

23281

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Court of Common Pleads Richland County, South Carolina

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

Case No. 2010-CP-40-1571

CitiMortgage, Inc., ... Respondent,

vs.

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

Of Whom Bruce W. Gardner is the Appellant.

RECORD ON APPEAL

Bruce W. Gardner

LS

Bruce W. Gardner, pro se, Appellant
237 YMCA Road
Lexington, South Carolina 29073
(803) 206-6729

Pete Balthazer, Esquire
Riley Pope & Laney, LLC
Post Office Box 11412 (29211)
2838 Devine Street
Columbia, South Carolina 29201
Attorney for Respondent

INDEX TO RECORD ON APPEAL

1. Order of Reference; April 29, 2010.....	2
2. Amended Order of Reference; September 28, 2011.....	4
3. Transcript of Hearing; July 12, 2012.....	7
4. Special Referee's Order of Judgment of Foreclosure and Sale Decree: June 9, 2016...	55
5. Notice of Appeal to Stay the Order of Judgment of Foreclosure and Sale Decree: May 9, 2016.....	64
6. Appellant's Initial Brief; September 21, 2017.....	68
7. Designation of Matters.....	79
8. Motion Complaint of Malicious Prosecution and Petition to cancel Foreclosure Sale.....	83
9. Respondent's Return to Appellant's Motion Complaint of Malicious Prosecution and Petition to cancel Foreclosure Sale.....	90
10. Reply to Respondent's Return to Motion Complaint of Malicious Prosecution and Petition to cancel Foreclosure Sale.....	95
11. Order for Motion to Stay is denied.....	99

RECEIVED
FEB 09 2017
SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CitiMortgage, Inc.,

Plaintiff(s)

vs.

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

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-40-1571

ORDER OF REFERENCE

It appearing that pursuant to Rule 53(b) SCRCP, that the herein action is for foreclosure of the Plaintiff's mortgage and is an appropriate action to be referred to the Honorable Cynthia Graham Howe, Master in Equity for Horry County with authority to enter a final judgment in the case;

NOW, upon motion of the attorneys for the Plaintiff,

IT IS ORDERED that this case is referred to the Honorable Cynthia Graham Howe, Master in Equity for Horry County, who, pursuant to Rule 53(b) SCRCP, shall exercise all power and authority which a Circuit Judge sitting without a jury would have, including but not limited to, making findings of fact and conclusions of law; directing entry of final judgment in this action under Rule 53(b) SCRCP; hearing any issues, including motions, after sale or judgment; issuing any and all Orders and Supplemental Orders, Writs of Assistance, Rules to Show Cause and hearing any issues involving possession and/or removal of property and appraisal proceedings under Section 29-3-360, et seq. of the South Carolina Code. Pursuant to Rule 53(b) SCRCP, any appeal from the final judgment entered by the Master in Equity shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules. Any judicial sale of the property subject of this action may be held on a day other than the regular judicial sale day.

IT IS SO ORDERED.

Cola, South Carolina
April 29, 2010

Jeanette W. McBride
~~Presiding Judge~~
Richland County Clerk of Court

WE SO MOVE:

Johnson & Freedman, LLC

Tiffany H. Wolf
Tiffany H. Wolf/ S.C. Bar No.: 6149
ATTORNEY FOR THE PLAINTIFF

1587 Northeast Expressway
Atlanta, GA 30329
(770) 234-9181 (Telephone)
(770) 234-9192 (Facsimile)
0904811SC

2.

RICHLAND COUNTY
FILED
APR 30 AM 9:53
JAMES C. P. & S. C. JUDGE

pd
250
4/28/10

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CASE NO.: 2010-CP-40-1571

CITIMORTGAGE, INC.,

ORDER OF RECUSAL

Plaintiff,

vs.

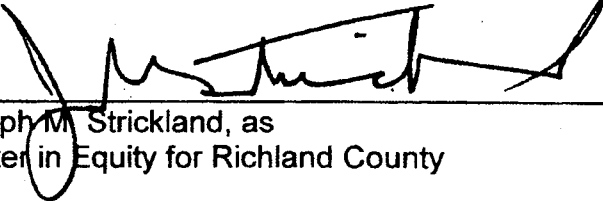
BRUCE W. GARDNER., ET AL.,

Defendant(s)

RICHLAND COUNTY
FILED
2011 MAY 19 AM 11:00
CLERK OF COURT
C.C.P. & G.S.

The matter before the court is a foreclosure lawsuit. I have reviewed the file and have determined I should recuse myself from considering any matter in this case.

IT IS SO ORDERED.



Joseph M. Strickland, as
Master in Equity for Richland County

Columbia, South Carolina
May 18, 2011

Cc: Johnson and Freedman
1587 Northeast Expressway
Atlanta, GA 30329

Mr. Bruce W. Gardner, Pro se
Post Office Box 1531
Lexington, South Carolina 29071

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CitiMortgage, Inc.,

Plaintiff(s)

vs.

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

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-40-1571

BOOK

SF

PAGE

41

**AMENDED
ORDER OF REFERENCE**

RICHLAND COUNTY
CLERK OF COURT
2010 MAY 24 AM 9:24
JEANETTE H. WOLF
C.C.

It appearing that pursuant to Rule 53(b) SCRPC, that the herein action is for foreclosure of the Plaintiff's mortgage and is an appropriate action to be referred to the Honorable Joseph M. Strickland, Master in Equity for Richland County with authority to enter a final judgment in the case;

NOW, upon motion of the attorneys for the Plaintiff,

IT IS ORDERED that this case is referred to the Honorable Joseph M. Strickland, Master in Equity for Richland County, who, pursuant to Rule 53(b) SCRPC, shall exercise all power and authority which a Circuit Judge sitting without a jury would have, including but not limited to, making findings of fact and conclusions of law; directing entry of final judgment in this action under Rule 53(b) SCRPC; hearing any issues, including motions, after sale or judgment; issuing any and all Orders and Supplemental Orders, Writs of Assistance, Rules to Show Cause and hearing any issues involving possession and/or removal of property and appraisal proceedings under Section 29-3-360, et seq. of the South Carolina Code. Pursuant to Rule 53(b) SCRPC, any appeal from the final judgment entered by the Master in Equity shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules. Any judicial sale of the property subject of this action may be held on a day other than the regular judicial sale day.

IT IS SO ORDERED.

Coleman South Carolina
5/13 2010

James F. Best

Presiding Judge
Richland County Clerk of Court

WE SO MOVE:

Johnson & Freedman, LLC

Tiffany H. Wolf
Tiffany H. Wolf/ S.C. Bar No.: 16149
ATTORNEY FOR THE PLAINTIFF

1587 Northeast Expressway
Atlanta, GA 30329
(770) 234-9181 (Telephone)
(770) 234-9192 (Facsimile)
0904811SC

41

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CitiMortgage, Inc.

Plaintiff(s)

vs.

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

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-40-1571

AMENDED

ORDER OF REFERENCE TO APPOINT
SPECIAL REFEREE

JEANETTE W. HARRIS
C.C.P. & G.S.
CLERK

2011 SEP 29 PM 4:52

FILED

It appearing that pursuant to Rule 53(b) SCRCP, that the herein action is for foreclosure of the Plaintiff's mortgage and is an appropriate action to be referred to Ben N. Miller, III, as the Special Referee for Richland County with authority to enter a final judgment in the case;

NOW, upon motion of the attorneys for the Plaintiff,

IT IS ORDERED that this case is referred to Ben N. Miller, III, as the Special Referee for Richland County, who, pursuant to Rule 53(b) SCRCP, shall exercise all power and authority which a Circuit Judge sitting without a jury would have, including but not limited to, making findings of fact and conclusions of law; directing entry of final judgment in this action under Rule 53(b) SCRCP; hearing any issues, including motions, after sale or judgment; issuing any and all Orders and Supplemental Orders, Writs of Assistance, Rules to Show Cause and hearing any issues involving possession and/or removal of property and appraisal proceedings under Section 29-3-360, *et seq.* of the South Carolina Code. Pursuant to Rule 53(b) SCRCP, any appeal from the final judgment entered by the Special Referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

5.

Any judicial sale of the property subject of this action may be held on a day other than the regular judicial sale day.

IT IS SO ORDERED.

Columbia, South Carolina
Sept 28, 2011

Alan Bruce Lee
Presiding Judge
Richland County Clerk of Court

WE SO MOVE:

Johnson & Freedman, LLC

January N. Taylor with express permission by
January N. Taylor, Esq. SC Bar No.: 80069 Ana Street Camp
Tiffany H. Wolf, Esq. SC Bar No.: 16149 SC Bar 68633
Summer Hughes Smoot, Esq. SC Bar No. 80070
ATTORNEYS FOR THE PLAINTIFF
1587 Northeast Expressway
Atlanta, GA 30329
(770) 234-9181 (Telephone)
(770) 234-9192 (Facsimile)
0904811SC

6.

Citimortgage,
Plaintiff,
v.
Bruce W. Gardner and First
Citizens Bank and Trust,
Inc.,
Defendants.

APPEARANCES:

J. Pamela Price, Esquire
 HARVEY & VALLINI, LLC
 900 Elmwood Avenue, Suite 200
 Columbia, South Carolina 29201
 Attorney for the Plaintiff

Bruce Gardner
 190 Brookland Circle
 Columbia, South Carolina 29204
 Pro Se Defendant

EXHIBITS

Plaintiff's Exhibit Number One	6
(Note)	
Plaintiff's Exhibit Number Two	8
(Mortgage)	
Plaintiff's Exhibit Number Three	10
(Assignment of Mortgage)	
Plaintiff's Exhibit Number Four	12
(Affidavit of Debt)	
Plaintiff's Exhibit Number Five	13
(Affidavit In Support of Attorney's Fees)	
Defendant's Exhibit Number One	14
(MERS Internet Printout)	

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the South Carolina Rules of Civil Procedure.

8.

1 **THE COURT:** The next matter before the Court is
2 Citimortgage, Inc. versus Bruce Gardner. This
3 is docket number 2010-CP-40-1571. Present are
4 Pam Price, attorney for the plaintiff; and the
5 defendant, Bruce Gardner, who is appearing pro
6 se. This -- Ms. Price, what property does this
7 cover?

8 **MS. PRICE:** 104 Abraham Street here in Columbia,
9 29203.

10 **THE COURT:** Okay. And can you give me a little bit
11 of history on the property? When was it
12 purchased?

13 **MS. PRICE:** Let's see.

14 **THE COURT:** I'm just asking you to refer to the
15 recorded documents.

16 **MS. PRICE:** We have a deed to Mr. Gardner dated
17 September 17, 2007.

18 **THE COURT:** All right. And the loan date on the
19 mortgage?

20 **MS. PRICE:** December 14, 2007.

21 **THE COURT:** Okay. All right. We'll hear from you,
22 Ms. Price.

23 **MS. PRICE:** Your Honor, this is a typical
24 foreclosure action. Mr. Gardner is in default
25 under the terms of his note and mortgage as of

1 December -- let's see, through August 1, 2008.
2 And we have an original debt of \$82,800. We
3 are asking for the principal balance due as of
4 August 1, 2008 plus interest from that point
5 forward, escrows, which includes hazard
6 insurance and taxes, late charges. We're
7 requesting attorney's fees and cost. We have
8 a small appraisal fee and property inspection
9 fee and some interest on those escrow advances.

10 **THE COURT:** Okay.

11 **MS. PRICE:** We have --

12 **THE COURT:** All right. Now, before we get started,
13 do you want to make an opening statement as
14 well?

15 **MR. GARDNER:** Yes, I do.

16 **THE COURT:** All right.

17 **MR. GARDNER:** I object because it's my understanding
18 that Citimortgage is not the owner of the note.
19 They do not own the property. The property
20 have been -- what's the technical term?

21 **THE COURT:** Could you make this sort of succinct
22 because you're going to have ample opportunity
23 to get into all this later. But that's
24 basically --

25 **MR. GARDNER:** They don't have standing because the

10.

CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 note -- both notes were -- what's the term I'm
2 looking for?

3 **THE COURT:** I believe you said bifurcated before.

4 **MR. GARDNER:** That's not the word I'm looking for
5 now.

6 **THE COURT:** Okay.

7 **MR. GARDNER:** Securitized. Both notes were
8 securitized, and during that securitization
9 process, which she said that she gave me cash,
10 she has no proof that she gave me cash or
11 Citimortgage gave me cash. When the mortgages
12 were -- when both mortgages were securitized,
13 the entity that funded the note was not
14 Citimortgage.

15 **THE COURT:** Okay. All right. Now, are you ready to
16 present your documents?

17 **MS. PRICE:** I will be glad to, your Honor. We've
18 got the note, which is signed by Mr. Gardner.
19 We have the original, and it is to
20 Citimortgage, Inc.

21 **THE COURT:** All right. Let's hold up one second.
22 Mr. Gardner, take a look at this one.

23 **MR. GARDNER:** Okay.

24 **THE COURT:** Do you recognize that to be your
25 signature?

1 MR. GARDNER: Yeah, that's my signature.

2 THE COURT: All right. Let's mark that as
3 Plaintiff's Exhibit One.

4 COURT REPORTER: You want to mark the -- is this the
5 original?

6 THE COURT: Oops, that's right, this is the
7 original.

8 MS. PRICE: Yeah, that's it. Let me get you a copy.

9 THE COURT: This is the one for \$82,800.

10 COURT REPORTER: Okay. That will be Exhibit One.

11 (Plaintiff's Exhibit Number One was marked for
12 identification purposes and entered into evidence.)

13 THE COURT: All right. Do you have another document
14 you want to offer?

15 MS. PRICE: Your Honor, we have the mortgage, which
16 was signed by Mr. Gardner on December 14, 2007.
17 It is -- the mortgagee is MERS, which is acting
18 as nominee for Citimortgage. The lender is
19 Citimortgage, Inc. And, of course, we have the
20 legal description attached to that, which
21 refers to the property at 104 Abraham Street.

22 THE COURT: All right. Mr. Gardner, you want to
23 take a look at this and particularly tell me
24 whether or not --

25 MR. GARDNER: What is that, now?

12,

CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 **THE COURT:** This is the mortgage. And let me know
2 if this is your signature on the --

3 **MR. GARDNER:** That is my signature, but I object. I
4 have a question on that. If we could look at
5 number 20 in that mortgage, which I should have
6 pointed out in the other mortgage as well, sale
7 of note.

8 **THE COURT:** Okay.

9 **MR. GARDNER:** Because I'm still not clear how MERS
10 can assign for value when it -- the value has
11 not been explained to me, but sale of note.

12 **THE COURT:** Okay.

13 **MR. GARDNER:** Charge of loan servicer -- or change
14 of loan servicers, notice of grievance. The
15 note or a partial interest in the note together
16 with the security instrument can be sold one or
17 more times without prior notice to the
18 borrower. But the point I wanted to -- what I
19 wanted to look at, the Court to look at, is
20 where it says together with the security
21 instrument.

22 **THE COURT:** Uh-huh (affirmative response).

23 **MR. GARDNER:** So from what I've seen so far, I'm
24 still unclear as to how the note can go one way
25 and the mortgage can go someplace else.

1 THE COURT: Okay. All right. So you -- this is --
2 this has your original signature on it. Is
3 that your -- is that what you've said?

4 MR. GARDNER: That's correct.

5 THE COURT: All right. I'm going to admit that into
6 evidence as Plaintiff's Exhibit Two, or a copy
7 of it, if you've got a copy available. Okay.
8 And this does have paragraph 20 that you just
9 mentioned in it. All right. I'm going to
10 admit this into evidence as Plaintiff's Exhibit
11 Two.

12 (Plaintiff's Exhibit Number Two was marked for
13 identification purposes and entered into evidence.)

14 MS. PRICE: Our next exhibit is the assignment of
15 mortgage where --

16 MR. GARDNER: Did you show me the note?

17 THE COURT: This is the note.

18 MR. GARDNER: Okay.

19 MS. PRICE: The next exhibit is the assignment of
20 mortgage wherein MERS, as nominee for
21 Citimortgage, assigned the mortgage to
22 Citimortgage, Inc.

23 MR. GARDNER: And I object.

24 MS. PRICE: And this is the recorded copy from the
25 courthouse.

1 THE COURT: All right. And do you have a --

2 MS. PRICE: I do have a copy.

3 THE COURT: -- copy for that one? All right. Okay.

4 You want to state your objection --

5 MR. GARDNER: Yes, sir.

6 THE COURT: -- Mr. Gardner?

7 MR. GARDNER: Okay. Let's look at -- first of all,
8 this Treeva person. Object to that.

9 THE COURT: Okay.

10 MR. GARDNER: And I object to where it says -- MERS
11 is saying for value received.

12 THE COURT: All right.

13 MR. GARDNER: That hasn't been explained. Then
14 let's look at the dates. Okay. Assignment
15 was, of mortgage was on or before 4/15/09.
16 Then we go down to in witness, said it was
17 witnessed by an authorized office on 17 of
18 April '09. Then the same guy who works for
19 Citimortgage who's not the vice president,
20 Aaron Mehne, who's all over the internet for
21 fraud. Then the witness, one place is not even
22 signed by the witness. Then we've got a third
23 date 04/21/09 here. So we've got, so far,
24 three dates. And if we look at the top, the
25 very top, where, I guess, the -- was the actual

1 -- they actually took it to the court is
2 5/18/09. So we've got 5/18/09 --

3 MS. PRICE: I believe that's 5/13/09.

4 MR. GARDNER: Up top --

5 MS. PRICE: Your copy looks like 5/13.

6 MR. GARDNER: Up top, 5/18 --

7 THE COURT: I think she's --

8 MR. GARDNER: No. I'm not talking about that one
9 yet. I'm not there yet.

10 THE COURT: But that may have something to do with
11 the recorder's office.

12 MR. GARDNER: Okay.

13 THE COURT: And it's not on the original here.

14 MR. GARDNER: Okay. All right. So we've got 4/15.
15 We've got 4/14. We've got 4/17. We've got
16 4/21. We've got 5/13. And then we got 4/17.
17 Maybe my understanding of a certified authentic
18 document, maybe my understanding is different,
19 but I object because you've got about five
20 different dates on here.

21 THE COURT: Okay. All right. I'm admitting it into
22 evidence over your objection. All right?

23 MR. GARDNER: Wow.

24 (Plaintiff's Exhibit Number Three was marked for
25 identification purposes and entered into evidence.)

16.

1 **THE COURT:** Do you have further documents that you'd
2 like to present, Ms. Price?

3 **MS. PRICE:** Yes, Your Honor. We have the affidavit
4 of debt and the affidavit of attorney's fees.
5 I've just got to find the originals. These
6 copies are so good, I can't tell which is the
7 copy and which is the original. This is the
8 affidavit in support of our request for
9 attorney's fees, and the affidavit of debt.

10 **THE COURT:** All right. Okay. Mr. Gardner, that's
11 the affidavit of debt that she's offered into
12 evidence as Plaintiff's Exhibit Four. Do you
13 have any objection?

14 **MR. GARDNER:** Yes, I do. I'd also like to object
15 because a -- if you look at the lis pendens,
16 there's a third party, First Citizens Bank,
17 they're not present.

18 **THE COURT:** Okay.

19 **MR. GARDNER:** All right. Now, would I have access
20 to copies of these at some point?

21 **THE COURT:** If you'd like, the court reporter can
22 sell you a copy of the transcript.

23 **MR. GARDNER:** Okay. Okay.

24 **THE COURT:** Is that what you'd like?

25 **MR. GARDNER:** That's fine.

1 THE COURT: All right.

2 MR. GARDNER: As long as I have access to these --

3 THE COURT: All right.

4 MR. GARDNER: -- because these --

5 THE COURT: Okay.

6 MR. GARDNER: Yeah.

7 THE COURT: All right. So you're mentioning that
8 this copy --

9 MS. PRICE: And those are the originals.

10 THE COURT: This affidavit in the caption doesn't
11 list First Citizens Bank, is that -- was your
12 objection?

13 MR. GARDNER: Right.

14 THE COURT: All right.

15 MR. GARDNER: Because they are on --

16 THE COURT: They are on this document or on the lis
17 pendens.

18 MR. GARDNER: Right.

19 THE COURT: Okay. All right. I'm going to admit it
20 into evidence and deny your objection, and
21 admit it into evidence as Plaintiff's Exhibit
22 Four.

23 (Plaintiff's Exhibit Number Four was marked for
24 identification purposes and entered into evidence.)

25 THE COURT: Now, Ms. Price, you've handed me an

1 affidavit in support of attorney's fees. And
2 you're asking for \$1,800 in attorney's fees; is
3 that correct?

4 **MS. PRICE:** Yes, your Honor.

5 **THE COURT:** All right. Do you want to look this
6 over?

7 **MR. GARDNER:** That's useless.

8 **THE COURT:** All right. We admit that into evidence
9 as Plaintiff's Exhibit Five.

10 (Plaintiff's Exhibit Number Five was marked for
11 identification purposes and entered into evidence.)

12 **THE COURT:** All right. Do you have anything
13 further?

14 **MS. PRICE:** Your Honor, we're asking for the first
15 available sale date. We're also asking, as in
16 the prior case, we're asking for a deficiency
17 judgment against Mr. Gardner if the property
18 does not sell for an amount sufficient to --

19 **MR. GARDNER:** I object.

20 **MS. PRICE:** -- payment for the debt.

21 **MR. GARDNER:** I object because both of these
22 properties have already been paid for so many
23 times.

24 **THE COURT:** All right. So you -- you're through?

25 **MS. PRICE:** Yes, Your Honor.

1 **THE COURT:** All right. Okay. We'll hear from you,
2 Mr. Gardner.

3 **MR. GARDNER:** Okay. I'd like to enter this from
4 MERS into evidence, stating that Citimortgage
5 does not own the loan, so they do not have
6 standing. The loan is not owned and never was
7 owned by Citimortgage.

8 **THE COURT:** Do you want this in evidence?

9 **MR. GARDNER:** Yes, sir.

10 **THE COURT:** All right. That's Defendant's Exhibit
11 One over -- without objection.

12 (Defendant's Exhibit Number One was marked for
13 identification purposes and entered into evidence.)

14 **MR. GARDNER:** Let me make sure this is the right
15 one. I think this one goes to the other
16 property and the other property -- I think.
17 It's --

18 **MS. PRICE:** Without objection, Your Honor.

19 **THE COURT:** It's got a different MIN number.

20 **MR. GARDNER:** Yeah. I think that --

21 **MS. PRICE:** I think the MIN number is on the
22 mortgage. There's the MIN number --

23 **THE COURT:** 495, so this -- all right. This one is
24 the 495 one.

25 **MS. PRICE:** So that goes to the property that's --

1 THE COURT: That's this one, right? Is that --

2 MS. PRICE: 104 Abraham. That's the second case.

3 THE COURT: All right. So this one goes to the
4 first one?

5 MS. PRICE: Yeah, MIN number 710.

6 THE COURT: I'm getting confused.

7 MS. PRICE: That is the Brookland Circle property.

8 THE COURT: Okay. So actually, can you switch these
9 out?

10 COURT REPORTER: Yeah, I can. Let me just use
11 different stickers here. So this is going to
12 be the case number 5914, that was the first
13 case. And this is going to be --

14 THE COURT: All right. Oh, this is the first case.
15 Okay.

16 COURT REPORTER: Yeah. And this will be -- okay.
17 Here we go. This is the first case right here.

18 THE COURT: All right. I think we got the two
19 things straightened out now. Now, let's see,
20 where did the Defendant's Exhibit Number One go
21 to? Was that this?

22 COURT REPORTER: Oh, was it One? Oh, you know why I
23 did that? Because it was marked to the other
24 one as Number Two. My apologies. I did that
25 wrong. This is Exhibit Number One.

1 THE COURT: Okay.

2 COURT REPORTER: I was just copying the number.

3 THE COURT: You would have been looking all
4 afternoon trying to find the missing one,
5 wouldn't you?

6 COURT REPORTER: I would have tried figuring that
7 out. Okay. So this is Exhibit Number One to
8 the case that we're presently talking about --

9 THE COURT: All right.

10 COURT REPORTER: -- which is 1571.

11 THE COURT: Okay. So Mr. Gardner has offered into
12 evidence and we've admitted into evidence a
13 document from the MERS service ID Process Loans
14 Not Paperwork. Okay. You got any further
15 documents?

16 MR. GARDNER: I think that's it as far as documents.

17 THE COURT: That's it?

18 MR. GARDNER: Right.

19 THE COURT: All right. All right. So we're through
20 with documents. Do you have any closing
21 arguments that you'd like to make?

22 MR. GARDNER: Yes, I do.

23 THE COURT: Because we have your motion.

24 MR. GARDNER: Okay. I motion to dismiss in addition
25 to the motion that I submitted. That if you

1 look at the note, only one party's
2 certification is on it, which is mine. I don't
3 see any certification from the other party.
4 And --

5 **THE COURT:** When you say the other party, you're
6 referring to --

7 **MR. GARDNER:** The plaintiff.

8 **THE COURT:** -- Citimortgage?

9 **MR. GARDNER:** The plaintiff, right.

10 **THE COURT:** All right.

11 **MR. GARDNER:** And I don't see how that can prove
12 standing with just one party signature on it.
13 I submit that both mortgages were securitized.
14 They were purchased by Fannie Mae. And this
15 MERS corporation is used as a strawman, a
16 coverup, so that there's no historical --
17 there's no historical time frame of assignments
18 or what happened to the original note from the
19 time that it was signed until present.

20 **THE COURT:** Okay. And the rest -- you're preserving
21 your other arguments that are contained in your
22 motion; is that basically what you're saying?

23 **MR. GARDNER:** If I need to read them, I will.

24 **THE COURT:** No. I'm not asking you to read them,
25 but is there anything that you need to alter or

23.

CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 change in having heard the evidence presented
2 that you would like to change in your motion or
3 modify it or expand on in your motion?

4 **MR. GARDNER:** I move to strike the -- both of the
5 assignments from MERS because they have no
6 equity; they never have had equity, in either
7 one of the properties. So how could they
8 legally assign equity when they don't have any?

9 **THE COURT:** Okay. All right. Is that it?

10 **MR. GARDNER:** Yes, sir.

11 **THE COURT:** Do you have anything further, Ms. Price?

12 **MS. PRICE:** No, I don't.

13 **THE COURT:** All right. Well, then we'll adjourn the
14 hearing, and we'll ask the court reporter to
15 prepare original and perhaps two copies. You
16 need a copy?

17 **MS. PRICE:** We were not going to ask for a copy
18 unless the case was appealed, but --

19 **MR. GARDNER:** I'm going to appeal the case.

20 **MS. PRICE:** -- you go ahead and make it. That will
21 be fine.

22 **THE COURT:** All right. What you'll need to do, Mr.
23 Gardner, is that the court reporter will
24 prepare the transcript, and she'll have a copy
25 for you. She'll send you a bill first, okay,

1 and ask that you pay for your copy before she
2 mails it to you. All right?

3 MR. GARDNER: All right.

4 THE COURT: And then when she gets the --

5 MR. GARDNER: All that's been done.

6 COURT REPORTER: Yeah. Well, actually, we -- I
7 think my office has --

8 MR. GARDNER: You think.

9 THE COURT REPORTER: You've put a down payment on
10 it.

11 THE COURT: Oh, all right.

12 COURT REPORTER: I don't know what the final price
13 will be but --

14 MR. GARDNER: Right.

15 THE COURT: Well, very good.

16 COURT REPORTER: Yes, sir. Yes.

17 THE COURT: Well, very good. All right.

18 COURT REPORTER: We made arrangements for that.

19 THE COURT: All right.

20 COURT REPORTER: Okay. Thank you very much.

21 THE COURT: Thank you.

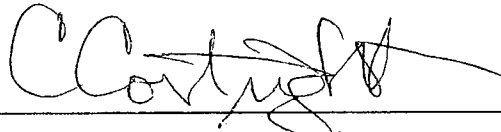
22 (There being nothing further, the hearing concluded
23 at 3:15 p.m.)
24
25

CERTIFICATE

This is to certify that the Foreclosure Hearing, consisting of Nineteen (19) pages, is a true and correct transcript of the testimony given; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on July 25, 2012.



Christine A. Cortright
Court Reporter

Notary Public for South Carolina
My Commission Expires: August 28, 2016

76.

CREEL COURT REPORTING, INC.

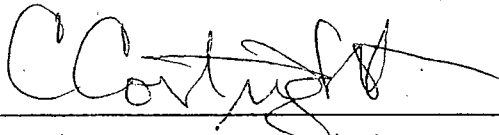
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

CERTIFICATE

This is to certify that the Foreclosure Hearing, consisting of Nineteen (19) pages, is a true and correct transcript of the testimony given; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on July 25, 2012.



Christine A. Cortright
Court Reporter

Notary Public for South Carolina
My Commission Expires: August 28, 2016

27.

CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

002004904649

281

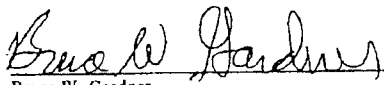
10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


Bruce W. Gardner (Seal)
Borrower

(Sign Original Only)

Print Job: 187393

Page 12 of 34

Instrument: 2007113979

Book/Page: R1388 : 1494

Date/Time: 12/28/2007 3:42:35 PM

PENGAD 800-831-6989

PLAINTIFF'S
EXHIBIT

2

10-CR-40-1571

Return To:
CitiMortgage, Inc.
Attn: Document Processing
P.O. Box 790021
St. Louis, MO 63179-0021

Prepared By:
CitiMortgage, Inc.
6300 InterFirst Drive
Ann Arbor, MI 48108

Book 1388-1494
2007113979 12/28/2007 15:42:34 300
Fee: \$22.00 County Tax: \$0.00 State Tax: \$0.00
2007113979 Richard W. Rodden
Richard County ROD

[Space Above This Line For Recording Data]

MORTGAGE

MIN 100011520049046495

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated December 14, 2007 together with all Riders to this document.
(B) "Borrower" is Bruce W. Gardner

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2028, Flint, MI 48501-2028, tel. (888) 678-MERS.

002004904649

SOUTH CAROLINA - Single Family - Parallel Non/Produce Non UNIFORM INSTRUMENT WITH MERS Form 3041 1/01

4A(BG) 10/09/07

Page 1 of 18

CitiMortgage Systems, Inc.

CitiMortgage 3.2.13.20 V3

BRIAN CHARLES NEEV
ATTORNEY AT LAW
P.O. BOX 8428
WEST COLUMBIA, SC 29177

30.

Print Job: 187393

Page 13 of 34

Instrument: 2007113979

Book/Page: R1386: 1495

Date/Time: 12/28/2007 3:42:35 PM

(D) "Lender" is CitiMortgage, Inc.

Lender is a Corporation
organized and existing under the laws of New York
Lender's address is 1000 Technology Drive, O' Fallon, MO 63368-2240

(B) "Note" means the promissory note signed by Borrower and dated December 14, 2007
The Note states that Borrower owes Lender Eighty Two Thousand Eight Hundred

Dollars

(U.S. \$ 82,800.00) plus interest. Borrower has promised to pay this debt in regular Periodic
Payments and to pay the debt in full not later than January 1, 2038

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the
Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges
due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following
Riders are to be executed by Borrower (check box as applicable):

- | | | |
|--|---|--|
| ☐ Adjustable Rate Rider | ☐ Condominium Rider | ☐ Second Home Rider |
| ☐ Balloon Rider | ☐ Planned Unit Development Rider | ☐ 1-4 Family Rider |
| ☐ VA Rider | ☐ Biweekly Payment Rider | ☒ Other(s) (specify)
Schedule "A" |

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,
non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other
charges that are imposed on Borrower or the Property by a condominium association, homeowners
association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by
check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic
instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit
or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller
machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse
transfers.

(L) "Borrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, entitlement, award of damages, or proceeds paid
by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i)
damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the
Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the
value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on,
the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the
Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RETPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its
implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to
time, or any additional or successor legislation or regulation that governs the same subject matter. As used

002004904649

CitiMortgage 3.2.13.20 V3

Page 2 of 10

Form 3041 1/01

CitiMortgage 3.2.13.20 V3

BRIAN CHARLES
ATTORNEY AT LAW
P.O. BOX 842E
WEST COLUMBIA, SC 29171

Print Job: 187393

Page 14 of 34

Instrument: 2007113979

Book/Page: R1388 : 1496

Date/Time: 12/28/2007 3:42:35 PM

In this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the County of Richland

(Type of Recording Jurisdiction)

(Name of Recording Jurisdiction)

See Schedule A attached hereto and made apart thereof.

Parcel ID Number:
104 ABRAHAM ST
COLUMBIA
("Property Address"):

which currently has the address of

(City) . South Carolina 29203-3002 (Zip Code)

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and cancelling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

002004904649

Page 3 of 15

[Signature]

Form 3041 1/01

Citibank 3.2.13.20 V3

BRIAN CHARLES REEVE
ATTORNEY AT LAW
P.O. BOX 9488
WEST COLUMBIA, SC 29171

321

Print Job: 187393

Page 15 of 34

Instrument: 2007113879

Book/Page: R1388: 1497

Date/Time: 12/28/2007 3:42:35 PM

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payment is insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can obtain priority over this Security Instrument as a lien or encumbrance on the Property; (b) household payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

002004904649

LA(SEC) (04/09/07)

Page 4 of 18

Form 3041 1/01

CidMortgage 3.2.13.20 V3

BRIAN CHARLES REEVE
ATTORNEY AT LAW
 P.O. BOX 8488
 WEST COLUMBIA, SC 29171

Print Job: 187393

Page 16 of 34

Instrument: 2007113879

Book/Page: R1388: 1498

Date/Time: 12/28/2007 3:42:35 PM

in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds to an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

002004904649

 SA(BC) 10-009 D1

Page 5 of 18



 Form 3041 1/01
 CHMortgage 3.2.13.28 V3

BRIAN CHARLES REEVE
ATTORNEY AT LAW
 P.O. BOX 6488
 WEST COLUMBIA, SC 29171

lies. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

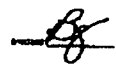
5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the debts secured by this Security Instrument, whether or not then due, with

002004904649


 002004904649

Page 6 of 18

Form 3041 1/01

CMIMortgage 3.2.13.20 V3

BRIAN CHARLES REEVE
ATTORNEY AT LAW
 P. O. BOX 9428
 WEST COLUMBIA, SC 29171

Print Job: 187393

Page 18 of 34

Instrument: 2007113879

Book/Page: R1388: 1500

Date/Time: 12/28/2007 3:42:35 PM

the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repair and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

002004904649

LA(BIC) 40-408.01

Page 7 of 18

Bq

Form 3041 1/01

CitiMortgage 3.2.13.20 V3

BRIAN CHARLES REEVE
ATTORNEY AT LAW
P.O. BOX 6428
WEST COLUMBIA, SC 29171

Print Job: 187393

Page 19 of 34

Instrument: 2007113979

Book/Page: R1388 1501

Date/Time: 12/28/2007 3:42:35 PM

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

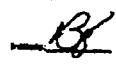
As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

002004904649

 eScriber (EC) 04000.01

Page 9 of 15



 Form 3041 1/01
 CitiMortgage 3.2.13.20 V3

BRIAN CHARLES REEVE
 ATTORNEY AT LAW
 P.O. BOX 8428
 WEST COLUMBIA, SC 29171

This document is not to scale

38.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

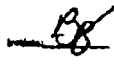
Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

002004904649

 BA(BC) 04000101

Page 8 of 15



Form 3041 1/01

CMRMortgage 3.2.13.20 V3

BRIAN CHARLES REEVE
ATTORNEY AT LAW
 P.O. BOX 8428
 WEST COLUMBIA, SC 29171

Print Job: 187393

Page 21 of 34

Instrument: 2007113979

Book/Page: R1355-1503

Date/Time: 12/28/2007 3:42:35 PM

12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Joint and Several Liability; Co-signers, Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only as mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

002004904649

GA(20) 10406.01

Page 10 of 15

Form 3041 1/01
CitiMortgage 3.2.13.20 V3

BRIAN CHARLES REEVE
ATTORNEY AT LAW
P.O. BOX 8428
WEST COLUMBIA, SC 29171

40.

Print Job: 187393

Page 22 of 34

Instrument: 2007113979

Book/Page: R1388 : 1504

Date/Time: 12/28/2007 3:42:35 PM

16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument. 18. **Transfer of this Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstatement After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to ensure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects periodic payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

002004904649

BA(BC) MACON, GA

Page 11 of 16

By 

Form 3041 1/01

CitiMortgage 3.2.13.20 V3

BRIAN CHARLES REEVE
ATTORNEY AT LAW
P.O. BOX 6428
WEST COLUMBIA, SC 29171

Print Job: 187393

Page 23 of 34

Instrument: 2007113879

Book/Page: R1388: 1505

Date/Time: 12/28/2007 3:42:35 PM

requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party here to a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

31. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spillage, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

002004904649

GA(BC) 0408.01

Page 12 of 18

Bq

Form 3041 1/01
CltMortgage 3.2.13.20 V3

BRIAN CHARLES REEVE
ATTORNEY AT LAW
P.O. BOX 8435
WEST COLUMBIA, SC 29171

42.

Print Job: 187393

Page 24 of 34

Instrument: 2007113979

Book/Page: R1388 : 1506

Date/Time: 12/28/2007 3:42:35 PM

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defenses of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. **Release.** Upon Payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. **Homesestead Waiver.** Borrower waives all rights of homesestead exemption in the Property to the extent allowed by Applicable Law.

25. **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

26. **Future Advances.** The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

002004904649

4A(BC) 040801.01

Page 12 of 16

By

Form 3041 1/01

CIS Mortgage 3.2.13.20 V3

BRIAN CHARLES REEVE
ATTORNEY AT LAW
P.O. BOX 6428
WEST COLUMBIA, SC 29171

48

Print Job: 187393

Page 25 of 34

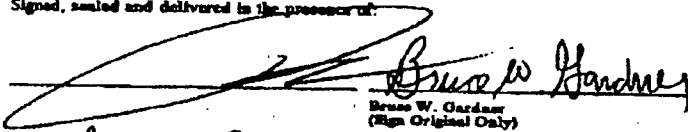
Instrument: 2007113979

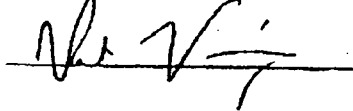
Book/Page: R1388: 1507

DateTime: 12/28/2007 3:42:35 PM

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

 (Seal)
Brian W. Gardner
(Sign Original Only)



002004904649

BA(BC) 10-0001.01

Page 14 of 16

Form 3041 1/01
CitMortgage 3.2.13.20 V3

BRIAN CHARLES REEVE
ATTORNEY AT LAW
P.O. BOX 8428
WEST COLUMBIA, SC 29171

This document is not to scale



Print Job: 187393

Page 26 of 34

Instrument: 2007113979

Book/Page: R1398: 1508

Date/Time: 12/28/2007 3:42:35 PM

STATE OF SOUTH CAROLINA
I, Brian C. Reeve LexingtonCounty as:
do hereby certify thatBruce W. Gardner

personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 14 day of December 2007

Notary Public for South Carolina

My Commission Expires: 10/14/16Brian C. Reevex N/V
Witness: Victoria Volponi

002004904649

2A(BC) 10408.01

Page 16 of 16

Form 2041 1/01
CltMortgage 3.2.13.20 V3BRIAN CHARLES REEVE
ATTORNEY AT LAW
P.O. BOX 8428
WEST COLUMBIA, SC 29090

44

Print Job: 187393

Page 27 of 34

Instrument: 2007113979

Book/Page: R1368: 1500

Date/Time: 12/28/2007 3:42:35 PM

Schedule A to Mortgage of Gardner

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND WITH THE IMPROVEMENTS THEREON, SITUATE, LYING AND BEING NEAR THE CITY OF COLUMBIA, IN THE COUNTY OF RICHLAND, STATE OF SOUTH CAROLINA, THE SAME BEING SHOWN AS LOT NUMBER 220 ON A PLAT OF GREENVIEW BY COLUMBIA ENGINEERING COMPANY DATED APRIL 28, 1950, REVISED SEPTEMBER 4, 1951 AND RECORDED IN PLAT BOOK O AT PAGE 136 IN THE CLERK OF COURT OFFICE FOR RICHLAND COUNTY SC. ALSO, BEING SHOWN ON A PLAT PREPARED FOR LEOLA DARLEY BY R.E. COLLINGWOOD, JR., RLS, DATED FEBRUARY 16, 1966 AND RECORDED MARCH 17, 1966 IN THE OFFICE OF THE ROD FOR RICHLAND COUNTY, SC IN PLAT/RECORD BOOK 28 AT PAGE 543.

THIS BEING THE SAME PROPERTY HERETOFORE CONVEYED TO BRUCE W. GARDNER BY DEED OF WACHOVIA BANK OF DELAWARE, N.A. DATED SEPTEMBER 17, 2007 AND RECORDED OCTOBER 26, 2007 IN THE OFFICE OF THE REGISTER OF DEEDS FOR RICHLAND COUNTY IN DEED/RECORD BOOK 1370 AT PAGE 1416.

SUBJECT TO RESTRICTIVE COVENANTS RECORDED IN DEED/RECORD BOOK 1370 AT PAGE 1416.

TMS# 14203-10-04

PROPERTY ADDRESS: 104 ABRAHAM STREET, COLUMBIA SC 29203

File No: R-27547

BRIAN CHARLES REEVE
ATTORNEY AT LAW
P.O. BOX 6428
WEST COLUMBIA, SC 29172

Treeva
4**COPY**

Client Loan No.: 2004904649

Our File No.: 0904811SC

Property: 104 Abraham Street
Columbia, SC 29203**ASSIGNMENT OF MORTGAGE**

FOR VALUE RECEIVED, the receipt and sufficiency of which are hereby acknowledged, the undersigned, does hereby grant, bargain, sell, convey and assign unto CitiMortgage, Inc., at 1000 Technology Drive, O'Fallon, MO 63368-2240, all its right, title and interest in and to that certain Mortgage executed by BRUCE W. GARDNER in favor of Mortgage Electronic Registration Systems, Inc., as nominee for CITIMORTGAGE, INC. dated DECEMBER 14, 2007 which mortgage appears of record in Book 1388, Page 1494 of the records of the RICHLAND County Register of Deeds, South Carolina, together with the note, debt, and claim secured by said mortgage, in the principal sum of \$82,800.00 and all monies due or to become due thereunder with the interest thereon. The effective date of this Assignment of Mortgage was on or before 04/15/09.

LEGAL DESCRIPTION: (See attached exhibit A)

All referenced recordings are in the Register of Deeds Office for RICHLAND County, South Carolina, unless otherwise noted herein.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized officer, on this 17TH day of APRIL, 2009.

Mortgage Electronic Registration Systems, Inc., as nominee for
CITIMORTGAGE, INC.

By: Aaron Menne
Its: Vice President

WITNESS: [Signature]
TITLE: CLERK DATE: 04/21/09

WITNESS: C. Maness
TITLE: C. MANESS DATE: 04/21/09

STATE OF Missouri
COUNTY OF St. Charles

Book 1520-3794
2009037757 05/13/2009 11:58:11 490
Fee: \$7.00 County Tax: \$0.00

Assignment of Mortgage
State Tax: \$0.00

2009037757 Richard W. Rodden
Richland County R.O.D.

PERSONALLY, came and appeared before me, the undersigned authority in and for the jurisdiction aforesaid Aaron Menne, with whom I am personally acquainted and who acknowledged that (s) he is the Vice President of the within named Mortgage Electronic Registration Systems, Inc., as nominee for CITIMORTGAGE, INC. and that (s) he signed, sealed and delivered the within and foregoing assignment on the day and year therein mentioned for and on behalf of said corporation, and as its own act and deed for the purpose therein mentioned, having been first duly authorized so to do.

Witness my signature and official seal on this, the 17TH day of APRIL, 2009.

Alex D. Crossman
NOTARY PUBLIC

My Commission Expires: _____

ALEX D CROSSMAN
Notary Public - Notary Seal
State of Missouri
St. Charles County
Commission #08672776
My Commission Expires 11/04/2012

PLAINTIFF'S
EXHIBIT
3
10-CP-40-1571

Schedule A to Mortgage of Gardner

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND WITH THE IMPROVEMENTS THEREON, SITUATE, LYING AND BEING NEAR THE CITY OF COLUMBIA, IN THE COUNTY OF RICHLAND, STATE OF SOUTH CAROLINA, THE SAME BEING SHOWN AS LOT NUMBER 220 ON A PLAT OF GREENVIEW BY COLUMBIA ENGINEERING COMPANY DATED APRIL 28, 1950, REVISED SEPTEMBER 4, 1951 AND RECORDED IN PLAT BOOK 0 AT PAGE 136 IN THE CLERK OF COURT OFFICE FOR RICHLAND COUNTY SC. ALSO, BEING SHOWN ON A PLAT PREPARED FOR LEOLA DARLEY BY R.E. COLLINGWOOD, JR., RLS, DATED FEBRUARY 16, 1966 AND RECORDED MARCH 17, 1966 IN THE OFFICE OF THE ROD FOR RICHLAND COUNTY, SC IN PLAT/RECORD BOOK 28 AT PAGE 543.

THIS BEING THE SAME PROPERTY HERETOFORE CONVEYED TO BRUCE W. GARDNER BY DEED OF WACHOVIA BANK OF DELAWARE, N.A. DATED SEPTEMBER 17, 2007 AND RECORDED OCTOBER 26, 2007 IN THE OFFICE OF THE REGISTER OF DEEDS FOR RICHLAND COUNTY IN DEED/RECORD BOOK 1370 AT PAGE 1416.

SUBJECT TO RESTRICTIVE COVENANTS RECORDED IN DEED/RECORD BOOK 1370 AT PAGE 1416.

TMS# 14203-10-04

PROPERTY ADDRESS: 104 ABRAHAM STREET, COLUMBIA SC 29203

File No: R-27547

CF.
BRIAN CHARLES REEVE
ATTORNEY AT LAW
P.O. BOX 8428
WEST COLUMBIA, SC 29171

IN THE COMMON PLEAS COURT OF RICHLAND COUNTY, SOUTH CAROLINA

CitiMortgage, Inc.,

Plaintiff,

vs.

Bruce W. Gardner

Defendant(s).

CASE NO. 2010-CP-40-1571

AFFIDAVIT

STATE OF MISSOURI

) SS.

ST. CHARLES COUNTY)

W Rothermich, being first duly sworn on oath, deposes and states as follows:

1. I am employed by CitiMortgage, Inc. as a Document Control Officer. In that capacity, I am authorized to execute this affidavit on behalf of CitiMortgage, Inc.. The statements made in this Affidavit are based on my personal knowledge.

2. For convenience, the following party or parties listed on the Note are referred herein as "Borrower": Bruce W. Gardner.

3. In my capacity as a Document Control Officer, I have access to CitiMortgage, Inc. business records, including the business records for and relating to the Borrower's loan. I make this affidavit based upon my review of those records relating to the Borrower's loan and from my own personal knowledge of how they are kept and maintained. The loan records for the Borrower are maintained by CitiMortgage in the course of its regularly conducted business activities.

48.



4. Borrower executed a Note dated December 14, 2007, for \$ 82,800.00 secured by a Mortgage on a property located at 104 Abraham Street, Columbia, SC 29203-5002. CitiMortgage, Inc. is the servicer of the loan and holds the note X ; or CitiMortgage, Inc. is the servicer of the loan and is authorized to act on behalf of the holder of the note .

5. The Borrower has defaulted on his/her payment under the Borrower's loan documents. The Borrower's default on the Note and Mortgage has not been cured, and the loan balance has been accelerated making the entire balance due and owing pursuant to the terms of the loan documents.

6. As a result of the Borrower's default, the Borrower owes, as of 07/12/2012, the following itemized sums of money, exclusive of fees and costs:

Principal Balance	\$ 82,254.59
-------------------	--------------

Interest Due from 08/01/2008 through 07/12/2012 at 6.375%	\$ 20,696.09
---	--------------

Pre-Acceleration Late Charges	\$ 206.56
-------------------------------	-----------

Escrow

Escrow Deficiency-Real Estate Taxes Paid in 2011	\$2,416.51
--	------------

Escrow Deficiency-Real Estate Taxes Paid in 2010	\$2,427.43
--	------------

Escrow Deficiency-Real Estate Taxes Paid in 2009	\$2,367.00
--	------------

Escrow Deficiency-Real Estate Taxes Paid in 2008	\$1,432.32
--	------------

Hazard Insurance	\$3,378.37
------------------	------------

Mortgage Insurance Premium/Private Mortgage Insurance	\$0.00
---	--------

49.

Credits
\$0

Total Escrow	\$12,021.63
Broker's Price Opinion/Appraisals	<u>\$168.00</u>
Property Preservation	<u>\$158.50</u>
Property Inspections	\$671.50
Suspense	<u>\$0</u>
Miscellaneous Charges/Credits as Follows:	
Interest on Escrow Advance	\$693.85
Less Unapplied Funds	\$0
TOTAL	\$116,870.72

BY:

W Rothermich
AFFIANT W Rothermich

Document Control Officer

Date:

6-29-12

Subscribed and sworn to before me
this 29th day of June, 2012, by

W Rothermich

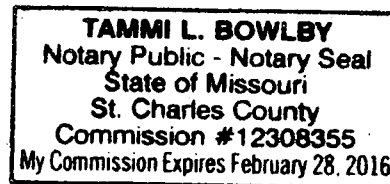
Tammi L Bowlby, Notary Public

State of MISSOURI
My commission expires: 2/28/16

Personally Known ✓ OR
Produced Identification N/A

Type of Identification Produced:

N/A



50,

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Citimortgage, Inc.,

Plaintiff(s)

vs.

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

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-40-1571

**AFFIDAVIT IN SUPPORT OF
PLAINTIFF'S REQUEST FOR
ATTORNEY'S FEES**

PERSONALLY APPEARED BEFORE ME, Nicholas N. Sears, Jr. / Lora Stuart Camp / Summer Hughes Smoot / Tiffany H. Wolf, Attorney at Law, who, upon first being first duly sworn, does state as follows:

1. He/she is the Attorney for the Plaintiff above named
2. He/she was admitted to the South Carolina Bar and since that time has been engaged in private practice within the state of South Carolina. Presently he/she is an associate with Johnson & Freedman, LLC, Attorneys and Counselors at Law, of Atlanta, Georgia, and is engaged in the practice of law, primarily practicing foreclosure law on behalf of lenders.
3. He/she is a member of the South Carolina Bar Association.
4. He/she has represented the Plaintiff in the proceedings which have been pending before the Court concerning the foreclosure of Plaintiff's mortgage.
5. He/she incorporates herein Rule 1.5 of the South Carolina Rules of Professional Conduct, which concerns the setting of attorney's fees. He/she calls the attention of the Court to the case law decisions by the Supreme Court of South Carolina concerning the factors and criteria which should be considered in the setting of attorney's fees. He/she relies upon the discretion of this Court in the determination of the amount of fees based, among other things, upon the Court's file herein as well as the Court's knowledge of the litigation between these

51.



parties which reflects the difficulty of the services rendered, the time necessarily expended, the result accomplished, the fees which are customarily recommended by the Federal National Mortgage Association which are a flat fee.

6. The time spent in this matter as set forth more fully hereinafter was necessary to the protection of his/her client's interests.

7. The undersigned, in accordance with his time and expense records, states to the Court his estimation that the time necessarily expended by his/her firm in handling the matter was significant.

8. Based upon the criteria which have been held to be relevant in setting of attorney's fees, the undersigned, on behalf of his/her client, requests that this Court review the file herein, together with this Affidavit, and this Court's Judgment for Foreclosure and Sale, which specifically awarded the Plaintiff attorney's fees, and grant judgment in favor of the undersigned's client against the Defendant mortgagor(s) in a sum which may be determined by the Court to be reasonable for attorney's fees, costs and suit money.

9. Accordingly, the undersigned respectfully seeks an awarding of attorney's fees of \$1,800.00 through the date of this hearing.



Nicholas N. Sears, Jr., SC Bar No.: 78031
Lora Stuart Camp, SC Bar No.: 68633
Summer Hughes Smoot, SC Bar No. 80070
Tiffany H. Wolf, SC Bar No.: 16149
ATTORNEY FOR THE PLAINTIFF

Sworn To Before Me, this 1st
day of July 2012
Marjorie T. Eackus
Notary Public for the State of Georgia
My Commission Expires: 04.25.2014





Process Loans, Not Paperwork™

2 records matched your search:

MIN: 1000200-0045847449-5 Note Date: 10/19/2007

MIN Status: Inactive

Servicer: First Light Mortgage Corporation
Mt. Laurel, NJ

Phone: (800) 304-9786

If you are a borrower on this loan, you can [click here](#) to enter additional information and display the Investor name.

MIN: 1000115-2004904649-5 Note Date: 12/14/2007

MIN Status: Inactive

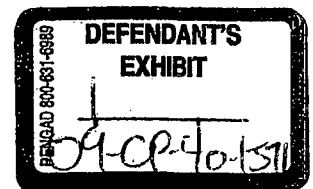
★ Servicer: First Light Mortgage Corporation
O'Fallon, MO

Phone: (800) 283-7918

If you are a borrower on this loan, you can [click here](#) to enter additional information and display the Investor name.

[Return to Search](#)

For more information about Mortgage Electronic Registration Systems, Inc. (MERS) please go to [www.mers.com](#)
Copyright © 2012 MERS ServicerID Holdings, Inc.



Select borrower type and enter borrower information to see Investor for MIN 1000115-2004904649-5.

☐ Investor for Individual Borrower

Your entries may be either upper or lower case.
Fields marked are required.

* Last Name: gardner

* SSN: [REDACTED]

* By checking this box, the borrower or borrower's authorized representative is attesting to the fact that he or she is in fact the borrower or borrower's authorized representative for the loan in question. Additionally, borrowers wishing to learn the identity of their loan's investor must confirm their identity by entering their last name or corporation name as well as their SSN or TIN. If this information does not match the information contained in the MERS® System for the borrower of the loan, the investor information will not be displayed. Borrowers should verify the results with their loan servicer.

☐ Submit

☐ Investor for Corporation/Non-Person Entity Borrower

Your entries may be either upper or lower case.
Fields marked are required.

* Corporation/Non-Person Entity Name:

* Taxpayer Identification Number:

* By checking this box, the borrower or borrower's authorized representative is attesting to the fact that he or she is in fact the borrower or borrower's authorized representative for the loan in question. Additionally, borrowers wishing to learn the identity of their loan's investor must confirm their identity by entering their last name or corporation name as well as their SSN or TIN. If this information does not match the information contained in the MERS® System for the borrower of the loan, the investor information will not be displayed. Borrowers should verify the results with their loan servicer.

☐ Submit

Servicer: [REDACTED]
O'Fallon, MO

Phone: (800) 283-7918

* Investor: Fannie Mae

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

CitiMortgage, Inc.,

Plaintiff,

vs.

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

Defendants.

(File No. 4088.01014)

RILEY POPE & LANEY, LLC
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS

C/A NO.: 2010-CP-40-1571

**SPECIAL REFEREE'S ORDER OF
JUDGMENT OF FORECLOSURE AND
SALE DECREE**

(Non-Jury)

(Not Eligible for HAMP)

(Deficiency Waived)

Bruce W. Gardner
Pro Se

Pursuant to Rule 53 SCRPC, the above entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in this cause without further order of court. Any appeal from this Order shall be directly to the South Carolina Court of Appeals.

This matter came before the Court on March 9, 2016, for a hearing on Plaintiff's Motion for Summary Judgment. Present at the hearing representing the Plaintiff was Peter M. Balthazor. The Defendant Bruce W. Gardner appeared, *pro se*.

This is an action for a foreclosure of a mortgage of real property located in Richland County, South Carolina. Plaintiff filed and served a Motion for Summary Judgment supported by an Affidavit and attachments on July 20, 2015. Defendant has not filed any counter-affidavits prior to the hearing as required by Rules 6(d) and 56(e), SCRPC.

STANDARD

Summary Judgment is warranted only if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party." Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000). The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. However, once the party moving for summary judgment meets the initial burden of showing an absence of

BW
Page 1

55

Exhibit 1

evidentiary support for the opponent's case, the opponent must come forward with specific facts showing there is a genuine issue for trial." Garvin v. Bi-Lo, Inc., 337 S.C. 436, 523 S.E.2d 481 (Ct. App. 1999). The opponent cannot merely rely upon the pleadings, but must submit some additional evidence creating a genuine issue of material fact.

"Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt. Once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction." Bell, 385 S.C. at 374-75, 684 S.E.2d at 205 (internal citations omitted).

In support of its motion, Plaintiff submitted an Affidavit from Marc Handley, Vice President – Document Control for CitiMortgage, Inc., the servicer of this mortgage loan. The Affidavit established the authenticity of the Note and Mortgage, terms of the loan agreement, default on the terms of the loan agreement, debt figures, and compliance with all statutory requirements regarding notice. As no counter-affidavits or other admissible evidence was presented, the evidence before the Court is uncontested. Based upon the uncontested evidence, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT:

- 1) The Lis Pendens was filed on March 9, 2010.
- 2) The Summons and Complaint were filed on March 9, 2010.
- 3) Service was made upon the Defendants as shown by the proof of service filed herein.
- 4) The Defendant First Citizens Bank and Trust Company is in default as shown by Affidavit, Notice, or Order filed herein.
- 5) The Defendants and all attorneys of record were notified of the time, date, and place of the hearing in this matter.
- 6) According to the affidavit filed herein, a good faith investigation did not determine that the Defendant, Bruce W. Gardner is in the military service and therefore entitled to protection under the Servicemembers' Civil Relief Act (SCRA) of 2003, 50 U.S.C. § 501 et. seq., or any amendments thereto.
- 7) For value received, Bruce W. Gardner made, executed and delivered a note ("Note") dated December 14, 2007, promising thereby to pay to the order of CitiMortgage, Inc.

Burn
Page 2

56

the sum of Eighty Two Thousand Eight Hundred and 00/100 (\$82,800.00) Dollars, with interest at the rate of 6.375% per annum, with a current rate of 6.3750% per annum. Other terms and conditions are stated in the Note, which is of record herein.

8) To better secure the payment of the Note described above, Bruce W. Gardner made, executed, and delivered to Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for CitiMortgage, Inc. a certain real estate mortgage ("Mortgage") in writing, dated December 14, 2007, covering real property in Richland County, which is the same as that described in the Complaint. The Mortgage was filed in the Office of the Register of Mesne Conveyances/Register of Deeds for Richland County on December 28, 2007, in Book 1388 at Page 1494. Thereafter the mortgage was assigned to the Plaintiff herein by assignment dated April 17, 2009 and recorded May 13, 2009 in Book 1520 at Page 3794 in the Register of Deeds Office of Richland County.

9) The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor and constitutes a first mortgage lien on the mortgaged premises.

10) The Plaintiff is the real party in interest pursuant to SCRCP 17(a) and is entitled to enforce the terms of the subject Note and Mortgage. The uncontested affidavit filed in support of summary judgment attests that Plaintiff is the holder of the Note and Mortgage. Moreover, Plaintiff's counsel is in possession of the original Note and Mortgage, which were supplied for the Court's review at the hearing on this matter.

11) The titleholder of record of the subject property as of the filing of the Lis Pendens in this action is Bruce W. Gardner, who is the original mortgagor.

12) Any notice required by the terms of the Note and Mortgage or by state or federal statutes has been given to the applicable Defendants prior to the commencement of this action.

13) The loan evidenced by the Note and Mortgage is serviced by a servicer participating in the Home Affordable Modification Program (HAMP). It is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac. Based on the allegations in the Complaint that the subject loan is not eligible for HAMP modification, the Court finds that there are no HAMP issues to be resolved before foreclosure is ordered or the sale is commenced.

14) As stated in the Certification of Exemption from Administrative Order 2011-05-02-01 filed herein, the real property which is the subject of this action is not an "owner occupied

Bruce
Page 3

dwelling" as defined in the Order. Moreover, Defendant admitted receiving notice of foreclosure intervention but that he failed to respond within 30 days of its delivery.

15) The Note payments which became due on September 1, 2008, and subsequent months, have not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of its attorney for collection by foreclosure.

16) The sum of \$2,947.00 is a reasonable fee to allow as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Note and Mortgage. The inclusion of services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

17) The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of the within action, including an attorney's fee, secured by the Note and Mortgage, is as follows:

(a) Principal amount due as of September 1, 2008	\$82,254.59
(b) Interest from August 1, 2008 to April 5, 2015 at a current rate of 6.3750%	\$35,015.87
Additional Per Diem Interest through 3/9/2016	\$4,870.21
(c) Advances	
Property Inspections, BPOs, Appraisals	\$1,702.50
Property Taxes	\$13,728.58
Escrow	\$5,993.69
Prior Counsel FC Fees/Costs	\$2,373.00
Servicing Fees (Interest Accrued on Escrow Advances)	\$2,852.64
(d) Late charges	\$0.00
(e) Costs of collection prior to hearing (service of process, filing fees, etc.)	\$25.00
(f) Attorneys Fee	\$2,947.00
Total debt secured by Note and Mortgage, including interest to date shown	\$151,763.08

Interest for the period from the date shown in (b) above through the date of this judgment at above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 6.3750% per

BH-
Page 4

58

annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

18) The Plaintiff is seeking the usual foreclosure of the mortgage and although deficiency was demanded in the Complaint, Plaintiff now wishes to waive the right to a personal or deficiency judgment pursuant to Rule 71(b) SCRCP.

19) The sale is subject to assessments, county taxes, existing easements, easements and restrictions of record, and other senior encumbrances.

20) The following Defendant claims or may claim a lien upon or interest in the subject property or are otherwise involved in this matter. In the event there is a surplus from the sale of the subject property, the validity, priority and amount of such liens will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRCP. The Clerk of Court/Register of Deeds is hereby ordered to release said lien in so much as it pertains to the property which is the subject of this action:

First Citizens Bank and Trust Company, Inc. by virtue of a mortgage not to exceed the amount of \$25,200.00 and recorded January 16, 2008 in Book R1392 at Page 3563 in the Office of the Register of Deeds for Richland County. Any such interest in or lien upon the property is junior and subordinate to Plaintiff's mortgage.

CONCLUSIONS OF LAW

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1) The Plaintiff's Mortgage should be declared a first mortgage lien and Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

2) The Court finds that there are no HAMP issues to be resolved before foreclosure is ordered or the sale is commenced.

3) The Court also finds the real property is not an "owner occupied dwelling" as defined in the May 2, 2011 Administrative Order, and is therefore exempt from said Order.

4) The Defendants named herein, and all persons whosoever claiming under Defendants, are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged premises so sold, or any part thereof.

5) Pursuant to Rule 53, SCRCP, this Order shall constitute a final judgment.

*Bru
Page 5*

59

6) There is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum of \$151,763.08, as set out in the Findings of Fact *supra*.

7) The amount due in the preceding paragraph (the "Total Debt" as set out in the Findings of Fact *supra*, and later accrued interest on the principal), shall constitute the total judgment debt due Plaintiff and shall bear interest hereafter at the rate of 6.3750% per annum. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the judgment figures set forth herein. It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee awarded. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by statement and shall be adjudicated by the Court without further finding.

8) The Defendants liable for the aforesaid judgment debt including interest at the rate of 6.3750% per annum shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

9) On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Special Referee, at public auction, at 12:00 p.m. at the County Courthouse in Richland, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on some other day appointed by the Court), on the following terms, that is to say:

10) For cash: The Special Referee, will require, at the time of the bid, a deposit of 5% of the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event of non-compliance, the deposit may be forfeited without further hearing and applied first to the costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to make the required deposit at time of bid or comply with the other terms of the bid within twenty (20) days, then the property may be re-sold on the same terms and conditions on some subsequent Sales Day, but at the risk of the defaulting bidder(s).

Burn
Page 6.

11) Interest on the balance of the bid shall be paid through the day of compliance at the rate of 6.3750%.

12) Purchaser shall pay for any statutory commission on sale from the proceeds of sale, deed preparation, costs of recording the deed, and deed stamps.

13) A personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

14) The sale is subject to assessments, county taxes, existing easements, easements and restrictions of record, and other senior encumbrances.

15) The Special Referee, will, by advertisement according to law, give notice of the time and place of such sale and the terms thereof and will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within twenty (20) days after the conclusion of the bidding, then the Special Referee, may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

16) In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales day upon the terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

17) If Plaintiff is the successful bidder at the sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Special Referee, only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

18) The Special Referee will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus should be held pending further Order of this court.

Bum
Page 7

7
61.

19) In the event the successful bidder is other than the Defendant(s) in possession of the subject property, upon full compliance and title by deed from the Court vested into such purchaser, and upon issuance of a Writ of Assistance by the Court, the Sheriff of Richland County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful purchaser or his assigns in full, quiet, and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

20) In the event the successful purchaser is someone other than the Defendant(s) in possession of the subject property, and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage is said property, and title by deed from the Court is vested into such purchaser, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said property on the public street or highway or by any other means.

21) In accordance with S.C. Code Ann. §30-9-31, the deed of conveyance made pursuant to said sale shall be indexed by the R.M. C. in the name of the owner of record of subject property immediately prior to execution of the deed, as well as in the name of the Special Referee, who executes such deed as grantor.

22) The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

23) The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or lot of land with the improvements thereon, situate, lying and being near the City of Columbia, in the County of Richland, State of South Carolina, the same being shown as Lot Number 220 on a plat of Greenview by Columbia Engineering Company dated April 28, 1950, revised September 4, 1951 and recorded in Plat Book O at Page 136 in the Clerk of Court Office for Richland County SC. Also, being shown on a plat prepared for Leola Darley by R.E. Collingwood, Jr., RLS, dated February 16, 1966 and recorded March 17, 1966 in the Office of the ROD for Richland County, SC in Plat/Record Book 28 at Page 543.

This being the same property heretofore conveyed to Bruce W. Gardner by Deed of Wachovia Bank of Delaware, N.A. dated September 17, 2007 and recorded October 26, 2007 in the Office of the Register of Deeds for Richland County in Deed/Record

*Bruce
Page 8.*

*8
62.*

Book 1370 at Page 1416. Subject to Restrictive Covenants recorded in Deed/Record
Book 1370 at Page 1416.

TMS No. 14203-10-04

Property Address: 104 Abraham Street, Columbia, SC 29203



Honorable Ben N. Miller, III
Special Referee Richland County

April 28, 2016
Columbia, South Carolina

Blw
Page 9.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAY 09 2016
SC Court of Appeals

Appeal from the Court of Common Pleads Richland County, South Carolina,

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

Case No. 2010-CP-40-1571

CitiMortgage, Inc., ... Respondent,

vs.

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

NOTICE OF APPEAL TO STAY THE ORDER OF JUDGMENT OF FORECLOSURE AND
SALE DECREE

Bruce W. Gardner Appellant appeals the Special Referee's Order of Judgment of Foreclosure and Sale Decree (the Order) of The Special Referee, Honorable Ben N. Miller, III of Richland County dated April 28, 2016. Appellant received the Notice of The Order on May 5, 2016, via mail attached, Exhibit A and the actual Order, Exhibit B; via the Clerk of Court on May 6, 2016. Appellant appeals this Order, pursuant to the following: 1) No Original Note Produced; Fraudulent Assignment, (MERS never owned the note to assign it); 2) No evidence pursuant to UUC 3 that Respondent is the holder in due course; the note and mortgage has been bifurcated. Fannie Mae bought only a part of the note which is a violation of UCC 3, as well; and 3) ROBO Assignment of Mortgage.

1.

64

RICHLAND COUNTY
FILED
2016 MAY -9 PM 2:26
JEANNETTE W. MCORRICK
C.C.P. & G.S.

Bruce W. Gardner

LS

Bruce W. Gardner Pro Se, Appellant

237 YMCA Road

Lexington, South Carolina 29073

(803) 605-2223

May 9, 2016

2.

65

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Court of Common Pleads Richland County, South Carolina,

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

Case No. 2010-CP-40-1571

CitiMortgage, Inc., ...Respondent,

vs.

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

CERTIFICATE OF COMPLIANCE

The undersigned certify that this Notice of Appeal to Stay the Order of Judgment of Foreclosure and Sale Decree of Appellant complies with the South Carolina Court's Order.

Bruce W. Gardner

LS

Bruce W. Gardner Pro Se, Appellant
237 YMCA Road
Lexington, South Carolina 29073
(803) 605-2223

May 9, 2016
Columbia, South Carolina

66

RECEIVED
MAY 09 2016
SC Court of Appeals

FILED
2016 MAY -9 PM 2:26
JEANETTE W. MORRIS
C.O. 265

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAY 09 2016
SC Court of Appeals

Appeal from the Court of Common Pleads Richland County, South Carolina,

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

Case No. 2010-CP-40-1571

CitiMortgage, Inc., ... Respondent,

vs.

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

PROOF OF SERVICE

The undersigned certify that this Notice of Appeal to Stay the Order of Judgment of Foreclosure and Sale Decree of Appellant, served upon the Respondent, by placing the same in the U.S. Mail, First class Postage prepaid, addressed as following on May 9, 2016, as addressed below:

Bruce W. Gardner LS
Bruce W. Gardner Pro Se, Appellant
237 YMCA Road
Lexington, South Carolina 29073
(803) 605-2225

Pete Balthazer, Esquire (803) 223-9791
Riley Pope & Laney, LLC
Post Office Box 11412 (29211)
2838 Devine Street
Columbia, South Carolina 29205

67

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Court of Common Pleads Richland County, South Carolina,

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

RECEIVED

Case No. 2010-CP-40-1571

SEP 21 2016

Appellate Case No. 2016-000980

SC Court of Appeals

CitiMortgage, Inc., ... Respondent,

vs.

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

Of Whom Bruce W. Gardner is the Appellant.

APPELLANT'S INITIAL BRIEF

RICHLAND COUNTY
FILED
2016 SEP 21 PM 2:46
JEANETTE W. MCBRIDE
C.C.P. & G.S.

Bruce W. Gardner

LS

Bruce W. Gardner, pro se, Appellant
237 YMCA Road
Lexington, South Carolina 29073
(803) 605-2223

68.

TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of Issue on Appeal.....	1
Statement of the Case.....	1
Facts.....	2
Arguments:	
A. The Trial Judge erred in his order granting foreclosure for the	
Respondent who never produced the original note and therefore lacked	
standing.	
B. The Trial Judge failed to compel the production of the requested original	
note and therefore leaving grounds to order foreclosure of the property	
secured by the mortgage that was collateral to the note.	
C. Respondent failed to produce requested evidence to establish that both	
the promissory note and mortgage were legally executed, delivered, and	
transferred from the MERS to the plaintiff because evidence was never	
produced that MERS was ever the owner of the promissory note.	
Conclusion.....	3

TABLE OF AUTHORITIES

Cases

Powell ex rel. Kelley v. Bank of Am., 379 S.C. 437. (Ct. App. 2008).....	3
Brock v. Bennett, 313 S.C. 513, 519. (Ct. App. 1994).....	3
Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 22. (2010).....	3
Sloan v. Sch. Dist. Of Greenville Cnty., 342 S.C. 515, 524. (Ct., App. 2000).....	3
U.S. Bank Trust Nat'l Ass'n v. Bell, 385 S.C. 364, 374. (Ct. App. 2990).....	3

70.

STATEMENT OF ISSUES ON APPEAL

- A. Did the Trial Judge err in granting foreclosure for the Respondent who never produced the original note and therefore lacked standing? 3
- B. Did the Trial Judge err in failing to compel the production of the requested original note and therefore leaving no grounds to order foreclosure?.....3
- C. Was the failure of the Respondent to produce the requested evidence that both the promissory note and mortgage were legally executed, delivered, and transferred from the MERS to the Respondent, grounds for dismissal?.....3

71.

STATEMENT OF THE CASE

Respondent, CitiMortgage, Inc. never established a basic chain of ownership for Foreclosure. Additionally, respondent, CitiMortgage, Inc. never established that both the promissory note and mortgage were legally executed, delivered, and transferred from the MERS to Respondent.

Respondent, CitiMortgage, Inc. never produced a note establishing the MERS was the legal holder of the promissory note. Respondent, CitiMortgage, Inc. therefore was not a real party of interest and lacked standing to sue Appellant. Respondent, CitiMortgage, Inc. failed to offer evidence it was the owner or holder of the note as required by Section 35-3-301 of the South Carolina Code (Supp.). Appellant contend foreclosure was therefore illegal.

Respondent, CitiMortgage, Inc. filed a Lis Pendens on March 9, 2010 and a summons and complaint was filed on March 9, 2010. The filing of the Lis Pendens and a summons and complaint on March 9, 2010 was the initiation of a foreclosure action against the Appellant.

721

FACTS

Appellant, Bruce W. Gardner is a resident of the county of Lexington, State of South Carolina. Respondent, CitiMortgage, Inc. N.A. is a Corporation organized and existing by virtue of the laws of the United States of America, with its principal office in the City of New York, State of New York.

On or about December 14, 2007, Appellant, Bruce W. Warren purchased property located at 104 Abraham Street, Columbia, South Carolina 29203 from Wachovia Bank of Delaware, N.A. and the deed was recorded December 28, 2007 in Record Book 1370, Page 1498.

On or about December 14, 2007, Appellant, Bruce W. Gardner executed a Mortgage on property located at 104 Abraham Street, Columbia, South Carolina 29203 to Mortgage Electronic Registration Systems, Inc. (MERS) recorded December 28, 2007 in Record Book 1388, Page 1416.

A mortgage was assigned to the Respondent, CitiMortgage, Inc. on April 17, 2009 and recorded on May 13, 2009 in Record Book 1520, Page 3794, listing

CitiMortgage, Inc. as the assignee and assignor. There is no record of an assignment of the mortgage on property located at 104 Abraham Street, Columbia, South Carolina 29203 to Mortgage Electronic Registration Systems, Inc. (MERS) recorded December 28, 2007 in Record Book 1388, Page 1498 by Mortgage Electronic Registration Systems, Inc. (MERS) assignor to Respondent, CitiMortgage, Inc. as assignee.

Appellant, Bruce W. Gardner made a request that Respondent, CitiMortgage, Inc. produce the note of CitiMortgage, Inc. and a mortgage on property located at 104 Abraham Street, Columbia, South Carolina 29203 to Mortgage Electronic Registration Systems, Inc. (MERS) recorded December 28, 2007 in Record Book 1388; Page 1498 demonstrates the Respondent's lack of ownership of the debt.

Respondent, CitiMortgage, Inc. did not produce the note for Appellant Bruce W. Gardner. CitiMortgage, Inc. has a mortgage on the property located at 104 Abraham Street, Columbia, South Carolina 29203. Mortgage Electronic Registration Systems, Inc. (MERS) was recorded December 28, 2007 in Record Book 1388, page 1498, which demonstrates the Respondent's lack of securitization of the property.

74

ARGUMENTS

A. Did the Trial Judge err in granting foreclosure for the Respondent who never produced the original note and therefore lacked standing?

Appellant argues that the Trial Judge erred in granting foreclosure for the respondent that lacked standing. "Standing refers to a party's right to make legal claim or seek judicial enforcement of a duty or right." *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437. (Ct. App. 2008). "Generally, a party must be a real party in interest to the litigation to have standing." *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 22. (2010).

The Appellant realizes that the requirement of standing is not an inflexible one. *Sloan v. Sch. Dist. Of Greenville Cnty.*, 342 S.C. 515, 524. (Ct., App. 2000).

Regardless, standing is required. The Respondent did not have standing.

"A mortgage and a note are separate securities for the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action." *U.S. Bank*

Trust Nat'l Ass'n v. Bell, 385 S.C. 364, 374. (Ct. App. 2990). The Respondent chose to pursue a foreclosure action. The Respondent was therefore required to meet all necessary requirements of foreclosure.

"Once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction." *Id.* The Respondent never established the debt, and subsequently unsuccessful in establishing the default.

CONCLUSION

WHEREFORE, the Appellant prays that the Respondent judgment granting foreclosure of the property owned by Appellant, Bruce Warren Gardner and located 104 Abraham Street, Columbia, South Carolina 29203 is reversed, remanded and denied.

Bruce W. Gardner LS
Bruce W. Gardner, pro se, Appellant
237 YMCA Road
Lexington, South Carolina 29073
(803) 605-2223

September 21, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Court of Common Pleads Richland County, South Carolina,
Honorable Ben N. Miller, III Special Referee for Richland County

Case No. 2010-CP-40-1571
Appellate Case No. 2016-000969

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

vs.

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

Of Whom Bruce W. Gardner is the Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certify that this Initial Brief complies with the South Carolina Court's Order.

Bruce W. Gardner LS

Bruce W. Gardner Pro Se, Appellant
237 YMCA Road
Lexington, South Carolina 29073
(803) 605-2223

September 21 2016
Columbia, South Carolina

Al

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Court of Common Pleads Richland County, South Carolina,
Honorable Ben N. Miller, III Special Referee for Richland County

RECEIVED

Case No. 2010-CP-40-1571

SEP 21 2016

Appellate Case No. 2016-000969

SC Court of Appeals

CitiMortgage, Inc., ... Respondent,

vs.

Bruce W. Gardner and First Citizens Bank and Trust Company, Inc., ... Defendants,
Of Whom Bruce W. Gardner is the Appellant.

PROOF OF SERVICE

I, Bruce W. Gardner certifies that I served the following individuals with a copy of the foregoing Appellant's Initial Brief by depositing a copy of the same in the United States mail, postage prepaid, addressed as follows on July 18, 2016: Riley Pope & Laney, LLC, Peter M. Balthazor, 2838 Devine Street, Post Office Box 11412 (29211) Columbia, South Carolina 29205.

Bruce W. Gardner LS
Bruce W. Gardner, pro se, Appellant
237 YMCA Road
Lexington, South Carolina 29073
(803) 605-2223

September 21, 2016

78.

DESIGNATION OF MATTERS TO BE
INCLUDED IN THE RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleads

Honorable Ben N. Miller, III Special Referee

Case No. 2010-CP-40-1571

CitiMortgage, Inc., ... Respondent,

vs.

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

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposed the following to be included in the Record on Appeal

1. Complaint filed March 9, 2010
2. Answer to the Complaint filed April 15, 2010
3. Order of Reference filed April 30, 2010
4. Amended Order of Reference filed May 14, 2010
5. Order of Recusal of Judge Strickland filed May 19, 2011
6. Amended Order of Reference to Appoint Special Referee filed September 29, 2011

RECEIVED

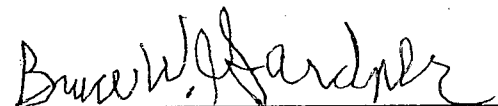
JUL 19 2016

SC Court of Appeals

RICHLAND COUNTY
FILED
2016 JUL 19 PM 1:31
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

29.

7. Transcript of Proceedings, pp. 3-17
8. Defendant's reply filed October 5, 2011
9. Defendant's reply filed February 27, 2012
10. Defendant's reply filed March 13, 2012
11. Defendant's reply filed January 24, 2012
12. Defendant's reply filed April 11, 2012
13. Motion to Demand The South Carolina Supreme Court to hear case
14. Request, Demands and Motions the Court to Notice of Civil App
15. Request for Court to Dismiss This Case
16. Request of Bruce Gardner filed June 19, 2012
17. Request of Bruce Gardner filed July 2, 2012
18. Notice of Bruce Gardner filed July 3, 2012
19. Motion to Dismiss filed July 6, 2012
20. Response of Bruce Gardner filed July 22, 2012
21. Summary Judgment response filed August 6, 2012
22. Amended Summary Judgment response filed March 6, 2013
23. Amended Response to Drafts of The Order and Judgment of Foreclosure
24. Motion to dismiss case due to lack of standing filed August 12, 2015
25. Defendant's Answer To The Reply of Plaintiff's Reply To The Answer of Bruce W. Gardner.
26. Judgment and foreclosure filed March 28, 2016

 LS

Bruce W. Gardner, pro se, Appellant
237 YMCA Road
Lexington, South Carolina 29073
(803) 605-2223

80.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

AUG 04 2016

SC Court of Appeals

Appeal from the Court of Common Pleads Richland County, South Carolina,

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

Case No. 2010-CP-40-1571

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

vs.

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

CERTIFICATE OF COUNSEL

The undersigned certify that this Designation of Matter of the Appellant complies with the Rule 209(d), SCACR.

Bruce W. Gardner LS

Bruce W. Gardner Pro Se, Appellant
237 YMCA Road
Lexington, South Carolina 29073
(803) 605-2223

August 4, 2016
Columbia, South Carolina

81.

RECEIVED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

AUG 04 2016

SC Court of Appeals

Appeal from the Court of Common Pleads Richland County, South Carolina,
Honorable Ben N. Miller, III Special Referee for Richland County

Case No. 2010-CP-40-1571

CitiMortgage, Inc., ... Respondent,

vs.

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

PROOF OF SERVICE

The undersigned certify that this Corrected Certificate of Council, that Appellant served upon the Respondent, by placing the same in the U.S. Mail, on August 4, 2016, First class Postage prepaid, as addressed below:

Bruce W. Gardner LS
Bruce W. Gardner Pro Se, Appellant
237 YMCA Road
Lexington, South Carolina 29073
(803) 605-2225

Pete Balthazer, Esquire (803) 223-9791
Riley Pope & Laney, LLC
Post Office Box 11412 (29211)
2838 Devine Street
Columbia, South Carolina 29205

82.

2016 AUG - PM 12:56
JEANETTE W. MORRIS
C.C.P. G.S.
FILED
RICHLAND COUNTY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

7-2007-1-475
10-03-2016
SC Court of Appeals

Appeal from the Court of Common Pleads Richland County, South Carolina,
Honorable Ben N. Miller, III Special Referee for Richland County

Case No. 2010-CP-40-171

CitiMortgage, Inc., ... Respondent,

vs.

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

RICHLAND COUNTY
FILED
2016 JUN -3 PM 2:40
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

MOTION COMPLAINT OF MALICIOUS PROSECUTION AND
PETITION TO CANCEL FORECLOSURE SALE

The Complaint, complaining of the Defendant-Appellant above-name, alleges
and state:

MALICIOUS PROSECUTION

1.

At all times pertinent herein, Defendant-Appellant, Bruce W. Gardner (herein
referred to as the Appellant) is a resident of the county of Lexington, State of
South Carolina.

2.

At all times pertinent herein, the Plaintiff-Respondent, CitiMortgage, Inc. N.A. (herein referred to as the Respondent) is a Corporation organized and existing by virtue of the law of the United States of America, with its principal office in the City of New York, State of New York.

3.

On or about December 14, 2007, Appellant, Bruce W. Warren purchased property located at 104 Abraham Street, Columbia, South Carolina 29203 from Wachovia Bank of Delaware, N.A. and the deed was recorded December 28, 2007 in Record Book 1370, Page 1498.

4.

On or about December 14, 2007, Appellant, Bruce W. Gardner executed a Mortgage on property located at 104 Abraham Street, Columbia, South Carolina 29203 to Mortgage Electronic Registration Systems, Inc. (MERS) recorded December 28, 2007 in Record Book 1388, Page 1411.

5.

A mortgage was assigned to the Respondent, CitiMortgage, Inc. on April 17, 2009 and recorded on May 13, 2009 in Record Book 1520, Page 3794.

6.

The mortgage was assigned to the Respondent, CitiMortgage, Inc. on April 17, 2009 and recorded on May 13, 2009 in Record Book 1520, Page 3794 listed CitiMortgage, Inc. as the assignee and assignor.

7.

There is no record of an assignment of the mortgage on property located at

104 Abraham Street, Columbia, South Carolina 29203 to Mortgage Electronic Registration Systems, Inc. (MERS) recorded December 28, 2007 in Record Book 1388, Page 1498 by Mortgage Electronic Registration Systems, Inc. (MERS) assignor to Respondent, CitiMortgage, Inc. as assignee.

8.

Respondent, CitiMortgage, Inc. never established a basic chain of ownership for Foreclosure.

9.

Respondent, CitiMortgage, Inc. never established that both the promissory note and mortgage were legally executed, delivered, and transferred from the MERS to Respondent.

10.

Respondent, CitiMortgage, Inc. never produced a note establishing the MERS was the legal holder of the promissory note.

11.

Respondent, CitiMortgage, Inc. production of the note of Appellant, Bruce W. Gardner to CitiMortgage, Inc. and a mortgage on property located at 104 Abraham Street, Columbia, South Carolina 29203 to Mortgage Electronic Registration Systems, Inc. (MERS) recorded December 28, 2007 in Record Book 1388, Page 1498 demonstrates the Respondent's lack of ownership of the debt.

12.

Respondent, CitiMortgage, Inc. did not produce the note for Appellant Bruce W. Gardner. CitiMortgage, Inc. has a mortgage on the property located at 104 Abraham Street, Columbia, South Carolina 29203. Mortgage Electronic Registration Systems, Inc. (MERS) was recorded December 28, 2007 in Record

85.

Book 1388, page 1498, which demonstrates the Respondent's lack of securitization of the property.

13.

Respondent, CitiMortgage, Inc. filed a Lis Pendens on March 9, 2010 and a summons and complaint was filed on March 9, 2010.

14.

The filing of the Lis Pendens and a summons and complaint on March 9, 2010 was the initiation of a foreclosure action against the Appellant.

15.

Respondent, CitiMortgage, Inc. therefore was not a real party of interest and lacked standing to sue Appellant.

16.

Respondent, CitiMortgage, Inc. failed to offer evidence it was the owner or holder of the note as required by Section 35-3-3(1) of the South Carolina Code (Supp.)

17.

As a direct and proximate cause of Respondent's Lawsuit the Appellant has suffered actual and specific damages, included but not limited to, illegal foreclosure and potential of real property.

FOR A SECOND CAUSE OF ACTION
PETITION TO CANCEL FORECLOSURE SALE

18.

As a direct and proximate cause of Respondent's Lawsuit the Appellant

has suffered actual and specific damages, included but not limited to, illegal foreclosure and potential loss of real property.

19.

Appellant suffered detrimentally as a result of this foreclosure action which the Respondent has no standing to bring this action that has resulted in the Appellant being severely harmed and the serious consequences of the potential of his real estate being sold as a result of a foreclosure sale.

Accordingly, in addition to and/or in the alternative to the other remedies requested above, Appellant is entitled to reinstatement of the subject property.

WHEREFORE, the Appellant prays that the Respondent be required to specifically perform their obligations under the terms of the agreement and complete the transfer of the subject property to the Appellant, or, in the alternative be awarded a judgment against the Respondent in the amount of the damages to be determined by the trier of the facts

Further, Appellant respectfully request that this Order of Foreclosure Sale by the Richland County Special Referee be reversed, remanded and denied.

Bruce W Gardner LS
Bruce W. Gardner, pro se, Appellant
237 Y MCA Road
Lexington, South Carolina 29073
(803) 505-2223

June 3, 2016
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Court of Common Pleads Richland County, South Carolina,
Honorable Ben N. Miller, III Special Referee for Richland County

Case No. 2010-CP-40-1671

CitiMortgage, Inc., ... Respondent

vs.

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

CERTIFICATE OF COMPLIANCE

The undersigned certify that this Motion Complaint of Malicious Prosecution and Petition to Cancel Foreclosure Sale of Appellant complies with the South Carolina Court's Order.



LS

Bruce W. Gardner Pro Se, Appellant
237 YMCA Road
Lexington, South Carolina 29073
(803) 605-2223

June 3, 2016
Columbia, South Carolina

8B.

2016 JUN -3 PM 2:40
JEANNETTE W. McBRIDE
C.C.P. & O.
RICHLAND COUNTY
FILED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC Court of Appeals

Appeal from the Court of Common Pleas Richland County, South Carolina,
Honorable Ben N. Miller, III Special Referee for Richland County

Case No. 2010-CP-40-1571

CitiMortgage, Inc., ... Respondent,

vs.

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

PROOF OF SERVICE

The undersigned certify that this Motion Complaint of Malicious Prosecution and
Petition to Cancel Foreclosure Sale, that Appellant served upon the Respondent,
by placing the same in the U.S. Mail, First class Postage prepaid, addressed as
following on June 3, 2016, as addressed below:

Bruce W. Gardner LS
Bruce W. Gardner Pro Se, Appellant
237 YMCA Road
Lexington, South Carolina 29073
(803) 605 2225

Pete Balthazer, Esquire (803) 223-9791
Riley Pope & Laney, LLC
Post Office Box 11412 (29211)
2838 Devine Street
Columbia, South Carolina 29205

89.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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

RECEIVED

JUN 10 2016

SC Court of Appeals

Case No.: 2010-CP-40-01571

Appellate Case No. 2016-00969

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

v.

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

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

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

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

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

90.
Exhibit 2

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

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

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

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

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

RILEY POPE & LANEY, LLC



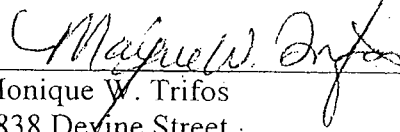
Peter M. Balthazor
2838 Devine Street
Post Office Box 11412 (29211)
Columbia, South Carolina 29205
Telephone: (803)799-9993
Facsimile: (803) 239-1414
Attorneys for Respondent

Columbia, South Carolina

June 9, 2016

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

RILEY POPE & LANEY, LLC



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

June 9, 2016
Columbia, South Carolina

293

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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

Case No.: 2010-CP-40-01571

Appellate Case No. 2016-00969

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

v.

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

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

PROOF OF SERVICE

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

Bruce W. Gardner
237 YMCA Road
Lexington, SC 29073

And

94

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

JUN 23 2016

SC Court of Appeals

Appeal from the Court of Common Pleads Richland County, South Carolina,

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

Case No. 2010-CP-40-1571

Appellate Case No. 2016-00969

CitiMortgage, Inc., ... Respondent,

vs.

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

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

The Appellant, replying to the Plaintiff-Respondent's Return to the
Defendant-Appellant's Motion Complaint of Malicious Prosecution and Petition
To Cancel Foreclosure Sale hereby state:

Respondent asserts that Appellant's Motion should be denied and/or
dismissed. Respondent contend the Appellant seeks to litigate issues that could
have been decided by the Special Referee. Further, the Respondent asserts that
Appellant will have the opportunity to address these issues on appeal and
contends the Appellant is attempting to re-litigate issues that may be dealt with
on appeal. Respondent assertion that Appellant's Motion should be denied
and/or dismissed is without merit.

1.
95

Likewise, the Respondent asserts that the filing of a notice of appeal does not act to automatically stay matters decided in the Special Referee's Order. The notice of appeal is not alone in the only contention as to why a stay of the Special Referee's Foreclosure is appropriate.

For the reasons stated herein, Appellant respectfully requests that this Court grant the Appellant's Motion Complaint and cancel the foreclosure sale and the Return of the Respondent lacks merit and gives no legal creditable reason to deny the Motion Complaint of the Appellant.



LS

Bruce W. Gardner, pro se, Appellant
237 YMCA Road
Lexington, South Carolina 29073
(803) 605-2223

June 22, 2016
Columbia, South Carolina

296

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JUN 22 2016
SC Court of Appeals

Appeal from the Court of Common Pleds Richland County, South Carolina,
Honorable Ben N. Miller, III Special Referee for Richland County

Case No. 2010-CP-40-1571
Appellate Case No. 2016-00969

CitiMortgage, Inc., ...Respondent,

vs.

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

CERTIFICATE OF COMPLIANCE

The undersigned certify that this Reply to Respondent's Return to Motion
Complaint of Malicious Prosecution and Petition to Cancel Foreclosure Sale of
Appellant complies with the South Carolina Court's Order.

Bruce W. Gardner LS
Bruce W. Gardner Pro Se, Appellant
237 YMCA Road
Lexington, South Carolina 29073
(803) 605-2223

June 22, 2016
Columbia, South Carolina

97

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JUN 22 2016
SC Court of Appeals

Appeal from the Court of Common Pleds Richland County, South Carolina,
Honorable Ben N. Miller, III Special Referee for Richland County

Case No. 2010-CP-40-1571
Appellate Case No. 2016-00969

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

vs.

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

PROOF OF SERVICE

The undersigned certify that this Reply to Respondent's Return to Motion Complaint of Malicious Prosecution and Petition to Cancel Foreclosure Sale, that Appellant served upon the Respondent, by placing the same in the U.S. Mail, First class Postage prepaid, addressed as following on June 22, 2016, as addressed below:

Bruce W. Gardner

LS

Bruce W. Gardner pro se, Appellant
237 YMCA Road
Lexington, South Carolina 29073
(803) 605-2225

Pete Balthazer, Esquire (803) 223-9791
Riley Pope & Laney, LLC
Post Office Box 11412 (29211)
2838 Devine Street
Columbia, South Carolina 29205

96.

The South Carolina Court of Appeals

CitiMortgage, Inc., Respondent,

v.

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

Of whom Bruce W. Gardner is the Appellant.

Appellate Case No. 2016-000969

ORDER

Appellant has filed a "motion complaint of malicious prosecution and petition to cancel foreclosure sale," which we construe as a motion to stay the foreclosure sale. After careful consideration, the motion to stay is denied. *See* Rule 241 (d)(1), SCACR ("Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal."); S.C. Code Ann. § 18-9-170 (2014) ("If the judgment appealed from directs the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon . . ."). To the extent that Appellant is asking this court to reverse the foreclosure, this court will consider the merits of the appeal once it is fully briefed and assigned to a panel for review.



FOR THE COURT

Columbia, South Carolina

FILED

99.

August 5, 2016.

Exhibit 3

cc:

Bruce W. Gardner

Peter M Balthazor, Esquire

100

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

CitiMortgage, Inc.,

Plaintiff,

vs.

Bruce Gardner,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2009-CP-40-5914

Exhibit A

**CONSENT ORDER SUBSTITUTING
COUNSEL**

(File No. 4088-01314)

This is an action to foreclose a mortgage on real estate located in Richland County, South Carolina. Plaintiff, with consent of counsel, consents to a substitution of counsel in the above titled action from Riley, Pope & Laney, LLC, to Finkel Law Firm LLC, as its counsel, and Riley, Pope & Laney, LLC, consents to withdrawing as counsel for the Plaintiff, CitiMortgage, Inc.; and, Finkel Law Firm LLC consents to being substituted as counsel.
IT IS SO ORDERED.



Ben N. Miller, III
Special Referee, Richland County

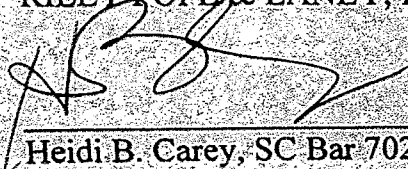
Columbia, South Carolina

November 19, 2016

December

WE SO MOVE:

RILEY POPE & LANEY, LLC



Heidi B. Carey, SC Bar 7020
2838 Devine Street
Post Office Box 11412 (29211)
Columbia, South Carolina 29205
(803) 799-9993
Attorneys for Plaintiff

WE SO CONSENT:


Finkel Law Firm LLC

Elizabeth S. Moore, SC Bar # 69236

2016 DEC 28 PM 12:30
JEANNETTE R. HOEDE
C.C.P. DEPT. 5
RICHLAND COUNTY
FILED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
FEB 09 2017
SC Court of Appeals

Appeal from the Court of Common Pleads Richland County, South Carolina,

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

Case No. 2010-CP-40-1571

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

vs.

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

Of Whom Bruce W. Gardner is the Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certify that this Record on Appeal complies with Rule 210
SCACR.

Bruce W. Gardner

LS

Bruce W. Gardner Pro Se, Appellant
237 YMCA Road
Lexington, South Carolina 29073
(803) 605-2223

February 8, 2017
Columbia, South Carolina