

Case Information: 2011-192526

Court:	Court of Appeals	Classification:	Appeal - Common Pleas - Other
Short Title:	Junk, D. v. Mortgage Electric & Bayview	Case Status:	Remittitur
Case Owner:	DGREENE		

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Create Thread(s)

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<input type="checkbox"/>	04/26/2012	Legacy Documents - Internal Documents
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<input type="checkbox"/>	01/18/2012	Memorandum - Miscellaneous
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<input type="checkbox"/>	11/30/2011	Correspondence - Cover Letter - Order (Legacy)
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<input type="checkbox"/>	10/13/2011	Staff Attorneys - Sent to Staff Attorneys
<input type="checkbox"/>	10/12/2011	Reply (Legacy) - Reply (Legacy)
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<input type="checkbox"/>	09/28/2011	Motion - Petition for Reinstatement (Legacy)
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<input type="checkbox"/>	09/15/2011	Dispositional Decision - Dismissal - Undocketed (Legacy)
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<input type="checkbox"/>	09/13/2011	Correspondence - Cover Letter - Order (Legacy)

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	09/13/2011	Order Issued (Legacy) - Miscellaneous (Legacy)
	09/13/2011	Order Issued (Legacy) - Miscellaneous (Legacy)
	07/28/2011	Correspondence - Incoming (Other)
	07/20/2011	Clerk of Court - Sent to Clerk for Review
	07/08/2011	Return Received (Legacy) - Return Received (Legacy)
	07/05/2011	Motion - Received (Legacy)
	06/29/2011	Motion - Received (Legacy)
	06/29/2011	Motion - Received (Legacy)
	06/23/2011	Return Received (Legacy) - Return Received (Legacy)
	06/10/2011	Case Status Changed (Legacy) - Case Status Changed (Legacy)
	06/08/2011	Motion - Received (Legacy)
	05/31/2011	Correspondence - NOA Notification (Legacy)
	05/27/2011	Correspondence - Sensitive Info for NOA (Legacy)
	05/23/2011	Notice of Appeal - Received (Legacy)
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	05/23/2011	Notice of Appeal - Received (Legacy)

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

Case No. 2009-CP-07-04301

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2011
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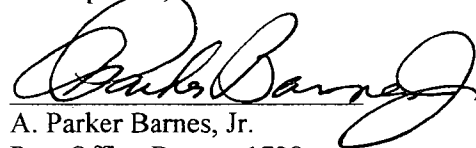
SC Court of Appeals

Daniel L. Junk and Christine H. Junk Appellants,
v.
Mortgage Electronic Registration Systems, Inc.,
And John Does 1-5,000 Respondents.

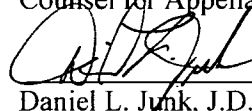
NOTICE OF APPEAL

Daniel L. Junk and Christine H. Junk appeal the order of the Honorable Marvin H. Dukes, III dated April 11, 2011. Appellants received written notice of entry of this order on April 17, 2011.

May 12, 2011



A. Parker Barnes, Jr.
Post Office Drawer 1729
500 Carteret Street
Beaufort, South Carolina 29901
(843) 522-2600
Counsel for Appellant Christine Junk



Daniel L. Junk, J.D.
Pro Se Appellant
181 Oldfield Way
Okatie, SC 29909
(843) 290-8469

Other Counsel of Record:

Brian P. Crotty
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Meridian, 17th Floor
1320 Main Street
Columbia, SC 29201
Counsel for Respondent Mortgage Electronic Registration Systems, Inc.
(803) 255-9422

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

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Case No. 2009-CP-07-04301
MAY 23 2011

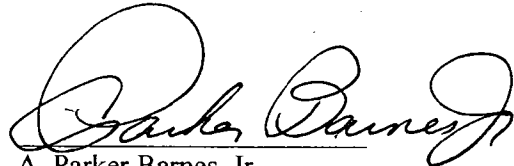
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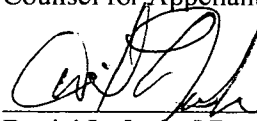
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Mortgage Electronic Registration Systems, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on May 12, 2011, addressed its respective attorneys of record, Brian P. Crotty, Nelson Mullins Riley & Scarborough LLP, Meridian, 17th Floor, 1320 Main Street, Columbia, SC 29201.

May 12, 2011



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CERTIFIED CIVIL COURT MEDIATOR

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May 12, 2011

The Honorable Kenneth A. Richstad
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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MAY 23 2011

SC Court of Appeals

RE: Daniel L. Junk and Christine H. Junk, Appellants v.
Mortgage Electronic Registration Systems, Inc.
and John Does 1-5,000, Respondents, Case No. 2009-CP-07-04301

20783

-and-

Bayview Loan Servicing, LLC, Respondent, v.
Daniel Junk f/k/a Daniel L. Junk and
Christine H. Junk, Appellants, Case No. 2009-CP-07-05088

20785

Dear Mr. Richstad:

Enclosed for filing is a notice of appeal in each of the above cases. Case No. 2009-CP-07-04301 is an appeal from a final order and Case No. 2009-CP-07-05088 is an interlocutory appeal. We request an interlocutory appeal pursuant to S.C. Code § 18-1-130 which authorizes appeals from "any intermediate order involving the merits and necessarily affecting the judgment" and S.C. Code § 14-3-330, as held in *State v. McKnight*, 287 S.C. at 168, 337 S.E.2d at 209, which permits an interlocutory appeal when the order "in effect determines the action . . . or discontinues the action." The effect of the Order in Case No. 2009-CP-07-05088 directly determines the actions in both cases as the two cases are inseparable and the overlap of issues between the two cases necessitates our request that the Court grant Appellants leave to file and be heard on this interlocutory appeal.

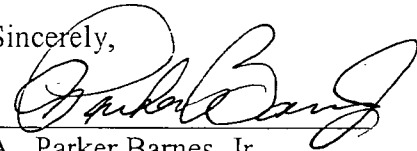
Also enclosed are the following:

- 1) Proof of service of the notice of appeal on the respondents in each case.
- 2) A copy of the orders which are to be challenged on appeal.
- 3) A filing fee of \$100.

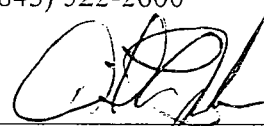
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V. Claire Allen, Deputy
Clerk, S.C. Court of Appeals

A. Parker Barnes, Jr., P.A.
Case No. 2009-CP-07-04301
Case No. 2009-CP-07-05088

Sincerely,



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Pro Se Appellant
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cc: Brian P. Crotty
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Attorney for Respondent Mortgage Electronic
Registration Systems, Inc.
Attorney for Respondent Bayview Loan Servicing LLC

Andrew Colvin
Nexsen Pruet
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Hilton Head, SC 29226
Attorney for Oldfield Community Association

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V. Claire Allen, Deputy
Clerk, S.C. Court of Appeals

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT

Daniel L. Junk and Christine H. Junk,) Civil Action No. 2009-CP-07-04301
)

Plaintiff,)

vs.)

ORDER

Mortgage Electronic Registration
Systems, Inc., and John Does 1-5000,)

Defendants.)

Bayview Loan Servicing, LLC) Civil Action No. 2009-CP-07-05088
)

Plaintiff,)

vs.)

ORDER

Daniel Junk a/k/a Daniel L. Junk,
Christina H. Junk and Oldfield
Community Association,)

Defendants.)

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These related matters came before this Court for hearings on pending motions on December 4, 2010, and February 10, 2011. Both matters were referred to the Beaufort County Master-In-Equity with the consent of the Parties by Orders entered on May 25, 2010. The following motions were heard at the above mentioned hearings:

(a) In Junk v. Mortgage Electronic Registration Systems, Inc., et al. ("The Quiet Title Action"):

- (1) Defendant Mortgage Electronic Registration Systems, Inc.'s ("MERS") Motion to Dismiss filed Nov. 23, 2009;
- (2) Plaintiffs' Motion for MERS to Post an Indemnity Bond filed Nov. 22, 2010; and
- (3) Plaintiffs' Motion for Judgment on the Pleadings and Default Judgment filed Jan. 21, 2011.

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V. Claire Allen, Deputy
Clerk, S.C. Court of Appeals

(b) In Bayview Loan Servicing, LLC v. Daniel Junk et al. ("the Foreclosure Action"):

- (1) The Junk Defendants' Motion to Dismiss under Rules 13(a) and 12(b)(8) filed Nov. 25, 2009;
- (2) The Junk Defendants' Motion to Dismiss under Rule 12(b)(6) filed Nov. 25, 2009; and
- (3) Plaintiff's Motion to Substitute CitiMortgage, Inc. as Plaintiff filed Mar. 30, 2010.

On December 4, 2010, Daniel and Christine Junk were represented by A. Parker Barnes, Jr., Esq., and MERS, Bayview Loan Servicing, LLC ("Bayview") and CitiMortgage, Inc. ("CitiMortgage") were represented by Brian P. Crotty, Esq. On January 24, 2011, an Order was entered permitting Daniel Junk to represent himself *pro se* in both actions. At the February 10, 2011 hearing, Mr. Junk appeared *pro se*, while Mrs. Junk was represented by Mr. Barnes, and MERS, Bayview and CitiMortgage were represented by Mr. Crotty. This Court has carefully considered these motions, the supporting memoranda, affidavits, and other materials submitted by the parties and their counsel, the existing record in these matters, and the arguments offered by counsel for the parties. For the reasons stated herein, in the Quiet Title Action, this Court hereby denies Plaintiffs' Motion that MERS Post an Indemnity Bond; denies Plaintiffs' Motion for Judgment on the Pleadings and Default Judgment; and grants MERS' Motion to Dismiss without prejudice. Additionally, for the reasons stated herein, in the Foreclosure Action, this Court denies the Junks' Motions to Dismiss under Rules 13(a), 12(b)(6), and 12(b)(8), and grants Bayview's Motion to Substitute CitiMortgage as Plaintiff in the Foreclosure Action.

FACTUAL BACKGROUND

On November 3, 2006, Daniel and Christina Junk ("the Junks") entered into a mortgage loan transaction ("the Loan") to refinance existing mortgage loans secured by the real property known as 181 Oakfield Way, Okatie, South Carolina. This Loan was evidenced by an adjustable rate note ("the Note") executed by the Junks in favor of American Home Mortgage ("AHM") in the principal amount of \$1.2 Million. To secure repayment of the Loan evidenced by the Note, the Junks also executed a mortgage agreement ("Mortgage") expressly granting to MERS and the successors and assigns of MERS the mortgagee interest. The Mortgage disclosed that MERS held the security lien as nominee for Lender and Lender's successors and assigns.

Both the Note and the Mortgage executed by the Junks stated that the Note could be sold by AHM to one or more third parties. Specifically, the first page of the Note contains the following statement:

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

Note at ¶ 1. The Mortgage further states the following:

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A Sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written Notice of the Change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing....

Mortgage at ¶ 20.

The Mortgage also identified the role of MERS in this mortgage loan transaction. The first page of the Mortgage stated that **"MERS is the mortgagee under this Security Instrument"** (emphasis in original) and stated that **"MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns."** Mortgage at p. 1, ¶ (C). The Mortgage further states, under the heading **"TRANSFER OF RIGHTS IN THE PROPERTY"**:

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note, and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property....

Mortgage at p. 3 (emphasis added). Further, the Mortgage states,

Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interest, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender, including, but not limited to, releasing and canceling this Security Instrument.

Id. (emphasis added).

The Junks have acknowledged that at the closing of their loan they were informed that the loan would be serviced by American Home Mortgage Servicing. (Plaintiff's Brief In Opposition to MERS' Mot. To Dismiss ("Pl.'s Opp. Brief") at p. 3). Shortly after the November 3, 2006 closing, AHM sold the Junks' Loan to CitiMortgage, Inc. ("CitiMortgage"). This sale of the Note is acknowledged by the Junks in their filings with the Court. (Pl.'s Opp. Brief at p. 11) (stating that AHM sold the Loan to

CitiMortgage on December 22, 2006). The Junks also admit that in January 2007 they received written notice from AHM that the servicing of this loan had been transferred to CitiMortgage. (Id.). Finally, the Junks admit that, beginning March 1, 2009, they stopped making any payments on the Note. (Pl.'s Opp. Brief at p. 5).

On March 6, 2009, The Junks sent CitiMortgage a letter requesting a copy of the Note and CitiMortgage responded by providing the Junks with both a copy of the Note and a copy of the Mortgage. (Pl.'s Opp. Brief at p. 4). The Junks then sent a letter purporting to be a Qualified Written Request under RESPA to both CitiMortgage and AHM.¹ (Id.). The Junks admit that this letter "requested a full accounting" and information regarding the application of their payments, rather than a statement outlining any alleged errors with the loan. (Id.). CitiMortgage responded to the Junks stating that their letter did not qualify as a Qualified Written Request under RESPA. (Pl.'s Opp. Brief at p. 5).

On March 23, 2009, the Junks sent another purported Qualified Written Request to AHM which included a "Notice of Claim and Rescission" purporting to rescind the Loan transaction. (Am. Compl. in the Quiet Title Action at ¶ 34). This was sent to AHM despite the fact that the Junks were aware that the servicing of the Loan was with CitiMortgage and that AHM had been in bankruptcy since August of 2007. (Pl.'s Opp. Brief at pp. 3-4). In this attempt to rescind the loan, the Junks included language in their letter which asserted that AHM's failure to rebut Plaintiffs' claim would result in the

¹ At this time, the Junks were aware that the servicing of their loan was handled by CitiMortgage and not American Home Mortgage. See Pl.'s Opp. Brief at p. 3 (acknowledging receipt in January 2007 of written notice that servicing of the Loan had been transferred to CitiMortgage). Thus, because RESPA's provisions regarding Qualified Written Requests apply only to "loan servicers," sending such a letter to AHM more than two years after both the Loan and servicing of the Loan had been transferred was of no effect. 15 U.S.C. § 2605(e); see also DeVary v. Countrywide Home Loans, Inc., 701 F. Supp. 2d 1096, 1106 (D. Minn. 2010) (holding that under RESPA only loan servicers are required to respond to any qualified written request from the borrower).

Plaintiffs purportedly being granted an "unlimited Power of Attorney" and "full authorization" to sign a satisfaction of the obligation. (Pl.'s Opp. Brief at p. 5). On April 20, 2009, apparently based AHM making no response to the March 23, 2009 letter, Daniel Junk recorded a "Satisfaction of Mortgage" in which he declared and represented himself to be an agent of AHM and the "owner and holder" of the Mortgage. (Pl.'s Opp. Brief at p. 7).

Following the Junk's suspension of making payments under the Note in March 2009, CitiMortgage began sending them correspondence and notices regarding their default status. Specifically, letters and notices were sent by CitiMortgage to the Junks on April 1, 2009, May 4, 2009, and May 19, 2009. (Pl.'s Opp. Brief at p. 7). In June of 2009, the servicing rights for the Junks' loan was transferred by CitiMortgage to Bayview Loan Servicing, LLC ("Bayview"). The Junks have acknowledged receiving written notice from CitiMortgage dated June 15, 2009, and written notice from Bayview dated July 1, 2009, informing them that the servicing of the Loan was transferred to Bayview. (Pl.'s Opp. Brief at p. 7). Following this transfer of servicing, Bayview sent the Junks correspondence and notices regarding their default status on July 6, 2009, July 9, 2009 and July 17, 2009. (Pl.'s Opp. Brief at p. 8). On July 21, 2009, the Junks sent a letter to Bayview disputing the debt. (Pl.'s Opp. Brief at p. 8). Bayview responded by identifying itself as the servicer of the loan, providing a loan history for the Plaintiffs' loan and informing them of the date of their default. (Pl.'s Opp. Brief at p. 8).

The Junks filed the Quiet Title Action on September 11, 2009, and amended their Complaint on September 14, 2009. The Defendants named in the Quiet Title Action are

AHM², MERS and John Does 1 – 5000. Despite being aware of the sale of the loan to CitiMortgage and the transfer of servicing rights to CitiMortgage and then to Bayview, the Junk's excluded as named defendants these entities whom the Junk's knew had an interest in this action and with whom the Junk's had directly corresponded. Instead, the Junk's included "John Doe" defendants who were served by publication.

On September 25, 2009, the Mortgage in this case was assigned by MERS to Bayview. This assignment was recorded on October 19, 2009. Following the recording of that assignment, Bayview initiated the Foreclosure Action on October 26, 2009. In March of 2010, the servicing rights regarding the Junk's' Loan were transferred by Bayview back to CitiMortgage, and the Mortgage was assigned by Bayview to CitiMortgage. The assignment of the Mortgage by Bayview to CitiMortgage was recorded on March 19, 2010. Shortly thereafter, on March 30, 2010, a motion was filed in the Foreclosure Action to substitute CitiMortgage as the Plaintiff in that action in the place of Bayview.

ORDER

A. The Junk's Motion to Require MERS to Post an Indemnity Bond is Denied.

Both the Quiet Title Action and the Foreclosure Action center on the Mortgage Loan entered into by the Junk's on November 3, 2006. The Junk's motion seeking to have MERS's post an indemnity bond, however, relates not to the November 3, 2006 Mortgage, but instead to a prior mortgage dated September 26, 2005 (that was to be paid off as part of the November 3, 2006 mortgage loan transaction). The Junk's admit that MERS, which was also the mortgagee on the 2005 Mortgage, filed a satisfaction as to the

² AHM was subsequently dismissed by Plaintiffs after it filed a Suggestion of Bankruptcy.

September 26, 2005 Mortgage, but assert that they never received the Note from the 2005 loan transaction marked paid in full or satisfied. Significantly, the Junks do not contend that any attempt by anyone has been made to collect on the 2005 Note in the more than four years since that loan was apparently paid off. The Junks' motion to require MERS to post a bond relating to the 2005 Mortgage is without any basis or support. The 2005 Mortgage has been satisfied of record, and there is no reason to justify this Court requiring MERS to post any bond. Thus, this motion is denied.

B. The Junks' Motion for Judgment on the Pleadings and for Default Judgment in the Quiet Title Action is Denied.

The Junk's Motion for judgment on the pleadings and default judgment is based on their claim that, because MERS has assigned the Mortgage to Bayview, MERS no longer has any interest in the property. Additionally, the Junks contend that Bayview falls within one of the "John Doe" defendants who were served with the Quiet Title Action by publication, and by failing to answer the Quiet Title action's Complaint, Bayview is in default. Because the Junks were aware that Bayview and CitiMortgage may have had an interest in the mortgage loan, and because the Junks would have been easily able to serve both Bayview and CitiMortgage through normal means, neither the inclusion of "John Doe" defendants, nor the use of service by publication was effective as to these entities.

Rule 10(a)(1), SCRCP allows the use of "john doe" parties "[w]hen a party does not know the name of an adverse party." Similarly, Rule 17(e), SCRCP specifically allows "unknown parties" to be named in quiet title actions. As for service on unknown parties, service by publication on "persons unknown" is authorized in quiet title actions. S.C. Code Ann. § 15-67-40. However, "such persons as are known or appear of record to

have some right, title, interest, estate or lien in or on the real property in controversy” must still be individually served. *Id.* A plaintiff is required to exercise due diligence to identify a method of service on all such parties before resorting to service by publication. S.C. Code Ann. §§ 15-9-710, 15-9-720.

Prior to filing the Quiet Title Action, the Junks had corresponded with both CitiMortgage and Bayview regarding the mortgage loan at issue. The Junks were well aware, based on the default warning letters they admit receiving from these entities, that one or both of them claimed some interest in the mortgage lien. Thus, neither Bayview nor CitiMortgage could be considered to be a proper “John Doe” defendant. Additionally, because the Junk’s had been in direct communication with both Bayview and CitiMortgage, service by publication would be improper as to either entity, as such service may only be used where the party cannot be found within the State. Aside from having addresses for both Bayview and CitiMortgage, either entity’s agent for service of process could have been ascertained through a simple search of the Secretary of State’s database. Therefore, Bayview and CitiMortgage were not proper “John Doe” defendants in the Quiet Title Action, and the Junks’ service by publication as to the John Doe defendants was of no effect as to either Bayview or CitiMortgage. Thus, The Junk’s Motion for Judgment on the Pleadings and Default Judgment is hereby denied.

C. MERS’ Motion to Dismiss the Quiet Title Action is Granted Without Prejudice.

As discussed above, Bayview and CitiMortgage were not properly made parties to the Quiet Title Action. Thus, MERS is the sole Defendant in that action. The Mortgage at issue has been assigned by MERS to Bayview, and by Bayview to CitiMortgage.

Additionally, this Court is simultaneously granting the motion substituting CitiMortgage as the Plaintiff in the Foreclosure Action that was initiated by Bayview while it was the servicer of the Loan and the holder of record of the Mortgage. The Junks' Quiet Title Action raises numerous issues challenging the validity and effect of the Mortgage that is the subject of the Foreclosure Action. In the interests of justice and judicial economy, these actions should be consolidated in some manner. Therefore, this Court hereby grants MERS' motion to dismiss the Quiet Title Action without prejudice, and directs the Junks to assert whatever claims or issues they contend apply in their Answer to the Foreclosure Action's complaint.

D. The Junks' Motion to Dismiss the Foreclosure Action under Rules 13(a) and 12(b)(8) is Denied.

The Junks contend that the Foreclosure Action should have been asserted by Bayview as a compulsory counterclaim to the Quiet Title Action under Rule 13(a), SCRPC. Additionally, the Junks contend that dismissal is appropriate under Rule 12(b)(8), SCRPC, because the Quiet Title Action constituted another action that was pending between the same parties for the same claim. However, as stated above, neither Bayview nor CitiMortgage were properly made parties to the Quiet Title Action. Therefore, neither Rule 13(a), nor Rule 12(b)(8) are applicable, and the Junk's Motion to Dismiss the Foreclosure action on these grounds is hereby denied.

E. The Junks Motion to Dismiss the Foreclosure Action Under Rule 12(b)(6) is Denied.

The Foreclosure Action Complaint asserts three separate causes of action: (1) fraudulent satisfaction of the mortgage, (2) reformation of the deed and/or mortgage, and (3) foreclosure of the mortgage. The Junks have moved to dismiss this Complaint under

Rule 12(b)(6), SCRCF on the following grounds: (1) Bayview lacked standing to bring the action; (2) the Mortgage that is the subject of the action is not a valid mortgage; (3) the Assignment of the Mortgage from MERS to Bayview was invalid; (4) any assignment of the Note and Mortgage was invalid due to AHM's bankruptcy; and (5) MERS' interest in the Mortgage was invalidated when AHM transferred the Note and no assignment of the Mortgage was recorded. None of these grounds provides a basis for dismissal of the Foreclosure Action Complaint under Rule 12(b)(6).

"In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." Cole Vision Corp. v. Hobbs, 384 S.C. 283, 286, 680 S.E.2d 923, 924 (Ct. App. 2009). Copies of documents attached as exhibits to a pleading are a part of the pleadings. S.C. R. Civ. P. 10(c). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Id.

The Complaint includes three causes of action. Each claim expressly includes allegations sufficient to meet all required legal elements under South Carolina law, and satisfies the standard under Rule 8, especially when viewed in the required light most favorable to the Plaintiff, and with every doubt resolved in its behalf. The Junks' Motion does not allege that Plaintiff has improperly pleaded the referenced causes of action, and Plaintiff's Complaint can certainly be read to state valid claims for relief.

The Junks contend that Bayview lacked standing to bring the Foreclosure Action because it was not the holder of the Note. At the time the Foreclosure Action was initiated by Bayview, it was the servicer of the Junks' loan. In the case of In re

Woodberry, 383 B.R. 373, 379 (D.S.C. Bankr. 2008), the U.S. District Court for the District of South Carolina held “that a loan servicer, with a contractual duty to collect payments and foreclose mortgages in the event of default, has standing to move for relief from stay in the Bankruptcy Court.” Subsequent decisions in the District of South Carolina have extended this to apply where the servicer did not hold the note. Harris v. Option One Mortgage Corp., 261 F.R.D. 98, 103-04 (D.S.C. 2009); In re Dendy, 396 B.R. 171, 178 (D.S.C. 2008) (noting that the servicer was the general agent for the holder of the mortgage by servicing the loan and collecting the loan payments). This view follows the holdings in other jurisdictions that loan servicers have standing to bring foreclosure actions by virtue of their pecuniary interest in collecting payments under the terms of the note and mortgage. In re Tainan, 48 B.R. 250, 252 (E.D. Pa. 1985) (servicer is real party in interest under Rule 17(a) for relief from stay); Bankers Trust v. 236 Beltway, 865 F. Supp 1186 (E.D. Va 1994) (both lender and servicer have standing to foreclose even if servicer is not the holder of the mortgage); In re O’Dell, 268 B.R. 607, 618 (N.D. Ala. 2001) aff’d 305 F.3d 1297 (11th Cir., 2002) (servicer is real party in interest in proceedings involving loans which it services); In re Miller, 320 B.R. 203 (N.D. Ala 2005) (servicer permitted to seek relief from stay). Thus, the Junk’s contention that Bayview lacks standing is without merit.

Even if Bayview had lacked standing to bring the Foreclosure action, any issue as to standing is resolved by the substitution of CitiMortgage as the Plaintiff. The original Note, bearing an endorsement from AHM to CitiMortgage, is in CitiMortgage’s possession. Additionally, CitiMortgage is the current assignee of record of the Mortgage. Rule 17(a), SCRPC provides that “[n]o action shall be dismissed on the ground that it is

not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest." Thus, any issue as to standing is resolved by CitiMortgage's substitution as Plaintiff in this action.

The Junks' remaining grounds are not properly applicable to a Rule 12(b)(6) motion. This Court must consider the Complaint in the light most favorable to the plaintiff, and with every doubt resolved in its behalf. Under this standard, the Plaintiff has stated facts sufficient to establish the causes of action asserted. Therefore, the Junks' Motion to dismiss under Rule 12(b)(6) is hereby denied.

F. Bayview's Motion to Substitute CitiMortgage as the Plaintiff in the Foreclosure Action is Granted.

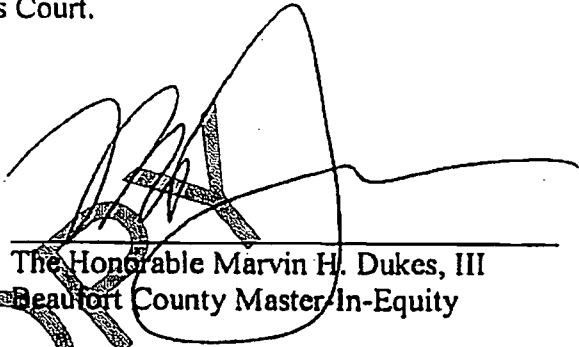
Bayview has moved, pursuant to Rule 25(c) to substitute CitiMortgage as the Plaintiff in the Foreclosure Action. This motion is based on the assignment of the Mortgage from Bayview to CitiMortgage. Additionally, substitution of CitiMortgage is also appropriate under Rule 17(a) based upon CitiMortgage's possession of the original Note bearing an endorsement to CitiMortgage and the fact that it is now also the holder of record of the Mortgage. This Court hereby grants the motion to substitute CitiMortgage as the Plaintiff in the Foreclosure Action and orders that the Foreclosure Action be hereinafter captioned as: "CitiMortgage, Inc. v. Daniel L. Junk, Christina H. Junk and Oldfield Community Association."

CONCLUSION

For the reasons stated herein, in the Quiet Title Action, this Court hereby: (a) denies Plaintiffs' Motion that MERS Post an Indemnity Bond; (b) denies Plaintiffs' Motion for Judgment on the Pleadings and Default Judgment; and (c) grants MERS'

Motion to Dismiss without prejudice. Because the Quiet Title Action has now been dismissed any other motions pending therein are hereby denied as moot. As for the Foreclosure Action, for the reasons stated herein, this Court hereby: (a) denies the Junks' Motions to Dismiss under Rules 13(a), 12(b)(6), and 12(b)(8); and (b) grants Bayview's motion to substitute CitiMortgage as Plaintiff. Pursuant to Rule 12(a), SCRPC, the Junks shall have fifteen (15) days from the their receipt of this Order to file a responsive pleading to the Foreclosure action Complaint, unless a Scheduling Order designating a different timeframe is entered by this Court.

IT IS SO ORDERED



The Honorable Marvin H. Dukes, III
Beaufort County Master-In-Equity

April 11, 2011

COPY

The Supreme Court of South Carolina

Daniel L. Junk and Christine H. Junk, Petitioners,

v.

Mortgage Electronic Registration Systems, Inc., and John
Does 1-5000, Respondents.

Bayview Loan Servicing, L.L.C., Respondent,

v.

Daniel Junk a/k/a Daniel L. Junk, Christina H. Junk and
Oldfield Community Association, Defendants, Of Whom
Daniel L. Junk and Christina H. Junk are, Petitioners.

Appellate Case No. 2012-205650

ORDER

We deny the petition for a writ of certiorari to review the Court of Appeals' order in *Junk v. Mortgage Electronic Registration Systems, Inc.*, S.C. Ct. App. Order dated September 13, 2011.


C.J.
FOR THE COURT

Columbia, South Carolina

February 7, 2013

cc:

The Honorable Jenny Abbott Kitchings

A. Parker Barnes, Jr.

Brian Patrick Crotty

Daniel L. Junk

RECEIVED

FEB 08 2013

SC Court of Appeals

CERTIFIED TRUE COPY:
V. Claire Allen, Deputy
Clerk, S.C. Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

Case No. 2009-CP-07-04301

RECEIVED

MAY 23 2011

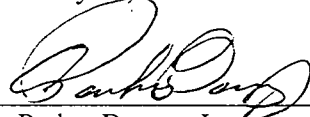
SC Court of Appeals

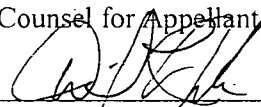
Daniel L. Junk and Christine H. Junk
v.
Mortgage Electronic Registration Systems, Inc.,
And John Does 1-5,000 Respondents.

AMENDED NOTICE OF APPEAL

Daniel L. Junk and Christine H. Junk appeal the order of the Honorable Marvin H. Dukes, III dated May 20, 2011. Appellants received written notice of entry of this order on May 20, 2011.

May 23, 2011


A. Parker Barnes, Jr.
Post Office Drawer 1729
500 Carteret Street
Beaufort, South Carolina 29901
(843) 522-2600
Counsel for Appellant Christine Junk


Daniel L. Junk, J.D.
Pro Se Appellant
181 Oldfield Way
Okatie, SC 29909
(843) 290-8469

Other Counsel of Record:

Brian P. Crotty
Nelson Mullins Riley & Scarborough LLP
Meridian, 17th Floor
1320 Main Street
Columbia, SC 29201
Counsel for Respondent Mortgage Electronic Registration Systems, Inc.
(803) 255-9422

CERTIFIED TRUE COPY:
V. Claire Allen, Deputy
Clerk, S.C. Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

Case No. 2009-CP-07-04301

RECEIVED

MAY 23 2011

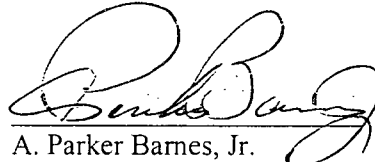
SC Court of Appeals

Daniel L. Junk and Christine H. Junk Appellants,
v.
Mortgage Electronic Registration Systems, Inc.,
And John Does 1-5,000 Respondents.

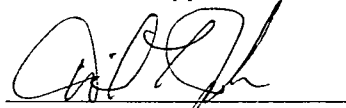
PROOF OF SERVICE

I certify that I have served the Amended Notice of Appeal on Mortgage Electronic Registration Systems, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on May 23, 2011, addressed its respective attorneys of record, Brian P. Crotty, Nelson Mullins Riley & Scarborough LLP, Meridian, 17th Floor, 1320 Main Street, Columbia, SC 29201.

May 23, 2011



A. Parker Barnes, Jr.
Post Office Drawer 1729
500 Carteret Street
Beaufort, South Carolina 29901
(843) 522-2600
Counsel for Appellant Christine Junk



Daniel L. Junk, J.D.
Pro Se Appellant
181 Oldfield Way
Okatie, SC 29909
(843) 290-8469

CERTIFIED TRUE COPY:
V. Claire Allen, Deputy
Clerk, S.C. Court of Appeals

A. PARKER BARNES JR., P.A.

ATTORNEY AT LAW
P.O. DRAWER 1729
500 CARTERET STREET
BEAUFORT, SOUTH CAROLINA 29901-1729
apbarnes@parkerbarneslaw.com

A. PARKER BARNES, JR.
CERTIFIED CIVIL COURT MEDIATOR

TELEPHONE (843) 522-2600
FACSIMILE (843) 522-2610

May 23, 2011

The Honorable Kenneth A Richstad
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
MAY 23 2011

Re: Daniel L. Junk and Christine H. Junk, Appellants v.
Mortgage Electronic Registration Systems, Inc.
and John Does 1-5,000, Respondents, Case No. 2009-CP-07-04301

SC Court of Appeals

-and-

Bayview Loan Servicing, LLC, Respondent, v.
Daniel Junk f/k/a/ Daniel L. Junk and
Christine H. Junk, Appellants, Case No. 2009-CP-07-05088

Dear Mr. Richstad:

Enclosed for filing is an amended notice of appeal in each of the above cases that supplements the May 12, 2011 Notice of Appeal. Case No. 2009-CP-07-04301 is an appeal from a final order denying Plaintiff's Rule 59(e) S.C.R.C.P. motion to alter or amend the April 11, 2011 Order dismissing the case.

Case No. 2009-CP-07-05088 is an interlocutory appeal that supplements the May 12, 2011 Notice of Appeal. We request an interlocutory appeal pursuant to S.C. Code § 18-1-130 which authorizes appeals from "any intermediate order involving the merits and necessarily affecting the judgment" and S.C. Code § 14-3-330, as held in *State v. McKnight*, 287 S.C. at 168, 337 S.E.2d at 209, which permits an interlocutory appeal when the order "in effect determines the action . . . or discontinues the action." The effect of the Order(s) in Case No. 2009-CP-07-05088 directly determines the actions in both cases as the two cases are inseparable and the overlap of issues between the two cases necessitates our request that the Court grant Appellants leave to file and be heard on this interlocutory appeal.

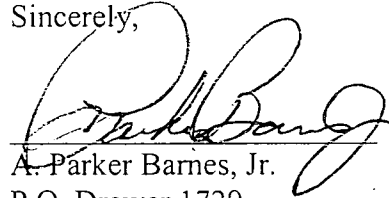
Also enclosed are the following:

- 1) Proof of service of the Amended Notice of Appeal on the respondents in each case.
- 2) A copy of the orders which are to be challenged on appeal.
- 3) A filing fee of \$100 for each appeal.

CERTIFIED TRUE COPY:
V. Claire Allen, Deputy
Clerk, S.C. Court of Appeals

2011

Sincerely,



A. Parker Barnes, Jr.
P.O. Drawer 1729
500 Carteret Street
Beaufort, SC 29901-1729
(843) 522-2600
Attorney for Christine Junk



Daniel L. Jank, J.D.
Pro Se Litigant
181 Oldfield Way
Okatie, SC 29909
(843) 290-8469

cc: Brian P. Crotty
Nelson Mullins Riley & Scarborough LLP
Meridian, 17th floor
1320 Main Street
Columbia, SC 29201
Attorney for Respondent Mortgage Electronic
Registration Systems, Inc.
Attorney for Respondent Bayview Loan Servicing LLC

Andrew Colvin
Nexsen Pruetz
400 Main Street Office Campus
Suite 100A
Hilton Head, SC 29226
Attorney for Oldfield Community Association

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MAY 23 2011
SC Court of Appeals

CERTIFIED TRUE COPY:
V. Claire Allen, Deputy
Clerk, S.C. Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
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

September 13, 2011

A. Parker Barnes, Jr, Esquire
A. Parker Barnes, Jr., PA
P.O. Drawer 1729
Beaufort, SC 29901

Daniel L. Junk, J.D.
181 Oldfield Way
Okatie, SC 29909

C. Mitchell Brown, Esquire
B. Rush Smith III, Esquire
Brian P. Crotty, Esquire
Michael J. Anzelmo, Esquire
Nelson Mullins Riley & Scarborough
P O Box 11070
Columbia, SC 29211

Re: Junk, D. v. Mortgage Electric & Bayview
2011192526

Dear Counsel:

Enclosed is a copy of an Order of the Court regarding your Motions in the above case.

The remittitur in the case will be sent to the Clerk of Court for Beaufort County according to the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: James, Y, Becker, Esquire
The Honorable Jerri Roseneau

CERTIFIED TRUE COPY:
V. Claire Allen, Deputy
Clerk, S.C. Court of Appeals

The South Carolina Court of Appeals

Daniel L. Junk and Christine H. Junk, Appellants,

v.

Mortgage Electronic Registration
Systems, Inc., and John Does 1-5000, Respondents,

and

Bayview Loan Servicing, LLC, Respondent,

v.

Daniel Junk, a/k/a Daniel L. Junk,
Christina H. Junk, and Oldfield
Community Association, Defendants,

Of Whom Daniel L. Junk and Christina
H. Junk are Appellants.

The Honorable Marvin Dukes, III
Beaufort County
Trial Court Case Nos. 2009-CP-07-04301 and 2009-CP-07-05088

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a 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. It is, therefore, ordered that the Petition for Rehearing be denied.

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V. Claire Allen, Deputy
Clerk, S.C. Court of Appeals

W. B. [Signature] J.

John D. [Signature] J.

Joseph M. [Signature] A.J.

Columbia, South Carolina

cc: A. Parker Barnes, Jr, Esquire
Daniel L. Junk, J.D.
C. Mitchell Brown, Esquire
B. Rush Smith, III, Esquire
Brian P. Crotty, Esquire
Michael J. Anzelmo, Esquire
James Y. Becker, Esquire

FILED
11/30/11 *VA*

CERTIFIED TRUE COPY:
V. Claire Allen, Deputy
Clerk: S.C. Court of Appeals

The South Carolina Court of Appeals

Daniel L. Junk and Christine H. Junk, Appellants,

v.

Mortgage Electronic Registration
Systems, Inc., and John Does 1-5000, Respondents,

and

Bayview Loan Servicing, LLC, Respondent,

v.

Daniel Junk, a/k/a Daniel L. Junk,
Christina H. Junk, and Oldfield
Community Association, Defendants,

Of Whom Daniel L. Junk and Christina
H. Junk are Appellants.

The Honorable Marvin Dukes, III
Beaufort County
Trial Court Case Nos. 2009-CP-07-04301 and 2009-CP-07-05088

ORDER

Appellants filed Notices of Appeal from the master's orders (1) dismissing their quiet title action and denying their motion to require Mortgage Electronic Registration Systems, Inc., (MERS) to file an indemnity bond, and (2) permitting CitiMortgage, Inc., to substitute for Bayview Loan Servicing, LLC, (Bayview) in Bayview's foreclosure action and declining to dismiss the foreclosure action. This court consolidated the appeals. Respondents filed a motion to dismiss the consolidated appeal. After Appellants filed a return five days late, Respondents

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V. Claire Allen, Deputy
Clerk, S.C. Court of Appeals

filed a motion to strike Appellant's return as untimely and another motion for an extension of time to file their reply. Appellants then filed a motion for leave to file their return out of time.

After careful consideration, we grant Appellants' petition to file their return to the motion to dismiss out of time, and we deny Respondents' motion for an extension of time to file a reply and motion to strike Appellants' return as untimely. Finally, we grant Respondents' initial motion and dismiss the consolidated appeal because neither order challenged herein is immediately appealable. See S.C. Code Ann. § 14-3-330 (1976 & Supp. 2010) (permitting appeal from an order that affects a party's substantial right and "(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, . . . or (c) strikes out an answer or any part thereof or any pleading in any action").

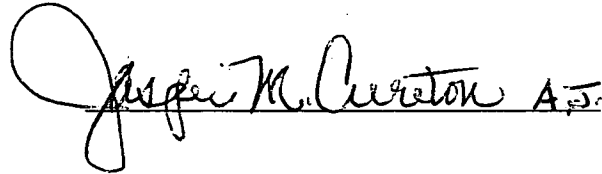
As to the master's order denying Appellants' motion to require MERS to file an indemnity bond and dismissing Appellants' quiet title action: Int'l Fidelity Ins. Co. v. China Constr. America (SC) Inc., 375 S.C. 175, 181, 650 S.E.2d 677, 680 (Ct. App. 2007) ("[A] dismissal of a claim without prejudice is not an adjudication of the merits of the controversy and has no preclusive effect as a matter of law." (citing McEachern v. Black, 329 S.C. 642, 651, 496 S.E.2d 659, 663 (1998))); Collins v. Sigmon, 299 S.C. 464, 467, 385 S.E.2d 835, 837 (1989) (recognizing when a court dismisses a case without prejudice, "the plaintiff can reassert the same cause(s) of action" in another case) (internal quotation marks omitted).

As to the master's order permitting CitiMortgage, Inc., to substitute for Bayview in the foreclosure action and declining to dismiss the foreclosure action: McLendon v. S.C. Dep't of Highways & Pub. Transp., 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994) (interpreting § 14-3-330 and holding that, like the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be

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V. Claire Allen, Deputy
Clerk, S.C. Court of Appeals

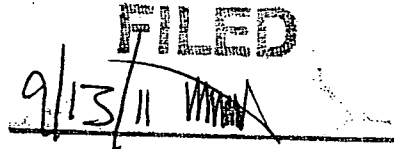
raised again at a later stage of the proceedings and, therefore, is not directly appealable); Neeltec Enters., Inc. v. Long, 391 S.C. 177, 179, 705 S.E.2d 57, 58 (Ct. App. 2011) (noting an order substituting parties is not immediately appealable when it is not final and does not "fit within a statutory exception permitting an appeal from an interlocutory order").

AND IT IS SO ORDERED.

A handwritten signature in black ink that reads "Joseph M. Curston A.J.". The signature is written in a cursive style with a large initial "J".

Columbia, South Carolina

cc: A. Parker Barnes, Jr., Esquire
Daniel L. Junk, J.D.
Brian P. Crotty, Esquire
Michael J. Anzelmo, Esquire

A rectangular stamp with the word "FILED" in bold, capital letters. Below the stamp, the date "9/13/11" is handwritten in black ink, followed by a signature that appears to be "V. Claire Allen".

CERTIFIED TRUE COPY:
V. Claire Allen, Deputy
Clerk, S.C. Court of Appeals

**PHOTOCOPY BILLING
SOUTH CAROLINA COURT OF APPEALS**

Date: April 22, 2014

Name: Daniel L. Junk and Christine H. Junk v. Mortgage Electronic Registration

Firm: Nelson Mullins

Address 1320 Main Street/ 17th Floor

Attn: Diane H. Argabright

File/Client #: 2011-192526

Op.

Copies Made By: Diane Greene, caseowner

	\$ _____
<u>31 pages</u>	\$ _____
	\$ _____
Total Due	\$ <u>31.00</u>

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P.O. Box 11629
Columbia, SC 29211

Will send runner with payment. 4/28/14
per Diane Argabright
DAG