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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAR 10 2017
SC Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Master-in-Equity

Appellate Case No. 2016-002234

Primelending, A Plains Capital CompanyRespondent,

vs.

Ronnell Demar Walker a/k/a Ronnell D. Walker;
and South Pointe Homeowners Association Defendants.

Of whom Ronnell Demar Walker a/k/a Ronnell D. Walker Appellant.

**RESPONDENT’S MOTION TO DISMISS AND
MOTION TO STAY TIME TO FILE INITIAL BRIEF**

Pursuant to Rule 240(a), SCACR, Respondent Primelending, A Plains Capital Company moves to dismiss the above-captioned appeal in its entirety. The basis for this motion is that Appellant Ronnell Demar Walker has failed to properly address the letters of deficiency sent to him from the South Carolina Court of Appeals. Accordingly, Appellant has failed to comply with his obligations.

FACTS

On October 31, 2016, Appellant filed and served Respondent with a Notice of Appeal. On November 3, 2016, The South Carolina Court of Appeals (“SCCA”) issued a Deficiency Letter to Appellant to correct his Notice of Appeal within 10 days as it did not follow the

SCACR. Specifically, Appellant's Notice of Appeal was deficient because: (1) the caption/title did not comply with Rule 267(a) as it did not include the name of the judge issuing the order; (2) the Notice of Appeal was not accompanied by the final order challenged on appeal; (3) Appellant did not provide a copy of the original complaint; and (4) Appellant did not provide the attorney information for respondent's attorney, Nikole Deanna Haltiwanger. On November 14, 2016, Appellant filed another Notice of Appeal that again did not follow the SCACR. Respondent never received this Notice of Appeal. On December 6, 2016, the SCCA issued a Deficiency Letter to Appellant to correct Amended Notice of Appeal within 10 days. Specifically, Appellant failed to provide a proof of service and the document was not signed. On December 12, 2016, Appellant filed another Notice of Appeal that again did not follow the SCACR. Therefore, on December 12, 2016, the SCCA issued a Deficiency Letter to Appellant because Appellant failed to provide a complete copy of the final order challenged on appeal. On January 17, 2017, Appellant filed his Initial Brief of Appellant. On January 19, 2017, the SCCA issued a Deficiency Letter to Appellant to correct his Initial Brief of Appellant within 10 days as it did not follow the SCACR. Specifically, Appellant's Initial Brief was not accompanied by a Designation of Matter to be included in the Record on Appeal. Moreover, Appellant's caption/title did not comply with Rule 267(a), SCACR. On January 31, 2017, Appellant filed his Designation of Matter to be Included in the Record on Appeal. On February 2, 2017, Appellant filed an Emergency Motion to Vacate Judgment. On February 8, 2017, the SCCA issued a Deficiency Letter to Appellant to provide a Proof of Service with his Designation of Matter within 10 days or his appeal shall be dismissed. On February 9, 2017, the SCCA issued yet another Deficiency Letter to Appellant to correct his proof of service within 10 days as it did not comply with Form 7 in Appendix C to Part II of the SCACR. Specifically, Appellant was to

provide the names and addresses of each person served. On February 14, 2017, Appellant filed his Proof of Service regarding his Designation of Matter to be included in the Record on Appeal, which still did not comply with the SCACR and Respondent never received the Designation of Matter.

ARGUMENT

I. Appellant's Proof of Service regarding his Designation of Matter does not comply with the SCACR or the Court's Deficiency Letter, and such deficiency resulted in Respondent never receiving the Designation of Matter to be included in the Record on Appeal.

On February 9, 2017, this Court issued a Deficiency Letter to Appellant wherein this Court indicated the following:

Upon reviewing your proof of service of the Appellant's designation of matter, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The accompanying proof of service is not in compliance with the SCACR. Your proof of service should be substantially in the format shown by Form 7 in Appendix C to part II of the SCACR. Specifically, it must contain the names and addresses of each person served.

On February 14, 2017, Appellant filed his Proof of Service, which stated: "I Ronnell Demar Bey certify that I have served the Designation of Matter by depositing a copy of it in the United States Mail, postage prepaid, on February 14, 2017. In the matter of PrimeLending, etc v. Ronnell Demar Walker, et al. above case." Appellant then carbon copied counsel of record for Respondent, without ever indicating which parties were served. Furthermore, Appellant failed to provide in the Proof of Service the names and addresses of each party served with the Designation of Matter. Appellant's broad statement indicating he deposited a copy of the Designation of Matter in the mail fails to comply with: (1) Form 7 in Appendix C to part II of the SCACR; and (2) the Deficiency Letter issued on February 9, 2017. Appellant's deficiency is

problematic because Respondent never received Appellant's Designation of Matter. Had Appellant corrected the deficiency and properly served his Designation of Matter, Respondent could adequately respond to such documents. However, Appellant's continuous failures to comply with the SCACR and this Court's Deficiency Letters has directly prejudiced Respondent. As of this date, Respondent has had no opportunity to review Appellant's Designation of Matter. Therefore, pursuant to the SCACR and the Deficiency Letter issued on February 9, 2017, Appellant's case should be dismissed.

CONCLUSION

For these reasons, Respondent respectfully moves for an order dismissing the appeal and respectfully moves for an order staying the time for Respondent to be required to file its initial brief until such time as the Order to Dismiss is granted.

Respectfully submitted,



Erica G. Lybrand (SC Bar # 79052)
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ATTORNEYS FOR RESPONDENT
Rogers Townsend & Thomas, PC and its staff are debt collectors.

March 10, 2017

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PROOF OF SERVICE

I HEREBY CERTIFY that I have served the **RESPONDENT'S MOTION TO DISMISS AND MOTION TO STAY TIME TO FILE INITIAL BRIEF** on Appellant Ronnell Demar Walker by depositing copies of it in the United States Mail, postage prepaid, on March 10, 2017, at 412 Eastover Circle, Summerville, SC 29483.


Erica G. Lybrand (SC Bar # 79052)

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SC Court of Appeals



March 10, 2017

VIA HAND DELIVERY

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

RE: *PrimeLending, A PlainsCapital Company v. Ronnell Demar Walker a/k/a
Ronnell D. Walker; South Pointe Homeowners Association*
C/A # 2015-CP-08-00965
RTT File # 506951.00925

Dear Ms. Kitchings:

Please find enclosed an Original and 7 copies of the Respondent's Motion to Dismiss and Motion to Stay Time to File Initial Brief and Proof of Service in for the above referenced matter. Also enclosed is a check in the amount of \$25.00 representing the motion filing fee. Please file the original and return a clocked copy to our courier.

With kind regards, I remain

Cordially yours,

A handwritten signature in black ink, appearing to read "Karissa Richardson".

Karissa Richardson
Paralegal for Erica G. Lybrand

Enclosures

cc:
Ronnell Demar Bey
412 Eastover Circle
Summerville, SC 29483