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October 21, 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")

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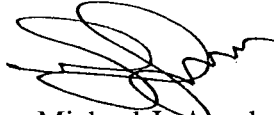
The Honorable Jenny Abbott Kitchings
October 21, 2014
Page 2

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of a Return to Appellants' Motion to Certify Appeal to Supreme 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,



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

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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 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 to Certify Appeal to Supreme Court

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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. (“CitiMortgage”) files this Return to the Motion to Certify the Appeal to the South Carolina Supreme Court filed by Appellants Daniel L. Junk and Christine H. Junk (collectively “the Junks”). Subject to the clarifications set forth below, and denying expressly the grounds asserted by the Junks in support of their motion, CitiMortgage does not oppose certification of this appeal to the South Carolina Supreme Court.

This matter began as a simple foreclosure action that the Junks have continually and unnecessarily complicated in an attempt to avoid their responsibility on a \$1.2 million mortgage loan the Junks entered into on November 3, 2006. After making payments to CitiMortgage on the thirty-year note for two years, the Junks stopped making payments in March 2009. As a result of the Junks’ default on the loan, the then-servicer of the loan, Bayview Loan Servicing, LLC, filed this foreclosure action on October 27, 2009. By Order filed April 12, 2011, CitiMortgage was substituted as plaintiff after taking over servicing of the loan from Bayview.¹ In response, the Junks sued every entity or person associated with this loan including appraisers, lawyers, title companies, and the mortgage servicer to whom they had been making payments, CitiMortgage. The Junks asserted numerous counterclaims against CitiMortgage and attempted to assert a third party complaint against twenty-three persons and/or entities which were not parties to the foreclosure and bore little, if any, relationship to the issues in dispute in the foreclosure action.

¹ The Junks have admitted to the Court of Appeals that CitiMortgage currently services the loan. See Junks’ Motion for Leave to file Motion in Circuit Court p. 6 dated September 9, 2014.

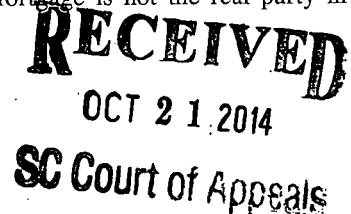
On February 22, 2012, the master-in-equity dismissed the Junks' third-party complaint in its entirety.² On April 24, 2012, the Master filed an order granting CitiMortgage's motion to dismiss the counterclaims.³ This appeal addresses only the February 22 Order and the April 24 Order, which dismissed the third-party complaint and counterclaims. Notably, neither order on appeal decided or otherwise addressed the issues of ownership or entitlement to enforce the Note and Mortgage, which form the basis of the Junks' motion to certify this appeal.

The Junks have raised the issue of CitiMortgage's entitlement to enforce the Note and Mortgage to the master-in-equity.⁴ Therefore, the issue of CitiMortgage's entitlement to enforce the Note and Mortgage will be adjudicated by the master-in-equity in the underlying foreclosure action. Such an argument does not present a novel

² The master dismissed the third-party complaint (a) in its entirety under Rule 14(a), SCRCP, because none of the claims alleged against the Third-Party Defendants were founded upon derivative liability with regard to the foreclosure complaint's claims; (b) denied the Junks' motion to join all of the Third-Party Defendants as counterclaim defendants under Rules 13(h), 14(c), 19, and 20, SCRCP, because they were not necessary parties and their permissive joinder was inappropriate; (c) dismissed the "civil conspiracy" claim as an improper attempt to assert a malicious prosecution claim as to an action that was still pending; (d) dismissed the slander of title claim because it was based on the filing of documents that were absolutely privileged; (e) dismissed the professional negligence claim asserted against RPL, Carey, Laney, and Pope because attorneys are immune from liability to third persons arising from their representation of their clients; (f) dismissed the quiet title claim because it failed to allege facts supporting a plausible inference that any Third-Party Defendant claimed or might claim an interest in the subject property; and (g) granted Heller, Jones and Colonial's motions for relief from the entry of default because "good cause" was shown supporting such ruling.

³ Pursuant to Rule 12(b)(6), SCRCP, the April 24 Order dismissed the counterclaims for negligent misrepresentation; fraud (three separate counts); breach of contract; rescission under the Truth-in-Lending Act; slander of title; and civil conspiracy. All of the counterclaims, with the exception of the slander of title counterclaim, were dismissed because they were brought outside of their applicable statute of limitations. The counterclaim for rescission under the Truth-in-Lending Act was also dismissed because the Junks failed to allege the required element that the borrower is able to tender the loan proceeds in the event rescission of the loan is ordered, and because this claim is time-barred under the TILA. Finally, the counterclaim for slander of title was dismissed because it was based upon the mortgage and the foreclosure action filings which did not, as a matter of law, support this claim.

⁴ See the Junks' 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.



issue of law in South Carolina; despite the Junks' unsupported assertion in the Motion. See Motion to Certify p. 1. Rather, CitiMortgage, as servicer of the Junks' mortgage, is entitled to enforce the note and mortgage via a foreclosure action. *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).⁵ The grounds asserted by the Junks in support of their motion are thus factually and legally incorrect.

Subject to the foregoing, CitiMortgage asserts that certification of this appeal is proper to avoid further delay. This appeal has been pending since May 2, 2012,⁶ and has been marked with delay from the outset due to the Junks' practice of vexatious and meritless motions and dilatory filings, including a Chapter 11 bankruptcy action filed in the United States Bankruptcy Court in Ohio. In the interest of brevity, CitiMortgage will not rehash each filing of the Junks, but instead CitiMortgage references the voluminous filings at the Court of Appeals. The Junks' delay tactics have allowed them

⁵ The Junks executed the \$1.2 million dollar note in favor of American Home Mortgage on November 3, 2006. The Junks also signed a mortgage dated November 3, 2006. The mortgage identified MERS as the mortgagee as nominee for American Home Mortgage and its successors and assigns. On January 22, 2007, CitiMortgage purchased the Junks' loan from the original lender, American Home Mortgage. In addition to acquiring the note, CitiMortgage also became the servicer of the loan as of February 1, 2007. The Junks have acknowledged in the South Carolina action that they received notice of this servicing transfer, and **the Junks made their mortgage payments to CitiMortgage from February 2007 until they unilaterally stopped making payments on this loan in March 2009.** In April 2009, as part of an internal transaction involving CitiMortgage and its related entity, CitiBank, NA, ownership of the Junks' note was transferred to CitiBank, NA. CitiMortgage remained the holder of the Junks' note and retained the servicing rights to the loan. In June 2009, CitiMortgage transferred the sub-servicing rights for the loan to Bayview Loan Servicing. The Junks have acknowledged in the South Carolina litigation that they received notice of the servicing transfer to Bayview. In March 2010, Bayview transferred servicing rights for the loan back to CitiMortgage, and also assigned the mortgage to CitiMortgage. The Junks have acknowledged in the South Carolina litigation that they received notice of this servicing transfer. CitiMortgage has continuously serviced the Junk's loan since that time. The Junks have admitted in the South Carolina litigation that CitiMortgage currently services the loan.

⁶ The Junks initiated this appeal with notices of appeal dated March 23, 2012, for the order dismissing the third-party complaint and May 2, 2012, for the order dismissing the counterclaims.

to delay the appeal for over two years, hinder the completion of the foreclosure, and avoid their repayment obligation on their \$1.2 million mortgage for nearly five and half years. Now, the Junks admit in this Motion that a petition for a writ of certiorari is inevitable in this matter.

Further delay burdens the parties and the courts. The Junks have been ordered to serve the Record on Appeal by November 10, 2014. *See* Order dated October 10, 2014, from the Court of Appeals. The Junks' Motion does not stay the Junks' responsibility to serve the Record on Appeal by November 10, 2014, under our appellate court rules. *See* Rule 240(b), SCACR. CitiMortgage thus fully expects the Junks to serve the Record on Appeal in a timely fashion, which will make the appeal ripe for adjudication by this Court to avoid further inevitable delay and save resources of the parties and the courts. Therefore, CitiMortgage respectfully requests that the Supreme Court certify this appeal pursuant to Rule 204(b), SCACR.⁷

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⁷ Lastly, the Junks' claim of fraud on the court by CitiMortgage lacks merit and does not even warrant a response. At best, such a claim reflects a profound misunderstanding—if not willful misrepresentation—of the law. A servicer of a mortgage, such as CitiMortgage, has standing to pursue foreclosure. *See Draper*, 405 S.C. at 223, 746 S.E.2d at 482. The Junks have admitted to the Court of Appeals that CitiMortgage is “servicer of the debt.” *See* Junks' Motion for Leave to file Motion in Circuit Court p. 6 dated September 9, 2014.

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Columbia, South Carolina

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In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
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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

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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 to Certify Appeal to Supreme Court

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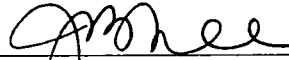
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Administrative Assistant

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