

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
App. Case No. 2012-210910

RECEIVED
OCT 28 2014
SC Court of Appeals

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
Insurance Corporation, Corelogic, Inc. and American
Home Mortgage Holdings, Inc.

Third-party Respondents.

APPELLANTS', COUNTERCLAIM APPELLANTS' AND THIRD-PARTY
APPELLANTS' REPLY TO MOTION TO CERTIFY CASE FOR
REVIEW BY SUPREME COURT

Pursuant to Rules 204(b) and 240(f), SCACR, Appellants, Counterclaim Appellants and Third-party Appellants Daniel L. Junk and Christine H. Junk (the "Junks"), respectfully submit this reply ("Reply") to their motion to certify this case for review by the Supreme Court ("Motion"). The Junks' Motion requested relief under Rule 204(b), SCACR, to transfer jurisdiction of the case, not just the pending consolidated appeal, to the Supreme Court. Furthermore, the Motion directly and specifically requested relief from this Court's Order dated October 9, 2014, ordering Appellants to perfect and serve and file the record for the consolidated appeal within 30 days.

CitiMortgage, Inc.'s ("CMI") return to the Motion ("Return") misunderstands Rule 204(b) and the relief requested in the Motion itself. If the Motion is granted, "[t]he effect of such certification shall be to transfer jurisdiction over the case to the Supreme Court for all purposes." *See* Rule 204(b), SCACR. The Motion requests the case, not the just the pending consolidated appeal, be transferred to the Supreme Court.

CMI mistakenly cites standing as the issue raised by its admission it has never been the owner of the refinance note and mortgage during the last five years of litigation despite its sworn statements to the contrary. The correct issue before the Court is capacity not standing. "The capacity of a party to sue or be sued shall be determined by the law of this State." Rule 17(b), SCRCF. "Want of capacity to sue has reference to any legal disability that deprives a party of

the right to come into court.” *Haddock Flying Service v. Tisdale*, 288 S.C. 62, 339 S.E.2d 525 (Ct. App. 1986) citing *Dockside Association, Inc. v. Detyens*, 285 S.C. 565, 330 S.E.2d 537 (Ct. App.1985), *aff’d as modified*, 337 S.E.2d 887 (S.C.1985). “It does not relate to the jurisdiction of the court.” *Id. cf See Sloan v. City of Greenville*, 235 S.C. 277, 287, 111 S.E.2d 573, 578 (1959); *Bramlett v. Young*, 229 S.C. 519, 535, 93 S.E.2d 873, 881 (1956); 59 Am.Jur.2d *Parties* Sections 249, 252 (1971); 67A C.J.S. *Parties* Sections 127, 129 (1978); see also Rules 9(a) and 17(b), SCRPC.

CMI’s Admission on August 28, 2014, through its counsel herein, that it has never been the owner of the Junks’ refinance note and therefore mortgage¹ at any time herein relevant, renders the entire record below in this case, not just the record of the pending appeal, void as a result of CMI’s lack of capacity to maintain the action as owner of the mortgage note debt. *See* Exhibit A attached hereto. Under South Carolina law, S.C. Code § 29-3-10,² only the owner of

¹ South Carolina recognizes the “familiar and uncontroverted proposition” that “the assignment of a note secured by a mortgage carries with it an assignment of the mortgage.” *Hahn v. Smith*, 157 S.C. 157, 154 S.E. 112 (1930); *Ballou v. Young*, 42 S.C. 170, 20 S.E. 84 (1894). “The assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee....” *South Carolina Nat’l Bank v. Halter*, 293 S.C. 121, 128, 359 S.E.2d 74, 77 (Ct.App.1987) (citing *Hahn*, 157 S.C. 157, 154 S.E. 112); *see also* 55 AM.JUR.2D *Mortgages* § 1317 (1971). *Cf. Midfirst Bank, SSB v C.W. Haynes*, 893 F. Supp. 1304, 1318 (D.S.C. 1994) (“The great weight of authority certainly favors applying the rule that the mortgages follow the notes; and therefore, because GNMA owns the mortgage notes, it also owns the mortgages.”). Under South Carolina law a mortgage is not a negotiable instrument that can be “held;” it is a non-negotiable instrument that is owned. *Moffatt v. Hardin*, 22 S.C. 9 (1884). “The transferee of an obligation secured by mortgage is ordinarily in the position of any transferee of a non-negotiable chose in action, and takes it subject to all equities and defenses which exist in favor of the debtor, such as illegality, failure of consideration, part payment, and the like, irrespective of whether he has actual or constructive notice thereof.” *Hardin*, 22 S.C. at 305 , *see also* Emily S. Bernheim, *Tiffany Real Property* § 1455 n.14 (3d ed. Supp. 2000).

² S.C. Code § 29-3-10. Rights and title of mortgagor and mortgagee.

“No mortgagee shall be entitled to maintain any possessory action for the real estate mortgaged, even after the time allotted for the payment of the money secured by mortgage is elapsed, but the mortgagor shall be deemed the owner of the land and the mortgagee as owner of the money lent or due and the mortgagee shall be entitled to recover satisfaction for such money out of the land by foreclosure and sale according to law. But notwithstanding the foregoing provision all releases of the equity of redemption shall be binding and effectual in law.”

the debt obligation has the rights and title of a mortgagee and only a mortgagee can extinguish the Junks' rights in the property through foreclosure, including their equitable right of redemption. *Bartles v. Livingston*, 282 S.C. 448, 319 S.E.2d 707 (Ct. App. 1984), *cf Lewis v. Premium Inv. Corp.* 351 S.C. 167, 568 S.E.2d 361 (S.C. 2002). There can be no colorable claim of an interest in the Oldfield Property as the mortgagee, nor a right to payment nor a right to an equitable remedy for breach of performance if such breach gives a right to payment as mortgagee, *unless CMI owns the mortgage note debt.*

Capacity is an issue of fact. *Brown v. Keller*, 274 F.2d 779, 780 (6th Cir. 1960). The Junks' Third Defense in their First Amended Answer, Counterclaims and Third-party Complaint denies CMI has capacity to maintain this action as owner of the mortgage under Rule 9(a), SCRCP, and that therefore the complaint should be dismissed. *See* Exhibit B attached hereto (for brevity, Appellants include only the first 9 pages of their First Amended Answer, Counterclaims and Third-party Complaint denying CMI has capacity to maintain this action as owner of the mortgage under Rule 9(a), SCRCP.). The filing of the foreclosure complaint against the Junks and the Oldfield Property as owner of the refinance note and mortgage was an act *ultra vires* and the subsequent substitution of CMI as the Plaintiff in the foreclosure action as owner of the refinance note and mortgage, as now admitted by CMI, was also an act *ultra vires*.

Any further costs and judicial resources spent on this case should be to correct the record below pursuant to Rule 60, SCRCP, based on the newly discovered evidence. The judicial costs and delays CMI complains of in its Return to the Motion are in reality, and now admittedly, the result of Respondent herein Bayview Loan Servicing, LLP ("Bayview"), and its counsel's (also Respondents herein) and CMI and its multiple counsel's, perpetual and continual false sworn-to pleadings in this action claiming to be owner of the mortgage note debt and its security

instruments.

The following now-admittedly false pleadings by Bayview and CMI are in the record before not only the state courts of South Carolina, but also the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division, and the United States District Court for the Southern District of Ohio in the Junks' bankruptcy related to the South Carolina property:

1. With the filing of the October 27, 2009 Complaint at paragraph 3, counsel for Bayview initiated this "simple foreclosure"³ action on behalf of Bayview in the capacity as "owner and holder of the Note and Mortgage"
 - a. The Complaint states three Causes of Action:
 - i. Fraudulent Satisfaction of Mortgage
 - ii. Reformation of Deed and/or Mortgage
 - iii. Foreclosure of Real Estate Mortgage (Deficiency Waived)
 - b. There is no allegation in the Complaint that Bayview or CMI is the servicer or that Bayview or CMI is acting in the capacity of, or with authority of, or on behalf of, any other party as servicer.
 - c. At paragraph 30 of the Complaint Bayview and CMI "expressly waived" any right to a personal judgment at law for the amount of the total debt under the terms of the Note pursuant to S.C. Code § 29-3-650. The Complaint expressly waives and does not seek a general lien at law against the Junks through a personal judgment on the total debt under the terms of the Note *before* a sale of the property.
 - d. At paragraph 30 of the Complaint Bayview and CMI "expressly waived" any right to any deficiency judgment and general lien at law pursuant to S.C. Code § 29-3-660. The Complaint expressly waives and does not seek a general lien at law against the Junks through a personal judgment on any remaining total debt under the terms of the Note *after* a sale of the property.

³ CMI and the Third-Party Respondents' have characterized this matter as a "simple foreclosure" for over five years. If this was a "simple foreclosure" it would have ended years ago. As stated in Appellants' Initial Reply Brief, "[i]f this case was simple, CitiMortgage would 'simply' open its document custodial records and accounting books and prove to the Junks and the court, that it does in fact own the debt evidenced by the Note [and thereby own the mortgage] with authority to enforce it as alleged." See Appellants' Initial Reply Brief at pg. 1, ¶ 1.

- e. The Complaint is verified under oath on personal knowledge by Bayview counsel and Respondent herein, Heidi Carey, Esq., despite the fact that the copy of the purported Note attached to the Complaint was clearly purportedly specifically indorsed to CitiMortgage and not to Bayview nor was there any allonge attached from CitiMortgage converting its purported specific indorsement back to an indorsement in blank.
2. CMI was substituted in as the real party in interest and Plaintiff based on its Rule 25(c), SCRCF, motion and its supporting affidavits under oath claiming the capacity of owner of the note and mortgage, pursuant to Rule, 17(a), SCRCF, in the April 11, 2011, Order from the Honorable Marvin H. Dukes, III, as the Master in Equity for Beaufort County.
3. The Junks' Third Defense in their First Amended Answer, Counterclaims and Third-party Complaint to the foreclosure Complaint specifically avers that CMI failed to plead the nature of its legal capacity to maintain this suit under Rule 9(a), SCRCF, at pp. 8-9.
4. CMI's August 28th admission, Exhibit A, admits the Junks' Third Affirmative Defense.

CMI's new admission commits the April 11, 2011 Order in the Circuit Court substituting CMI as the Plaintiff and denying Appellants' Rule 12(b)(6) and Rule 13(a), SCRCF motions on admittedly false sworn-to facts in this action to reversible error. CMI now admits it had no right to sue the Junks for foreclosure of the mortgage as owner of the Note and Mortgage and its false pleadings before the Court with its recent admission should prove fatal to CMI's or any other party's ability to maintain the foreclosure action against the Junks' Bankruptcy Estate and its South Carolina property.

CMI and its co-Respondents' counsel all signed onto CMI's Initial Brief currently pending in this Court claiming CMI owned the Note. CMI and its co-Respondents' counsel have a duty to correct the now-admitted false record rather than perpetuate it through their continued advocacy for the perfection and prosecution of the case under a now-admittedly void and false

record in the pending appeal.⁴

On June 27, 2013, there was a transfer of interest in the underlying action subject this case as a matter of law as a result of the Junks filing their bankruptcy petition. On July 2, 2014, the Hon. John E. Hoffman, Jr., in the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division issued an order (the “Relief Order”) granting CMI – and only CMI – limited relief from the automatic stay under 11 U.S.C. § 362(d) to pursue its claim against the bankruptcy estate outside the Bankruptcy Court to enforce its alleged specific lien against the Oldfield Property and to reform the mortgage of the Oldfield Property, *so long as doing so would not be inconsistent with the Junk’s as Debtors in possession (“DIP”) position as a hypothetical lien creditor and bona fide purchaser under 11 U.S.C. § 544(a) as of June 27, 2013.*

CMI now admits that whoever owns the subject refinance mortgage debt and mortgage is not recorded in the Beaufort County Register of Deeds as the mortgagee and owner of the mortgage prior to June 27, 2013. As a result of the July 2, 2014 Relief Order and CMI’s recent admission, CMI is unable to obtain a judgment of foreclosure against the Oldfield Property and the foreclosure action should be dismissed with prejudice.

In the interests of judicial economy and comity with the Federal Bankruptcy and District Courts in Ohio, this case should be transferred to the Supreme Court under Rule 204(b), SCACR, and the Supreme Court should dismiss the foreclosure action and reformation of the deed action with prejudice under Rule 60, SCRCR, as a result of the newly discovered evidence by way of admission. There is no precedent in South Carolina allowing a Plaintiff that has admitted the Defendants’ specifically averred defense claiming Plaintiff lacked capacity under Rule 9(a),

⁴ Although this is a consolidated appeal, and Respondents’ Initial Brief is a single joint brief, as of the writing of this Reply, the only Return to the Motion received by the Junks is CMI’s Return as Respondent and Counterclaim Respondent, yet CMI does not request that the consolidated appeals be separated back into the originally filed individual appeals.

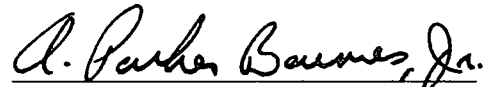
SCRCP, to continue its lawsuit against the Defendants and their property, and requiring an appellant to perfect, serve and file the void record despite an admission it lacks capacity and that its pleadings before the courts of this state have been false for the entire five years of the litigation.

CONCLUSION

WHEREFORE, Appellants, Counterclaim Appellants and Third-party Appellants Daniel L. Junk and Christine H. Junk, respectfully request this Court or the South Carolina Supreme Court to issue an Order reassigning this case to the South Carolina Supreme Court for the above reasons.

Respectfully submitted,

A. PARKER BARNES, JR., P.A.



A. Parker Barnes, Jr. – signed with permission 

(SC Bar No. 523)

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*Counsel for Appellant, Counterclaim
Appellant and Third-party Appellant,
Christine Junk*

and

DANIEL L. JUNK



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*Pro Se for Appellant, Counterclaim
Appellant and Third-party Appellant
Daniel L. Junk*

Columbus, Ohio
October 27, 2014

EXHIBIT A

Nelson Mullins

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August 28, 2014

Via Federal Express and U.S. Mail

Daniel L. Junk
Christine Junk
181 Old Field Way
Okatie, SC 29909

Daniel L. Junk
Christine Junk
2827 Chateau Circle S.
Upper Arlington, OH 43212

RE: Letter to CitiMortgage dated August 14, 2014

Mr. Junk,

We have been asked to respond on behalf of CitiMortgage, Inc. ("CMI") to your letter dated August 14, 2014, received by CMI on August 18, 2014.

To the extent your obligation has been discharged or is subject to an automatic stay of a bankruptcy order under Title 11 of the United States Code, this notice is for compliance and informational purposes only and does not constitute a demand for payment or an attempt to collect any such obligation.

CMI received your letter dated July 23, 2014, on July 28, 2014, and CMI acknowledged receipt on July 29, 2014. Moreover, CMI responded to your letter dated July 23, 2014, on August 8, 2014. After further review, CMI qualifies its response in its August 8, 2014 letter by stating that, while CMI purchased the Note from the original lender and was the owner of the Note, on or about April 2009, as part of an internal transaction involving CMI and its related entity Citibank, NA, ownership of the Note was internally transferred to Citibank, NA whose address is Citibank, N.A., (CBNA) Other Hold Portfolio, Corporate Accounting, 1000 Technology Drive, O'Fallon, MO 63368-2240. CMI remains the holder of the Note and the

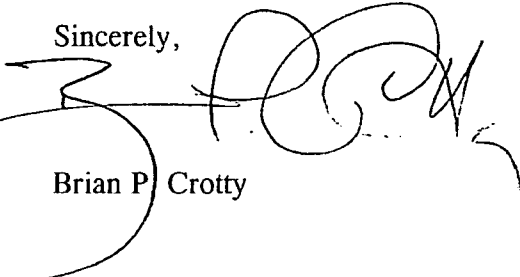
August 28, 2014
Page 2

servicer of this loan. CMI has determined that no further response to your August 14, 2014 letter is required. See 12 C.F.R. § 1024.36(f)(i).

As CMI is the servicer of the loan and because this loan is in litigation we request that any further communications relating to this loan be directed or copied to the undersigned counsel for CMI.

As to any other requests that may be contained in your letter, CMI has determined that any such requests do not qualify as a request related to the servicing of your mortgage loan. Therefore, no response is required.

Sincerely,



Brian P Crotty

BPC:mja

- cc: A. Parker Barnes (via U.S. Mail only)
- Jennifer Brunner (via U.S. Mail only)
- Rick L. Brunner (via U.S. Mail only)
- Peter Contreras (via U.S. Mail only)
- Kaitlin M. Madigan (via U.S. Mail only)
- Patrick M. Quinn (via U.S. Mail only)
- Susan L. Rhiel (via U.S. Mail only)
- Kristin Radwanick (via U.S. Mail only)

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

CITIMORTGAGE, INC.,)
)
)
Plaintiff,)

v.)

DANIEL L. JUNK and)
CHRISTINE H. JUNK, et al.)
)
Defendants.)

DANIEL L. JUNK and)
CHRISTINE H. JUNK,)
)
Counterclaim Plaintiffs,)

v.)

CITIMORTGAGE, INC.,)
)
Counterclaim Defendant.)

DANIEL L. JUNK and)
CHRISTINE H. JUNK,)
)
Third-Party Plaintiffs,)

v.)

RILEY POPE & LANEY, LLC, HEIDI)
CAREY, ESQ., ROY LANEY, ESQ.,)
T. LOWNDES POPE, ESQ., BAYVIEW)
LOAN SERVICING, LLC, MERSCORP,)
INC., MORTGAGE ELECTRONIC)

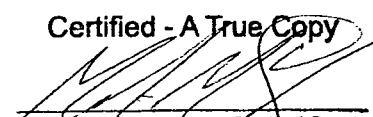
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

DOCKET NO.: 2009-CP-07-05088

DEFENDANTS DANIEL L. JUNK'S
AND CHRISTINE H. JUNK'S FIRST
AMENDED ANSWER,
COUNTERCLAIMS AND
THIRD-PARTY COMPLAINT

JURY TRIAL DEMANDED FOR ALL
MATTERS AT LAW

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CLERK OF COURT
BEAUFORT COUNTY, SC

Certified - A True Copy

Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Melissa Kilby

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 Defendants.)
_____)

Daniel L. Junk and Christine H. Junk, (“Defendants”), responding to allegations of the Plaintiff’s Complaint, would show and allege unto this Honorable Court that:

FOR A FIRST DEFENSE

1. That upon information and belief each and every allegation contained in the Plaintiff’s Complaint and not specifically admitted hereinafter is denied.
2. Wherever “MERS” is used in any paragraph in the Answer, Counterclaim and Third-Party Complaint it includes both Third-Party Defendants MERSCOPR. Inc. and Mortgage Electronic Registration Systems, Inc.
3. Defendants deny paragraph 1 of this Complaint and further allege that Plaintiff does not have standing with which to invoke the subject matter jurisdiction of this Honorable Court and the foreclosure complaint should be dismissed.

4. Defendants are without sufficient knowledge of the Plaintiff's legal status to do business in South Carolina as alleged in paragraph 2 of the Complaint and therefore deny each and every allegation contained in paragraph 2 of the Complaint and demand strict proof thereof.

5. Paragraphs 3,5,6,7,13,16,19,20,21,22,23,24,25,26,27 of the Complaint contain legal conclusions to which no responses are required; however, to the extent paragraphs 3,5,6,7,13,16,19,20,21,22,23,24,25,26,27 do contain allegations, Defendants deny the allegations contained in paragraphs 3,5,6,7,13,16,19,20,21,22,23,24,25,26,27 of the Complaint and demand strict proof thereof.

6. Paragraph 4 of the Complaint contains legal conclusions to which no responses are required; however, to the extent paragraph 4 does contain allegations, Defendants admit that Defendants have a right, title and interest in the real estate subject this action and deny the other allegations, if any, contained in paragraph 4 of the Complaint and demand strict proof of the allegations, if any, contained therein.

7. Defendants admit that they signed a promissory note ("Refi Note") on November 3, 2006 as alleged in paragraph 8 but deny that the copy of the Refi Note attached to the Complaint as "Exhibit A" is a genuine and authentic copy of the Refi Note they signed.

8. Defendants deny the allegations contained in paragraph 9 of the Complaint and further allege that none of the documents they signed on November 3, 2006 was a valid mortgage under South Carolina law and demand strict proof of the allegations contained therein.

9. Defendants deny the allegations contained in paragraph 10 of the Complaint and further allege upon information and belief American Home Mortgage (hereinafter "AHM") was

never and has never been a member of Third-Party Defendants Mortgage Electronic Registration Systems, Inc. or MERSCORP, Inc. (collectively hereinafter "MERS") and that MERS never has been and never was nominee of AHM and that MERS never had authorization from AHM as its nominee to assign the Refi Note and purported mortgage and that MERS never had a pecuniary interest in the Refi Note which it could assign and is judicially estopped from claiming otherwise and that the document improperly titled "Mortgage" attached to the Complaint as "Exhibit B" is not a valid mortgage under South Carolina law and Defendants demand strict proof thereof for all allegations contained in paragraph 10 of the Complaint.

10. Defendants deny the allegations contained in paragraphs 11 and 12 of the Complaint and demand strict proof thereof.

11. Paragraphs 14, 15 and 17 of the Complaint contain legal conclusions to which no responses are required and Defendants further allege that Plaintiff has no standing to make claims on behalf of AHM and Defendants deny the allegations, if any, contained in paragraph 14 of the Complaint. Upon further information and belief, no legal entity named AHM¹ has ever existed that was a New York corporation so that AHM lacked the capacity to enter into the Refi Note as a matter of law and upon further information and belief AHM was not a member of MERS and as a result MERS could not be a nominee of AHM and that upon further information and belief American Home Mortgage Holdings, Inc., a Delaware corporation; American Home Mortgage Investment Corp., a Maryland corporation; American Home Mortgage Acceptance, Inc., a Maryland corporation;

¹ Upon information and belief American Home Mortgage is not and never has been a New York Corporation. Upon information and belief AHM is an assumed name d/b/a of a New York company named American Home Mortgage, Corp. which in turn was a d/b/a of a New York Corporation named Michael Strauss, Inc. that is authorized to do business only in New York County New York as of May 24, 1999 and American Home Mortgage Corp. filed for Bankruptcy on

AHM SV, Inc. (f/k/a American Home Mortgage Servicing, Inc.), a Maryland corporation; American Home Mortgage Corp., a New York corporation; American Home Mortgage Ventures LLC, a Delaware limited liability company; Homegate Settlement Services, Inc., a New York corporation; and Great Oak Abstract Corp., a New York corporation (collectively hereinafter the "AHM parties") all filed for Bankruptcy in the United States Bankruptcy Court for the District of Delaware on August 6, 2007 and the Debtors Plan of Liquidation dated February 18, 2009 became effective on November 30, 2010 and as such all of the AHM parties were legally extinguished thereby.

12. Defendants admit the allegations contained in paragraph 18 of the Complaint, and further upon information and belief denies that CitiMortgage, Inc. ("CitiMortgage") has acquired any right title or interest in the property and further allege that Bayview Loan Servicing LLC's ("Bayview") purported assignment of the Refi Note and purported mortgage to CitiMortgage recorded in Book 2942 Page 327 on March 19, 2010 in the Beaufort County Register of Deeds is a fraudulent assignment of the Refi Note and purported mortgage made and recorded in bad faith resulting in no transfer of right title or interest in the property from Third-Party Defendant Bayview.

13. Defendants deny the allegations contained in paragraphs 28 and 29 of the Complaint and allege upon information and belief that the purported mortgage is not a valid mortgage under South Carolina law and its terms are a nullity and Defendants demand strict proof thereof.

14. Defendants admit paragraph 30 of the Complaint.

August 6, 2007 and was ordered liquidated on February 18, 2009.

15. Relief Requested – Defendants deny that the Plaintiff is entitled to any of the relief requested in the Complaint under sections 1-8 of Plaintiff's prayer for relief.

FOR A SECOND DEFENSE

16. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

17. Upon information and belief the Complaint is barred in whole because the Plaintiff lacks standing to bring this action in one of the following ways:

- a) no valid mortgage exists under South Carolina law upon which CitiMortgage can base this foreclosure action;
- b) the "Lender" named in the Junks' refinance promissory note ("Refi Note") American Home Mortgage ("AHM was not and never has been either a New York corporation or a legal entity;
- c) the "Lender" named in the Junks' Refi Note, AHM a New York corporation, was not and never has been a member of MERS;
- d) MERS was not and never has been a nominee of the "Lender" AHM a New York corporation;
- e) that AHM, a New York corporation has never been a member of MERS;
- f) MERS is not a mortgagee under South Carolina law because MERS never has had a pecuniary interest in the loan proceeds or debt purportedly secured by the purported mortgage and is judicially estopped from claiming otherwise;
- g) the purported mortgage secures the right of the "Lender" stated to be AHM which was not a legal entity and that American Home Mortgage Holdings, Inc., a Delaware

corporation; American Home Mortgage Investment Corp., a Maryland corporation; American Home Mortgage Acceptance, Inc., a Maryland corporation; AHM SV, Inc. (f/k/a American Home Mortgage Servicing, Inc.), a Maryland corporation; American Home Mortgage Corp., a New York corporation; American Home Mortgage Ventures LLC, a Delaware limited liability company; Homegate Settlement Services, Inc., a New York corporation; and Great Oak Abstract Corp., a New York corporation (collectively hereinafter the "AHM parties") all filed for Bankruptcy in the United States Bankruptcy Court for the District of Delaware on August 6, 2007 and the Debtors Plan of Liquidation dated February 18, 2009 became effective on November 30, 2010 and as such all of the AHM parties were legally extinguished thereby;

- h) the Junks' Refi Note and purported mortgage relate to real property in South Carolina and there is no recorded document within the Beaufort County Register of Deeds affecting title to the property other than the Deed into the Junks filed in the Beaufort County Register of Deeds assigning any valid interest to CitiMortgage;
- i) because the document purported to be a MERS mortgage was intentionally separated at its inception from the Junks' Refi Note and is unenforceable therefor.
- j) MERS never has had any legal right to collect any payments on the Junks' Refi Note and therefore the document claimed to be a mortgage is not a valid mortgage under South Carolina law;
- k) MERS has never had a pecuniary interest in the Refi Note;

- l) because the document purported to be a MERS mortgage was only recorded as a claimed interest in South Carolina land but has no other legal purpose.
- m) because MERS has no legal right to enforce the debt purportedly secured by the purported mortgage;
- n) but for recording the purported mortgage serves no legal purpose under South Carolina law and is unenforceable by MERS or any successors or assigns of MERS.
- o) because AHM was not the "Lender" as stated in the Junks' Refi Note and purported mortgage;
- p) because CitiMortgage has never perfected its purported lien against the Junks' property to be able to make a valid claim under South Carolina law.
- q) because MERS lacks the capacity under South Carolina law to assign the Junks' Refi Note and purported mortgage;
- r) no valid assignment exists of the Junks' Refi Note and purported mortgage from MERS or to CitiMortgage;
- s) all purported assignments of the Junks' Refi Note or purported mortgage by MERS are invalid;
- t) all purported assignments of the Junks' Refi Note and purported mortgage from Bayview to CitiMortgage are invalid.

FOR A THIRD DEFENSE

18. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

19. Upon information and belief Plaintiff's Complaint is barred in whole for failure to plead, specify or identify in any way the nature of its legal capacity to maintain this suit in this Court as required under Rule 9(a) S.C.R.C.P. and the Complaint should be dismissed therefor.

FOR A FOURTH DEFENSE

20. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

21. Upon information and belief the Complaint is barred in whole or part by the doctrine of accord and satisfaction. The named "Lender" on the Refi Note AHM was paid in full by a third-party guarantor or surety without recourse pursuant to ¶ 9 of the Refi Note with the unmistakably clear intention that the payment tendered fully satisfied AHM's demand on the Refi Note and AHM accepted said payment with the intention that it operated as a satisfaction of the Junks' obligation to AHM as "Lender" on the Refi Note.

FOR A FIFTH DEFENSE

22. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

23. Upon information and belief Plaintiff is barred from the equitable remedy it seeks because the purported mortgagee MERS was not represented by counsel at the purported closing of the Junks' purported loan transaction as required under South Carolina law.

24. The Junks' attorney at the closing surreptitiously was also representing one or more of the AHM parties without disclosing that to Mr. and Mrs. Junk and accordingly Mr. and Mrs. Junk were not represented by counsel at the closing.

25. That counsel for "Lender" did not disclose to the Junks that American Home Mortgage Investment Corp, a Maryland corporation actually wired the funds for the closing process

DANIEL L. JUNK

October 27, 2014

RECEIVED

OCT 28 2014

SC Court of Appeals

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

Re: CitiMortgage v. Junk, et al.

Civil Action No. 2009-CP-07-05088

Orders on Appeal: April 11, 2011 (Order Dismissing Quiet Title Action w/out Prejudice) **and** February 23, 2012 (Order Granting Motion to Dismiss Third-Party Complaint) **and** (Order Denying Defendants' Motion to Join Third Parties as Counterclaim Defendants)

Case Tracking No. 2012-210910

and

CitiMortgage v. Junk, et al.

Civil Action No. 2009-CP-07-05088

Order on Appeal: April 23, 2012 (Order Granting CitiMortgage's Motion to Dismiss Counterclaims)

Consolidated Case Tracking No. 2012-210910

and

CitiMortgage v. Junk, et al.

Civil Action No. 2009-CP-07-05088

Order on Appeal: May 3, 2012 (Form 4 Order Denying Motion for Default Judgment against American Home Mortgage)

Consolidated Case Tracking No. 2012-210910

Dear Ms. Kitchings,

Enclosed please find an original and seven (7) copies of Appellants' Counterclaim Appellants' and Third-party Appellants' Reply to Motion to Certify Case for Review by

Honorable Jenny Abbott Kitchings
October 27, 2014

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Supreme Court. Please file the original and return a file-stamped copy to me via the enclosed self-addressed postage paid envelope. Please contact me if you need anything further.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. L. Junk', written in a cursive style.

Daniel L. Junk, J.D.
Pro se Appellant