

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Master-In-Equity

The Honorable Marvin H. Dukes, III

Court of Appeals Tracking No. 2012-210910

CitiMortgage, Inc., Respondent,

v.

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

Of Whom Daniel L. Junk and Christine H. Junk are Appellants,

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

v.

_____ CitiMortgage, Inc. Counterclaim
Respondent.

_____ Daniel L. Junk and Christine H. Junk, Third-party
Appellants,

v.

Riley Pope & Laney, LLC, Heidi Carey, Esq., Roy
Laney, Esq., T. Lowndes Pope, Esq., Bayview Loan
Servicing, LLC, MERSCORP, Inc., Mortgage
Electronic Registration Systems, Inc., Citi Master
Servicing, Citigroup Global Markets Realty Corp.,
Citigroup Mortgage Loan Trust, Inc., John Does 1-
5,000, Jennifer Oakes, Robert G. Hall, Security
Connections, Inc., Krystal Hall, Danielle Sterling, ABC
Appraisal Group, Inc., Mark A. Ruplinger, Linda
Heller, Harry Jones, Colonial Coast Title Agency, Inc.,
Lawyers Title Insurance Corporation, Corelogic, Inc.
and American Home Mortgage Holdings, Inc. Third-Party
Respondents.

Return to Appellants' Motion for Substitution

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SC Court of Appeals

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Respondent/Counterclaim Respondent CitiMortgage, Inc., and Third-Party Respondents Bayview Loan Servicing, LLC, Merscorp, Inc., Mortgage Electronic Registration Systems, Inc., CitiMaster Servicing, Citigroup Global Markets Realty Corp., Citigroup Mortgage Loan Trust, Inc., Jennifer Oakes, Robert G. Hall; Third-Party Respondents Riley Pope & Laney, LLC, Heidi Carey, Esq., Roy Laney, Esq., and T. Lowndes Pope, Esq.; Third-Party Respondents Security Connections, Inc., Krystal Hall; Third-Party Respondents ABC Appraisal Group, Inc., Mark A. Ruplinger, Linda Heller, Harry Jones; Third-Party Respondents Corelogic, Inc.; Third-Party Respondents Lawyer Title Insurance Corporation; and Third-Party Respondents Colonial Coast Title Agency, Inc. (collectively “Respondents”) file this collective Return to the Appellant Daniel L. Junk’s Motion for Substitution in the above-captioned appeal.

In the Motion, Junk seeks three substitutions. First, Junk requests that Daniel L. Junk, Debtor-in-Possession, be substituted as a party for Daniel L. Junk as the Appellant, Counterclaim Appellant, and Third-Party Appellant (collectively “Appellant”) in this appeal. See Motion p. 2. Second, Junk—not an attorney licensed in any state—requests that he be substituted as counsel of record for Appellant Christine H. Junk. See Motion p. 2, 3. Third, Junk requests that he be substituted as counsel of record—again despite the fact that Junk is not a licensed attorney—for **Respondents** and other creditors. See Motion p. 2 (requesting substitution of the bankruptcy estate “as *pro se* counsel for all other Creditors of the Estate); see also p. 3-4. Each request should be denied by the Court for the following reasons.

1. Junk's request for Daniel L. Junk, Debtor-in-Possession, to be substituted as a party to this appeal should be denied. Junk claims substitution was "directed by the Honorable John E. Hoffman, Jr." in the order from the bankruptcy court. See Motion at p. 3. That is not what the bankruptcy order says. In the bankruptcy court, Junk argued he lacked authority to participate in this appeal because he is now "Daniel L. Junk, as Debtor-in-Possession," and not a party to the appeal. See Order of Bankruptcy Court p. 72-74, attached to Junk's Motion for Substitution as Exhibit A. The bankruptcy court rejected the argument that Daniel L. Junk is a different party than Daniel L. Junk, Debtor-in-Possession, holding:

[T]he Junks are authorized to participate in the litigation in the South Carolina State Courts. **Given that the Junks are the same person before and after the Petition Date, it seems odd to suggest, as they do, that they would have to be substituted for themselves.**

See Order of Bankruptcy Court p. 73, attached to Junk's Motion for Substitution as Exhibit A (emphasis added).¹ The above demonstrates that the bankruptcy court did not "direct" Junk to file this Motion. The substitution is unnecessary because Daniel L. Junk is the same person as Daniel L. Junk, Debtor-in-Possession.

Similarly, Junk's reliance on Rule 25, SCRCPC, is misplaced. Rule 25 controls "substitutions of parties." Daniel L. Junk, Debtor-in-Possession, is not a new party to this appeal. Daniel L. Junk, Debtor-in-Possession is one-in-the-same with Appellant

¹ The bankruptcy court did note that this Court has the "authority to do whatever [it] believe[s] is necessary to make the Junks parties to the proceedings in South Carolina in their capacities as debtors in possession." See Order of Bankruptcy Court p. 73, attached to Junk's Motion for Substitution as Exhibit A. This Court need not take any action to authorize Appellants Daniel L. Junk and Christine H. Junk to remain parties to the appeal. Should the Court prefer to refer to Appellants as "Appellant Daniel L. Junk, Debtor-in-Possession, and Appellant Christine H. Junk, Debtor-in-Possession," for the caption, Respondents have no objection. Respondents ask that any costs associated with the alteration of the caption be borne exclusively by the Junks since they have requested this unnecessary relief.

Daniel L. Junk, who is already a party to this appeal. Therefore, Rule 25 does not apply. The Court should deny this request.

2. Junk also asks that he be substituted as counsel of record for Appellant Christine H. Junk. See Motion p. 2, 3. This request is improper for two reasons. First, Junk improperly filed this Motion on behalf of Appellant Christine H. Junk. Junk cannot move on behalf of Ms. Junk because A. Parker Barnes, Jr., Esq., represents Appellant Christine H. Junk in this appeal. Unless and until Mr. Barnes moves to be withdrawn as counsel of record, only he can make motions on behalf of Ms. Junk.

Second, South Carolina law precludes Junk from representing Appellant Christine H. Junk in this appeal. It is well-settled that a *pro se* litigant cannot represent another *pro se* litigant. Such representation would constitute the unauthorized practice of law. See, e.g., S.C. Code Ann. § 40-5-80 (Supp. 2009) (recognizing that a party is entitled to represent oneself, but it is the unauthorized practice of law when a non-lawyer represents another by noting “[t]his chapter may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires”) (emphasis added). As a *pro se* litigant, Junk cannot represent another *pro se* litigant, which Ms. Junk would be if her attorney, Mr. Barnes, moves to withdraw. Therefore, the Court should deny Junk’s request to represent his wife in this appeal.

3. Junk also requests that this Court substitute him as counsel of record for Respondents and all other creditors. Motion p. 2, 3-4. This request should be denied

out of hand.² Respondents are already represented by the undersigned counsel, and Junk, as a *pro se* litigant, cannot represent Respondents before this Court, in any event. Moreover, substitution of counsel requires some indicia from the client that the client desires new counsel, i.e., counsel to be replaced consents to the substitution (which has not occurred in this matter), the client signs the motion for substitution (which likewise has not occurred), or an affidavit from the client (likewise none here). Junk has failed to present any such evidence that would allow him to represent Respondents in this appeal. The Court should deny this request.

4. Lastly, Junk's bankruptcy action no longer has any impact on this appeal. The bankruptcy court lifted the stay specifically to allow this appeal and the South Carolina litigation to proceed. All that remains in this appeal is for Appellants to serve the Record on Appeal³ on Respondents, for the parties to file final briefing in conformity with Rule 211, SCACR, and for Appellants to file the Record on Appeal.

It is time for this case to proceed. The parties have completed initial briefing and have designated the items to be included in the Record on Appeal. Respondents ask this Court to require Appellants to serve the Record on Appeal within ten (10) days of the order addressing this Motion or face dismissal of the appeal. Appellants have

² This request is in keeping with Junk's conduct throughout this litigation. Mr. Junk falsely executed and recorded a document purporting to be a "Satisfaction of Mortgage" of the mortgage at issue in this case. See Order of Bankruptcy Court p. 7, attached to Junk Motion for Substitution as Exhibit A.

³ This Court has already entertained and ruled on motions related to the content of the Record on Appeal. That issue is complete. The Record on Appeal is ready for service as designated by the parties.

had more than ample time to prepare the Record on Appeal for service and should not be afforded any additional time.⁴

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Global Markets Realty Corp., and Citigroup
Mortgage Loan Trust, Inc., Jennifer Oakes, and
Robert G. Hall.

Columbia, South Carolina

July 25, 2014

and

⁴ Further, Respondents note that if Appellants persist with filing frivolous filings, motions, petitions, or otherwise attempt to delay this appeal with meritless arguments such as in the instant Motion, Respondents will move this Court to (1) sanction the Appellants and impose costs to respond to such filing and/or (2) enter an order barring Appellants from making any further filings in this action unless Appellants (both Daniel L. Junk and Christine H. Junk) are represented by a licensed South Carolina attorney

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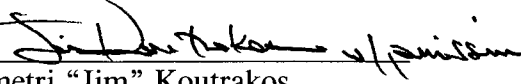
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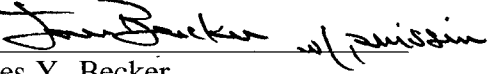
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Master-in-Equity

The Honorable Marvin H. Dukes, III

Court of Appeals Tracking Nos. 2012-210910, 2012-212115, and 2012-212148

CitiMortgage, Inc., Respondent,

v.

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

Appellants,

Of Whom Daniel L. Junk and Christine H.
Junk are.....

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

v.

CitiMortgage Inc., Counterclaim Respondent,

Daniel L. Junk and Christine H. Junk, Third-Party Appellants,

v.

Riley Pope & Laney, LLC, Heidi Carey,
Esq., Roy Laney, Esq., T. Lowndes Pope,
Esq., Bayview Loan Servicing, LLC,
Merscorp, Inc., Mortgage Electronic
Registration Systems, Inc., Citi Master
Servicing, Citigroup Global Markets Realty
Corp., Citigroup Mortgage Loan Trust, Inc.,
John Does 1-5,000, Jennifer Oakes, Robert
G. Hall, Security Connections, Inc., Krystal
Hall, Danielle Sterling, ABC Appraisal
Group, Inc., Mark A. Ruplinger, Linda
Heller, Harry Jones, Colonial Coast Title
Agency, Inc., Lawyer Title Insurance
Corporation, Corelogic, Inc., and American
Home Mortgage Holdings, Inc.,

Third-Party Respondents.

Proof of Service

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent/Counterclaim Respondent, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow by all by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **Return to Appellants' Motion for Substitution**

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SC Court of Appeals

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July 25, 2014

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July 25, 2014

Hand Delivered

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

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SC Court of Appeals

RE: CitiMortgage, Inc. v. Daniel L. Junk, et al.
Civil Action No. 2009-CP-07-05088
Order on Appeal: February 22, 2012 ("Order Granting Motion to Dismiss
Third-Party Complaint")
Court of Appeals Tracking No. 2012-210910

and

CitiMortgage, Inc. v. Daniel Junk a/k/a Daniel L. Junk, Christina H. Junk and
Oldfield Community Association
Civil Action No. 2009-CP-07-5088
Order on Appeal: April 23, 2012 ("Order Granting CitiMortgage's Motion to
Dismiss Counterclaims")

and

CitiMortgage, Inc. v. Daniel Junk a/k/a Daniel L. Junk, Christina H. Junk and
Oldfield Community Association
Civil Action No. 2009-CP-07-05088
Order on Appeal: May 3, 2012 ("Form 4 Order Denying Junk's Motion for
Default Judgment")

The Honorable Jenny Abbott Kitchings
July 25, 2014
Page 2

Dear Ms. Kitchings:

Enclosed please find an original seven copies of a Return to Appellants' Motion for Substitution 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 all parties.

Very truly yours,



Michael J. Anzelmo

MJA:jlee
Enclosures

cc: A. Parker Barnes, Jr.
James Y. Becker
James G. Long
John T. Lay
Childs Cantey Thrasher
Sean Michael Bolchoz
Demetri "Jim" K. Koutrakos
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Tina Cundari
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