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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SEP 18 2014

APPEAL FROM BEAUFORT COUNTY
Master-In-Equity

SC Court of Appeals

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 Leave to File Motion in Circuit Court

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Respondent/Counterclaim Respondent CitiMortgage, Inc. (“CMI”) files this Return to the Appellants’¹ Motion for leave to File Motion in Circuit Court.

Mr. Junk’s motion seeks improper relief that this Court cannot address and is interposed solely for the purpose of delaying this appeal. This is an appeal of orders dismissing counterclaims and third-party claims, and the motion is based on factual contentions surrounding issues that have not been addressed by the lower court, putting it beyond the reach of this Court. As for delay, on July 2, 2014, the Bankruptcy Court expressly authorized this appeal to proceed, but Mr. Junk has refused to serve the Record on Appeal, thus delaying the filing of final briefs and the ultimate resolution of this appeal. With that caveat, CMI does not oppose the lifting of the appellate stay in this matter so that the issues remaining before the circuit court can be resolved in that forum without further delay. This appeal, however, should proceed to resolution.

In the Motion, Mr. Junk seeks permission to return to the circuit court to litigate the issue of “ownership” of the Note and Mortgage and entitlement to enforce the Note and Mortgage in the foreclosure action pursuant to Rule 60(b), SCRPC. *See* Motion p. 3.² Insofar as Mr. Junk seeks to return to the lower court to litigate the remaining

¹ Appellant Daniel L. Junk improperly filed this motion on behalf of Appellant Christine H. Junk. Mr. Junk cannot move on behalf of Ms. Junk because A. Parker Barnes, Jr., Esq., represents Appellant Christine H. Junk in this appeal. Mr. Barnes has not filed any motion on behalf of Ms. Junk nor did Mr. Barnes join in this motion. Unless and until Mr. Barnes moves to be withdrawn as counsel of record, only he can make motions on behalf of Ms. Junk. Also, South Carolina law precludes Mr. Junk from representing Ms. 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.

² Mr. Junk also asks this Court (1) to strike all appellate orders related to an April 11, 2011 Order issued by the circuit court and (2) for leave to return to the circuit court to request that court strike all “subsequent orders” issued by the circuit court based on that April 11, 2011 Order. This Court cannot rule on such a request. The April 11, 2011 Order is not on appeal with this Court. In fact, this Court

foreclosure claims, CMI has no objection. All of the counterclaims dismissed in the order on appeal sought money damages. The lower court retains jurisdiction over matters not affected by the appeal, namely the foreclosure claims. To the extent the underlying foreclosure claims are not affected by the automatic stay, nothing prevents the parties from proceeding in the lower court, and no relief from this Court is necessary. Insofar as Mr. Junk's motion seeks leave to proceed in the lower court, it can be construed as a motion to lift the automatic stay (to the extent any stay exists), pursuant to Rule 241, SCACR, allowing the issue of CMI's entitlement to enforce the Note and Mortgage to be decided by the circuit court without further delay; if that is what Mr. Junk is asking, CMI concurs.

CMI responds more particularly to Mr. Junk's request as follows:

1. Currently before this Court in this consolidated appeal are two orders from the circuit court related to the litigation between Appellants and CMI: (a) a February 22, 2012 Order that dismissed Appellants' third-party complaint because Appellants did not allege that any of the third-party defendants were derivatively liable for the claims asserted by CMI against Appellants as well as because certain claims failed as a matter of law and (b) an April 24, 2012 Order that dismissed Appellants' counterclaims against CMI because Appellants' purported counterclaims were time-

previously held that order was not immediately appealable. *See* Order dated September 13, 2011. The Supreme Court denied Mr. Junk's petition for certiorari to review that dismissal. *See* Order dated February 7, 2013. Mr. Junk then attempted to re-appeal that April 11, 2011 Order to this Court. *See* Notice of Appeal dated March 23, 2013. This Court again dismissed that appeal. *See* Order dated July 2, 2013. Moreover, there is no basis for this Court to strike orders from a previous appeal in an unrelated appeal, and Mr. Junk does not advance any authority for his request.

barred under the applicable limitations period or failed as a matter of law.³ See Initial Brief of Respondents at p. 4-6. Notably, neither order on appeal decided or otherwise addressed the issues of ownership or entitlement to enforce the Note and Mortgage, which is the subject of Mr. Junk's motion.

2. The issue of CMI's entitlement to enforce the Note and Mortgage will be adjudicated by the circuit court in the underlying action for foreclosure. Appellants have raised the issue below⁴ and, therefore, as part of the circuit court's judgment those issues must necessarily be resolved. CMI is confident that it will prevail because, as servicer of Appellants' Mortgage, it is entitled to enforce the Note and Mortgage. *Bank of America, N.A. v. Draper*, 405 S.C. 214, 223, 746 S.E.2d 478, 482 (Ct. App. 2013) (holding that a servicer is a real party in interest with a pecuniary interest under the note and mortgage and, as a result, has standing to foreclose on the mortgage). The issue of CMI's entitlement to enforce the Note and Mortgage, however, is not an issue in the consolidated appeal before this Court. Rather, CMI's ability to enforce the Note and Mortgage remains pending before the circuit court.

3. Because the issues of ownership of and CMI's entitlement to enforce the Note and Mortgage have not yet been ruled upon by the circuit court, the circuit court has not entered a judgment on those issues in the foreclosure action. Because there is

³ The circuit court dismissed Appellants' purported slander of title counterclaim because such a claim was based on CMI's filing of a foreclosure complaint, which is absolutely privileged. See April 24, 2012 Order p. 12 ¶ 6. The circuit court dismissed the alleged Truth-in-Lending counterclaim because Appellants failed to plead the required element that the borrower was able to tender the loan proceeds in the event to rescission under TILA and because the claim was time-barred. See April 24, 2012 Order p. 8-12 ¶ 5.

⁴ See Appellants' Amended Answer, Counterclaims, and Third-Party Complaint ¶¶ 12, 17 ("the Plaintiff lacks standing to bring this action . . ."), 17(a)-(t), 28, 34, 38 ("CitiMortgage is not the real party in interest . . ."), 38(a)-(h), and 39.

no judgment on this issue, Mr. Junk's request for relief pursuant to Rule 60(b), SCRCR, is improper. Therefore, this Court should not return this matter to the circuit court on that incorrect basis.

4. If the foreclosure claims pending in the lower court were affected by the automatic stay under Rule 241, SCACR, the proper mechanism for allowing the circuit court to address the foreclosure related issues would be to grant the parties relief from the automatic stay pursuant to Rule 241, SCACR. The aim of Mr. Junk's Motion is to resume litigation of issues in the underlying foreclosure action.⁵ CMI concurs. To the extent the automatic stay affects the underlying foreclosure at all, it should be lifted so that the foreclosure can proceed and CMI can prove that it is entitled to enforce the mortgage. Thus, CMI joins in Mr. Junk's request that this Court lift the automatic stay pursuant to Rule 241, SCACR, so that the issue of CMI's entitlement to enforce the Note and Mortgage and any issue related ownership of the Note and Mortgage can be resolved by the circuit court, where such claims are properly litigated.

5. Mr. Junk's claims of fraud on the court, request for striking of appellate briefing, and his legal arguments regarding foreclosure law and bankruptcy law are totally without merit and do not even warrant a response. If made by a licensed lawyer, they would be frivolous. At best, his arguments reflect a profound misunderstanding—if not willful misrepresentation—of the law. This Court has made clear that a servicer of a mortgage, such as CMI, has standing to pursue foreclosure. *See Draper*, 405 S.C. at 223, 746 S.E.2d at 482. Mr. Junk admits in this Motion that CMI is "servicer of the debt." *See* Motion p. 6.

⁵See Motion p. 9 ("allow DIP to appear *pro se* in the trial court below. . . .").

Regardless of Mr. Junk's professional status, personal attacks and requests for sanctions over an issue that has never been litigated (ownership of the note and mortgage) have no place in this Court. Moreover, because this is a Court of appellate jurisdiction, this Court lacks the power to take action based on Mr. Junk's (mistaken) assertions of facts that have not been addressed in the first instance by a lower court. Even if this Court had authority to act, this Court still could not vacate its previous orders related to the dismissal of the April 11, 2011 Order because that Order is not before this Court in this appeal. *See* Footnote 2, *supra*.

6. Mr. Junk's Motion continues his practice of vexatious and meritless motions and filings throughout this litigation. This action has been marked by vexatious filings from the beginning. Notably, even before any lawsuits were commenced, in one of the first relevant filings of record, on April 20, 2009, Mr. Junk executed and recorded a document purporting to be a "Satisfaction of Mortgage" of his Mortgage. *See* Initial Brief of Respondents p. 9, citing to Junks' Brief in Opposition to MERS' Motion to Dismiss the Quiet Title Action at p. 7. Mr. Junk, stating falsely that he was acting as "agent for American Home Mortgage," swore that he was the "bona fide owner and holder of the [mortgage from the Loan]" and that "the debt which was secured [by the Loan] has been paid in full and the lien of the mortgage is satisfied and cancelled." *Id.* None of these sworn statements was true.

Mr. Junk took this action despite the fact that he has admitted that Appellants have not made a payment on their \$1.2 million mortgage since March 1, 2009. *See*

Initial Brief of Respondents p. 7 n.12, p. 8.⁶ Since then, through numerous tactical delays, Appellants have avoided foreclosure as well as their repayment obligation under the Note for over five years. Further delay burdens the parties and the courts.

CMI respectfully requests that this Court grant Mr. Junk's wish and allow the foreclosure to proceed so that the issue of CMI's entitlement to enforce the Note and Mortgage can finally be addressed by the circuit court. This Court should otherwise deny the Motion and order that this appeal proceed with the service of the Record on Appeal.

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Columbia, South Carolina

September 18, 2014

⁶ CMI cannot provide record citations at this time because Mr. Junk refuses to serve the Record on Appeal.

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 Leave to File motion in Circuit Court**

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September 18, 2014

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September 18, 2014

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1015 Sumter Street - 5th Floor
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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
September 18, 2014
Page 2

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Return to Appellants' Motion for Leave to File Motion in Circuit Court 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 opposing parties.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael J. Anzelmo". The signature is stylized with several loops and a long, thin tail extending to the right.

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
Elizabeth Van Boren Gray
Tina Cundari
Susan Taylor Wall
Hamilton Osborne, Jr.
Daniel L. Junk