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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Ben N. Miller, III, Special Referee for Richland County

RECEIVED

JUN 10 2016

SC Court of Appeals

Case No.: 2010-CP-40-01571

Appellate Case No. 2016-00969

CitiMortgage, Inc.,.....Respondent,

v.

Bruce W. Gardner and First Citizens Bank and Trust Company, Inc.,.....Defendants,

Of whom Bruce W. Gardner is the.....Appellant.

**RESPONDENT'S RETURN TO APPELLANT'S MOTION COMPLAINT OF
MALICIOUS PROSECUTION AND PETITION TO CANCEL FORECLOSURE SALE**

This is a mortgage foreclosure action. The Special Referee entered an Order of Judgment of Foreclosure and Sale Decree on April 28, 2016. (Exhibit 1)

On May 9, 2016, Appellant filed a Notice of Appeal to Stay the Order of Judgment of Foreclosure and Sale Decree. Appellant's notice of appeal states that he is appealing the April 28, 2016 Order, on various grounds, including: 1) no original Note produced; 2) fraudulent assignment of Note and Mortgage; 3) no evidence that Respondent is the holder in due course; and 4) the Note and Mortgage have been bifurcated.

Appellant has now filed a Motion Complaint of Malicious Prosecution and Petition to Cancel Foreclosure Sale. In this motion, Appellant recites facts concerning the origination of the subject Note and Mortgage, and then Appellant makes various allegations concerning irregularities with assignment and ownership of the subject Note and Mortgage. Appellant alleges that, due to these irregularities, Respondent lacked standing to sue, and that Respondent did not prove that it was the owner or holder of the Note. Appellant also asks this Court to cancel any foreclosure sale. Appellant does not state any reason for the requested cancellation of a foreclosure sale other than the foreclosure lawsuit itself.

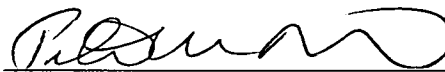
Respondent asserts that Appellant's motion should be denied and/or dismissed. Appellant's motion seeks to litigate issues of fact that could have been heard by the Special Referee. The motion also seeks to re-litigate issues that may have been heard and decided by the Special Referee. For example, Appellant claims that Respondent did not produce the original Note. As found by the Special Referee, Respondent is the real party in interest and Respondent was in possession of the original Note and Mortgage. (Exhibit 1, ¶ 10) Appellant will have the opportunity to address this issue in any brief filed with this Court. The court rules simply do not allow an appellant to file a notice of appeal and then attempt to litigate, or re-litigate, issues that may be dealt with in the appeal.

Appellant also seeks to have this Court cancel any foreclosure sale. In support of this request, Appellant states that he has been harmed by the foreclosure lawsuit and the potential of his real estate being sold. It is important to note that Appellant did not raise a payment defense at the hearing. The only defenses raised by Appellant concerned the aforementioned authenticity and assignment irregularities. Now, Appellant attempts to claim he is being damaged because he has not paid a debt owed by him, and his property will be sold. The sale of property pledged to

secure a debt is the obvious outcome of a foreclosure action. Appellant has not provided this Court with any independent reason to stay any foreclosure sale of the subject property. The filing of a notice of appeal does not act to automatically stay matters decided in the Special Referee's order. Rule 241(b), SCACR; C-Sculptures, LLC, No.3 v. Brown, 393 S.C. 27, 709 S.E.2d 705 (Ct. App. 2011).

For the reasons stated herein, Respondent respectfully requests that this Court deny Appellant's "Motion Complaint . . . and Petition to Cancel Foreclosure Sale."

RILEY POPE & LANEY, LLC



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Facsimile: (803) 239-1414
Attorneys for Respondent

Columbia, South Carolina

June 9, 2016

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PROOF OF SERVICE

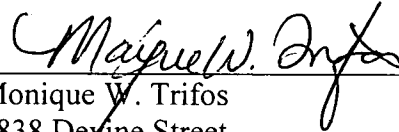
I certify that I have served the **RESPONDENT'S RESPONSE TO APPELLANT'S MOTION COMPLAINT OF MALICIOUS PROSECUTION AND PETITION TO CANCEL FORECLOSURE SALE** and this proof of service by depositing a copy of the same in the United States Mail, postage prepaid, at the address below:

Bruce W. Gardner
237 YMCA Road
Lexington, SC 29073

And

Bruce W. Gardner
P.O. Box 1531
Lexington, SC 29071

RILEY POPE & LANEY, LLC

A handwritten signature in cursive script, appearing to read "Monique W. Trifos", is written over a horizontal line.

Monique W. Trifos
2838 Devine Street
Post Office Box 11412 (29211)
Columbia, South Carolina 29205
(803) 799-9993

June 9, 2016
Columbia, South Carolina

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June 9, 2016

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The Honorable Jenny Abbott Kitchings
Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

JUN 10 2016

SC Court of Appeals

Re: CitiMortgage, Inc. vs. Bruce W. Gardner and First Citizens Bank and Trust Company,
Inc.
Civil Action No.: 2010-CP-40-01571
Our File No. 4088.01014

Dear Ms. Kitchings:

Please find enclosed the original and six (6) copies of Respondent's Response to Appellant's Motion Complaint of Malicious Prosecution and Petition to Cancel Foreclosure Sale in connection with the above-referenced case. Please file same and return the clocked copy to me in the enclosed, self-addressed, stamped envelope.

Thank you for your kind assistance in this matter.

Sincerely,

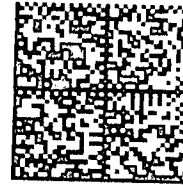


Peter M. Balthazor

PMB/mwt

Enclosures

cc: Bruce W. Gardner (w/enclosure)



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Riley Pope
& Laney, LLC ATTORNEYS AND COUNSELORS AT LAW

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TO:
The Honorable Jenny Abbott Kitchings
Clerk
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