

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Master-in-Equity

The Honorable Jeffery M. Tzerman

Case No. 2011-CP-28-0981

Appellate Case No. 2012-212971

RECEIVED

MAY 27 2014

SC Court of Appeals

CitiMortgage, Inc., Respondent,

v.

Ellen R. Springer, Peggy S. Charles f/k/a Peggy S.
Roberts, Defendants

Of whom Ellen R. Springer is Appellant.

CitiMortgage's Return to Appellant's Motion to Reinstate Appeal

Pursuant to South Carolina Appellate Court Rule 240(e), Respondent CitiMortgage, Inc. ("CitiMortgage") files this return to the motion to reinstate the appeal filed by Appellant Ellen R. Springer ("Springer"). The motion should be denied for two reasons.

First, remittitur has issued properly, and, therefore, this Court lack jurisdiction to entertain the motion. On February 27, 2014, CitiMortgage moved to dismiss the appeal because Springer failed to serve the Record on Appeal as mandated by this Court. By letter dated December 11, 2013, this Court directed Springer to serve the

Record on Appeal by January 10, 2014.¹ Springer ignored that clear mandate. Thus, this Court dismissed the appeal on April 8, 2014. See Order dated April 8, 2014, attached hereto as Exhibit A. Springer did not file any motion or seek to reinstate the appeal within fifteen days of the filing of the order of dismissal. As a result, this Court remitted this matter to the trial court on April 29, 2014. See Remittitur dated April 29, 2014, attached hereto as Exhibit B.

The proper issuance of remittitur divests this Court of jurisdiction over the matter. Wise v. S.C. Dept. of Corrections, 372 S.C. 173, 173, 642 S.E.2d 551, 551 (2007). Notably, this lack of jurisdiction precludes this Court from considering any motion filed by a party. Id. The remittitur is properly issued after dismissal “unless a motion to reinstate the appeal has been actually received by the court within fifteen days of the filing of the order of dismissal.” Id. “The only exception to this rule is if the remittitur was sent down by mistake, error or inadvertence of the Court.” Id.

This Court properly issued the remittitur in this matter. The Court correctly dismissed the appeal because Springer failed to comply with the requirements of our appellate court rules and clear directives from this Court. See Wise, 372 S.C. at 173, 642 S.E.2d at 642 (stating that “[w]henver it appears that an appellant has failed to comply with the requirements of the SCACR, an order of dismissal **shall** be issued”) (emphasis added). Springer did not file any motion to reinstate within the fifteen day deadline imposed by our appellate court rules. Thus, this Court properly issued the

¹ Initially, Appellant was required by the rules to serve the Record of Appeal within 30 days of the service of the last brief, which was CitiMortgage’s brief filed on October 14, 2013, because no reply brief was served. See Rule 210(a), SCACR. The due date was November 13, 2013. Appellant failed to do so. Instead, Appellant has constantly filed frivolous motions seeking identical relief (this Court has consistently denied each motion).

remittitur. Id. (holding that “[t]he Clerk of Court **shall** remit the case to the lower court in accordance with Rule 221, SCACR, unless a motion to reinstate the appeal has been actually received by the court within fifteen days of filing of the order of dismissal”) (emphasis added).

The remittitur was not issued by mistake, error, or inadvertence, and Springer advances no argument that it was. It is well-settled that a remittitur is properly issued when appellant fails to timely move to reinstate the appeal within fifteen days of the dismissal. Id. (“The remittitur in this case was not sent down by mistake, error or inadvertence of the Court of Appeals. Instead, it was correctly sent after fifteen days had elapsed from the date of the order dismissing the appeal without the proper filing of a petition for reinstatement.”). Therefore, this Court does not have jurisdiction to act in this matter or entertain Springer’s motion. The motion should be dismissed.

Second, Springer fails to advance any legitimate reason to reinstate the appeal. This Court dismissed the appeal because Springer failed to serve the Record on Appeal as she was required to do. In the motion, Springer does not even attempt to address this issue. Instead, Springer advances several frivolous and incomprehensible arguments wholly unrelated to the basis for dismissal. This Court should deny the motion, provided the Court had jurisdiction to do so.

In addition, this Court should view the motion in light of the fact that this Court was more than lenient with Appellant throughout this appeal. Despite multiple opportunities and second chances from this Court, Appellant simply refused to comply with this Court’s mandates and rules. The appeal had been pending since September 17, 2012, and due to Appellant’s failure to follow the appellate court rules and clear


directions from this Court, the appeal had yet to even move to final briefing. The constant delays caused by Appellant caused CitiMortgage to incur unnecessary costs on appeal, delay in advancing the appeal, unwarranted delay in the underlying foreclosure, and costs associated with maintaining and preserving the property at issue. This Court cannot provide Springer with another chance to abuse the appellate process and prejudice CitiMortgage.

Conclusion

Based on the foregoing, this Court lacks jurisdiction to address Springer's motion to reinstate the appeal. Even if this Court had jurisdiction, the motion should be denied.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____


Michael J. Anzelmo
SC Bar No. 72933
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for CitiMortgage, Inc.

Columbia, South Carolina

May 27, 2014

The South Carolina Court of Appeals

Citimortgage Inc., Respondent,

v.

Ellen R. Springer, Peggy S. Charles f/k/a Peggy S.
Roberts, Defendants,

Of whom Ellen R. Springer is the Appellant.

Appellate Case No. 2012-212971

ORDER

This appeal has been pending since September 17, 2012. By letter of December 11, 2013, this court instructed Appellant to serve the record of appeal on Respondent and file proof of service within thirty days. It has now been 117 days, and Appellant has failed to serve the record on appeal. Accordingly, this appeal is dismissed.

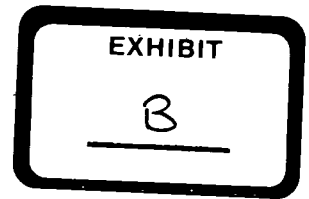


FOR THE COURT C.J.

Columbia, South Carolina

cc:
Ellen R. Springer
Michael J. Anzelmo, Esquire
Allen Mattison Bogan, Esquire
Benjamin Rush Smith, III, Esquire

4/8/14
FILED
mmmmmm



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

April 29, 2014

The Honorable Joyce McDonald
PO Box 1557
Camden SC 29021-1557

REMITTITUR

Re: Citimortgage Inc. v. Ellen R. Springer
Lower Court Case No. 2011CP2800981
Appellate Case No. 2012-212971

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Ellen R. Springer
Michael J. Anzelmo, Esquire
Allen Mattison Bogan, Esquire

Benjamin Rush Smith, III, Esquire
The Honorable Jeffrey Marc Tzerman

Parties Served:

Ellen R. Springer
147-21 109th Avenue
Jamaica, New York 11435



Jennifer Lee
Administrative Assistant

May 27, 2014

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.9024
www.nelsonmullins.com

Michael J. Anzelmo
Tel: 803.255.9312
Fax: 803.255.9024
michael.anzelmo@nelsonmullins.com

May 27, 2014

Hand Delivered

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

RECEIVED
MAY 27 2014
SC Court of Appeals


RE: CitiMortgage, Inc. v. Ellen R. Springer
Case No.: 2011-CP-28-0981
Our file no.: 26019/01732

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of a Return to the Motion to Reinstate the Appeal in the above-referenced matter. Please file the original and return a clocked-in copy to me via our courier. Should you have any questions, please do not hesitate to contact me.

By copy of this letter, I am hereby serving the opposing party.

Very truly yours,



Michael J. Anzelmo

MJA:jlee
Enclosures

cc: Ellen R. Springer, Pro se