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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Daniel L. Junk and Christine H. Junk,)

Plaintiff,)

vs.)

Mortgage Electronic Registration
Systems, Inc., and John Does 1-5000,)

Defendants.)

Civil Action No. 2009-CP-07-04301

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ORDER MAY 23 2011

SC Court of Appeals

Bayview Loan Servicing, LLC)

Plaintiff,)

vs.)

Daniel Junk a/k/a Daniel L. Junk,
Christina H. Junk and Oldfield
Community Association,)

Defendants.)

Civil Action No. 2009-CP-07- 05088

ORDER

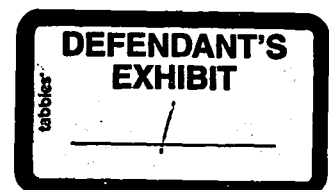
BEAUFORT COUNTY, S.C.
CLERK OF COURT

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These related matters came before this Court for hearings on pending motions on December 4, 2010, and February 10, 2011. Both matters were referred to the Beaufort County Master-In-Equity with the consent of the Parties by Orders entered on May 25, 2010. The following motions were heard at the above mentioned hearings:

(a) In Junk v. Mortgage Electronic Registration Systems, Inc., et al. ("The Quiet Title Action"):

- (1) Defendant Mortgage Electronic Registration Systems, Inc.'s ("MERS") Motion to Dismiss filed Nov. 23, 2009;
- (2) Plaintiffs' Motion for MERS to Post an Indemnity Bond filed Nov. 22, 2010; and
- (3) Plaintiffs' Motion for Judgment on the Pleadings and Default Judgment filed Jan. 21, 2011.



(b) In Bayview Loan Servicing, LLC v. Daniel Junk et al. ("the Foreclosure Action"):

- (1) The Junk Defendants' Motion to Dismiss under Rules 13(a) and 12(b)(8) filed Nov. 25, 2009;
- (2) The Junk Defendants' Motion to Dismiss under Rule 12(b)(6) filed Nov. 25, 2009; and
- (3) Plaintiff's Motion to Substitute CitiMortgage, Inc. as Plaintiff filed Mar. 30, 2010.

On December 4, 2010, Daniel and Christine Junk were represented by A. Parker Barnes, Jr., Esq., and MERS, Bayview Loan Servicing, LLC ("Bayview") and CitiMortgage, Inc. ("CitiMortgage") were represented by Brian P. Crotty, Esq. On January 24, 2011, an Order was entered permitting Daniel Junk to represent himself *pro se* in both actions. At the February 10, 2011 hearing, Mr. Junk appeared *pro se*, while Mrs. Junk was represented by Mr. Barnes, and MERS, Bayview and CitiMortgage were represented by Mr. Crotty. This Court has carefully considered these motions, the supporting memoranda, affidavits, and other materials submitted by the parties and their counsel, the existing record in these matters, and the arguments offered by counsel for the parties. For the reasons stated herein, in the Quiet Title Action, this Court hereby denies Plaintiffs' Motion that MERS Post an Indemnity Bond; denies Plaintiffs' Motion for Judgment on the Pleadings and Default Judgment; and grants MERS' Motion to Dismiss without prejudice. Additionally, for the reasons stated herein, in the Foreclosure Action, this Court denies the Junks' Motions to Dismiss under Rules 13(a), 12(b)(6), and 12(b)(8), and grants Bayview's Motion to Substitute CitiMortgage as Plaintiff in the Foreclosure Action.

FACTUAL BACKGROUND

On November 3, 2006, Daniel and Christina Junk ("the Junks") entered into a mortgage loan transaction ("the Loan") to refinance existing mortgage loans secured by the real property known as 181 Oakfield Way, Okatie, South Carolina. This Loan was evidenced by an adjustable rate note ("the Note") executed by the Junks in favor of American Home Mortgage ("AHM") in the principal amount of \$1.2 Million. To secure repayment of the Loan evidenced by the Note, the Junks also executed a mortgage agreement ("Mortgage") expressly granting to MERS and the successors and assigns of MERS the mortgagee interest. The Mortgage disclosed that MERS held the security lien as nominee for Lender and Lender's successors and assigns.

Both the Note and the Mortgage executed by the Junks stated that the Note could be sold by AHM to one or more third parties. Specifically, the first page of the Note contains the following statement:

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

Note at ¶ 1. The Mortgage further states the following:

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A Sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written Notice of the Change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing....

Mortgage at ¶ 20.

The Mortgage also identified the role of MERS in this mortgage loan transaction. The first page of the Mortgage stated that **"MERS is the mortgagee under this Security Instrument"** (emphasis in original) and stated that **"MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns."** Mortgage at p. 1, ¶ (C). The Mortgage further states, under the heading **"TRANSFER OF RIGHTS IN THE PROPERTY"**:

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note, and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, **Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property....**

Mortgage at p. 3 (emphasis added). Further, the Mortgage states,

Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interest, including, but not limited to, the right to foreclose and sell the Property; **and to take any action required of Lender**, including, but not limited to, releasing and canceling this Security Instrument.

Id. (emphasis added).

The Junks have acknowledged that at the closing of their loan they were informed that the loan would be serviced by American Home Mortgage Servicing. (Plaintiff's Brief In Opposition to MERS' Mot. To Dismiss ("Pl.'s Opp. Brief") at p. 3). Shortly after the November 3, 2006 closing, AHM sold the Junks' Loan to CitiMortgage, Inc. ("CitiMortgage"). This sale of the Note is acknowledged by the Junks in their filings with the Court. (Pl.'s Opp. Brief at p. 11) (stating that AHM sold the Loan to

CitiMortgage on December 22, 2006). The Junks also admit that in January 2007 they received written notice from AHM that the servicing of this loan had been transferred to CitiMortgage. (Id.). Finally, the Junks admit that, beginning March 1, 2009, they stopped making any payments on the Note. (Pl.'s Opp. Brief at p. 5).

On March 6, 2009, The Junks sent CitiMortgage a letter requesting a copy of the Note and CitiMortgage responded by providing the Junks with both a copy of the Note and a copy of the Mortgage. (Pl.'s Opp. Brief at p. 4). The Junks then sent a letter purporting to be a Qualified Written Request under RESPA to both CitiMortgage and AHM.¹ (Id.). The Junks admit that this letter "requested a full accounting" and information regarding the application of their payments, rather than a statement outlining any alleged errors with the loan. (Id.). CitiMortgage responded to the Junks stating that their letter did not qualify as a Qualified Written Request under RESPA. (Pl.'s Opp. Brief at p. 5).

On March 23, 2009, the Junks sent another purported Qualified Written Request to AHM which included a "Notice of Claim and Rescission" purporting to rescind the Loan transaction. (Am. Compl. in the Quiet Title Action at ¶ 34). This was sent to AHM despite the fact that the Junks were aware that the servicing of the Loan was with CitiMortgage and that AHM had been in bankruptcy since August of 2007. (Pl.'s Opp. Brief at pp. 3-4). In this attempt to rescind the loan, the Junks included language in their letter which asserted that AHM's failure to rebut Plaintiffs' claim would result in the

¹ At this time, the Junks were aware that the servicing of their loan was handled by CitiMortgage and not American Home Mortgage. See Pl.'s Opp. Brief at p. 3 (acknowledging receipt in January 2007 of written notice that servicing of the Loan had been transferred to CitiMortgage). Thus, because RESPA's provisions regarding Qualified Written Requests apply only to "loan servicers," sending such a letter to AHM more than two years after both the Loan and servicing of the Loan had been transferred was of no effect. 15 U.S.C. § 2605(e); see also DeVary v. Countrywide Home Loans, Inc., 701 F. Supp. 2d 1096, 1106 (D. Minn. 2010) (holding that under RESPA only loan servicers are required to respond to any qualified written request from the borrower).

Plaintiffs purportedly being granted an "unlimited Power of Attorney" and "full authorization" to sign a satisfaction of the obligation. (Pl.'s Opp. Brief at p. 5). On April 20, 2009, apparently based AHM making no response to the March 23, 2009 letter, Daniel Junk recorded a "Satisfaction of Mortgage" in which he declared and represented himself to be an agent of AHM and the "owner and holder" of the Mortgage. (Pl.'s Opp. Brief at p. 7).

Following the Junk's suspension of making payments under the Note in March 2009, CitiMortgage began sending them correspondence and notices regarding their default status. Specifically, letters and notices were sent by CitiMortgage to the Junks on April 1, 2009, May 4, 2009, and May 19, 2009. (Pl.'s Opp. Brief at p. 7). In June of 2009, the servicing rights for the Junks' loan was transferred by CitiMortgage to Bayview Loan Servicing, LLC ("Bayview"). The Junks have acknowledged receiving written notice from CitiMortgage dated June 15, 2009, and written notice from Bayview dated July 1, 2009, informing them that the servicing of the Loan was transferred to Bayview. (Pl.'s Opp. Brief at p. 7). Following this transfer of servicing, Bayview sent the Junks correspondence and notices regarding their default status on July 6, 2009, July 9, 2009 and July 17, 2009. (Pl.'s Opp. Brief at p. 8). On July 21, 2009, the Junks sent a letter to Bayview disputing the debt. (Pl.'s Opp. Brief at p. 8). Bayview responded by identifying itself as the servicer of the loan, providing a loan history for the Plaintiffs' loan and informing them of the date of their default. (Pl.'s Opp. Brief at p. 8).

The Junks filed the Quiet Title Action on September 11, 2009, and amended their Complaint on September 14, 2009. The Defendants named in the Quiet Title Action are

AHM², MERS and John Does 1 – 5000. Despite being aware of the sale of the loan to CitiMortgage and the transfer of servicing rights to CitiMortgage and then to Bayview, the Junks excluded as named defendants these entities whom the Junks knew had an interest in this action and with whom the Junks had directly corresponded. Instead, the Junks included “John Doe” defendants who were served by publication.

On September 25, 2009, the Mortgage in this case was assigned by MERS to Bayview. This assignment was recorded on October 19, 2009. Following the recording of that assignment, Bayview initiated the Foreclosure Action on October 26, 2009. In March of 2010, the servicing rights regarding the Junks’ Loan were transferred by Bayview back to CitiMortgage, and the Mortgage was assigned by Bayview to CitiMortgage. The assignment of the Mortgage by Bayview to CitiMortgage was recorded on March 19, 2010. Shortly thereafter, on March 30, 2010, a motion was filed in the Foreclosure Action to substitute CitiMortgage as the Plaintiff in that action in the place of Bayview.

ORDER

A. The Junk’s Motion to Require MERS to Post an Indemnity Bond is Denied.

Both the Quiet Title Action and the Foreclosure Action center on the Mortgage Loan entered into by the Junks on November 3, 2006. The Junk’s motion seeking to have MERS’s post an indemnity bond, however, relates not to the November 3, 2006 Mortgage, but instead to a prior mortgage dated September 26, 2005 (that was to be paid off as part of the November 3, 2006 mortgage loan transaction). The Junks admit that MERS, which was also the mortgagee on the 2005 Mortgage, filed a satisfaction as to the

² AHM was subsequently dismissed by Plaintiffs after it filed a Suggestion of Bankruptcy.

September 26, 2005 Mortgage, but assert that they never received the Note from the 2005 loan transaction marked paid in full or satisfied. Significantly, the Junks do not contend that any attempt by anyone has been made to collect on the 2005 Note in the more than four years since that loan was apparently paid off. The Junks' motion to require MERS to post a bond relating to the 2005 Mortgage is without any basis or support. The 2005 Mortgage has been satisfied of record, and there is no reason to justify this Court requiring MERS to post any bond. Thus, this motion is denied.

B. The Junks' Motion for Judgment on the Pleadings and for Default Judgment in the Quiet Title Action is Denied.

The Junk's Motion for judgment on the pleadings and default judgment is based on their claim that, because MERS has assigned the Mortgage to Bayview, MERS no longer has any interest in the property. Additionally, the Junks contend that Bayview falls within one of the "John Doe" defendants who were served with the Quiet Title Action by publication, and by failing to answer the Quiet Title action's Complaint, Bayview is in default. Because the Junks were aware that Bayview and CitiMortgage may have had an interest in the mortgage loan, and because the Junks would have been easily able to serve both Bayview and CitiMortgage through normal means, neither the inclusion of "John Doe" defendants, nor the use of service by publication was effective as to these entities.

Rule 10(a)(1), SCRCP allows the use of "john doe" parties "[w]hen a party does not know the name of an adverse party." Similarly, Rule 17(e), SCRCP specifically allows "unknown parties" to be named in quiet title actions. As for service on unknown parties, service by publication on "persons unknown" is authorized in quiet title actions. S.C. Code Ann. § 15-67-40. However, "such persons as are known or appear of record to

have some right, title, interest, estate or lien in or on the real property in controversy” must still be individually served. *Id.* A plaintiff is required to exercise due diligence to identify a method of service on all such parties before resorting to service by publication. S.C. Code Ann. §§ 15-9-710, 15-9-720.

Prior to filing the Quiet Title Action, the Junks had corresponded with both CitiMortgage and Bayview regarding the mortgage loan at issue. The Junks were well aware, based on the default warning letters they admit receiving from these entities, that one or both of them claimed some interest in the mortgage lien. Thus, neither Bayview nor CitiMortgage could be considered to be a proper “John Doe” defendant. Additionally, because the Junk’s had been in direct communication with both Bayview and CitiMortgage, service by publication would be improper as to either entity, as such service may only be used where the party cannot be found within the State. Aside from having addresses for both Bayview and CitiMortgage, either entity’s agent for service of process could have been ascertained through a simple search of the Secretary of State’s database. Therefore, Bayview and CitiMortgage were not proper “John Doe” defendants in the Quiet Title Action, and the Junks’ service by publication as to the John Doe defendants was of no effect as to either Bayview or CitiMortgage. Thus, The Junk’s Motion for Judgment on the Pleadings and Default Judgment is hereby denied.

C. MERS’ Motion to Dismiss the Quiet Title Action is Granted Without Prejudice.

As discussed above, Bayview and CitiMortgage were not properly made parties to the Quiet Title Action. Thus, MERS is the sole Defendant in that action. The Mortgage at issue has been assigned by MERS to Bayview, and by Bayview to CitiMortgage.

Additionally, this Court is simultaneously granting the motion substituting CitiMortgage as the Plaintiff in the Foreclosure Action that was initiated by Bayview while it was the servicer of the Loan and the holder of record of the Mortgage. The Junks' Quiet Title Action raises numerous issues challenging the validity and effect of the Mortgage that is the subject of the Foreclosure Action. In the interests of justice and judicial economy, these actions should be consolidated in some manner. Therefore, this Court hereby grants MERS' motion to dismiss the Quiet Title Action without prejudice, and directs the Junks to assert whatever claims or issues they contend apply in their Answer to the Foreclosure Action's complaint.

D. The Junks' Motion to Dismiss the Foreclosure Action under Rules 13(a) and 12(b)(8) is Denied.

The Junks contend that the Foreclosure Action should have been asserted by Bayview as a compulsory counterclaim to the Quiet Title Action under Rule 13(a), SCRCP. Additionally, the Junks contend that dismissal is appropriate under Rule 12(b)(8), SCRCP, because the Quiet Title Action constituted another action that was pending between the same parties for the same claim. However, as stated above, neither Bayview nor CitiMortgage were properly made parties to the Quiet Title Action. Therefore, neither Rule 13(a), nor Rule 12(b)(8) are applicable, and the Junk's Motion to Dismiss the Foreclosure action on these grounds is hereby denied.

E. The Junks Motion to Dismiss the Foreclosure Action Under Rule 12(b)(6) is Denied.

The Foreclosure Action Complaint asserts three separate causes of action: (1) fraudulent satisfaction of the mortgage, (2) reformation of the deed and/or mortgage, and (3) foreclosure of the mortgage. The Junks have moved to dismiss this Complaint under

Rule 12(b)(6), SCRCP on the following grounds: (1) Bayview lacked standing to bring the action; (2) the Mortgage that is the subject of the action is not a valid mortgage; (3) the Assignment of the Mortgage from MERS to Bayview was invalid; (4) any assignment of the Note and Mortgage was invalid due to AHM's bankruptcy; and (5) MERS' interest in the Mortgage was invalidated when AHM transferred the Note and no assignment of the Mortgage was recorded. None of these grounds provides a basis for dismissal of the Foreclosure Action Complaint under Rule 12(b)(6).

"In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." Cole Vision Corp. v. Hobbs, 384 S.C. 283, 286, 680 S.E.2d 923, 924 (Ct. App. 2009). Copies of documents attached as exhibits to a pleading are a part of the pleadings. S.C.R. Civ. P. 10(c). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Id.

The Complaint includes three causes of action. Each claim expressly includes allegations sufficient to meet all required legal elements under South Carolina law, and satisfies the standard under Rule 8, especially when viewed in the required light most favorable to the Plaintiff, and with every doubt resolved in its behalf. The Junks' Motion does not allege that Plaintiff has improperly pleaded the referenced causes of action, and Plaintiff's Complaint can certainly be read to state valid claims for relief.

The Junks contend that Bayview lacked standing to bring the Foreclosure Action because it was not the holder of the Note. At the time the Foreclosure Action was initiated by Bayview, it was the servicer of the Junks' loan. In the case of In re

Woodberry, 383 B.R. 373, 379 (D.S.C. Bankr. 2008), the U.S. District Court for the District of South Carolina held “that a loan servicer, with a contractual duty to collect payments and foreclose mortgages in the event of default, has standing to move for relief from stay in the Bankruptcy Court.” Subsequent decisions in the District of South Carolina have extended this to apply where the servicer did not hold the note. Harris v. Option One Mortgage Corp., 261 F.R.D. 98, 103-04 (D.S.C. 2009); In re Dendy, 396 B.R. 171, 178 (D.S.C. 2008) (noting that the servicer was the general agent for the holder of the mortgage by servicing the loan and collecting the loan payments). This view follows the holdings in other jurisdictions that loan servicers have standing to bring foreclosure actions by virtue of their pecuniary interest in collecting payments under the terms of the note and mortgage. In re Tainan, 48 B.R. 250, 252 (E.D. Pa. 1985) (servicer is real party in interest under Rule 17(a) for relief from stay); Bankers Trust v. 236 Beltway, 865 F. Supp 1186 (E.D. Va 1994) (both lender and servicer have standing to foreclose even if servicer is not the holder of the mortgage); In re O'Dell, 268 B.R. 607, 618 (N.D. Ala. 2001) *aff'd* 305 F.3d 1297 (11th Cir., 2002) (servicer is real party in interest in proceedings involving loans which it services); In re Miller, 320 B.R. 203 (N.D. Ala 2005) (servicer permitted to seek relief from stay). Thus, the Junk's contention that Bayview lacks standing is without merit.

Even if Bayview had lacked standing to bring the Foreclosure action, any issue as to standing is resolved by the substitution of CitiMortgage as the Plaintiff. The original Note, bearing an endorsement from AHM to CitiMortgage, is in CitiMortgage's possession. Additionally, CitiMortgage is the current assignee of record of the Mortgage. Rule 17(a), SCRCF provides that “[n]o action shall be dismissed on the ground that it is

not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest." Thus, any issue as to standing is resolved by CitiMortgage's substitution as Plaintiff in this action.

The Junks' remaining grounds are not properly applicable to a Rule 12(b)(6) motion. This Court must consider the Complaint in the light most favorable to the plaintiff, and with every doubt resolved in its behalf. Under this standard, the Plaintiff has stated facts sufficient to establish the causes of action asserted. Therefore, the Junks' Motion to dismiss under Rule 12(b)(6) is hereby denied.

F. Bayview's Motion to Substitute CitiMortgage as the Plaintiff in the Foreclosure Action is Granted.

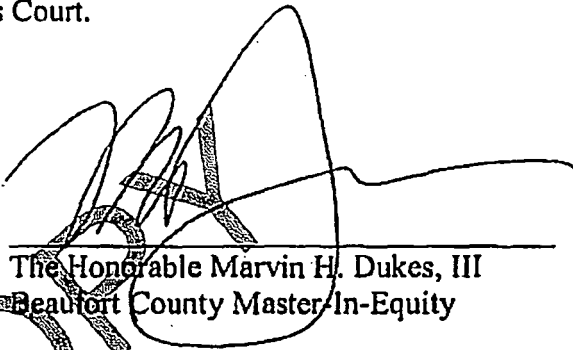
Bayview has moved, pursuant to Rule 25(c) to substitute CitiMortgage as the Plaintiff in the Foreclosure Action. This motion is based on the assignment of the Mortgage from Bayview to CitiMortgage. Additionally, substitution of CitiMortgage is also appropriate under Rule 17(a) based upon CitiMortgage's possession of the original Note bearing an endorsement to CitiMortgage and the fact that it is now also the holder of record of the Mortgage. This Court hereby grants the motion to substitute CitiMortgage as the Plaintiff in the Foreclosure Action and orders that the Foreclosure Action be hereinafter captioned as: "CitiMortgage, Inc. v. Daniel L. Junk, Christina H. Junk and Oldfield Community Association."

CONCLUSION

For the reasons stated herein, in the Quiet Title Action, this Court hereby: (a) denies Plaintiffs' Motion that MERS Post an Indemnity Bond; (b) denies Plaintiffs' Motion for Judgment on the Pleadings and Default Judgment; and (c) grants MERS'

Motion to Dismiss without prejudice. Because the Quiet Title Action has now been dismissed any other motions pending therein are hereby denied as moot. As for the Foreclosure Action, for the reasons stated herein, this Court hereby: (a) denies the Junks' Motions to Dismiss under Rules 13(a), 12(b)(6), and 12(b)(8); and (b) grants Bayview's motion to substitute CitiMortgage as Plaintiff. Pursuant to Rule 12(a), SCRCF, the Junks shall have fifteen (15) days from the their receipt of this Order to file a responsive pleading to the Foreclosure action Complaint, unless a Scheduling Order designating a different timeframe is entered by this Court.

IT IS SO ORDERED



The Honorable Marvin H. Dukes, III
Beaufort County Master-In-Equity

April 11, 2011

COPY

STATE OF SOUTH CAROLINA, COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A No. 2009-CP-0705088

BAYVIEW LOAN SERVICING, LLC

Plaintiff,

vs.

DANIEL L. JUNK and
CHRISTINE H. JUNK,

Defendants.

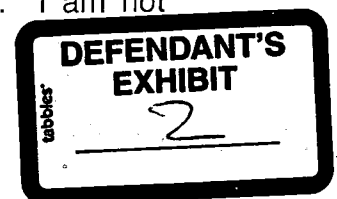
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JENNIFER JOSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

AFFIDAVIT OF LYNN E. SZYMONIAK, ESQ.,
AS DEFENDANTS' EXPERT

STATE OF FLORIDA
COUNTY OF PALM BEACH

LYNN E. SZYMONIAK, Esq., having been duly sworn, does state the following:

1. I am an adult citizen of the United States, and have resided in Palm Beach County, Florida since 1979.
2. I am an attorney and was admitted to the Florida Bar in 1980. I am not



admitted to practice in South Carolina.

3. For the past twenty years, my practice has primarily focused on cases involving white-collar crime allegations; particularly, in representing major insurance companies in claims that they have been defrauded by large policyholders.

4. In the last ten years, I have also served as an expert witness in civil and criminal cases. In criminal cases, I have served as an expert witness for the United States of America and the State of California. I have testified at trial in two federal court cases in Jacksonville, Florida, where the allegations involved false and fabricated documents including fabricated insurance policies and certificates of insurance. The two cases Jacksonville cases were United States v. Thomas King, Case No. 3:05-cr-52-J-99MMH, Middle District of Florida, Jacksonville Division and United States v. Donald Touchet, et al., Case No. 3:2007cr00090, Middle District of Florida, Jacksonville Division. My designation as an expert and the use of my testimony were affirmed in an 11th Circuit opinion, United States v. Robert D. Jennings, Case No. 08-13434 (11th Cir. Jan. 5, 2010). I also submitted an expert opinion for the government in a New York Northern District federal case that ended in a guilty plea: United States v. James Kernan, Case No. 5:2008cr00061. I have also been designated an expert on insurance regulatory matters in Florida and testified at trial in a case currently pending, United States v. Michael Zapetis, et al., Case No. 8:2006cr00026, Middle District of Florida, Tampa Division. I also submitted an expert opinion in a California state case involving fraudulent insurance practices and documents that resulted in a guilty plea in March, 2010, the People of the State of California v. Mitchell Zogob, Orange County, California. I am also an expert for the government in a federal criminal trial involving allegations of insurance fraud in a case currently pending in Charleston, South Carolina, United States v. Robert Kohn, Case No. 2:2009cr01127. I have submitted Expert Affidavits in seven other mortgage

foreclosure cases.

5. I was formerly a Certified Fraud Examiner, and have had nine hours training by the National Association of Certified Fraud Examiners in identifying forged and fabricated documents, in a course taught by retired agents of the FBI.

6. I have examined a copy of an Assignment of Mortgage filed in the foreclosure action presently before this Court, a copy of which is attached as Exhibit A. The notarization indicates this Assignment was executed in Miami-Dade County, Florida on September 25, 2009, with Robert G. Hall signing as Assistant Secretary of the Assignor: Mortgage Electronic Registration Systems. I have also examined a copy of a second Assignment of Mortgage in the foreclosure action presently before this Court, a copy of which is attached hereto as Exhibit B. The notarization indicates this Assignment was executed in Miami-Dade County, Florida on March 17, 2010 and was also signed by Robert G. Hall, signing as Vice-President of Assignor, Bayview Loan Servicing, LLC.

7. I have examined several hundred other Mortgage Assignments also executed in Miami-Dade County, Florida, and Beaufort County, South Carolina, signed by Robert G. Hall. On many such Assignments, Robert G. Hall signed as Vice-President of Silver Hill Financial, LLC. Ten examples of such Assignments are attached hereto as Composite Exhibit C.

8. On many other Mortgage Assignments, executed during the same time period, Robert G. Hall signs as Vice-President of Interbay Funding, LLC. Ten examples of such Assignments are attached hereto as Composite Exhibit D.

9. On many other Mortgage Assignments, executed during the same time period, Robert G. Hall signs as Vice-President of Mortgage Electronic Registration Systems, Inc. as nominee for Mortgage Network, Inc. Several examples of such

Assignments are attached hereto as Composite Exhibit E.

10. On many other Mortgage Assignments, executed during the same time period, Robert G. Hall signs as Vice-President of Mortgage Electronic Registration Systems, Inc. as nominee for Dreamhouse Mortgage Corporation. An example of such an Assignment is attached hereto as Composite Exhibit F.

11. On many other Mortgage Assignments, executed during the same time period, Robert G. Hall signs as Vice-President of Mortgage Electronic Registration Systems, Inc. as nominee for Fidelity Mortgage, Inc. An example of such an Assignment is attached hereto as Exhibit G.

12. On many other Mortgage Assignments, executed during the same time period, Robert G. Hall signs as Vice-President of Mortgage Electronic Registration Systems, Inc. as nominee for DHI Mortgage Company, Ltd. An example of such an Assignment is attached hereto as Exhibit H.

13. On many other Mortgage Assignments, executed during the same time period, Robert G. Hall signs as Vice-President of Mortgage Electronic Registration Systems, Inc. as nominee for Wilmington Finance, a division of AIG Federal Savings Bank. An example of such an Assignment is attached hereto as Exhibit I.

14. On many other Mortgage Assignments, executed during the same time period, Robert G. Hall signs as Vice-President of Mortgage Electronic Registration Systems, Inc. as nominee for AEGIS Wholesale Corporation. An example of such an Assignment is attached hereto as Exhibit J.

15. On many other Mortgage Assignments, executed during the same time period, Robert G. Hall signs as Vice-President of Mortgage Electronic

Registration Systems, Inc. as nominee for Easy Street Mortgage. An example of such an Assignment is attached hereto as Exhibit K.

16. On many other Mortgage Assignments, executed during the same time period, Robert G. Hall signs as Vice-President of Mortgage Electronic Registration Systems, Inc. as nominee for CTX Mortgage Company, LLC. An example of such an Assignment is attached hereto as Exhibit L.

17. On many other Mortgage Assignments, executed during the same time period, Robert G. Hall signs as Vice-President of Mortgage Electronic Registration Systems, Inc. as nominee for M & T Mortgage Corporation. An example of such an Assignment is attached hereto as Exhibit M.

18. On many other Mortgage Assignments, executed during the same time period, Robert G. Hall signs as Vice-President of Mortgage Electronic Registration Systems, Inc. as nominee for MFC Mortgage Inc. of Florida. An example of such an Assignment is attached hereto as Exhibit N.

19. On many other Mortgage Assignments, executed during the same time period, Robert G. Hall signs as Vice-President of Bayview Financial Small Business Funding, LLC. Examples of such Assignments are attached hereto as Exhibit O.

20. On many other Mortgage Assignments, executed during the same time period, Robert G. Hall signs as Vice-President of Mortgage Electronic Registration Systems, Inc., without indicating the name of the actual Assignor/Grantor. Examples of such an Assignments are attached hereto as Exhibit P.

21. On other Mortgage Assignments, executed during the same time period,

Robert G. Hall signs as Vice-President of Wachovia Bank, N.A. as Trustee Successor by Merger to First Union National Bank By It's (sic) Attorney-In-Fact Bayview Loan Servicing, LLC. An example of such an Assignment is attached hereto as Exhibit Q.

22. On many of the Mortgage Assignments I examined with the signature of Robert G. Hall, executed during the same time period, Robert G. Hall signs as Vice-President of Bayview Loan Servicing, LLC. Examples of such Assignments are attached hereto as Exhibit R.

23. On these many Assignments, there are at least two very distinct versions of the Robert Hall signature. In one version, the name is written out in full with the first letter resembling a Capital Cursive "O." In the second version, only one letter is recognizable, so that the signature looks more like a mark than a signature written using the traditional cursive alphabet. Examples of Version One and Version Two of the Hall Signature are attached hereto as Exhibit S.

24. After careful examination of the Assignments signed by Hall, and based on my knowledge of the mortgage industry and the practices related to mortgage assignments, I concluded that the Hall signer (or signers), are employees of a mortgage servicing company, Bayview Loan Servicing, LLC, and that Bayview is the grantee on these Assignments. Many of these Assignments are defective, however, because: 1) Robert G. Hall, an officer of the GRANTEE, is signing on behalf of the GRANTOR; 2) No disclosure is made to the Courts or property owners that Hall is acting on behalf of Bayview Loan Servicing, LLC; 3) no Power of Attorney is attached or referenced regarding Hall's authority to act on behalf of these many companies. While the numerous mortgage companies may have each executed a Power of Attorney to Robert G. Hall authorizing him to sign, he does not indicate that he is signing as the Attorney-In-Fact on most of the Assignments (with the exception of the Wachovia Bank assignment); and 4) Hall

often signs as an officer of mortgage companies that were previously dissolved in bankruptcy, using the "MERS as nominee" title. Because MERS derives its authority from its member companies, it can have no greater authority than that of the member companies – and thus an Assignment is defective if Hall signs as an officer of MERS, as nominee for a bankrupt or dissolved corporation.

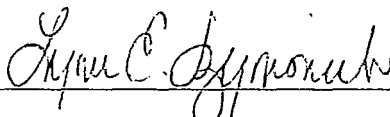
25. I also examined the original mortgage herein that identifies the original lender as American Home Mortgage and lists the lender's address as 538 Broadhollow Road, Melville, New York 11747. I am familiar with this company and address and recognize it to be one of many associated companies (including American Home Mortgage Corporation, American Home Mortgage Acceptance, Inc., American Brokers Conduit and American Home Mortgage Holdings) that filed for bankruptcy in Delaware in 2007.

26. I am aware from my experience with Mortgage Assignments that in thousands of instances, no Mortgage Assignment was executed from American Home Mortgage after the mortgage was made and before the bankruptcy filing. As a result, there is a break in the chain-of-title in these cases. I know from personal experience that many mortgage servicing companies have attempted to resolve this problem by having their own employees, or employees of a default management company, execute a Mortgage Assignment years after the bankruptcy. In these thousands of cases, no authorization from the Bankruptcy Court has been produced authorizing any entity to execute Mortgage Assignments on behalf of the American Home entities. Any Assignment made on behalf of an American Home Mortgage entity after the bankruptcy filing without the express authorization of the bankruptcy court is most likely invalid.

27. Based on all of the above, I have concluded that the Assignments at issue herein are fraudulent and/or insufficient to establish standing to foreclose. It is my opinion that no valid assignment has been made to the plaintiff.

28. In thousands of cases I have examined, new "replacement" Assignments have been prepared and presented to Courts without any disclosure to the Court or to the Homeowner/Defendants that the original Assignments were lost or never obtained.

FURTHER AFFIANT SAYETH NOT.


LYNN E. SZYMONIAK, ESQ.

COUNTY OF PALM BEACH
STATE OF FLORIDA

Before Me, the undersigned authority, on this 28th day of April, 2010, personally appeared LYNN E. SZYMONIAK, known to me to be the person whose name is subscribed to the foregoing Affidavit, and acknowledged that she executed the same for the purposes therein contained.

In witness whereof, I here unto set my hand and official seal.


ROBERT V. BROWNLEE



ROBERT V. BROWNLEE
MY COMMISSION # DD 720610
EXPIRES: October 1, 2011
Bonded Thru Budget Notary Services

INDEX TO EXHIBITS REFERENCED IN SZYMONIAK AFFIDAVIT

Exhibit A: Junk Assignment dated September 25, 2009

Exhibit B: Junk Assignment dated March 17, 2010

Composite Exhibit C: Ten Assignments with Robert Hall signing as an officer of Silver Hill Financial

Composite Exhibit D: Ten Assignments with Robert Hall signing as an officer of Interbay Funding

Exhibit E: Assignment with Robert Hall signing as an officer of MERS, as nominee for Mortgage Network Inc.

Exhibit F: Assignment with Robert Hall signing as an officer of MERS, as nominee for Dreamhouse Mortgage Corporation

Exhibit G: Assignment with Robert Hall signing as an officer of MERS, as nominee for Fidelity Mortgage Inc.

Exhibit H: Assignment with Robert Hall signing as an officer of MERS, as nominee for DHI Mortgage Inc.

Exhibit I: Assignment with Robert Hall signing as an officer of MERS, as nominee for Wilmington Finance, a division of AIG Federal Savings Bank.

Exhibit J: Assignment with Robert Hall signing as an officer of MERS, as nominee for Aegis Wholesale Corporation.

Exhibit K: Assignment with Robert Hall signing as an officer of MERS, as nominee for Easy Street Mortgage.

Exhibit L: Assignment with Robert Hall signing as an officer of MERS, as nominee for CTX Mortgage Company, LLC.

Exhibit M: Assignment w/ Robert Hall signing as an officer of MERS, as nominee for M & T Mort.

Exhibit N: Assignment w/ Robert Hall signing as an officer of MERS, as nominee for MFC Mort.

Exhibit O: Assignment with Robert Hall signing as an officer of Bayview Financial Small Business Funding.

Exhibit P: Assignment with Robert Hall signing as an officer of MERS, without indication of signing as nominee for any other entity.

Exhibit Q: Assignment with Robert Hall signing as Vice-President of Wachovia Bank, N.A. as Trustee Successor by Merger to First Union National Bank By It's (sic) Attorney-In-Fact Bayview Loan Servicing, LLC.

Exhibit R: Assignments with Robert Hall signing as an officer of Bayview Loan Servicing, LLC.

Exhibit S: Two Versions of the Robert Hall Signatures.

1/6/10
Riley Pope
6289

BEAUFORT COUNTY SC - ROD
BK 02399 PG 0436
FILE NUM 2009060367
10/19/2009 03:02:25 PM
REC'D BY R WEBB RCPT# 598869
RECORDING FEES 6.00

WHEN RECORDED MAIL TO:
Bayview Loan Servicing, L.L.C.
Attn: Jennifer McGovern
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, Florida 33146

BV LOAN NO: 403634

BORROWER: JUNK
LOAN AMOUNT: \$ 1,200,000.00

Assignment of Mortgage

FOR VALUE RECEIVED, the undersigned as ("ASSIGNOR/GRANTOR"), hereby grants, conveys, assigns to

BAYVIEW LOAN SERVICING, LLC A DELAWARE LIMITED LIABILITY COMPANY
4425 PONCE DE LEON BLVD., CORAL GABLES, FL 33146

("Assignee/Grantee") all beneficial interest under that certain Mortgage dated: 11/03/2006 and executed by:
DANIEL L JUNK AND CHRISTINE H JUNK, HUSBAND & WIFE, borrower(s) to: MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC., Mortgagee, acting solely as nominee for AMERICAN
HOME MORTGAGE, as Original Lender and Mortgage recorded in Instrument: 2006090350, Volume: 02472, at
Page: 2001, recorded on: 11/09/2006, in the Official Records of BEAUFORT, State of SC, covering the following
described property:

181 OLDFIELD WAY, OKATIE, SC 29909

Together with the note or notes therein described or referred to, the money due and to become due thereon with
interest, and all rights accrued or to accrue under said Document.

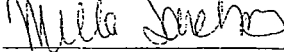
Dated: September 25, 2009

ASSIGNOR: MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS INC. at P.O. Box 2026, Flint,
MI 48501-2026

Witness: Ramona Careaga



Witness: Melba Sanchez



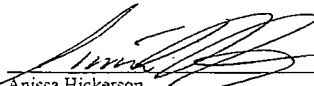
By: 
ROBERT G. HALL, Assistant Secretary

STATE OF FLORIDA)
) SS.:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this September 25, 2009 by ROBERT G. HALL,
Assistant Secretary of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC. at P.O. Box 2026,
Flint, MI 48501-2026 on behalf of the corporation. He is personally known to me.

Probate Witness: Ramona Careaga




Anissa Hickerson
My commission expires: 11/14/2010
DD 614525



ANISSA HICKERSON
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD614525
Expires: NOV. 14, 2010

Prepared By: Angela Soler
Bayview Financial, L.P.
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, Florida 33146

Riley Pope & Son, LLC
Post Office Box 1112
Columbia, South Carolina 29211

4028.01009

EXHIBIT A

1-56
Nelson
1/28/10

BEAUFORT COUNTY SC - ROD
BK 02942 PG 0327
FILE NUM 2010014640
03/19/2010 04:14:58 PM
REC'D BY X DOE RCPT# 611936
RECORDING FEES 6.00

WHEN RECORDED MAIL TO:
Bayview Loan Servicing, LLC
Attn: Jennifer McGovern
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, Florida 33146

BV LOAN NO: 403634

LOAN AMOUNT: \$ 1,200,000.00

Assignment of Mortgage

FOR VALUE RECEIVED, the undersigned as ("ASSIGNOR/GRANTOR"), hereby grants, conveys, assigns to

CITIMORTGAGE INC.
1000 TECHNOLOGY DRIVE, O'FALLON, MO 63368

("Assignee/Cirantee") all beneficial interest under that certain Mortgage dated: 11/3/2006 and executed by: Daniel L. Junk and Christine H. Junk, husband & wife as borrower(s) to: American Home Mortgage as Original Lender and certain Mortgage recorded in Instrument No. 2006090350 in Volume 02472, at Page 2001-2023, recorded on 11/9/2006, in the Official Records of Beaufort County, State of SC.

PROPERTY ADDRESS: 181 OLDFIELD WAY, OKATIE, SC 29909

Together with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Document.

Dated: March 17, 2010

Melba Sanchez
Witness: Melba Sanchez

Ron Portal
Witness: Roger Portal

ASSIGNOR: BAYVIEW LOAN SERVICING, LLC
4425 Ponce De Leon Blvd, 5th Floor, Coral Gables, Florida 33146

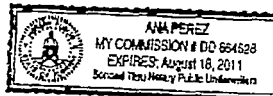
By: Robert G. Hall
ROBERT G. HALL, VICE PRESIDENT

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE) SS

On 3/17/2010, before me, ANA PEREZ, a notary public for an within the said county, personally appeared, ROBERT G. HALL, VICE PRESIDENT, of BAYVIEW LOAN SERVICING, LLC, whose address is 4425 Ponce De Leon Blvd, 5th Floor, Coral Gables, Florida 33146, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

By: Ana Perez
Notary Public: ANA PEREZ
My commission Expires: 8/18/2011



Prepared By: Melba Sanchez
Bayview Loan Servicing, LLC
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, Florida 33146

Tracking No:



CFN 2008R0601846

OR Bk 26491 Pg 02947 (1pg)
RECORDED 07/23/2008 09:12:24
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA
LAST PAGE

When Recorded Return To:
BayView Financial, L.P.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

Loan #: 200064248

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, **SILVER HILL FINANCIAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY**, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL , CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to **BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY**, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL , CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said Mortgage was made by **ALL FOR THE EARTH FOUNDATION A MINNESOTA NOT-FOR-PROFIT CORPORATION** and was recorded in Official Records of the Clerk of the Circuit Court of DADE County, Florida, in Book 26158 , Page 3614 or Instr # 2008R0034298 upon the property situated in said State and County as more fully described in said mortgage.

Dated: 06/11/2008
SILVER HILL FINANCIAL, LLC

By: [Signature]
ROBERT G. HALL VICE PRESIDENT
Whose address is: 4425 PONCE DE LEON BLVD., 4TH FL , CORAL GABLES, FL 33146

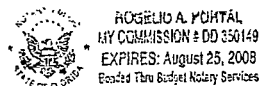
Witnesses:

[Signature]
Angela Soler

[Signature]
YESLYN GOMEZ

STATE OF FLORIDA COUNTY OF Dade
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgement appeared ROBERT G. HALL personally known to me to be the VICE PRESIDENT of SILVER HILL FINANCIAL, LLC , a corporation, and that she/he acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation. WITNESS my hand and official seal in the County and State last aforesaid THIS 11TH DAY OF JUNE IN THE YEAR 2008

[Signature]
Rogelio A. Portal Notary Public
My commission expires: 08/25/2008



Document Prepared By: J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152



BVASN 8409325 PWO1846431 form5/FRMFL1

COMP. EXH. C

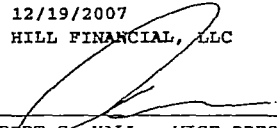
When Recorded Return To:
BayView Financial, L.P.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

Loan #: 200050685

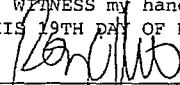
ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, SILVER HILL FINANCIAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL, CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said Mortgage was made by W.B. INVESTMENTS L.L.C. A FLORIDA LIMITED LIABILITY COMPANY and was recorded in Official Records of the Clerk of the Circuit Court of LEON County, Florida, in Book 3630, Page 1242 or Instr # 20060117903 upon the property situated in said State and County as more fully described in said mortgage.

Dated: 12/19/2007
SILVER HILL FINANCIAL, LLC

By: 
ROBERT G. HALL VICE PRESIDENT
Whose address is: 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146

STATE OF FLORIDA COUNTY OF Dade
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared ROBERT G. HALL well known to me to be the VICE PRESIDENT of SILVER HILL FINANCIAL, LLC, a corporation, and that she/he acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation. WITNESS my hand and official seal in the County and State last aforesaid THIS 19TH DAY OF DECEMBER IN THE YEAR 2007


Rogelio A. Portal Notary Public
My commission expires: 08/25/2008



ROGELIO A. PORTAL
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD350149
Expires: AUG. 25, 2008

Document Prepared By: J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152



BVASN 7506283 PW01691832

COMP. EXH. C

When Recorded Return To:
BayView Financial, L.P.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

Loan #: 200062340

Nationwide Title Clearing
2100 Alt. 19 N
Palm Harbor, FL
34683

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY

DATE: 02/27/2008 10:00:12 AM

FILE #: 2008020495 OR BK 04989 PG 0181

RECORDING FEES 10.00

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, SILVER HILL FINANCIAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL, CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said Mortgage was made by TINA TEEGARDEN and was recorded in Official Records of the Clerk of the Circuit Court of MARION County, Florida, in Book 04930, Page 0740 or Instr # 2007147681 upon the property situated in said State and County as more fully described in said mortgage.

Dated: 12/31/2007

SILVER HILL FINANCIAL, LLC

By:

ROBERT G. HALL VICE PRESIDENT

Whose address is: 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146

STATE OF FLORIDA

COUNTY OF Dade

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared ROBERT G. HALL well known to me to be the VICE PRESIDENT of SILVER HILL FINANCIAL, LLC, a corporation, and that she/he acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation. WITNESS my hand and official seal in the County and State last aforesaid THIS 31ST DAY OF DECEMBER IN THE YEAR 2007

Rogelio A. Portal Notary Public
My commission expires: 08/25/2008



ROGELIO A. PORTAL
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD350149
Expires: AUG. 25, 2008

Document Prepared By: J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152



BVASN 8383926 CJ1700440

COMP. EXH. C

FILE NUM 2008003495
OR BK 00650 PG 0988
SHARON ROBERTSON, CLERK OF CIRCUIT COURT
OKEECHOBEE COUNTY, FL
RECORDED 03/17/2008 01:09:57 PM
RECORDING FEES 10.00
RECORDED BY G Newbourn
Pg 0988; (1pg)

When Recorded Return To:
BayView Financial, L.P.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

Loan #: 200056072

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, SILVER HILL FINANCIAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL, CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said Mortgage was made by IMTIAZ ALI and was recorded in Official Records of the Clerk of the Circuit Court of OKEECHOBEE County, Florida, in Book 00631, Page 0135 or Instr # 2007007193 upon the property situated in said State and County as more fully described in said mortgage.

Dated: 12/30/2007
SILVER HILL FINANCIAL, LLC

By: ROBERT G. HALL VICE PRESIDENT
Whose address is: 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146

STATE OF FLORIDA COUNTY OF Dade
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared ROBERT G. HALL well known to me to be the VICE PRESIDENT of SILVER HILL FINANCIAL, LLC, a corporation, and that she/he acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation. WITNESS my hand and official seal in the County and State last aforesaid THIS 30TH DAY OF DECEMBER IN THE YEAR 2007

Rogelio A. Portal Notary Public
My commission expires: 08/25/2008



ROGELIO A. PORTAL
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD350149
Expires: AUG, 25, 2008

Document Prepared By: J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152



BVASN 7914698 CJ1699438

COMP. EXH. C

INSTR # 2070380
OR BK 02313 PG 1301
Ps 1301; (1ps)
RECORDED 03/06/2008 08:59:02 AM
MARSHA EWING
CLERK OF MARTIN COUNTY FLORIDA
RECORDED BY L Wood

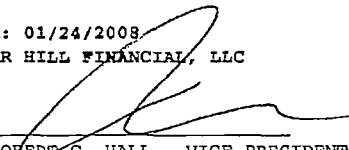
When Recorded Return To:
BayView Financial, L.P.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

Loan #: 200062386

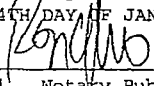
ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, SILVER HILL FINANCIAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL, CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said Mortgage was made by ASAD IBRAHIM and was recorded in Official Records of the Clerk of the Circuit Court of MARTIN County, Florida, in Book 02293, Page 0796 or Instr # 2051993 upon the property situated in said State and County as more fully described in said mortgage.

Dated: 01/24/2008
SILVER HILL FINANCIAL, LLC

By: 
ROBERT G. HALL VICE PRESIDENT
Whose address is: 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146

STATE OF FLORIDA COUNTY OF Dade
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared ROBERT G. HALL well known to me to be the VICE PRESIDENT of SILVER HILL FINANCIAL, LLC, a corporation, and that she/he acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation. WITNESS my hand and official seal in the County and State last aforesaid THIS 24TH DAY OF JANUARY IN THE YEAR 2008


Rogelio A. Portal Notary Public
My commission expires: 08/25/2008



ROGELIO A. PORTAL
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD350149
Expires: AUG. 25, 2008

Document Prepared By: J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152



BVASN 8383790 PWO1723204

COMP. EXH. C

form 5/FRMFL1

When Recorded Return To:
BayView Financial, L.P.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

Loan #: 200062314

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY

DATE: 02/27/2008 10:00:12 AM

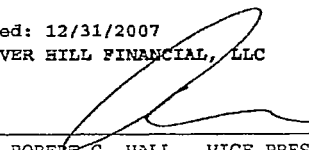
FILE #: 2008020494 OR BK 04989 PG 0180

RECORDING FEES 10.00

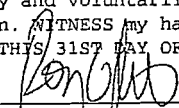
Nationwide Title Clearing
2100 Alt. 19 N, Palm Harbor, FL 34683
ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, SILVER HILL FINANCIAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL, CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said Mortgage was made by THOMAS F. MAMMANA AND CAROL J. MAMMANA AS TRUSTEES OF THE THOMAS F. AND CAROL J. MAMMANA REVOCABLE LIVING TRUST DATED NOVEMBER 20 2006 and was recorded in Official Records of the Clerk of the Circuit Court of MARION County, Florida, in Book 04930, Page 0643 or Instr # 2007147655 upon the property situated in said State and County as more fully described in said mortgage.

Dated: 12/31/2007
SILVER HILL FINANCIAL, LLC

By: 
ROBERT G. HALL VICE PRESIDENT
Whose address is: 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146

STATE OF FLORIDA COUNTY OF Dade
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared ROBERT G. HALL well known to me to be the VICE PRESIDENT of SILVER HILL FINANCIAL, LLC, a corporation, and that she/he acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation. WITNESS my hand and official seal in the County and State last aforesaid THIS 31ST DAY OF DECEMBER IN THE YEAR 2007


Rogelio A. Portal Notary Public
My commission expires: 08/25/2008



ROGELIO A. PORTAL
NOTARY PUBLIC - STATE OF FLORIDA
Commission #00350149
Expires AUG. 25, 2008

Document Prepared By: J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152



BVASN 8383994 CJ1700440

COMP. EXH. C

Loan #: 200047791

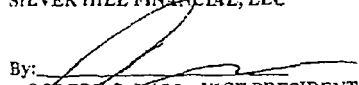
BEAUFORT COUNTY SC - ROD
BK 02535 PG 0303
FILE NUM 2007019372
03/09/2007 04:33:38 PM
REC'D BY B BING RCPT# 476112
RECORDING FEES 6.00

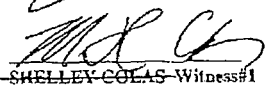
*1/6 KB
Not made
7782*

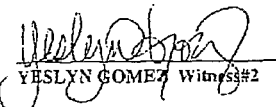
ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, SILVER HILL FINANCIAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL., CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage/deed together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL., CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said mortgage is made by JOSEPH D. GASKIN to SILVER HILL FINANCIAL, L.L.C. and recorded 09/28/2006 in the Recorder or Registrar of Deeds of BEAUFORT County, South Carolina in Book 02450 Page 1284 and/or as Document # 2006078525

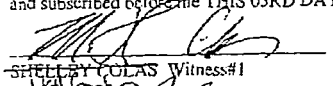
dated 01/03/2007
SILVER HILL FINANCIAL, LLC

By: 
ROBERT G. HALL VICE PRESIDENT


SHELLEY COLAS Witness#1
Mkt Clerk


YESLYN GOMEZ Witness#2

STATE OF FLORIDA COUNTY OF Dade
Before me, the undersigned Notary Public, personally appeared the undersigned witness who, being duly sworn, deposed and said that (s)he saw ROBERT G. HALL the VICE PRESIDENT sign, seal and deliver the foregoing Assignment of Mortgage and that (s)he, together with the other witness witnessed the execution thereof. SWORN to and subscribed before me THIS 03RD DAY OF JANUARY IN THE YEAR 2007.


SHELLEY COLAS Witness#1
Mkt Clerk

Jason James (#DD428371) Notary Public
My commission expires: 05/11/2009



JASON JAMES
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD428371
Expires: MAY 11, 2009

Document Prepared By:
J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152
When Recorded Return To: [WHEN RECORDED RETURN TO]

NTC -- ATTN: JESSICA LESINSKI
2100 ALT. 19 NORTH
PALM HARBOR, FLORIDA 34683
EVAHS Loan #: 200047791




COMP. EXH. C

to be
National Title
5078

Assignor Ln#: 200034089

BEAUFORT COUNTY SC - ROD
BK 02528 PG 2071
FILE NUM 2007015229
02/23/2007 01:30:54 PM
REC'D BY J COORE RCPT# 473217
RECORDING FEES 6.00

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, SILVER HILL FINANCIAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage/deed together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL, CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE).

Said mortgage is made by WAYNE GRABENBAUER, JR. to SILVER HILL FINANCIAL, L.L.C. and recorded 09/30/2005 in the Recorder or Registrar of Deeds of BEAUFORT County, South Carolina in Book 02241 Page 0509 and/or as Document # 2005083516

dated 08/28/2006
SILVER HILL FINANCIAL, LLC

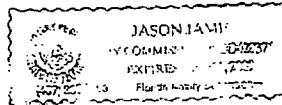
By: ROBERT G. HALL VICE PRESIDENT

Witness#1

DENIS WAGOVICH Witness#2

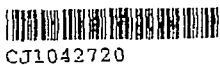
STATE OF FLORIDA COUNTY OF Dade
Before me, the undersigned Notary Public, personally appeared the undersigned witness who, being duly sworn, deposed and said that (s)he saw ROBERT G. HALL the VICE PRESIDENT sign, seal and deliver the foregoing Assignment of Mortgage and that (s)he, together with the other witness witnessed the execution thereof. SWORN to and subscribed before me THIS 28TH DAY OF AUGUST IN THE YEAR 2006

Witness#1



Jason James (#DD428371) Notary Public
My commission expires: 05/11/2009

Document Prepared By:
J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152
When Recorded Return To:
National Title Clearing
2100 Alt. 19 North
Palm Harbor, FL 34683



BVFA2 6014879

CJ1042720

COMP. EXH. C

INSTR # 2079764
OR BK 02323 PG 1648
Pg 1648: (1pg)
RECORDED 04/22/2008 03:56:22 PM
MARSHA EWING
CLERK OF MARTIN COUNTY FLORIDA
RECORDED BY L Wood

When Recorded Return To:
BayView Financial, L.P.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

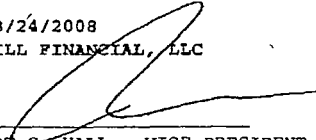
Loan #: 200063318

ASSIGNMENT OF MORTGAGE

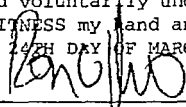
FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, **SILVER HILL FINANCIAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY**, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to **BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY**, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL, CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said Mortgage was made by **BRIAN KENNY AND JEANNEMARIE KENNY** and was recorded in Official Records of the Clerk of the Circuit Court of MARTIN County, Florida, in Book 02296, Page 0614 or Instr # 2054886

upon the property situated in said State and County as more fully described in said mortgage.

Dated: 03/24/2008
SILVER HILL FINANCIAL, LLC

By: 
ROBERT G. HALL VICE PRESIDENT
Whose address is: 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146

STATE OF FLORIDA COUNTY OF Dade
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared ROBERT G. HALL well known to me to be the VICE PRESIDENT of SILVER HILL FINANCIAL, LLC, a corporation, and that she/he acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation. WITNESS my hand and official seal in the County and State last aforesaid THIS 24TH DAY OF MARCH IN THE YEAR 2008


Rogelio A. Portal Notary Public
My commission expires: 08/25/2008



ROGELIO A. PORTAL
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD350149
Expires: AUG. 25. 2008

Document Prepared By: J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152



BVASN 8383764 PW01774759

COMP. EXH. C

BEAUFORT COUNTY SC - REC
BK 0928 PG 2071
FILE NUM 200705229
02/23/2007 11:20:54 PM
REC'D BY J COORE RPT# 47617
RECORDING FEES \$00

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, HAS UNDAVISED, SILVER HILL FINANCIAL, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 3425 PONDIC DE LEON BLVD., 4TH FL., CORAL GABLES, FL 33146, (ASBIBNOR), BY DEBRA FREEMAN NEAR MORGAN, GIBBY, 2011, 2010, transferred and set over the described assets/properties together with the certain notices described therein (together with all in, to, and secured thereby, all liens, and any rights due or to become due thereon) TO BAYVIEW LOAN SERVICES, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 3425 PONDIC DE LEON BLVD., 5TH FL., CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE).

Said mortgage is held by WATSON GRADENRADER, JR. of SILVER HILL FURNACE, L.P.C. and recorded 01/18/2006 in the Recorder or Registrar of Deeds of BLAUFORD County, South Carolina in 2006 12261 Page 0026 and/or as Document # 2006059316

001-1 00737056
SILVER HILL FINANCIAL, LLC

By: ROBERT C. GALL VICE PRESIDENT

10/1/84 - Nitrotest: 100% 100% W
100% W - Nitrotest: 100% W

STATE OF FLORENCE COUNTY OF Iowa
before me, the undersigned Notary Public personally appeared
the undersigned witnesses who, being duly sworn, deposed and said
that to the best of their knowledge the VICE PRESIDENT, sign, seal
and deliver the foregoing Assignment of Mortgage and that same,
together with the other witnesses witnessed the execution of said
instrument and subscribed before me THIS FOURTH DAY OF AUGUST IN THE
YEAR 2004.

7220264

Case# 13062 (470428191) Agency Public
by commission expires: 05/17/2035

Document Prepared By:
J. L. LAY, JR., 2100 Ave. 19 North, Palm Harbor, FL 32634 (800) 346-9152
When Recorded Return To:
National Life Title Insurance
2100 Ave. 19 North
Palm Harbor, FL 32634

REF ID: A66000

DATE: 04/11/2008 04:10:12 PM

FILE #: 2008037678 OR BK 05015 PG 1709

RECORDING FEES 10.00

When Recorded Return To:
BayView Financial, L.P.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

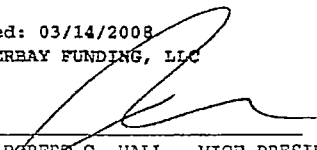


Loan #: 200062174

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, INTERBAY FUNDING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL, CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said Mortgage was made by Z. A. A. CORPORATION A FLORIDA CORPORATION and was recorded in Official Records of the Clerk of the Circuit Court of MARION County, Florida, in Book 04927, Page 0762 or Instr # 2007145889 upon the property situated in said State and County as more fully described in said mortgage.

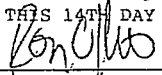
Dated: 03/14/2008
INTERBAY FUNDING, LLC

By: 

ROBERT G. HALL VICE PRESIDENT

Whose address is: 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146

STATE OF FLORIDA COUNTY OF Dade
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared ROBERT G. HALL well known to me to be the VICE PRESIDENT of INTERBAY FUNDING, LLC, a corporation, and that she/he acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation. WITNESS my hand and official seal in the County and State last aforesaid THIS 14TH DAY OF MARCH IN THE YEAR 2008


Rogelio A. Portal Notary Public
My commission expires: 08/25/2008



ROGELIO A. PORTAL
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD350149
Expires: AUG. 25, 2008

Document Prepared By: J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152



BVASN 8384007 PWO1767822

COMP. EXHIBIT D

11/15
1/11/2008
8/2/08

Loan #: 200065831

BEAUFORT COUNTY SC - ROD
BK 02730 PG 0858
FILE NUM 2008034909
06/05/2008 12:57:10 PM
REC'D BY F FRANKLIN RCMT# 547108
RECORDING FEES 6.00

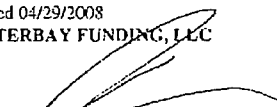
ASSIGNMENT OF MORTGAGE

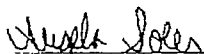
FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, INTERBAY FUNDING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage/deed together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL, CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE).

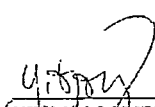
Said mortgage is made by ROY A. RIVERS AND CYNTHIA J. RIVERS to INTERBAY FUNDING, LLC and recorded 03/19/2008 in the Recorder or Registrar of Deeds of BEAUFORT County, South Carolina in Book 02697 Page 2018 and/or as Document # 2008016792

dated 04/29/2008

INTERBAY FUNDING, LLC

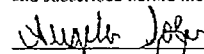
By: 
ROBERT G. HALL VICE PRESIDENT

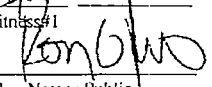

Angela Soler Witness#1

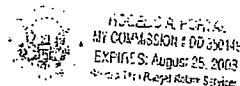

YESLYN GOMEZ Witness#2

STATE OF FLORIDA COUNTY OF Dade

Before me, the undersigned Notary Public, personally appeared the undersigned witness who, being duly sworn, deposed and said that (s)he saw ROBERT G. HALL the VICE PRESIDENT sign, seal and deliver the foregoing Assignment of Mortgage and that (s)he, together with the other witness witnessed the execution thereof. SWORN to and subscribed before me THIS 29TH DAY OF APRIL IN THE YEAR 2008.


Angela Soler Witness#1


Rogelio A. Portal Notary Public
My commission expires: 08/25/2008



Document Prepared By:

J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152
Reviewed and Approved as meeting the South Carolina Code of Laws and Recording Statutes by Biddle Law Firm, P.A., Myrtle Beach, South Carolina.

When Recorded Return To: BayView Financial, L.P.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683



BVASN 8492398 PWD1805691 form5/FRMSCI

COMPOSITE EXHIBIT D

When Recorded Return To:
BayView Financial, L.P.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

Loan #: 200065585

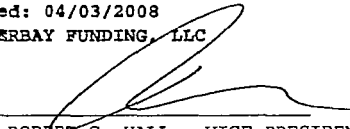
THIS IS NOT A
CERTIFIED COPY

ASSIGNMENT OF MORTGAGE

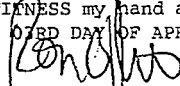
FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, INTERBAY FUNDING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL, CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said Mortgage was made by WANDA CUESTO BEDAMI and was recorded in Official Records of the Clerk of the Circuit Court of HILLSBOROUGH County, Florida, in Book 18500, Page 903 or Instr # 2008091598

upon the property situated in said State and County as more fully described in said mortgage.

Dated: 04/03/2008
INTERBAY FUNDING, LLC

By: 
ROBERT G. HALL VICE PRESIDENT
Whose address is: 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146

STATE OF FLORIDA COUNTY OF Dade
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared ROBERT G. HALL well known to me to be the VICE PRESIDENT of INTERBAY FUNDING, LLC, a corporation, and that she/he acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation. WITNESS my hand and official seal in the County and State last aforesaid THIS 03RD DAY OF APRIL IN THE YEAR 2008


Rogelio A. Portal Notary Public
My commission expires: 08/25/2008



ROGELIO A. PORTAL
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD350149
Expires: AUG. 25, 2008

Document Prepared By: J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152



BVASN 8492506

PW01784295

COMP. EXH. D

THIS IS NOT A
CERTIFIED COPY

When Recorded Return To:

BayView Financial, L.P.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

Loan #: 200063090

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, INTERBAY FUNDING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL, CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said Mortgage was made by JB DELATOP & ASSOCIATES TRUSTEE OF THE 5123 MLK TRUST and was recorded in Official Records of the Clerk of the Circuit Court of HILLSBOROUGH County, Florida, in Book 18298, Page 889 or Instr # 2007510052 upon the property situated in said State and County as more fully described in said mortgage.

Dated: 03/31/2008

INTERBAY FUNDING, LLC

By:

ROBERT G. HALL VICE PRESIDENT

Whose address is: 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146

STATE OF FLORIDA

COUNTY OF Dade

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared ROBERT G. HALL well known to me to be the VICE PRESIDENT of INTERBAY FUNDING, LLC, a corporation, and that she/he acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation. WITNESS my hand and official seal in the County and State last aforesaid THIS 31ST DAY OF MARCH IN THE YEAR 2008

Rogelio A. Portal Notary Public
My commission expires: 08/25/2008



ROGELIO A. PORTAL
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD350149
Expires: AUG. 25, 2008

Document Prepared By: J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152



BVASN 8383885

PW01780514

THIS IS NOT A
CERTIFIED COPY

When Recorded Return To:

BayView Financial, L.P.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

Loan #: 200063970

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, INTERBAY FUNDING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL, CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said Mortgage was made by RIYAD MALKEYA and was recorded in Official Records of the Clerk of the Circuit Court of HILLSBOROUGH County, Florida, in Book 18367, Page 1944 or Instr # 2008009730 upon the property situated in said State and County as more fully described in said mortgage.

Dated: 03/19/2008

INTERBAY FUNDING, LLC

By:

ROBERT G. HALL VICE PRESIDENT

Whose address is: 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146

STATE OF FLORIDA

COUNTY OF Dade

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared ROBERT G. HALL well known to me to be the VICE PRESIDENT of INTERBAY FUNDING, LLC, a corporation, and that she/he acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation. WITNESS my hand and official seal in the County and State last aforesaid THIS 19TH DAY OF MARCH IN THE YEAR 2008

Rogelio A. Portal Notary Public
My commission expires: 08/25/2008



ROGELIO A. PORTAL
NOTARY PUBLIC - STATE OF FLORIDA
Commission #00850149
Expires: AUG. 25, 2008

Document Prepared By: J. Lesinski/NTC,2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152



BVASN 8409402

PW01770932

1/6/06
Nationwide
4506

Assignor Ln#: 200038020

BEAUFORT COUNTY SC - ROD
BK 02626 PG 2070
FILE NUM 2007015228
02/23/2007 01:30:54 PM
REC'D BY J COORE RCPT# 473217
RECORDING FEES 6.00

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, INTERBAY FUNDING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage/deed together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL, CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said mortgage is made by ERIC J. OGREN to INTERBAY FUNDING, L.L.C. and recorded 11/02/2005 in the Recorder or Registrar of Deeds of BEAUFORT County, South Carolina in Book 02261 Page 1038 and/or as Document # 2005093513

dated 08/29/2006
INTERBAY FUNDING, LLC

By: ROBERT G. HALL VICE PRESIDENT

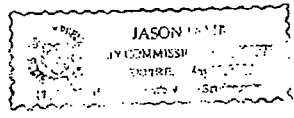
[Signature]
Witness#1

[Signature]
DENIS WAGOVICH Witness#2

STATE OF FLORIDA COUNTY OF Dade
Before me, the undersigned Notary Public, personally appeared the undersigned witness who, being duly sworn, deposed and said that (s)he saw ROBERT G. HALL the VICE PRESIDENT sign, seal and deliver the foregoing Assignment of Mortgage and that (s)he, together with the other witness witnessed the execution thereof. SWORN to and subscribed before me THIS 29TH DAY OF AUGUST IN THE YEAR 2006

[Signature]
Witness#1

[Signature] Notary Public
My Commission expires: 05/11/2009



Document Prepared By:
J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9151
When Recorded Return To:
Nationwide Title Clearing
2100 Alt. 19 North
Palm Harbor, FL 34683

[Barcode] BVFA2 6013108
CJ1044418

COMPOSITE EXHIBIT D

INSTR # 2079765
OR BK 02323 PG 1649
Pg 1649; (1pg)
RECORDED 04/22/2008 03:56:22 PM
MARSHA EWING
CLERK OF MARTIN COUNTY FLORIDA
RECORDED BY L Wood

When Recorded Return To:
BayView Financial, L.P.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

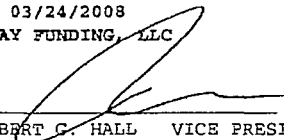
Loan #: 200061528

ASSIGNMENT OF MORTGAGE

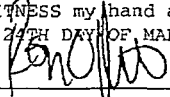
FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, INTERBAY FUNDING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL , CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL , CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said Mortgage was made by ARTHUR CABRAL JR. AND JOAN C. CABRAL and was recorded in Official Records of the Clerk of the Circuit Court of MARTIN County, Florida, in Book 02286 , Page 2939 or Instr # 2046245

upon the property situated in said State and County as more fully described in said mortgage.

Dated: 03/24/2008
INTERBAY FUNDING, LLC

By: 
ROBERT G. HALL VICE PRESIDENT
Whose address is: 4425 PONCE DE LEON BLVD., 4TH FL , CORAL GABLES, FL 33146

STATE OF FLORIDA COUNTY OF Dade
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared ROBERT G. HALL well known to me to be the VICE PRESIDENT of INTERBAY FUNDING, LLC , a corporation, and that she/he acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation. WITNESS my hand and official seal in the County and State last aforesaid THIS 24TH DAY OF MARCH IN THE YEAR 2008


Rogelio A. Portal Notary Public
My commission expires: 08/25/2008



ROGELIO A. PORTAL
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD350149
Expires: AUG. 25, 2008

Document Prepared By: J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152



EVASN 8213516 PW01774759

COMPOSITE EXHIBIT D

When Recorded Return To:
BayView Financial, L.P.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

Loan #: 200063147

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, INTERBAY FUNDING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL., CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL., CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said Mortgage was made by JCS INVESTMENT PROPERTIES L.L.C. and was recorded in Official Records of the Clerk of the Circuit Court of ST JOHNS County, Florida, in Book 3017, Page 436 or Instr # 2007081123

upon the property situated in said State and County as more fully described in said mortgage.

Dated: 02/22/2008
INTERBAY FUNDING, LLC

By: ROBERT G. HALL VICE PRESIDENT
Whose address is: 4425 PONCE DE LEON BLVD., 4TH FL., CORAL GABLES, FL 33146

STATE OF FLORIDA COUNTY OF Dade

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared ROBERT G. HALL well known to me to be the VICE PRESIDENT of INTERBAY FUNDING, LLC, a corporation, and that she/he acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation. WITNESS my hand and official seal in the County and State last aforesaid THIS 22ND DAY OF FEBRUARY IN THE YEAR 2008

Rogelio A. Portal Notary Public
My commission expires: 08/25/2008



ROGELIO A. PORTAL
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD350149
Expires: AUG. 25, 2008

Document Prepared By: J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800) 346-9152



EVASN 8384387

PW01749446

When Recorded Return To:
BayView Financial, L.P.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

Loan #: 200063147

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, **INTERBAY FUNDING, LLC, A DELAWARE LIMITED LIABILITY COMPANY**, WHOSE ADDRESS IS **4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146**, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to **BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY**, WHOSE ADDRESS IS **4425 PONCE DE LEON BLVD., 5TH FL, CORAL GABLES, FL 33146**, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said Mortgage was made by **JCS INVESTMENT PROPERTIES L.L.C.** and was recorded in Official Records of the Clerk of the Circuit Court of ST JOHNS County, Florida, in Book 3017, Page 436 or Instr # 2007081123

upon the property situated in said State and County as more fully described in said mortgage.

Dated: 02/22/2008
INTERBAY FUNDING, LLC

By: ROBERT G. HALL VICE PRESIDENT
Whose address is: **4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146**

STATE OF FLORIDA COUNTY OF Dade

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared **ROBERT G. HALL** well known to me to be the VICE PRESIDENT of **INTERBAY FUNDING, LLC**, a corporation, and that she/he acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation. WITNESS my hand and official seal in the County and State last aforesaid THIS 22ND DAY OF FEBRUARY IN THE YEAR 2008

Rogelio A. Portal
Rogelio A. Portal Notary Public
My commission expires: 08/25/2008



ROGELIO A. PORTAL
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD350149
Expires: AUG. 25, 2008

Document Prepared By: **J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800) 346-9152**



BVASN 8384387

PW01749446

COMPOSITE EXHIBIT D

THIS IS NOT A
CERTIFIED COPY

When Recorded Return To:
BayView Financial, L.P.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

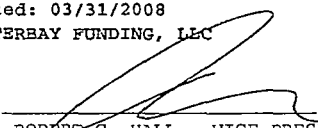
Loan #: 200061945

ASSIGNMENT OF MORTGAGE

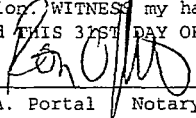
FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, INTERBAY FUNDING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL, CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said Mortgage was made by JUAN M. DE LA GARZA and was recorded in Official Records of the Clerk of the Circuit Court of HILLSBOROUGH County, Florida, in Book 18251, Page 349 or Instr # 2007482592

upon the property situated in said State and County as more fully described in said mortgage.

Dated: 03/31/2008
INTERBAY FUNDING, LLC

By: 
ROBERT G. HALL VICE PRESIDENT
Whose address is: 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146

STATE OF FLORIDA COUNTY OF Dade
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared ROBERT G. HALL well known to me to be the VICE PRESIDENT of INTERBAY FUNDING, LLC, a corporation, and that she/he acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation. WITNESS my hand and official seal in the County and State last aforesaid THIS 31ST DAY OF MARCH IN THE YEAR 2008


Rogelio A. Portal Notary Public
My commission expires: 08/25/2008



ROGELIO A. PORTAL
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD350149
Expires: AUG. 25, 2008

Document Prepared By: J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152



BVASN 8213761 PWO1780514

COMP. EXH. D

16/12/24

1
6 AD
Glaning: Verit
any

BEAUFORT COUNTY SC - ROD
BK 02891 PG 1067
FILE NUM 2009055661
09/23/2009 02:52:31 PM
REC'D BY R WEBB RCPT# 596757
RECORDING FEES 6.00

WHEN RECORDED MAIL TO:
Bayview Loan Servicing, L.L.C.
Attn: Jennifer McGovern
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, Florida 33146

BV LOAN NO: 277904

BORROWER: CLELAND
LOAN AMOUNT: \$ 112,500.00

Assignment of Mortgage

FOR VALUE RECEIVED, the undersigned as ("ASSIGNOR/GRANTOR"), hereby grants, conveys, assigns to

Bayview Loan Servicing, LLC
4425 Ponce de Leon Blvd., Coral Gables, FL 33146

("Assignee/Grantee") all beneficial interest under that certain Mortgage dated: 10/7/2002 and executed by:
LARRY L. CLELAND AND LUCILLE J. CLELAND, HIS WIFE, borrower(s) to: Mortgage Electronic
Registration Systems, Inc. as nominee for DREAMHOUSE MORTGAGE CORPORATION, as Original
Lender and Mortgage recorded in Instrument: 2002070498, Volume: 01653, at Page: 0453, recorded on:
10/25/2002, in the Official Records of BEAUFORT COUNTY, State of SC, covering the following described
property:

378 BALL PARK ROAD, ST HELENA ISLAND, SC 29920

Together with the note or notes therein described or referred to, the money due and to become due thereon with
interest, and all rights accrued or to accrue under said Document.

Dated: August 28, 2009

ASSIGNOR: MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS INC. as nominee for
DREAMHOUSE MORTGAGE CORPORATION at P.O.
Box 2026, Flint, MI 48501-2026

Witness:

Angela Soler

Witness:

Mark E. Pearson

By: Robert G. Hall
ROBERT G. HALL, Vice President

STATE OF FLORIDA)
) SS.:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this August 28, 2009 by ROBERT G. HALL, Vice
President of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC. as nominee for
DREAMHOUSE MORTGAGE CORPORATION at P.O. Box 2026, Flint, MI 48501-2026 on behalf of the
corporation. He is personally known to me.

Probate Witness:

Angela Soler

Anissa Hickerson
My commission expires: 11/14/2010
DD 614525



ANISSA HICKERSON
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD614525
Expires: NOV. 14, 2010

Prepared By: Anissa Hickerson
Bayview Financial, L.P.
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, Florida 33146

EXHIBIT F

2/2
Bayview
4594

When Recorded Return to:
Bayview Loan Servicing, LLC
4425 Ponce De Leon Blvd., 5th FL
Coral Gables, FL 33146
Attn: Jennifer McGovern

BEAUFORT COUNTY SC - ROD
BK 02829 PGS 0658-0659
FILE NUM 2009019089
04/06/2009 04:11:41 PM
REC'D BY F FRANKLIN RCPT# 580733
RECORDING FEES 7.00

BV: 362316A
Mers Min# 100076600012558148

LOAN AMOUNT: \$147,200.00

Assignment of Mortgage

FOR VALUE RECEIVED, the undersigned as ("ASSIGNOR/GRANTOR"), hereby grants, conveys, assigns to

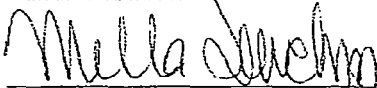
BAYVIEW LOAN SERVICING, LLC
4425 PONCE DE LEON BLVD., 5TH FL., CORAL GABLES, FL 33146

("Assignee/Grantee") all beneficial interest under that certain Mortgage dated: 04/15/2004 and executed by: ,
FRED BROWN AND QUEEN ESTHER BROWN, borrower(s) to: **FIDELITY MORTGAGE INC.** Original
Lender, and certain Mortgage recorded in Instrument # 2004026114, Book 01943, Page 1532-1541,
recorded on 04/23/2004, in the Official Records of **BEAUFORT** County, State of **SC**, covering the following
described property:

2606 SMILAX AVENUE, PORT ROYAL, SC 29935

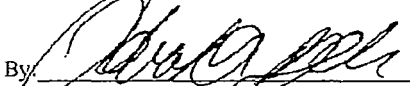
Together with the note or notes therein described or referred to, the money due and to become due thereon with
interest, and all rights accrued or to accrue under said Document.

Dated: 03/16/2009

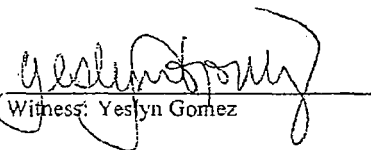


Witness: Melba Sanchez

ASSIGNOR: MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC. as nominee for FIDELITY MORTGAGE INC
1000 WOODBURY RD., WOODBURY, NY 11797



By: **ROBERT G. HALL, VICE PRESIDENT**



Witness: Yeslyn Gomez

EXHIBIT G

2
MAD
Hemery
5084

BEAUFORT COUNTY SC - ROD
BK D2735 PGS 2330-2331
FILE NUM 2008038898
08/19/2008 03:11:03 PM
REC'D BY M DOE RCPT# 549111
RECORDING FEES 7.00

WHEN RECORDED MAIL TO:
Bayview Loan Servicing, L.L.C.
Attn: Jennifer McGovern
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, Florida 33146

BV LOAN NO: 357761

BORROWER: FISCHMAN
LOAN AMOUNT: \$ 179,160.00

Assignment of Mortgage

FOR VALUE RECEIVED, the undersigned as ("ASSIGNOR/GRANTOR"), hereby grants, conveys, assigns to

BAYVIEW LOAN SERVICING, LLC A DELAWARE LIMITED LIABILITY COMPANY
4425 PONCE DE LEON BLVD., CORAL GABLES, FL 33146

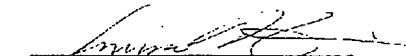
("Assignee/Grantee") all beneficial interest under that certain Mortgage dated: 12/29/2006 and executed by:
JACK FISCHMAN and CHRISTINE FISCHMAN, HUSBAND AND WIFE, borrower(s) to: MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE for DHI MORTGAGE COMPANY,
LTD., as Original Lender and Mortgage recorded in Instrument: 2007004289, Volume: 02506, at Page: 0505,
recorded on: 01/12/2007, in the Official Records of BEAUFORT, State of SC, covering the following described
property:

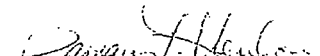
128 SLATER STREET, BLUFFTON, SC 29909

Together with the note or notes therein described or referred to, the money due and to become due thereon with
interest, and all rights accrued or to accrue under said Document.

Dated: June 2, 2008

ASSIGNOR: MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. AS NOMINEE for
DHI MORTGAGE COMPANY, LTD. at P.O. Box 2026,
Flint, MI 48501-2026


Witness: Anissa Hickerson

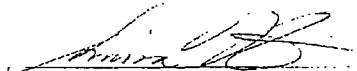

Witness: Damaris Henlon

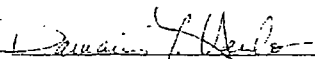
By: 
ROBERT G. HALL, Assistant Secretary

STATE OF FLORIDA)
) SS.:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this June 2, 2008 by ROBERT G. HALL, Assistant
Secretary of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE for DHI
MORTGAGE COMPANY, LTD. at P.O. Box 2026, Flint, MI 48501-2026 on behalf of the corporation. He is
personally known to me.

Probate Witness:


Anissa Hickerson
My commission expires: 11/14/2010
DD 614525


Damaris Henlon



ANISSA HICKERSON
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD614525
Expires: NOV. 14, 2010

Prepared By: Damaris Henlon
Bayview Financial, L.P.
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, Florida 33146

Record & return to:
DANIEL C. CONSUEGRA
ATTORNEY AT LAW
9204 King Palm Drive
Tampa, Florida 33619-1328
BLS v. Seglah, Solomon

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY
DATE: 12/01/2009 12:48:51 PM
FILE #: 2009103017 OR BK 05285 PG 0290
RECORDING FEES 10.00

WHEN RECORDED MAIL TO:
Bayview Loan Servicing, L.L.C.
Attn: Jennifer McGovern
4425 Ponce De Leon Blvd.
Coral Gables, Florida 33146

BV LOAN NO: 396560
BORROWER: SEGLAH
LOAN AMOUNT: \$ 115,200.00

Assignment of Mortgage

FOR VALUE RECEIVED, the undersigned as ("ASSIGNOR/GRANTOR"), hereby grants, conveys, assigns to

BAYVIEW LOAN SERVICING, LLC
4425 PONCE DE LEON BLVD., 5TH FLOOR, CORAL GABLES, FL 33146

("Assignee/Grantee") all beneficial interest under that certain Mortgage dated: 11/1/2005 and executed by:
SOLOMON SEGLAH, a single person, borrower(s) to: Mortgage Electronic Registration Systems, Inc. as
nominee for Wilmington Finance, a division of AIG Federal Savings Bank, as Original Lender and Mortgage
recorded in Instrument: 2005197201, Volume: 04229, at Page: 1991, recorded on: 11/02/2005, in the Official
Records of MARION COUNTY, State of FL, covering the following described property:

9317 SPRING TERRACE, OCALA, FL 34472

Together with the note or notes therein described or referred to, the money due and to become due thereon with
interest, and all rights accrued or to accrue under said Document.

Dated: October 02, 2009

ASSIGNOR: MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS INC. as nominee for
Wilmington Finance, a division of AIG Federal Savings
Bank at P.O. Box 2026, Flint, MI 48501-2026

Witness:

Angela Sole

Witness:
Melle Seelins

By: Robert G. Hall
ROBERT G. HALL, Assistant Secretary

STATE OF FLORIDA)
) SS.:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this October 02, 2009 by ROBERT G. HALL, Assistant
Secretary of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC. as nominee for Wilmington
Finance, a division of AIG Federal Savings Bank at P.O. Box 2026, Flint, MI 48501-2026 on behalf of the
corporation. He is personally known to me.

Anissa Hickerson
Anissa Hickerson
My commission expires: 11/14/2010
DD 614525

 ANISSA HICKERSON
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD614525
Expires: NOV. 14, 2010

Prepared By: Anissa Hickerson
Bayview Financial, L.P.
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, Florida 33146

EXHIBIT I

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY
DATE: 11/23/2009 12:19:50 PM
FILE #: 2009100955 OR BK 05282 PG 0221

RECORDING FEES 10.00

RECORD AND
RETURN TO

LAW OFFICES OF
MARSHALL C. WATSON, P.A.
1800 N.W. 49th Street, Suite 120
Ft. Lauderdale, FL 33309

WHEN RECORDED MAIL TO:
Bayview Loan Servicing, L.L.C.
Attn: Jennifer McGovern
4425 Ponce De Leon Blvd. 5th Floor
Coral Gables, Florida 33146

BV LOAN NO: 403905

BORROWER: THOMAS
LOAN AMOUNT: \$ 97,500.00

Assignment of Mortgage

FOR VALUE RECEIVED, the undersigned as ("ASSIGNOR/GRANTOR"), hereby grants, conveys, assigns to

BAYVIEW LOAN SERVICING, LLC A DELAWARE LIMITED LIABILITY COMPANY
4425 PONCE DE LEON BLVD., CORAL GABLES, FL 33146

("Assignee/Grantee") all beneficial interest under that certain Mortgage dated: 07/27/2006 and executed by:
FREDERICK THOMAS, A MARRIED MAN JOINED BY HIS SPOUSE ANGELA THOMAS borrower(s)
to: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Mortgagee, acting solely as nominee
for AEGIS WHOLESALE CORPORATION, as Original Lender and Mortgage recorded in Instrument:
2006143778, Volume: 04557, at Page: 0959, recorded on: 09/07/2006, in the Official Records of MARION
County, State of FL, covering the following described property:

2935 NE 7 STREET UNIT #103, OCALA, FL 34470

Together with the note or notes therein described or referred to, the money due and to become due thereon with
interest, and all rights accrued or to accrue under said Document.

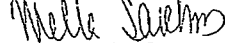
Dated: September 23, 2009

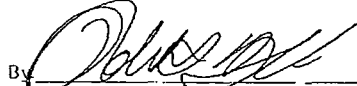
ASSIGNOR: MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS INC., as nominee for AEGIS
WHOLESALE CORPORATION, at P.O. Box 2026, Flint,
MI 48501-2026

Witness: Ramona Careaga



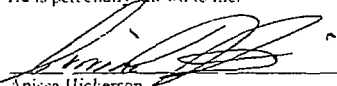
Witness: Melba Sanchez



By 
ROBERT G. HALL, Assistant Secretary

STATE OF FLORIDA)
) SS.:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this September 23, 2009 by ROBERT G. HALL,
Assistant Secretary of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC., as nominee for
AEGIS WHOLESALE CORPORATION, at P.O. Box 2026, Flint, MI 48501-2026 on behalf of the corporation.
He is personally known to me.


Anissa Hickerson
My commission expires: 11/14/2010
DD 614525



ANISSA HICKERSON
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD614525
Expires: NOV. 14, 2010

C9-612465K

Prepared By: Angela Soler
Bayview Financial, L.P.
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, Florida 33146

EXHIBIT J

BAYVIEW LOAN SERVICING
PO BOX 331409
MIAMI, FL 33233

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY
DATE: 10/22/2009 12:13:22 PM
FILE #: 2009091360 OR BK 05269 PGS 0638-0639

RECORDING FEES 18.50



WHEN RECORDED MAIL TO:
Bayview Loan Servicing, LLC
Attn: Jennifer McGovern
4425 Ponce De Leon Blvd, 5th Floor,
Coral Gables, Florida 33146

BV LOAN NO: 276480A

LOAN AMOUNT: \$ 90,588.00

Mers Min #: 100029500004242735

Assignment of Mortgage

FOR VALUE RECEIVED, the undersigned as ("ASSIGNOR/GRANTOR"), hereby grants, conveys, assigns to

BAYVIEW LOAN SERVICING, LLC
4425 PONCE DE LEON BLVD, 5TH FLOOR, CORAL GABLES, FLORIDA 33146

("Assignee/Grantee") all beneficial interest under that certain Mortgage dated: 10/7/2003 and executed by: Anthony C Law and Tammy L Law, husband and wife as joint tenants borrower(s) to: Easy Street Mortgage Original Lender and certain Mortgage recorded in Instrument # 2003139877, at Book: 03556 and Page: 0675, recorded on 10/22/2003, in the Official Records of Marion County, State of FL.

PROPERTY ADDRESS: 5707 SW 116TH STREET, BELLEVIEW, FL 34420

Together with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Document.

Dated: October 12, 2009

Witness: Melba Sanchez

Witness: Angela Soler

**ASSIGNOR: MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC. as nominee for EASY STREET MORTGAGE**
2300 S. Pine Street, Ste B, Ocala, FL 34471

By:

ROBERT G. HALL,

Certifying Officer and Assistant Secretary

EXHIBIT K

BV#: 276480A

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

On 10/12/2009, before me, **JENNIFER MCGOVERN**, a notary public, personally appeared, **ROBERT G. HALL, CERTIFYING OFFICER AND ASSISTANT SECRETARY of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.** as nominee for **EASY STREET MORTGAGE**, whose address is **2300 S. Pine Street, Ste B, Ocala, FL 34471**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/ her/their signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

By. _____

Name: **JENNIFER MCGOVERN**
My Commission expires: **6/26/2013**



JENNIFER MCGOVERN
MY COMMISSION # **DD 643108**
EXPIRES: **June 26, 2013**
Bonded Thru Budget Notary Services

Prepared By: Melba Sanchez
Bayview Loan Servicing, LLC
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, Florida 33146

Tracking Number: 00355209563

DATE: 04/02/2009 03:53:08 PM

FILE #: 2009027785 OR BK 05179 PG 0021

RECORDING FEES 10.00

WHEN RECORDED MAIL TO:

Bayview Loan Servicing, LLC
 Attn: Jennifer McGovern
 4425 Ponce De Leon, 5th Floor
 Coral Gables, Florida 33146

BY LOAN NO: 367959A

LOAN AMOUNT: \$161,560.00


 RECORDED
 RETURN TO

Assignment of Mortgage

FOR VALUE RECEIVED, the undersigned as ("ASSIGNOR/GRANTOR"), hereby grants, conveys, assigns to

BAYVIEW LOAN SERVICING, LLC
 4425 PONCE DE LEON BLVD, 5TH FLOOR, CORAL GABLES, FL 33146

("Assignee/Grantee") all beneficial interest under that certain document dated: 12-27-2005 and executed by:BEVERLY D. PHILLIPS A MARRIED WOMAN borrower(s) to: CTX MORTGAGE COMPANY, LLC,

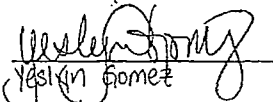
Original Lender, certain document recorded in Book # 04300, Page # 0574 in Doc # 2006002886
 recorded on 1-6-2006, in the Official Records of MARION County, State of FL, covering the following
 described property:

SE MALAUKA RADIAL, OCKLAWAHA, FL 32179

LOT 7, BLOCK 960, OF SILVER SPRING SHORES, UNIT 31, ACCORDING TO THE PLAT THEREOF,
 AS RECORDED IN PLAT BOOK J, PAGES 268 THROUGH 275, INCLUSIVE OF THE PUBLIC
 RECORDS OF MARION COUNTY, FLORIDA

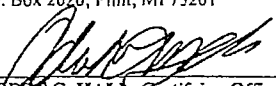
Together with the note or notes therein described or referred to, the money due and to become due thereon with
 interest, and all rights accrued or to accrue under said Document.

Dated: March 18, 2009


 Yeslyn Gomez

 Melba Sanchez

ASSIGNOR: MORTGAGE ELECTRONIC REGISTRATION
 SYSTEMS, INC. as nominee for CTX MORTGAGE COMPANY,
 LLC
 P. O. Box 2026, Flint, MI 75201

By: 
 ROBERT G. HALL, Certifying Officer

STATE OF FLORIDA

) SS

COUNTY OF DADE

On 3/18/09, before me, ANA PEREZ a notary public for an within the said county, personally
 appeared, ROBERT G. HALL, CERTIFYING OFFICER, of MORTGAGE ELECTRONIC REGISTRATION
 SYSTEMS, INC. as nominee for CTX MORTGAGE COMPANY, LLC., whose address is 4425 PONCE DE
 LEON BLVD., 5TH FLOOR, CORAL GABLES, FL 33146, personally known to me (or proved to me on the
 basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and
 acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/
 her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed
 the instrument.

WITNESS my hand and official seal



By: 
 Notary Public ANA PEREZ
 My commission Expires: 08/18/2011

Prepared By: Yeslyn Gomez
 Bayview Loan Servicing, LLC
 4425 Ponce De Leon Blvd, 5th Floor
 Coral Gables, Florida 33146

Tracking Number: 00355884549

Return To
Fassett, Anthony & Taylor, P.A.
1325 W Colonial Drive
Orlando, Florida 32804
File no. 6727-12 (nikli)

RECORD AND
RETURN TO

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY

DATE: 11/06/2008 02:43:28 PM

FILE #: 2008110459 OR BK 05119 PGS 0217-0218

RECORDING FEES 18.50

SPACE ABOVE LINE FOR RECORDING DATA

Return to: Bayview Loan Servicing, LLC
4425 Ponce de Leon Blvd., 5th Floor
Coral Gables, Florida 33146
Prepared By: Matthew Cobum

BV Loan # 355783

**ASSIGNMENT OF DEED OF TRUST
(CORPORATE)**

Wherever used herein, the term "party" shall include the heirs, personal representatives, successors and/or assigns of the respective parties hereto; the use of the singular number shall include the plural, and the plural the singular; the use of any gender shall include all genders; and, if used, the term "note" shall include all the notes herein described if more than one.

KNOW ALL MEN BY THESE PRESENTS that:

Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for M&T Mortgage Corporation, at P.O. Box 2026, Flint, MI 48501

party of the first part, in consideration of the sum of Ten Dollars and other good and valuable consideration paid by:

Bayview Loan Servicing, LLC at 4425 Ponce De Leon Blvd., 5th Floor, Coral Gables, FL 33146,

party of the second part, at or before the enrolling and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over unto the said party of the second part a certain indenture of Mortgage/Deed of Trust referred to in the attached Exhibit "A" attached hereto and made a part hereof.

Together with the note(s) or obligation(s) described in said Mortgage/Deed of Trust, and the moneys due and to become due thereon, with interest.

TO HAVE AND TO HOLD the same unto the said party of the second part, and its assigns forever.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed in its name, and its corporate seal to be hereunto affixed, by its proper officers thereunto duly authorized, this 20th day of October, 2008.

Effective as of 9/13/2007.

Mortgage Electronic Registration Systems,
Inc. (MERS) as nominee for M&T Mortgage
Corporation,


Name: Robert G. Hall
Title: Assistant Secretary

STATE OF FLORIDA)
) ss
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 20th day of October, 2008, by Robert G. Hall, Assistant Secretary of Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for M&T Mortgage Corporation, and he acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said company. He is personally known to me.

Notary Public
My Commission Expires:

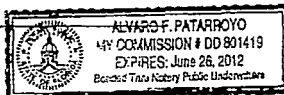


EXHIBIT M

355783

Prepared by: Lynn Tarleton
Bayview Loan Servicing, LLC
4425 Ponce De Leon Blvd., 5th FL
Coral Gables, FL 33146

When Recorded Return to:
Bayview Loan Servicing, LLC
P.O. BOX 331409
MIAMI, FL 33233-1409

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY
DATE: 06/11/2008 01:05:27 PM
FILE #: 2008060230 OR BK 05050 PGS 0600-0601
RECORDING FEES 18.50

BV: 330965
Mers Min#: 100293200001152347

LOAN AMOUNT: \$139,863.00

Assignment of Mortgage

FOR VALUE RECEIVED, the undersigned as ("ASSIGNOR/GRANTOR"), hereby grants, conveys, assigns to

BAYVIEW LOAN SERVICING, LLC
4425 PONCE DE LEON BLVD., 5TH FL., CORAL GABLES, FL 33146

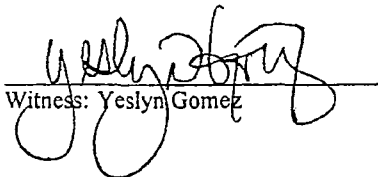
("Assignee/Grantee") all beneficial interest under that certain Mortgage dated: 10/13/2005 and executed by: ,
EDILFREDO SARIMIENTO, A MARRIED MAN, JOINED BY HIS WIFE FILICITA SARMIENTO,
borrower(s) to: **MFC MORTGAGE, INC. OF FLORIDA** Original Lender, and certain Mortgage recorded in,
Instrument # 2005193156, Book 04223, Page 0337-0349, recorded on 10/27/2005, in the Official Records of
MARION County, State of FL, covering the following described property:
5937 SW 128TH ST RD., OCALA, FL 34473-3873

Together with the note or notes therein described or referred to, the money due and to become due thereon with
interest, and all rights accrued or to accrue under said Document.

Dated: 06/04/2008



Witness: Melba Sanchez



Witness: Yeslyn Gomez

ASSIGNOR: MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC. as nominee for MFC MORTGAGE, INC. OF
FLORIDA
851 TRAFALGAR CRT., 3RD FL., MAITLAND, FL 32751

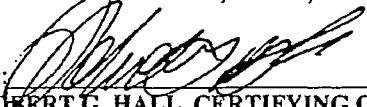
By: 
ROBERT G. HALL, CERTIFYING OFFICER AND
ASSISTANT SECRETARY

EXHIBIT N

When Recorded Return To:
BayView Financial, L.P.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683



Loan #: 200064121

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY

DATE: 04/24/2008 02:36:39 PM

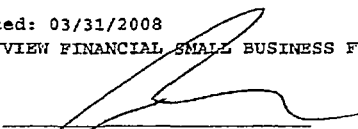
FILE #: 2008042472 OR BK 05023 PG 0628

RECORDING FEES 10.00

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, BAYVIEW FINANCIAL SMALL BUSINESS FUNDING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS 4425 PONCE DE LEON BLVD., 5TH FL, CORAL GABLES, FL 33146, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE). Said Mortgage was made by JOSEPHINE PETROLINO and was recorded in Official Records of the Clerk of the Circuit Court of MARION County, Florida, in Book 04963, Page 0451 or Instr # 2008003326 upon the property situated in said State and County as more fully described in said mortgage.

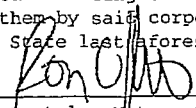
Dated: 03/31/2008
BAYVIEW FINANCIAL SMALL BUSINESS FUNDING, LLC

By: 

ROBERT G. HALL VICE PRESIDENT

Whose address is: 4425 PONCE DE LEON BLVD., 4TH FL, CORAL GABLES, FL 33146

STATE OF FLORIDA COUNTY OF Dade
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared ROBERT G. HALL well known to me to be the VICE PRESIDENT of BAYVIEW FINANCIAL SMALL BUSINESS FUNDING, LLC, a corporation, and that she/he acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation. WITNESS my hand and official seal in the County and State last aforesaid THIS 31ST DAY OF MARCH IN THE YEAR 2008


Rogelio A. Portal Notary Public
My commission expires: 08/25/2008



ROGELIO A. PORTAL
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD350149
Expires: AUG. 25, 2008

Document Prepared By: J. Lesinski/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152



BVASN 8409105 PW01780514

EXHIBIT O

Daniel Consuegra
9204 King Palm Drive
Tampa FL 33619

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY

DATE: 03/22/2010 03:13:07 PM

FILE #: 2010025430 OR BK 05333 PG 1255

RECORDING FEES 10.00



WHEN RECORDED MAIL TO:

Bayview Loan Servicing, L.L.C.
Attn: Jennifer McGovern
4425 Ponce De Leon Blvd.
Coral Gables, Florida 33146

BV LOAN NO: 405712

BORROWER: PETRUCCO
LOAN AMOUNT: \$ 92,000.00

Assignment of Mortgage

FOR VALUE RECEIVED, the undersigned as ("ASSIGNOR/GRANTOR"), hereby grants, conveys, assigns to

Bayview Loan Servicing, LLC a Delaware limited liability company
4425 Ponce de Leon Blvd., Coral Gables, FL 33146

("Assignee/Grantee") all beneficial interest under that certain Mortgage dated: 6/2/2006 and executed by:

STEVEN PETRUCCO, a married person, borrower(s) to: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. mortgagee acting solely as nominee for CitiMortgage, Inc., as Original Lender and Mortgage recorded in Instrument: 2006092011, Volume: 04462, at Page: 1646-1670, recorded on: 06/07/2006, in the Official Records of Marion County, State of FL, covering the following described property:

2100 NE 52ND ST, OCALA, FL 34479-7204

Together with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Document.

Dated: 02/12/2010

ASSIGNOR: MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS INC. at P.O. Box 2026, Flint,
MI 48501-2026

Witness:

[Signature]

Witness:

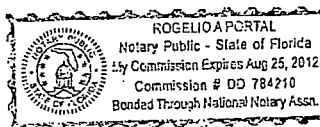
[Signature]

By: [Signature]
ROBERT G. HALL, Assistant Secretary

STATE OF FLORIDA)
) SS.:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 02/12/2010 by ROBERT G. HALL, Assistant Secretary of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC. at P.O. Box 2026, Flint, MI 48501-2026 on behalf of the corporation. He is personally known to me.

[Signature]
Rogelio A. Portal
My commission expires: Aug. 25, 2012
DD 784210



Prepared By: Rogelio A. Portal
Bayview Financial, L.P.
4425 Ponce De Leon Blvd, 5th Floor
Coral Gables, Florida 33146

EXHIBIT P

1 to RB
Bayview 9548

BEAUFORT COUNTY SC - ROD
BK 02194 PG 0240
FILE NUM 2005060183
07/25/2005 02:37:52 PM
REC'D BY B BING RCPT# 348179
RECORDING FEES 6.00

WHEN RECORDED MAIL TO:
Bayview Loan Servicing, LLC
Attn: Jennifer McGovern
4425 Ponce De Leon, 5th Floor
Coral Gables, Florida 33146

BV LOAN NO: 289687

LOAN AMOUNT: \$63,000.00

Assignment of Mortgage

FOR VALUE RECEIVED, the undersigned as ("ASSIGNOR/GRANTOR"), hereby grants, conveys, assigns to

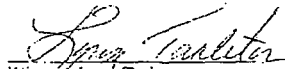
Bayview Loan Servicing, LLC AT: 4425 Ponce De Leon, 5th FL
Coral Gables, FL 33146

("Assignee/Grantee") all beneficial interest under that certain Mortgage dated: 02/14/1994 and executed by:
RONALD F SCHILLING AND SANDRA J SCHILLING, as borrower(s) to: ATLANTIC SAVINGS BANK,
F.S.B. as Original Lender and certain Mortgage recorded in Instrument No. 1994065642
in Volume 684 at Page 2201, recorded on 2/16/94, in the Official
Records of BEAUFORT County, State of SC.

Property Address: 118-D OCEAN DUNES VILLAS, HILTON HEAD ISLAND, SC 29928

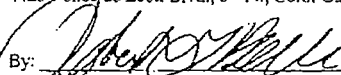
Together with the note or notes therein described or referred to, the money due and to become due thereon with
interest, and all rights accrued or to accrue under said Document.

Dated: April 12, 2005


Witness: Lynn Tarleton


Witness: Lorune Molina

ASSIGNOR: WACHOVIA BANK, N.A. AS TRUSTEE,
SUCCESSOR BY MERGER TO FIRST UNION
NATIONAL BANK BY IT'S ATTORNEY-IN-FACT
BAYVIEW LOAN SERVICING, LLC
4425 Ponce de Leon Blvd., 5th FL, Coral Gables, FL 33146

By: 
ROBERT G. HALL, VICE PRESIDENT

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

On 04/12/2005, before me, JERUSHA NIBBS, a notary public for and within the said county, personally appeared,
ROBERT G. HALL, VICE PRESIDENT, of BAYVIEW LOAN SERVICING, LLC AS ATTORNEY-IN-
FACT FOR WACHOVIA BANK, N.A. AS TRUSTEE, SUCCESSOR BY MERGER TO FIRST UNION
NATIONAL BANK. Attorney-in-fact located at 4425 Ponce de Leon Blvd., 5th FL, Coral Gables, FL 33146,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/ her/their signature(s) on the instrument the person(s) or the
entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

By: 
Notary Public: JERUSHA NIBBS
My commission Expires: 09/07/2008

Prepared By: Lynn Tarleton
Bayview Financial, L. P.
4425 Ponce De Leon Blvd., 5th Floor
Coral Gables, FL 33146



JERUSHA NIBBS
MY COMMISSION # DD 363374
EXPIRES: September 7, 2008
Renee & Thelma E. Hall Notary Services

Tracking Number: 00355135971

1-200
9-22-11

Document Prepared by: SCALM-6 05/02/06
Andren Grayer
When recorded return to:
SIMEON OREKOYA
9909 HEDIN DR
SILVER SPRING, MD 20903-

BEAUFORT COUNTY SC - ROD
BK 02505 PG 0347
FILE NUM 2007003759
01/10/2007 01:39:25 PM
REC'D BY S SMITH RCPT# 465084
RECORDING FEES 5.00

Loan #: 900067230
Investor Loan #: 900067230
PIN/Tax ID #: 01308944
Property Address:
130 ADMIRALS ROW
HILTON HEAD ISLAND, SC 29928-

LOST MORTGAGE SATISFACTION

Bayview Loan Servicing LLC, whose address is 4425 Ponce De Leon, 5th Floor, Coral Gables, FL 33146, being the owner and holder of the above described mortgage, acknowledges that the debt which was secured thereby has been paid in full and the lien of the mortgage is satisfied and cancelled.

Original Mortgagor(s): SIMEON O OREKOYA AND ESSIE G OREKOYA
Original Mortgage: ATLANTIC SAVINGS BANK FSB
Loan Amount: \$41,250.00 Date of Mortgage: 11/29/1993

Date Recorded: 12/03/1993 Book: 669 Page: 1302 Document #: 1993042180
and recorded in the records of BEAUFORT County, State of South Carolina affecting Real Property and more particularly described on said Mortgage referred to herein. Dated this date of 12-28-06

Bayview Loan Servicing LLC

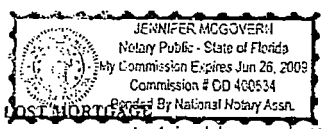
Nicole E. Beauchamp
Witness: Nicole E. Beauchamp

By Robert G. Hall
Title: Vice President

Witness: Valeria Escudero
State of Florida
County/City of Miami-Dade

Personally appeared before me Nicole E. Beauchamp and made oath that he/she saw the corporate seal of Bayview Loan Servicing LLC, affixed to the foregoing instrument and that he/she also saw, Robert G. Hall, Vice President of said Bayview Loan Servicing LLC, sign and attest the same, and that he/she with Valeria Escudero witnessed the execution and delivery thereof as the act and deed of the said Bayview Loan Servicing LLC.

Sworn to before me this date of 12-28-06
Notary Public:
My Commission Expires:



AFFIDAVIT OF LOST MORTGAGE

Personally appeared before me Robert G. Hall, who, being duly sworn, deposes and says that s/he represents the bona fide owner and holder of the within bond and mortgage, and that the same has not been assigned, hypothecated or otherwise disposed of, and that the same has been lost or destroyed, and after diligent search cannot be found; and that deponent has full authority to execute and deliver the within satisfaction of mortgage.

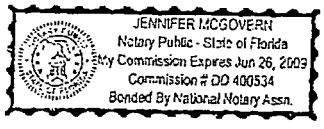
Bayview Loan Servicing LLC

Nicole E. Beauchamp
Witness: Nicole E. Beauchamp

By Robert G. Hall
Title: Vice President

State of
County/City of
Sworn to and subscribed before me this date of 12-28-06

Notary Public:
My Commission Expires:



DATE: 07/08/2008 10:01:23 AM

FILE #: 2008069321 OR BK 05063 PG 1579

RECORDING FEES 10.00

Prepared By and Return to:
K. Augustin
YALE MORTGAGE CORP.
4100 N.E. 2ND AVE
SUITE 206
MIAMI, FL. 33137



ASSIGNMENT OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS: That BAYVIEW LOAN SERVICING, LLC, party of the first part, whose mailing address is 4425 PONCE DE LEON BLVD, 5TH FLOOR, Coral Gables, Florida 33146, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration, received from or on behalf of YALE MORTGAGE CORPORATION, party of the second part, whose mailing address is 4400 N.E. 2ND AVE, SUITE 206, Miami, Florida 33137, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, assign, transfer and set over unto the said party of the second part that certain Mortgage bearing date the 15th day of NOVEMBER 2005, AD made by ELLIS BARRETT, joined by his wife DEBBIE BARRETT, whose post office address 14175 NE 46th STREET, SILVER SPRINGS, FL 34488 in favor of YALE MORTGAGE CORPORATION, and recorded in Official Records Book 04260, Page 0335 of the Public Records of COLLIER County, Florida upon the following described piece or parcel of land. Situated and being in said County and State, to-wit:

The South 1/4 of the NW 1/4 of the NW 1/4 lying north of the Lacota Road in Section 32, Township 14 South, Range 24 East.

Except the West 459.64 feet of the South 1/4 of the NW 1/4 of the NW 1/4 lying north of Lacota road in Section 32, Township 14 South Range 24 East and

Except a portion of the NW 1/4 of the NW 1/4 of Section 32 Township 14 South, Range 24 East, being more fully described as follows: Commence at the SW corner of the NW 1/4 of the NW 1/4 of said Section 32, thence run N. 00 degrees, 11'17"E, 102.87 feet to a rebar on the North right of way of Lacota Road (50' wide) and the Point of Beginning; thence continue N. 00 degrees, 11'17"E, 350.21 feet thence depart N. 85 degrees 45'25"E, 14.00 feet; thence run S. 02 degrees 05'07"W, 350.39 feet to the North Right of Way of said Lacota Road; thence run S. 65 degrees 15'15"W 2.60 feet to the Point of Beginning and containing 0.07 acres more or less.

The same as canceled, and hereby direct the Clerk of the said Circuit Court to cancel the same of record hereby acknowledge full payment and satisfaction of said Note and Mortgage Deed, and surrenders

This was a collateral assignment to secure repayment of that certain Promissory Note from Yale Mortgage Corporation to Bayview Loan Servicing, LLC. The documentary stamps have previously been paid on this note.

Together with the note or obligation described in said mortgage, and the monies due and to become due thereon, with interest from the 1st day of January 2006.

TO HAVE AND TO HOLD the same unto the said party of the second part, its heirs, legal representatives, successors and assigns forever.

IN WITNESS WHEREOF, the party of the first part has caused these presents to be executed this 1st day of JULY, 2008.

(WITNESS)
Kristin Gomez
(PRINT NAME)
(WITNESS)
Urbica Sanchez
(PRINT NAME)

BAYVIEW LOAN SERVICING, LLC
BY: Robert G. Hall
ROBERT G. HALL, VICE PRESIDENT

STATE OF FLORIDA
COUNTY OF DADE

The foregoing Assignment of Mortgage was acknowledged before me this 7th day of JULY, 2008 by ROBERT G. HALL as VICE PRESIDENT of BAYVIEW LOAN SERVICING, LLC, who is personally known to me and who did not take an oath.

MY COMMISSION EXPIRES:
ANISSA HICKERSON
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD614525
Expires: NOV. 14, 2010

Anissa Hickerson
Notary Public

COMP. EXH. R

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY

DATE: 07/21/2008 02:34:18 PM

FILE #: 2008073649 OR BK 05069 PG 1812

RECORDING FEES 10.00

WHEN RECORDED MAIL TO:

BV LOAN NO: 321306

Yale Mortgage Corporation
4100 NE 2nd Ave, Ste. 103
Miami, FL 33137

BORROWER: VILLANUEVA
LOAN AMOUNT: \$ 120,000.00

Assignment of Mortgage

FOR VALUE RECEIVED, the undersigned as ("ASSIGNOR/GRANTOR"), hereby grants, conveys, assigns to

YALE MORTGAGE CORPORATION
4100 NE 2nd Avenue, Suite 206, Miami, Florida 33137

("Assignee/Grantee") all beneficial interest under that certain Mortgage dated: 12/28/2005 and executed by:
EDGAR VILLANUEVA, a married man, borrower(s) to: YALE MORTGAGE CORPORATION, as Original
Lender and Mortgage recorded in Instrument: 2006004661, Volume: 04303 Page: 1137 recorded on: 01/10/2006,
in the Official Records of MARION County, State of FL, covering the following described property:

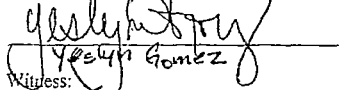
16055 SE 47TH AVE, SUMMERFIELD, FL 34491

Together with the note or notes therein described or referred to, the money due and to become due thereon with
interest, and all rights accrued or to accrue under said Document.

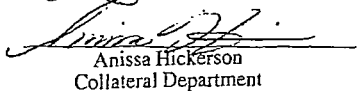
Dated: July 2, 2008

ASSIGNOR: BAYVIEW LOAN SERVICING, LLC at
4425 Ponce de Leon Blvd, 5th Floor, Coral Gables, FL 33146

Witness:


Yessy Gomez

Witness:

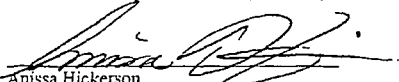

Anissa Hickerson
Collateral Department

By:


ROBERT G. HALL, Vice President

STATE OF FLORIDA)
) SS.:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this July 2, 2008 by ROBERT G. HALL, Vice-President
of BAYVIEW LOAN SERVICING, LLC at 4425 Ponce de Leon Blvd, 5th Floor, Coral Gables, FL 33146 on
behalf of the corporation. He is personally known to me.


Anissa Hickerson
My commission expires: 11/14/2010
DD 614525



ANISSA HICKERSON
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD614525
Expires: NOV. 14, 2010

Prepared By: Leslie Perez
Yale Mortgage Corporation
4100 NE 2nd Ave, Ste. 103
Miami, FL 33137

NEITZ & SCHWARTZ P A
1601 WEST COMMERCIAL BLVD
STE 31
FT LAUDERDALE, FL 33309



COMP. EXH. R

INSTRUMENT#: 2010123781, BK: 19818 PG: 129 PGS: 129 - 130 04/15/2010 at
10:01:20 AM, DEPUTY CLERK:SPENCER Pat Frank,Clerk of the Circuit Court
Hillsborough County

THIS IS NOT A
CERTIFIED COPY

Recording Requested By:
CITIMORTGAGE, INC.

When Recorded Return To:

KELLI FISHRE
CITIMORTGAGE, INC.
5280 CORPORATE DRIVE
MC 4112
FREDERICK, MD 21703

CORPORATE ASSIGNMENT OF MORTGAGE

Hillsborough, Florida
SELLER'S SERVICING #:0000349081 "AGUIRRE"
INVESTOR'S LOAN #: 3309-349081

MERS #: 100039241761753501 VRU #: 1-888-679-6377

Date of Assignment: March 12th, 2010
Assignor: BAYVIEW LOAN SERVICING LLC at 4425 PONCE DE LEON BLVD, 5TH FLOOR, CORAL GABLES, FL 33146
Assignee: CITIGROUP GLOBAL MARKETS REALTY CORP at 388/390 GREENWICH ST, 6TH FLOOR, NEW YORK, NY 2293-60055
Executed By: PEPE AGUIRRE AN UNMARRIED PERSON To: FIRST MAGNUS FINANCIAL CORPORATION, AN ARIZONA CORPORATION
Date of Mortgage: 06/23/2006 Recorded: 07/13/2006 in Book/Reel/Liber: 16701 Page/Folio: 0779 as Instrument No.: 2006335749 in Hillsborough, Florida

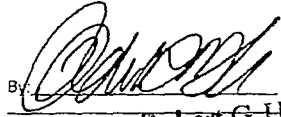
Property Address: 704 EAST EMILY STREET, TAMPA, FL 33603

KNOW ALL MEN BY THESE PRESENTS that in consideration of the sum of TEN and NO/100ths DOLLARS and other good and valuable consideration, paid to the above named Assignor, the receipt and sufficiency of which is hereby acknowledged, the said Assignor hereby assigns unto the above-named Assignee, the said Mortgage together with the Note or other evidence of indebtedness (the "Note"), said Note having an original principal sum of \$225,120.00 with interest, secured thereby, together with all moneys now owing or that may hereafter become due or owing in respect thereof, and the full benefit of all the powers and of all the covenants and provisos therein contained, and the said Assignor hereby grants and conveys unto the said Assignee, the Assignor's beneficial interest under the Mortgage.

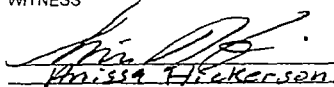
TO HAVE AND TO HOLD the said Mortgage and Note, and also the said property unto the said Assignee forever, subject to the terms contained in said Mortgage and Note.

BAYVIEW LOAN SERVICING LLC
On March 12th, 2010

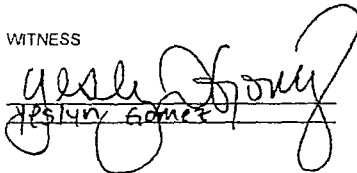
By:


Robert G. Hall
Vice President

WITNESS


Missa Hickerson

WITNESS


Jeshy Gomez

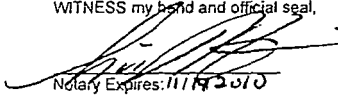
THIS IS NOT A CERTIFIED COPY

CORPORATE ASSIGNMENT OF MORTGAGE Page 2 of 2

STATE OF Florida
COUNTY OF Miami Dade

On March 12th, 2010, before me, Anissa Hickerson, a Notary Public in and for Miami Dade County in the State of Florida, personally appeared Robert B. Hall, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal,


Notary Expires: 11/14/2010

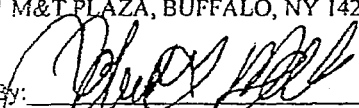


ANISSA HICKERSON
NOTARY PUBLIC - STATE OF FLORIDA
Commission #DD614525
Expires: NOV. 14, 2010
(This area for notarial seal)

Prepared By:
ALEXANDER NOPULOS, VERDUGO TRUSTEE SERVICE CORP PO BOX 9443(1-800-283-7918), GAITHERSBURG, MD 20898

VERSION #1 OF ROBERT HALL SIGNATURE:

ASSIGNOR: MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC. as nominee for M&T MORTGAGE
CORPORATION
1 M&T PLAZA, BUFFALO, NY 14203

By: 

ROBERT G. HALL, CERTIFYING OFFICER AND
ASSISTANT SECRETARY

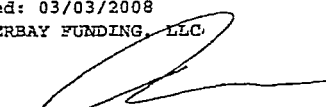
ASSIGNOR: MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS INC., as nominee for
WILMINGTON FINANCE, INC., at P.O. Box 2026, Flint,
MI 48501-2026

By: 

ROBERT G. HALL, Assistant Secretary

VERSION #2 OF ROBERT HALL SIGNATURE:

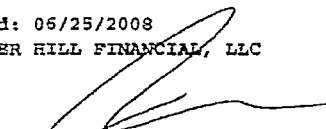
Dated: 03/03/2008
INTERBAY FUNDING, LLC

By: 

ROBERT G. HALL VICE PRESIDENT

Whose address is: 4425 PONCE DE LEON BLVD., 4TH FL., CORAL GABLES, FL 33146

Dated: 06/25/2008
SILVER HILL FINANCIAL, LLC

By: 

ROBERT G. HALL VICE PRESIDENT

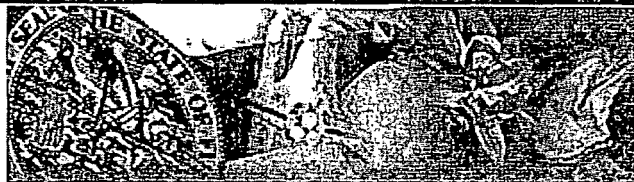
Whose address is: 4425 PONCE DE LEON BLVD., 4TH FL., CORAL GABLES, FL 33146

EXHIBIT S

[skip to content](#)

Today is May 04, 2010

Office of the
ATTORNEY GENERAL of FLORIDA
Bill McCollum



Enter search

**Active Public Consumer-Related Investigation**[Home](#)[AG Bill McCollum](#)[Office Information](#)[Programs and Units](#)[Employment](#)[Open Government](#)[Crime and Fraud](#)[Consumer Protection](#)[Citizen Safety](#)[Victims' Services](#)[AG Opinions](#)

The case file cited below relates to a civil -- not a criminal -- investigation. The existence of an investigation does not constitute proof of any violation of law.

Case Number:

L10-3-1095

Subject of investigation:

Florida Default Law Group, PL

Subject's address:

9119 Corporate Lake Drive, Suite 300, Tampa, Florida 33634

Subject's business:

Law Firm, Foreclosures

Allegation or issue being investigated:

Appears to be fabricating and/or presenting false and misleading documents in foreclosure cases. These documents have been presented in court before judges as actual assignments of mortgages and have later been shown to be legally inadequate and/or insufficient. Presenting faulty bank paperwork due to the mortgage crisis and thousands of foreclosures per month. This firm is one of the largest foreclosure firms in the State. This firm appears to be one of Docx, LLC a/k/a Lender Processing Services' clients, who this office is also investigating.

AG unit handling case:

Economic Crimes Division in Ft. Lauderdale, Florida

Keep up with our latest
news and consumer
information:

or email address

[Newsletter](#)[RSS feed](#)[Audio Msg](#)[Twitter](#)

Fraud Hotline
1-866-966-7226

[Contact Us](#)[View](#) contact information for Ft. Lauderdale.

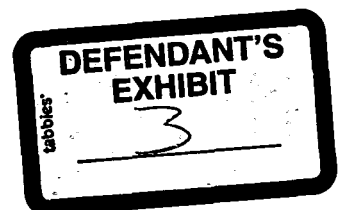
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
Daniel L. Junk and Christine H. Junk,	)	Civil Action No. 2009-CP-07-04301
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' NOTICE OF MOTION
	)	TO ALTER OR AMEND THE APRIL
Mortgage Electronic Registration	)	11, 2011 ORDER PURSUANT TO
Systems, Inc., and John Does 1-5000,	)	RULE 59(e) SCRCF
	)	
Defendants.	)	
	)	
Bayview Loan Servicing, LLC	)	Civil Action No. 2009-CP-07- 05088
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANTS' NOTICE OF MOTION
	)	TO ALTER OR AMEND THE APRIL
Daniel Junk a/k/a Daniel L. Junk,	)	11, 2011 ORDER PURSUANT TO
Christine H. Junk and Oldfield	)	RULE 59(e) SCRCF
Community Association,	)	
	)	
Defendants.	)	

2011 APR 27 PM 4:28
 BEAUFORT COUNTY, S.C.
 CLERK

NOTICE

TO: BRIAN P. CROTTY, ESQ., COUNSEL FOR MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, BAYVIEW LOAN SERVICING, LLC AND CITIMORTGAGE, INC.:

PLEASE TAKE NOTICE that Plaintiffs/Defendants will move the Honorable Marvin Dukes, III, on May 11, 2011 at 10:00 a.m. in his chambers in Beaufort, South Carolina for an Order to alter or amend the April 11, 2011 Order pursuant to Rule 59(e) SCRCF as stated hereinafter.



I. INTRODUCTION.

Each of these separate actions was referred to the Beaufort County Master-In-Equity with the consent of the Parties by Orders entered on May 25, 2010. The motions listed below in these separate actions came before this Court for hearings on December 6, 2010, and February 10, 2011.

The following motions were heard at the above mentioned hearings:

(a) In Junk v. Mortgage Electronic Registration Systems, Inc., et al. (“the Quiet Title Action”):

- (1) Defendant Mortgage Electronic Registration Systems, Inc.’s (“MERS”) Rule 12(b)(6) SCRCF Motion to Dismiss filed Nov. 23, 2009;
- (2) Plaintiffs’ Motion for MERS to Post an Indemnity Bond filed Nov. 22, 2010; and
- (3) Plaintiffs’ Rule 12(c) SCRCF Motion for Judgment on the Pleadings and Default Judgment filed Jan. 21, 2011.

(b) In Bayview Loan Servicing, LLC v. Daniel Junk et al. (“the Foreclosure Action”):

- (1) The Junk Defendants’ Motion to Dismiss under Rules 13(a) and 12(b)(8) SCRCF filed Nov. 25, 2009;
- (2) The Junk Defendants’ Motion to Dismiss under Rule 12(b)(6) SCRCF filed Nov. 25, 2009; and
- (3) Plaintiff’s Motion to Substitute CitiMortgage, Inc. as Plaintiff under Rule 25 SCRCF filed Mar. 30, 2010.

II. BACKGROUND

On November 3, 2006 Daniel and Christine Junk entered into a loan transaction to refinance existing loans (“the Refi Loan”) secured by real property owned and held by them as joint tenants in common with rights of survivorship known as 181 Oldfield Way,

Okatie, South Carolina (“the Property”)¹. The debt for this Refi Loan was evidenced by an adjustable rate promissory note (“Refi Note”) in the principal amount of \$1.2 Million which named American Home Mortgage (“AHM”), a “New York Corporation” as the “Lender”.

As a required *condition precedent* of the contract to obtain and close the Refi Loan, the Lender required the Junks to pay off their existing original promissory note (Original Note) that also was originated by AHM in the amount of \$849,057.06 and satisfy the lien of that debt’s security instrument which named MERS as the mortgagee acting solely as nominee for AHM and its successors and assigns (“Original Lien”) recorded in Book 2238 at Page 1672 of the Beaufort County Register of Deeds on September 28, 2005. As an additional *condition precedent* for the Refi Loan, the Lender also required the Junks to payoff their SunTrust line of credit (“SunTrust LOC”) in the amount of \$194,109.02 and satisfy the lien of that debt’s security instrument (LOC Lien) recorded in Book 2327 at Page 229 of the Beaufort County Register of Deeds on February 28, 2006.

On August 6, 2007 American Home Mortgage Holdings, Inc. (“AHMHI”) a Delaware corporation, American Home Mortgage Investment Corp. (“AHMIC”) a Maryland corporation, American Home Mortgage Acceptance, Inc. (“AHMAI”) a Maryland corporation, AHM SV, Inc (f/k/a American Home Mortgage Servicing, Inc.) a Maryland corporation, American Home Mortgage Corp. (“AHMC”) a New York corporation, American Home Mortgage Ventures LLC (“AHMV”) a Delaware limited liability company, Homegate Settlement Services, Inc., a New York corporation and

¹ Title for the 181 Oldfield Way, Okatie SC 29909 property in the Junks’ name was recorded in Book 2238 at Page 1669 of the Beaufort County Register of Deeds on September 28, 2005.

Great Oak Abstract Corp., a New York corporation (collectively the “AHM parties”) filed voluntary petitions in the United States Bankruptcy Court of the District of Delaware. (*QT Compl* ¶ 25). On February 18, 2009, AHMHI filed an Amended Chapter 11 Plan of Liquidation of the Debtors whereby the AHMHI bankruptcy was amended from reorganization to liquidation (“Liquidation Order”). (Exhibit A).

On August 25, 2009 Bayview filed a Lis Pendens 2009-CP-07-01903 with this Court stating that *MERS as nominee for AHM had assigned the Junks’ Refi Note* and Refi Lien prior to the filing of the Lis Pendens and that the assignment was yet to be recorded. However, *MERS is not named in the Refi Note and never has had an interest in the Junks’ Refi Note that it could assign and AHM’s interest in the Refi Note was extinguished as a result of bankruptcy and the Liquidation Order.*

Bayview filed this first Lis Pendens as the servicer for CitiMortgage. Bayview’s counsel that filed this first Lis Pendens was Heidi B. Carey, Esq., of the law firm Riley Pope & Laney, LLC. The purported assignment that was stated in this first Lis Pendens as having already occurred prior to the filing of the Lis Pendens but was yet to be recorded, in fact never has been recorded as of the date of this motion. Bayview and Ms. Carey never filed and served a complaint against the Junks as a result of the August 25, 2009 first Lis Pendens.

The Junks filed the Quiet Title Action on September 11, 2009, and amended their Complaint on September 14, 2009. The Defendants named in the Quiet Title Action are the only parties with a recorded interest in the Junks’ property and unknown parties named as “John Does 1-5,000.” The Junks named “John Does 1-5,000” because MERS cannot be the nominee of AHM any longer as a result of the Liquidation Order and the

Junks were unaware for whom MERS was now purportedly acting for as nominee mortgagee at the time the Junks filed the Quiet Title Action.

Attached to the Junks' Amended Complaint as Exhibit 1 and incorporated by reference therein at ¶ 9 is the case *Mortgage Electronic Registration Systems, Inc. v Nebraska Department of Banking and Finance*, 704 N.W.2d 784 (Neb. Sup. Ct. 2005) wherein MERS was successful in its appeal to the state of Nebraska's Supreme Court in overturning the District Court's ruling that MERS was a mortgage banker under that state's Mortgage Banker Act.

The Nebraska Supreme Court's decision states at 704 N.W.2d 784, 788 and therefore the Junk's Amended Complaint alleges at ¶ 9, that "[M]ERS does not itself extend credit or acquire rights to receive payments on mortgage loans. Rather, the lenders retain the promissory notes and the rights to the mortgage . . ." (Emphasis added). Further, the Nebraska Supreme Court states and the Junks allege that "[M]ERS serves as legal title holder in a nominee capacity, permitting lenders to sell their interests in the notes and servicing rights to investors without recording each transaction." (Emphasis added). Therefore, the Junks alleged at ¶ 9 of their Amended Complaint that MERS is judicially estopped from asserting that it . . . owns the promissory notes purportedly secured by the purported mortgage.

AHM was personally served on September 16, 2009. MERS was personally served on September 17, 2009. The "John Doe" defendants were served by Order of Publication dated October 2, 2009 and affidavit of service by publication dated October 20, 2009. American Home Mortgage Corp. ("AHMC") as opposed to the named defendant, AHM, filed a suggestion of bankruptcy in this action on September 29, 2009

and as a result AHM was dismissed without prejudice by the Junks on October 5, 2009. The Junks respectfully ask the Court to take notice that no entity named AHM is listed as a Debtor on the Suggestion of Bankruptcy filed with this Court in the Quiet Title Action.

After service on Defendants MERS and “John Does” 1-5,000 had been effected and filed with the Court, *the Refi Lien and Refi Note were purportedly assigned a second time on September 25, 2009 by MERS as nominee for AHM to Bayview despite the fact that MERS is judicially estopped from claiming any interest in the Refi Note that it could assign.* That assignment is recorded at Book 2899 Page 436 on October 19, 2009. MERS’ counsel for this action was the same counsel as Bayview’s when it recorded the first Lis Pendens on August 25, 2009 stating that the Refi Note been assigned prior to August 25, 2009 but was never recorded – Ms. Heidi B. Carey and her law firm, Riley Pope & Laney, LLC.

This second assignment of the Refi Note and Refi Lien from MERS to Bayview is dated September 25, 2009 (30 days *after* the first Lis Pendens was filed stating that MERS has already purportedly assigned the Refi Note but was yet to be recorded) and was executed by Bayview’s employee Robert G. Hall acting as an officer of MERS. Again, MERS had no interest in the Junk’s Refi Note to assign and is judicially estopped from claiming otherwise. MERS’ recorded principal and the nominal Lender on the Refi Note, AHM, was under the protection of the U.S. Bankruptcy Court and was precluded by law from authorizing MERS to make the assignment of the Refi Note and Refi Lien as its agent. *Even though Bayview’s employee, Robert G. Hall, made the purported assignment from MERS as the MERS officer and agent of his employer*

Bayview, Bayview did not to appear in the Quiet Title action and assert its claims in that action.

MERS filed its Answer to the Quiet Title action on October 19, 2009 stating it should be dismissed from The Quiet Title Action as a result of its purported Assignment to Bayview on September 25, 2009 – the same day that Bayview recorded the MERS assignment of the Refi Note and Refi Lien. *Heidi B. Cary, Esq. and her law firm Riley Pope & Laney, LLC filed both the Answer for MERS and the recording of the Assignment for Bayview on October 19, 2009.*

In its Answer MERS admits ¶ 33 of the Quiet Title Complaint in ¶ 17 of its Answer admitting that it has no right, title or interest in the Refi Note or the Refi Lien as a result of its purported assignment of the Refi Note and Refi Lien to Bayview. In its prayer for relief, MERS states that it should be dismissed from the action as a result of having no interest in the Refi Note's debt or the Junk's property. Additionally, as required under Rule 8(c) SCRC, MERS failed to plead the affirmative defense that Bayview was a necessary party to the action as a result of its assignment and therefore waived that defense.

MERS counsel for its Answer was Heidi B. Carey and her law firm Riley Pope & Laney, LLC – the same counsel representing Bayview, which was MERS' stated Assignee in its Answer. *Ms. Carey was counsel for Bayview when it filed the first unrecorded Lis Pendens claiming that the Refi Note and Refi Lien had already been assigned but not recorded as servicer for CitiMortgage and was counsel for MERS in its Answer in the Quiet Title Action and also in its purported second assignment of the Refi Note and Refi Lien from her client MERS to her client Bayview.*

On October 27, 2009 Bayview filed its second Lis Pendens against the Junk's property – again by the same counsel Heidi B. Carey and her law firm, Riley Pope & Laney, LLC (*how did MERS undo its first assignment stated in the first Lis Pendens filed by Ms. Carey as having occurred prior to August 25, 2009?*). In this second Lis Pendens, Bayview is no longer the servicer for CitiMortgage as it was in the August 25, 2009 Lis Pendens. In the second Lis Pendens it states that on September 25, 2009 *MERS [again for the second time] assigned the Refi Note and Refi Lien as nominee for AHM, for valuable consideration received (from whom since AHM was bankrupt?), and transferred and assigned and set over the Refi Lien and Refi Note to Bayview – again ignoring the fact that MERS is judicially estopped from claiming it has any interest in the Refi Note.* This second Lis Pendens is the Assignment referred to in MERS Answer which is dated September 25, 2009 and was recorded in the Beaufort County Register of Deeds in Book 2899 at Page 436.

In conjunction with the second Lis Pendens, Bayview filed the Complaint in the Foreclosure Action on October 27, 2009 stating in ¶3 that Bayview is the owner and holder of the Refi Note and Refi Lien – no mention of being the servicer anywhere in its Complaint. Moreover, *the Bayview Complaint in the Foreclosure action was verified by the affidavit on personal knowledge of Bayview's and MERS' counsel, Heidi B. Carey, Esq. of the law firm Riley Pope & Laney, LLC.* Ms. Carey attested that the allegations of the Complaint are true *of her own knowledge* and that she was in possession of the Refi Note and Refi Lien. However, attached to the Complaint as Exhibit A and incorporated therein by reference in ¶ 8. is a copy of the Refi Note purportedly indorsed from AHM to CitiMortgage *not* to Bayview.

There is no indorsement anywhere on the copy of the Refi Note attached to Bayview's Complaint indicating that Bayview was the holder or owner of the Refi Note as defined under South Carolina Uniform Commercial Code ("UCC"). The Refi Note is a Negotiable Instrument governed by the South Carolina UCC. Without such an indorsement there is no indicium of ownership that would give Bayview any authority to enforce the Refi Note under South Carolina law. Without an indorsement to Bayview or the Refi Note having a bearer indorsement, Bayview does not have the right to enforce the Refi Note as a matter of law and cannot be deemed the holder and owner as a matter of law.

The Junks sent discovery requests to MERS in the Quiet Title action on January 27, 2010. Shortly thereafter, Ms. Carey and her firm withdrew from both the Quiet Title and Foreclosure Actions and filed a motion to substitute counsel in both the Quiet Title action and the Foreclosure action and to substitute CitiMortgage for Bayview as Plaintiff in the Foreclosure Action. Ms. Carey's motion was jointly submitted with Elizabeth Scott Moise, Esq. of Nelson Mullins & Riley as counsel for Substitute Plaintiff CitiMortgage. Ms Moise and her law firm Nelson Mullins & Riley was substituted as counsel for MERS and Bayview by Consent Order on March 15, 2010.

Ms. Carey's and Moies's joint Motion in the Foreclosure action was made under Rule 25(c) SCRPC claiming that Bayview had transferred its interest in the Refi Note (which it purportedly received from MERS despite MERS having no interest in the Refi Note to assign) and Refi Lien to CitiMortgage and indorsed the Refi Note to CitiMortgage. In support of that motion, CitiMortgage submitted the first affidavit of Jennifer Oakes dated March 25, 2010. In her affidavit, Ms. Oakes not only states that

Bayview transferred its purported interests in the Refi Note and Refi Lien allegedly received from MERS, to CitiMortgage, *Ms. Oakes also states under oath and the penalty of perjury that Bayview indorsed the Refi Note to CitiMortgage.*

In March of 2010, in conjunction with Ms. Carey's and Riley Pope & Laney's and Ms. Moies's and Nelson Mullins & Riley's motion to substitute counsel and plaintiffs, the servicing rights regarding the Junks' Refi Loan were transferred by Bayview to CitiMortgage, and the Refi Lien and Refi Note were purportedly assigned by Bayview – *again by Robert G. Hall – yet this time as a Vice President of Bayview rather than an officer of MERS,* to CitiMortgage. This second Assignment by Robert G. Hall of the Refi Lien and Refi Note by Bayview to CitiMortgage was recorded on March 19, 2010 in Book 2942 at Page 327.

On May 4, 2010 the Junks filed in this Court the Affidavit of Lynn Szymoniak, Esq.² As Defendants' Expert in the Foreclosure Action. *Ms. Szymoniak's Affidavit contains copies of 34 different purported mortgage and purported note assignments from Robert G. Hall recorded throughout Florida and South Carolina with differing signatures for Mr. Hall and representing himself as Vice President or another executive officer and even an attorney-in-fact, of not only MERS but also:*

- Silver Hill Financial;
- Interbay Funding;
- Mortgage Network, Inc.;
- Dreamhouse Mortgage Corporation;

² Ms. Szymoniak is a lawyer and well-known fraud expert who was recently featured on the April 1, 2011 CBS television show 60 Minutes speaking as an expert on the topics of fraudulent mortgage assignments and "robo-signing".

- Fidelity Mortgage Inc.;
- DHI Mortgage Inc.;
- Wilmington Finance, a division of AIG Federal Savings Bank;
- Aegis Wholesale Corporation;
- Easy Street Mortgage;
- CTX Mortgage Company, LLC;
- M&T Mort.;
- MFC Mort.;
- Bayview Financial Small Business Funding; and ,
- Vice-President of Wachovia Bank, N.A. as Trustee Successor by Merger to First Union Bank By it's [sic] Attorney-in-Fact Bayview Loan Servicing, LLC.

On June 25, 2010 Ms. Moise withdrew as counsel and Nelson Mullins & Riley partners Mr. Brian P. Crotty and Mr. Rush Smith, III took over as counsel for MERS, Bayview and CitiMortgage from Ms. Moise and are currently the counsel of record.

The Junks have filed two separate motions for sanction for fraud upon the Court that have yet to be heard. The first motion was filed November 24, 2010 and the second motion was filed on January 21, 2011. If the Affidavit of Jennifer Oakes *infra* is true, then everything filed by Ms. Heidi Carey, Mr. Roy Laney and their firm Riley Pope & Laney LLC is untrue and constitutes a massive fraud upon the Court and the Junks.

Thereafter, on December 6, 2010, Mr. Crotty of Nelson Mullins & Riley filed with this Court in further support of Ms. Carey's and Ms. Moise's Rule 25(c) SCRCF Motion to Substitute, *a Supplemental Affidavit – not a Corrective Affidavit* – of Ms. Jennifer Oakes of CitiMortgage, swearing again under the penalty of perjury that the

previously sworn-to facts of the March 25, 2010 Oakes Affidavit in support of Bayview's Rule 25(c) motion were incorrect.

In her Supplemental Affidavit, Ms. Oakes now attests, again under the penalty of perjury, *that CitiMortgage has always had the Refi Note – since sometime in January 2007, but she doesn't know the exact date – and she now swears under oath that it was indorsed to CitiMortgage by AHM and not Bayview, at some uncertain date in January 2007.*

Thus, Ms. Oakes' second Affidavit submitted by Mr. Crotty and Mr. Smith, if true, completely contradicts not only Ms. Oakes' first Affidavit submitted jointly by Ms. Moise and Nelson Mullins and Riley as counsel for CitiMortgage and Ms. Carey's and Riley Pope & Laney's as counsel for MERS and Bayview, it also nullifies both the previously recorded assignments executed by Robert G. Hall as a MERS officer and as a Bayview officer in addition to the purported first assignment that has yet to be recorded which was stated in the August 25, 2009 first Lis Pendens. Ms. Oakes Affidavit, if true, confirms to the Court that the Refi Note and Refi Lien have been separated from inception in this case and that the purported mortgage in this case indeed was never intended to follow the note.

There is no record of the assignment of the Refi Note from AHM to CitiMortgage as a subsequent creditor in the Beaufort County Register of Deeds as required by SC Code § 30-7-10 or anywhere in the record of this case. A mortgage may not follow a note in South Carolina if it was never joined with the note at inception and recordation of assignments of the Refi Note is required by law in order for a subsequent creditor – as CitiMortgage claims to be in Ms. Oakes Affidavit – to enforce the Refi Lien and make a

legally valid claim against the Junks' property. CitiMortgage therefore has never perfected its purportedly owned debt's purported lien on the Junks' property and there is no *legally valid* assignment under SC Code § 30-7-10 of the Refi Note *or* Refi Lien from AHM to Bayview or CitiMortgage for either Bayview or CitiMortgage to make its claim on the Refi Lien under South Carolina law.

III. MOTION

On April 11, 2011, this Court signed an Order that was served upon the Junks by mail by way of letter from Mr. Crotty dated April 12, 2011:

1. In the Quiet Title Action:

- a. Dismissed the Quiet Title Action in its entirety filed pursuant to MERS Rule 12(b)(6) SCRCP Motion to Dismiss filed by MERS original counsel, Roy Laney Esq. of the firm Riley Pope & Laney, LLC;
- b. denied the Junks' Motion for Judgment on the Pleadings and for Default Judgment filed pursuant to Rule 12(c) SCRCP; and,
- c. denied the Junks' Motion for MERS to Post an Indemnity Bond for a Lost Instrument.

2. In the Foreclosure Action:

- a. Denied the Junks' Motion to Dismiss as a Compulsory Counterclaim and for the action being the same parties as the Quiet Title Action filed pursuant to Rules 13(a) SCRCP and 12(b)(8);
- b. denied the Junks' Motion to Dismiss filed pursuant to Rule 12(b)(6) SCRCP; and
- c. granted Bayview's and non-party CitiMortgage's Motion to Substitute CitiMortgage, Inc. as Plaintiff under Rule 25 SCRCP filed jointly by Heidi B. Carey Esq., of Riley Pope & Laney and Elizabeth Scott Moise, Esq. of Nelson Mullins & Riley (whom has since also withdrawn as counsel for MERS, Bayview and CitiMortgage).

The Junks hereby move this Court for reconsideration to alter or amend its Order pursuant to Rule 59(e) SCRPC.

THE QUIET TITLE ACTION

A. Defendant MERS' Rule 12(b)(6) SCRPC Motion filed by Roy Laney, Esq. of Riley Pope & Laney LLC was improperly granted on the following grounds:

- 1) The Court erred in its Order granting MERS' Rule 12(b)(6) Motion to Dismiss because the Complaint alleged the following claims that are assumed to be true on their face when stated and the Court did not address any of these claims in its Order. The Rule 12(b)(6) SCRPC Motion to Dismiss therefore should not have been granted:
 - i. The mortgage is not a valid mortgage under South Carolina law; (QT Complaint ¶¶ 8, 17, 21, 39)
 - ii. MERS is not and was not the mortgagee under South Carolina law; (QT Complaint ¶¶ 8, 9, 17, 21, 22, 24, 33, 39)
 - iii. MERS is judicially estopped from claiming any interest in the Refi Note that it can assign. (¶ 9, Exhibit A).
 - iv. Fraud in the factum was perpetrated on the Junks at the closing of the loan transaction; (QT Complaint ¶¶ 8, 9, 17, 21, 22, 24, 33, 39)
 - v. That as a result of fraud in the factum no holder of their Promissory Note can qualify for status as a holder in due course without notice; (QT Complaint ¶¶ 16, 17)
 - vi. That the true Lender named on the Promissory Note was not the true source of funding for the loan transaction nor the named true Lender in the purported mortgage and Promissory Note in violation of Truth In Lending ("TIL") laws; (QT Complaint ¶¶ 16, 28 29, 35, 36, 37)
 - vii. That the Promissory Note was sold prior to its execution by the Junks; (QT Complaint ¶ 20)
 - viii. That the purported mortgage and Promissory Note were intentionally separated at inception and that the Promissory Note is unsecured; (QT Complaint ¶ 21)
 - ix. That MERS has no right title or interest in the Junks' property and has no valid lien on the Junks' property; (QT Complaint ¶¶ 8, 9, 21, 22, 24, 33, 39)

- x. That the Lender and principal of MERS named on the Refi Note and Refi Lien filed bankruptcy on August 6, 2007 thereby extinguishing MERS' nominee interest in the purported mortgage; (QT Complaint ¶¶ 8, 9, 17, 21, 22, 24, 33, 39)
 - xi. That MERS' registry system tracks the beneficial interests in the Junks' promissory Note and MERS knew the true parties to the loan transaction yet never has disclosed their identities; (QT Complaint ¶¶ 6, 7, 10, 29)
 - xii. That AHM entered into Assignment and Assumption Agreements and one or more Pooling and Servicing Agreements that controlled the securitization of the Junks' Promissory Note and purported mortgage prior to or contemporaneously with the alleged "closing"; (QT Complaint ¶ 26)
 - xiii. That the security for the Promissory Note secured an obligation that had been paid in full by an undisclosed third party to the named Lender at the closing; (QT Complaint ¶ 30)
 - xiv. That MERS has no interest in the Promissory Note, is not a holder in due course of the Promissory Note and has no right title or interest in the Junks' property; (QT Complaint ¶ 33)
 - xv. That the Junks' received a "NOTICE OF RIGHT TO CANCEL" at the closing that did not state the true name of the Lender as required under the Truth in Lending Act ("TILA"), 12 USC 1631 et seq.; (QT Complaint ¶ 35)
 - xvi. That the Junks rescinded the refinance transaction timely under TILA Rescission 15 USC 1635 et seq. as a result of the non-disclosure of the true Lender at the Refi Loan closing; (QT Complaint ¶ 34)
 - xvii. That the Lender on the Promissory Note did not acknowledge the Junks' rescission timely under TILA and did not bring a declaratory judgment action nor extinguish its security interest in the Junks' property as required under TILA Rescission 15 USC 1635 et seq. (QT Complaint ¶¶ 37,38)
- 2) Thus, all of these allegations state a cause of action since each must be treated as if it were true when the Court ruled on MERS Rule 12(b)(6) Motion to Dismiss.

- 3) The Court erred in its Order granting MERS' Roy Laney, Esq. Rule 12(b)(6) Motion to Dismiss since MERS had already filed its Answer by Heidi Carey, Esq. also of the Riley Pope & Laney, LLC firm and the Rule 12(b)(6) SCRPC Motion should have been converted to and properly heard as a Rule 12(c) SCRPC Motion for Judgment on the Pleadings.
- 4) The Court erred in its Order granting MERS' Roy Laney, Esq. Rule 12(b)(6) Motion to Dismiss because it did not consider or rule on any of the Junks' claims in their Complaint nor apply any statutory or case law to the Junks' claims in its decision to dismiss the Quiet Title Action in its entirety.
- 5) The Court erred in its Order by impermissibly considering the following factors outside the Complaint as pleaded in making its decision to dismiss the Quiet Title Action and Complaint in its entirety:
 - i. *The assignment of the Refi Note and Refi Lien from MERS to Bayview;*
 - ii. *The assignment of the Refi Note and Refi Lien from Bayview to CitiMortgage;*
 - iii. *The Rule 25(c) SCRPC Motion of non-parties Bayview and CitiMortgage for Substitution of Plaintiffs that was brought jointly by Heidi B. Carey, Esq. of Riley Pope & Laney, LLC and Elizabeth Scott Moise of Nelson Mullins & Riley in the Foreclosure Action and not the Quiet Title Action;*
 - iv. *Consolidation of the Quiet Title Action and Foreclosure Action without any such motion pending before the Court.*
- 6) The Court erred in its Order by impermissibly allowing non-parties Bayview and CitiMortgage to raise and argue the affirmative defense of lack of necessary parties in the Quiet Title Action in spite of the fact that *MERS waived that affirmative defense by not pleading said defense in its Answer* to the Quiet Title Action Complaint.
- 7) *The Court erred in its Order dismissing the action in its entirety by granting non-party Bayview's Rule 25(c) SCRPC Motion to Substitute Plaintiffs that was brought jointly by Heidi B. Carey, Esq. of Riley Pope & Laney, LLC and Elizabeth Scott Moise, Esq. of Nelson Mullins & Riley which was filed in the Foreclosure Action and not the Quiet Title Action as a basis for granting MERS' Rule 12(b)(6) SCRPC Motion in the Quiet Title Action.*

8) The Court erred in its Order by consolidating the Quiet Title Action with the Foreclosure Action as opposed to the other way around. The Quiet Title Action was filed first and MERS filed its Answer without asserting that Bayview or CitiMortgage were necessary parties as an affirmative defense therefore waiving that defense.

9) *The Court erred in not allowing the Junks' leave to amend their Complaint* after granting MERS' Rule 12(b)(6) SCRCF Motion dismissing the Quiet Title Action in its entirety.

B. The Court erred in its Order denying the Junks' Motion for Judgment on the Pleadings and for Default Judgment by considering issues of fact not joined in the pleadings rather than deciding the motion on the law based on the facts as pleaded and admitted to therein.

1) The Court erred in its Order stating that Bayview and CitiMortgage were not proper "John Doe" Defendants.

i. The Junks did not know for whom MERS was acting as nominee when they filed the Quiet Title Complaint as a result of the AHM bankruptcy, so naming "John Does" as Defendants' was proper under Rule 10(a)(1) SCRCF.

ii. Service on the "John Doe" Defendants as unknown parties by publication was proper under S.C. Code Ann. §§ 15-67-40 and 15-9-740 after 6 months of diligent inquiry as to who owned the Junks' debt via QWRs to both AHM and CitiMortgage under RESPA, debt validation letters to Bayview and Heidi B. Carey of Riley Pope & Laney under the FDCPA, Complaints and responses from both Bayview, CitiMortgage and the Junks with the South Carolina Department of Consumer Affairs against Bayview and CitiMortgage and finally rescission under TILA to AHM, CitiMortgage and MERS – all of which ascertained *only* the identification of the servicer – not the identification of the owner of their debt. None of the responses received by the Junks told them who owned their debt after the AHM bankruptcy liquidation order of February 2009. (Plaintiffs Opposition Brief to MERS Rule 12(b)(6) SCRCF Motion to Dismiss filed 3/16/10).

2) The Court erred in denying the Junks' Motion for Default Judgment against the "John Doe" Defendants since no party other than MERS and AHM³ made an appearance in the Quiet Title action and the time to answer the Quiet Title Complaint has run entitling the Junks to Default Judgment against the "John Doe" Defendants.

³ AHMC (not named Defendant AHM) filed a Suggestion of Bankruptcy on September 29, 2009 and the Junks' voluntarily dismissed AHM without prejudice on October 5, 2009.

- 3) The Court erred in omitting from its Order denying the Junks' Rule 12(c) Motion for Judgment on the Pleadings the fact that in ¶ 17 of MERS' Answer it admits the allegations contained in ¶ 33 of the Quiet Title Complaint. MERS admits it has no right title or interest in the Junks Refi Lien or Refi Note or property as a result of its assignment as agent to its principal Bayview. *Bayview recorded its lien in the property the same day that MERS filed its Answer in the Quiet Title action yet failed to make an appearance in the Quiet Title action. Ms. Heidi Carey, Esq. and her law firm Riley Pope & Laney LLC were counsel for MERS and Bayview at that time and filed the MERS Answer and recorded the Bayview Assignment on the same day.*
 - 4) *MERS did not plead in its Answer that its new principals Bayview and CitiMortgage were necessary parties to the action and therefore waived that defense.*
 - 5) *The Court erred in allowing non-parties Bayview and CitiMortgage to argue for a potential benefit from an affirmative defense without MERS being required to affirmatively plead it in its Answer.*
 - 6) The Court erred in going outside the pleadings as filed and considering issues of fact not joined in the pleadings related to non-parties Bayview and CitiMortgage rather than deciding the motion as a matter of law as required under Rule 12(c) SCRPC on the facts already admitted to therein.
- C. The Court erred in denying the Junks 'Motion for MERS to Post an Indemnity Bond for a Lost Instrument because satisfying the Original Lien was a condition precedent of the Refi Loan and MERS failed to perform under the condition precedent leaving the Junks still liable for the debt of the Original Note to a holder in due course that acquired holder in due course status without knowledge of the asserted discharge of the Junks' debt.
- 1) The Court erred in its Order denying the Junks Motion for MERS to Post an Indemnity Bond for a Lost Instrument on p. 7 ¶ A, stating that "[t]he Junk's [sic] motion seeking to have MERS's [sic] post an indemnity bond, however, relates not to the November 3, 2006 Mortgage, but instead to a prior mortgage dated September 26, 2005 (that was to be paid off as part of the November 3, 2006 mortgage loan transaction)." (Emphasis in original). The Court's Order is contradictory in that *it recognizes and confirms that satisfying the Original Lien was a condition precedent and a part of the November 3, 2006 Refi Loan.*

- 2) The Court erred in its Order on p. 8 lines 4-5, stating that “The Junks’ motion to require MERS to post a bond relating to the 2005 Mortgage is without any basis or support.” The Court has already recognized that satisfying the Original Lien purportedly held by MERS was a condition precedent of the Refi Loan contract for which MERS was also the purported mortgagee and therefore erred in denying the Junks’ Motion for MERS to Post an Indemnity Bond for a Lost Instrument since there was a basis and support for granting it based on the Court already stating as such in the Order on the previous page.
- 3) The Court erred in its Order on p. 8 lines 2-4, stating that “[s]ignificantly the Junks do not contend that any attempt by anyone has been made to collect on the 2005 Note in the more than four years since that loan was apparently paid off.” (Emphasis in original). The Junks are still liable for the original loan amount and the mortgage is still enforceable under S.C. Code Ann. § 36-3-601(b) to a holder in due course of their original Note who acquired holder in due course status without knowledge of the apparent discharge.
- 4) The Court erred in its Order on p. 8 lines 5-7 stating “[t]he 2005 Mortgage has been satisfied of record, and there is no reason to justify this Court requiring MERS to post any bond.” Since a joined mortgage follows its note under South Carolina law satisfaction of the purported Mortgage alone and not the debt evidenced by the Note is a nullity.
- 5) The Court erred in its Order denying the Junks’ Motion for MERS to Post a Bond for a Lost Instrument because the recorded MERS Lost Mortgage Satisfaction of the Original Lien is without authority and is fraudulent.
 - i. On April 7, 2010 MERS’ then Corporate Secretary and Treasurer William Hultman, testified in a deposition in a separate matter in New Jersey, that MERS has no employees and has had no employees in the last five years. Therefore without any employees for its stated principal in the Original Lien and the Refi Lien, AHM, to control, it cannot be an agent as a matter of South Carolina law. (*Defendants Brief in Support of its Motion for MERS to Post an Indemnity Bond filed 11/22/10 at Tab 21*).
 - ii. The Lost Mortgage Satisfaction was executed by Krystal Hall who has previously testified in another matter that she was an employee of Security Connections, Inc. out of Idaho during the time period when the Lost Mortgage Satisfaction was executed and recorded. *Id.*

- iii. Krystal Hall testified in that same other matter that she signs approximately 400 documents a day and that she has no personal knowledge as to facts she is attesting to in the documents she signs under oath. *Id*
 - iv. Krystal Hall testified in that same other matter as to her signature on Exhibit 1 of that deposition. Krystal Hall's signature on Exhibit 1 of the deposition in the other matter differs greatly from her signature on the Junks' Lost Mortgage Satisfaction purportedly executed by Krystal Hall and the Junks alleged it is a forgery. *Id*
 - v. Krystal Hall executed the Lost Mortgage Satisfaction purportedly as a Vice President of MERS. Krystal Hall is not in fact a Vice President of MERS and had no authority from AHM as agent or otherwise to file and record the Lost Satisfaction of Mortgage. *Id*
 - vi. MERS is not named on the Original Note and there is no evidence that the Original Note owner AHM authorized MERS to delegate its nominee authority to Krystal Hall, an employee of Security Connections, Inc., to purportedly act as AHM's agent under the guise of being a MERS officer to satisfy the AHM Original Note and was an *ultra vires* act of no effect under South Carolina law. *Id*
 - vii. The sworn statement on personal knowledge by Krystal Hall on the Lost Mortgage Satisfaction swearing that MERS was the bona fide holder of the Original lien and that that lien has been discharged is ineffective in releasing the security interest that follows the Original Note as to a holder in due course who acquired holder in due course status without knowledge of the purported discharge of the Junks' debt under S.C. Code Ann. § 36-3-601(b). *Id*
- 6) The Court erred in denying the Junks' Motion for MERS to Post a Bond for a Lost Mortgage Satisfaction because neither Security Connections, Inc., nor its employee Krystal Hall were the agents of AHM in performance of MERS duty to satisfy the Refi Lien as required by the condition precedent to obtaining the Refi Loan nor did they have the authority to record the Lost Mortgage Satisfaction.
- i. MERS did not have the authorization of AHM to delegate its nominee status to Security Connections, Inc. or Krystal Hal under the terms of the Original Lien to satisfy it as of record.

- ii. AHM did not have the right and authority to control and direct the particular work or undertaking of Security Connections, Inc. or Krystal Hall, as to the manner or means of its accomplishment rendering therefore the recording of the Lost Satisfaction of Mortgage a nullity and a fraudulent act against the Junks damaging them by creating a cloud upon their title to the Property subject the Quiet Title Action.

THE FORECLOSURE ACTION

A. The Court erred in denying the Junks' Motions to Dismiss the Foreclosure Action as a Compulsory Counterclaim and to dismiss for the Foreclosure Action for containing the same parties as the Quiet title Action filed pursuant to Rules 13(a) and 12(b)(8) SCRCP for the following reasons:

- 1) The Court erred in dismissing the Junks Rule 13(a) and 12(b)(8) SCRCP without the motions ever being argued before the Court at either the December 6, 2010 hearing or the February 11, 2011 hearing. (2/10/11 Transcript p. 103; lines 8-9).
- 2) The Court's Order on p. 10 lines 5-8 states that Bayview and CitiMortgage were necessary parties to the Quiet Title Action thereby confirming that Bayview's and CitiMortgage's claims arose from the same transaction which the Quiet Title Action is based upon and are therefore compulsory counterclaims under Rule 13(a) SCRCP in the Quiet Title Action.
- 3) The Court's Order on p. 10 lines 5-8 states that Bayview and CitiMortgage were necessary parties to the Quiet Title Action thereby confirming that Bayview's and CitiMortgage's claims arose from the same transaction which the Quiet Title Action is based upon and are therefore the same parties as in the Quiet Title Action and the Foreclosure Action should be dismissed therefore under Rule 12(b)(8) SCRCP.
- 4) The Court erred in its Order on p. 10 lines 5-8 stating that Bayview and CitiMortgage were not properly made parties to the Quiet Title Action by failure of the Junks' pleadings in the Quiet Title Action when MERS was required to plead necessary parties as an affirmative defense under Rules 8(c) and 12(b) SCRCP and did not, thereby waiving that defense.
- 5) The Court erred in impermissibly allowing non-party CitiMortgage and party Bayview argue for a potential benefit from an affirmative defense in the Quiet Title Action without MERS being required to affirmatively plead it in its Answer in the Quiet Title Action.

- 6) The Court erred in its Order by not considering the claims made in the Junks' Motions and applying any case law or statutory law and analysis in denying the Junks' Rules 13(a) and 12(b)(8) Motions.
 - 7) The Court erred by not imputing the knowledge of MERS as mortgagee as nominee of an unknown principal being served the Summons and Complaint in the Quiet Title Action to its subsequent assignee of the Refi Note and Refi Lien and principal, *Bayview*, post service, under the close connectedness doctrine and denying the Junks' Rules 13(a) and 12(b)(8) Motions to Dismiss the Foreclosure Action as compulsory counterclaims in the Quiet Title Action and for the Foreclosure Action being the same parties as the Quiet Title Action.
 - 8) The Court erred in not imputing the knowledge of Bayview as the successor in interest to MERS as mortgagee and owner of the Refi Note by way of the 9/25/09 Assignment from MERS regarding the Summons and Complaint in the Quiet Title Action to its subsequent assignee of the Refi Note and Refi Lien, CitiMortgage, post service as MERS' principal under the close connectedness doctrine and denying the Junks' Rules 13(a) and 12(b)(8) Motions to Dismiss the Foreclosure Action as compulsory counterclaims in the Quiet Title Action and for the Foreclosure Action being the same parties as the Quiet Title Action.
- B. The Court erred in its Order granting MERS' Rule 12(b)(6) SCRPC Motion to Dismiss because although the Complaint's claims as alleged are deemed to be true Bayview lacked standing to bring the action in the first place and failed to invoke the jurisdiction of this Court. Therefore the Junks' Rule 12(b)(6) Motion to Dismiss the Complaint in the Foreclosure Action should not have been denied:

- 1) The Court erred in its Order on p. 11 lines 4-6 point (5) when it states that the Junks moved to dismiss the Complaint on the grounds that “(5) MERS’ interest in the Mortgage was invalidated when AHM transferred the Note and no assignment of the *Mortgage* was recorded.” (Emphasis added. The Junks moved to dismiss the Foreclosure Action on the additional ground that the Note assignment from AHM to CitiMortgage was not recorded, thereby rendering any subsequent creditors’ purported lien unperfected on the Junks’ property and, because the mortgage follows the note, there is no *legally valid* assignment under SC Code § 30-7-10 of the *Refi Note* or Refi Lien from AHM to Bayview or CitiMortgage for either Bayview or CitiMortgage to make a valid claim on the Refi Lien under South Carolina law.
- 2) The Court erred in not considering the additional ground to dismiss pleaded by the Junks that the purported Assignment of the Refi Note had not been recorded rendering any subsequent creditor no legally valid claim on their property.
- 3) The Court erred in its Order at p. 11 ¶ 3 stating that “[t]he Junks contend that Bayview lacked standing to bring the Foreclosure Action because it was not the holder of the Note.” The Junks’ Rule 12(b)(6) SCRCP Motion to Dismiss contends that Bayview was NEITHER the holder NOR THE OWNER of the Refi Note and the Court erred in not considering whether or not Bayview was the owner of the Refi Note in addition to whether or not Bayview was the holder of the Refi Note.
- 4) The Court erred in its Order on p. 12 lines 17, 18 in stating that “the Junk’s [sic] contention t hat Bayview lacks standing is without merit.” Bayview lacks standing for the following reasons:
 - i. Bayview’s Complaint at ¶ 3. alleges “The Plaintiff is the owner and holder of the Note and Mortgage described hereafter and that are the subject of this action.” The Complaint continues at ¶ 8. stating “[o]n or about November 3, 2006, Daniel L. Junk and Christine H. Junk made, executed and delivered unto American Home Mortgage a certain Note (“Note”) . . . a copy of which is attached hereto as Exhibit “A” and made a part hereof by reference.”

The referenced copy of the Note is in fact attached to the Complaint as Exhibit A. The copy of the Note attached as Exhibit A is made payable to American Home Mortgage and on the last page of the Note it contains a purported indorsement from American Home Mortgage without recourse to CitiMortgage. Nowhere in the Note or on the Note does Bayview’s name appear at all and Bayview has no authority to enforce the Note therefor.

- ii. The Refi Note is a negotiable instrument governed under S.C. Code Ann. Title 36 Chapter 3 and Bayview is not entitled to enforce the Refi Note as a matter of law under S.C. Code Ann. §§ 36-3-301, 302 because it is not holder of the Refi Note pursuant to S.C. Code § 36-3-201(a), which requires that the person be in possession of the note and under § 36-3-201(b) either (i) the note is payable to that person or (ii) the note is payable to bearer. The Refi Note attached to the Complaint as Exhibit A is not indorsed to Bayview nor is it indorsed in blank as a bearer instrument. Therefore, Bayview is not entitled to enforce the Refi Note because it is not a holder under South Carolina law and the Court erred in its Order denying the Junks' Rule 12(b)(6) SCRCF Motion to Dismiss the Complaint in the Foreclosure Action. (*Junks' Brief in Supp. of 12(b)(6) Mo.*)
- iii. Under Rule 10(c) SCRCF, statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading. Under 24 S.C. Jur. Rules of Civil Procedure § 10.1 Rule 10(c) is the same as the Federal Rule, except that it requires copies of exhibits to be attached to the pleading, if they are to be considered a part thereof.

“When there is a conflict between the allegations of a complaint and an attached exhibit, the exhibit prevails. A legal conclusion in a complaint which is inconsistent with a document attached as an exhibit is of no effect, and a judicial determination of the effect of the exhibit prevails over the pleader's characterization of the exhibit.” Wright and Miller's Federal Practice and Procedure, Civil § 1327 (Exhibits as Part of the Pleadings). When documents attached to a complaint indicate that the plaintiff is not entitled to relief, a court does not abuse its discretion in dismissing the complaint, and in dismissing it with prejudice when it appears that no amendment could cure its defects. *Id.*

Because the Complaint in the Foreclosure Action alleges that Bayview is the owner and holder of the Refi Note and that allegation conflicts with the copy of the Refi Note attached to its Complaint as Exhibit A, the Exhibit controls. As a result of Bayview not being the holder of the Note and therefore having no authority to enforce the Refi Note, the Court erred in denying the Junks' Rule 12(b)(6) Motion to Dismiss because Bayview did not have standing to invoke the jurisdiction of the Court in bringing the Foreclosure Action.

- iv. The Court further erred in its Order on p. 13 lines 3, 4 concluding “any issue as to standing is resolved by CitiMortgage's substitution

as Plaintiff.” Real Party in Interest SCRCF Rule 17(a) cannot be used to create standing and the Court’s application of the law and the real party in interest doctrine is misplaced.

A party's lack of standing deprives a court of subject matter jurisdiction. To have standing, a party must have both a personal stake in the subject matter of a lawsuit and be the “real party in interest.” Without standing, the Court lacks subject matter jurisdiction over the parties regardless the real party in interest rule. Standing doctrines are employed to refuse to determine the merits of a legal claim, on the ground that even though the claim may be correct the litigant advancing it is not properly situated to be entitled to its judicial determination. The focus is on the party, not the claim itself. Therefore, the Court’s Order concluding that “any issue as to standing is resolved by CitiMortgage’s substitution as Plaintiff in this action[.]” is not supported by the law and the Court erred in its Order denying the Junks Rule 12(B)(6) Motion to Dismiss on their allegation that Bayview lacked standing to bring the Foreclosure Action *ab initio*.

- 5) The Court erred in its Order denying the Junks’ Rule 12(b)(6) Motion to Dismiss the Complaint in the Foreclosure Action by impermissibly considering the following factors outside the Complaint in its ruling to deny the Junks’ Rule 12(b)(6) SCRCF Motion to dismiss the Complaint in the Foreclosure Action in its entirety:
 - i. The Court erred in its Order at pp. 11-12 in considering Bayview’s standing as a servicer. Bayview did not allege anywhere within its Complaint in the Foreclosure Action that it was the servicer of the Refi Note nor did Bayview plead in the Complaint that it was bringing the action as servicer for any other party The Court therefore impermissibly considered facts outside the four corners of the pleading in its analysis of the Junks’ claim that Bayview had no standing and the cases cited by the Court in support of its analysis of the issue of Bayview’s standing as servicer of the Refi Note are inapposite. The Court erred when it denied the Junks’ Rule 12(b)(6) SCRCF Motion to Dismiss the Foreclosure Action by ruling that Bayview had standing as a servicer when the issue of Bayview being a servicer was not pleaded in Bayview’s Complaint.
 - ii. The Court erred in its Order at p 12 p. lines 3, 4 concluding “[e]ven if Bayview lacked standing to bring the Foreclosure action, any issue as to standing is resolved by the substitution of CitiMortgage as Plaintiff.” The Court therefore impermissibly considered facts outside the four corners of the pleading in considering Bayview’s Rule 25 SCRCF Motion to Substitute Plaintiffs which is not a part of

the pleadings and was brought by Bayview approximately 5 months after it initially filed the Foreclosure action. Therefore the Court erred in denying the Junks' Rule 12(b)(6) SCRC Motion to Dismiss the Foreclosure Action when it considered Bayview's Rule 25 SCRC Motion for substitution in deciding the Junks' Rule 12(B)(6) SCRC Motion to Dismiss Action.

- 6) The Court erred in granting Bayview and CitiMortgage's joint Rule 25(c) SCRC Motion to Substitute originally filed by Heidi B. Carey of Riley Pope & Laney, LLC and Elizabeth Scott Moise of Nelson Mullins & Riley because the first affidavit in support of the Motion from CitiMortgage employee Jennifer Oakes sworn to and made on personal knowledge is contradicted by her second affidavit on sworn to and made on personal knowledge that was filed by current counsel Brian P. Crotty and Rush Smith III *also* of Nelson Mullins & Riley thereby leaving the pleading of the motion wholly unsupported begging the question as to the veracity of the affiant, counsel and the motion itself.

- i. The Court erred in its Order on p. 13 ¶ F in ruling that "[t]his motion is based on the assignment of the mortgage from Bayview to CitiMortgage." When in fact it initially was based on the transfer of the Refi Note and the Refi Lien from Bayview to CitiMortgage. Additionally, it initially was based upon Bayview indorsing the Refi Note to CitiMortgage as stated in the first Affidavit of Jennifer Oakes filed on March 25, 2010 in support of the joint motion.

The mortgage follows the note in South Carolina and an assignment of a mortgage alone in South Carolina is a nullity and conveys no interest in title. Further, the second Supplemental Affidavit of Jennifer Oakes in support of the parties joint Rule 25(c) SCRC Motion for Substitution from Jennifer Oakes filed by Mr. Crotty on December 6, 2010, contradicts everything pleaded in the initial motion and supporting affidavit. In Ms. Oakes Supplemental Affidavit she now states that everything she swore to in her first Affidavit was incorrect and that CitiMortgage has had the Refi Note in its possession since *sometime in January 2007 and that she doesn't know the exact date of CitiMortgage acquiring the Refi Note*. Further she states now that AHM indorsed the Refi Note to CitiMortgage and **NOT** Bayview as she testified in her first Affidavit.

- ii. The Court erred in granting Bayview's and CitiMortgage's Rule 25 SCRC Motion to Substitute by converting it to a Real Party in Interest Rule 17(a) Motion when Bayview never had standing to bring the Foreclosure Action in the first place. Real Party in

Interest Rule 17(a) cannot be used to create standing where none existed at the initiation of the Foreclosure Action.

A party's lack of standing deprives a court of subject matter jurisdiction. To have standing, a party must have both a personal stake in the subject matter of a lawsuit and be the "real party in interest." Without standing, the Court lacks subject matter jurisdiction over the parties regardless the real party in interest rule. Standing doctrines are employed to refuse to determine the merits of a legal claim, on the ground that even though the claim may be correct the litigant advancing it is not properly situated to be entitled to its judicial determination. The focus is on the party, not the claim itself.

WHEREFORE, Plaintiffs /Defendants urge this Court to alter or amend its

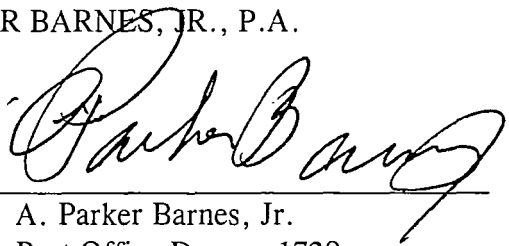
April 11, 2011 Order as follows:

- (a) In Junk v. Mortgage Electronic Registration Systems, Inc., et al. ("the Quiet Title Action"):
 - (1) Deny Defendant Mortgage Electronic Registration Systems, Inc.'s ("MERS") Rule 12(b)(6) SCRPC Motion to Dismiss filed Nov. 23, 2009;
 - (2) Grant Plaintiffs' Motion for MERS to Post an Indemnity Bond filed Nov. 22, 2010; and
 - (3) Grant Plaintiffs' Rule 12(c) SCRPC Motion for Judgment on the Pleadings and Default Judgment filed Jan. 21, 2011.
- (b) In Bayview Loan Servicing, LLC v. Daniel Junk et al. ("the Foreclosure Action"):
 - (4) Grant The Junk Defendants' Motion to Dismiss under Rules 13(a) and 12(b)(8) SCRPC filed Nov. 25, 2009;
 - (5) Grant The Junk Defendants' Motion to Dismiss under Rule 12(b)(6) SCRPC filed Nov. 25, 2009; and
 - (6) Deny Plaintiff's Motion to Substitute CitiMortgage, Inc. as Plaintiff under Rule 25 SCRPC filed Mar. 30, 2010.

Respectfully Submitted,

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

BY:



A. Parker Barnes, Jr.
Post Office Drawer 1729
500 Carteret Street
Beaufort, South Carolina 29901
(843) 522-2600
Counsel for Christine Junk

DANIEL L. JUNK

BY:



Pro Se Litigant

April 27, 2011

Beaufort, South Carolina

FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Daniel L. Junk and Christine H. Junk

PLAINTIFF(S)

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 -CP- 07 - 04301

Mortgage Electronic

Electronic Registration
Systems, Inc. et al.

DEFENDANT(S)

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____

☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

Plaintiffs' Rule 59(e) Motion is hereby denied. All proceedings in the Foreclosure

CaseNo. 2009-CP-07-05088 are hereby stayed until further notice by the Court pursuant to Chief Justice Toal's Administrative Order 2009-05-22-01 until Plaintiff's counsel certifies to this Court that all directives in the Order have been satisfied.

Dated at Beaufort, South Carolina, this 20th day of May, 2011. *Satisfied*

[Signature]
PRESIDING JUDGE

This judgment was entered on the 20th day of May, 2011, and a copy mailed first class this 2nd day of June, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

A. Parker Barnes, Jr.

P.O. Drawer 1729

500 Carteret Street

Beaufort, SC 29901-1729

Brian P. Crotty

Nelson Mullins & Riley

Meridian, 17th Floor

1320 Main Street

Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
CLERK OF COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

Case No. 2009-CP-07-04301

RECEIVED

MAY 23 2011

SC Court of Appeals

Daniel L. Junk and Christine H. Junk Appellants.

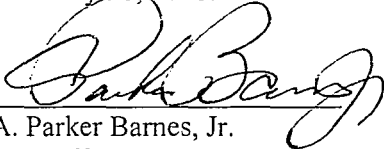
v.

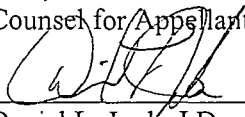
Mortgage Electronic Registration Systems, Inc.,
And John Does 1-5,000 Respondents.

AMENDED NOTICE OF APPEAL

Daniel L. Junk and Christine H. Junk appeal the order of the Honorable Marvin H. Dukes, III dated May 20, 2011. Appellants received written notice of entry of this order on May 20, 2011.

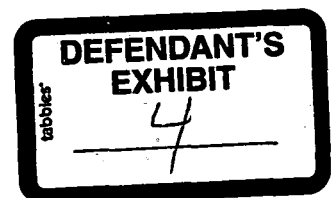
May 23, 2011


A. Parker Barnes, Jr.
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(843) 522-2600
Counsel for Appellant Christine Junk


Daniel L. Junk, J.D.
Pro Se Appellant
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Okatie, SC 29909
(843) 290-8469

Other Counsel of Record:

Brian P. Crotty
Nelson Mullins Riley & Scarborough LLP
Meridian, 17th Floor
1320 Main Street
Columbia, SC 29201
Counsel for Respondent Mortgage Electronic Registration Systems, Inc.
(803) 255-9422



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

Case No. 2009-CP-07-04301

RECEIVED
MAY 23 2011

SC Court of Appeals

Daniel L. Junk and Christine H. Junk Appellants

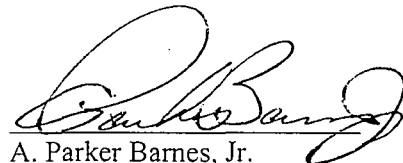
v.

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

PROOF OF SERVICE

I certify that I have served the Amended Notice of Appeal on Mortgage Electronic Registration Systems, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on May 23, 2011, addressed its respective attorneys of record, Brian P. Crotty, Nelson Mullins Riley & Scarborough LLP, Meridian, 17th Floor, 1320 Main Street, Columbia, SC 29201.

May 23, 2011



A. Parker Barnes, Jr.
Post Office Drawer 1729
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Beaufort, South Carolina 29901
(843) 522-2600
Counsel for Appellant Christine Junk



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

11 MAY 23 AM 10:09
BEAUFORT COUNTY, S.C.
CLERK OF COURT

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 -CP- 07 - 04301

Daniel L. Junk and
Christine H. Junk

Mortgage Electronic
Electronic Registration
Systems, Inc., et al.

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other

☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

Plaintiffs' Rule 59(e) Motion is hereby denied. All proceedings in the Foreclosure

Case No. 2009-CP-07-0508 are hereby stayed until further notice by the Court pursuant to Chief Justice Toal's Administrative Order 2009-05-22-01 until Plaintiff's counsel certifies to this Court that all directives in the Order have been satisfied.

Dated at Beaufort, South Carolina, this 22th day of May, 20 11.

[Signature]
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

A. Parker Barnes, Jr.
P.O. Drawer 1729
500 Garteret Street
Beaufort, SC 29901-1729

Brian P. Crotty
Nelson Mullins & Riley
Meridian, 17th Floor
1320 Main Street
Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

Case No. 2009-CP-07-04301

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MAY 23 2011

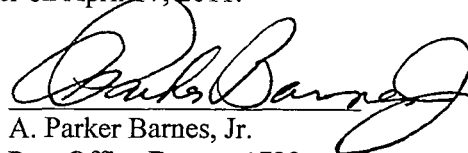
SC Court of Appeals

Daniel L. Junk and Christine H. Junk Appellants,
v.
Mortgage Electronic Registration Systems, Inc.,
And John Does 1-5,000 Respondents.

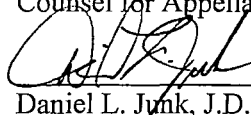
NOTICE OF APPEAL

Daniel L. Junk and Christine H. Junk appeal the order of the Honorable Marvin H. Dukes, III dated April 11, 2011. Appellants received written notice of entry of this order on April 17, 2011.

May 12, 2011



A. Parker Barnes, Jr.
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Counsel for Appellant Christine Junk



Daniel L. Junk, J.D.
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Other Counsel of Record:

Brian P. Crotty
Nelson Mullins Riley & Scarborough LLP
Meridian, 17th Floor
1320 Main Street
Columbia, SC 29201
Counsel for Respondent Mortgage Electronic Registration Systems, Inc.
(803) 255-9422

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

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MAY 23 2011

Case No. 2009-CP-07-04301

SC Court of Appeals

Daniel L. Junk and Christine H. Junk Appellants,

v.

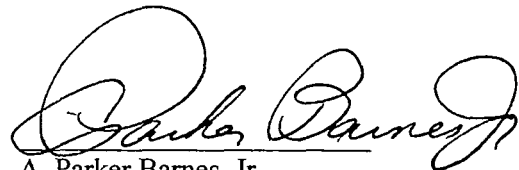
Mortgage Electronic Registration Systems, Inc.,

And John Does 1-5,000 Respondents.

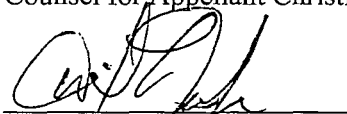
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Mortgage Electronic Registration Systems, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on May 12, 2011, addressed its respective attorneys of record, Brian P. Crotty, Nelson Mullins Riley & Scarborough LLP, Meridian, 17th Floor, 1320 Main Street, Columbia, SC 29201.

May 12, 2011



A. Parker Barnes, Jr.
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Counsel for Appellant Christine Junk



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

Case No. 2009-CP-07-05088

11 MAY 23 AM 10:15
JENNIFER GENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

RECEIVED

MAY 23 2011

SC Court of Appeals

Bayview Loan Servicing, LLC Respondent,

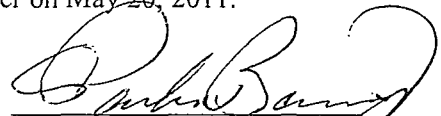
v.

Daniel Junk a/k/a Daniel L. Junk and Christine H. Junk,
and Oldfield Community Association Appellants.

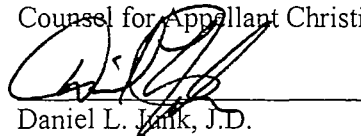
AMENDED NOTICE OF APPEAL

Daniel L. Junk and Christine H. Junk appeal the order of the Honorable Marvin H. Dukes, III dated May 20, 2011. Appellants received written notice of entry of this order on May 20, 2011.

May 23, 2011



A. Parker Barnes, Jr.
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(843) 522-2600
Counsel for Appellant Christine Junk



Daniel L. Junk, J.D.
Pro Se Appellant
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Okatie, SC 29909
(843) 290-8469

Other Counsel of Record:

Brian P. Crotty
Nelson Mullins Riley & Scarborough LLP
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1320 Main Street
Columbia, SC 29201
Counsel for Respondent Bayview Loan Servicing, LLC
(803) 255-9422

Andrew Colvin
Nexsen Pruet
400 Main Street Office Campus
Suite 100A
Hilton Head Island, SC, 29926
Counsel for Oldfield Community Association
(843) 689-6277

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

Case No. 2009-CP-07-05088

11 MAY 23 AM 10:15

JERRY ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

RECEIVED

MAY 23 2011

SC Court of Appeals

Bayview Loan Servicing, LLC Respondent,

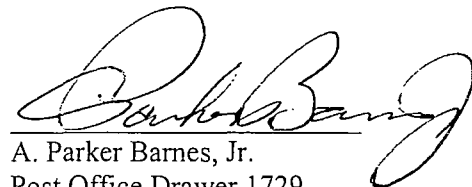
v.

Daniel Junk a/k/a Daniel L. Junk and Christine H. Junk,
and Oldfield Community Association Appellants.

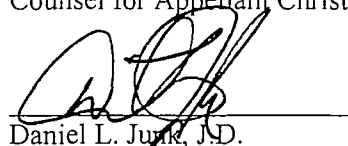
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Bayview Loan Servicing LLC and Oldfield Community Association by depositing a copy of it in the United States Mail, postage prepaid, on May 23, 2011, addressed its respective attorneys of record, Brian P. Crotty, Nelson Mullins Riley & Scarborough LLP, Meridian, 17th Floor, 1320 Main Street, Columbia, SC 29201 and Andrew Colvin, Nexsen Pruet, 400 Main Street Office Campus, Suite 100A, Hilton Head Island, SC, 29926.

May 23, 2011



A. Parker Barnes, Jr.
Post Office Drawer 1729
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Beaufort, South Carolina 29901
(843) 522-2600
Counsel for Appellant Christine Junk



Daniel L. Junk, J.D.
Pro Se Appellant
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Okatie, SC 29909
(843) 290-8469

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Master-in-Equity

Marvin H. Dukes, III, Master-in-Equity

Case No. 2009-CP-07-04301

Daniel L. Junk and Christine H. Junk, ...

Appellants,

v.

Mortgage Electronic Registration Systems, Inc., and
John Does 1-5000, ...

Respondents.

Case No. 2009-CP-07-05088

Bayview Loan Servicing, LLC, ...

Respondent,

v.

Daniel Junk a/k/a Daniel L. Junk, Christine H. Junk and
Oldfield Community Association, of whom Daniel Junk
and Christina Junk, ...

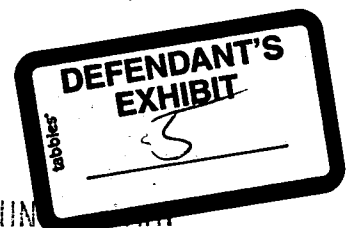
Defendants,

Of Whom Daniel L. Junk and Christine H. Junk are,....

Appellants.

Motion to Dismiss Appeal

Pursuant to Rule 240(a) of the South Carolina Appellate Court Rules,
Respondents Mortgage Electronic Registration Systems, Inc. ("MERS"), Bayview Loan
Servicing, LLC ("Bayview"), and CitiMortgage, Inc. ("CitiMortgage") hereby move



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this Court for an order dismissing the appeals filed by Appellants Daniel Junk and Christine Junk (“the Junks”). The ground for this motion is that the order on appeal is not immediately appealable.¹ As a result, this Court should dismiss this appeal in its entirety.

The order being appealed relates to two separate actions. The first action is a quiet title action (Civil Action No. 2009-CP-07-04301) (“the quiet title action”) filed by the Junks against MERS and numerous “John Doe” defendants. The second action is a foreclosure action (Civil Action No. 2009-CP-07-05088) (“the foreclosure action”) initially filed by Bayview against the Junks in which CitiMortgage has now been substituted as the plaintiff. The appealed order addressed a total of six motions, with three motions pertaining to the quiet title action and three motions pertaining to the foreclosure action. Specifically, in the quiet title action, the appealed order addressed:

- (1) MERS’s Motion to Dismiss;
- (2) The Junks’ Motion for Judgment on the Pleadings and Default Judgment;
and
- (3) The Junks’ Motion for MERS to Post an Indemnity Bond.

In the foreclosure action, the appealed order addressed:

- (1) Bayview’s and CitiMortgage’s Motion to Substitute CitiMortgage as Plaintiff;
- (2) The Junks’ Motion to Dismiss under Rule 12(b)(6), SCRCP; and
- (3) The Junks’ Motion to Dismiss under Rules 12(b)(8) and 13(a), SCRCP.

¹ The Junks appealed the order dated April 12, 2011 on May 12, 2011. On May 23, 2011, the Junks filed an amended notice of appeal including the trial court’s denial of their Rule 59(e), SCRCP, motion.

The appealed order was entered on April 12, 2011, and it granted MERS's motion to dismiss the quiet title action without prejudice, granted Bayview's and CitiMortgage's motion to substitute CitiMortgage as the plaintiff in the foreclosure action, and denied all of the remaining motions. On May 12, 2011, the Junks filed their Notice of Appeal as to the April 12, 2011, order. On May 20, 2011, the Trial Court denied the Junks' Rule 59, SCRPC, motion, and on May 23, 2011, the Junks filed an Amended Notice of Appeal to include the Trial Court's May 20, 2011, order. The Junks appear to be appealing all six of the motions addressed in the April 12, 2011, and May 20, 2011, orders relating to the quiet title action and the foreclosure action. None of the rulings in these orders is immediately appealable as fully set forth below. Therefore, this Court should dismiss the Junks' appeal.

Statutory law controls the right to an appeal in South Carolina. Hagood v. Summerville, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005). Generally, an appeal may be pursued only after a party has obtained a final judgment. Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993). Section 14-3-330 of the South Carolina Code governs the determination of whether a party may immediately appeal an order issued before or during trial. Hagood, 362 S.C. at 195; 607 S.E.2d at 708. The order must fall into one of the categories set forth in that statute in order to be immediately appealable. Baldwin Constr. Co. v. Graham, 357 S.C. 227, 593 S.E.2d 146 (2004). Section 14-3-330 allows intermediate appeals if the order (1) involves the merits or (2) affects a substantial right. S.C. Code Ann. § 14-3-330(1) and (2).

The Supreme Court has held that an order “involves the merits” if it is one that “must finally determine some substantial matter forming the whole or part of some cause of action or defense.” Mid-State Distributors, 310 S.C. at 334, 426 S.E.2d at 780 (emphasis added). An order “affects a substantial right” when it “in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action.” S.C. Code Ann. § 14-3-330(2). Unless those requirements are met, an order which does not finally end a case or prevent a final judgment from which a party may seek appellate review is considered an interlocutory order from which no immediate appeal is allowed. Tatnall v. Gardner, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct. App. 2002). The provisions of Section 14-3-330 have been narrowly construed and immediate appeal of orders issued before or during trial generally has not been allowed. Hagood, 362 S.C. at 195; 607 S.E.2d at 708. “Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial.” Id. The rulings in the trial court’s order on appeal are not immediately appealable under the above framework. Each will be addressed in turn.

A. The Trial Court’s Dismissal of the Quiet Title Action Was Without Prejudice and is Not Immediately Appealable.

The trial court granted MERS’ motion to dismiss the quiet title action. (April 12, 2011 Order at pp. 9-10). Importantly, this dismissal was “without prejudice” and directed the Junks to “assert whatever claims or issues they contend apply in their Answer to the Foreclosure Action’s complaint.” (Id. at p. 10). This ruling is not immediately appealable. A ruling made “without prejudice” does not meet the requirements of section 14-3-330, and, thus, is not immediately appealable.

This Court has held that “a dismissal of a claim without prejudice is not an adjudication of the merits of the controversy.” International Fidelity Ins. Co. v. China Constr. Am., Inc., 375 S.C. 175, 181, 650 S.E.2d 677, 680 (Ct. App. 2007). Moreover, our Supreme Court has noted that “a dismissal of a case without prejudice means that the plaintiff can reassert the same cause(s) of action by curing the defects that led to dismissal.” McComas v. Ross, 368 S.C. 59, 626 S.E.2d 902 (Ct. App. 2006) (quoting Collins v. Sigmon, 299 S.C. 464, 467, 385 S.E.2d 835, 837 (1989)).

Based on the above, the Junks could file a later suit against MERS or other defendants alleging the identical or similar claims or, as per the trial court, assert any claims by way of counterclaim and/or third party complaint in their answer to the foreclosure action. As a result, the trial court did not make a final decision as to the claims asserted in the quiet title action. The ruling cannot involve the merits because it neither finally decided any issue nor decided anything related to the merits of the case. Moreover, such a without prejudice ruling cannot affect a substantial right because the Junks are allowed to pursue this exact claim again. In sum, the ruling did not finally rule on this issue and left open the merits of the issue for later determination. See, e.g., Foggie v. General Elec. Co., 376 S.C. 384, 389, 656 S.E.2d 395, 398 (S.C. App. 2008) (holding that if the interlocutory order leaves open the determination of an issue, then it is not a final order, and thus, is not immediately appealable). Therefore, this ruling is not immediately appealable and the Junks’ appeal should be dismissed.

B. The Trial Court's Denial of the Junks' Motion for MERS to Post an Indemnity Bond is Not Immediately Appealable.

The trial court denied the Junks' motion to require MERS to post an indemnity bond. (April 12, 2011 Order at pp. 7-8). In this motion, which was filed in the quiet title action, the Junks requested that the trial court require MERS to post a bond relating to a mortgage dated September 26, 2005 ("the 2005 Mortgage"), which had previously been satisfied of record by MERS.² (Id.). The quiet title action complaint contains no allegations whatsoever relating to the 2005 Mortgage. Rather, both the quiet title action and the foreclosure action relate only to a mortgage dated November 3, 2006 ("the 2006 Mortgage"). The 2005 Mortgage that was the subject of the indemnity bond motion was actually satisfied as part of the 2006 Mortgage transaction, and the Junks do not contend that any attempt by anyone has been made to enforce the 2005 Mortgage following its satisfaction. (Id.) Thus, the Trial Court found no basis existed for MERS to file any bond with regard to the 2005 Mortgage. (Id.)

The trial court's denial of the indemnity bond motion does not meet the appealability requirements of section 14-3-330(1) or (2). The denial decided nothing about the merits of the case nor did it finally decide some cause of action or defense. The denial also did not determine the action, prevent a judgment from which an appeal might be taken, or discontinue the action. Thus, the ruling is not immediately appealable and the Junks' appeal of this denial should be dismissed. See Gardner, 350 S.C. at 138, 564 S.E.2d at 379 (holding the failure to satisfy the section 14-3-330

² The Junks admit the September 25, 2006 mortgage has been satisfied of record.

requirements renders an order interlocutory from which no immediate appeal is allowed).

C. The Trial Court's Denial of the Junks' Motion for Judgment on the Pleadings and Default Judgment is Not Immediately Appealable.

The trial court denied the Junks' motion for judgment on the pleadings and default judgment in the quiet title action. (April 12, 2011 Order at pp. 8-9). The motion for judgment on the pleadings was based on Rule 12(c), SCRCP. The denial of this Rule 12(c) motion is not immediately appealable. Our Supreme Court has specifically held the denial of a Rule 12(c), SCRCP, "motion for judgment on the pleadings is not directly appealable under S.C. Code Ann. § 14-3-330 (1976), even if it raises only a question of law." Rose v. Thrash, 291 S.C. 459, 459, 354 S.E.2d 378, 378 (1987). Moreover, the denial of the motion for judgment on the pleadings decides nothing about the merits of the case. The trial court also denied the Junks' motion for default judgment. (April 12, 2011 Order at pp. 8-9). This motion sought a default judgment in the quiet title action against Bayview and CitiMortgage despite the fact that these entities had not been named as defendants or served in the quiet title action. Rather, the Junks contended that Bayview and CitiMortgage were "John Doe" defendants who had been served via publication. The trial court concluded that neither Bayview nor CitiMortgage could be properly considered to be "John Doe" defendants based on the fact that the Junks had numerous communications with both Bayview and CitiMortgage prior to filing the quiet title action and because the Junks were aware that Bayview and CitiMortgage may have had an interest in the mortgage loan that was the subject of the quiet title action. (Id.). Additionally, the trial court concluded that

service by publication to “John Doe” defendants was ineffective as to Bayview and CitiMortgage based upon the Junks’ prior direct communication with these entities and ability to serve them directly. (Id. at p. 9).

The Junks’ attempt to appeal this ruling is improper. The denial of a default judgment motion does not satisfy the requirements of section 14-3-330(1) or (2). The denial of the motion for default judgment decides nothing about the merits of the case. It merely decides that the case should proceed to trial. The ruling did not finally decide an issue, did not finally decide the merits of either the quiet title action or the foreclosure action, and did not strike any claim or defense of the Junks. Thus, the ruling is not immediately appealable and the Junks’ appeal of this ruling should be dismissed.³

D. The Trial Court’s Denial of the Junks’ Motions to Dismiss Under Rules 12(b)(8) and 13, SCRCP, is Not Immediately Appealable.

The trial court denied the Junks’ motion to dismiss the foreclosure action pursuant to Rules 12(b)(8) and 13, SCRCP. (April 12, 2011 Order at p. 10). The Junks’ Rule 12(b)(8) motion was based on the existence of the quiet title action. The denial of this motion is not immediately appealable. Our Supreme Court has held that South Carolina “does not allow immediate appellate review of the *denial* of any Rule 12(b), SCRCP, motion.” Breland v. Love Chevrolet Olds, Inc., 339 S.C. 89, 93, 529

³ Moreover, it is well-settled that the denial of a motion to set aside a default under Rule 55, SCRCP, is not immediately appealable. Jefferson v. Gene’s Used Cars, Inc., 295 S.C. 317, 368 S.E.2d 456 (1988). It would be incongruous to allow a denial of a motion for default judgment to be immediately appealable but not a motion to set aside default under the same rule. The denial of the motion in either scenario has the same effect—the matter simply proceeds to trial. Thus, the denial of a request for default should be treated the same as a denial of a motion to set aside default. This ruling is not immediately appealable.

S.E.2d 11, 13 (2000) (establishing that the denial of a Rule 12(b)(1), 12(b)(2), 12(b)(3), and 12(b)(6) motion to dismiss is not immediately appealable) (emphasis in original). The court reasoned that the denial of such a motion is not immediately appealable because it is the court's policy to avoid piecemeal litigation where the rights of the parties have not been substantially impacted. Id. at 94, 529 S.E.2d at 123; see also Mid-State, 310 S.C. at 334-35, 426 S.E.2d at 780 (holding that "[a] party who is denied a dismissal under Rule 12 has forfeited nothing, they must simply continue to trial"). Here, the rights of the Junks have not been impacted at all. The decision of the trial court to dismiss the quiet title action was made without prejudice. Thus, the Junks were free to assert any claims via their answer in the foreclosure action. Therefore, the ruling on the Rule 12(b)(8) motion is not immediately appealable.⁴

The Junks' Rule 13 motion asserted that the foreclosure action should have been asserted by Bayview as a compulsory counterclaim in the quiet title action, despite the fact that Bayview was not a named defendant in the quiet title action. As with the Junks' Rule 12(b)(8) motion, the trial court's denial of the Rule 13 motion does not satisfy the appealability requirements of section 14-3-330(1) or (2). This ruling did not finally decide an issue, did not finally decide the merits of the foreclosure action, and did not strike any claim or defense of the Junks. Therefore, as with the Junks' Rule

⁴ Moreover, it is well-settled that the denial of a motion to set aside a default under Rule 55, SCRPC, is not immediately appealable. Jefferson v. Gene's Used Cars, Inc., 295 S.C. 317, 368 S.E.2d 456 (1988). It would be incongruous to allow a denial of a motion for default judgment to be immediately appealable but not a motion to set aside default under the same rule. The denial of the motion in either scenario has the same effect—the matter simply proceeds to trial. Thus, the denial of a request for default should be treated the same as a denial of a motion to set aside default. This ruling is not immediately appealable.

12(b)(8) motion, the ruling on the Rule 13 motion is not immediately appealable, and the Junks' appeal of these rulings should be dismissed.

E. The Trial Court's Denial of the Junks' Motions to Dismiss Under Rule 12(b)(6) is Not Immediately Appealable.

The trial court denied the Junks' Rule 12(b)(6), SCRCP, motion to dismiss in the foreclosure action. (April 12, 2011 Order at p. 10). It is well established that an order *denying* a motion to dismiss under Rule 12(b)(6), SCRCP, is not immediately appealable. See, e.g., Huntley v. Young, 319 S.C. 559, 462 S.E.2d 860 (1995); McLendon v. S.C. Dept. of Highways & Pub. Transp., 313 S.C. 525, 443 S.E.2d 539 (1994). Therefore, this ruling is not immediately appealable and this Court should dismiss the Junks' attempt to appeal this ruling.

F. The Trial Court's Ruling Allowing the Substitution of CitiMortgage as the Plaintiff in the Foreclosure Action is Not Immediately Appealable.

The trial court granted Bayview's and CitiMortgage's motion to substitute CitiMortgage as plaintiff in the foreclosure action. (April 12, 2011 Order at p. 13). As with the other rulings in the April 12, 2011 order, this ruling is not immediately appealable. This Court has recently held that the denial of a motion to substitute a party is not immediately appealable. Neeltec v. Enterp., Inc. v. Long, 391 S.C. 177, 705 S.E.2d 57 (Ct. App. 2010). In Neeltec, this Court found that the motion to substitute did not involve the merits or affect a substantial right, and, accordingly, was not immediately appealable under section 14-3-330(1) or (2). Id. at 178-79, 705 S.E.2d at 58. The ruling allowing the substitution of CitiMortgage as plaintiff fits within the Neeltec rationale. The relief ordered by the trial court was technical in nature as it merely substituted one entity for another. It does not impact any substantive or

procedural rights of the Junks. The substitution struck none of the claims or defenses of the Junks and it does not preclude them from maintaining against CitiMortgage all defenses, claims, rights, etc. that they may have properly asserted against Bayview. Additionally, in the event that the Junks maintain they have any claims specific to Bayview, they remain free to assert any such claims in a third party complaint or a separate action. In short, the grant of the motion to substitute decided nothing involving the merits nor did it affect any substantial right. Therefore, as with all of the other rulings in the April 12, 2011, order, this ruling is not immediately appealable.

Conclusion

Based on the foregoing, the April 12, 2011, and May 20, 2011, orders for which the Junks seek appellate review are not immediately appealable and the Junks' appeal of the ruling contained therein should be dismissed by this Court.

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Columbia, South Carolina

June 8, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Master-in-Equity

Marvin H. Dukes, III, Master-in-Equity

Case No. 2009-CP-07-04301

Daniel L. Junk and Christine H. Junk, ...

Appellants,

v.

Mortgage Electronic Registration Systems, Inc., and
John Does 1-5000, ...

Respondents.

Case No. 2009-CP-07-05088

Bayview Loan Servicing, LLC, ...

Respondent,

v.

Daniel Junk a/k/a Daniel L. Junk, Christine H. Junk and
Oldfield Community Association, of whom Daniel Junk
and Christina Junk, ...

Defendants,

Of Whom Daniel L. Junk and Christine H. Junk are,....

Appellants.

Proof of Service

I, the undersigned Administrative Assistant of the law offices of Nelson
Mullins Riley & Scarborough LLP, attorneys for Plaintiff, 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:

Motion to Dismiss

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Jennifer B. Lee
Administrative Assistant

June 8, 2011

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

RECEIVED
JUN 23 2011
SC Court of Appeals

Daniel L. Junk and Christine H.
Junk,

Appellants,

v.

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

Respondents,

Case No. 2009-CP-07-04301

Bayview Loan Servicing, LLC,

Respondent,

v.

Daniel Junk a/k/a Daniel L. Junk and
Christine H. Junk and Oldfield Community
Association,

Defendants,

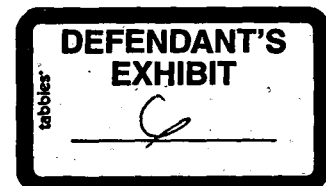
Of Whom Daniel L. Junk and Christine H.
Junk are,

Appellants.

Case No. 2009-CP-07-05088

Opposition to Motion to Dismiss

In response to Respondent's Motion to Dismiss pursuant to Rule 240(a) of the South Carolina Appellate Court Rules filed with this Court on June 8, 2011 Appellants submit this brief in opposition to Respondents' Motion to Dismiss. The effect of the orders appealed



from render each ruling immediately appealable as either a final judgment or by statute under SC Code Ann. § 14-3-330 and its various subsections. Respondents' motion to dismiss the instant appeals should be denied.

The orders being appealed relate to two separate but closely related actions. (April 11, 2011 Order p. 10) (Exhibit 1). The first action is Civil Action No. 2009-CP-07-04301 ("the quiet title action") filed on September 11, 2009 by Appellants against American Home Mortgage,¹ Mortgage Electronic Registration Systems, Inc. ("MERS") and John Does 1-5,000 for all unknown Defendants. The second action is Civil Action No. 2009-CP-07-05088 ("the foreclosure action") filed by Respondent Bayview Loan Servicing, LLC ("Bayview") on October 27, 2009 as the owner and holder of Appellants' purported mortgage and refinance promissory note ("Refi Note") that was filed *after* the Appellants' quiet title action was filed against Respondent MERS. As a result of a purported assignment of the Refi Note and purported mortgage recorded on March 19, 2010 *after* the foreclosure action was filed by Bayview, and the April 11, 2011 Order granting Respondents Rule 25(c) SCRCF motion under Rule 17(a) SCRCF, Respondent CitiMortgage, Inc. ("CitiMortgage") has now been substituted for Bayview in the foreclosure action as the Plaintiff.

The appealed orders issue rulings on a total of six motions, with three motions pertaining to the quiet title action and three motions pertaining to the foreclosure action. *Id.* pp. 1-2. Specifically, in the quiet title action, the appealed orders addressed:

- 1) Appellants' Motion for MERS to Post an Indemnity Bond for a Lost Instrument;
- 2) Appellants' Rule 12(c) SCRCF Motion for Judgment on the Pleadings and

¹ American Home Mortgage Corp. as opposed to American Home Mortgage filed a Suggestion of Bankruptcy in lieu of an Answer and Appellants non-suited American Home Mortgage without prejudice. (April 11, 2011 Order p. 7 FN 2).

Default Judgment; and

3) MERS's Rule 12(b)(6) SCRCF Motion to Dismiss the Quiet Title Action.

In the foreclosure action, the appealed orders addressed:

- A. Appellants' Rule 12(b)(6) SCRCF Motion to Dismiss Bayview's Foreclosure Action;
- B. Appellants' Motion to Dismiss under Rules 12(b)(8) as Same Parties to the Quiet Title Action and 13(a) SCRCF for Compulsory Counterclaims to the Quiet Title Action; and
- C. Bayview's and CitiMortgage's Joint Rule 25(c) SCRCF Motion to Substitute CitiMortgage as Plaintiff and to Substitute Counsel for Substitute Plaintiff.

The appeal of the Orders dated April 11, 2011 ("April Order") and May 20, 2011 ("May Order") (Exhibit 2) and entered by the Beaufort County Clerk ("Clerk") on April 12, and May 20, 2011, respectively, disposed of the quiet title action in its entirety without leave to amend even though Appellant requested leave (Transcript of Hearing on February 10, 2011 ("Feb. Transcript") (Exhibit 3) p. 75;14, and was a final judgment dismissing the quiet title action. April Order pp. 13-14, *see also* May Order. Respondents' motion to dismiss the quiet title action that was granted was also a motion for summary judgment in the alternative. While the April Order states the dismissal is without prejudice, its effect is one of prejudice to the Appellants. *Id.*

There has been no formal discovery in the quiet title action, yet the April Order denied Appellants' leave to amend their Complaint to correct any deficiencies in the pleadings. *Id.* The Trial Court Order requires Appellants to refile their quiet title action claims in their answer to the foreclosure action. The foreclosure action arose from the same closing as the quiet title action but involves subsequent parties that acquired an interest in Appellants' property *after* the quiet title action was filed. *Id.* p. 10. *See also* Feb. Transcript

pp. 103;20-25:104;1-21:109;6-15.

There has been no formal discovery in either the quiet title action or the foreclosure action. All of the findings in the Trial Court's April Order are based on contested, inadmissible hearsay without any foundation. None of the Trial Court's rulings are based on sworn testimony properly before the Trial Court.

Appellants' have not had the opportunity to depose any of the affiants of the three affidavits submitted by Respondents in either of the actions. Appellants have not had the opportunity to depose Krystal Hall, an alleged "robo-signer" who claimed to be a Vice President of Respondent MERS and who attested under oath that Appellants' 2005 Note constituting a first purchase money mortgage debt had been discharged per the terms of the refinance contract and that the purported mortgage for that debt was cancelled despite the fact that she is not an employee of MERS.

In fact, the Trial Court has not even so much as formally taken judicial notice of any of the documents relied on its April Order or the May Order. The orders are based upon Respondent MERS' Lost Mortgage Satisfaction; Respondent Bayview's second Lis Pendens; MERS' purported assignment of Appellants' Refi Note and purported mortgage to Respondent Bayview; and, Respondent Bayview's purported assignment of Appellants' purported mortgage and Refi Note to Respondent CitiMortgage. None of these documents have been admitted into evidence with any foundation, authentication or testimony and *all but the Lost Mortgage Satisfaction were executed or recorded after the quiet title action was filed.*

In effect the Orders determine the quiet title action as originally filed, involving the merits affecting substantial rights of Appellants and striking Appellants' pleadings and

defenses to the foreclosure action. *Id.* at pp. 7-14. The April Order requires Appellants to bring their original quiet title action claims in a subsequently filed separate action as counterclaims and third-party claims against a party that had no valid recorded interest in the Appellants' property either at the time the quiet title was filed or when the foreclosure action was originally filed. *Id.* at 13-14.²

On May 12, 2011 Appellants filed their Notice of Appeal as to the April order. On May 20, 2011 the Trial Court denied Appellants' Rule 59(e) SCRCF Motion to Alter or Amend the Judgment and on May 23, 2011 Appellants filed an Amended Notice of Appeal to include the Trial Court's May Order. Appellants are appealing all six rulings contained in the April and May Orders. Even if the rulings in the April and May Orders are not deemed "final" each ruling in the Orders is a permissible appeal under S.C. Code Ann. § 14-3-330 and its various subsections as set forth more fully below.

The right of appeal is controlled by statute in South Carolina. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707, 708 (S.C. 2005). An appeal ordinarily may be pursued only after a party has obtained a final judgment. *Id.* citing *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 781 (S.C. 1993); S.C. Code Ann. § 14-3-330 (1976); Rule 201(a), SCACR. If a judgment is not a final judgment an appellate court should look to the effect of an interlocutory order to determine its appealability under S.C. Code Ann. § 14-3-330. *Thornton v. South Carolina Elec. & Gas Corp.* 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011) citing *Bowden v. Powel*, 194 S.C. 482, 10 S.E.2d 8 (S.C. 1940), *Miles v. Charleston Light & Water Co.*, 87 S.C. 254, 69 S.E.2d 292

² The Quiet Title Action was filed on September 11, 2009; the Foreclosure Action was filed October 27, 2009; and the Motion to Substitute Plaintiff was filed Jointly by Bayview and CitiMortgage on March 30, 2010.

(S.C. 1910).

SC Code Ann. § 14-3-330 authorizes appeals from:

- 1) “any intermediate order involving the merits and necessarily affecting the judgment;” and
- 2) (a) “of an order affecting a substantial right made in an action when such order in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action;”

(b) “grants or refuses a new trial;” or

(c) “strikes out an answer or any part thereof or any pleading in any action.”³

If an order falls into one of the subsections set forth within that statute the order is immediately appealable. *Hagood supra*.

Immediate appeals under subsection (2) have been allowed in situations where the substantial right could not be vindicated on appeal after the case. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E2d 11, 13 (S.C. 2000) citing *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (S.C. 1985). “If the circuit court errs in striking out any material allegations of a good cause of action or good defense, it is impossible to remedy it in the course of the trial, because the evidence and the issues submitted to the jury cannot be extended beyond the issues made by the pleading, and on appeal from the final judgment this court could not say there was error of law in confining the evidence and charge to the pleadings.” *Thornton supra*, at 479 (citing *Bowden supra* quoting *Harbert v. Atlanta & Charlotte Air Line Ry. Co.*, 74 S.C. 13, 16, 53 S.E. 1001, 1001–02, (S.C 1906)). This Court heard an appeal from an order striking two defenses from an answer in *P.J. Construction Co., Inc. v. Roller*, 287 S.C. 632, 340 S.E.2d 564, (Ct. App. 1986). Before proceeding to the

³ Respondents’ Brief at p. 3 cites the same statute but without explanation fails to cite to this Honorable Court subsection 2(b) or (c) which allows an immediate appeal under the statute of an order that strikes out an answer or any part thereof or any pleading in any action.

merits of the appeal, the Court stated: “[a]n order striking a portion of a pleading is immediately appealable.” *Id.*

An order granting a Rule 12(b) motion as to one of multiple claims is directly appealable under § 14-3-330(2) because it affects a substantial right and strikes out part of a pleading. *Leibovitz v. Mudd*, 289 S.C. 476, 478, 347 S.E. 2d 94, 96 (S.C. 1986) citing *Miles supra*, (order granting demurrer as to portion of complaint). “When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.” Rule 54(b) SCRCF.

Lack of certification under Rule 54(b) SCRCF does not bar an immediate appeal since an appellant has a statutory right to immediately appeal. *Link v. School Dist. of Pickens County*, 302 S.C. 1, 393 S.E.2d 176, 178 (S.C. 1990). This is the same conclusion reached by the federal courts under their Rule 54(b). 10 Wright, Miller & Kane, *Federal Practice and Procedure, Civil 2d*, § 2658 at pp. 71-72 (1983) (Rule 54(b) should not be construed to alter federal appellate jurisdiction or supersede or modify the other means by which a party can secure a review of a trial court determination). *Link* at 4-5.

In *Murphy v. Owens-Corning Fiberglas Corp.*, 346 S.C. 37, 550 S.E.2d 589 (Ct. App. 2001), *overruled on other grounds by Farmer v. Monsanto Corp.*, 353 S.C. 553, 556-57, 579 S.E.2d 325, 327 (2003), this Court looked to the effect of an interlocutory order to determine its appealability under § 14-3-330(2)(c). *Murphy* at 44-45, 550 S.E.2d at 593. *Thornton supra*, at FN5. “Though the order granting the Rule 12(b)(1), SCRCF motion was

not a final order, the Court found it immediately appealable because it had “the practical effect ... that it strikes out the Murphy’s complaint with respect to [some but not all defendants].” *Murphy* at 44, 550 S.E.2d at 593.

“When an order may be appealable under § 14-3-330(2)(c) because it has the effect of striking out a pleading, the order is also appealable under § 14-3-330(1) as ‘involving merits.’” *Link supra*, citing *Nauful v. Milligan*, 258 S.C. 139, 187 S.E.2d 511 (S.C. 1972); *Cf. Jefferson by Johnson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 368 S.E.2d 456 (S.C. 1988) (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 ...”). “A summary judgment ruling, as well as a 12(b)(6) dismissal, fits within this *Jefferson* definition. Section 14-3-330(1) allows a party to wait until final judgment to appeal intermediate orders ‘necessarily affecting the judgment not before appealed from.’ We have long ago held that the phrase “necessarily affecting the judgment” has the equivalent meaning as the phrase “involving the merits,” and that the legislature meant to use these phrases interchangeably. *Link supra*, citing *Blakely & Copeland v. Frazier*, 11 S.C. 122 (S.C. 1878).

I. ALL OF THE TRIAL COURT’S RULINGS RELATED TO THE QUIET TITLE ACTION IN THE APRIL 11, 2011 AND MAY 20, 2011 ORDERS ARE IMMEDIATELY APPEALABLE.

A. DENIAL OF APPELLANTS’ MOTION FOR MERS TO POST A BOND FOR A LOST INSTRUMENT IN THE QUIET TITLE ACTION INVOLVES THE MERITS AFFECTING A SUBSTANTIAL RIGHT OF APPELLANTS AND STRIKES A DEFENSE OF APPELLANTS IN THE FORECLOSURE ACTION.

The Trial Court denied Appellants’ motion to require Respondent MERS to post an indemnity bond for a lost instrument. April Order pp. 7-8, see also May Order. Appellants’ motion was based on their claim that paying off their original promissory note dated September 26, 2005 (“2005 Note”) to the holder in due course was a condition precedent to

the Refi Note transaction. (See Plaintiffs' Brief in Support of Their Motion Requiring Defendant Mortgage Electronic Registration Systems, Inc. to Post an Indemnity Bond for a Lost Instrument ("Pltfs. Bond Brief"), p.1, (Exhibit 4), *see also* Feb. Transcript pp. 24;7-12, *see also* Appellants' Notice of Motion to Alter or Amend the April 11, 2011 Order Pursuant to Rule 59(e) SCRCF ("Rule 59(e) Motion") p. 18, ¶ C, (Exhibit 5). The Trial Court mistakenly and illogically stated that "[t]he Junks' motion seeking to have MERS's [sic] post an indemnity bond, however, relates **not** to the November 3, 2006 Mortgage, but instead to a prior mortgage dated September 26, 2005 (that was to be paid off as part of the November 3, 2006 mortgage loan transaction)." April Order p. 7, (emphasis in original), *see also* Feb. Transcript, pp. 22;5-32;18, *see also* Rule 59(e) Motion 18, ¶ C(1) and (2).

Appellants claimed in the Trial Court that MERS had recorded a fraudulent lost mortgage satisfaction of their 2005 Note and purported mortgage Pltfs. Bond Brief p. 2, *see also* Feb. Transcript, pp. 31;11 *see also* Rule 59(e) Motion 18, ¶ C(5)(i-vii) and that the condition precedent had not been met putting the Appellants at risk of double liability on the 2005 Note. Pltfs. Bond Brief p. 3, *see also* Feb. Transcript, pp. 28;3-10: 31;11, *see also* Rule 59(e) Motion p. 20, ¶C(3). Appellants' claim was under S.C. Code Ann. § 36-3-601(b). Pltfs. Bond Brief p. 3-4. Appellants are still liable for the entire amount of the 2005 Note to a holder in due course who acquired holder in due course status without notice of the discharge. Pltfs. Bond Brief *Id.*, *see also*, Feb. Transcript, p. 26;11-16. Appellants additionally claimed that they have a cloud on their title as a result of MERS' fraudulent Lost Mortgage Satisfaction. *Id.* at 4, *see also*, Feb. Transcript, p. 31;22-23, *see also* Rule 59(e) Motion p. 20 ¶ 6(i).

Contract law is based on the principle expressed in the Latin phrase *pacta sunt*

servanda, which is usually translated "agreements to be kept." It is a general legal principle that an intentional misrepresentation is so substantial and fundamental as to defeat the purpose of the contract. *Rogers v. Silsbury Brick Corp.*, 299 S.C. 141, 143-144, 382 S.E.2d 915, (S.C. 1989) citing *Elliott v. Snyder*, 246 S.C. 186, 191, 143 S.E.2d 374, 375, (S.C. 1965). Failure to pay off and satisfy the original loan per the required terms of the refinance loan leaves the mortgagor at risk to unanticipated and unbargained for risk. *In Re Roy*, 387 S.C. 372, 692 S.E.2d 916, (S.C. 2010). "[I]mproper handling [of the] refinance exposed both [the mortgagor and] title insurance company to significant risk as the refinance lien was unprotected and in a secondary position...." *Id.*

The U.S. Supreme Court held – over a century ago – that a “mortgage can have no separate existence” from its promissory note. *Carpenter v. Longan*, 83 U.S. 271, 274 (1872). MERS’ claim to own legal title to mortgages, despite the promissory notes those purported mortgages purportedly secure having been negotiated elsewhere, flies in the face of the legal maxim endorsed by the U.S. Supreme Court: *accessorium non ducit, sequitur principalem* – the accessory does not lead, but rather follows the principal. *Id.* at 276. A valid mortgage joined with a promissory note is inseparable because of the “dependent and incidental relation” that a valid mortgage has with the obligation it secures. *Id.*

“South Carolina recognizes the ‘familiar and uncontroverted proposition’ that ‘the assignment of a note secured by a [valid] mortgage carries with it an assignment of the mortgage.’” *Midfirst Bank. SSB v. C.W. Haynes & Co., Inc.*, 893 F.Supp, 1304, 1318, (D.S.C. 1004), citing *Hahn v. Smith*, 157 S.C. 157, 154 S.E. 112 (S.C. 1930); *Ballou v. Young*, 42 S.C. 170, 20 S.E. 84 (S.C. 1894). “The assignment of a [valid or invalid] mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee....” *Id.*

quoting *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).

Under S.C. Code Ann. § 36-3-601(b) discharge of a promissory note debt obligation is effective against a holder in due course only if the holder had notice of the discharge when holder in due course status was acquired. This Court held that “a fraudulent satisfaction [of a valid mortgage] will not prevent a mortgagee from foreclosing a mortgage.” *MI CO., LTD., v. Arthur F. McLean, Jr.; Trustee under Testamentary Trust contained in the Will of Sarah S. McLean*, 325 S.C. 616, 482 S.E.2d 597, 624, (Ct. App. 1997) citing *Pilkington v. McBain*, 274 S.C. 312, 262 S.E.2d 916, (S.C. 1980).

Appellants face an unanticipated and unbargained for substantial risk that a subsequent creditor could appear to enforce the 2005 Note and purported mortgage that is “lost” through an action for equitable subrogation. Because the Refi Note and purported mortgage subject of both the quiet title action and foreclosure action are the result of a voluntary refinancing with the same “Lender,” AHM, the Refi Note and any valid security associated with it would be second in priority to the 2005 Note and its purported mortgage. *Matrix Financial Services Corp., v Frazer*, --- S.E.2d --- , 2010 WL 3219472, (S.C. 2010) “[a] party must have liability for the debt other than a voluntary agreement to refinance its own earlier [valid] mortgage; otherwise, a lender can simply refinance the debt at any time to prevail over an intervening lien holder, rendering the requirement of secondary liability meaningless.”

MERS cannot discharge Appellants’ 2005 Note debt by either agreement or the laws of this state because its only interest in the 2005 Note transaction is an interest in land solely for recording purposes. (April 11, 2011 Order p. 4). See also, *Bank of New York v.*

Silverberg, --- N.Y.S.2d ---, 2011 WL 2279723 (N.Y.A.D. 2 Dept.) (“For purposes of recording . . . MERS is the mortgagee of record. However, as “nominee,” MERS's authority was limited to only those powers which were specifically conferred to it and authorized by the lender (*see* Black's Law Dictionary 1076 [8th ed 2004] [defining a nominee as “(a) person designated to act in place of another, (usually) in a very limited way”]). Hence . . . [the purported mortgage] did not specifically give MERS the right to [discharge] the underlying notes, and the [discharge] of the notes was thus beyond MERS's authority as nominee or agent of the lender[.]). *See also, Mortgage Electronic Registration Systems, Inc. v Nebraska Department of Banking and Finance*, 270 Neb. 529, 535, 536, 704 N.W.2d 784, 788 (Neb. 2005) (“... MERS does not acquire ‘any loan or extension of credit secured by a lien on real property.’ MERS does not itself extend credit or acquire rights to receive payments on mortgage loans. Rather, the lenders retain the promissory notes and servicing rights to the mortgage, while MERS acquires legal title to the mortgage for recordation purposes.”)

The September 26, 2005 purported mortgage *only* gave MERS authority to discharge the security instrument and *not* the 2005 Note. April Order p.4, *see also* Feb. Transcript p. 22;19-25. Because a joined valid mortgage can have no separate existence from its promissory note and the accessory does not lead, but rather follows the principal, discharge of a valid security instrument is of no legal effect as to discharge of the debt.

Respondent MERS never has had the right, per the terms of the purported mortgage or law, to discharge the debt as the purported mortgagee for recoding purposes only. *Id.*; *Carpenter*, 83 U.S. 271, 274, 276; *Midfirst Bank*, 893 F.Supp, 1304; *Bank of New York*, 2011 WL 2279723, *Mortgage Electronic Registration Systems, Inc.* 704 N.W.2d 784, 788.

Respondent MERS has never had an interest in the 2005 Note or the debt evidenced thereby and the Lost Mortgage Satisfaction that was recorded is of no effect to a holder in due course of the 2005 Note that acquired holder in due course status without notice of the discharge. S.C. Code Ann. § 36-3-601(b).

“[No] recent South Carolina case law addressing the effect of a fraudulent satisfaction on an innocent third party who subsequently takes an interest in the [validly] mortgaged property [exists]. However, in the 1884 case of *City Council of Charleston v. Ryan*, 22 S.C. 339, (1885), the court held, where the mortgagee endorsed his name in blank on the back of the mortgage and a satisfaction was thereafter written above his signature, *the mortgagee must bear the consequences of the act* made possible through his negligence, and an innocent subsequent purchaser would be protected.” *MI CO., LTD, supra*. [Emphasis added.] The Trial Court’s assumption that the purported MERS mortgage for the 2005 Refi Note was extinguished on record April Order p. 8, *see also*, Feb. Transcript p. 32;6-9) is very much mistaken. (“[S]ince that loan was apparently paid off . . . [t]he Junks’ motion to require MERS to post a bond relating to the 2005 Mortgage is without any basis or support.”) April Order p. 8. [Emphasis added].

Respondent MERS’ Lost Mortgage Satisfaction has no probative weight or legal significance and Appellants’ title to their property must therefore be considered the same as a wild deed. Chain of title is not a mere technicality – it is the bedrock of South Carolina property law where if you buy a property you should receive clear title to it.

The fact that no holder in due course has attempted to collect on the 2005 Note does not mean Appellants do not have damages to sustain their motion. *Id.* “[A]ctions constituting wilful [sic] invasion of a plaintiff’s legal rights will give rise to damages

sufficient to sustain an action, even though those damages are presumed[.]” *Pilkington*, 274 S.C. 312, 262 S.E.2d 916, (S.C 1980), *citing Hinson v. A. T. Sistare Construction Co.*, 236 S.C. 125, 113 S.E.2d 341, (S.C 1960) *overruled on other grounds; Cook v. Atlantic Coast Line R. Co.*, 183 S.C. 279, 190 S.E. 923, (S.C. 1937).”

The Trial Court’s denial of Appellants’ motion for MERS to post a bond for a lost instrument involves the quiet title action merits affecting substantial rights of Appellants striking a defense claim of setoff that Appellants could assert in their answer to the foreclosure action. Appellants’ appeal of the April and May Orders of the Trial Court denying the motion to post a bond for a lost instrument is therefore immediately appealable under SC Code Ann. §§ 14-3-330(1) and (2)(a) and (c).

B. THE TRIAL COURT CONSIDERED FACTS NOT JOINED IN THE PLEADINGS IN DENYING APPELLANTS’ MOTION FOR JUDGMENT ON THE PLEADINGS UNDER RULE 12(C) SCRPC AGAINST DEFENDANT MERS AND FOR DEFAULT JUDGMENT AGAINST DEFENDANTS JOHN DOES 1-5,000 AND IS IMMEDIATELY APPEALABLE UNDER SC CODE ANN. §§ 14-3-330(1) AND (2)(a).

The Trial Court’s denial of Appellants’ Rule 12(c) SCRPC motion for judgment on the pleadings and for default judgment involves the merits affecting Appellants’ substantial rights. April Order pp. 8-9, *see also* May Order, *see also*, Rule 59(e) Motion p. 17, ¶ B. Neither Respondent Bayview nor Respondent CitiMortgage had a valid recorded interest in Appellants’ property at the time the quiet title action was filed. Neither Respondent Bayview nor Respondent CitiMortgage was a party to the quiet title action. Rule 59(e) Motion p. 17, ¶ B(3). The Trial Court impermissibly considered facts not joined in the pleadings in dismissing the Rule 12(c) motion for judgment on the pleadings. *Id.*, *see also*, Feb. Transcript p. 19;2-25:p.20;1-5, *see also* May Order, *see also* Rule 59(e) Motion p. 17, ¶ B(6).

“Being in the nature of a demurrer, a motion for judgment on the pleadings raises an issue

of law only.” *Page v. North Carolina Mut. Life Ins. Co.*, 207 S.C. 277, 35 S.E.2d 716, (S.C. 1945). “If there is joined an issue of fact upon which, if supported by the evidence, a valid judgment may be based, a judgment on the pleadings is improper. The court cannot anticipate what the proof will show. *American Surety Co. v. Mills*, 194 S.C. 221, 9 S.E.2d 433, (S.C. 1940).” “A motion for Judgment on the Pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or present merely an immaterial issue.” *Rosenthal v. Unarco Industries, Inc.*, 278 S.C. 420, 297 S.E.2d 638, (S.C. 1982), citing *Wooten v. Standard Life and Casualty Insurance Company*, 239 S.C. 243 (S.C. 1961).

Appellants’ motion for judgment on the pleadings and default judgment is based on the law. There are no issues of fact that have been joined outside the pleadings of the quiet title action upon which, if supported by the evidence; a valid judgment may be based. MERS as nominee for AHM was the only recorded interest in the Junks’ property at the time the quiet title action was filed. Respondent MERS in its Answer claims it assigned the purported mortgage to Respondent Bayview eight (8) days after personal service was effected upon MERS in the quiet title action. MERS Answer p. 2 ¶ 12 (Exhibit 6). Neither Respondents Bayview or CitiMortgage ever made an appearance in the quiet title action despite the purported assignment from MERS after MERS had been served in the quiet title action.

In ¶ 17 of MERS Answer (*Id.*) Respondent MERS admits the allegations contained in ¶ 33 of the quiet title action Amended Complaint. See Quiet Title Amended Complaint p. 7, ¶ 33 (Exhibit 7). MERS admits it has no right title or interest in the Junks Refi Lien or Refi Note or property as a result of its assignment as agent to its principal Bayview. MERS Answer *supra*.

The Trial Court further erred by allowing non-parties Bayview and CitiMortgage to argue

an affirmative defense that was not pled by Respondent MERS in its Answer to the quiet title action Amended Complaint. Feb. Transcript p. 118;17-22, see also Rule 59(e) Motion p. 17, ¶ B(4-6). Appellants were prejudiced by the Trial Court's ruling that Respondents Bayview and CitiMortgage were necessary parties to the quiet title action.

Respondent MERS' failure to plead under Rule 8(c) SCRPC that Bayview and CitiMortgage were necessary parties waived that claim. "The failure to plead an affirmative defense is deemed a waiver of the right to assert it." *Whitehead v. State*, 352 S.C. 215, 220, 574 S.E.2d 200 (S.C. 2002). Respondent MERS and non-parties Bayview and CitiMortgage should not be able to argue for a potential benefit from an affirmative defense without being required to affirmatively plead it. *Madren v. Bradford*, 378 S.C. 187, 192-3, 661 S.E.2d 390 (Ct.App.2008), citing *Parrish v. Allison*, 376 S.C. 308, 656 S.E.2d 382 (Ct. App. 2007) (*Shearouse Adv. Sh. No. 43 at 58*), 376 S.C. 308, 656 S.E.2d 382 (Ct.App.2007).

Moreover, Appellants' service of process by Order of Publication under SC Code § 15-9-710(3) on John Doe Defendants 1-5,000 was final. Respondents have not alleged fraud or collusion and the Trial Court found no such fraud or collusion to set aside service in its April 11, 2011 Order. *Wachovia Bank of S.C. v. Player*, 341 S.C.424, 535 S.E. 2d 128, 130 (S.C. 2000). (When the issuing officer is satisfied by the affidavit, his decision to order service by publication is final absent fraud or collusion.) *Id. citing Yarbrough v. Collins*, 293 S.C. 290, 360 S.E.2d 300 (S.C 1987); *Ingle v. Whitlock*, 282 S.C. 391, 318 S.E.2d 367 (S.C. 1984); *Gibson v. Everett*, 41 S.C. 22, 19 S.E. 286 (S.C. 1894); *Yates v. Gridley*, 16 S.C. 496 (S.C. 1882).

Respondent MERS admitted in its Answer in the quiet title action that it had no interest whatsoever in Appellants property as a result of its purported assignment of the purported mortgage to Respondent Bayview. MERS Answer *supra*. The Trial Court erred in considering

facts outside the pleadings in deciding the Rule 12(c) SCRPC motion for judgment on the pleadings and prejudiced Appellants by allowing non-parties Bayview and CitiMortgage to argue an affirmative defense which MERS never pled. April Order pp. 8-9, *see also*, May Order.

Respondent MERS made no allegations of fraud or collusion as to the service by publication on John Doe Defendants and that service of process was final. *Id.* No party other than Respondent MERS made an appearance in the quiet title action and the time for other parties to appear has long since run. The Trial Court's denial of Appellants' Rule 12(c) SCRPC motion for judgment on the pleadings and default judgment therefore involved the merits and affected substantial rights of Appellants and is immediately appealable under SC Code Ann. §§ 14-3-330(1) and (2)(a).

C. THE TRIAL COURT'S ORDER GRANTING MERS' RULE 12(b)(6) SCRPC MOTION TO DISMISS THE QUIET TITLE ACTION WITHOUT LEAVE TO AMEND ADJOURNED *SINE DIE* RENDERING THE ORDER IMMEDIATELY APPEALABLE AS A FINAL JUDGMENT.

1. The Trial Court's granting Respondent MERS' Rule 12(b)(6) SCRPC motion to dismiss the quiet title action without leave to amend as in spite the fact Appellants request leave (Feb. Transcript p. 75;14) was a final judgment and is immediately appealable. April Order pp. 13-14; *see also*, May Order, *see also*, Feb. Transcript p. 125;23-25. Generally, a trial judge loses jurisdiction over a case finally determined when he adjourns *sine die*. *Shillito v. City of Spartanburg*, 215 S.C. 83, 54 S.E.2d 521 (S.C. 1949). "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory; but if it so completely fixes the rights of the parties that the court has nothing further to do in the action, then it is final." *Lewis v. State*, 368 S.C. 630, 631, 630 S.E.2d 464, 464 (S.C. 2006), (quoting *Adickes v. Allison & Bratton*, 21 S.C. 245, 259 (S.C. 1884)).

The Trial Court's final Orders dismiss the quiet title action on the merits in its entirety without leave to amend the quiet title complaint. April Order pp. 13-14; *see also*, May Order. The Orders require Appellants to refile all their quiet title claims in their answer to the foreclosure action *against a new party that acquired its interest in Appellants' property after the quiet title and foreclosure actions were filed* as counterclaims and third-party claims. *Id.* pp. 13-14; *Id.*. The Trial Court adjourned the proceedings in its May 20, 2011 Order without assigning a day for a further meeting or hearing on the quiet title action rendering its Order a final order that is immediately appealable. May 20 Order.

2. Even if the April 11 and May 20, 2011 Orders are not deemed final as a result of the Order stating the dismissal is without prejudice (*Id.*), its effect is one of prejudice to Appellants. The Orders are therefore immediately appealable under SC Code Ann. §§14-3-330(1), 2(a) and(c).

The Trial Court abused its discretion in dismissing Appellants original claims in the quiet title action in "the interests of judicial economy" thereby prejudicing Appellants. April Order p. 10, *see also*, May Order. The Trial Court's consolidation does not preserve Appellants' property's chain of title against which Appellants' quiet title action claims were originally filed. *Id.* p. 9, *Id.*, *see also*, Amended Complaint. The Trial Court's Orders require Appellants to refile their quiet title claims as counterclaims and third-party claims in their answer to the foreclosure action against a new party *that had no recorded interest* in Appellants' property when the quiet title action was filed *nor* when the foreclosure action was filed. *Id.*, *Id.*

The Trial Court has broad discretion in its supervision over the progression and disposition of a circuit court case in the interests of justice and judicial economy. *Capital City Ins. Co. v BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (S.C. App. 2009), see also *Williams v. Bordon's, Inc.*, 274 S.C. 275, 279, 262 S.E.2d 881, 883 (S.C. 1980) (“The authority of the court to grant continuances and to determine the order in which cases shall be heard is derived from its power to hear and decide cases. This adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants.”). [Emphasis added].

Appellants should not be required to “roll the dice” on whether their original claim, properly within the jurisdiction of the circuit court, will be preserved in the “interests of judicial economy” in a subsequently filed separate action as a defendant to a party that did not appear in the quiet title action, did not file the foreclosure action and was subsequently impermissibly made a party with standing created under Rule 17(a) SCRCF. *Id.* at, 105, see also, April Order p. 13, see also, May Order, see also, Motion for Substitution of Plaintiff and for Substitution of Counsel for Substitute Plaintiff (“Substitution Motion”) (Exhibit 8), see also, Affidavit of CitiMortgage, Inc. in Support of Motion for Substitution of Plaintiff (“1st Oakes Affidavit”) (Exhibit 9), see also, Supplemental Affidavit of Jennifer Oakes (“2nd Oakes Affidavit”) (Exhibit 10). The Substitution Motion and the 1st Oakes Affidavit and the 2nd Oakes Affidavit will be addressed in detail *infra*.

The quiet title action was filed on September 11, 2009 *before* the foreclosure action was filed on October 27, 2009. In the “interests of judicial economy,” the Trial

Court ordered the quiet title action and foreclosure action to “be consolidated in some manner.” April Order p. 10, *see also*, May Order.

The ruling, in effect, allows Respondent MERS to avoid the quiet title action claims as filed against it all together as a result of it purportedly assigning Appellants’ Refi Note and purported mortgage to Respondent Bayview on September 25, 2009 (“September 25, 2009 Assignment”) (Exhibit 11) after MERS had been served in the quiet title action but before MERS filed its Answer in the quiet title action. MERS Answer p. 2 ¶ 12, April Order p. 9-10, *see also*, May Order. Respondent Bayview then purportedly subsequently assigned its interest in Appellants’ Refi Note and purported mortgage on March 17, 2009 to Respondent CitiMortgage after Bayview filed the October 27, 2009 foreclosure action. March 17, 2010 Assignment (Exhibit 12).

Appellants claimed in the Trial Court that both the September 25 Assignment and the March 17, 2010 Assignment were fraudulent. *See*, Affidavit of Lynn Szymoniak, Esq. as Defendants’ Expert (“Szymoniak Affidavit”) (Exhibit 13), *see also*, Rule 59(e) Motion pp. 10-11. Appellants claimed in the Trial Court that both the September 25, 2009 Affidavit and the March 17, 2010 Assignment were invalid as it was not propbated as required under SC Code Ann. § 30-7-50. Defendants’ Brief in support of Their Motion to Dismiss Pursuant to SCRCP 12(b)(6) (“Defdts. 12(b)(6) Brief”), pp. 2,3,10 (Exhibit 14).

The April 11, 2011 and May 20, 2011 Orders consolidating the quiet title action and foreclosure action “in the interests of judicial economy ... in some manner” involves the merits of the quiet title action affecting a substantial right of Appellants, striking the quiet title pleading and striking Appellants’ defenses in the foreclosure action for a Rule

13(a) SCRPC motion to dismiss the action as a compulsory counterclaim to the quiet title action and a Rule 12(b)(8) motion to dismiss for the foreclosure action containing the same parties as the quiet title action.

The Trial Court's Order consolidating the quiet title action and foreclosure action involves the merits, does not protect Appellants' substantial rights and strikes Appellants' defenses in the foreclosure action which was an abuse of discretion. As a result, the April 11, 2011 and May 20, 2011 Orders involving the quiet title action are therefore immediately appealable under SC Code Ann. §§14-3-330(1), 2(a) and(c).

II. ALL OF THE TRIAL COURT'S RULINGS RELATED TO THE FORECLOSURE ACTION IN THE APRIL 11, 2011 AND MAY 20, 2011 ORDERS ARE IMMEDIATELY APPEALABLE.

D. THE TRIAL COURT'S ORDER DISMISSING APPELLANTS' RULE 13(a) SCRPC MOTION TO DISMISS THE FORECLOSURE ACTION BECAUSE IT SHOULD HAVE BEEN FILED AS A DEFENSE TO THE QUIET TITLE ACTION AND 12(b)(8) SCRPC MOTIONS TO DISMISS THE FORECLOSURE ACTION FOR SAME PARTIES AS THE QUIET TITLE ACTION IS IMMEDIATELY APPEALABLE UNDER SC CODE ANN. §§14-3-330(1), 2(a) and(c).

The Trial Court's April 11, 2011 and May 20, 2011 Orders denied Appellants' Rule 13(a) SCRPC Compulsory Counterclaims Motion and 12(b)(8) SCRPC Same Parties Motion on the basis that the quiet title action was denied because Appellants did not name Respondent Bayview and CitiMortgage as necessary parties in the quiet title action. April Order p. 10, *see also* May Order, *see also*, Feb. Transcript pp. 125;12 – 128;6. The trial Court never heard the Rule 13(a) or 12(b)(8) SCRPC motions and its decision did not consider Appellants' briefs in support of either motion. *Id.*, *Id.*, *Id.*, *see also*, Defendants' Brief in Support of Their Motion to Dismiss Pursuant to SCRPC 13(a) ("Pltfs. 13(a) Brief") (Exhibit 15), *see also* Rule 59(e) Motion p. 21 ¶ (A)(1-8). Appellants now are forever deprived of these pleadings and defenses in the foreclosure action because there is no quiet title action in which to assert the defenses of a compulsory

counterclaim or that the quiet title action involved the same parties and/ or seek a default judgment to the quiet title action.

Appellants served MERS in the quiet title action by personal service on September 17, 2009. MERS purportedly assigned the Refi Note and purported mortgage to Respondent Bayview on September 25, 2009. April Order pp. 9-10. The close-connectedness doctrine provides that a transferee does not take an instrument in good faith when the transferee is so closely connected with the transferor that the transferee may be charged with knowledge of an infirmity in the underlying transaction. *MidFirst Bank v. Haynes*, 893 F. Supp. 1304 (1994), *see also Mortgage Electronic Registration Systems, Inc. v Leonard F. Girdvanis, Jr., et al.*, 2005-CP-43-0278, Sumter County, South Carolina, Court of Common Pleas for the Thirteenth Judicial Circuit, *see also Arcanum National Bank v. Hessler*, 433 N.E.2d 204 (Ohio 1982). *See also HIMC Investment Company v. Sicliano*, 246 A.2d 502, 507 (N.J. Super. Ct. Law Div. 1968). The close-connectedness doctrine allows a court to impute knowledge to the transferee when the relationship between the transferee and the transferor is sufficiently close to warrant such an imputation. 893 F. Supp. 1304 (1994) *Supra*.

Respondents Bayview is a member of MERS. The MERS Foreclosure Manual, Section 1. states "MERS shall within two (2) business days forward to the appropriate Member or Members, in the form prescribed by and otherwise in accordance with the Procedures, all properly identified notices, payments, and other correspondence received by MERS with respect to mortgage loans registered on the MERS® System for which Mortgage Electronic Registration Systems, Inc. serves as mortgagee of record.". Further, the signing officer Robert G. Hall, for the assignor, MERS, is also an officer of plaintiff Bayview.

Per the MERS foreclosure manual, Respondents were given notice of the quiet title action by the stated MERS process. Moreover, Respondent Bayview is precluded from claiming that it took the assignment from MERS without notice of the quiet title action. The assignment came from a Bayview officer wearing a MERS hat at the time of purportedly assigning the note and mortgage. As such this Court can impute knowledge to the transferee because the relationship between the transferee and the transferor is sufficiently close to warrant such an imputation. Respondent Bayview had actual notice of the Appellants prior quiet title action at the time it filed the foreclosure action and should have asserted its claims against Appellants in the quiet title action as compulsory counterclaims.

Both the quiet title action and the foreclosure action arise from the same transaction – the November 3, 2006 refinance loan transaction. The purpose of Rule 13(a) is “to prevent multiplicity of actions and to achieve resolution in a single lawsuit of all disputes arising out of common matters.” *Beach Co. v. Twillman, LTD.*, 566 S.E. 2d 863, 865 (S.C. App. 2002) *citing First-Citizens Bank & Trust Co. v. Hucks*, 408 S.E.2d 222, 223 (1991). “[R]ules of procedure, like statutes, should be given their plain meaning.” *Id. citing Valentine v. Davis*, 460 S.E.2d 218, 220 (Ct.App.1995).

“By definition, a counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing party’s claim.” *Id. citing First-Citizens Bank & Trust Co. v. Hucks*, 305 S.C. 296, 298, 408 S.E.2d 222, 223 (1991). The test for determining if a counterclaim is compulsory is whether there is a “logical relationship” between the claim and the counterclaim. *Id. citing Mullinax v. Bates*, 317 S.C. 394, 396, 453 S.E.2d 894, 895 (1995). Whether a counterclaim is logically related to the initial claim depends upon the facts of each case. *See Hucks*, 305 S.C. at 298, 408 S.E.2d at 223 (finding a logical relationship between a

trustee regarding the administration of a trust and a legal counterclaim alleging that the trustee breached a fiduciary duty); *N.C. Fed. Sav. & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 518–19, 381 S.E.2d 903, 905 (1989) (finding a logical relationship between an action on a note brought by the lender to foreclose and the validity of a purported oral agreement modifying the note alleged by the borrower).

“If a compulsory counterclaim is not raised in the first action, a defendant is precluded from asserting the claim in a subsequent action: *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 217, 493 S.E.2d 826, 835 (1997). The South Carolina Reporter’s Note following Rule 13 states: “[c]ounterclaims arising out of the same transaction or occurrence that is the subject of the action are ‘compulsory’ under Rule 13(a) and are barred by *res judicata* or *estoppel by judgment* if not asserted.” The Reporter’s Note also notes that South Carolina’s Rule 13(a) is the same as the federal rule on counterclaims. Accordingly, we may rely on federal law to interpret our Rule 13.” *Id.* citing *Brown v. Leverette*, 291 S.C. 364, 366–67, 353 S.E.2d 697, 698–99 (1987) (utilizing federal law to interpret a state rule that tracked the language of the corresponding federal rule).

Here, Respondents’ claims in this action arise out of the transaction that is the subject matter of the Quiet Title action – the purported closing of a loan transaction dated November 3, 2006 – and does not require the presence of third parties of whom the court cannot acquire adjudication. Respondents’ claims for reformation of the mortgage and foreclosure of the mortgage are logically related to the quiet title action and therefore should have been asserted in that action as compulsory counterclaims. As such Respondents are precluded from bringing them in this separate action and the foreclosure action should be dismissed with prejudice.

If a compulsory counterclaim is not raised in the first action, a defendant is precluded from asserting the claim in a subsequent action and is barred by *res judicata* or *estoppel by judgment* if not asserted. Respondents' failure to assert its claims as compulsory counterclaims in the defendants' quiet title action precludes them from asserting those claims here, in this separate action.

As stated above, the Trial Court erred in its ruling dismissing the quiet title action. The Order denying Appellants' Rule 13(a) and 12(b)(8) motions involves the merits of the quiet title action affecting substantial rights of Appellants and strikes Appellants' compulsory counterclaim and same parties defenses in the foreclosure action. Therefore, the Trial Court's Orders denying Appellants' Rule 13(a) SCRCF and 12(b)(8) SCRCF motions are immediately appealable under SC Code Ann. §§14-3-330(1), 2(a) and(c).

E. THE TRIAL COURT'S ORDER PREPARED BY RESPONDENTS' COUNSEL DENYING APPELLANTS' RULE 12(b)(6) SCRCF MOTION OMITS APPELLANTS' CLAIM THAT BAYVIEW WAS NOT THE OWNER OF THE REFI NOTE WITH AUTHORITY TO ENFORCE THE REFI NOTE AND ERRONEOUSLY STATES THAT BAYVIEW WAS THE SERVICER WHEN IN FACT THE FORECLOSURE COMPLAINT DID NOT ALLEGE ANYWHERE THEREIN THAT BAYVIEW WAS THE SERVICER AND IS THEREFORE IMMEDIATELY APPEALABLE UNDER SC CODE ANN. §§14-3-330 (2)(a).

The Trial Court's April 11, 2011 Order was drafted by Respondents' counsel Brian P. Crotty, Esq. Feb. Transcript p. 128;10,11. The April Order at pp. 11-13 omits Appellants' claims asserted in the foreclosure action that Respondent Bayview was not the holder and owner of the Refi Note with no authority to enforce the Refi Note under SC Code Ann. § 36-3-201(a) and (b). Defdts. 12(b)(6) Brief 2, 6, 10, see also, Rule 59(e) Motion pp. 23 ¶ B(3),(4)(i-iii), see also, Feb. Transcript p. 106;14 – p. 109;4. Moreover, nowhere in the Foreclosure Complaint does Respondent Bayview claim it is the servicer of the Refi Note. In fact, the word "servicer" is not contained *even one time* in the Bayview

Foreclosure Complaint. Bayview Foreclosure Complaint (Exhibit 16).

Thus, neither the April Order nor the May Order considered Appellants' argument as pled and are based on facts that were not pled by Respondent Bayview in the Foreclosure Complaint. Bayview Foreclosure Complaint ¶ 3. The effect of omitting the Appellants' claim of lack of ownership and authority to enforce the Refi Note and consideration of facts not pled by Bayview in its complaint, as the basis to determine Respondent Bayview's standing in a Rule 12(b)(6) SCRC motion, affects a substantial right of Appellants and in effect determines the action and prevents a judgment from which an appeal might be taken. The Trial Court's denial of appellants' Rule 12(b)(6) SCRC motion is therefore immediately appealable under SC Code Ann. §§ 14-3-330 (2)(a).

If a judgment is not a final judgment an appellate court should look to the effect of an interlocutory order to determine its appealability under S.C. Code Ann. § 14-3-330. *Thornton v. South Carolina Elec. & Gas Corp.* 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011) citing *Bowden v. Powel*, 194 S.C. 482, 10 S.E.2d 8 (S.C. 1940), *Miles v. Charleston Light & Water Co.*, 87 S.C. 254, 69 S.E.2d 292 (S.C. 1910). Immediate appeals under subsection (2) have been allowed in situations where the substantial right could not be vindicated on appeal after the case. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (S.C. 2000) citing *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (S.C. 1985). "If the circuit court errs in striking out any material allegations of a good cause of action or good defense, it is impossible to remedy it in the course of the trial, because the evidence and the issues submitted to the jury cannot be extended beyond the issues made by the pleading, and on appeal from the final judgment this court could not say there was error of law in confining the evidence and charge to the pleadings." *Thornton supra*, at 479 (citing *Bowden supra*

quoting *Harbert v. Atlanta & Charlotte Air Line Ry. Co.*, 74 S.C. 13, 16, 53 S.E. 1001, 1001-02, (S.C 1906)).

A Rule 12(b)(6) SCRCF motion to dismiss is a procedural device used to test the sufficiency of a complaint. In deciding a motion to dismiss pursuant to Rule 12(b)(6) SCRCF, *the trial court should consider only the allegations set forth on the face of the plaintiff's complaint* and a 12(b)(6) motion should not be granted if “facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Stiles v. Onorato*, 318 S.C 297, 457 S.E.2d 601, 602 (S.C. 1995). (Emphasis added). The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (S.C. 1987).

A party's lack of standing as a real party in interest deprives a court of subject matter jurisdiction. *Bardoon Properties, NV v. Eidolon Corporation*, 326 S.C. 166, 485 S.E.2d 371 (S.C., 1997) citing *Richland County Recreation District v. City of Columbia* 290 S.C. 93, 348 S.E.2d 363 (1986); *Anders v. S.C. Parole and Comm. Corrections Board*, 279 S.C. 206, 305 S.E.2d 229 (1983). See e.g., *Bailey v. Bailey*, 312 S.C. 454, 441 S.E.2d 325 (1994); *Duke Power Co. v. South Carolina Public Service Comm'n*, 284 S.C. 81, 326 S.E.2d 395 (1985); *Dockside Assoc., Inc. v. Detyens, Simmons*, 285 S.C. 565, 330 S.E.2d 537 (Ct.App.1985), *overruled in pt. on other grounds*, *Queen's Grant Villas v. Daniel Int'l Corp.*, 286 S.C. 555, 335 S.E.2d 365 (to have standing, a party must have both a personal stake in the subject matter of a lawsuit and be the “real party in interest”). (Emphasis added).

There is a difference between the concepts of “standing,” “capacity to sue,” and “real party in interest.” See Wright, Miller and Kane, Federal Practice and Procedure, § 1542 at pp. 328-329 (1990). “[P]laintiff must both be the real party in interest and have standing.” *Id.* Without standing, the Court lacks subject matter jurisdiction over the parties regardless the real party in interest rule. *Id.* See also *Nix v. Mercury Motor Express, Inc.*, 270 S.C. 477, 242 S.E.2d 683 (1978) (“[a] court lacking subject matter jurisdiction, however, has no authority to act regardless . . .”).

“Standing doctrines are employed to refuse to determine the merits of a legal claim, on the ground that even though the claim may be correct the litigant advancing it is not properly situated to be entitled to its judicial determination. The focus is on the party, not the claim itself. At the same time, the focus on the party may take account of the relationship between the party and the claim being advanced—a party who might have standing to advance a claim not made may lack standing to advance a different claim that is made.” Wright Miller and Kane, *Supra* at § 3531.

“[B]ecause of separation from the merits, it is commonly said that standing must exist at the time an action is filed. Post-filing events that supply standing that did not exist on filing may be disregarded, denying standing despite a showing of sufficient present injury caused by the challenged acts and capable of judicial redress.” (Emphasis added). *Id.*

Thus the Trial Court ignored this in both dismissing the quiet title action but not dismissing the foreclosure action. The real-party-in-interest “rule is similar to, though distinct from, the requirement that the plaintiff have standing to sue, in that “whether a party has standing hinges upon the facts at the inception of litigation.” *Moss v. Spartanburg County School Dist.* No. 7 --- F.Supp.2d ---, 2011 WL 1296699 (D.S.C. 2011) quoting *Friends of the Earth, Inc. v.*

Laidlaw Envtl. Servs., 528 U.S. 167, 180, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000) (“[W]e have an obligation to assure ourselves that [the plaintiff] had Article III standing at the outset of litigation.”). “The plaintiff’s burden to demonstrate standing is congruent with the plaintiff’s burden of proof at different stages in the litigation. *Stephens v. County of Albemarle*, 524 F.3d 485, 491 (4th Cir.2008). At the summary judgment stage, therefore, the plaintiff can no longer predicate standing on general factual allegations; rather, the plaintiff must furnish, “by affidavit or other evidence, specific facts, which for purposes of the summary judgment motion will be taken to be true.” *Lujan v. Defenders of Wildlife*, 504 U.S. at 561, 112 S.Ct. 2130 (1992).

The Trial Court’s April 11, 2011 Order addresses Appellants’ claim that Bayview was not the holder of the Refi Note with authority to enforce it under SC Code Ann. § 36-3-201(a) and (b) by stating “[t]he Junks contend that Bayview lacked standing to bring the Foreclosure Action because it was not the holder of the Note. At the time the Foreclosure Action was initiated by Bayview, it was the servicer of the Junks’ loan.” April Order p. 11. Whether Bayview was the servicer or not is inapposite here, as neither the Appellants nor the Respondents made any claim whatsoever related to Bayview’s status as the servicer of the Refi Note. The April Order drafted by Respondents’ counsel Mr. Crotty, then goes on to justify why a servicer has Article 3 standing in Bankruptcy Court to lift the automatic stay as opposed to analyzing prudential standing principles that would appropriately determine the instant issue. The entire analysis all together ignores the claims pled in the Foreclosure Complaint and the claims asserted by appellants in their Rule 12(b)(6) SCRC Motion.

By creating standing on facts not asserted in the Bayview Foreclosure Complaint and simultaneously substituting CitiMortgage under a real party in interest theory *after* the action

was commenced⁴, the Trial Court's April Order and May Order in effect determines the action preventing a judgment from which an appeal might be taken. The Trial Court's impermissible consideration of facts not pled to create standing is therefore immediately appealable under SC Code Ann. 14-3-330 (2)(a). If allowed to stand at this stage in the action, substitute plaintiff CitiMortgage's fiat standing as opposed to prudential standing based on the facts as pled by Respondent Bayview in its Foreclosure Complaint, will prevent Appellants from challenging the factual allegations of the Bayview Foreclosure Complaint at the summary judgment stage. *See Stephens*, 524 F.3d 485, 491 (4th Cir.2008). The Trial Court's denial of appellants Rule 12(b)(6) SCRCF motion is therefore immediately appealable under SC Code Ann. 14-3-330 (2)(a).

F. RESPONDENTS' JOINT MOTION TO SUBSTITUTE PLAINTIFF TO CREATE STANDING WHERE NONE EXISTED ORIGINALLY THAT WAS GRANTED WAS AN ABUSE OF DISCRETION BY THE TRIAL COURT AND IS THEREFORE IMMEDIATELY APPEALABLE UNDER SC CODE ANN. §§14-3-330 (2)(a).

The Trial Court's April 11, 2011 Order granting Respondents' Bayview's and CitiMortgage's March 30, 2010 joint motion to substitute CitiMortgage for Bayview as Plaintiff under Rule 25(c) SCRCF was an abuse of discretion impermissibly creating standing where none existed originally that affects Appellants' substantial rights and in effect determines the action and prevents a judgment from which an appeal might be taken. April Order p. 12, *see also Defendants Brief in Opposition to Plaintiffs Motion to Substitute Plaintiff* (Exhibit 17). The Trial Court abused its discretion by creating standing through the Substitution Motion. ("Even if

⁴ The Trial Court ignored the fact that the motion to substitute plaintiff was brought under Rule 25(c) SCRCF stating that CitiMortgage purchased the Refi Note from Bayview on or about March 9, 2009. Transfer of interest is proper after an action has been commenced. Rule 17(a) SCRCF real party in interest theory is proper only when the interest of the real party originated prior to the commencement of the action. The Trial Court's April and May Orders are in error in that they granted substitution under an inconsistent legal doctrine and theory that was not properly before the Trial Court.

Bayview had lacked standing to bring the Foreclosure action, any issue as to standing is resolved by the substitution of CitiMortgage as the Plaintiff.”). *Id.* Therefore, the Trial Court’ granting of Respondents’ Rule 25(c) SCRCP motion to substitute plaintiff is immediately appealable under SC Code Ann. 14-3-330 (2)(a).

“Rule 25(c) is applicable where there is a transfer of interest *during* the pendency of an action, whereas Rule 17 is applicable where there is a transfer of interest *prior to* the commencement of an action.” *Bryant v. Waste Management, Inc.*, 342 S.C. 159, 536 S.E.2d 380 (S.C. Ct. App. 2000) *citing* 7C Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure*, § 1958, at 553 (2d ed.1986).

“Rule 25(c) speaks to the situation in which “an interest is transferred” during the pendency of an action. If an interest has been transferred prior to commencement of the suit, Rule 17, requiring that an action be brought in the name of the real party in interest and defining capacity to sue and be sued, is controlling. After suit is brought, Rule 25(c) becomes the relevant provision. The rule applies to ordinary transfers and assignments, as well as to corporate mergers.” *See* Wright, Miller and Kane, *Federal Practice and Procedure*, § 1958 Transfer of Interest in Action; 7C Fed.Prac. & Proc. Civ. § 1958 (3d ed.) (2010).

The Court erred in its Order on p. 13 ¶ F in ruling that “[t]his motion is based on the *assignment of the mortgage* from Bayview to CitiMortgage.” [Emphasis added]. Respondents’ Substitution Motion states it is based on the fact that *CitiMortgage purchased the Refi Note and purported mortgage from Bayview on or about March 9, 2010 and that Bayview indorsed the Refi Note and purported mortgage to CitiMortgage on or about March 9, 2010. See Substitution Motion.* The Substitution Motion is supported by the 1st Oakes Affidavit stating under oath that *CitiMortgage purchased the Refi Note on or about March 9, 2010 and that Bayview indorsed the*

Refi Note to CitiMortgage on or about March 9, 2010. Thereafter, on December 6, 2010, CitiMortgage submitted the 2nd Oakes Affidavit as a supplemental affidavit to the Joint Motion to Substitute. In the 2nd Oakes Affidavit, CitiMortgage and Jennifer Oakes stated that the grounds for the Rule 25(c) SCRCF Substitution Motion were incorrect. The 2nd Oakes Affidavit states under sworn testimony and the penalty of perjury, that, CitiMortgage has always had the Refi Note since some unknown date prior to January 22, 2007 and that AHM indorsed the Refi Note to CitiMortgage – not Bayview as previously sworn to in the 1st Oakes Affidavit.

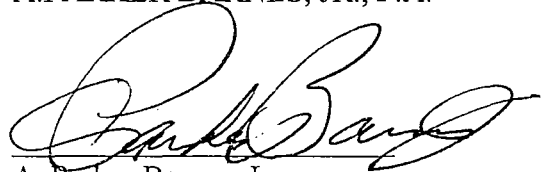
If the 2nd Oakes Affidavit is true (which Appellants explicitly deny) then the Trial Court's granting Respondent's Rule 25(c) Substitution Motion was improper and the Trial Court erred. If the 2nd Oakes Affidavit is true it therefore means that bay view never owned or held the note by law and did not have standing to bring the foreclosure action initially.

The Trial Court abused its discretion in using Rule 17(a) SCRCF to create standing thereby. A party's lack of standing as a real party in interest deprives a court of subject matter jurisdiction. *Bardoon Properties, NV*, 326 S.C. 166, 485 S.E.2d 371 (S.C., 1997). The Trial Court abused its discretion in creating standing after the action had been commenced. The Trial Court lacked jurisdiction over Appellants as a result of bay view having no standing at the time the action was commenced and abused its discretion in creating jurisdiction and standing under Rule 17(a) SCRCF without jurisdiction having been originally invoked by Bayview at the commencement of the foreclosure action. The Trial Court abuse its discretion in granting Respondents' Rule 25(c) Substitution Motion affecting a substantial right of Appellants and in effect determines the action and prevents a judgment from which an appeal might be taken. Therefore the Order is immediately appealable under SC Code Ann. § 14-3-330 (2)(a).

CONCLUSION

Based on the foregoing, the April 11, 2011 and the May 20, 2011 orders for which Appellants' seek review are immediately appealable either as a final judgment or under SC Code Ann. § 14-3-330 and its various subsections. The Respondents' Motion to Dismiss should therefore be denied by this Court.

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Counsel for Appellant Christine Junk



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

Beaufort, South Carolina
June 23, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY COURT
Court of Common Pleas

Honorable Marvin H. Dukes, III, Master in Equity

Daniel L. Junk and Christine H.
Junk,

Appellants

v.

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

Respondents

Case No. 2009-CP-07-04301

Bayview Loan Servicing, LLC,

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.

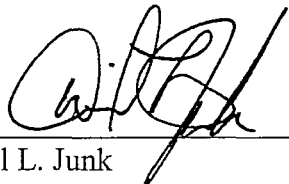
Case No. 2009-CP-07-05088

Proof Of Service

I, the undersigned, do hereby certify that I have served all counsel in this action with a copy of the pleadings(s) hereinbelow by all by hand delivering a copy to the following address(es):

Pleading(s); Opposition To Motion To Dismiss

Counsel Served: Brian P. Crotty
 Nelson Mullins Riley & Scarborough LLP
 Meridian, 17th Floor
 1320 Main Street
 Columbia, SC 29201



Daniel L. Junk

June 23, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Master-in-Equity

Marvin H. Dukes, III, Master-in-Equity

2009-CP-07-04301

Daniel L. Junk and Christine H. Junk, ... Appellants

v.

Mortgage Electronic Registration Systems, Inc., and
John Does 1-5000, ... Respondents

2009-CP-07-05088

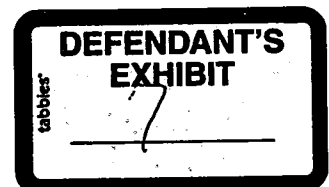
Bayview Loan Servicing, LLC, ... Respondent,

v.

Daniel Junk a/k/a Daniel L. Junk, Christine H. Junk
and Oldfield Community Association,
of whom Daniel Junk and Christina Junk are Appellants.

Motion to Strike Appellants' Untimely Return to the Motion to Dismiss

Pursuant to Rule 240(a) of the South Carolina Appellate Court Rules,
Respondents Mortgage Electronic Registration Systems, Inc., Bayview Loan Servicing,
LLC, and CitiMortgage, Inc. (collectively "Respondents") hereby move this Court for
an order striking the untimely "Opposition to Motion to Dismiss" filed by Appellants



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Daniel Junk and Christine Junk (“the Junks”). This opposition to the motion to dismiss is untimely and should be struck by this Court.

Respondents filed a Motion to Dismiss Appellant’s appeal on June 8, 2011. This motion to dismiss was served on Appellants that same day. See Clocked-In Copy of the Certificate of Service for the Motion to Dismiss dated June 8, 2011, attached hereto as Exhibit A. Rule 240(e) of the South Carolina Appellate Court Rules governs the requirements for any return to a motion filed in this Court. That rule specifically provides ten days to file and serve any return. See Rule 240(e), SCACR (“Any party opposing a motion or petition shall have **ten (10) days from the date of service** thereof to file an original and six (6) copies of his return with the clerk and serve on all parties a copy of the return”) (emphasis added). Service of the Motion to Dismiss by mail to Appellants does not enlarge the return period. See Rule 263, SCACR (“No additional time shall be allowed after service by mail . . .”).

Thus, Appellants’ return was to be filed and served no later than June 21, 2011.¹ Appellants missed this deadline. Appellants filed and served the “Opposition to Motion to Dismiss” on June 23, 2011. See Proof of Service for the Opposition to Motion to Dismiss dated June 23, 2011, attached hereto as Exhibit B. Therefore, Appellant failed to file and serve the return in compliance with Rule 240(e), SCACR. This Court should strike the return as untimely and dismiss Appellants’ appeal. See Rule 240(e), SCACR (“Failure of a party to **timely** file a return may be deemed consent by that party to the relief sought in the motion or petition”) (emphasis added).

¹ The return’s official due date was June 18, 2011, which was a Saturday. Therefore, the return dated moved to Monday, June 21, 2011.

Lastly, Respondents request that the deadline to file their reply to the return be held in abeyance pending the Court's resolution of this motion. Should the Court grant this motion to strike, then no reply will be needed. Should this Court deny this motion, then Respondent will file a timely reply.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

C. Mitchell Brown

B. Rush Smith III

Brian P. Crotty

Michael J. Anzelmo

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803.799.2000

Attorneys for Respondents Mortgage Electronic
Registration Systems, Inc., Bayview Loan Servicing,
LLC, and CitiMortgage, Inc.

Columbia, South Carolina

June 29, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Master-in-Equity

Marvin H. Dukes, III, Master-in-Equity

Case No. 2009-CP-07-04301

Daniel L. Junk and Christine H. Junk, ...

Appellants,

v.

Mortgage Electronic Registration Systems, Inc., and
John Does 1-5000, ...

Respondents.

Case No. 2009-CP-07-05088

Bayview Loan Servicing, LLC, ...

Respondent,

v.

Daniel Junk a/k/a Daniel L. Junk, Christine H. Junk and
Oldfield Community Association, of whom Daniel Junk
and Christina Junk, ...

Defendants,

Of Whom Daniel L. Junk and Christine H. Junk are,....

Appellants.

Proof of Service

RECEIVED
JUN 08 2011
SC Court of Appeals

I, the undersigned Administrative Assistant of the law offices of Nelson
Mullins Riley & Scarborough LLP, attorneys for Plaintiff, 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:

Motion to Dismiss

Counsel Served:

A. Parker Barnes, Jr., Esquire
P.O. Drawer 1729
Beaufort, SC 29901-1729

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



Jennifer B. Lee
Administrative Assistant

June 8, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY COURT
Court of Common Pleas

Honorable Marvin H. Dukes, III, Master in Equity

Daniel L. Junk and Christine H.
Junk,

Appellants

v.

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

Respondents

Case No. 2009-CP-07-04301

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Respondent,

v.

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Christine H. Junk and Oldfield Community
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Of Whom Daniel L. Junk and Christine H.
Junk are,

Appellants.

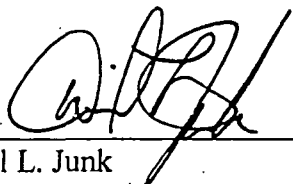
Case No. 2009-CP-07-05088

Proof Of Service

I, the undersigned, do hereby certify that I have served all counsel in this action with a copy of the pleadings(s) hereinbelow by all by hand delivering a copy to the following address(es):

Pleading(s); Opposition To Motion To Dismiss

Counsel Served: Brian P. Crotty
 Nelson Mullins Riley & Scarborough LLP
 Meridian, 17th Floor
 1320 Main Street
 Columbia, SC 29201



Daniel L. Junk

June 23, 2011

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Plaintiff, 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: **Motion to Strike Appellants' Untimely Return to the Motion to Dismiss**

Counsel Served: A. Parker Barnes, Jr., Esquire
P.O. Drawer 1729
Beaufort, SC 29901-1729

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



Jennifer B. Lee
Administrative Assistant

June 29, 2011

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

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SC Court of Appeals

Daniel L. Junk and Christine H.
Junk,

Appellants,

v.

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

Respondents,

Case No. 2009-CP-07-04301

Bayview Loan Servicing, LLC,

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Daniel Junk a/k/a Daniel L. Junk and
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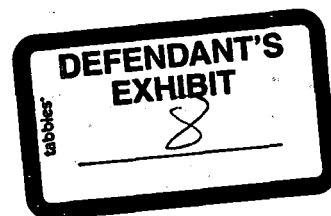
Of Whom Daniel L. Junk and Christine H.
Junk are,

Appellants.

Case No. 2009-CP-07-05088

Petition to File Return Motion Out of Time

Pursuant to Rules 240(e) and 263(b) of the South Carolina Appellate Court Rules,
Appellants Daniel L. Junk and Christine H. Junk hereby petition this Court for leave to file their
Return to the Motion to Dismiss titled ("Opposition to Motion to Dismiss") to Respondents



Mortgage Electronic Registration Systems, Inc.'s, Bayview Loan Servicing, LLC's and CitiMortgage, Inc.'s Motion to Dismiss under Rule 240(a) of the South Carolina Appellate Court Rules filed June 8, 2011, out of time. Appellants ask that this Court accept Appellants' Return Motion that was filed and served out of time on June 23, 2011 as opposed to the actual return service and filing date of June 20, 2011.¹

The grounds for this petition are excusable neglect on the part of *Pro Se* Appellant Daniel L. Junk and there is no prejudice to the Respondents in Appellants' serving and filing their Return to the Motion to Dismiss three (3) days late. Appellants' Return to the Motion to Dismiss sets out meritorious claims and defenses and Appellants respectfully submit that Respondents' June 8, 2011 Motion to Dismiss the Appeal should be decided on the merits rather than procedure. Appellants do not oppose Respondents' Motion for an Extension of Time filed on June 29, 2011.

Appellants timely filed an Amended Notice of Appeal with this Court on May 23, 2011. Respondents filed and served by mail their Motion to Dismiss Appellants appeal on June 8, 2011. *Pro Se* Appellant Daniel L. Junk, misread the South Carolina Appellate Court Rule 263(a) with regard to the inapplicability of Rule 6(e) SCRCR allowing five (5) days for service by mail. *Pro Se* Appellant Daniel L. Junk calendared the deadline for filing his Return to the Motion to Dismiss incorrectly and did not present the Return Motion to Appellant Christine H. Junk's counsel, A. Parker Barnes, Jr., for his approval and signature until June 23, 2011 – the day the Return Motion was served and filed by hand. *Pro Se* Appellant was unaware that he had misread the Rule and incorrectly calendared the date for filing and service and did not inform Mr. Barnes of his error as

¹ Respondents' Motion to Strike Appellants' Untimely Return to the Motion to Dismiss filed with this Court on June 29, 2011 mistakenly states Monday June 21, 2011 as the date Appellants' Return Motion was due; however, the correct date was Monday, June 20, 2011.

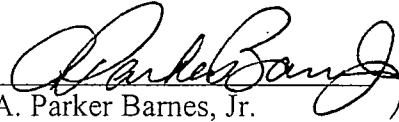
he was not aware of his error. Neither *Pro Se* Appellant Daniel L. Junk nor Mr. Barnes were aware they had not complied with the time calculation requirement of the rules until June 30, 2011, when Mr. Barnes received Respondents' Motion to Strike Appellants' Untimely Return to the Motion to Dismiss that was served by mail.

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Appellants respectfully submit that their error in calculating the time requirements for their Return Motion should not be deemed consent to the relief sought by Respondents' Motion to Dismiss. Appellants did in fact respond, and the error in calculating and calendaring the time by *Pro Se* Appellant Daniel L. Junk should be deemed excusable neglect not consent. Appellants' Return Motion sets forth meritorious claims and defenses to Respondents' Motion to Dismiss. There is no prejudice to Respondents in this Court accepting the out of time Return Motion and Appellants do not oppose Respondents' request for an extension of time to file its Reply to its motion. Appellants therefore respectfully petition this Court to accept their out of time Return Motion and ask that this Court grant Respondents Motion for an Extension of Time to file its Reply to the Motion to Dismiss.

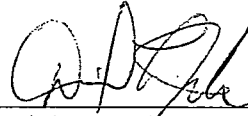
Respectfully submitted,

{Signature Page Follows}

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



A. Parker Barnes, Jr.
Post Office Drawer 1729
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(843) 522-2600
Counsel for Appellant Christine Junk



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

Beaufort, South Carolina
July 1, 2011

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

Daniel L. Junk and Christine H.
Junk,

Appellants,

v.

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

Respondents,

Case No. 2009-CP-07-04301

Bayview Loan Servicing, LLC,

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.

Case No. 2009-CP-07-05088

Affidavit of *Pre Se* Appellant Daniel L. Junk

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

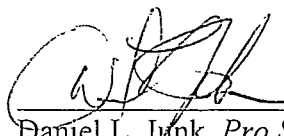
I, Daniel L. Junk, am the *Pro Se* Appellant in the above captioned appeal and submit this affidavit in support of Appellants' Petition to File Out of Time. Respondents' filed their Motion to Dismiss the Appeal on June 8, 2011 and served it upon me by mail on June 8, 2011. I received Respondents' service by mail on Saturday, June 11, 2011.

Upon receipt of Respondents' Motion to Dismiss, I mistakenly read Rule 263(a) of the South Carolina Appellate Court Rules in calculating my time to respond to the Motion to Dismiss and did not take into account the inapplicability of Rule 6(e) SCRCR allowing five (5) days for service by mail when I calendared my time to respond. I drafted my Return to the Motion to Dismiss and presented it to A. Parker Barnes, Jr., counsel for Appellant Christine Junk, for his review, approval and signature on June 23, 2011, the day I had mistakenly calendared the response date. I personally served the Return to the Motion to Dismiss the Appeal upon Respondents' counsel by hand delivering a copy to Mr. Guy Emory in the processing office at Nelson Mullins Riley & Scarborough at their Columbia offices on June 23, 2011 and then filed the Return to the Motion to Dismiss the Appeal by hand with this Court on June 23, 2011. Neither I nor Mr. Barnes were aware of my mistake until Mr. Barnes received Respondents' Motion to Strike Appellants' Untimely Return to the Motion to Dismiss by mail on June 30, 2011.

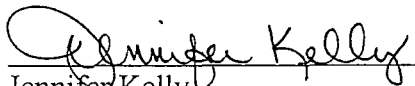
My mistake in calculating the time to respond is not consent to the relief requested in Respondents' Motion to Dismiss the Appeal. I always intended to contest Respondents' request for relief in its Motion to Dismiss the Appeal and have set forth meritorious claims and defenses to

Respondents motion in my Opposition to Motion to Dismiss that was mistakenly filed and served out of time on June, 23, 2011. I do not oppose Respondents' Motion for an Extension of Time to file its Reply to the Motion to Dismiss the Appeal.

I respectfully ask that my error in miscalculating the time to respond be deemed excusable neglect as opposed to consent to the relief requested in Respondents' Motion to Dismiss the Appeal. Respondents' have asked for an extension of time to file its Reply to its motion. No prejudice to either party will result if this Court accepts Appellants' Petition to File out of Time and grants Respondents' Motion for an Extension of Time. I respectfully ask this Court to decide Respondents' Motion to Dismiss the Appeal on the merits rather than procedure and to accept Appellants' Return to the Motion to Dismiss that was filed out of time. Affiant sayeth further not.


Daniel L. Junk, *Pro Se* Appellant

SWORN to before me this 1st day of July 2011


Jennifer Kelly
Notary Public for the State of South Carolina

My Commission Expires: 02-01-2020

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

Daniel L. Junk and Christine H.
Junk,

Appellants,

v.

Mortgage Electronic Registration
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5,000,

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Bayview Loan Servicing, LLC,

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Of Whom Daniel L. Junk and Christine H.
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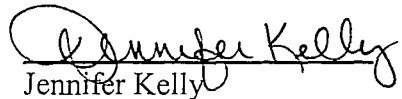
Case No. 2009-CP-07-05088

Proof of Service

I certify that I have served the Petition to File Out of Time on Respondents Mortgage Electronic Registration Systems, Inc, Bayview Loan Servicing, LLC and CitiMortgage, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on July 1, 2011, addressed to his attorney of record,

Brian P. Crotty, Esq., Nelson Mullins Riley & Scarborough, 1320 Main Street, 17th Floor, Columbia, SC
29201.

July 1, 2011

A handwritten signature in cursive script, reading "Jennifer Kelly", written over a horizontal line.

Jennifer Kelly

Paralegal

A.P. Barnes, Jr., P.A.

P.O. Drawer 1729

Beaufort, South Carolina 29901

(843) 522-2600

Paralegal for Appellant Christine H. Junk

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Master-in-Equity

Marvin H. Dukes, III, Master-in-Equity

2009-CP-07-04301

Daniel L. Junk and Christine H. Junk, ... Appellants

v.

Mortgage Electronic Registration Systems, Inc., and
John Does 1-5000, ... Respondents

2009-CP-07-05088

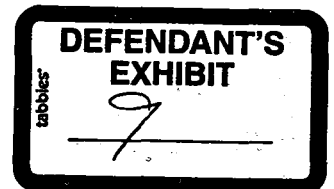
Bayview Loan Servicing, LLC, ... Respondent,

v.

Daniel Junk a/k/a Daniel L. Junk, Christine H. Junk
and Oldfield Community Association,
of whom Daniel Junk and Christina Junk are Appellants.

**Reply to Appellants' Return to Motion to Strike
Appellants' Untimely Return to the Motion to Dismiss**

Pursuant to Rule 240(f) of the South Carolina Appellate Court Rules,
Respondents Mortgage Electronic Registration Systems, Inc., Bayview Loan Servicing,
LLC, and CitiMortgage, Inc. (collectively "Respondents") hereby file this Reply to



Appellants' Return to the Motion to Strike.¹ For the reasons set forth below, this Court should strike the Appellants' Return to the Motion to Dismiss as untimely and dismiss Appellants' appeal.

In their return, Appellants claim the "excusable neglect on the part of *Pro Se* Appellant Daniel L. Junk" allows this Court to ignore the fact that the return was untimely filed.² See Appellant's Return to Motion to Strike captioned "Petition to File Return to Motion Out of Time" at p. 2. The *sole basis* for this alleged "excusable neglect" is the fact that Daniel Junk "misread the South Carolina Appellate Court Rule 263(a) with regard to the inapplicability of Rule 6(e) SCRCF [sic]" Id. Such a contention is without merit.

The obligation to file a timely return is set forth clearly and without complication in Rules 240 and 263, SCACR. Rule 263, SCACR, states plainly that "Rule 6(e), SCRCF, is not applicable to these rules, and no additional time shall be allowed by reason of service by mail or upon a statutory agent." Thus, it is not excusable neglect to miss the deadline to file a return based on Appellants' argument. "Inadvertence, neglect, misunderstanding, ignorance of the rule or its burden, or half hearted attempts at service have generally been waived as insufficient to show good cause." Vincent v. Reynolds Mem'l Hosp., Inc., 141 F.R.D. 436, 437 (N.D. W. Va.

¹ Appellants styled their filing as a "Petition to File Return to Motion Out of Time." Respondents construe this filing as a return to Respondents' Motion to Strike Appellants' Untimely Return to Respondents' Motion to Dismiss. The "Petition to File Return to Motion Out of Time" was filed without the filing fee for a motion as required by Rule 240, SCACR. Additionally, the substance of this filing directly responded to Respondents' Motion to Strike. Thus, Appellants' "Petition to File Return to Motion Out of Time" is actually a return to Respondents' Motion to Strike under Rule 240(e), SCACR, and should be treated as such by this Court.

² Appellants do not contend the return was timely filed.

1992); Moncrief v. Stone, 961 F.2d 595 (6th Cir. 1992) (“Generally, a party cannot show either good cause or excusable neglect by claims of simple inadvertence or mistake of counsel, or ignorance of the rules.”)

Daniel Junk had an affirmative duty to comply with the mandates of the Appellate Court Rules, and his status as a *pro se* appellant does not relieve him from this duty. Both this Court and the Supreme Court have consistently maintained that proceeding *pro se* does not relieve a party of complying with the laws and procedures of this State. See, e.g., State v. Burton, 356 S.C. 259, 265 n. 5, 589 S.E.2d 6, 9 n. 5 (2003) (“A *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law”); Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001) (“[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney”) (internal citation omitted).

Additionally, Mr. Junk is not an unsophisticated litigant lacking experience in the law or judicial process. To the contrary, Mr. Junk has represented himself to this Court as holding a Juris Doctor Degree.³ Therefore, Appellant has sufficient experience and knowledge to understand the requirements of Rule 263, SCACR.

Finally, Mr. Junk is but one of two appellants. The other Appellant, Christine Junk is represented by A. Parker Barnes, Jr., Esq. Mr. Barnes, who has been listed as counsel of record in nineteen (19) published opinions before this Court and the Supreme

³ The signature blocks on the Notice of Appeal, Appellants’ untimely return to the Motion to Dismiss (titled “Opposition to Motion to Dismiss”), and the “Petition to File Return to Motion Out of Time” all state “Daniel L. Junk, J.D.”

Court, is not an appellate novice unfamiliar with Court practices and rules. Appellants provide no explanation as to why Mr. Barnes failed to file a timely return other than stating that “*Pro Se* Appellant Daniel L. Junk . . . did not present the Return Motion to Appellant Christine H. Junk’s counsel, A. Parker Barnes, Jr., for his approval and signature until June 23, 2011.” See Appellant’s “Petition to File Return to Motion Out of Time” at p. 2. The apparent delegation of responsibility for the return to Mr. Junk does not excuse the failure to file a timely return.

As stated in Respondents’ Motion to Dismiss the Appeal, the orders for which Appellants seek judicial review are not immediately appealable, and this appeal should be dismissed. Having failed to file a timely return to the Motion to Dismiss, and having failed a sufficient justification for their failure to do so, Appellants should be deemed to have consented to the dismissal of this appeal, and this matter can then proceed before the Circuit Court.

Signature Page Attached

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
C. Mitchell Brown
B. Rush Smith III
Brian P. Crotty
Michael J. Anzelmo
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, South Carolina 29201
803.799.2000

Attorneys for Respondents Mortgage Electronic
Registration Systems, Inc., Bayview Loan Servicing,
LLC, and CitiMorgage, Inc.

Columbia, South Carolina

July 8, 2011

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Plaintiff, 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):

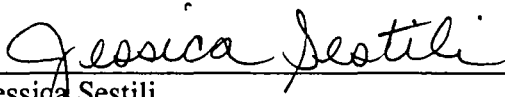
Pleadings:

Reply to Appellants' Return to Motion to Strike
Appellants' Untimely Return to the Motion to Dismiss

Counsel Served:

A. Parker Barnes, Jr., Esquire
P.O. Drawer 1729
Beaufort, SC 29901-1729

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



Jessica Sestili
Administrative Assistant

July 8, 2011

The South Carolina Court of Appeals

Daniel L. Junk and Christine H. Junk, Appellants,

v.

Mortgage Electronic Registration
Systems, Inc., and John Does 1-5000, Respondents,

and

Bayview Loan Servicing, LLC, Respondent,

v.

Daniel Junk, a/k/a Daniel L. Junk,
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Of Whom Daniel L. Junk and Christina
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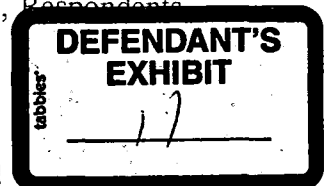
The Honorable Marvin Dukes, III
Beaufort County

Trial Court Case Nos. 2009-CP-07-04301 and 2009-CP-07-05088

ORDER

Appellants filed Notices of Appeal from the master's orders (1) dismissing their quiet title action and denying their motion to require Mortgage Electronic Registration Systems, Inc., (MERS) to file an indemnity bond, and (2) permitting CitiMortgage, Inc., to substitute for Bayview Loan Servicing, LLC, (Bayview) in Bayview's foreclosure action and declining to dismiss the foreclosure action. This court consolidated the appeals. Respondents filed a motion to dismiss the consolidated appeal. After Appellants filed a return five days late, Respondents

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filed a motion to strike Appellant's return as untimely and another motion for an extension of time to file their reply. Appellants then filed a motion for leave to file their return out of time.

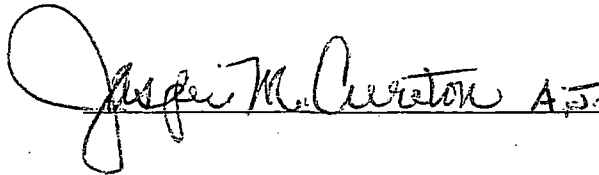
After careful consideration, we grant Appellants' petition to file their return to the motion to dismiss out of time, and we deny Respondents' motion for an extension of time to file a reply and motion to strike Appellants' return as untimely. Finally, we grant Respondents' initial motion and dismiss the consolidated appeal because neither order challenged herein is immediately appealable. See S.C. Code Ann. § 14-3-330 (1976 & Supp. 2010) (permitting appeal from an order that affects a party's substantial right and "(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, . . . or (c) strikes out an answer or any part thereof or any pleading in any action").

As to the master's order denying Appellants' motion to require MERS to file an indemnity bond and dismissing Appellants' quiet title action: Int'l Fidelity Ins. Co. v. China Constr. America (SC) Inc., 375 S.C. 175, 181, 650 S.E.2d 677, 680 (Ct. App. 2007) ("[A] dismissal of a claim without prejudice is not an adjudication of the merits of the controversy and has no preclusive effect as a matter of law." (citing McEachern v. Black, 329 S.C. 642, 651, 496 S.E.2d 659, 663 (1998))); Collins v. Sigmon, 299 S.C. 464, 467, 385 S.E.2d 835, 837 (1989) (recognizing when a court dismisses a case without prejudice, "the plaintiff can reassert the same cause(s) of action" in another case) (internal quotation marks omitted).

As to the master's order permitting CitiMortgage, Inc., to substitute for Bayview in the foreclosure action and declining to dismiss the foreclosure action: McLendon v. S.C. Dep't of Highways & Pub. Transp., 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994) (interpreting § 14-3-330 and holding that, like the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be

raised again at a later stage of the proceedings and, therefore, is not directly appealable); Neeltec Enters., Inc. v. Long, 391 S.C. 177, 179, 705 S.E.2d 57, 58 (Ct. App. 2011) (noting an order substituting parties is not immediately appealable when it is not final and does not "fit within a statutory exception permitting an appeal from an interlocutory order").

AND IT IS SO ORDERED.

A handwritten signature in black ink, reading "Joseph M. Curston A.J.", written over a horizontal line.

Columbia, South Carolina

cc: A. Parker Barnes, Jr., Esquire
Daniel L. Junk, J.D.
Brian P. Crotty, Esquire
Michael J. Anzelmo, Esquire

A rectangular stamp with the word "FILED" in bold, capital letters. Below it, the date "9/13/11" is handwritten in black ink, followed by a signature.

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

RECEIVED
SEP 28 2011
SC Court of Appeals

Daniel L. Junk and Christine H.
Junk,

Appellants,

v.

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

Respondents,

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Bayview Loan Servicing, LLC,

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v.

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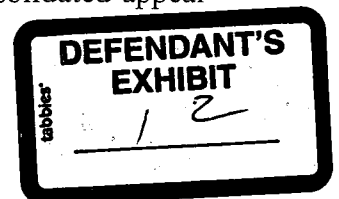
Of Whom Daniel L. Junk and Christine H.
Junk are,

Appellants.

Case No. 2009-CP-07-05088

Petition for Rehearing

Pursuant to Rule 221(c) of the South Carolina Appellate Court Rules,
Appellants submit this petition for rehearing of this Court's Order dated September 13, 2011
granting Respondents' motion to dismiss the consolidated appeal. The consolidated appeal



covered orders on a total of six motions between two separate cases, with three motions pertaining to the originally filed quiet title action and three motions pertaining to the subsequently filed foreclosure action. Specifically, in the quiet title action, the appealed orders addressed:

- 1) Appellants' Motion for MERS to Post an Indemnity Bond for a Lost Instrument;
- 2) Appellants' Rule 12(c) SCRCF Motion for Judgment on the Pleadings and Default Judgment; and
- 3) MERS's Rule 12(b)(6) SCRCF Motion to Dismiss the Quiet Title Action.

In the foreclosure action, the appealed orders addressed:

- 4) Appellants' Rule 12(b)(6) SCRCF Motion to Dismiss Bayview's Foreclosure Action;
- 5) Appellants' Motion to Dismiss under Rules 12(b)(8) SCRCF as Same Parties to the Quiet Title Action and 13(a) SCRCF for Compulsory Counterclaims to the Quiet Title Action; and
- 6) Bayview's and CitiMortgage's Joint Rule 25(c) SCRCF Motion to Substitute CitiMortgage as Plaintiff and to Substitute Counsel for Substitute Plaintiff.

Appellants respectfully submit that this Court's September 13, 2011 Order granting Respondents' initial motion to dismiss the consolidated appeal overlooked Appellants Notice of Appeal of the lower court's denial of:

- A. Appellants' Rule 12(c) SCRCF Motion for Judgment on the Pleadings and Default Judgment in the Quiet Title Action; and,
- B. Appellants' Motion to Dismiss the Foreclosure Action under Rules 12(b)(8) SCRCF as Same Parties to the Quiet Title Action and 13(a) SCRCF for Compulsory Counterclaims to the Quiet Title Action in.

Further, Appellants respectfully submit that that this Court misapprehended the following points in issuing its Order granting dismissal of the consolidated appeal:

- C. The trial court's dismissal of Appellants' Quiet Title Action in effect determines the action as to the validity of the recorded MERS lien and prevents a judgment

one way or the other related to Appellants' claims against the MERS lien from which an appeal might be taken;

- D. The trial court's dismissal of Appellants' Quiet Title Action strikes out Appellants' defenses in the Foreclosure Action under Rule 13(a) SCRCP to dismiss the Foreclosure Action as a compulsory counterclaim that was required to be asserted by law in the Quiet Title Action; and,
- E. The trial court's dismissal of Appellants' Quiet Title Action in effect strikes out Appellants' defenses under Rule 12(b)(8) SCRCP to dismiss the Foreclosure Action because it contains the same parties as the previously filed Quiet Title Action.

The Appellants' original claim challenging the validity of MERS' recorded lien on their property cannot be appealed as a result of the trial court's dismissal of the Quiet Title Action under Rule 12(b)(6) and that ruling prevents a judgment from which an appeal can be taken. In effect, the dismissal of the Quiet Title Action under Rule 12(b)(6) SCRCP prevents Appellants' from re-asserting their original claim challenging the validity of the original recorded MERS lien on their property. MERS is in effect dismissed from having to defend its originally recorded lien on Appellants' property claiming it subsequently assigned its interest in Appellants' property after it was sued and that it no longer is a proper party to a quiet title action as a result of its claimed assignment of its original interest.

Appellants respectfully submit that the issues overlooked and misapprehended by this Court in its September 13, 2011 Order warrant their consolidated appeal heard on the merits under SC Code Ann. §§ 14-3-330(1) and (2)(a) and (c) as set forth more fully below.

- I. THE SEPTEMBER 13 ORDER OVERLOOKED THE LOWER COURT'S DENIAL OF THE RULE 12(c) SCRCP MOTION FOR JUDGMENT ON THE PLEADINGS IN THE QUIET TITLE ACTION.

The Trial Court's denial of Appellants' Rule 12(c) SCRCP motion for judgment on the pleadings and for default judgment involves the merits affecting Appellants' substantial rights.

April Order pp. 8-9, *see also* May Order, *see also*, Rule 59(e) Motion p. 17, ¶ B. Neither

Respondent Bayview nor Respondent CitiMortgage had a valid recorded interest in Appellants' property at the time the quiet title action was filed. Neither Respondent Bayview nor Respondent CitiMortgage was a party to the quiet title action. Rule 59(e) Motion p. 17, ¶ B(3). The Trial Court impermissibly considered facts not joined in the pleadings in dismissing the Rule 12(c) motion for judgment on the pleadings. *Id.*, *see also*, Feb. Transcript p. 19;2-25:p.20;1-5, *see also* May Order, *see also* Rule 59(e) Motion p. 17, ¶ B(6).

"Being in the nature of a demurrer, a motion for judgment on the pleadings raises an issue of law only." *Page v. North Carolina Mut. Life Ins. Co.*, 207 S.C. 277, 35 S.E.2d 716, (S.C. 1945). "If there is joined an issue of fact upon which, if supported by the evidence, a valid judgment may be based, a judgment on the pleadings is improper. The court cannot anticipate what the proof will show. *American Surety Co. v. Mills*, 194 S.C. 221, 9 S.E.2d 433, (S.C. 1940)." "A motion for Judgment on the Pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or present merely an immaterial issue." *Rosenthal v. Unarco Industries, Inc.*, 278 S.C. 420, 297 S.E.2d 638, (S.C. 1982), *citing* *Wooten v. Standard Life and Casualty Insurance Company*, 239 S.C. 243 (S.C. 1961).

Appellants' motion for judgment on the pleadings and default judgment is based on the law. There are no issues of fact that have been joined outside the pleadings of the quiet title action upon which, if supported by the evidence; a valid judgment may be based. MERS as nominee for AHM was the only recorded interest in the Junks' property at the time the quiet title action was filed. Respondent MERS in its Answer claims it assigned the purported mortgage to Respondent Bayview eight (8) days after personal service was effected upon MERS in the quiet title action. MERS Answer p. 2 ¶ 12 (Exhibit 6). Neither Respondents Bayview nor

CitiMortgage ever made an appearance in the quiet title action despite the purported assignment from MERS after MERS had been served in the quiet title action.

In ¶ 17 of MERS Answer (*Id.*) Respondent MERS admits the allegations contained in ¶ 33 of the quiet title action Amended Complaint. See Quiet Title Amended Complaint p. 7, ¶ 33 (Exhibit 7). MERS admits it has no right title or interest in the Junks Refi Lien or Refi Note or property as a result of its assignment as agent to its principal Bayview. MERS Answer *supra*.

The Trial Court further erred by allowing non-parties Bayview and CitiMortgage to argue an affirmative defense that was not pled by Respondent MERS in its Answer to the quiet title action Amended Complaint. Feb. Transcript p. 118;17-22, see also Rule 59(e) Motion p. 17, ¶ B(4-6). Appellants were prejudiced by the Trial Court's ruling that Respondents Bayview and CitiMortgage were necessary parties to the quiet title action.

Respondent MERS' failure to plead under Rule 8(c) SCRPC that Bayview and CitiMortgage were necessary parties waived that claim. "The failure to plead an affirmative defense is deemed a waiver of the right to assert it." *Whitehead v. State*, 352 S.C. 215, 220, 574 S.E.2d 200 (S.C. 2002). Respondent MERS and non-parties Bayview and CitiMortgage should not be able to argue for a potential benefit from an affirmative defense without being required to affirmatively plead it. *Madren v. Bradford*, 378 S.C. 187, 192-3, 661 S.E.2d 390 (Ct.App.2008), citing *Parrish v. Allison*, 376 S.C. 308, 656 S.E.2d 382 (Ct. App. 2007) (*Shearouse Adv. Sh. No. 43 at 58*), 376 S.C. 308, 656 S.E.2d 382 (Ct.App.2007).

Moreover, Appellants' service of process by Order of Publication under SC Code § 15-9-710(3) on John Doe Defendants 1-5,000 was final. Respondents have not alleged fraud or collusion and the Trial Court found no such fraud or collusion to set aside service in its April 11, 2011 Order. *Wachovia Bank of S.C. v. Player*, 341 S.C.424, 535 S.E. 2d 128, 130 (S.C. 2000).

(When the issuing officer is satisfied by the affidavit, his decision to order service by publication is final absent fraud or collusion.) *Id. citing Yarbrough v. Collins*, 293 S.C. 290, 360 S.E.2d 300 (S.C. 1987); *Ingle v. Whitlock*, 282 S.C. 391, 318 S.E.2d 367 (S.C. 1984); *Gibson v. Everett*, 41 S.C. 22, 19 S.E. 286 (S.C. 1894); *Yates v. Gridley*, 16 S.C. 496 (S.C. 1882).

Respondent MERS admitted in its Answer in the quiet title action that it had no interest whatsoever in Appellants property as a result of its purported assignment of the purported mortgage to Respondent Bayview. MERS Answer supra. The Trial Court erred in considering facts outside the pleadings in deciding the Rule 12(c) SCRPC motion for judgment on the pleadings and prejudiced Appellants by allowing non-parties Bayview and CitiMortgage to argue an affirmative defense which MERS never pled. April Order pp. 8-9, see also, May Order.

Respondent MERS made no allegations of fraud or collusion as to the service by publication on John Doe Defendants and that service of process was final. *Id.* No party other than Respondent MERS made an appearance in the quiet title action and the time for other parties to appear has long since run. The Trial Court's denial of Appellants' Rule 12(c) SCRPC motion for judgment on the pleadings and default judgment therefore involved the merits and affected substantial rights of Appellants and is immediately appealable under SC Code Ann. §§ 14-3-330(1) and (2)(a) and (c).

- II. THE SEPTEMBER 13 ORDER OVERLOOKED THE LOWER COURT'S REFUSAL TO HEAR THE RULE 13(a) SCRPC MOTION FOR DISMISSAL OF THE FORECLOSURE ACTION CLAIMING THE FORECLOSURE CLAIM SHOULD HAVE BEEN BROUGHT AS A COMPULSORY COUNTERCLAIM TO QUIET TITLE ACTION AND RULE 12(b)(8) SCRPC MOTION FOR DISMISSAL OF THE FORECLOSURE ACTION CLAIMING THE FORECLOSURE ACTION CONTAINS THE SAME PARTIES AS THE QUIET TITLE ACTION.

The Trial Court's April 11, 2011 and May 20, 2011 Orders denied Appellants' Rule 13(a) SCRPC Compulsory Counterclaims Motion and 12(b)(8) SCRPC Same Parties Motion. The trial court never heard either motion. The trial court's order states that the foreclosure claimants were

necessary parties to the Quiet Title Action – yet – their claims for foreclosure on Appellants’ property are not compulsory counterclaims to Appellants’ quiet title action.

The trial Court never heard the Rule 13(a) or 12(b)(8) SCRCF motions and its decision did not consider Appellants’ briefs in support of either motion. *Id.*, *Id.*, *Id.*, *see also*, Defendants’ Brief in Support of Their Motion to Dismiss Pursuant to SCRCF 13(a) (“Pltfs. 13(a) Brief”) (Exhibit 15), *see also* Rule 59(e) Motion p. 21 ¶ (A)(1-8). Appellants now are forever deprived of these pleadings and defenses in the foreclosure action because the original party of the Quiet Title Action, MERS, purportedly assigned its interest in Appellants’ property after the Quiet Title Action had been commenced. As a result, in the Foreclosure Action, Appellants can never assert the defenses of a compulsory counterclaim or that the quiet title action involved the same parties and/ or seek a default judgment to the quiet title action.

Appellants served MERS in the quiet title action by personal service on September 17, 2009. MERS purportedly assigned the Refi Note and purported mortgage to Respondent Bayview on September 25, 2009. April Order pp. 9-10. The close-connectedness doctrine provides that a transferee does not take an instrument in good faith when the transferee is so closely connected with the transferor that the transferee may be charged with knowledge of an infirmity in the underlying transaction. *MidFirst Bank v. Haynes*, 893 F. Supp. 1304 (1994), *see also* *Mortgage Electronic Registration Systems, Inc. v. Leonard F. Girdvanis, Jr., et al.*, 2005-CP-43-0278, Sumter County, South Carolina, Court of Common Pleas for the Thirteenth Judicial Circuit, *see also* *Arcanum National Bank v. Hessler*, 433 N.E.2d 204 (Ohio 1982). *See also* *HIMC Investment Company v. Siciliano*, 246 A.2d 502, 507 (N.J. Super. Ct. Law Div. 1968). The close-connectedness doctrine allows a court to impute knowledge to the transferee when the

relationship between the transferee and the transferor is sufficiently close to warrant such an imputation. 893 F. Supp. 1304 (1994) *Supra*.

Respondents Bayview is a member of MERS. The MERS Foreclosure Manual, Section 1. states “MERS shall within two (2) business days forward to the appropriate Member or Members, in the form prescribed by and otherwise in accordance with the Procedures, all properly identified notices, payments, and other correspondence received by MERS with respect to mortgage loans registered on the MERS® System for which Mortgage Electronic Registration Systems, Inc. serves as mortgagee of record.”. Further, the signing officer Robert G. Hall, for the assignor, MERS, is also an officer of Plaintiff Bayview.

Per the MERS foreclosure manual, Respondents were given notice of the quiet title action by the stated MERS process. Moreover, Respondent Bayview is precluded from claiming that it took the assignment from MERS without notice of the quiet title action. The assignment came from a Bayview officer wearing a MERS hat at the time of purportedly assigning the note and mortgage. As such this Court can impute knowledge to the transferee because the relationship between the transferee and the transferor is sufficiently close to warrant such an imputation. Respondent Bayview had actual notice of the Appellants prior quiet title action at the time it filed the foreclosure action and should have asserted its claims against Appellants in the quiet title action as compulsory counterclaims.

Both the quiet title action and the foreclosure action arise from the same transaction – the November 3, 2006 refinance loan transaction. The purpose of Rule 13(a) is “to prevent multiplicity of actions and to achieve resolution in a single lawsuit of all disputes arising out of common matters.” *Beach Co. v. Twillman, LTD.*, 566 S.E. 2d 863, 865 (S.C. App. 2002) *citing First-Citizens Bank & Trust Co. v. Hucks*, 408 S.E.2d 222, 223 (1991). “[R]ules of procedure,

like statutes, should be given their plain meaning.” *Id. citing Valentine v. Davis*, 460 S.E.2d 218, 220 (Ct.App.1995).

“By definition, a counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing party’s claim.” *Id. citing First–Citizens Bank & Trust Co. v. Hucks*, 305 S.C. 296, 298, 408 S.E.2d 222, 223 (1991). The test for determining if a counterclaim is compulsory is whether there is a “logical relationship” between the claim and the counterclaim. *Id. citing Mullinax v. Bates*, 317 S.C. 394, 396, 453 S.E.2d 894, 895 (1995). Whether a counterclaim is logically related to the initial claim depends upon the facts of each case. *See Hucks*, 305 S.C. at 298, 408 S.E.2d at 223 (finding a logical relationship between a trustee regarding the administration of a trust and a legal counterclaim alleging that the trustee breached a fiduciary duty); *N.C. Fed. Sav. & Loan Ass’n v. DAV Corp.*, 298 S.C. 514, 518–19, 381 S.E.2d 903, 905 (1989) (finding a logical relationship between an action on a note brought by the lender to foreclose and the validity of a purported oral agreement modifying the note alleged by the borrower).

“If a compulsory counterclaim is not raised in the first action, a defendant is precluded from asserting the claim in a subsequent action. *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 217, 493 S.E.2d 826, 835 (1997). The South Carolina Reporter’s Note following Rule 13 states: “[c]ounterclaims arising out of the same transaction or occurrence that is the subject of the action are ‘compulsory’ under Rule 13(a) and are barred by *res judicata* or *estoppel by judgment* if not asserted.” The Reporter’s Note also notes that South Carolina’s Rule 13(a) is the same as the federal rule on counterclaims. Accordingly, we may rely on federal law to interpret our Rule 13.” *Id. citing Brown v. Leverette*, 291 S.C. 364, 366–67, 353 S.E.2d 697, 698–99

(1987) (utilizing federal law to interpret a state rule that tracked the language of the corresponding federal rule).

Here, Respondents' claims in this action arise out of the transaction that is the subject matter of the Quiet Title action – the purported closing of a loan transaction dated November 3, 2006 – and does not require the presence of third parties of whom the court cannot acquire adjudication. Respondents' claims for reformation of the mortgage and foreclosure of the mortgage are logically related to the quiet title action and therefore should have been asserted in that action as compulsory counterclaims. As such Respondents are precluded from bringing them in this separate action and the foreclosure action should be dismissed with prejudice.

If a compulsory counterclaim is not raised in the first action, a defendant is precluded from asserting the claim in a subsequent action and is barred by *res judicata* or *estoppel by judgment* if not asserted. Respondents' failure to assert its claims as compulsory counterclaims in the defendants' quiet title action precludes them from asserting those claims here, in this separate action.

As stated above, the Trial Court erred in its ruling dismissing the quiet title action. The Order denying Appellants' Rule 13(a) and 12(b)(8) motions involves the merits of the quiet title action affecting substantial rights of Appellants and strikes Appellants' compulsory counterclaim and same parties defenses in the foreclosure action. Therefore, the Trial Court's Orders denying Appellants' Rule 13(a) SCRCF and 12(b)(8) SCRCF motions are immediately appealable under SC Code Ann. §§14-3-330(1), 2(a) and(c).

III. THE *EFFECT* OF LOWER COURT'S DISMISSAL OF THE QUIET TITLE ACTION UNDER RULE 12(b)(6) SCRCF PREVENTS A JUDGMENT FROM WHICH AN APPEAL MIGHT BE TAKEN PREVENTING APPELLANTS FROM EVER BEING ABLE TO CHALLENGE THE VALIDITY OF MERS' PURPORTED ORIGINAL LIEN ON THEIR PROPERTY.

The Trial Court abused its discretion in dismissing Appellants original claims against

MERS in the quiet title action in “the interests of judicial economy” thereby preventing a judgment against MERS from which an appeal might be taken. April Order p. 10, see also, May Order. The Trial Court’s consolidation does not preserve Appellants’ property’s chain of title against which Appellants’ quiet title action claims were originally filed. Id. p. 9, Id., see also, Amended Complaint. The Trial Court’s Orders require Appellants to re-file their quiet title claims as counterclaims and third-party claims in their answer to the foreclosure action against a new party that had no recorded interest in Appellants’ property when the quiet title action was filed nor when the foreclosure action was filed. Id., Id. As a result of MERS purportedly assigning its interest in Appellants property after it was served the Summons and Complaint in the Quiet Title Action, MERS no longer claims an interest in Appellants’ property and any subsequent quiet title action allegedly no longer involves MERS.

The Trial Court has broad discretion in its supervision over the progression and disposition of a circuit court case in the interests of justice and judicial economy. *Capital City Ins. Co. v BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (S.C. App. 2009), see also *Williams v. Bordon's, Inc.*, 274 S.C. 275, 279, 262 S.E.2d 881, 883 (S.C. 1980) (“The authority of the court to grant continuances and to determine the order in which cases shall be heard is derived from its power to hear and decide cases. *This adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants.*”). [Emphasis added].

Appellants should not be required to “roll the dice” on whether their original claim for quiet title against MERS, properly within the jurisdiction of the circuit court, will be preserved in the “interests of judicial economy” in a subsequently filed separate action. The Quiet Title Action was filed on September 11, 2009 before the Foreclosure Action was filed on October 27,

2009. In the “interests of judicial economy,” the Trial Court ordered the Quiet Title Action and Foreclosure Action to “be consolidated in some manner.” April Order p. 10, see also, May Order.

The ruling, in effect, allows Respondent MERS to avoid the quiet title action claims as filed against it all together as a result of it purportedly assigning Appellants’ Refi Note and purported mortgage to Respondent Bayview on September 25, 2009 (“September 25, 2009 Assignment”) (Exhibit 11) after MERS had been served in the quiet title action but before MERS filed its Answer in the quiet title action. MERS Answer p. 2 ¶ 12, April Order p. 9-10, see also, May Order. Respondent Bayview then purportedly subsequently assigned its interest in Appellants’ Refi Note and purported mortgage on March 17, 2009 to Respondent CitiMortgage after Bayview filed the October 27, 2009 foreclosure action. March 17, 2010 Assignment (Exhibit 12).

Appellants claimed in the Trial Court that both the September 25 Assignment and the March 17, 2010 Assignment were fraudulent. See, Affidavit of Lynn Szymoniak, Esq. as Defendants’ Expert (“Szymoniak Affidavit”) (Exhibit 13), see also, Rule 59(e) Motion pp. 10-11. Appellants claimed in the Trial Court that both the September 25, 2009 Assignment and the March 17, 2010 Assignment were invalid as they were not probated as required under SC Code Ann. § 30-7-50. Defendants’ Brief in support of Their Motion to Dismiss Pursuant to SCRCP 12(b)(6) (“Defdts. 12(b)(6) Brief”), pp. 2,3,10 (Exhibit 14).

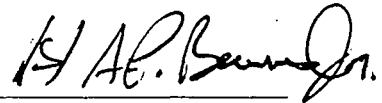
The April 11, 2011 and May 20, 2011 Orders consolidating the quiet title action and foreclosure action “in the interests of judicial economy ... in some manner” was an abuse of discretion and does not protect Appellants’ substantial rights and strikes Appellants’ defenses in

the foreclosure action which. As a result, the April 11, 2011 and May 20, 2011 Orders involving the quiet title action are therefore immediately appealable under SC Code Ann. §§14-3-330(1), 2(a) and(c).

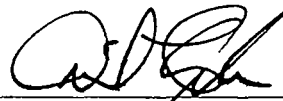
CONCLUSION

Based on the foregoing, the issues overlooked and misapprehended by the Court in its September 13, 2011 Order dismissing Appellants' consolidated appeal should be reconsidered pursuant to Rule 221(c) of the South Carolina Appellate Court Rules.

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Beaufort, South Carolina
September 27, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Master-in-Equity

Marvin H. Dukes, III, Master-in-Equity

Case No. 2009-CP-07-04301

Daniel L. Junk and Christine H. Junk, ... Appellants,

v.

Mortgage Electronic Registration Systems, Inc., and
John Does 1-5000, ... Respondents.

Case No. 2009-CP-07-05088

Bayview Loan Servicing, LLC, ... Respondent,

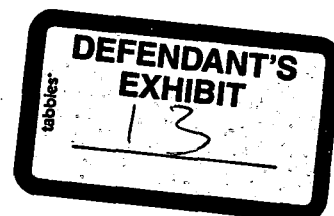
v.

Daniel Junk a/k/a Daniel L. Junk, Christine H. Junk and
Oldfield Community Association, of whom Daniel Junk
and Christina Junk, ... Defendants,

Of Whom Daniel L. Junk and Christine H. Junk are,.... Appellants.

Return to Appellants' Petition for Rehearing

Pursuant to Rules 221(c) and 240(e) of the South Carolina Appellate Court Rules, Respondents Mortgage Electronic Registration Systems, Inc. ("MERS"), Bayview Loan Servicing, LLC ("Bayview"), and CitiMortgage, Inc. ("CitiMortgage") (collectively "Respondents") hereby files this Return to Appellants' Petition for



Rehearing. This Court did not overlook or misapprehend any facts or issues relevant to the determination whether this matter was immediately appealable. This Court properly concluded that the order on appeal is not immediately appealable. Thus, Appellants' Petition for Rehearing should be denied.

Argument

First, Appellants claim the Court overlooked that the denial of their Rule 12(c), SCRPC, motion in the quiet title action was immediately appealable. {Pet. for Rehearing p. 3}. This argument is without merit. The Court did not overlook this argument. The Court specifically considered and rejected this position. See Order p. 2. Moreover, Appellants' petition for rehearing fails to set forth any authority that the denial of a Rule 12(c), SCRPC, motion is immediately appealable. Instead, Appellants merely argue the substantive merits of this issue.¹ The merits of the issue have no bearing on whether the denial of such a motion is immediately appealable. Our case law is clear that the denial of a Rule 12(c), SCRPC, motion is not immediately appealable. See Rose v. Thrash, 291 S.C. 459, 459, 354 S.E.2d 378, 378 (1987) (holding that the denial of a "motion for judgment on the pleadings is not directly appealable under S.C. Code Ann. § 14-3-330 (1976), even if it raises only a question of

¹ Additionally, the arguments advanced in Appellants' petition for rehearing merely reargue those which were already advanced in their Return to the Motion to Dismiss the Appeal. Accordingly, these grounds cannot constitute a basis for rehearing because they were previously presented to this Court. The Supreme Court has held that a petition for rehearing cannot be used to present previously made appellate arguments. See Kennedy v. South Carolina Retirement Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (holding it is not "the purpose of a petition for rehearing to have the case tried in the appellate court a second time").

law”). Therefore, this Court properly found the denial of the Rule 12(c), SCRCP, is not immediately appealable.

Second, Appellants allege this Court overlooked the fact the denial of their motions to dismiss under Rules 12(b)(8) and 13(a), SCRCP, were immediately appealable. {Pet. for Rehearing p. 6-9}. This argument should be rejected. The Court’s order addressed Appellants’ motions to dismiss, noting that the master’s order declined to dismiss the foreclosure action. The Court then cited authority for the rule that the denial of a motion to dismiss is not immediately appealable. See Order p. 2. Thus, the argument was not overlooked. Instead, the Court specifically considered this issue and then applied well-settled law to find the denial of the motions to dismiss is not immediately appealable. See, e.g., McLendon v. S.C. Dep’t of Highways & Pub. Transp., 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 (1994) (holding that under section 14-3-330 the denial of a motion to dismiss does not establish law of the case and is not immediately appealable).²

Appellants again argue the substantive merits of whether the trial court properly denied the motions to dismiss in support of the petition. The merits on this issue have no impact on whether the denial of a motion to dismiss is immediately appealable. Our law is clear—a denial of a motion to dismiss is not immediately appealable under section 14-3-330. Id.; see also Breland v. Love Chevrolet Olds, Inc., 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000); Mid-State Distributors, Inc. v. Century Importers, Inc., 310

² Again, Appellants’ re-argue the substantive merits of this issue in the petition for rehearing. This argument was previously made in their Return to the Motion to Dismiss the Appeals. Accordingly, this Court cannot grant rehearing on those grounds. See Kennedy, 349 S.C. at 532, 564 S.E.2d at 322 (holding it is not “the purpose of a petition for rehearing to have the case tried in the appellate court a second time”).

S.C. 330, 334-35, 426 S.E.2d 777, 780 (1993). Thus, this Court properly found the trial court's denial of the Rule 12(b)(8) and 13(c), SCRCP, motions were not immediately appealable.

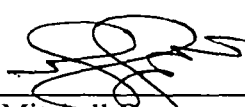
Likewise, Appellants' claim that the denial of their Rule 12(b)(6), SCRCP, motion to dismiss the foreclosure action is immediately appealable does not warrant rehearing. First, Appellants failed to argue that this Court overlooked or misapprehended their Rule 12(b)(6), SCRCP, argument. See Rule 221, SCACR ("A petition for rehearing . . . shall state with particularity the points supposed to have been overlooked or misapprehended by the court."). This Court should deny this petition on that basis. Rule 240(g), SCACR ("Failure to the moving party to perform an act required by this Rule may be deemed an abandonment of the motion or petition."). Second, even if Appellants' complied with the Appellate Court Rules, the Court did not overlook this issue. As noted above, the order specifically found that the denial of Appellants' motions to dismiss the foreclosure action is not immediately appealable. See Order p. 2. It is axiomatic that the denial of a Rule 12(b)(6), SCRCP, motion to dismiss is not immediately appealable. See, e.g., Huntley v. Young, 319 S.C. 559, 462 S.E.2d 860 (1995). As a result, this Court properly found the trial court's denial of the Rule 12(b)(6), SCRCP, motion was not immediately appealable.

Conclusion

Based on the foregoing, Appellants' petition for rehearing should be denied.

{Signature Page Follows}

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October 5, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Master-in-Equity

Marvin H. Dukes, III, Master-in-Equity

Case No. 2009-CP-07-04301

Daniel L. Junk and Christine H. Junk, ...

Appellants,

v.

Mortgage Electronic Registration Systems, Inc., and
John Does 1-5000, ...

Respondents.

Case No. 2009-CP-07-05088

Bayview Loan Servicing, LLC, ...

Respondent,

v.

Daniel Junk a/k/a Daniel L. Junk, Christine H. Junk and
Oldfield Community Association, of whom Daniel Junk
and Christina Junk, ...

Defendants,

Of Whom Daniel L. Junk and Christine H. Junk are,....

Appellants.

Proof of Service

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Plaintiff, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow by all by

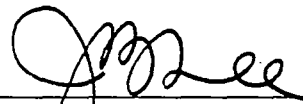
mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

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Jennifer B. Lee
Administrative Assistant

October 5, 2011

Court Copy

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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OCT 12 2011

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

Honorable Marvin H. Dukes, III, Master in Equity

Daniel L. Junk and Christine H.
Junk,

Appellants,

v.

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

Respondents,

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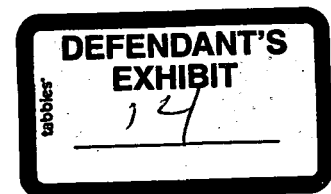
Of Whom Daniel L. Junk and Christine H.
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Appellants.

Case No. 2009-CP-07-05088

Reply to Petition for Rehearing

Pursuant to Rule 221(c) and 240(e) of the South Carolina Appellate Court Rules, Appellants submit this reply brief to Respondents' return brief filed with this Court on October 5, 2011. Respondent's return brief misstates this Court's September 13 Order in



claiming that the Court did not overlook or misapprehend Appellant's Rule 12(c) SCRCF motion for judgment on the pleadings and default judgment in the Quiet Title action and Rule 13(a) SCRCF and Rule 12(b)(8) SCRCF motions to dismiss in the foreclosure action. The Respondents' argument is without merit and misleads the Court. Nowhere in this Court's September 13 Order does it address on either legal merit or procedure the appealed Rule 12(c) SCRCF in the Quiet Title action or the Rule 13(a) SCRCF and Rule 12(b)(8) SCRCF motions to dismiss in the Foreclosure action neither of which were ever heard by the Circuit Court.

Moreover, the Respondents' argument that Appellants failed to argue that this Court misapprehended the effect of its *granting* Respondents' 12(b)(6) SCRCF motion in the quiet title action is patently false and a veiled attempt to divert the Court from the real issue at hand which is: the effect of the Circuit Court *granting* Respondents' Rule 12(b)(6) SCRCF dismissing the Quiet Title action struck Appellants' pleadings in the foreclosure action therefore rendering the Rule 12(b)(6) order immediately appealable under SC Code Ann. §§ 14-3-330(1) and (2)(a) and (c).

I. This Court's September 13 Order Overlooked Appellants' Rule 12(c) SCRCF Motion in the Quiet Title Action in Effect Preventing a Judgment from Which an Appeal Might be Taken and is Immediately Appealable under SC Code Ann. §§ 14-3-330(2)(a).

The effect of the denial of the Rule 12(c) SCRCF motion for judgment on the pleadings prevents a judgment from which an appeal might be taken. Therefore the Rule 12(c) motion denial is immediately appealable under SC Code Ann. §§ 14-3-330(1) and (2)(a) and (c).

The original claim of the Quiet Title action stated that the MERS lien publicly recorded on Appellants' property was not a valid lien. As a result of the denial of the Rule 12(c) SCRCF motion based solely on the granting of Respondents' Rule 12(b)(6) SCRCF motion without

prejudice, Appellants' cannot appeal the Quiet Title action as originally filed and plead. MERS admits in its Answer filed with the Circuit Court that it assigned its purported lien eight (8) days after Appellants served the Quiet Title Summons and Complaint on MERS. In effect, the dismissal of the Quiet Title Action under Rule 12(b)(6) SCRCP prevents Appellants' from re-asserting their original claim challenging the validity of the recorded MERS lien on their property. MERS is in effect dismissed from having to defend its originally recorded lien on Appellants' property by claiming it subsequently assigned its interest in Appellants' property after it was sued and that it no longer is a proper party to a subsequent quiet title action as a result of its claimed assignment of its original interest.

If allowed to stand, the overlooked denial of Appellants' Rule 12(c) SCRCP motion will never be appealable. Appellants' cannot now get a final judgment on the pleadings for quiet title against MERS because the Circuit Court and this Court misapprehend the effect granting the Rule 12(b)(6) in the Quiet Title action allowing MERS to assign its interest (if any) in Appellants' property after the Quiet Title action had been properly commenced against it but before MERS had filed its Answer in the action.

Because the Court overlooked the effect of the denial of the Rule 12(c) SCRCP motion for judgment on the pleadings and default judgment which in effect determines the action and prevents a judgment from which an appeal might be taken, the Circuit Court's Order is immediately appealable under SC Code Ann. §§ 14-3-330 (2)(a).

- II. This Court's September 13 Order Overlooked Appellants' Rule 13(a) SCRCP and Rule 12(b)(8) Motions in the Foreclosure Action Striking Out Appellants' Pleadings in the Foreclosure Action and is Immediately Appealable under SC Code Ann. §§ 14-3-330(1) and(2)(c).

The Court's September 13, 2011 Order did not address the Circuit Court's Order striking Appellants' pleadings in the Foreclosure Action. The Circuit Court denied Appellants' Rule 13(a) SCRPC Compulsory Counterclaims Motion and 12(b)(8) SCRPC Same Parties Motion in the Foreclosure Action based solely on the fact that it had dismissed the Quiet Title action. The trial court never heard either motion. The trial court's order states that the foreclosure claimants were necessary parties to the Quiet Title Action – yet – with twisted logic – then states that even though Respondents were necessary parties to the Quiet Title action, Appellants' cannot claim that the Foreclosure action was a compulsory counterclaim to the Quiet Title action?

The Circuit Court's Order striking Appellants' pleadings under Rule 13(a) SCRPC and Rule 12(b)(8) SCRPC to dismiss the Foreclosure action is immediately appealable under SC Code Ann. §§ 14-3-330(1) and(2)(c).

III. This Court's September 13 Order Misapprehended the Effect of the Circuit Court's Order Dismissing Appellants' Quiet Title Action Determining the Quiet Title Action, Preventing a Judgment from Which an Appeal Might be Taken and Striking out Appellants' Pleadings in the Foreclosure Action Rendering the Rule 12(b)(6) SCRPC Dismissal Immediately Appealable Under SC Code Ann. §§ 14-3-330(1) and(2)(c).

Appellants' recognize that *denial* of a Rule 12(b)(6) SCRPC motion is not generally appealable as a final order; however, Respondents argument is misplaced and is misleading the Court. Appellants' Petition for rehearing is focused on the *granting* of Respondents' motion to dismiss the Quiet Title action NOT the denial of Appellants' motion to dismiss the Foreclosure action. The effect of the granting the Rule 12(b)(6) motion denying the Quiet Title action strikes out Appellants' pleadings in the Foreclosure action and is immediately appealable under SC Code Ann. §§ 14-3-330(1) and(2)(c).

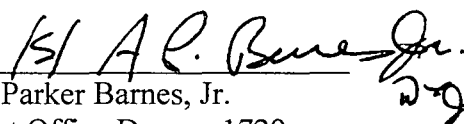
The April 11, 2011 and May 20, 2011 Orders dismissing the Quiet Title action requiring Appellants to bring their claims again as counterclaims or third-party claims to the Foreclosure

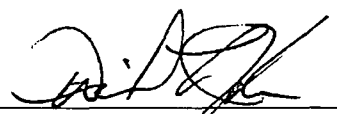
action “in the interests of judicial economy ... in some manner” was an abuse of discretion and did not protect Appellants’ substantial rights striking Appellants’ pleadings in the Foreclosure action. [See Fig. 1]. As a result, the April 11, 2011 and May 20, 2011 Orders granting Respondents Rule 12(b)(6) SCRCF motion dismissing the Quiet Title action struck Appellants pleadings in the Foreclosure action and is therefore immediately appealable under SC Code Ann. §§14-3-330(1), 2(a) and(c).

IV. Conclusion

Based on the original petition and the foregoing, Appellants petition for rehearing should be granted.

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

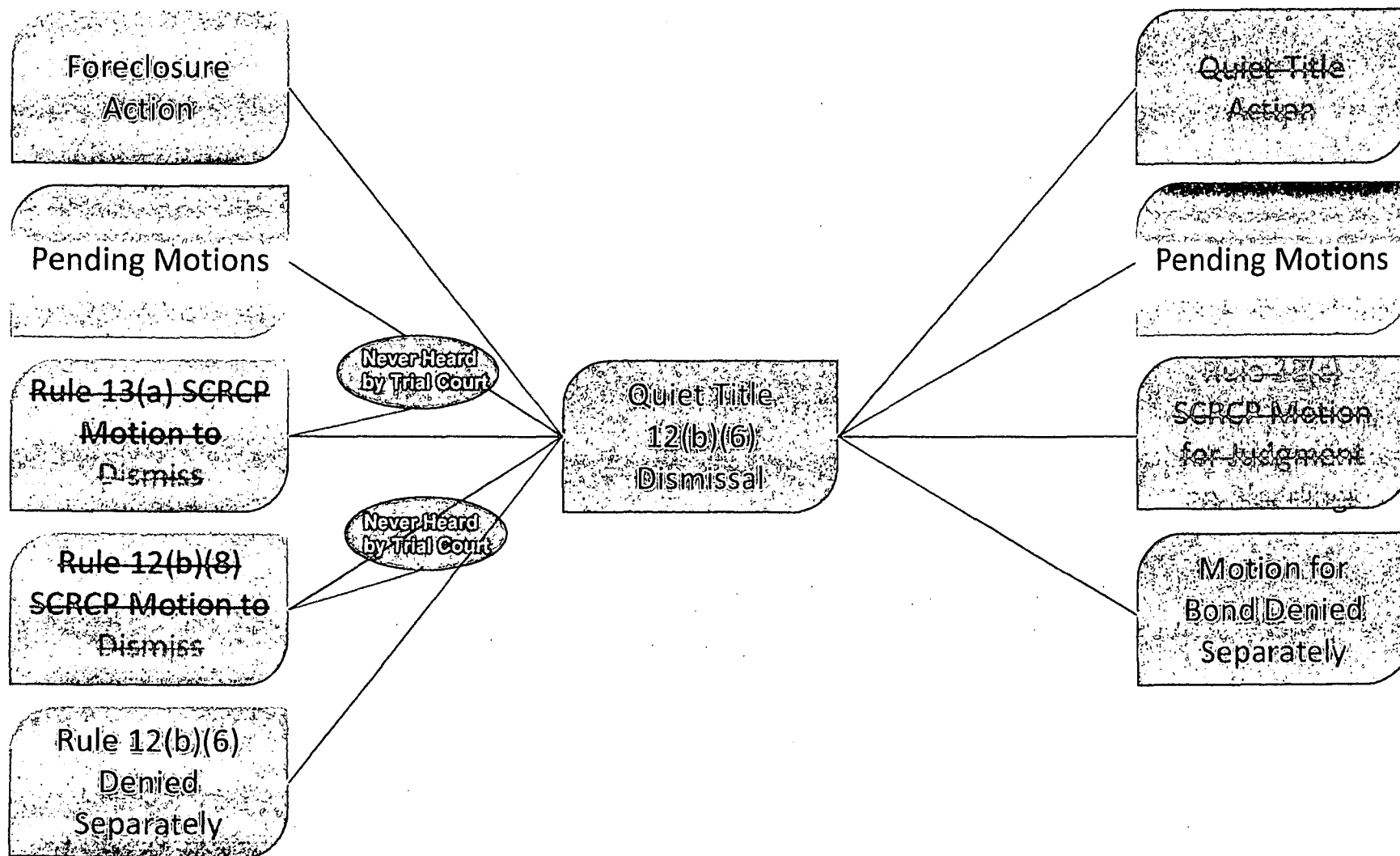

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October 11, 2011

Fig. 1

**Effect of Rule 12(b)(6) SCRCP Dismissal of Quiet Title Action
Under SC Code Ann. § § 14-3-330(1) and (2)(a) and (c)
Removing Two Defenses in the Foreclosure Action**



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

OCT 12 2011

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

Honorable Marvin H. Dukes, III, Master in Equity

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Appellants.

Case No. 2009-CP-07-05088

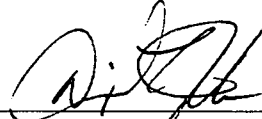
PROOF OF SERVICE

I certify that I have served the Reply to the Petition for Rehearing on Respondents by depositing a copy of it in the United States Mail, postage prepaid, on October 11, 2011, addressed its respective attorneys of record, Brian P. Crotty, Nelson Mullins Riley &

Scarborough LLP, Meridian, 17th Floor, 1320 Main Street, Columbia, SC 29201 and James Y.

Becker Haynsworth Sinkler Boyd, PA PO Box 11889 Columbia, SC 29211.

October 11, 2011

A handwritten signature in black ink, appearing to read 'D. L. Junk', written over a horizontal line.

Daniel L. Junk, J.D.

Pro Se Appellant
181 Oldfield Way
Okatie, SC 29909
(843) 290-8469

The South Carolina Court of Appeals

Daniel L. Junk and Christine H. Junk, Appellants,

v.

Mortgage Electronic Registration
Systems, Inc., and John Does 1-5000, Respondents,

and

Bayview Loan Servicing, LLC, Respondent,

v.

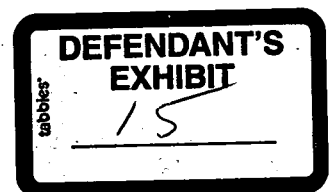
Daniel Junk, a/k/a Daniel L. Junk,
Christina H. Junk, and Oldfield
Community Association, Defendants,

Of Whom Daniel L. Junk and Christina
H. Junk are Appellants.

The Honorable Marvin Dukes, III
Beaufort County
Trial Court Case Nos. 2009-CP-07-04301 and 2009-CP-07-05088

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.



N. B. (See) J.

John D. Smith J.

James M. Crotty A.J.

Columbia, South Carolina

cc: A. Parker Barnes, Jr, Esquire
Daniel L. Junk, J.D.
C. Mitchell Brown, Esquire
B. Rush Smith, III, Esquire
Brian P. Crotty, Esquire
Michael J. Anzelmo, Esquire
James Y. Becker, Esquire

FILED

11/30/11 *Y*