

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Joseph M. Strickland, Circuit Court Judge

Case No. 2018-00106

CitiMortgage, Inc., ..... Respondent,  
v.  
Satara Lopez and Francisco Lopez, ..... Appellants.

**RECEIVED**  
AUG 27 2018  
SC Court of Appeals

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**RETURN IN OPPOSITION TO  
REQUEST FOR PERMISSION TO ORDER TRANSCRIPT OUT OF TIME**

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Respondent CitiMortgage, Inc. (“CitiMortgage”), by and through its undersigned counsel, hereby submits this Return in Opposition to Appellants Satara Lopez and Francisco Lopez’s (“Appellants”) Request for Permission to Order Transcript Out of Time (“the Motion”). This is Appellants’ second request for additional time to order the transcripts of the proceedings and, for the reasons outlined herein, the request should be denied.

**PROCEDURAL HISTORY OF APPEAL**

The above-captioned appeal was noticed on June 6, 2018 but the notice of appeal failed to include copies of any orders Appellants purport to appeal. Following receipt of a June 8, 2018 deficiency letter from this Court, Appellants submitted copies of the December 7, 2017 Master in Equity’s Order and Judgment of Foreclosure and Sale, the December 7, 2017 Order Denying

Motion Pursuant to Rule 60, the September 14, 2016 Order of Reference, the January 25, 2018 Master's Report on Sale and Disbursements and Order of Confirmation, and the December 7, 2017 Order Restoring the Case. Thereafter, Appellants failed to timely order the transcript in accordance with Rule 207 of the South Carolina Appellate Court Rules. *See* S.C. App. R. 207 (a)(1) ("In appeals from court of common pleas, master in equity, special referees or the family court in domestic actions, the transcript must be ordered within ten (10) days after the date of service of the notice of appeal."). In addition to failing to order the transcript, Appellants failed to file a motion for additional time in which to order the transcript.

On June 27, 2018, the Court sent a deficiency letter to Appellants noting that the transcript deadline passed and providing that within ten days of the date of the letter Appellants had to "file a copy of the letter showing that you have ordered the transcript directly from the court reporter, along with a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207[.]" (6/27/18 Deficiency Ltr.) On July 2, 2018, Appellants requested the names of the court reporters from the Honorable Joseph M. Strickland,<sup>1</sup> and sent a letter<sup>2</sup> to this Court stating they were "unable to request the Transcript, if any exist, of the proceedings." (7/2/18 Apps. Ltr. to Ct. of App.) In a response letter dated July 12, 2018, this Court requested an update on the "status of the transcript within ten (10) days of the date of this letter," or the "appeal may be dismissed." (7/12/18 Deficiency Status Ltr.) By letter dated July 19, 2018, Appellants contacted South Carolina Court Administration for the names of the court reporters.

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<sup>1</sup> While the July 2, 2018 letter to Judge Strickland indicates that counsel for CitiMortgage was copied by email on that letter, counsel for CitiMortgage did not receive an email with the attached letter.

<sup>2</sup> Counsel for CitiMortgage was not copied on the correspondence to the Court.

On August 13, 2018, the Court sent another deficiency letter noting that the transcripts remained outstanding and that Appellants “must file a copy of the *letter showing that you have ordered the transcript directly from the court reporter*, along with a motion requesting permission to order the transcript outside of the filing deadlines.” (8/13/18 2d Deficiency Ltr. (emphasis added)). On August 21, 2018, Appellants filed a document titled “Request for Permission to Order Transcript Out of Time,” stating their request “is being made in good faith as a result of Appellant’s[sic] difficulty in ascertaining the names and contact information for the court reports who transcribed the proceedings before the Master-in-Equity.” (8/21/18 Appellants Ltr. to Ct. of App.)<sup>3</sup> As outlined herein, Appellants have had ample time and opportunity to request and order the transcripts and the Motion should be denied and appeal dismissed.

### ARGUMENT

Appellants were required to order the transcript of the proceedings by June 18, 2018. *See* S.C. App. R. 207(a)(1). An additional two months have passed since the initial deadline, Appellants have been granted significant leeway and extensions of time, and the transcripts still have not been ordered. Moreover, Appellants fail to identify any specific reason why they have been unable to identify the relevant court reporters and order the transcripts. The vague reference to “difficulty in ascertaining the names and contact information” is unacceptable for several reasons.

First, Appellants’ counsel were present at the hearings and proceedings in this case and, therefore, know whether a court reporter was or was not present for each of the hearings. To the extent Appellants rely on their July 2, 2018 correspondence and the statement therein that “during

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<sup>3</sup> Appellants failed to pay the corresponding motion fee and a deficiency letter requesting the filing fee was sent by this Court on August 22, 2018.

the entire proceeding before Judge Strickland, we continually complained about not having a Court Reporter to take testimony and arguments of the court proceedings,” CitiMortgage’s recollection is quite different. (Mot. at Ex. A.) CitiMortgage does not recall any complaints about the lack of a court reporter present at any of the three hearings that took place before entry of the Order of Judgment of Foreclosure and Sale. In fact, these complaints could not have been made because court reporters were present. Specifically, Wanda K. Ceil with A. William Roberts, Jr. & Associates was the court reporter present for the April 19, 2017 hearing, Amy R. Cope also with A. William Roberts, Jr. & Associates was the court reporter present for the June 29, 2017 hearing, and Sarah E. Young with A. Williams Roberts, Jr. & Associates was the court reporter for the final merits hearing on November 7, 2017. Accordingly, transcripts are available for the proceedings and Appellants could have timely ordered the transcripts for the appeal.

Second, while Appellants have not asked CitiMortgage’s counsel for the names of the court reporters or court reporting service, counsel for CitiMortgage emailed counsel for Appellants on August 3, 2018 to address the July 2, 2018 correspondence that was not served on counsel for CitiMortgage. Therein, counsel for CitiMortgage informed counsel for Appellants that it had the names of the court reporters present for the three hearings leading up to the foreclosure judgment. A copy of the 8/3/18 email correspondence is attached hereto as Exhibit “1.” Counsel for CitiMortgage did not receive a response to the email. Despite having the names of the court reporters and the court reporting company, Appellants failed to order the transcripts.

Third, Appellants’ August 20, 2018 letter attached to the Motion fails to meet the requirements of the August 13, 2018 deficiency letter from this Court and, therefore, Appellants should not avoid dismissal. Both the June 27, 2018 deficiency letter and the August 13, 2018 deficiency letter required Appellants to “file a *copy of the letter showing that you have ordered the*

*transcript* directly from the court reporter, along with a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the South Carolina Appellate Court Rules.” (See 6/27/18 Deficiency Ltr. and 8/13/18 2d Deficiency Ltr. (emphasis added)). Appellants failed, in both responses, to provide such a letter. Accordingly, the clerk may dismiss for failure to comply with the requirements of the South Carolina Appellate Court Rules. See S.C. App. R. 260(a).

In the August 20, 2018 letter, Appellants state that they are providing evidence of their efforts to secure the names of the court reporters—notably omitting that the names were provided to them by counsel for CitiMortgage on August 3, 2018. Appellants further state that they “will request the transcripts immediately upon receiving the information from Judge Strickland.” (8/20/18 Ltr.)<sup>4</sup> As outlined herein, Appellants do not need any information from Judge Strickland to order the transcripts of the proceedings. Appellants have had the names of the court reporters since at least August 3, 2018, despite never asking counsel for CitiMortgage for the names as part of their “efforts.” (See *id.*) Appellants could have requested the names of the court reporters or the court reporting service from counsel for CitiMortgage within the time required by the appellate court rules to timely request transcripts, but failed to do so. Appellants also could have ordered the transcripts prior to submitting the Motion for an additional extension of time, but failed to do

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<sup>4</sup> It is also disingenuous for counsel for Appellants to request the names of the court reporters from Judge Strickland and simultaneously inform this Court that they “continually complained about not having a Court Reporter to take the testimony and arguments of the court proceedings” and that they believe their “objections to the lack of having a Court Reporter were unanswered.” (Mot., Ex. A) If a court reporter was not present at the proceedings, Appellants would be aware and, therefore, there would not be anything to request of Judge Strickland. In any event, counsel for CitiMortgage provided counsel for Appellants with the names of the court reporters for the April 19, 2017, June 29, 2017, and November 7, 2017 hearings.

so. Because Appellants failed to include a copy of the letter showing that they ordered the transcripts directly from the court reporter with the Motion, the Motion should be denied.

Finally, counsel for CitiMortgage is unaware of any conduct by Judge Strickland that would have prevented counsel for Appellants from timely ordering the transcripts. As explained above, court reporters were present and transcripts could be available if Appellants desired to order them. The aspersions cast on Judge Strickland in the July 2, 2017 correspondence attached to the Motion are unfair and inaccurate.

**CONCLUSION**

Appellants' Motion should be denied and the appeal dismissed. Appellants have had over two months to order transcripts that should have been ordered within ten days of the notice of appeal. Yet, despite the passing of a significant amount of time, the Motion fails to identify a single, specific reason for why the transcripts have not been ordered. Having failed to timely order the transcripts of the proceedings, despite having the names in their possession, this Court should deny the Motion and dismiss the appeal.

***SIGNATURE PAGE ATTACHED***

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8/27

, 2018

THE STATE OF SOUTH CAROLINA  
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**PROOF OF SERVICE**

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Return in Opposition to Request for Permission to Order  
Transcript Our to Time

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August 27, 2018



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August 27, 2018

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**RECEIVED**  
AUG 27 2018  
SC Court of Appeals

RE: CitiMortgage, Inc. v. Satara Lopez and Francisco Lopez  
Case No. 2018-00106  
Our File No. 026019/01875

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven copies of Respondent's Return in Opposition to Request for Permission to Order Transcript out of Time in the above-referenced matter. Please file the original and return a clocked-in copy to our courier.

By copy of this letter to opposing counsel, we are hereby serving them with a copy of Respondent's Return in Opposition.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Thad H. Westbrook', written in a cursive style.

Thad H. Westbrook

THW:krs  
Enclosures

cc: The Honorable Joseph M. Strickland  
Joseph Henry, Esquire  
Nathaniel Roberson, Esquire