



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

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JAN 08 2015

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,

\_\_\_\_\_ 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 Withdraw Appeal

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Respondent/Counterclaim Respondent CitiMortgage, Inc. and Third-Party Respondents 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 (collectively “CitiMortgage”) and Third-Party Respondents Colonial Coast Title Agency, Inc., Fidelity National Title Insurance Company, as successor by merger to Lawyer Title Insurance Corporation, Riley Pope & Laney, LLC, Heidi Carey, Esq., Roy Laney, Esq., T. Lowndes Pope, Esq., Security Connections, Inc., Krystal Hall, ABC Appraisal Group, Inc., Mark A. Ruplinger, Linda Heller, Harry Jones, and Corelogic, Inc. (collectively “Third-Party Respondents”) jointly file this Return to Appellants’ Motion to Withdraw Appeal in the above-captioned consolidated appeal. After nearly three years of litigation in this Court, including extensive motions practice and briefing, Appellants seek to withdraw the appeal on the basis that the “orders on appeal are not final orders.” *See* Motion p. 2. As set forth herein, the Court should either deny the motion or dismiss the appeal with prejudice. Appellants should not be permitted to unilaterally withdraw the appeal without consequence given that they have already had their shot at the orders being reviewed by this Court, and have caused the parties to expend significant time and resources on this appeal.

#### **Relevant Background**

The procedural history of this appeal is lengthy and complex. On March 23, 2012, Appellants initiated the appeal of the master-in-equity’s February 22, 2012 order dismissing Appellants’ third-party complaint against Third-Party Respondents. *See*

Notice of Appeal dated March 23, 2012. On May 2, 2012, Appellants appealed the master's April 24, 2012 order dismissing Appellants' Counterclaims against CitiMortgage. *See* Notice of Appeal dated May 2, 2012. On May 21, 2012, Appellants started a third appeal, this time as to the master's May 3, 2012 order denying Appellants' motion for default judgment against Third-Party Respondent AHMH. *See* Notice of Appeal dated May 21, 2012.

On June 7, 2012, the Court directed Appellants and CitiMortgage to brief the issue of appealability. *See* Letter dated June 7, 2012, attached hereto as Exhibit A. The Court sought the parties' respective positions as to the appealability of one of the three orders—the May 2nd order denying the motion for default judgment. *Id.* The Court did not request that the parties address the February 22nd order (dismissing the Appellants' third-party complaint) or the April 24th order (dismissing the counterclaims), presumably because such orders are appealable under Section 14-3-330 of the South Carolina Code.

Appellants argued that the May 2nd order was “immediately appealable under S.C. Code Ann. § 14-3-330(a), (c) [sic].” *See* Appellants' Memorandum in Support of their Notice of Appeal of the May 2, 2012 Order p. 3, attached hereto as Exhibit B. On November 8, 2012, the Court issued an order that consolidated the three appeals and stated that: “Nothing in this order prevents the parties from arguing appealability of any of the orders *in their briefs.*” *See* Order dated November 8, 2012 (emphasis added), attached hereto as Exhibit C.

Appellants filed their initial brief and reply brief on December 21, 2012, and March 29, 2013, respectively. Appellants did *not* address appealability of any of the

three orders in their brief or reply brief. To the contrary, Appellants fully briefed the merits of the appeal and requested that the Court reverse the orders.

Appellants also engaged in substantial motions<sup>1</sup> practice related to these orders.<sup>2</sup> For instance, Appellants requested that the Court allow the parties to return to the master to litigate issues related to the underlying foreclosure. *See* “Motion for Leave . . . under Rule 60” dated September 10, 2014. Appellants also sought certification of the three orders on appeal to the Supreme Court pursuant to Rule 204, SCACR. *See* Motion to Certify Case for Review by Supreme Court dated October 17, 2014. The Supreme Court denied the motion on November 20, 2014. Approximately one month later, Appellants filed the present motion seeking to withdraw the appeal.

### Argument

Some 2 years, 9 months, and 16 days after Appellants voluntarily initiated this appeal and caused the parties to prepare initial briefs and engage in extensive motions practice, Appellants now claim that the “orders on appeal are not final orders” and request withdrawal of the appeal. *See* Motion p. 2. Implicit in the request is that Appellants should have the option to re-file the appeal after a final judgment in the underlying foreclosure action. *Id.* This Court should not allow Appellants to unilaterally withdraw the appeal without prejudice at this stage in the appeal. The proper course of action would be for this Court to either (1) dismiss the appeal with

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<sup>1</sup> This Return merely sets forth the motions relevant to the issues presented in the Motion to Withdraw the Appeal. It does not list or address the numerous other filings made by Appellants during the course of this lengthy appeal, including most recently a motion to have the entire appeal referred to the South Carolina Supreme Court.

<sup>2</sup> Although the parties joined together in the filing of the responsive brief, counsel for each party had to independently review and edit the brief to ensure that its clients’ interests were fully set forth and protected. The same is true for the extensive motions practice that Appellants have put the parties through.

prejudice for Appellants' failure to serve the Record on Appeal or (2) allow Appellants to withdraw the appeal subject to the prohibition against Appellants re-filing the appeal or otherwise seeking review of the orders after final judgment in the foreclosure actions. In the alternative, should this Court grant the Motion, this Court should condition the withdrawal on Appellants paying all costs and attorneys' fees incurred by CitiMortgage and Third-Party Respondents from inception of the appeal to the time of the order allowing withdrawal.

1. The Motion should be denied because Appellants have taken the position throughout this appeal that the orders are immediately appealable and should not be permitted to change their position at this late stage in the case. Further, Appellants had the opportunity to address the appealability of the orders in their initial briefs and failed to do so.

By order dated November 8, 2012, the Court permitted the parties to address appealability during the initial briefing stage. Appellants did not do so. Instead, Appellants waited over 2 years after briefing was completed (and after CitiMortgage and the Third-Party Respondents expended significant resources on the appeal) to raise the issue of whether the orders were in fact immediately appealable. At a minimum it borders on the frivolous for Appellants to take an appeal, brief an appeal, require all Respondents to brief the appeal, and then take the position that the orders appealed from are not final, appealable orders—especially when Appellants' current position contradicts prior positions taken on appealability. Appellants previously advised this Court that the May 2nd order was immediately appealable. *See* Appellants' Memorandum in Support of their Notice of Appeal of the May 2, 2012 Order p. 3,

attached hereto as Exhibit B. Appellants should not be permitted to change course at this late stage of the appeal. This last-minute change in position strongly suggests that the appeal was frivolous from the outset and used solely to delay the foreclosure. Because Appellants' request is late and contradicts a prior position taken, the motion should be denied.

2. The Motion should be denied because Appellants fail to cite any authority to support their claim that the orders are not immediately appealable. *See* Motion p. 2. Contrary to Appellants' assertion, the February 22nd order (dismissing the Appellants' third-party complaint) and the April 24th order (granting CitiMortgage's Rule 12(b)(6), SCRPC, motion to dismiss the counterclaims) are immediately appealable. *See* S.C. Code Ann. § 14-3-330(1), (2). Moreover, the May 2, 2012 order, while not immediately appealable<sup>3</sup> on its own, can be entertained in this consolidated appeal because of the appealability of the February 22nd and April 24th orders before this Court. *See, e.g., Edge v. State Farm Mut. Ins. Co.*, 366 S.C. 511, 623 S.E.2d 387 (2005) (holding that because an appealable order was before the court, then the court could consider a non-appealable order); *QZO, Inc. v. Moyer*, 358 S.C. 246, 594 S.E.2d 541 (Ct. App. 2004) (allowing and considering an appeal from a denial of a motion to dismiss because an appealable issue was before the court). Appellants chose to exercise their statutory ability to seek immediate review of the orders. Therefore, the orders on appeal are properly before this Court. The Motion should be denied.

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<sup>3</sup> Prior to consolidation of the three orders, CitiMortgage advised the Court that the May 2, 2012 order was not immediately appealable. That position was correct because the orders had yet to be consolidated. Consolidation of the May 2, 2012 order with the appealable February 22nd and April 24th orders alleviated the appealability concern.

3. The proper course of action would be for this Court to dismiss the appeal with prejudice for Appellants' failure to serve the Record on Appeal. The parties completed initial briefing on March 29, 2013. After the Court ruled on motions related to the content of the Record on Appeal, the Court directed Appellants to serve the Record on Appeal within 30 days, which was August 1, 2013. *See* Letter and Order dated July 2, 2013, attached hereto as Exhibit D. Appellants failed to do so. Instead, Appellants filed for bankruptcy. The bankruptcy court lifted the automatic stay and allowed this appeal to proceed. This Court acknowledged that relief on October 9, 2014, and ordered service of the Record on Appeal by November 10, 2014. *See* Order dated October 9, 2014, attached hereto as Exhibit E. Appellants again failed to serve the Record by that deadline.<sup>4</sup> Appellants have had ample time to prepare the Record on Appeal for service. Service of the Record on Appeal is now 50 days past due.<sup>5</sup>

Therefore, this Court should deny the Motion and dismiss the appeal with prejudice based on Appellants' failure to serve the Record on Appeal by the November 10th deadline imposed by this Court. *See* Rule 260(a), SCACR ("Whenever it appears that an appellant or petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court."); *Wise v. S.C. Dept. of Corrections*, 372 S.C. 173, 173, 642 S.E.2d 551, 551 (2007) (same).

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<sup>4</sup> Appellants then moved to certify this appeal to the Supreme Court. Such a motion does not stay the deadline to serve the Record on Appeal. *See* Rule 240(b), SCACR ("the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition").

<sup>5</sup> The merits of the appeal are ripe for consideration by this Court. All that remains is service of the record, filing of final briefing, and filing of the record, all of which can be completed in short order. Allowing the withdrawal of the appeal at this late stage, without consequence, will have permitted Appellants to waste the time and resources of the parties and of both this Court and the Supreme Court.

4. If the motion to withdraw the appeal is granted, it should be granted with prejudice to Appellants' right to file an appeal as to the same orders at a later date. Appellants have had their shot at appealing the orders before the Court and should not be permitted to do so again after final judgment in the foreclosure.

Section 14-3-330 of the South Carolina Code governs appealability and allows an appellant the option of when to pursue an appeal of an intermediate judgment, order, or decree. The February 22nd order (dismissing the third-party complaint) and the April 24th order (dismissing the counterclaims pursuant to Rule 12(b)(6), SCRCPP) fit within the ambit of the statute as intermediate orders.<sup>6</sup> That section provides that an appellate court has appellate jurisdiction of:

Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment *not before appealed from*.

S.C. Code Ann. § 14-3-330(1) (emphasis added).

Thus, the statute provides an appellant with the option to immediately bring the appeal of the adverse intermediate order or to wait until after final judgment to bring the appeal of the adverse intermediate order. Critically, the statute provides an

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<sup>6</sup> See, e.g., *Link v. Sch. Dist. of Pickens Cnty.*, 302 S.C. 1, 6, 393 S.E.2d 176, 179 (1990) (recognizing that orders granting motions to dismiss qualify as orders “involving the merits” under Section 14-3-330(1)); *Jefferson by Johnson v. Gene’s Used Cars, Inc.*, 295 S.C. 317, 368 S.E.2d 456 (1988) (stating that an order “involves the merits” when it finally determines “some substantial matter forming the whole or a part of some cause of action or defense . . .”).

appellant with only one bite at the proverbial appellate apple. The party cannot seek appeal both immediately and after final judgment.

Once the party elects to immediately appeal the intermediate order, the party cannot later take an appeal of the same order after final judgment. The limiting language employed by the Legislature establishes this rule. The statute allows the party to seek review of an intermediate order after final judgment by the appellate court “if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment . . . .” *Id.* However, the last four words of that sentence establish that an appeal after final judgment is proper only if the intermediate orders were “*not before appealed from.*” *Id.* (emphasis added). These words establish that the Legislature intended to limit the party’s ability to appeal an intermediate order after final judgment to situations when the party did not elect to immediately appeal the adverse intermediate order. *See, e.g., CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (“A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.”); *Breeden v. TCW, Inc./Tennessee Exp.*, 355 S.C. 112, 120, 584 S.E.2d 379, 383 (2003) (“Every word, clause, and sentence must be given some meaning, force, and effect, if it can be done by any reasonable construction.”); *Steinke v. S. Carolina Dep’t of Labor, Licensing & Regulation*, 336 S.C. 373, 396, 520 S.E.2d 142, 154 (1999) (stating that courts should “avoid a construction that would read a provision out of a statute”); *Davenport v. City of Rock Hill*, 315 S.C. 114, 117, 432 S.E.2d 451, 453 (1993) (“It is never to be supposed that a single word was inserted in the law of this state without the

intention of thereby conveying some meaning.”). The sentence structure of subsection (1) does not allow for successive appeals of intermediate orders. In the last clause, the Legislature placed two qualifiers that clearly limit Appellants (and appellate courts) to reviews of orders that have not been appealed from before. By introducing the final clause of subsection (1) with the words “if no appeal be taken until final judgment is entered” and by limiting review of intermediate orders and decrees to those “not before appealed from,” the Legislature signaled its intent to exclude from the scope of such review any intermediate orders that were previously appealed from. *See, e.g., Total Environmental Solutions, Inc. v. S.C. Pub. Servs. Comm’n*, 351 S.C. 175, 181-82, 568 S.E.2d 365, 369 (2002) (finding a subsequent phrase in the statute modified a preceding phrase and defined the scope of the statute).

Because Appellants have already elected to immediately “appeal[] from” the three intermediate orders as allowed by Section 14-3-330(1), they are precluded from doing so again at a later day. Appellate courts consider only those orders not previously appealed from, and because an appeal has been taken from these three orders, review at a later date would be improper. Thus, any withdrawal of the current appeal should be conditioned with a prohibition against Appellants appealing the orders for a second time after final judgment.

5. In the alternative, any withdrawal of the appeal should be conditioned on Appellants paying all costs and attorneys’ fees incurred by CitiMortgage and Third-Party Respondents from inception of the appeal to the time of the order allowing withdrawal. Appellants’ current position establishes that Appellants have frivolously pursued this appeal or done so with the purpose to delay the underlying foreclosure

action. Under Appellants' current position, they have elected to pursue a frivolous appeal for nearly 3 years. That decision has precluded CitiMortgage from moving forward on the underlying foreclosure action.<sup>7</sup> Moreover, CitiMortgage and the Third-Party Respondents have incurred significant costs and expended unnecessary time and expense to defend the substantial motions practice in this Court and complete initial briefing in an appeal Appellants now claim should not have been initiated. Such actions establish Appellants have violated Rule 269, SCACR. Should this Court allow Appellants to withdraw this appeal, the Court should condition the withdrawal on Appellants paying all costs and attorneys' fees incurred by CitiMortgage and Third-Party Respondents from inception of the appeal to the time of the order allowing withdrawal. *See* Rule 260(c), SCACR (allowing withdrawal of an appeal "upon such terms as may be fixed by the court"); Rule 269, SCACR ("Where an appeal . . . is . . . frivolous or taken solely for the purposes of delay . . . the appellate court may . . . after ten (10) days notice, impose upon the offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.").

### Conclusion

Based on the foregoing, unilateral withdrawal of the appeal by Appellants is not proper. The proper course of action would be for this Court to either (1) dismiss the appeal with prejudice for Appellants' failure to serve the Record on Appeal or (2) condition withdrawal of the appeal with a prohibition against Appellants re-filing the

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<sup>7</sup> Appellants now claim that a ruling in the foreclosure action is what they seek. *See* Motion p. 2 (arguing resources "should be directed at obtaining a final order in the *underlying action* in the court below) (emphasis added).

appeal after final judgment or at any later date. In the alternative, should this Court grant the Motion, this Court should require Appellants, or counsel for Appellant Christine Junk, to pay all costs and attorneys' fees incurred by CitiMortgage and Third-Party Respondents from inception of the appeal to the time of the order allowing withdrawal.

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January 8, 2015

{Additional signature pages follow}

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EXHIBIT

A

## The South Carolina Court of Appeals

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June 07, 2012

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Daniel L. Junk  
181 Oldfield Way  
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Re: CitiMortgage v. Junk, Daniel  
Appellate Case No. 2012-210910

Dear Counsel:

We have received Notices of Appeal from Judge Dukes' orders dated February 22, 2012 (tracking No. 2012-210910), April 23, 2012 (tracking No. 2012-212115) and May 2, 2012 (tracking No. 2012-212148).

Within ten days of the date of this letter, all parties are requested to serve and file memoranda addressing the issue of appealability for the order denying Appellants' motion for default judgment as well as possible consolidation of the above mentioned matters on appeal.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Brian Patrick Crotty

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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JUN 18 2012

**SC Court of Appeals**

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Honorable Marvin H. Dukes, III, Master in Equity

Case No. 2009-CP-07-04301

Case No. 2009-CP-07-05088

Daniel L. Junk and Christine H.  
Junk,

Appellants,

v.

Mortgage Electronic Registration  
Systems, Inc., and John Does 1-  
5,000,

Respondents.

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.

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JUN 18 2012

**SC Court of Appeals**

Third-Party Respondents.

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APPELLANTS' MEMORANDUM IN SUPPORT OF THEIR NOTICE OF APPEAL  
OF THE MAY 2, 2012 ORDER – TRACKING NO. 2012-212148

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Pursuant to this Court's letter dated June 7, 2012, Appellants Daniel L. Junk and Christine H. Junk ("the Junks") respectfully submit this Memorandum in Support of their Notice of Appeal from Judge Dukes' order dated May 2, 2012, tracking No. 2012-212148.

The Junks hereby object to memoranda from any of the other parties arguing any issue related to American Home Mortgage Holdings, Inc. (AHM) in this case. AHM is in default {Entry of Default, Appx. Tab 1} and has never appeared in this case. AHM filed for bankruptcy protection on August 6, 2007 in the United States Bankruptcy Court, District for Delaware {Suggestion of Bankruptcy, Appx. Tab 2}. None of the other parties' counsel is authorized to argue before, or seek relief from, this Court on behalf of AHM. By way of order from the Honorable Christopher S. Sontchi, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, the Junks are judicially permitted to sue AHM for liability and non-monetary damages without leave of the U.S. Bankruptcy Court. {Findings of Fact, Conclusions of Law and Order Confirming the Amended Chapter 11 Plan of Liquidation of the Debtors dated February 18, 2009, App. Tab 3, pp. 38-40, ¶¶ 50,51}; {Amended Chapter 11 Plan

of Liquidation of the Debtors Dated as of February 18, 2009, App. Tab 4, Article 17, ¶¶ A-H, pp. 100-105}. The Junks hereby consent to consolidation in this Court of all matters related to this action currently noticed for appeal.<sup>1</sup>

This Court has jurisdiction to hear the appeal of the May 2<sup>nd</sup> Order under an exception to the mootness doctrine. The Junks' motion for default judgment is not moot. Judgment in the Circuit Court, if rendered, *would* have a practical legal effect upon the existing controversy. The Order by the trial court deeming the default judgment motion moot affects future events and has collateral consequences for the parties even though this Court cannot give effective relief in the present case. The denial of default judgment as moot is binding with regard to the remainder of the litigation and may in effect determine the action or strike out a pleading in the action, rendering the Order immediately appealable under S.C. Code Ann. § 14-3-330(a), (c).

The Circuit Court's finding of mootness in the May 2<sup>nd</sup> Order is an abuse of discretion and prejudices the Junks. The May 2<sup>nd</sup> Order ignores the April 11, 2011 Order that was "without prejudice" finding MERS, Bayview Loan Servicing, LLC ("Bayview") and CitiMortgage, Inc. ("CitiMortgage") necessary parties to the subject controversy involving the Junks property.

The May 2<sup>nd</sup> Order in effect grants AHM relief from the entry of default despite AHM never making an appearance in the action requesting such relief. AHM made no application to the Circuit Court as required by Rule 7(b)(1), SCRCF, for relief from entry of default pursuant to Rule 55(c), SCRCF. The Junks are prejudiced by the May 2<sup>nd</sup> Order and the Judge's failure to comply with the rule of civil procedure and the finding of mootness is reversible error therefor. The default by AHM as the Junks' original "Lender" for their refinance promissory note ("Refi Note") is germane to their Affirmative Defenses, Counterclaims and Third-Party Complaint in

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<sup>1</sup> Additional appeals tracking Nos. 2012-210910; 2012-212115.

the foreclosure action and the appeal of the May 2<sup>nd</sup> Order should be heard by this Honorable Court under an exception to the mootness doctrine and S.C. Code Ann. § 14-3-330(a), (c).

**I. THE MAY 2<sup>ND</sup> ORDER IS NOT MOOT AND THIS COURT HAS JURISDICTION TO HEAR THE APPEAL OF THE ORDER UNDER AN EXCEPTION TO THE MOOTNESS DOCTRINE**

“A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy; this is true when some event occurs making it impossible for the reviewing court to grant effectual relief.” *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (S.C. 2006); see also *Shah v. Richland Memorial Hosp.* 350 S.C. 139, 564 S.E.2d 681 (S.C.App. 2002); *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591, (S.C. 2001); *Seabrook v. City of Folly Beach*, 337 S.C. 304, 523 S.E.2d 462 (S.C. 1999). “In the civil context, there are three general exceptions to the mootness doctrine: first, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review; second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest; finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.” *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (S.C. App. 2002) (emphasis added). An appellate court “will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.” *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 714 (1973).

Here, a judgment of default by the Circuit Court would have a practical legal effect upon the existing controversy. AHM is a necessary party to the underlying action and to the appeal of the February 22 Order currently pending before this Court – tracking No. 2012-210910. There

remains an existing actual controversy as to necessary parties and the propriety of the Junks' Amended Answer, Counterclaims and Third-Party Complaint. The May 2<sup>nd</sup> Order is not moot therefore and this Court has jurisdiction to hear the instant appeal.

The Circuit Court dismissed the Junks' original Quiet Title action "without prejudice" finding that CitiMortgage and Third-Party Defendant Bayview were necessary parties to the Quiet Title action and that the Junks should have named CitiMortgage and Bayview in the Quiet Title action {April 11, 2011 Order, Appx. Tab 5, p. 9 ¶C}. The Circuit Court's April 11, 2011 Order directed the Junks to re-file their quiet title action *and any other claims they may have* against all other parties in their answer to the mortgage foreclosure action {Id., Tab 5, p. 10, ¶C}.

In their Amended Answer to the foreclosure action, the Junks asserted affirmative defenses, counterclaims and third-party claims, including a second quiet title claim. The Amended Answer asserts claims against CitiMortgage and the other third-party defendants, including AHM. The Junks' claims are based on the contention that CitiMortgage did not take the Refi Note from AHM as a holder in due course and is subject to all claims and defenses they have against the original "Lender" AHM {Amended Answer, Appx. Tab 6, p.10, ¶ 27}. Per the Circuit Court's direction in the April 11 Order that avers to be "without prejudice," the Junks filed a Third-Party Complaint including the same parties among others, in their Amended Answer which the Circuit Court previously deemed necessary parties to the Quiet Title. {Id., Appx. Tab 6: pp. 100 et seq., ¶¶ 247 et seq.}.

The Junks' Amended Answer Counterclaims and Third-Party Complaint, pursuant to the April 11, 2011 Order alleges Civil Conspiracy and Slander of Title and Quiet Title against all parties – CitiMortgage as Counterclaim Defendant and all the Third-Parties listed in the Third-Party Complaint caption, of which MERS, Bayview and AHM were previously judicially held to

be necessary parties in the April 11 Order. At the February 23, 2012 hearing on the subject motion for default judgment, the Circuit Court deemed the motion moot as a result of its previous order signed the day before on February 22, 2012, dismissing both the Junks' Third-Party Complaint and the Junks' Motion to Join all Third-Party Defendants as Counterclaim Defendants as Necessary Parties currently pending appeal before this Court, holding those claims as improper. The Circuit Court reasoned that the February 22 Order dismissing the Third-Party Complaint renders the default judgment motion against AHM moot, despite the fact that the Circuit Court's previous finding that MERS, AHM, CitiMortgage and Bayview were necessary parties in the first quiet title action. The February 22, 2012 Order is currently pending appeal and is being considered for consolidation by this Court – tracking No. 2012-210910.

The instant Order finding the default judgment motion against AHM moot should be consolidated with the appeal of the February 22, 2012 Order dismissing the Third-Party Complaint as improper. There are many issues remaining in the existing controversy, including that of *res judicata*, yet to be heard before this Court in that appeal. The April 11 Order found CitiMortgage and Bayview to be necessary parties in the Quiet Title action along with Defendants MERS, AHM and John Does. The Circuit Court then held completely the opposite in its February 22 Order by finding MERS and Bayview were not necessary parties to the Junks' reassertion of their quiet title claims and other claims raised in their Amended Answer. A decision by the Circuit Court on the AHM default may affect future events, or have collateral consequences for the parties, and an appeal from the Circuit Court's decision is not moot, even though this Court cannot give effective relief in the present case.

## II. THE CIRCUIT COURT'S FINDING OF MOOTNESS IS REVERSIBLE ERROR AND PREJUDICES THE JUNKS

Rule 7(b)(1), SCRCP, states: "An application to the court for an order shall be by

motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.”

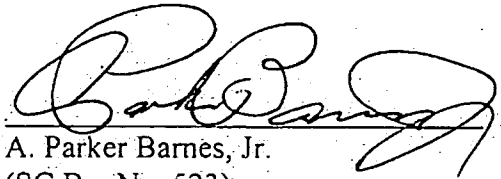
“Generally, in order to obtain reversal of a judgment on such basis, a party must establish prejudice as the result of another's failure to comply with rule of civil procedure requiring motions in writing to state with particularity the grounds for relief or order sought.” *Chastain v. Hiltabidle*, 381 S.C. 508, 673 S.E.2d 826 (S.C.App. 2009).

The April 11, 2011 Order did not provide the Junks with leave to amend and directed the Junks to bring their third-party claims in their Answer to the foreclosure action. The April 11 Order states it is without prejudice to the Junks yet the February 22 Order then dismissed the Junks' claims with prejudice. AHM, as the original “Lender” and principal for purported mortgagee MERS is a necessary party to the action. AHM is in default and has not requested relief from the court. The Circuit Court granted AHM relief in the May 2<sup>nd</sup> Order without AHM requesting such relief under the rule of civil procedure. Despite the April 11 Order stating it is “without prejudice” the Junks are prejudiced by the Circuit Court's May 2<sup>nd</sup> Order dismissing the same parties that were in the April 11 Order with prejudice. This Court should review the May 2<sup>nd</sup> Order for abuse of discretion and prejudice against the Junks and find reversible error allowing the instant appeal to be consolidated with the other appeals currently pending before this Court.


#### CONCLUSION

This Court has jurisdiction to hear the appeal of the Circuit Court's May 2<sup>nd</sup> Order under an exception to the Mootness Doctrine. The Circuit Court's denial of default judgment as moot

was an abuse of discretion and is reversible error. The Circuit Court granted AHM relief where none was request under the rule of civil procedure thereby dismissing a necessary party prejudicing the Junks. The Junks respectfully submit that this Court has jurisdiction to hear their appeal of the May 2<sup>nd</sup> Order and it should be consolidated with their other appeals pending before this Honorable Court.



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(SC Bar No. 523)  
Post Office Drawer 1729  
500 Carteret Street  
Beaufort, South Carolina 29901  
(843) 522-2600  
Counsel for Appellant  
Christine H. Junk



Daniel L. Junk, J.D.  
*Pro Se* Appellant, Counterclaim  
Appellant and Third-party Appellant  
181 Oldfield Way  
Okatie, SC 29909  
(843) 290-8469

Beaufort, South Carolina  
June 15, 2012

# The South Carolina Court of Appeals

CitiMortgage, Inc., Respondent,

v.

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.

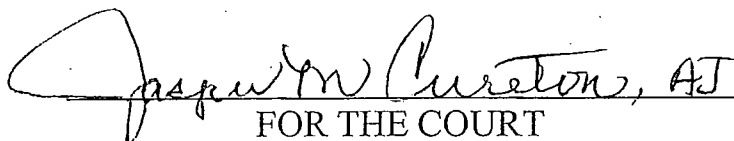
Appellate Case No. 2012-210910

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ORDER

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This appeal shall be consolidated with its two related appeals having Appellate Case Numbers 2012-212115 and 2012-212148. Nothing in this order prevents the parties from arguing the appealability of any of the orders in their briefs.

  
FOR THE COURT

Columbia, South Carolina

cc:

Daniel L. Junk  
Brian Patrick Crotty  
A. Parker Barnes, Jr.  
Amanda Coney Williams  
Susan Taylor Wall  
Michael J. Anzelmo

**FILED**

cc 11/8/12



EXHIBIT

D

## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

July 02, 2013

Daniel L. Junk  
35 North Fourth Street  
Suite 200  
Columbus OH 43215

Re: CitiMortgage v. Junk, Daniel AND CitiMortgage, Inc., v. Daniel Junk(2)  
AND CitiMortgage, Inc. v. Daniel Junk(3)  
Appellate Case No. 2012-210910

Dear Counsel:

Please see the attached order regarding the above matter on appeal.

All parties are advised the record on appeal must be served and proof of service filed with this Court no more than thirty (30) days from the date of this letter.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Brian Patrick Crotty  
A. Parker Barnes, Jr.  
Amanda Coney Williams  
Susan Taylor Wall  
Michael J. Anzelmo  
John Thomas Lay  
Childs Cantey Thrasher  
Elizabeth Van Doren Gray  
Tina Marie Cundari  
James Y. Becker  
Hamilton Osborne, Jr.  
Sean Michael Bolchoz  
Demetri K. Koutrakos  
Benjamin Rush Smith, III  
Daniel L. Junk

# The South Carolina Court of Appeals

CitiMortgage, Inc., Respondent,

v.

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. AND CitiMortgage, Inc., Respondent,

---

v.

Daniel Junk aka Daniel L. Junk, 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  
Plaintiffs,

v.

CitiMortgage, Inc., Counterclaim Respondent. AND  
CitiMortgage, Inc., Respondent,

v.

Daniel Junk aka Daniel L. Junk, 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  
Plaintiffs,

v.

CitiMortgage, Inc., Counterclaim Respondent.

Appellate Case No. 2012-210910

---

ORDER

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Respondents have filed a motion to dismiss the Notice of Appeal dated February 20, 2013, which Appellants filed with this court on February 21, 2013. We find the February 20, 2013 Notice of Appeal seeks review of the same order this court found unappealable in Appellate Case No. 2011-192526. We further find no

subsequent event has occurred that would render the order in question, which was issued by the master-in-equity on April 11, 2011, appealable. Accordingly, Respondents' motion to dismiss the February 20, 2013 Notice of Appeal is granted.

In addition, Respondents have filed a motion for leave to amend their Designation of Matter out of time, specifically, by deleting item number 57. We find Appellants do not oppose this motion. Respondents' motion is granted, and their Amended Designation of Matter is hereby accepted.

  
FOR THE COURT

Columbia, South Carolina

cc:

Daniel L. Junk  
Brian Patrick Crotty  
A. Parker Barnes, Jr.  
Amanda Coney Williams  
Susan Taylor Wall  
Michael J. Anzelmo  
John Thomas Lay  
Childs Cantey Thrasher  
Elizabeth Van Doren Gray  
Tina Marie Cundari  
James Y. Becker  
Hamilton Osborne, Jr.  
Sean Michael Bolchoz  
Demetri K. Koutrakos  
Benjamin Rush Smith, III

**FILED**

July 2, 2013 *YCC*

# The South Carolina Court of Appeals

CitiMortgage, Inc., Respondent,

v.

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. AND CitiMortgage, Inc., Respondent,

v.

Daniel Junk aka Daniel L. Junk, 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  
Plaintiffs,

v.

CitiMortgage, Inc., Counterclaim Respondent. AND  
CitiMortgage, Inc., Respondent,

v.

Daniel Junk aka Daniel L. Junk, 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  
Plaintiffs,

v.

CitiMortgage, Inc., Counterclaim Respondent.

Appellate Case No. 2012-210910

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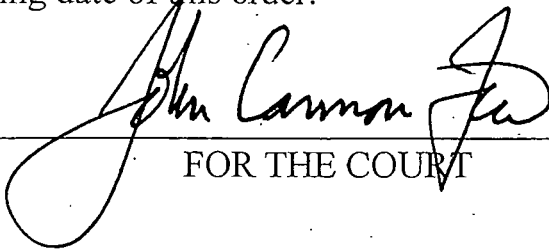
ORDER

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It has come to this Court's attention that the United States Bankruptcy Court issued an order on July 2, 2014, authorizing this Court to proceed with this appeal. Accordingly, the abeyance is lifted and this appeal shall proceed.

Appellant Daniel L. Junk has filed a motion to substitute parties and to substitute counsel. He has also filed a motion "for leave to file motion in the circuit court under Rule 60(b)(2),(3),(4)." After careful consideration, we deny Appellant's motions:

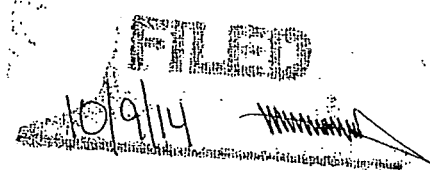
Appellants Daniel L. Junk and Christine H. Junk shall serve and file the record on appeal within thirty days of the filing date of this order:

  
FOR THE COURT

Columbia, South Carolina

cc:

Daniel L. Junk  
Brian Patrick Crotty, Esquire  
A. Parker Barnes, Jr., Esquire  
Amanda Coney Williams, Esquire  
Susan Taylor Wall, Esquire  
Michael J. Anzelmo, Esquire  
John Thomas Lay, Esquire  
Childs Cantey Thrasher, Esquire  
Elizabeth Van Doren Gray, Esquire  
Tina Marie Cundari, Esquire  
James Y. Becker, Esquire  
Hamilton Osborne, Jr., Esquire  
Sean Michael Bolchoz, Esquire  
Demetri K. Koutrakos, Esquire  
Benjamin Rush Smith, III, Esquire  
Jerri Ann Roseneau



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

APPEAL FROM BEAUFORT COUNTY  
Master-in-Equity

JAN 08 2015

The Honorable Marvin H. Dukes, III

SC Court of Appeals

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 to Withdraw Appeal**

Counsel Served:

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Nexsen Pruet, LLC  
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Columbia, SC 29202

James Y. Becker  
Haynsworth Sinkler Boyd. P.A.  
P.O. Box 11889  
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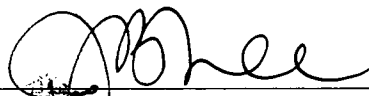
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Demetri "Jim" K. Koutrakos  
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Betsy Grey  
Tina Cundari  
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P.O. Box 11449  
Columbia, SC 29211

Susan Taylor Wall  
Amanda Williams  
McNair Law Firm P.A.  
Post Office Box 1431  
Charleston. South Carolina 29402



---

Jennifer B. Lee  
Administrative Assistant

January 8, 2015

# Nelson Mullins

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michael.anzelmo@nelsonmullins.com

RECEIVED

JAN 08 2015

SC Court of Appeals

January 8, 2015

## Hand Delivered

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1015 Sumter Street - 5th Floor  
Columbia, SC 29201

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")

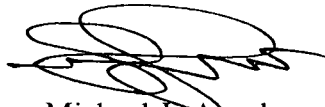
The Honorable Jenny Abbott Kitchings  
January 8, 2015  
Page 2

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Return to Appellants' Motion to Withdraw Appeal 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", with a large, 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  
Betsy Gray  
Tina Cundari  
Susan Taylor Wall  
Daniel L. Junk