

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Honorable Marvin H. Dukes, III, Master in Equity

Case No. 2009-CP-07-05088

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,

-and-

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

v.

CitiMortgage, Inc. Counterclaim Respondent.

-and-

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

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**REPLY TO MOTION FOR SUBSTITUTION**

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Pursuant to Rule 240(f) and of the South Carolina Appellate Court Rules and Rules 11(b) and 25(c) of the South Carolina Rules of Civil Procedure, Daniel L. Junk as Debtor-in-possession (“DIP”), formerly appearing before this Court as Daniel L. Junk in his individual capacity as an unlicensed attorney representing himself *pro se*, respectfully submits this reply to his motion for substitution of parties and counsel dated July 16, 2014 (“Motion”).

**1. Substitution under Rule 25, SCRCP, is proper under the law.**

On June 27, 2013, there was a transfer of interest in the underlying action subject this appeal as a matter of law. “A trustee in bankruptcy succeeds to all rights of the debtor, including the right to assert any causes of action belonging to the debtor.” *In re Beach First National Bancshares, Incorporated*, 702 F.3d 772, 776 (4<sup>th</sup> Cir. 2012) citing *Nat’l Am. Ins. Co. v. Ruppert Landscaping Co.*, 187 F.3d 439, 441 (4<sup>th</sup> Cir.1999). “A debtor’s right to bring a legal claim is part of the bankruptcy estate under 11 U.S.C. § 541(a).” Applying that foundational principle to the case at bar, the Trustee has the authority to assert any cause of action that Bancshares could have brought in its own right.” *Id.*

A plain reading of the Relief Order<sup>1</sup> makes it clear that under bankruptcy law, as debtor in possession, DIP is a judicial lien creditor and bona fide purchaser of the property subject this appeal and foreclosure/reformation of mortgage action as of June 27, 2013, under 11 U.S.C. §

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<sup>1</sup> The order of the Honorable John E. Hoffman, Jr. of the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division, dated July 2, 2014, attached to the Motion as Exhibit A (the “Relief Order”).

544(a). Pursuant to the Relief Order, CitiMortgage may proceed with its count to reform the mortgage only if “reformation would be effective against a judicial lien creditor and bona fide purchaser as of the Petition Date.” See Relief Order, p. 72, ¶ C, § 6 and p. 75, ¶ VI. . Substitution of the Estate as the real party in interest based in the transfer of the Junks’ interest in the counterclaims and third-party claims that occurred upon the filing of the Chapter 11 Petition. The instant Motion is therefore proper under Rule 265, SCACR and Rule 25, SCRCF.

## **2. The Debtors’ Bankruptcy Impacts this Appeal**

The Debtors’ bankruptcy filing clearly has an impact on this appeal. CitiMortgage’s right and ability to continue its pre-petition counts of foreclosure and reformation of the mortgage against the Junk’s Bankruptcy Estate (“Estate”) as to the property located at 181 Oldfield Way, Okatie, SC 29909, derives from bankruptcy law. The Debtors’ Chapter 11 Proceeding and related Adversary Proceeding,<sup>2</sup> remain pending with the Adversary Proceeding stayed as a result of the Relief Order.

CitiMortgage filed a claim against the Estate and subsequently sought and was granted relief from the automatic stay under 11 U.S.C. § 362(d) to continue the litigation subject its claim outside the bankruptcy court solely “as to the property commonly known as 181 Oldfield Way, Okatie, SC 29929.” See Relief Order, p. 32, ¶ B, 1. “CitiMortgage [did] not request relief from the automatic stay to pursue damages resulting from Debtors’ filing of documents

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<sup>2</sup> The fact that counsel for Respondents CitiMortgage, Inc. (“CitiMortgage”), 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 and Robert G. Hall – Nelson Mullins Riley & Scarborough (“Nelson Mullins”) Rush Smith, III, Brian Crotty and Michael Anzelmo – are named defendants in their individual capacity with each having a personal interest in the outcome of these proceedings as it relates to their liability in the claims made against them personally in the Adversary Proceeding by the Junks’ Bankruptcy Estate, raises ethical issues that the DIP will address with this Court separately from the instant Motion.

purporting to satisfy the Mortgage.” Id. The relief granted to CitiMortgage was solely to continue its litigation “of the state court complaint by which CitiMortgage seeks a foreclosure judgment[,]” and “also the count in CitiMortgage’s foreclosure complaint by which is seeks reformation of the Mortgage, . . . . [with] “[r]eformation [ ] permissible only if it is not inconsistent” with the rights and powers of the DIP as hypothetical lien creditors and bona fide purchasers who gained that status under 11 U.S.C. § 544(a) as of the Petition Date, June 27, 2013. Id., and p. 33 ¶ 1.

Further evidence of the impact from the Debtors’ bankruptcy filing is found in the Relief Order wherein it is directed that “CitiMortgage, shall not execute any judgment it obtains without requesting and obtaining further relief from the automatic stay from this Court pursuant to § 362(d)(1) (e.g., for lack of adequate protection) or pursuant to § 362(d)(2).” Id., p. 64, ¶ C, § 3 and p. 75, ¶ VI. This appeal is inseparable from its underlying foreclosure and reformation of the mortgage action. The Relief Order is very specific *passim* as to the capacity the Debtors can continue participating in the instant appeal and its underlying foreclosure and reformation of the mortgage action – *as debtors-in-possession*. “To be clear, as debtors in possession, the Junks are authorized to participate in the litigation in the South Carolina state courts, including by proceeding with the pending appeal and any appeals that are filed in the future.” Id., p. 74, ln 6. “As debtors in possession, the Junks ‘have all the rights, other than the right to compensation under section 330 of this title, and powers . . . of a trustee serving in a case under this chapter[.]’ 11 U.S.C. § 1107(a).” Id., p. 73, ln 3. A fair reading of the Relief Order points to the undeniable conclusion that the Junks’ bankruptcy does in fact have an impact on the instant appeal – an omnipresent impact.

**3. DIP has a fiduciary duty to the creditors of the Estate; including the Respondents named herein that are listed creditors of the Estate and substitution of counsel to**

**represent the creditors' interests in the Estate is proper.**

11 U.S.C. § 1106, which incorporates key provisions of § 704, sets forth the statutory duties of the trustee. In addition to these statutory duties, the case law also imposes fiduciary obligations upon a trustee to act for the beneficiaries of the “trust” and includes the traditional duties of care, loyalty and impartiality. *Hall v. Perry*, 703 F.2d 1339, 1357 (9th Cir. 1983); Restatement (Second) of Trusts § 170, 174. In addition, trustees must treat all beneficiaries fairly and equally with impartiality. *Id.* § 183. State law provisions which allow for approval of actions taken where there is a conflict of interest or for the application of the business judgment rule and limitations on liability for a breach of the duty of care do not apply to the trustee.

Creditors of the Estate as listed in Debtors' Schedules D; E; and F, contained in the Debtors' Voluntary Petition Under Chapter 11, filed in the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division on June 27, 2013, and as amended thereafter, attached to the Motion as Exhibit B, includes as listed creditors Counterclaim Respondent CitiMortgage in addition to Third-party Respondents 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, Jennifer Oakes, Robert G. Hall, Security Connections, Inc., Krystal Hall, Colonial Coast Title Agency, Inc., Lawyers Title Insurance Corporation, and American Home Mortgage Holdings, Inc. (collectively “Creditors”). DIP has a duty under statutory law to “collect and reduce to money the property of the estate . . . and close such estate as expeditiously as is compatible with the best interests of the parties.” 11 U.S.C. § 704(a)(1). “The duty to close the estate expeditiously is the Trustee’s main duty and overriding responsibility.” *Yadkin Valley Bank & Trust v. Linda McGee, Trustee (In re Hutchinson)*, 5 F.3d 750, 753 (4th Cir. 1993) (citing Collier on Bankruptcy and other cases). DIP

representing the Estate *pro se* requires substitution of counsel for the creditors of the Estate that are named Respondents herein so that DIP may uphold his statutory and fiduciary duties to the creditors of the Estate.

**4. Substitution of counsel for the substituted parties is proper.**

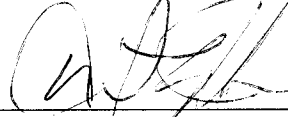
As stated in the Relief Order “as a debtor in possession, Mr. Junk has the rights and powers of a trustee. Trustees may represent themselves in Chapter 11 cases, *see Nicole Energy Servs.*, 385 B.R. at 221–22, as well as under other chapters of the Bankruptcy Code. Because they are representing themselves, they may do so even if they are not attorneys. Thus, Mr. Junk would not be prohibited from representing himself merely because he is not a licensed attorney.” *Id.* p. 53 ¶2.

The Estate is defined under 11 U.S.C. § 541 setting forth the statutory duties of the trustee. In addition to these statutory duties, the case law also imposes fiduciary obligations upon a trustee to act for the beneficiaries of the “trust” and includes the traditional duties of care, loyalty and impartiality. *Perry*, 703 F.2d 1339, 1357 *supra*. Christine H. Junk is a co-debtor and also debtor in possession, no longer an individual with interests separate from Mr. Junk – they are each debtors in possession – and Mr. Junk can represent the interests of the Estate as its trustee, including the interests of the creditors of the Estate as debtor in possession. Substitution of counsel for the substituted parties is a proper request pursuant to the Relief Order wherein the Junks were granted permission to proceed with the prosecution of the claims subject the instant appeal and the defense against CitiMortgage’s foreclosure/reformation of the mortgage action subject the instant appeal.

{Signature page follows}

Respectfully submitted,

DANIEL L. JUNK, DEBTOR-IN-  
POSSESSION, *PRO SE*



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Daniel L. Junk, Debtor-in-possession  
*Proposed Substitute Pro Se  
Appellant, Counterclaim Appellant  
and Third-party Appellant*  
35 North Fourth Street  
Columbus, OH 43221  
(614) 648-5062

Columbus, Ohio  
July 31, 2014

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Honorable Marvin H. Dukes, III, Master in Equity

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Case No. 2009-CP-07-04301  
Case No. 2009-CP-07-05088

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CitiMortgage, Inc., Respondent,

v.

Daniel Junk a/k/a Daniel L. Junk and  
Christine H. Junk and Oldfield Community  
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Of Whom Daniel L. Junk and Christine H.  
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CitiMortgage, Inc. Counterclaim Respondent.

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

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Riley Pope & Laney, LLC , Heidi Carey, Esq.,  
Roy Laney, Esq., T. Lowndes Pope, Esq.,  
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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.

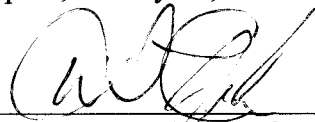
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PROOF OF SERVICE

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I certify that I have served DIP's Reply to its Motion for Substitution of Defendant, Counterclaim Plaintiff, Third-party Plaintiff and for Substitution of Substitute Defendant, Substitute Counterclaim Plaintiff, Substitute Third-party Plaintiff on counsel listed below by depositing a copy of it in the United States Mail, postage prepaid, on July 31, 2014.

July 31, 2014



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Daniel L. Junk *as Debtor-in-possession*  
35 North Fourth Street  
Suite 200  
Columbus, OH 43215  
(614) 648-5062

{Service list on following page}

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**SC Court of Appeals**

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**Document(s) Served: DIP's Reply to its Motion for Substitution of Defendant, Counterclaim Plaintiff, Third-party Plaintiff and for Substitution of Substitute Defendant, Substitute Counterclaim Plaintiff, Substitute Third-party Plaintiff**

**Persons Served:**

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AUG 01 2014

**SC Court of Appeals**

DANIEL L. JUNK

July 31, 2014

VIA FEDERAL EXPRESS OVERNIGHT DELIVERY

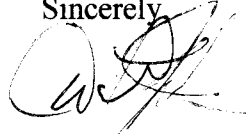
The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

Re: *CitiMortgage, Inc. v. Junk and Junk v. CitiMortgage, Inc., et al.*  
Consolidated Case Tracking No. 2012-210910.

Dear Ms. Kitchings,

Enclosed herewith is an original and 7 copies of DIP's Reply to the Motion for Substitution of Defendant, Counterclaim Plaintiff, Third-party Plaintiff and for Substitution of Counsel for Substitute Defendant, Substitute Counterclaim Plaintiff, Substitute Third-party Plaintiff. Kindly file the original and 6 copies and return the 7<sup>th</sup> file-stamped copy to me in the attached self-addressed, postage-paid envelope.

Sincerely



Daniel L. Junk,

cc: A. Parker Barnes, Jr., Esq.  
Michael J. Anzelmo, Esq.  
John T. Lay, Esq.  
Sean Michael Bolchoz, Esq.  
Susan Taylor Wall, Esq.  
James Y. Becker, Esq.  
Demitri "Jim" Koutrakos, Esq.  
Elizabeth Van Doren Gray, Esq.  
G. Hamlin O'Kelly, III, Esq.  
James G. Long, III, Esq.

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AUG 01 2014

**SC Court of Appeals**