

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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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 to for an Extension of Time**

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Respondent/Counterclaim Respondent CitiMortgage, Inc. (“CitiMortgage”) files this Return to the Motion for an Extension of Time to serve the Record on Appeal filed by Appellants Daniel L. Junk and Christine H. Junk (collectively “the Junks”). This Court should deny this request because the Junks fail to provide any legitimate reason to extend the deadline.

The Junks claim an extension is warranted due to their request to certify this appeal to the South Carolina Supreme Court. An extension on that basis is illogical. Regardless of which court decides this appeal, the record on appeal is required to be served. This Court has ordered service of the Record on Appeal by November 10, 2014. The Record on Appeal should have been served by that deadline to allow this appeal to proceed to resolution either in this Court or in the Supreme Court.

Moreover, the Junks filed the motion to certify this appeal on October 15, 2014. This motion for an extension (based on the motion to certify) is dated November 7, 2014. Such timing of the extension establishes the request is nothing more than a continuation of the Junks’ tactics to delay resolution of this appeal. This Court should deny the motion and dismiss the appeal based on the Junks’ failure to serve the Record on Appeal by the November 10th deadline imposed by this Court. See Wise v. S.C. Dept. of Corrections, 372 S.C. 173, 173, 642 S.E.2d 551, 551 (2007) (stating that “[w]henver it appears that an appellant has failed to comply with the requirements of the SCACR, an order of dismissal **shall** be issued”) (emphasis added).

Also, the Junks have had ample time to serve the Record on Appeal. At the time of the Junks’ bankruptcy filing, the Record on Appeal was ripe for service per the

Appellate Court Rules.¹ The bankruptcy court lifted the automatic stay on July 2, 2014, specifically to allow this appeal to proceed to resolution. The Junks have known since that time that our appellate court rules required service of the Record on Appeal. The Junks failed to do so. Instead, the Junks filed patently frivolous motions for the sole purpose of delaying service of the Record on Appeal. This Court denied those motions, and by order dated October 10, 2014, ordered service of the Record on Appeal by November 10, 2014. Thus, the Junks have had ample time to prepare the Record on Appeal for service and have known for 133 days that the Record on Appeal was to be served. This Court should deny the Junks' latest efforts to delay resolution of the appeal.²

{Signature Page Follows}

¹ 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.

² The Junks also re-raised the issue of CitiMortgage's entitlement to enforce the Note and Mortgage to the master-in-equity in their extension request. This Court has already rejected the Junks' arguments on this basis via order dated October 10, 2014. In any event, the argument lacks merit because 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). Moreover, CitiMortgage have never made any of the admissions claimed by the Junks' in the extension request. Such claims are misrepresentations by the Junks to this Court. The grounds asserted by the Junks in support of their motion are thus factually and legally incorrect.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:  _____

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Columbia, South Carolina

November 14, 2014

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.

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SC Court of Appeals

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 for an Extension of Time**

Counsel Served:

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Jennifer B. Lee
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November ¹⁴~~13~~, 2014

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November 14, 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”)

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of the Return to Appellants’ Motion to for an Extension of Time in the above-referenced matter. Please file the original and return a

The Honorable Jenny Abbott Kitchings
November 14, 2014
Page 2

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", with a stylized flourish at the end.

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
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