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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Roger Mack Young, Circuit Court Judge

Case No. 2011-CP-08-1754

CitiMortgage, Inc., ... Respondent,

v.

Angela Drexler, ... Appellant.

MOTION TO DISMISS

RECEIVED
MAY 24 2012

SC Court of Appeals

Pursuant to Rules 260(a) and 240(a) of the South Carolina Appellate Court Rules, Respondent CitiMortgage, Inc. ("CitiMortgage"), hereby moves this Court for an order dismissing the appeal served on April 4, 2012 and filed on April 13, 2012 by Appellant Angela Drexler ("Appellant"). The ground for this motion is that this Court lacks jurisdiction over this appeal because Appellant failed to timely serve her notice of appeal after voluntarily withdrawing her Motion to Reconsider pursuant to Rule 59(e), SCRCP.

Following the lower court's order granting CitiMortgage's dispositive motion, Appellant filed a Motion to Reconsider pursuant to Rule 59(e), SCRCP. While the Motion to Reconsider was pending, Appellant continued to litigate her case and submitted a motion coversheet and proposed "consent" order joining a new party by

representing to a different circuit court judge that CitiMortgage had been dismissed from the action, was no longer a party to the litigation, and its consent was not required to add Defendant Mass Mutual Life Insurance Company as a party to the litigation. With the Motion to Reconsider pending, CitiMortgage should have been consulted regarding the request and its consent obtained for the joinder of an additional party. Because Appellant affirmatively represented to the court through her motion coversheet and proposed order that CitiMortgage was “dismissed from the action by Judge Roger Young’s Order of January 6, 2012, [and] is no longer a party to the action,” she necessarily and effectively must have withdrawn the Motion to Reconsider when she made that representation to the lower court. Judge Young agreed with CitiMortgage’s position, deeming Appellant’s Motion to Reconsider moot. By failing to serve her Notice of Appeal on or before February 6, 2012, Appellant’s appeal is untimely. As a result, this jurisdictional defect requires this Court to dismiss Appellant’s appeal in its entirety.

PROCEDURAL HISTORY & BACKGROUND

A brief overview of the procedural history of this action establishes that Appellant’s Notice of Appeal is untimely. This litigation began on June 21, 2011, when Appellant filed a Complaint against CitiMortgage, Stonegate Properties, Inc. and Branch Banking and Trust Company, Inc. seeking to set aside a Master’s Sale, void a Master’s Deed, cancel a Mortgage Assignment, set aside a foreclosure judgment, and recover damages from CitiMortgage on the basis of negligence, fraud, breach of contract, breach of implied covenant of good faith and fair dealing, unjust enrichment, slander of title, negligent misrepresentation, tortious interference with contract, and

alleged violation of the South Carolina Unfair Trade Practices Act (“SCUTPA”)—all related to the servicing or origination of her loan. On August 25, 2011, CitiMortgage filed a Motion to Dismiss Appellant’s Complaint on the basis of res judicata and collateral estoppel¹ since all of the claims were compulsory counterclaims or defenses that should have been raised in a prior foreclosure action.

The prior foreclosure action was filed by CitiMortgage on May 7, 2008, followed by an amended Complaint on May 21, 2008 in the Court of Common Pleas for Berkeley County, Civil Action No. 2008-CP-08-1258. Appellant failed to respond to the foreclosure pleadings and the court entered an Order of Default. A hearing was held on October 29, 2008 and, again, Appellant failed to appear. Thereafter, the court entered a Judgment of Foreclosure and Sale on October 29, 2008. The property was subsequently sold to Stonegate Properties, a defendant in the instant litigation. On February 19, 2009, Appellant filed a Motion to Vacate the Judgment of Foreclosure and Sale (“Motion to Vacate”) pursuant to Rule 60(b), SCRCPP. A hearing was held on March 18, 2009, at which time the Master in Equity heard the arguments of Appellant and denied the motion. An appeal was never taken from the denial of the Motion to Vacate.

The foregoing events form the basis of CitiMortgage’s Motion to Dismiss filed in the action that is the subject of this appeal—a separate action filed almost two years after the Master-in-Equity denied Appellant’s Motion to Vacate on March 18, 2009. In fact, rather than pursue the proper course provided to her under the South Carolina

¹ CitiMortgage also raised arguments that Appellant’s negligence and negligent misrepresentation claims are barred by the economic loss rule, and that Appellant lacks standing to challenge the mortgage assignment.

Appellate Court Rules and file an appeal from the Master-in-Equity's ruling, Appellant initiated a new action on June 21, 2011, against CitiMortgage asserting the same arguments and theories that she asserted in her Rule 60 motion before the Master in Equity in 2009. In this case, all of Appellant's claims relate to the servicing of the loan, title to the subject property, or the terms of the Note and Mortgage and, therefore, should have been asserted as compulsory counterclaims in the May 2008 foreclosure action. Moreover, many of these issues were considered and decided by the Master-in-Equity in the prior action. Based on the foregoing, CitiMortgage argued in its Motion to Dismiss that the claims were barred by res judicata or collateral estoppel.

A hearing on CitiMortgage's Motion to Dismiss was held on October 12, 2011. After reading the briefing submitted by the parties and hearing the arguments presented at the hearing, The Honorable Roger M. Young treated the Motion to Dismiss as a Motion for Summary Judgment and ruled in favor of CitiMortgage on all claims. After receiving notice from Judge Young's law clerk that Judge Young was ruling in favor of CitiMortgage, Appellant filed a Motion to Amend Complaint on December 8, 2011 to add Mass Mutual Life Insurance Company as a party to the litigation. See 11/21/11 E-mail from Law Clerk of Judge Roger M. Young, attached hereto as Exhibit "A." Additionally, counsel for Appellant sent an e-mail asking Judge Young to defer signing an Order dismissing CitiMortgage until after a hearing could be scheduled on the Motion to Amend Complaint. See 12/8/11 E-mail from Attorney Matthew D. Hamrick, attached hereto as Exhibit "B." On January 9, 2012, Judge Young's law clerk informed the parties that he was signing the Order Granting Summary Judgment

in favor of CitiMortgage and that a hearing would need to be scheduled with the Clerk of Court's office for the Appellant's pending Motion to Amend Complaint. See 1/5/12 E-mail from Law Clerk of Judge Roger M. Young, attached hereto as Exhibit "C." The parties were notified on January 5, 2012, that Judge Young was granting CitiMortgage's dispositive motion and the Order Granting Summary Judgment was entered on January 6, 2012. See Order Granting Summary Judgment, attached hereto as Exhibit "D."

On January 17, 2012, Appellant filed a Motion to Reconsider, Alter or Amend the Order Granting Summary Judgment pursuant to Rule 59(e), SCRCF ("Motion to Reconsider"). See Mot. to Reconsider, Alter or Amend, attached hereto as Exhibit "E." Rather than pursuing either the Motion to Amend Complaint or the Motion to Reconsider, Appellant then submitted a motion cover sheet and Consent Order for Joinder of an Additional Defendant to The Honorable Deadra L. Jefferson, pursuant to Rules 15 and 19, SCRCF, but did not obtain CitiMortgage's consent to the joinder. See Consent Order for Joinder, attached hereto as Exhibit "F." Instead, Appellant represented through the Consent Order for Joinder that CitiMortgage was "dismissed from the action by Judge Roger Young's Order of January 6, 2012, is no longer a party to the action and therefore [its] consent is no longer required for Joinder." See id. at ¶ 4. Appellant further represented that the contents of the order and the Amended Complaint has "no force or effect upon the Order granting Summary Judgment and Dismissing Defendant CitiMortgage, Inc." Id. at ¶ 10. Thus, Appellant avoided a hearing on the Motion to Amend and sidestepped obtaining CitiMortgage's consent to amend the Complaint to add an additional party.

However, by representing to the Court of Common Pleas that CitiMortgage was dismissed from the action, Appellant also necessarily withdrew her Motion to Reconsider. Appellant is not permitted to maintain CitiMortgage as a party through her Motion to Reconsider and argue that CitiMortgage's consent is not needed to amend her Complaint to join a new party pursuant to Rules 15 and 19, SCRCP. Judge Young ruled accordingly on March 6, 2012. See Order Denying Mot. to Reconsider, Alter or Amend, attached hereto as Exhibit "G." Based on the foregoing, Appellant's Motion to Reconsider Notice of Appeal served on April 4, 2012 is untimely.

STANDARD OF REVIEW

Rule 203 of the South Carolina Appellate Court Rules controls the timely filing of a notice of appeal. When a notice of appeal is not timely filed by an appellant, the Court of Appeals lacks jurisdiction to hear the appeal. See Canal Ins. Co. v. Caldwell, 338 S.C. 1, 5, 524 S.E.2d 416, 418 (Ct. App. 1999) ("Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of subject matter jurisdiction and results in dismissal of the appeal."). Specifically, Rule 203 provides, in relevant part, that:

A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.

Rule 203(b)(1), SCACR. While the rule allows the filing of a timely post-trial motion to toll the thirty-day time limit to serve the notice of appeal, Appellant's Rule 59(e) motion fails to satisfy that requirement because it was voluntarily withdrawn by Appellant. Once Appellant voluntarily withdrew the Motion to Reconsider, the time for appeal began running. Therefore, as outlined below, Appellant's Notice of Appeal in this matter is untimely.

ARGUMENT

This Court lacks the jurisdiction necessary to address Appellant's appeal because the Notice of Appeal was not timely served. Here, Appellant's Motion to Reconsider stopped tolling the time for appeal when she presented a Consent Order for Joinder to the Court of Common Pleas on January 25, 2012, representing that CitiMortgage was finally dismissed from the matter on January 6, 2012—a statement that is erroneous unless she withdrew the pending Motion to Reconsider. Accordingly, Appellant acknowledged that the January 6, 2012 summary judgment Order was final and relied on this assertion to obtain an advantage in the pending litigation, thereby voluntarily withdrawing the Motion to Reconsider. Further, by making the representations in the Consent Order for Joinder, Appellant was judicially estopped from taking a contrary position and pursuing the Motion to Reconsider. Due to these representations, as outlined further below, Appellant's thirty-day period in Rule 203(b)(1), SCACR was not tolled and, therefore, began running on January 6, 2012. To the extent any tolling occurred in this case, the tolling period ended no later than January 25, 2012, when Appellant submitted the Consent Order for Joinder to Judge Jefferson and necessarily withdrew her pending Motion to Reconsider. In either

instance, the thirty-day period outlined in Rule 203(b)(1), SCACR has run. Appellant failed to appeal in a timely fashion and, therefore, this appeal must be dismissed.

Specifically, in the Order denying Appellant's Motion to Reconsider as moot, the Court held that "Plaintiff effectively withdrew the Motion to Reconsider when she submitted the motion sheet and proposed Consent Order for Joinder to Judge Jefferson and acknowledged CitiMortgage was 'dismissed' from the case as of the January 6, 2012 Order." Ex. D, at ¶ 7. Judge Young noted that Appellant made a representation to the Court in the Consent Order for Joinder that she did not have to obtain CitiMortgage's consent to add an additional party to the litigation because CitiMortgage was "dismissed" and "no longer a party" to the action. See id. at ¶ 8. However, Appellant's representation to the Court in the Consent Order for Joinder is only true if Appellant withdrew her Motion to Reconsider. Certainly counsel for Appellant would not make a false representation to the Court in violation of Rule 11, SCRCF and, therefore, there is no other conclusion to draw from Appellant's actions other than she necessarily withdrew the pending Motion to Reconsider. Judge Young agreed. See id. at ¶ 15 ("Plaintiff elected to effectively withdraw her Motion to Reconsider so that she could submit a Consent Order for Joinder, joining Defendant Mass Mutual as a party to the action, without seeking or receiving the consent of Defendant.").

As noted in CitiMortgage's Opposition to Motion to Reconsider, South Carolina law is clear that a pending Rule 59(e) motion removes the finality of a judgment. See, e.g., Southeastern Hous. Found. v. Smith, 380 S.C. 621, 640, 670 S.E.2d 680, 690 (Ct. App. 2008). By removing the finality of the judgment, CitiMortgage remained a party to the litigation and Appellant was obligated by Rule 15(a), SCRCF to either

obtain CitiMortgage's consent to amend the pleading or proceed with a hearing on the Motion to Amend Complaint. Appellant did not obtain CitiMortgage's consent to the amendment and apparently did not contact the Clerk of Court to schedule a hearing on the pending Motion to Amend filed in December 2011. Instead, because Appellant represented to the Court that CitiMortgage was "no longer a party" to the litigation, she necessarily withdrew her Motion to Reconsider. See Ex. D, at ¶ 10 ("[B]ased on Plaintiff's own representations to Judge Jefferson, the Order granting summary judgment in favor of Defendant is final as of January 6, 2012, and the Motion to Reconsider is necessarily withdrawn."). By withdrawing her Motion to Reconsider, Appellant's statutory time for appeal began to run on January 6, 2012.² See id. at ¶ 16 ("Therefore, the Court finds that the Motion to Reconsider was withdrawn by Plaintiff, the Motion to Reconsider is moot, and Defendant was finally dismissed from the case on January 6, 2012.").

Although the South Carolina Supreme Court has not previously had occasion to consider whether a voluntarily withdrawn Rule 59(e) motion tolls the time in which a party must appeal, it has held in analogous situations that an ineffectual Rule 59(e) motion does not toll the time to appeal. See, e.g., Robinson v. Robinson, 365 S.C. 583, 586, 619 S.E.2d 425, 426 (2005) (holding that an inappropriate post-trial motion does not toll the time for appeal); Quality Trailer Prods., Inc. v. CSL Equip. Co., Inc., 349 S.C. 216, 219, 562 S.E.2d 615, 617 (2002) (holding that the filing of successive

² As noted above, even if Appellant attempts to argue that the statutory time for appeal was tolled due to the pending Motion to Reconsider, the tolling necessarily ended when Appellant submitted the motion coversheet and proposed order to Judge Jefferson representing that CitiMortgage was finally dismissed from the case as of January 6, 2012. Therefore, at most, the statutory time for appeal was tolled between January 6, 2012 and January 25, 2012 and Appellant's Notice of Appeal is still untimely.

post-trial motions raising issues already raised to and ruled upon by the trial court does not toll the time to serve a notice of appeal). This same reasoning applies here. Specifically, Appellant's Motion to Reconsider became "inappropriate" once she represented to the Court in the subsequently filed Consent Order for Joinder that CitiMortgage was no longer a party to the litigation and, therefore, she did not have to obtain its consent to amend the Complaint. Just as the motions were ineffectual to toll the time for appeal in Robinson and Quality Trailer, Appellant's Motion to Reconsider became ineffectual on January 25, 2012 when the Consent Order for Joinder was presented and, therefore, the Motion did not toll or, at the very least, no longer tolled the thirty-day time period for appeal.

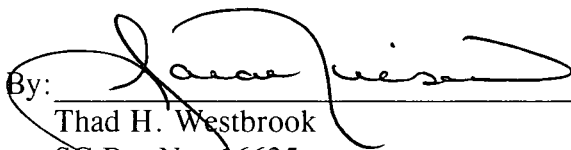
In accordance with the foregoing, other courts have held that a withdrawn Motion to Reconsider or other post-trial motion does **not** toll the time to appeal. See, e.g., Vanderwerf v. SmithKline Beecham Corp., 603 F.3d 842 (10th Cir. 2010) (holding appeal untimely where plaintiff voluntarily withdrew Rule 59 motion and thus the order being appealed from was the prior summary judgment ruling that was seven months old); Copar Pumice Co. v. Morris, 639 F.3d 1025 (10th Cir. 2011) (holding a voluntarily withdrawn motion did not toll time to appeal because "a withdrawn motion is treated as though the motion had never been made for purposes of [rule tolling time to appeal]"). Additionally, some courts have noted that this result is particularly appropriate where the withdrawal of the motion was a result of "hardball litigation strategy." United States v. Rodriguez, 892 F.2d 233 (2d Cir. 1989) (finding that a withdrawn 59(e) motion sufficed to toll time for appeal but noted that the result may be different if there was "evidence that the government filed and then withdrew its motion

for reconsideration in bad faith, as part of some sort of hardball litigation strategy”). In line with the foregoing cases, this Court should deny Appellant’s Notice of Appeal as untimely.

CONCLUSION

Based on the above arguments and authorities, CitiMortgage asks that this Court dismiss the appeal in this matter. Appellant failed to perfect a timely appeal from the Order Granting Summary Judgment in this case. Most notably counsel for Appellant appears to be relying on her Motion to Reconsider to toll the time to appeal, when the Motion to Reconsider was declared moot and voluntarily withdrawn due to Appellant’s actions and representations to the court in the case. Therefore, the appeal as to the underlying Order was not timely filed and Respondent respectfully requests dismissal of the Notice of Appeal.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
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(803) 799-2000

Attorneys for CitiMortgage, Inc.

Columbia, South Carolina

5/24, 2012

EXHIBIT A

11/21/11 E-mail from Law Clerk of Judge Roger M. Young

Sarah Nielsen

From: Young, Roger Law Clerk (Mary B. Ramsay) [ryounglc@sccourts.org]
Sent: Monday, November 21, 2011 10:47 AM
To: Thad Westbrook; Sarah Nielsen; dpt@traywicklaw.com; matt@matthamricklaw.com
Subject: Drexler v. Citimortgage et al 2011CP081754

Counsel,

As you are aware, Judge Young held a hearing on October 12 in Berkeley County on Defendant Citimortgage's Motion for Dismiss in the above referenced case. At the hearing, he took the Matter Under Advisement.

After reviewing the briefs and supporting case law, Judge Young has decided to grant Defendant's Motion based on Res Judicata and Collateral Estoppel.

He has requested that Mr. Westbrook prepare a proposed order for his consideration. Please note, given that the arguments presented considered evidence outside of the pleadings, this Motion was considered as a Motion for Summary Judgment. Please draft an order Granting Defendant's Motion for Summary Judgment based on Res Judicata and Collateral Estoppel.

Please submit a proposed order to me via email by Friday, Dec. 9 and copy opposing counsel.

Feel free to contact me should you have any questions. Also, please take a moment to ensure all necessary parties are copied on this email, and please let me know if someone should be added.

All the best,

Mary

Mary B. Ramsay, Esq.
Law Clerk to Judge Roger M. Young
Ninth Judicial Circuit
100 Broad Street, Suite 368
Charleston, SC 29401
Tel: (843) 958-2015
Fax: (843) 958-5108

EXHIBIT B

12/8/11 E-mail from Attorney Matthew D. Hamrick

Sarah Nielsen

From: Matt Hamrick [matt@matthamricklaw.com]
Sent: Thursday, December 08, 2011 4:36 PM
To: 'Young, Roger Law Clerk (Mary B. Ramsay)'
Cc: Thad Westbrook; Sarah Nielsen; dpt@traywicklaw.com; bgrimsley@grimsleylaw.com
Subject: RE: Drexler v. Citimortgage et al 2011CP081754
Attachments: 030340.PDF

Dear Judge Young and Ms. Ramsay:

We alleged in the Complaint and argued in our briefing and at the hearing that CitiMortgage at all times in the prior foreclosure suit acted as an agent of its principal. Today we confirmed the identity of that principal: Massachusetts Mutual Life Insurance Company ("MassMutual"). Accordingly, we have today filed and served the attached Motion to Amend Complaint, which seeks to add MassMutual as a defendant.

We request a hearing on our motion to amend. A hearing on the motion to amend is essential prior to the signing of the order dismissing CitiMortgage because either the principal or the agent may be entitled to dismissal on the grounds of res judicata—but not both (it is impossible for two people simultaneously to wear the same hat).

Until MassMutual has had an opportunity to serve a responsive pleading and clarify the nature of its relationship to CitiMortgage with respect to this transaction, a dismissal in favor of CitiMortgage potentially prejudices MassMutual. On the other hand, delaying decision on the motion to dismiss until MassMutual appears costs CitiMortgage nothing.

Respectfully,

Matthew D. Hamrick
Attorney at Law
875 Lowcountry Blvd., Ste. 206
Mt. Pleasant, SC 29464
tel. (843) 693-4700
fax (877) 524-5023
matt@matthamricklaw.com

This communication may be attorney-client privileged or otherwise confidential. If you are not the intended recipient, please delete this message and notify the sender of this error.

From: Young, Roger Law Clerk (Mary B. Ramsay) [<mailto:ryounglc@sccourts.org>]
Sent: Monday, November 21, 2011 10:47 AM
To: thad.westbrook@nelsonmullins.com; sarah.nielsen@nelsonmullins.com; dpt@traywicklaw.com; matt@matthamricklaw.com
Subject: Drexler v. Citimortgage et al 2011CP081754

Counsel,

As you are aware, Judge Young held a hearing on October 12 in Berkeley County on Defendant Citimortgage's Motion for Dismiss in the above referenced case. At the hearing, he took the Matter Under Advisement.

After reviewing the briefs and supporting case law, Judge Young has decided to grant Defendant's Motion based on Res Judicata and Collateral Estoppel.

He has requested that Mr. Westbrook prepare a proposed order for his consideration. Please note, given that the arguments presented considered evidence outside of the pleadings, this Motion was considered as a Motion for Summary Judgment. Please draft an order Granting Defendant's Motion for Summary Judgment based on Res Judicata and Collateral Estoppel.

Please submit a proposed order to me via email by Friday, Dec. 9 and copy opposing counsel.

Feel free to contact me should you have any questions. Also, please take a moment to ensure all necessary parties are copied on this email, and please let me know if someone should be added.

All the best,

Mary

Mary B. Ramsay, Esq.
Law Clerk to Judge Roger M. Young
Ninth Judicial Circuit
100 Broad Street, Suite 368
Charleston, SC 29401
Tel: (843) 958-2015
Fax: (843) 958-5108

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY)

EIGHTH JUDICIAL CIRCUIT

Angela Drexler)

CASE NO.: 2011-CP-08-1754

Plaintiff,)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.)

CitiMortgage; Stonegate; BB&T.)

Defendant.)

Plaintiff's Attorney:
David P. Traywick, Bar No. 78502
Address:
PO Box 564 IOP SC 29451
Phone: 843 343 5092 Fax 843 300 1051
E-mail: dpt@traywicklaw.com Other: _____

Defendant's Attorney:
_____, Bar No. _____
Address:

Phone: _____ Fax _____
E-mail: _____ Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Amend Complaint

Estimated Time Needed: 30

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25⁰⁰

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Angela Drexler,

Plaintiff,

v.

CitiMortgage, Inc.; Stonegate Properties,
Inc.; Branch Banking and Trust Company,
Inc.,

Defendants.

) IN THE COURT OF COMMON PLEAS

) Case No.:2011-CP-08-1754

) **NOTICE AND MOTION TO AMEND**
) **COMPLAINT**

TO THE COURT AND ALL INTERESTED PARTIES, PLEASE TAKE NOTICE:

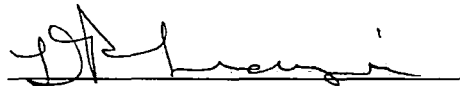
Plaintiff will, as soon as counsels may be heard, move the court pursuant to Rule 15, SCRCPP, for an order allowing Plaintiff to amend her pleading in accordance with the attached proposed Amended Complaint, providing that the amendment shall relate back to the date of the original pleading, and further providing that the filing and serving of the instant motion with the attached already signed copy of such Amended Complaint, shall constitute service and filing of the amended pleading as of the date the motion is granted as to existing parties, but not constituting service upon Defendant Massachusetts Mutual Life Insurance Company - who shall be served a copy of the Amended Complaint, according to SCRCPP along with a Summons, Civil Action Cover Sheet, and Lis Pendens, also attached hereto as part of the moved for Amended Complaint.

The grounds for this motion are that leave to amend is requested, justice so requires, and leave to amend will not prejudice any other party. The amendment is needed so as to clarify the

identities of the parties in the prior suit. Plaintiff's motion is based upon the pleadings and other filings in this action, the substantive law and procedural rules of the State of South Carolina and the United States of America, and such supporting memorandum, affidavits and additional evidence as may be timely submitted for consideration by this Court

The undersigned certifies that he has consulted with opposing parties, through their respective counsels, regarding this motion.

Respectfully submitted,


TRAYWICK LAW OFFICES, LLC
P.O. Box 564
Isle of Palms, SC 29451
Telephone: 843-343-5092
Fax: 843-300-1051
Dpt@traywicklaw.com

-and-

Matthew D. Hamrick
Attorney at Law
875 Lowcountry Blvd., Ste. 206
Mt. Pleasant, SC 29464
(843) 693-4700
matt@matthamricklaw.com

CO-COUNSELS FOR PLAINTIFF

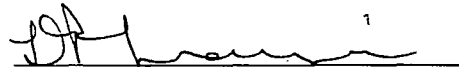
Charleston, South Carolina
December 8, 2011

CERTIFICATE OF SERVICE

The undersigned does hereby certify that I have served all counsel in this action with a copy of the foregoing document by mailing a copy of the same by US mail, postage prepaid, to the following addresses:

Benjamin E. Grimsley
1703 Laurel Street
PO Box 11682
Columbia, SC 29211

Sarah B. Nielsen
PO Box 11070
Columbia, SC 29201



David P. Traywick
P.O. Box 564
Isle of Palms, SC 29451
Telephone: 843-343-5092
Fax: 843-300-1051
Dpt@traywicklaw.com

Attorney For Plaintiff, Angela Drexler

Charleston, South Carolina
December 8, 2011

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Angela Drexler

Plaintiff(s)

vs.

CitiMortgage, Stonegate, BB&T, and
Massachusetts Mutual Life Ins. Company

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP - 08- 1754

(Please Print)

Submitted By: David P. Traywick

Address: PO Box 564 IOP SC 29451

SC Bar #: 78502

Telephone #: 843 343 5092

Fax #: 843 300 1051

Other:

E-mail: dpt@traywicklaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

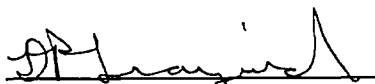
*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☒ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____-CP-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☒ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:



Date: December 8, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Angela Drexler,

Plaintiff,

v.

CitiMortgage, Inc.; Stonegate Properties,
Inc.; Branch Banking and Trust Company,
Inc., and Massachusetts Mutual Life
Insurance Company,

Defendants.

) IN THE COURT OF COMMON PLEAS

Case No.:2011-CP-08-1754

LIS PENDENS

(Jury Trial Demanded)

TO WHOM IT MAY CONCERN:

Please take notice that an action has been filed, or will be filed. The subject of this action is real property ("the Property") owned by Branch Banking and Trust Company, Inc., as conveyed by Instrument Number 11-3443 recorded in Book "R", Volume 08832, at Page 130 in the Berkeley County office of the Register of Deeds. The Property is located at 719 Cluster Pines, Road, Ladson, South Carolina 29456 in the county of Berkeley, State of South Carolina.

The Property TMS number is: 233-14-01-024

The object of the action is said property and among the purposes of the action is quiet title in favor of Plaintiff.

By:


David P. Traywick
TRAYWICK LAW OFFICES, LLC
P.O. Box 564
Isle of Palms, SC 29451
Telephone: 843-343-5092
Fax: 843-300-1051

Attorney for Plaintiff
Angela Drexler

December 8, 2011
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Angela Drexler,

Plaintiff,

v.

CitiMortgage, Inc.; Stonegate Properties,
Inc.; Branch Banking and Trust Company,
Inc., and Massachusetts Mutual Life
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) IN THE COURT OF COMMON PLEAS

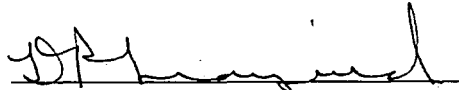
) Case No.:2011-CP-08-1754

SUMMONS

TO: THE DEFENDANT, MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribed at his office, P.O. Box 564, Isle of Palms, SC 29451, within thirty (30) days after the service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

By:



David P. Traywick

TRAYWICK LAW OFFICES, LLC

P.O. Box 564

Isle of Palms, SC 29451

Telephone: 843-343-5092

Fax: 843-300-1051

Attorney for Plaintiff

Angela Drexler

December 8, 2011

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS

)

) CASE NO.: 2011-CP-08-1754

Angela Drexler,

Plaintiff,

v.

CitiMortgage, Inc.; Stonegate Properties, Inc.;
Branch Banking and Trust Company, Inc.; and
Massachusetts Mutual Life Insurance Company,

Defendants.

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AMENDED COMPLAINT

(Jury Trial Demanded)

PARTIES AND JURISDICTION

1. Defendant CitiMortgage, Inc. ("Citi") is, and at all times herein mentioned was, a corporation doing business in Berkeley County, South Carolina and is, and at all times herein mentioned was, the agent of Massachusetts Mutual Life Insurance Company.

2. Defendant Stonegate Properties, Inc. ("Stonegate") is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of South Carolina.

3. Defendant Branch Banking and Trust Company, Inc. ("BB&T") is, and at all times herein mentioned was, a corporation doing business in Berkeley County, South Carolina.

4. Defendant Massachusetts Mutual Life Insurance Company ("MassMutual") is a business entity organized and existing under the laws of the State of Delaware and is, and at all times herein mentioned was, a corporation doing business in Berkeley County, South Carolina and is, and at all times herein mentioned was, the principal of its agent Citi. Upon information and belief, MassMutual is, and at all times herein mentioned was, the investor or beneficial

owner or owner trustee or trustee or holder or owner or counterparty or lender with respect to the note and/or mortgage from which this suit arises.

5. Plaintiff is, and at all times herein mentioned was, a resident of Berkeley County, South Carolina.

6. This Court has jurisdiction over the parties and subject matter of this complaint.

GENERAL ALLEGATIONS

7. On July 7, 1998, Plaintiff purchased certain real property ("Subject Property").

8. On July 7, 1998, Plaintiff executed a promissory note in favor of Compass Mortgage, Inc. The note was secured by a mortgage with Compass Mortgage, Inc. as mortgagee. Upon information and belief, the note and mortgage were thereafter assigned or otherwise transferred one or more times and ultimately were assigned or otherwise transferred to MassMutual.

9. Upon information and belief, Citi acquired Plaintiff's previous mortgage servicing company, ABN AMRO Mortgage Group, Inc. Plaintiff continued to make payments but now remitted them to Citi.

10. On December 17, 2007, Plaintiff paid Citi \$1333.51 via that defendant's telephone payment system.

11. On or about February 12, 2008, Citi instructed Plaintiff to send a certified check in the amount of \$2294.73. Citi claimed that amount was past due.

12. On or about February 19, 2008, Plaintiff purchased and mailed to Citi a certified check for \$2294.73.

13. On March 12, 2008, Plaintiff made out check #2300 paid to the order of Citi for \$910.70. This amount represented Plaintiff's ordinary monthly payment.

14. On March 13, 2008, Plaintiff mailed check #2300 to Citi via express mail.
15. On March 14, 2008, Citi received check #2300 and stamped it "too delinquent".
16. Prompted by Citi, on March 31, 2008, Plaintiff sent a facsimile transmission that included a photocopy of both the certified check for \$2294.73 mailed as of February 19 as well check #2300 mailed on March 13.
17. Throughout this period, Citi assured Plaintiff that all would be well, that Citi had simply misplaced the certified check, that it would be found, that there was nothing to worry about, and to proceed with making the \$910.70 April payment in the usual fashion (ie: personal check via regular mail).
18. On April 20, 2008, Plaintiff made out check #2261 paid to the order of Citi for \$910.70.
19. On or about April 21, 2008, Plaintiff mailed check #2261 to Citi via express mail.
20. On May 5, 2008, Citi returned, via regular mail letter, check numbers 2280 and 2261 to Plaintiff. The letter stated that Citi was unable to accept the funds because the amount was insufficient to cure the delinquency. Additionally, the letter states that a certified check is necessary to cure the delinquency.
21. The May 5, 2008 Citi letter to Plaintiff made no mention of the certified check, though Plaintiff was repeatedly assured that the check would be located.
22. On May 7, 2008, Rogers Townsend Thomas ("RTT") filed foreclosure pleadings in Berkeley County.
23. On May 9, 2008, at 7:45 a.m., Pro Vest, LLC served process on Plaintiff at her home.

24. On May 14, 2008, owing to representations appearing in Citi's May 5, 2008 letter, by the lawsuit served on May 9, and by representations made by RTT personnel during calls placed by Plaintiff to RTT, Plaintiff sent a facsimile transmission that included various documents and materials the purpose of which was to dispute the validity of the debt RTT alleged was due and owing in its foreclosure Complaint. Plaintiff's facsimile included compelling proof that all payments had been submitted by Plaintiff to Citi.

25. On May 21, 2008, RTT amended its initial complaint.

26. In early June of 2008, Plaintiff contacted Debra Leonard, a foreclosure prevention counselor with Money Management International, a non-profit consumer credit counseling organization.

27. On June 16, 2008, the certified check Plaintiff mailed to Citi on February 19 was deposited into Plaintiff's bank account. The circumstances of how the deposit was made remain mysterious.

28. Throughout June and July, 2008, Plaintiff, in conjunction with Debra Leonard, repeatedly attempted to obtain payment instructions from Citi - without success. During that period, Citi failed to return telephone calls, wait times were extraordinary, the process was overwhelmingly tedious, and nobody at Citi was capable of providing useful answers.

29. On August 6, 2008, Angela and Debra Leonard conference called a Citi supervisor. During that conference call, Citi advised that a check for \$8133.35 would bring the account up to date and that upon receipt of that check that the foreclosure Complaint would be dismissed.

30. On August 15, 2008, Plaintiff mailed a check for \$8133.35 to Citi.

31. On August 16, 2008, Citi received the check for \$8133.35.

32. On August 20, 2008, Citi returned the check for \$8133.35.
33. On either September 12 or 13, 2008, following numerous telephone conversations placed by Plaintiff to Citi, Plaintiff mailed a certified check via certified mail with a return receipt requested, to Citi. Citi had assured Plaintiff repeatedly that upon receipt of a certified check for \$9,010.00 that Citi would change Plaintiff's account status to current and that the foreclosure proceedings would be terminated.
34. On September 14, 2008, Citi signed for receipt of the certified check sent by Plaintiff.
35. On September 23, 2008, Citi sent a letter to BB&T explaining that Citi had received a certified check in the amount of \$9,010.00 but that Citi had been unable to match that certified check with any of its accounts.
36. On October 12, 2008, RTT claims to have mailed Plaintiff a Notice of Foreclosure Hearing scheduled for October 29, 2008.
37. On October 14, 2008, a certified check for 9,010.00 was mysteriously deposited into Plaintiff's account.
38. On October 15 or 16, 2008, Plaintiff mailed, via certified mail with return receipt requested, personal check #2336 for \$876.00 to Citi. This check represented the amount she was instructed to pay by Citi.
39. On October 17, 2008, Citi signed for receipt of check #2336.
40. On October 22, 2008, Citi returned check #2336 to Plaintiff via regular mail.
41. On October 29, 2008, a foreclosure hearing was held in Berkeley County and a Judgment of Foreclosure entered. Plaintiff was assured at all times that the foreclosure Complaint would be dismissed on condition that Plaintiff complied with payment instructions.

Plaintiff at all times complied with Citi's payment instructions. Plaintiff was never notified of the foreclosure hearing nor was she advised that a judgment had been entered.

42. On November 22, 2008, Plaintiff sent, via certified mail with return receipt requested, personal check #2341 for \$900 to Citi.

43. On November 24, 2008, Citi signed for receipt of check #2341 for \$900.

44. On November 29, 2008, Citi returned check #2341 for \$900 to Plaintiff, via regular mail. Citi had stamped the back of check #2341 "Foreclosure".

45. Plaintiff made each payment due on the loan from 1998 until the date her house was sold at public auction pursuant to a court ordered foreclosure.

46. Plaintiff did not receive notice of the time and place of the foreclosure sale.

**FIRST CAUSE OF ACTION
NEGLIGENCE
(AGAINST CITIMORTGAGE AND MASSMUTUAL)**

47. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 46, inclusive, as though fully set forth herein.

48. At all times relevant herein, Citi and MassMutual, acting as Plaintiff's lender and/or loan servicer, had a duty to exercise reasonable care and skill to maintain proper and accurate loan records and to discharge and fulfill the other incidents attendant to the maintenance, accounting and servicing of loan records, and Citi and MassMutual breached those duties by their conduct including, but not limited to, the failure to accurately credit payments made by Plaintiff and the following:

- (a) Assessing improper or excessive late fees;
- (b) Improperly characterizing customers' accounts as being in default or delinquent status to generate unwarranted fees;

- (c) Instituting improper or premature foreclosure proceedings to generate unwarranted fees;
- (d) Misapplying or failing to apply customer payments;
- (e) Failing to provide adequate monthly statement information to customers regarding the status of their accounts, payments owed, and/or basis for fees assessed;
- (f) Seeking to collect, and collecting, various improper fees, costs and charges, that are either not legally due under the mortgage contract or South Carolina law, or that are in excess of amounts legally due;
- (g) Mishandling borrowers' mortgage payments and failing timely or properly to credit payments received, resulting in late charges, delinquencies or default;
- (h) Treating borrowers as in default on their loans even though the borrowers have tendered timely and sufficient payments or have otherwise complied with mortgage requirements or South Carolina law;
- (i) Failing to disclose the fees, costs and charges allowable under the mortgage contract;
- (j) Ignoring grace periods;
- (k) Executing and recording false and misleading documents;
- (l) Acting as beneficiaries and trustees without the legal authority to do so;
- (m) Filing suit against property owners improperly whilst

assuring those property owners that the foreclosure suit was a mere formality, that upon receipt of payment Citi would drop the suit;

(n) Telling property owners who had been served lawsuits that they did not need to hire attorneys to defend themselves in court provided exact payment instructions were followed. For example, Plaintiff was specifically told that if she mailed payments that she should not waste her money hiring a lawyer since her account would no longer be in default. Citi told her this on several different occasions; and

(o) Misrepresenting the amounts due and owing under the note while at the same time misrepresenting the amount required to bring the account to current.

(p) As to MassMutual, negligently and recklessly giving authority to Citi to service the mortgage loan account and failing to supervise Citi in the servicing of the account.

49. In the various particulars alleged, and in failing to take actions reasonably necessary, actions that a reasonable party would have undertaken in order to credit payments submitted by Plaintiff, Citi and MassMutual breached their duty of care and skill owed to Plaintiff in the servicing of Plaintiff's loan by, among other things, failing to properly and accurately credit payments made by Plaintiff toward the loan, preparing and filing false documents, and foreclosing on the Subject Property without having the legal authority and/or proper documentation to do so.

50. As a direct and proximate result of Citi's and MassMutual's negligence, recklessness, wilfulness, and/or wantonness in carrying out or failing to carry out its duties to be

reasonably diligent in servicing Plaintiff's mortgage loan, as set forth above, Plaintiff suffered general and special damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION
FRAUD
(AGAINST CITIMORTGAGE AND MASSMUTUAL)

51. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 50, inclusive, as though fully set forth herein.

52. Citi and MassMutual engaged in a pattern and practice of defrauding Plaintiff in that, during the life of the mortgage loan, Citi and MassMutual failed properly to credit payments made and foreclosed on the Subject Property based on Plaintiff's alleged non-payment which they knew to be false.

53. Citi and MassMutual had actual knowledge that the Plaintiff's account, as Citi and MassMutual represented it to Plaintiff and others, was not accurate but that Citi and MassMutual could use the inaccuracy to foreclose on the Subject Property which had substantial equity, to recover its excessive fees, charges and interest. Plaintiff made such payments and provided proof of the payments based on the improper, inaccurate, and fraudulent representations as to her account. Citi and MassMutual also utilized amounts it knew to be inaccurate to determine the amount allegedly due and owing for purposes of foreclosure.

54. Additionally, Citi and MassMutual knowingly concealed material facts from Plaintiff regarding payments, notices, assignments, transfers, late fees and charges with the intent to defraud Plaintiff.

55. Citi and MassMutual made the above-referenced false representations, concealments and non-disclosures with knowledge of the misrepresentations, intending to induce

Plaintiff's reliance, which the unsuspecting Plaintiff justifiably relied upon, resulting in damage to her credit standing, costs, and loss of her property. Plaintiff was unaware of the true facts because Citi and MassMutual concealed them. Had Plaintiff known the true facts, Plaintiff, among other things, would have retained counsel upon receipt of the foreclosure Complaint, requested instructions for making payments be reduced to a writing, personally appeared at Citi's and/or MassMutual's offices and made a payment in actual cash, wire transferred the amount required to cure Plaintiff's allegedly delinquent account, and/or taken legal action immediately to save her house.

56. As a result of Citi's and MassMutual's fraudulent conduct, Plaintiff has suffered compensatory, general and special damages in an amount to be proven at trial. Additionally, Citi and MassMutual acted with malice, fraud and/or oppression and, thus, Plaintiff is entitled to an award of punitive damages.

**THIRD CAUSE OF ACTION
TO SET ASIDE MASTER'S SALE
(AGAINST CITIMORTGAGE)**

57. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1 through 56, inclusive, as though fully set forth herein.

58. Citi never had the legal authority to foreclose, i.e., the authority to exercise the power of sale as an assignee of the Note and Mortgage, resulting in the judicial foreclosure sale being void ab initio.

59. Citi never had the legal authority to foreclose because the Mortgage instrument upon which it premised foreclosure is void as it was fraudulently assigned/endorsed/transferred. Citi orchestrated the fraudulent assignment/endorsement/transfer. Citi cannot benefit from its

own fraudulent conveyance of an interest in real property and any judicial sale premised on a fraudulent document is void ab initio.

60. Accordingly, Plaintiff requests an Order from this Court that the Trustee's Sale was either void, or voidable as to the defrauded party, the Plaintiff, and that the judicial sale premised upon such fraud was without force and effect at least as to this defrauded Plaintiff. The order should further state that Citi and/or its agent(s) and/or principal(s), sought, obtained, and induced a court to conduct a judicial foreclosure absent any legal or equitable right or privilege to do so.

**FOURTH CAUSE OF ACTION
TO VOID OR CANCEL MASTER'S DEED UPON SALE
(AGAINST CITIMORTGAGE, MASSMUTUAL, STONEGATE PROPERTIES
AND BRANCH BANKING AND TRUST COMPANY)**

61. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 60, inclusive, as though fully set forth herein.

62. Although Master's deeds upon the two sales of the Subject Property bear the imprimatur of Berkeley County and the State of South Carolina, they are invalid, and of no force and effect, for the reasons set forth above including, inter alia, the fact the Mortgage which purportedly secured the Note, which served as the basis for a claim to have the right to conduct a judicial foreclosure, was void due to a fraudulent assignment/endorsement/transfer to Citi and/or MassMutual. As noted, such fraudulent assignment/endorsement/transfer was in fact orchestrated by Citi and/or MassMutual and/or its/their agent(s) and/or principal(s). Additionally, Plaintiff had submitted all payments due on the Note in a timely fashion and the judicial foreclosure was therefore unjustified.

63. Plaintiff is therefore entitled to an order that the Master's deeds upon the sales are void ab initio and the cancellation of those deeds' force and effect.

**FIFTH CAUSE OF ACTION
TO VOID OR CANCEL ASSIGNMENT OF MORTGAGE
(AGAINST CITIMORTGAGE)**

64. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1 through 63, inclusive, as though fully set forth herein.

65. The assignment of the mortgage, and subsequent recording, is invalid, and of no force and effect, for the reasons set forth above including, inter alia, the fact that Stewart Information Services, Inc. ("Stewart") fraudulently executed an assignment in favor of Citi. Stewart did not have standing or the legal authority to assign the mortgage allegedly securing the Note that was the basis for Citi's claim to have the right to conduct a judicial foreclosure. Thus, Stewart's fraudulent assignment of the mortgage was at all times void.

66. Plaintiff is therefore entitled to an order that the Assignment of the Mortgage by Stewart in favor of Citi is void ab initio and to an order cancelling the force and effect of such Assignment.

**SIXTH CAUSE OF ACTION
WRONGFUL FORECLOSURE VIA LACK OF STANDING
(AGAINST CITIMORTGAGE)**

67. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 66, inclusive, as though fully set forth herein.

68. Plaintiff is informed and believes and thereon alleges that after the origination and funding of her loan, the loan was sold to investors as a "mortgage backed security" and that Citi, which claimed authority to foreclose, owned neither the note nor its corresponding mortgage. Moreover, Citi had not been lawfully appointed as trustee or had the original note assigned to it. Accordingly, Citi had no right to foreclose Plaintiff's interest in its own right and in its own name, which it in fact did. The named Plaintiff in the filed foreclosure action was neither note

holder nor beneficiary of the note at the time Citi filed a suit premised on the Plaintiff's note and mortgage.

69. Plaintiff further alleges on information and belief that Citi was neither the note beneficiary nor a representative of the note beneficiary and, if Citi alleged otherwise, it did not possess the original note to prove that it was in fact the party authorized to conduct the foreclosure. No power of attorney to sue on behalf of another party, such as an owner trustee, was ever produced in court. Rather, Citi represented that it, Citi, owned the note.

70. Plaintiff further alleges on information and belief that the loan was sold or transferred without notice having been furnished to the Plaintiff in writing, or in any other fashion.

71. As a result of the above alleged wrongs, Plaintiffs have suffered general and special damages in an amount to be determined at trial.

**SEVENTH CAUSE OF ACTION FOR
BREACH OF CONTRACT
(AGAINST CITIMORTGAGE AND MASSMUTUAL)**

72. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 71, inclusive, as though fully set forth herein.

73. Plaintiff's original loan agreement set forth dates by which monthly principal and interest payments were due, and when late fees and other charges could be assessed, and how much those late fees and other charges were to be. Citi and/or MassMutual failed to comply with its/their obligations to adhere to the terms set forth in the original instruments and repeatedly misallocated payments or failed properly to calculate amounts due and owing under the note and mortgage at various periods.

74. Even assuming the original note and mortgage were properly assigned to Citi and/or MassMutual, Citi and/or MassMutual breached the note and mortgage terms that Plaintiff signed on July 7, 1998. The terms of the note and mortgage required payments made by Plaintiff to be applied properly to the note. Additionally, the note and mortgage specified the penalties for any late payments. Citi and/or MassMutual charged in excess of the amounts specified and thereby breached the contract between Plaintiff and Citi and/or MassMutual.

75. Citi and/or MassMutual breached the note and mortgage by failing to apply the payments made by Plaintiff in the various particulars described hereinabove the result of which led to the wrongful foreclosing of Plaintiff's property.

76. As a proximate result of Citi's and/or MassMutual's breaches, Plaintiff suffered various damages including expectation, compensatory, and other damages in an amount to be proven at trial.

**EIGHTH CAUSE OF ACTION FOR
BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(AGAINST CITI AND MASSMUTUAL)**

77. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 76, inclusive, as though fully set forth herein.

78. Every contract imposes upon each party a duty of good faith and fair dealing in its performance and in its enforcement. This implied covenant of good faith and fair dealing requires that no party do anything that effectively impairs, destroys, or injures the rights of the other party to receive the benefits of an agreement. The covenant implies that in all contracts each party will do all things reasonably contemplated by the terms of the contract to accomplish its purpose. The covenant protects the respective benefits that the parties reasonably contemplated when entering into the agreement.

79. Citi and/or MassMutual wielded, or claimed to have the power to wield, substantial discretionary power affecting the rights of Plaintiff during the events alleged in this Complaint. The covenant required Citi and/or MassMutual to exercise such power in good faith and with an eye toward fair dealing with respect to the contract's counterparty.

80. Citi and/or MassMutual wielded its/their discretionary authority in such a manner as to ensure the utter destruction of Plaintiff's rights to the benefits of the bargain she struck, and in such a manner as to defeat the Plaintiff's expectations to be dealt with fairly and reasonably. Citi's and/or MassMutual's conduct exhibited a determination to drive Plaintiff into foreclosure so that Citi and/or MassMutual could acquire the large equitable position Plaintiff enjoyed in the Subject Property. Citi's and/or MassMutual's pattern of conduct constitute a bad faith breach of the contract - a breach evidently undertaken with neither mercy nor malice - so cold, impersonal, faithless, and unfair so as to be 'machine-like'.

81. As a result of Citi's and/or MassMutual's breaches of this covenant, Plaintiff has suffered general and special damages in an amount to be determined at trial.

**NINTH CAUSE OF ACTION FOR
UNJUST ENRICHMENT
(AGAINST CITI AND MASSMUTUAL)**

82. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 81, inclusive, as though fully set forth herein.

83. By its wrongful acts and omissions, Citi and/or MassMutual has/have been unjustly enriched at the expense of Plaintiff, and thus Plaintiff has been unjustly deprived.

84. By reason of the foregoing, Plaintiff seeks restitution from Defendant Citi and/or MassMutual and an order of this Court that Citi and MassMutual disgorge all profits, benefits, and other compensation obtained resulting from the unjust Foreclosing of Plaintiff's property.

**TENTH CAUSE OF ACTION FOR
VIOLATION OF SOUTH CAROLINA'S UNFAIR TRADE PRACTICES ACT
(AGAINST CITIMORTGAGE AND MASSMUTUAL)**

85. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 84, inclusive, as though fully set forth herein.

86. South Carolina prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.

87. As more fully described above, Citi's and MassMutual's acts and practices are likely to deceive, constituting a fraudulent business act or practice. This conduct is ongoing and continues to this date.

88. Specifically, Citi and MassMutual engaged in deceptive business practices with respect to mortgage loan servicing, assignments of notes and mortgages, foreclosure of residential properties and related matters by:

- (a) Assessing improper or excessive late fees;
- (b) Improperly characterizing customers' accounts as being in default or delinquent status to generate unwarranted fees;
- (c) Instituting improper or premature foreclosure proceedings to generate unwarranted fees;
- (d) Misapplying or failing to apply customer payments;
- (e) Failing to provide adequate monthly statement information to customers regarding the status of their accounts, payments owed, and/or basis for fees assessed;
- (f) Seeking to collect, and collecting, various improper fees, costs and charges, that are either not legally due under the mortgage

contract or South Carolina law, or that are in excess of amounts legally due;

(g) Mishandling borrowers' mortgage payments and failing timely or properly to credit payments received, resulting in late charges, delinquencies or default;

(h) Treating borrowers as in default on their loans even though the borrowers have tendered timely and sufficient payments or have otherwise complied with mortgage requirements or South Carolina law;

(i) Failing to disclose the fees, costs and charges allowable under the mortgage contract;

(j) Ignoring grace periods;

(k) Executing and recording false and misleading documents;

(l) Acting as beneficiaries and trustees without the legal authority to do so;

(m) Filing suit against property owners improperly whilst assuring those property owners that the foreclosure suit was a mere formality, that upon receipt of payment Citi would drop the suit;

(n) Telling property owners who had been served lawsuits that they did not need to hire attorneys to defend themselves in court provided exact payment instructions were followed. For example, Plaintiff was specifically told that if she mailed payments that she should not waste her money hiring a lawyer since her account would no longer be in default. Citi told her this on several different occasions; and

(o) Misrepresenting the amounts due and owing under the note while at the same time misrepresenting the amount required to bring the account to current.

89. Citi and MassMutual failed to act in good faith as it took fees for services but did not render services competently and in compliance with applicable law and in accordance with applicable standards of care.

90. Moreover, Citi and MassMutual engaged in a uniform pattern and practice of unfair and overly-aggressive servicing that resulted in the assessment of unwarranted and unfair fees against this Plaintiff and other South Carolina consumers and premature default often resulting in unfair and illegal foreclosure proceedings. The scheme implemented by Citi and MassMutual was designed to defraud South Carolina consumers and to enrich Citi and MassMutual.

91. The foregoing acts and practices have caused substantial harm to this Plaintiff and to South Carolina consumers.

92. As a direct and proximate cause of the unlawful, unfair and fraudulent acts and practices of Citi and MassMutual, Plaintiff and South Carolina consumers have suffered and will continue to suffer damages in the form of unfair and unwarranted late fees, other improper fees and charges, as well as improper, unfair, and illegal seizures of real property.

93. By reason of the foregoing, Citi and MassMutual and/or its/their agent(s) and/or principal(s) have been unjustly enriched and should be required to disgorge their illicit profits and/or make restitution to Plaintiff and other South Carolina consumers who have been harmed, and/or be enjoined from continuing in such practices pursuant to South Carolina's Unfair Trade Practices Act. Additionally, Plaintiff is therefore entitled to injunctive relief and attorney's fees

and treble damages as available under South Carolina's Unfair Trade Practices Act. Plaintiff also invokes and demands all relief accorded by South Carolina Code sections 39-5-140(a) and 39-5-50 (b).

**ELEVENTH CAUSE OF ACTION FOR
QUIET TITLE
(AGAINST CITIMORTGAGE; MASSMUTUAL; STONEGATE; BB&T)**

94. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 93, inclusive, as though fully set forth herein.

95. Plaintiff is the equitable owner of the Subject Property which has the following legal description:

All that piece, parcel or lot of land with the buildings and improvements thereon, situate lying and being near Ladson, South Carolina, in Berkeley County, South Carolina, shown and designated as Lot 74, Block F, Tall Pines Plantation Subdivision, Section Three, on a plat dated January 19, 1977 made by Harold J. Leamond, P.E. and L.S., and recorded in the Office of the Clerk of Court for Berkeley County on January 24, 1977 in Plat Book W. Page 153. Derivation: Book 1379 at Page 53. The address is 719 Cluster Pines Road, Ladson, SC 29456. TMS #: 233-14-01-024.

96. Plaintiff seeks to quiet title against the claims of Defendants Citi, MassMutual, Stonegate, BB&T, and all other persons unknown claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to Plaintiff's title.

97. Upon information and belief, BB&T holds itself out as entitled to fee simple ownership of the Subject Property by and through its purchase of the property at a master in equity's sale held in 2011.

98. Plaintiff seeks to quiet title as of May 7, 2008, the date Citi filed a lis pendens against the subject property. Plaintiff seeks a judicial declaration that the title to the Subject Property is vested in Plaintiff alone and that any defendant claiming an interest or lien in Subject Property be declared to have no interest estate, right, title or interest in the Subject Property and

that the Defendants, their agents and assigns, be forever enjoined from asserting any estate, right title or interest in the Subject Property subject to Plaintiff rights.

**TWELFTH CAUSE OF ACTION FOR
SLANDER OF TITLE
(AGAINST CITIMORTGAGE, MASSMUTUAL, AND STONEGATE)**

99. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 98, inclusive, as though fully set forth herein.

100. Defendant Citi and/or MassMutual fraudulently assigned a mortgage which it filed with the Berkeley County Register of Deeds. Defendant Citi and/or MassMutual additionally caused to be filed a lis pendens against real property owned by Plaintiff. Defendant Stonegate knew that the Citi and/or MassMutual foreclosure was unlawful, that the basis of the foreclosure was the result of negligent, reckless, wilfull, and/or wanton conduct on the part of Citi and/or MassMutual and nevertheless purchased the property at auction and requested, received from the master and subsequently recorded a deed on the basis of the unlawful foreclosure sale.

101. By besmirching Plaintiff's title to real property, Defendants Citi, MassMutual, and Stonegate caused Plaintiff to suffer special damages.

102. The invalid liens and or deeds and mortgages were effectively published because they were recorded in Berkeley County and as such is public information freely available.

103. Defendant Citi and/or MassMutual filed its lis pendens knowing full well that the property that was its subject was owned by Plaintiff and was not subject to foreclosure as payments on the attendant note had been paid.

104. As a result of her besmirched title, via the various invalid mortgages, deeds and lis pendens, Plaintiff's property has been under a cloud since May of 2008 which has undermined her rights to full use and enjoyment of her property.

105. By doing the acts described above, Citi, MassMutual, and Stonegate have slandered Plaintiff's title to the Subject Property.

106. The conduct of Citi, MassMutual, and Stonegate caused Plaintiff to suffer general and special damages in an amount to be proven at trial.

**THIRTEENTH CAUSE OF ACTION FOR
TORTIOUS INTERFERENCE WITH CONTRACT
(AGAINST CITIMORTGAGE AND MASSMUTUAL)**

107. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 106, inclusive, as though fully set forth herein.

108. Plaintiff secured a note whereby she agreed to make installment payments to a third party. Plaintiff was certain to realize future economic benefit as a result of the contractual relationship

109. Defendants Citi and MassMutual knew about the existence of the contract between third party and Plaintiff.

110. Defendants Citi and/or MassMutual, and/or its/their agent(s) and/or principal(s), intentionally acted in a way designed to disrupt the relationship between Plaintiff and the third party and to interfere with the carrying out of the contract between the Plaintiff and third party.

111. Specifically, Citi and/or MassMutual refused properly to carry out its task to service the terms of the contract between Plaintiff and third party faithfully, diligently, and fairly. Citi and/or MassMutual failed to discharge its duty to Plaintiff as well as to third party in taking reasonable steps to ensure that all installment payments were promptly credited to the correct

account. Citi and/or MassMutual failed to take reasonable steps to notify Plaintiff of steps necessary to preserve the expectations of performance held by both the Plaintiff and third party.

112. As a result of Citi's and/or MassMutual's actions, the contractual relationship between Plaintiff and third party was disrupted catastrophically. Citi's and/or MassMutual's actions or failures to act proximately caused economic damages to Plaintiff in amounts to be proved at trial.

**FOURTEENTH CAUSE OF ACTION FOR
NEGLIGENT MISREPRESENTATION
(AGAINST CITIMORTGAGE AND MASSMUTUAL)**

113. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 112, inclusive, as though fully set forth herein.

114. Citi and/or MassMutual and/or its/their agent(s) and/or principal(s), instructed Plaintiff on numerous occasions how, when, for what amount and to whom to make payments in order that Plaintiff's account could be brought current. On each occasion, those representations were false and Citi and/or MassMutual knew or should have known that its representations were false.

115. Citi and/or MassMutual and/or its/their agent(s) and/or principal(s) instructed Plaintiff not to hire a lawyer to defend the lawsuit and represented to Plaintiff that as long as she carried out the instructions regarding how, when, for what amount, and to whom to make payments, that the foreclosure lawsuit would be dismissed. On each occasion, Citi's and/or MassMutual's representations were false and Citi and/or MassMutual knew or should have known that its representations were false.

116. Citi and/or MassMutual and/or its/their agent(s) and/or principal(s), made these representations, and upon information and belief, other false representations, without any reasonable grounds for believing them to be true.

117. Citi and/or MassMutual and/or its/their agent(s) and/or principal(s) made the various representations intending to prevent Plaintiff from engaging an attorney, from getting her loan current, and in an effort to speed up the foreclosure process so that Citi and/or MassMutual could seize the equity it knew existed in the Subject Property. Citi's and/or MassMutual's representations were made falsely and with the intent to induce the Plaintiff to rely upon them.

118. Plaintiff did believe the various misrepresentations: that she need not retain counsel and that she need only comply with the instructions given for making payments in order to cure her delinquent account. Plaintiff did rely on Citi's and/or MassMutual's misrepresentations, Plaintiff's reliance was reasonable and she relied upon Citi's and/or MassMutual's misrepresentations to her detriment.

119. As a result of her reliance on the misrepresentations, Plaintiff suffered damages in an amount to be established at trial.

**FIFTEENTH CAUSE OF ACTION FOR
OUTRAGE--INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(AGAINST CITIMORTGAGE AND MASSMUTUAL)**

120. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 119, inclusive, as though fully set forth herein.

121. Plaintiff has suffered severe emotional distress and anxiety as a direct result of Citi's and/or MassMutual's actions alleged herein.

122. Citi and/or MassMutual intentionally or recklessly inflicted severe emotional distress, or was/were certain, or substantially certain, that such distress would result from its/their conduct.

123. Citi's and/or MassMutual's conduct alleged herein was so extreme and outrageous so as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community.

124. The actions of Citi and/or MassMutual caused Plaintiff's emotional distress.

125. The emotional distress suffered by the Plaintiff was severe such that no reasonable person could be expected to endure it.

**SIXTEENTH CAUSE OF ACTION FOR
DEFAMATION
(AGAINST CITIMORTGAGE AND MASSMUTUAL)**

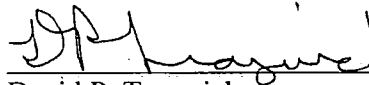
126. Plaintiff incorporates herein by reference the allegations made in paragraphs 1 through 125, inclusive, as though fully set forth herein.

127. Upon information and belief, Citi and/or MassMutual have falsely reported to credit reporting/ratings agencies that Plaintiff failed to make mortgage payments.

128. These false reports of missed mortgage payments were defamatory, were unprivileged publications to a third party, were the fault of Citi and/or MassMutual, were libelous *per se* and caused Plaintiff general and special damages in that the false reports of missed mortgage payments harmed Plaintiff's reputation as to lower her in estimation of the community or to deter third persons from associating or dealing with him.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

1. For a declaration of the rights and duties of the parties, specifically that the foreclosure of Plaintiff's residence was wrongful.
2. For issuance of an Order canceling all Master's Deeds Upon Sale.
3. To vacate the Master's Deeds.
4. To vacate and set aside the initial foreclosure sale and any subsequent sales.
5. To quiet title in favor of Plaintiff and against Defendants.
6. For compensatory, special, general and punitive damages according to proof against Citi and MassMutual.
7. For civil penalties pursuant to statute, restitution, injunctive relief and reasonable attorneys fees according to proof against Citi and MassMutual.
8. For reasonable costs of suit and such other and further relief as the Court deems proper.

 Date: Dec. 8, 2011

David P. Traywick
TRAYWICK LAW OFFICES, LLC
P.O. Box 564
Isle of Palms, SC 29451
Telephone: 843-343-5092
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-and-

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matt@matthamricklaw.com

CO-COUNSEL FOR PLAINTIFF

EXHIBIT C

1/5/12 E-mail from Law Clerk of Judge Roger M. Young

Sarah Nielsen

From: Young, Roger Law Clerk (Mary B. Ramsay) [ryounglc@sccourts.org]
Sent: Thursday, January 05, 2012 11:07 AM
To: Sarah Nielsen
Cc: Thad Westbrook; dpt@traywicklaw.com; bgrimsley@grimsleylaw.com; Matt Hamrick
Subject: RE: Drexler v. Citimortgage et al 2011CP081754

Counsel,

I appreciate your patience and hope y'all had a wonderful holiday.

After reviewing both positions, Judge Young has decided to proceed with signing the order which reflects his ruling on Citimortgage's Motion for Summary Judgment. The order was signed today and mailed to Berkeley County for filing.

As for the pending Motion to Amend, a hearing on that motion will need to be scheduled by the Berkeley County Clerk's Office.

All the best,

Mary

Mary B. Ramsay, Esq.
Law Clerk to Judge Roger M. Young
Ninth Judicial Circuit
100 Broad Street, Suite 368
Charleston, SC 29401
Tel: (843) 958-2015
Fax: (843) 958-5108

EXHIBIT D

Order Granting Summary Judgment

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT

Angela Drexler,) Civil Action No. 2011-CP-08-1754
)

Plaintiff,)
)

vs.)

CitiMortgage, Inc., Stonegate Properties,)
Inc., and Branch Banking and Trust)
Company, Inc.,)

Defendants.)
)

ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF
CITIMORTGAGE, INC.

2012 JAN - 6 PM 12:15
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

BEFORE THE COURT is Defendant, CitiMortgage, Inc. (hereinafter "CitiMortgage")'s Motion to Dismiss the Complaint of Plaintiff, Angela Drexler ("Plaintiff") pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. After the hearing held on October 12, 2011, at 10:00 A.M. and consideration of both parties' written briefs, the Court finds that CitiMortgage's Motion is considered as a motion for summary judgment, Plaintiff cannot succeed on any claim against CitiMortgage and, therefore, CitiMortgage is entitled to summary judgment.

BACKGROUND

1. This case arises from a prior action filed by CitiMortgage, against Plaintiff, in May 2008, in the Court of Common Pleas for Berkeley County, South Carolina, C/A No. 2009-CP-08-1258, for the foreclosure and sale of property located at 719 Cluster Pines Rd., Ladson, South Carolina 29456.

2. A Judgment of Foreclosure and Sale was entered on October 29, 2008, finding that Plaintiff entered into a Fixed Rate Note on July 9, 1998, which was

11/16

B

secured by a Mortgage, and Plaintiff failed to satisfy her payment obligations. The balance was accelerated and the property was sold at public auction.

3. The property was offered for sale on December 3, 2008, and sold to Defendant Stonegate Properties.

4. Over two months after the sale, on February 19, 2009, Plaintiff filed a Motion to Vacate the Judgment of Foreclosure and Sale pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure. In the motion, Plaintiff sought to set aside and vacate the Master in Equity's Judgment of Foreclosure and Sale, set aside and vacate the Master's Deed, and a declaration that she was current on her payments. A hearing was held on March 18, 2009, where Plaintiff argued that she made her payments and the Mortgage should be reinstated. After hearing the testimony and considering the evidence, the Master in Equity held that the record supported a finding that Plaintiff defaulted on her loan and that she failed to timely submit reinstatement payments. Further, the Master in Equity concluded that there was no fraud under Rule 60(b)(3) sufficient to set aside the foreclosure judgment. The Rule 60(b) Motion was denied and the court enforced the Order of Judgment of Foreclosure and Sale, and resulting sale to the third-party purchaser. Plaintiff failed to appeal that ruling within thirty days.

5. The foreclosure case was closed and final on August 4, 2009, when the surplus sale funds were distributed amongst the parties.

6. Plaintiff filed the instant action on June 21, 2011, against CitiMortgage, seeking to set aside the Master's Sale, void the Master's Deed, cancel the Mortgage Assignment, set aside the Foreclosure Judgment due to alleged lack of standing, quiet title, and recover damages based on negligence, fraud, breach of contract,

breach of the implied covenant of good faith and fair dealing, unjust enrichment, slander of title, negligent misrepresentation, tortious interference with contract, and alleged violation of the South Carolina Unfair Trade Practices Act ("SCUTPA").

7. CitiMortgage filed a Motion to Dismiss Plaintiff's Complaint on August 25, 2011, on the grounds of res judicata since all of the claims related to the servicing of Plaintiff's loan or CitiMortgage's standing to pursue foreclosure and, therefore, should have been pursued as compulsory counterclaims or defenses in the foreclosure action. Further, CitiMortgage argued that Plaintiff's claims related to the foreclosure judgment and servicing of Plaintiff's loan were fully and fairly litigated in the prior foreclosure action by way of the Rule 60(b) Motion and, therefore, are similarly barred by res judicata and collateral estoppel. As additional grounds in the Motion, CitiMortgage argued that Plaintiff's negligence and negligent misrepresentation claims are barred by the economic loss rule and Plaintiff lacked standing to challenge the Mortgage Assignment.

8. A hearing was held on October 12, 2011, where both parties submitted briefing and oral arguments. Based on the briefing provided to the Court and the arguments of both parties at the hearing, this Court finds that there is no genuine issue of material fact and CitiMortgage is entitled to summary judgment on all claims filed against it by Plaintiff.

APPLICABLE LAW

9. CitiMortgage filed its Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Because documents were submitted both

before and after the hearing on the Motion, this Court considered the Motion as one for summary judgment.

10. A motion for summary judgment should be granted where the Court is satisfied that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. A party opposing a motion for summary judgment must "do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial." *Hedgepath v. AT&T Co.*, 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001) (quoting *Baughman v. AT&T Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991)) (internal quotes omitted and emphasis in original). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Id.* at 355, 559 S.E.2d at 336. Reliance on allegations in a pleading is insufficient to overcome a motion for summary judgment. Rule 56(e), SCRPC. Further, "[a] party cannot escape summary judgment on the mere hope that something may develop at trial." *Champion Int'l Corp. v. Eubanks*, 291 S.C. 395, 398, 353 S.E.2d 880, 882 (Ct. App. 1987).

ANALYSIS AND CONCLUSIONS

11. Each of the claims related to the servicing of Plaintiff's loan is barred by the doctrine of res judicata because those claims should have been asserted as compulsory counterclaims in the prior foreclosure action. Additionally, each of the claims related to the foreclosure action and CitiMortgage's standing were fully and fairly litigated at the Rule 60(b) stage and are therefore barred by collateral estoppel.

12. In South Carolina, a party must bring as a counterclaim any claim she has against the opposing party if it arises out of the same transaction or occurrence that is the subject matter of the opposing party's claim and does not require the presence of additional parties over which the court cannot acquire jurisdiction. See S.C. R. Civ. P. 13(a). Thus, it is well-settled that if a counterclaim is compulsory, but is not raised in the first case, a party is precluded under the doctrine of res judicata from asserting the claim in a subsequent action. See *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 217, 493 S.E.2d 826, 835 (1997) (stating that "if a counterclaim is compulsory, but not raised in the first action, a defendant is precluded from asserting the claim in a subsequent action"); *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 62, 566 S.E.2d 863, 865 (Ct. App. 2002) ("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.'").

13. The South Carolina Supreme Court has adopted the "logical relationship" test for determining whether a claim is a compulsory counterclaim under Rule 13(a), SCRCP. *N.C. Fed. Savings & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 518, 381 S.E.2d 903, 905 (1989) ("We hereby adopt the logical relationship test."). Under the logical relationship test, a counterclaim is compulsory if there is any logical relationship between the claim and the counterclaim. See *id.* (finding a logical relationship between the enforceability of a note, which was the subject of a foreclosure action, and the validity of a purported oral agreement which, if performed, would have avoided default on the note).

14. In this case, Plaintiff's claims for negligence, fraud, breach of implied covenant of good faith and fair dealing, breach of contract, unjust enrichment, violation of the SCUTPA, tortious interference with contract, quiet title, and negligent misrepresentation all relate to and arise out of the servicing of Plaintiff's loan and, therefore, bear a logical relationship to the foreclosure action. Plaintiff should have disputed the servicing of her loan, the application of payments, and CitiMortgage's standing to foreclose in the previously-filed foreclosure action.

15. Accordingly, Plaintiff cannot bypass her obligation to raise all compulsory claims in the foreclosure action, as required under Rule 13(a), SCRCP and, therefore, CitiMortgage is entitled to summary judgment on these claims pursuant to the doctrine of res judicata. *See Plott v. Justin Enters.*, 374 S.C. 504, 511, 649 S.E.2d 92, 95 (Ct. App. 2007) ("Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of the prior action between those parties. Under res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.") (internal citations omitted).

16. In addition to being barred by the doctrine of res judicata, Plaintiff's claims as to improper servicing, standing to foreclose, and alleged reinstatement of the loan were all heard and decided by the Master in Equity during the hearing on Plaintiff's Rule 60(b) motion in the foreclosure action.

17. "Collateral estoppel prevents a party from re-litigating an issue in a subsequent suit which was actually and necessarily litigated and determined in the prior action." *Aaron v. Mahl*, 381 S.C. 585, 592, 674 S.E.2d 482, 486 (2009). An issue is

deemed precluded by collateral estoppel when the moving party establishes that "the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). CitiMortgage established each of the elements of collateral estoppel and Plaintiff cannot come forward with any facts to show a genuine issue for trial.

18. In the foreclosure action, Plaintiff filed a Rule 60(b) motion seeking to set aside and vacate the Master's Judgment of Foreclosure and Sale, set aside and vacate the Master's Deed, and seeking a declaration that the loan was current. Likewise, in this action, Plaintiff's Complaint seeks to set aside the Master's Sale, void or cancel the Master's Deed upon sale, and damages, under several claims,¹ related to payments on the loan.

19. As outlined in CitiMortgage's Motion and Supporting Memorandum, the Master in Equity found that the Plaintiff's testimony regarding payments and reinstatement was not supported by the record. Moreover, the Master in Equity held that CitiMortgage had standing to pursue the foreclosure and that any allegedly incorrect statements in the foreclosure Complaint should have been litigated during the foreclosure proceedings. Based on the testimony and documents submitted at the Rule 60(b) hearing, the Master in Equity held that the facts and law are overwhelmingly against Plaintiff and enforced the Order of Judgment of Foreclosure and Sale and the resulting sale to the third party purchaser. Because these issues were previously heard and ruled on by the Master in Equity, the issues were actually litigated,

¹ These theories include: negligence, fraud, breach of contract, breach of implied covenant of good faith and fair dealing, unjust enrichment, violation of the SCUTPA, tortious interference, and negligent misrepresentation.

directly determined, and necessary to support the judgment, thereby satisfying the elements of collateral estoppel.

20. Having found that CitiMortgage satisfied each element of collateral estoppel and Plaintiff has not come forward with sufficient evidence to create a genuine issue of material fact for trial, this Court grants summary judgment in favor of CitiMortgage on all claims. See *State v. Bacote*, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998) ("The doctrine of collateral estoppel is intended to reduce litigation and conserve the resources of the court and litigants and it is based upon the notion that it is unfair to permit a party to relitigate an issue that has already been decided.").²

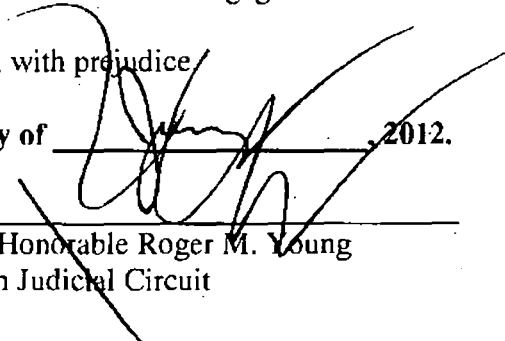
21. The Court finds that all of Plaintiff's claims against CitiMortgage are barred by the doctrine of res judicata because each claim should have been asserted as a compulsory counterclaim or a defense in the foreclosure action. Plaintiff's failure to assert these claims in the prior foreclosure action precludes her from attempting to litigate those same claims in this Court. Additionally, all of Plaintiff's claims are similarly precluded by collateral estoppel. In filing her Rule 60(b) motion in the prior foreclosure action, Plaintiff submitted the underlying issues and claims presently before this Court to the Master in Equity. The Master ruled in CitiMortgage's favor on these issues in an

² The Court also notes that Plaintiff's request for a finding of wrongful foreclosure, cancellation of the Master's Deed, and an order vacating the foreclosure judgment and sale is an improper attempt to appeal the Judgment of Foreclosure and Sale, entered on October 29, 2008, and the ruling on the Rule 60(b) Motion, entered on June 10, 2009. A foreclosure judgment is a final order that may only be appealed to the Court of Appeals, not to this Court. See *Peoples Fed. Sav. & Loan Ass'n v. Edwards*, 286 S.C. 475, 476, 334 S.E.2d 290, 291 (Ct. App. 1985) (noting that "[t]his is a direct appeal from an order of a master in equity in an action to foreclose on a mortgage"); *LaSalle Bank Nat'l Ass'n v. Davidson*, 386 S.C. 276, 277, 688 S.E.2d 121, 121 (2009) (noting that the action began as an "appeal from a judgment in a mortgage foreclosure proceeding"). Further, Plaintiff could have appealed the denial of the Rule 60(b) Motion after receipt of the Order entered on June 10, 2009. See *Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP*, 375 S.C. 423, 425, 653 S.E.2d 274, 275 (2007) (noting that the respondent "filed an appeal on the merits of the 60(b) motion. That appeal has been decided by the Court of Appeals, which affirmed [denial]"). Rule 203(b)(1) of the South Carolina Appellate Court Rules provides that a party must appeal an adverse order within 30 days of receipt of the written notice of the entry of the order. In this case, Plaintiff lost her right to appeal the final order when she failed to file a Notice of Appeal on or before July 10, 2009.

Order dated June 10, 2009. As outlined in the prior order, these underlying issues were previously decided in CitiMortgage's favor and it would be inequitable and improper to relitigate the same issues here.

NOW, THEREFORE, the Court concludes that, under the circumstances in this case and based on the arguments and evidence submitted to the Court, it is appropriate to grant summary judgment in favor of CitiMortgage on all claims asserted against it by Plaintiff. Therefore, the Court hereby **GRANTS** CitiMortgage's Motion and **DISMISSES** Plaintiff's claims against CitiMortgage, with prejudice.

IT IS SO ORDERED, this 60 day of June, 2012.



The Honorable Roger M. Young
Ninth Judicial Circuit

Charleston, South Carolina

1/6, 2012



State of South Carolina
The Circuit Court of the Ninth Judicial Circuit

ROGER M. YOUNG
JUDGE

100 BROAD STREET, SUITE 368
CHARLESTON, SOUTH CAROLINA 29401
TELEPHONE: (843) 958-2015
FAX: (843) 958-5108
E-MAIL: ryoungj@sccourts.org

January 5, 2012

Clerk of Court, Berkeley County
300-B California Avenue
Moncks Corner, South Carolina 29461

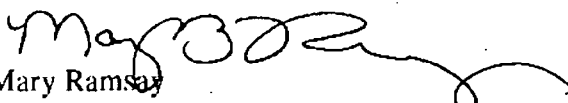
RE: Signed Order: 2011-CP-08-1754

Dear Valerie:

Please find enclosed signed order from the CPNJ docket week of October 10, 2011 to be filed with the Berkeley County Clerk's Office.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,


Mary Ramsay
Law Clerk to the Honorable Roger Young

Enclosure

EXHIBIT E

Mot. to Reconsider, Alter or Amend

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS

)

) CASE NO.: 2011-CP-08-1754

Angela Drexler,

Plaintiff,

CitiMortgage, Inc., et al.,

Defendants.

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PLAINTIFF'S MOTION TO
RECONSIDER, ALTER, OR
AMEND ORDER
GRANTING SUMMARY
JUDGMENT IN FAVOR OF
CITIMORTGAGE, INC.

Plaintiff, Angela Drexler ("Drexler"), by and through her undersigned attorneys, hereby gives notice of its motion and moves the Court, pursuant to Rule 59(e), SCRCP to reconsider, alter, or amend its January 6, 2012 Order Granting Summary Judgment in Favor of CitiMortgage, Inc. ("Citi"). Plaintiff's counsel received written notice of the entry of the Order, by email, on January 6, 2012.

The grounds for this motion are: 1) the discovery of the existence and identity of the actual mortgage lender, Massachusetts Mutual Life Insurance Company ("MassMutual") on December 8, 2011; and 2) the Court treated Citi's motion to dismiss as a motion for summary judgment despite Citi's arguing that the Court should not and need not do so, and the Court granted summary judgment without first giving the Plaintiff the opportunity to engage in discovery.

After the October 12, 2011 hearing on Citi's motion to dismiss but before the Court granted its January 6, 2012 Order, Plaintiff learned, on December 8, 2011, that MassMutual is actually Ms. Drexler's mortgage lender, not Citi. This new evidence establishes that Plaintiff was correct in its argument that *res judicata* is not applicable because the real party in interest in the previous mortgage foreclosure action was the

lender, MassMutual, and therefore claims related to loan servicing practices could not have been compulsory counterclaims in the prior foreclosure suit and the requirement of identity of the parties for purposes of *res judicata* is lacking.

Also, the Court *sua sponte* treated Citi's motion to dismiss as a motion for summary judgment, despite Citi's arguing that the Court should not and need not do so. (See Memorandum in Support of Motion to Dismiss at p. 2, n. 1). Consequently, the Court has improperly granted summary judgment when summary judgment was not requested and before Plaintiff had an opportunity to develop the record through discovery. Discovery should be allowed to proceed. At the very least, Citi's motion to dismiss should not be converted into a motion for summary judgment, and the decision whether to grant summary judgment should be stayed, until the parties have had a full opportunity to conduct discovery. The Court of Appeals of South Carolina has explained that:

summary judgment is a "drastic remedy" which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. *Cunningham v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003); *Lanham v. Blue Cross & Blue Shield*, 349 S.C. 356, 563 S.E.2d 331 (2002); *Conner v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002); *Redwend Ltd. P'ship v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (Ct.App.2003); *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271, 573 S.E.2d 830 (Ct.App.2002); *Trivelas v. South Carolina Dep't of Transp.*, 348 S.C. 125, 558 S.E.2d 271 (Ct.App.2001); *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct.App.2001); *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (Ct.App.1998). Because summary judgment is a drastic remedy, it **must not be granted until the opposing party has had a "full and fair opportunity to complete discovery."** *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003); *Lanham*, 349 S.C. at 363, 563 S.E.2d at 334; *Doe v. Batson*, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001); *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326, 331 (Ct. App. 2003) (emphasis added). The court in *Schmidt* went on to explain:

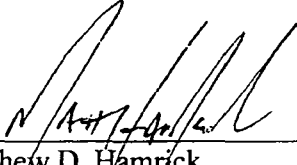
Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333; *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000); *Mosteller v. County of Lexington*, 336 S.C. 360, 520 S.E.2d 620 (1999); *Redwend Ltd. P'ship*, 354 S.C. at 468, 581 S.E.2d at 501; *Baril*, 352 S.C. at 280, 573 S.E.2d at 835; *Trivelas*, 348 S.C. at 130, 558 S.E.2d at 273; *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct.App.2002); *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 559 S.E.2d 327 (Ct.App.2001); *Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct.App.2001); *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct.App.1999); *Middleborough Horizontal Prop. Regime Council v. Montedison*, 320 S.C. 470, 465 S.E.2d 765 (Ct.App.1995). "Summary judgment is inappropriate when further development of the facts is desirable to clarify the application of the law." *Lee v. Kelley*, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct.App.1989). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Redwend Ltd. P'ship*, 354 S.C. at 468, 581 S.E.2d at 501; *Baril*, 352 S.C. at 280, 573 S.E.2d at 835; *Hall*, 349 S.C. at 173-74, 561 S.E.2d at 656; *Glasscock, Inc. v. United States Fid. & Guar. Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct.App.2001); *Stewart v. State Farm Mut. Auto. Ins. Co.*, 341 S.C. 143, 533 S.E.2d 597 (Ct.App.2000); see also *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003) (noting that summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is dispute as to conclusions to be drawn therefrom).

Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326, 331 (Ct. App. 2003). The Court of Appeals held that summary judgment should have been denied in the *Schmidt* case because the question of law in that case was a novel one, and the application of the law to the facts was in dispute. As in the *Schmidt* case, the question of law in this case (whether *res judicata* applies in a suit complaining of mortgage servicing practices when the actual lender and real party in interest in the prior mortgage foreclosure suit was not the mortgage servicer) is a novel question, and the application of the law to the facts of this

case is in dispute. Additionally, further inquiry into the facts is necessary to clarify the application of the law. Therefore, summary judgment is inappropriate and should be denied. At a minimum, the decision on Citi's motion to dismiss should be stayed until the parties have had a full opportunity to conduct discovery if the motion is to be converted into a motion for summary judgment.

For the foregoing reasons, Plaintiff respectfully requests that the Court reconsider, alter, or amend its Order granting summary judgment in favor of Citi accordingly.

Respectfully submitted,



Matthew D. Hamrick
Attorney at Law
875 Lowcountry Blvd., Ste. 206
Mt. Pleasant, SC 29464
Phone: (843) 693-4700
Fax: (877) 524-5023
matt@matthamricklaw.com

-and-

David P. Traywick
TRAYWICK LAW OFFICES, LLC
P.O. Box 564
Isle of Palms, SC 29451
Phone: (843) 343-5092
Fax: (843) 300-1051
dpt@traywicklaw.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of January, 2012 served all parties who have appeared in this action with a copy of pleading or paper to which this Certificate is attached by mailing a copy of the same by US mail, first class and postage prepaid, and addressed as follows:

Benjamin E. Grimsley, Esq.
1703 Laurel Street
PO Box 11682
Columbia, SC 29211

Thad H. Westbrook, Esq.
Sarah B. Nielsen, Esq.
Nelson Mullins Riley & Scarborough LLP
PO Box 11070
Columbia, SC 29211-1070

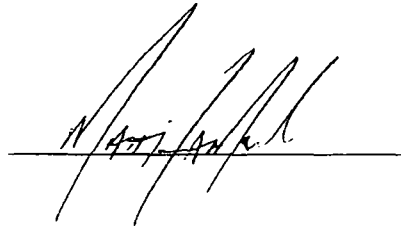
A handwritten signature in dark ink, appearing to read "Sarah B. Nielsen", is written over a horizontal line.

EXHIBIT F

Consent Order for Joinder

FILE COPY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

COUNTY OF BERKELEY)

CASE NO.: 2011-CP-08-1754

Angela Drexler)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

CitiMortgage; Stonegate; BB&T.)

Defendant.)

Plaintiff's Attorney:

David P. Traywick, Bar No. 78502

Address:

PO Box 564 IOP SC 29451

Phone: 843 343 5092 Fax 843 300 1051

E-mail: dpt@traywicklaw.com Other:

Defendant's Attorney:

_____, Bar No. _____

Address:

Phone: _____ Fax: _____

E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Amend Complaint

Estimated Time Needed: 30

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 25⁰⁰**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$ _____**

☐ **CONTESTED - AMOUNT DUE: \$ _____**

2012 JAN 25 AM 11:54
CLERK OF COURT, S.C.
BERKELEY COUNTY, S.C.

FILED

mdh

B

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Angela Drexler,

Plaintiff,

v.

CitiMortgage, Inc.; Stonegate Properties,
Inc.; Branch Banking and Trust Company,
Inc.; Massachusetts Mutual Life Insurance
Company,

Defendants.

) IN THE COURT OF COMMON PLEAS

) Case No.: 2011-CP-08-1754

)
)
)
)
) **CONSENT ORDER FOR JOINDER OF**
) **AN ADDITIONAL DEFENDANT**
) **PURSUANT TO RULES 19**
) **AND 15, SCRPC**

MARY P. BROOK
CLERK OF COURT
BERKELEY COUNTY, SC

2012 JAN 25 AM 11:55

FILED

IT APPEARING TO THE COURT:

1. That Joinder of an additional Defendant, Massachusetts Mutual Life Insurance Company under Rule 19 is necessary for a just adjudication in this case;
2. That this Joinder conforms to Rule 19(a)(1);
3. That Joinder will not deprive the Court of jurisdiction over the subject matter of the action;
4. That Defendant CitiMortgage, Inc. has been dismissed from the action by Judge Roger Young's Order of January 6, 2012, is no longer party to the action and therefore CitiMortgage Inc.'s consent is no longer required for Joinder;
5. That Defendant Stonegate Properties, Inc. is in default and has not appeared in the action and therefore Stonegate Properties, Inc.'s consent is no longer required for Joinder;
6. That the remaining party consents to the Joinder of Defendant Massachusetts Mutual Life Insurance Company;
7. That a Consent Order for Joinder of a necessary party under SCRPC Rule 19

1045
[Signature]

implies consent to Amend Plaintiff's Complaint in order to lay causes of action against the necessary party so joined, Massachusetts Mutual Life Insurance Company;

8. That the Parties agree that an Amendment under SCRCP Rule 15 be restricted to adding new causes of action against Massachusetts Mutual Insurance Company;

9. That Rule 15 specifically calls for the relation back of amendments where the party against whom a claim is asserted (1) has received such notice of the action and will not be prejudiced in defending on the merits or (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him;

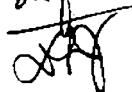
10. That the contents of this Order and the Amended Complaint shall have no force or effect upon the Order granting Summary Judgment and Dismissing Defendant CitiMortgage, Inc.;

11. That the contents of this Order and the Amended Complaint leave unmolested the claims of the original Complaint as brought against Defendant CitiMortgage, Inc. because until such time as all appeals have been exhausted, CitiMortgage, Inc. may be ordered back into this case whereupon that Defendant might be required to Answer the claims originally laid against it; and

12. That the Amended Complaint leaves intact the entirety of the original Complaint and merely supplements it with new claims against the new necessary party, Defendant Massachusetts Mutual Insurance Company.

THEREFORE, it is hereby ordered:

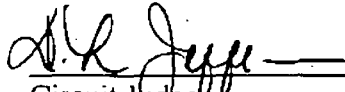
- a. That Plaintiff's Complaint is Amended to add Massachusetts Mutual Life Insurance Company as a defendant;
- b. That Plaintiff's causes of action against Massachusetts Mutual Life Insurance

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Company relate back to the date of Plaintiff's original Complaint;

- c. That the Amended Complaint shall have no effect upon Judge Roger Young's January 6, 2012 Order granting Summary Judgment in favor of Defendant CitiMortgage Inc.;
- d. That upon signing of this Order by the Court that such signing shall resolve Plaintiff's pending motion to Amend its Complaint and such motion shall be removed from the schedule; and
- e. That the Amended Complaint, attached hereto, shall be deemed served upon Defendant BB&T by service of this Order; and that Plaintiff shall serve the Amended Complaint upon Defendant Massachusetts Life Insurance Company pursuant to Rule 4, SCRPC.

AND IT IS SO ORDERED

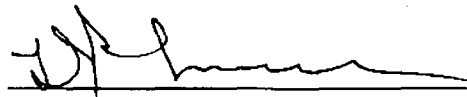

Circuit Judge

Date: Jan 23, 2012

Chas. SC 2012

3045
2012

WE CONSENT



TRAYWICK LAW OFFICES, LLC

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Isle of Palms, SC 29451

Telephone: 843-343-5092

Fax: 843-300-1051

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-and-

Matthew D. Hamrick

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CO-COUNSELS FOR PLAINTIFF

WE CONSENT

Grimsley Law Firm

By Benjamin E. Grimsley

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PO Box 11682

Columbia, SC 29211

ATTORNEY FOR DEFENDANT BB&T



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WE CONSENT


Grimsley Law Firm
By Benjamin E. Grimsley
1703 Laurel Street
PO Box 11682
Columbia, SC 29211

ATTORNEY FOR DEFENDANT BB&T

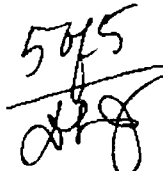
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EXHIBIT G

Order Denying Mot. to Reconsider, Alter or Amend

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT

Angela Drexler,) Civil Action No. 2011-CP-08-1754
)

Plaintiff,)

vs.)

CitiMortgage, Inc., Stonegate Properties,)
Inc., and Branch Banking and Trust)
Company, Inc.,)

Defendants.)

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER**

AS MOOT

CLERK OF COURT
BERKELEY COUNTY, SC

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BEFORE THE COURT is the Motion to Reconsider, Alter or Amend Judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure served by Plaintiff Angela Drexler ("Plaintiff") on January 17, 2012. Defendant CitiMortgage, Inc. ("Defendant") submitted its opposition on February 6, 2012. After reviewing the submissions of both parties, the Court **DENIES** Plaintiff's Motion to Reconsider, Alter or Amend Judgment as moot because Defendant is no longer a party to this action, as outlined below:

BACKGROUND

1. Plaintiff filed the Complaint that is the subject of this action on June 21, 2011, asserting various causes of action against Defendant that are barred by the doctrines of res judicata and collateral estoppel. On August 25, 2011, Defendant filed a Motion to Dismiss Plaintiff's Complaint, asserting these arguments, which was heard on October 12, 2011. At the hearing, both parties submitted briefing and oral arguments. After considering the briefing and oral arguments, this Court considered the Motion to Dismiss as one for Summary Judgment and found that there was no genuine issue of

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material fact and Defendant was entitled to summary judgment on all claims filed against it by Plaintiff. The Order was signed on January 6, 2012.

2. On January 17, 2012, Plaintiff served a Motion to Reconsider, Alter or Amend (the "Motion to Reconsider") the Order granting summary judgment in favor of Defendant.

3. While the Motion to Reconsider was pending, Plaintiff submitted a motion sheet and proposed order to the Honorable Deadra L. Jefferson, entitled Consent Order for Joinder of an Additional Defendant ("Consent Order for Joinder"), affirmatively acknowledging that Defendant was dismissed from the case pursuant to the January 6, 2012 Order granting summary judgment and stating, therefore, that Defendant's consent was not necessary to join an additional party.

4. The Consent Order was filed on January 25, 2012, adding an additional Defendant, Mass Mutual Life Insurance Company, to the case without the consent of Defendant on the basis that as of January 6, 2012, Defendant was no longer party to this action.

5. On February 6, 2012, in light of Plaintiff's recognition that Defendant was no longer a party to this action, Defendant submitted its opposition to the Motion to Reconsider, arguing that the actions of Plaintiff demonstrated her voluntary withdrawal of the pending Motion to Reconsider and, therefore, Defendant was finally dismissed from the case by prior court order. In the alternative, Defendant argued that Plaintiff's Motion to Reconsider failed on the merits.

6. This Court considered the briefing of the parties and issues this Order, without a hearing, in accordance with Rule 59 of the South Carolina Rules of Civil Procedure.

ANALYSIS AND CONCLUSIONS

7. The Court finds that Plaintiff effectively withdrew the Motion to Reconsider when she submitted the motion sheet and proposed Consent Order for Joinder to Judge Jefferson and acknowledged that CitiMortgage was “dismissed” from the case as of the January 6, 2012 Order. *See Koutsogiannis v. BB&T*, 365 S.C. 145, 149, 616 S.E.2d 425, 428–29 (2005) (noting that “clients are generally bound by their attorneys’ acts or omissions during the legal representation”).

8. The representations made by Plaintiff in the Consent Order for Joinder were that Defendant was “dismissed from the action” by the Order dated January 6, 2012 and, since Defendant was “no longer a party to the action,” its “consent [was] no longer required for Joinder.” *See* Consent Order for Joinder at ¶ 4. .

9. Pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure, Plaintiff must obtain the consent of the adverse parties or leave of court to amend the Complaint. Therefore, if Plaintiff’s Motion to Reconsider was deemed to have remained pending, Defendant would have been a party to the litigation and Defendant’s consent was required for joinder of any additional party. In this case, Plaintiff was not relieved of her obligation to obtain Defendant’s consent to amend the Complaint until the Order granting summary judgment was final. *See Southeastern Hous. Found. v. Smith*, 380 S.C. 621, 640, 670 S.E.2d 680, 690 (Ct. App. 2008) (stating that a Rule 59(e) motion removes the “finality of the challenged judgment”).

10. By failing to acknowledge in the Consent Order for Joinder that she had a Motion to Reconsider pending before this Court and failing to seek the consent of Defendant, Plaintiff necessarily admits that this Court's January 6, 2012 Order granting summary judgment in favor of Defendant was final, at that time. On that basis, Defendant is no longer a party to the litigation. Accordingly, the Court finds that, based on Plaintiff's own representations to Judge Jefferson, the Order granting summary judgment in favor of Defendant is final as of January 6, 2012, and the Motion to Reconsider is necessarily withdrawn.

11. Having found that Plaintiff's Motion to Reconsider is withdrawn, this Court denies the pending Motion to Reconsider as moot.

12. Further, this Court finds that Plaintiff is judicially estopped from proceeding on the Motion to Reconsider based on her affirmative representations to Judge Jefferson in the Consent Order for Joinder that Defendant is no longer a party to the action.

13. Judicial estoppel prevents a party from taking a contrary position that is inconsistent with one previously asserted in the same proceeding. *See Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004) ("Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding."). In this case, in order for Plaintiff to proceed with the Motion to Reconsider, she would have had to take a contrary legal and factual position that Defendant is not dismissed and that, in fact, Defendant is still a party to the litigation—a position directly contradictory to her position in the Consent Order for Joinder.

14. The Court finds that Plaintiff's prior position that Defendant is no longer a party to the litigation benefited her in two ways. First, Plaintiff was able to join a new party to the litigation without having to obtain the consent of Defendant in compliance with Rule 15(a) of the South Carolina Rules of Civil Procedure. And, second, Plaintiff avoided an objection to the amendment by Defendant at a hearing on Plaintiff's Motion to Amend that was filed on December 9, 2011.

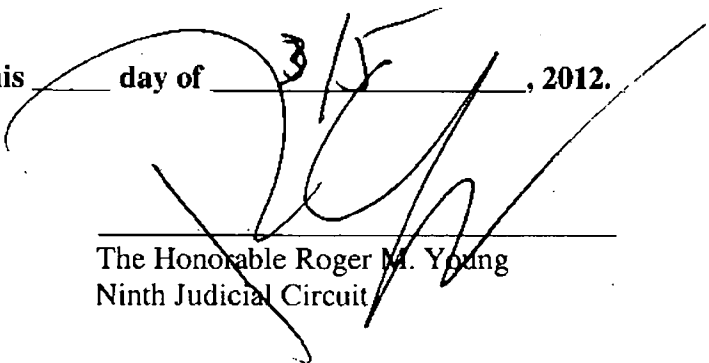
15. Based on the foregoing, Plaintiff is judicially estopped from claiming that Defendant is still a party to the action and, thus, subject to the Motion to Reconsider. Plaintiff elected to effectively withdraw her Motion to Reconsider so that she could submit a Consent Order for Joinder, joining Defendant Mass Mutual as a party to the action, without seeking or receiving the consent of Defendant. *See Hawkins v. Bruno Yacht Sales*, 353 S.C. 31, 43, 577 S.E.2d 202, 208 (2003) ("When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him.") (internal citation omitted).

16. Therefore, the Court finds that the Motion to Reconsider was withdrawn by Plaintiff, the Motion to Reconsider is moot, and Defendant was finally dismissed from the case on January 6, 2012.

17. Because Defendant was no longer a party in this action as of January 6, 2012, this Court does not need to reach Defendant's remaining arguments in its opposition to the Motion to Reconsider.

NOW, THEREFORE, the Court concludes that, under the circumstances of this case and based on the briefing submitted to the Court, Plaintiff's Motion to Reconsider was voluntarily withdrawn such that it must be **DENIED** as moot.

IT IS SO ORDERED, this 31 day of May, 2012.



The Honorable Roger M. Young
Ninth Judicial Circuit

Charleston, South Carolina

2/0, 2012

In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Roger Mack Young, Circuit Court Judge

Case No. 2011-CP-08-1754

CitiMortgage, Inc., ... Respondent,

v.

Angela Drexler, ... Appellant.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley and Scarborough, LLP, attorneys for Respondent, CitiMortgage, Inc., do hereby certify that I have served all counsel in this action with a copy of Respondent's Motion to Dismiss Appeal by mailing a copy of same by United States Mail, postage prepaid to the following addresses:

David P. Traywick, Esquire
TRAYWICK LAW OFFICES, LLC
P.O. Box 564
Isle of Palms, SC 29451

Benjamin E. Grimsley, Esquire
Grimsley Law Firm
P.O. Box 11682
Columbia, SC 29211

RECEIVED
MAY 24 2012
SC Court of Appeals



Charlene Ruff
Administrative Assistant

May 24, 2012

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

Attorneys and Counselors at Law

1320 Main Street / 17th Floor / Columbia, SC 29201

Tel: 803.799.2000 Fax: 803.255.5943

www.nelsonmullins.com

Sarah B. Nielsen

Tel: 803.255.9284

Fax: 803.255.5943

sarah.nielsen@nelsonmullins.com

May 24, 2012

Hand Delivered

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

RE: Angela Drexler v. CitiMortgage, Inc., et al.
2012211306
Our File No. 26019.01639

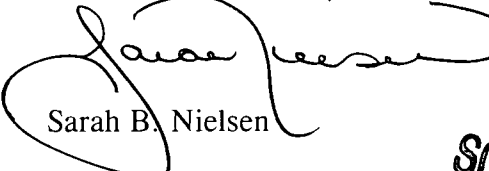
Dear Ms. Kitchings:

Enclosed please find an original and two copies of Respondent's Motion to Dismiss Appeal and Proof of Service in the above-referenced matter. Also enclosed is our Firm's \$25.00 filing fee check. We would appreciate your filing the original and return the clocked copies to us via our courier.

By copy of this letter, we are serving a copy of same on opposing counsel.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact us.

Very truly yours,


Sarah B. Nielsen

SBN:cruff
Enclosures

cc: David P. Traywick, Esquire
Benamin E. Grimsley, Esquire

RECEIVED
MAY 24 2012
SC Court of Appeals