT'S MOTION TO DISMISS

Respondent hereby submits its Motion to Dismiss pursuant to Rule 240 of the South Carolina Appellate Court Rules and shows this Honorable Court the following:

This case involves a cause of action for the foreclosure of a mortgage involving residential property located in Orangeburg County, South Carolina. Pursuant to an Order filed by the Orangeburg County Master in Equity on October 25, 2013, Respondent was granted an Order for Foreclosure and Sale and the sale of the subject property was sold to a third-party bidder on December 2, 2013.¹

On or about November 21, 2013, Respondent's counsel received a Notice of Appeal filed with this Court. On December 3, 2013, the undersigned received a letter from this Court notifying Appellant that the Notice of Appeal was deficient as it

¹ Respondent obtained its initial judgment on April 5, 2010, and has received several supplemental judgments since that time.

failed to contain a copy of the Order or Judgment being appealed. On January 30, 2013, the undersigned received a letter from this Court notifying the Appellant that the Court had received a copy of the official transcript in this matter, but that it was being returned as it was not the appropriate time to file a copy of the transcript.

Aside from receiving the initial, deficient Notice of Appeal, the undersigned has not received any correspondence or copies of filings from the Appellant.

Respondent now seeks to have this matter dismissed.

I. The Appeal should be dismissed as Appellant has failed to perfect the appeal or otherwise comply with the South Carolina Appellate Court Rules.

“A party intending to appeal must serve and file a notice of appeal and otherwise comply with these rules.” Rule 203(a), SCACR. “The notice of appeal *shall* be filed with the clerk of the lower court *and* the clerk of the appellate court within ten (10) days after the notice of appeal is served.” Rule 203(d)(1)(B), SCACR (emphasis added). The notice of appeal shall be accompanied by a copy of the order(s) and judgment(s) being challenged on appeal. “The failure to comply with the procedural requirements for an appeal divests a court of appellate jurisdiction.” State v. Brown, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004). A notice of appeal shall be served within thirty (30) days after receipt of written notice of the entry of the order or judgment. Rule 203(b)(1), SCACR.

In the present case, neither the undersigned counsel for Respondent nor his law firm have been served with a Notice of Appeal *and* copy of the order or judgment being appealed in this matter. Moreover, a review of the case management systems for Orangeburg County reflects that Appellant has failed to file with the clerk of the

lower court a copy of the Notice of Appeal. Respondent contends that Appellant has failed to comply with Rule 203(d)(1)(B), SCACR and, therefore, his notice of appeal has not been perfected, more than thirty (30) days has passed since the Order was issued and served, and that this Court lacks jurisdiction and the appeal should be dismissed.

II. Appellant has failed to comply with statutory requirements and, therefore, the appeal should be dismissed.

A review of the case management systems for Orangeburg County reflects that Appellant has failed to post the statutorily required bond pending an appeal of an order granting foreclosure. See S.C. Code § 18-9-170. Based upon Appellant's failure to comply with statutory requirements, the appeal should be dismissed.

III. Appellant has failed to timely submit his Initial Brief and Designation of Matter to be Included in the Record on Appeal and, therefore, the appeal should be dismissed.

Rule 208(a)(1), SCACR, provides that Appellant was to serve one copy of his initial brief within thirty (30) days after receiving the transcript. Appellant clearly had received a copy of the transcript before January 27, 2014, when this Court returned the transcript to the Appellant. More than thirty (30) days have passed and the undersigned has not received Appellant's initial brief.

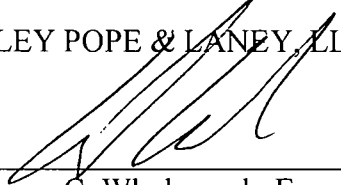
Rule 209(a), SCACR, provides that Appellant was to serve on the undersigned a copy of his Designation of Matter to Be Included in the Record on Appeal at the time he served his initial brief. The time to serve Appellant's initial brief has expired and the undersigned has not received a copy of Appellant's Designation of Matter to Be Included in the Record on Appeal

CONCLUSION

Based on the foregoing facts, the Appellant has failed to perfect this appeal calling into question the Court's continued jurisdiction over this case. Appellant has further failed to comply with statutory requirements and the Rules of Appellate Procedure; accordingly, the appeal should be dismissed.

Respectfully Submitted,

RILEY POPE & LANEY, LLC



Damon C. Wlodarczyk, Esquire
Riley, Pope & Laney, LLC
2838 Devine Street
Post Office Box 11412 (29211)
Columbia, South Carolina 29205
Telephone: (803)799-9993
Facsimile: (803) 239-1414

Attorneys for Respondent

Columbia, South Carolina

March 12, 2014

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In the Court of Appeals

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Case No.: 2013-002517

CitiMortgage, Inc.,

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v.


King David Corbitt,

Appellant.

CERTIFICATE OF SERVICE

I do hereby certify that I served the Respondent's Motion to Dismiss upon the parties below herein by depositing a copy of same, this date, in the U.S. Mail, first class postage prepaid, and addressed as follows:

King David Corbitt
450 Iva Road
North, SC 29112


Monique W. Trifos

Columbia, SC
March 12, 2014

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RILEY POPE & LANEY, LLC
ATTORNEYS AND COUNSELORS AT LAW

2838 DEVINE STREET
POST OFFICE BOX 11412 (29211)
COLUMBIA, SOUTH CAROLINA 29205

TELEPHONE
(803) 799-9993

FACSIMILE
(803) 239-1414

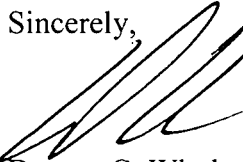
March 12, 2014

Ms. Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: CitiMortgage, Inc., Respondent,
vs.
King David Corbitt, Defendants
Of whom
King David Corbitt is the Appellant
Appeal No.: 2013-002517
Our File No. 4008.72209

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of the Respondent's Motion to Dismiss and proof of service along with my firm's check in the amount of \$25.00 to cover the filing fee. Please file the enclosed documents and return the clocked copy to me in the self-addressed, postage paid envelope I have included for your convenience.

Sincerely,

Damon C. Wlodarczyk

DCW/mwt

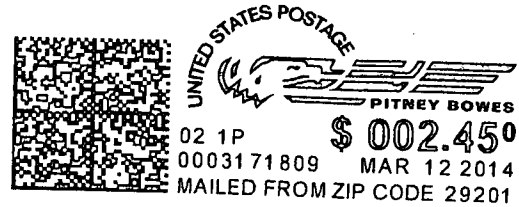
Enclosures

cc: King David Corbitt (w/encl.)

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Riley Pope
& Laney, LLC ATTORNEYS AND COUNSELORS AT LAW

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TO:

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