

**FORM 13  
BRIEF OF APPELLANT**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Maité D. Murphy, Master in Equity

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Case No. 2010-CP-18-2652

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JP Morgan Chase Bank,  
National Association,

Respondent,

v.

R. Duncan Jaenicke,

Appellant.

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INITIAL BRIEF OF APPELLANT

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R. Duncan Jaenicke  
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(843) 442-1397  
Appellant, pro se

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DEC 19 2012  
**SC Court of Appeals**

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1. **The trial court failed to adequately consider appellant's objections & testimony regarding the bank's failure to comply with the SC Supreme Court/Chief Justice Toal's Administrative Order -- specifically that the bank must give appellant a "full and fair opportunity" to modify the loan, a process that was mid-stream at the time of the Foreclosure Hearing, and is, in fact, still unresolved as of this writing (Dec. 17, 2012) .....2**

2. **That, quoting from Chief Justice Toal's Order: "the Court should hear and determine any dispute concerning any party's compliance with this order, including without limitation, the failure of any party to act in good faith in complying with the terms of this order." The bank failed to act in good faith, as shown by their two-deadline letters to Appellant which demonstrates their lack of appropriate care of Appellant's mortgage loan file and therefore lack of good faith in modifying the mortgage loan.....2**

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## TABLE OF AUTHORITIES

### CASES

None except the present Appeal, Appellant Case # 2012-212727, and the Foreclosure Hearing and Trial, Case #Case No. 2010-CP-18-2652 as noted.

### STATUTES

Chief Justice Toal's Administrative Orders of May 22, 2009 (Order No. 2009-05-22-01) and of May 2, 2011(Order No. 2011-05-02-01).

### OTHER AUTHORITIES

None except at cited.

## STATEMENT OF ISSUES ON APPEAL

1. **Did the trial court fail to adequately consider appellant's objections & testimony regarding the bank's failure to comply with the SC Supreme Court/Chief Justice Toal's Administrative Order -- specifically that the bank must give appellant a "full and fair opportunity" to modify the loan?**
2. **Did the trial court fully and fairly "hear and determine any dispute concerning any party's compliance with this order, including without limitation, the failure of any party to act in good faith in complying with the terms of (Chief Justice Toal's) order"?**

## STATEMENT OF THE CASE

On July 12, 2012, Judge Murphy heard the Foreclosure Hearing and found in favor of the Plaintiff, J.P. Morgan Chase Bank, N.A, and recorded her decision the following day, July 13, 2012. At trial, Defendant R. Duncan Jaenicke made objections related to the fact that the Bank had sent him two letters, which Defendant still has in his possession, which gave him two different deadlines for submission of information related to a mortgage modification process. Defendant argued that this explicit internal confusion (as well as the external confusion it spawned in the Defendant) demonstrated lack of prudent care (and, thereby, a lack of good faith) by the Bank for his mortgage modification process. However, the trial judge overruled Mr. Jaenicke's objections and proceeded to conclude the proceeding in favor of the Bank.

Mr. Jaenicke served notice of his appeal of the trial court's decision on the Bank's counsel on August 13, 2012. On Oct. 9, 2012, Mr. Jaenicke, after having had the Appeal dismissed based on missing a deadline for submitting the transcript (which he did possess but failed to mail to the Court), petitioned the SC Court of Appeals for an Extension of Time, based on his medical distress during the 60-day window, and the fact that he did submit the Transcript with his Motion for Extension of Time, and the SC Court of Appeals reinstated the Appeal in an Order filed Nov. 16, 2012.

## FACTS

As can be read in the Transcript, the facts concerning Argument #1 above are that Judge Murphy did not give full, fair and adequate consideration to Mr. Jaenicke's testimony and objections. She did not ask Mr. Jaenicke if he had anything to submit as evidence (which would have resulted in the two letters with differing deadlines having been recorded in evidence), which failure took malignant advantage of Mr. Jaenicke not having the advice of counsel, due to Defendant's financial distress.

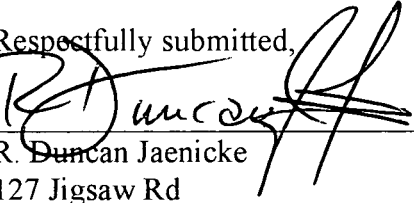
As can be read in the Transcript, the facts concerning Argument #2 above are that the Bank did not act in good faith, as evidenced by two facts: [1] they did not adequately care for Mr. Jaenicke's mortgage modification process, showing their negligence of the Bank's fiduciary responsibility for such care, and [2] the Bank has still not rendered a yes/no answer to Appellant's application for a mortgage modification, as of this writing, Dec. 17, 2012.

## CONCLUSION

For the reasons herein stated, this Court should reverse the judgment of the circuit court.

December 17, 2012

Respectfully submitted,

  
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