THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Master-In-Equity

The Honorable Marvin H. Dukes, III

Court of Appeals Tracking No. 2012-210910

CitiMortgage, Inc., ... Respondent,

v.

Daniel Junk a/k/a Daniel L. Junk and Christine H. Junk and Oldfield Community Association, ... Defendants,

Of Whom Daniel L. Junk and Christine H. Junk are ..... Appellants,

---

Daniel L. Junk and Christine H. Junk, ... Counterclaim Appellants,

v.

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

Daniel L. Junk and Christine H. Junk, ... Third-party Appellants,

v.

Riley Pope & Laney, LLC, Heidi Carey, Esq., Roy Laney, Esq., T. Lowndes Pope, Esq., Bayview Loan Servicing, LLC, MERSCORP, Inc., Mortgage Electronic Registration Systems, Inc., Citi Master Servicing, Citigroup Global Markets Realty Corp., Citigroup Mortgage Loan Trust, Inc., John Does 1-5,000, Jennifer Oakes, Robert G. Hall, Security Connections, Inc., Krystal Hall, Danielle Sterling, ABC Appraisal Group, Inc., Mark A. Ruplinger, Linda Heller, Harry Jones, Colonial Coast Title Agency, Inc., Lawyers Title Insurance Corporation, Corelogic, Inc. and American Home Mortgage Holdings, Inc. ..... Third-Party Respondents.

Initial Brief of Respondent/Counterclaim Respondent CitiMortgage, Inc., and Third-Party Respondents Bayview Loan Servicing, LLC, MERSCORP Holdings, Inc. f/k/a Merscorp, Inc., Mortgage Electronic Registration Systems, Inc., CitiMaster Servicing, Citigroup Global Markets Realty Corp., Citigroup Mortgage Loan Trust, Inc., Jennifer Oakes, Robert G. Hall, Riley Pope & Laney, LLC, Heidi Carey, Esq., Roy Laney, Esq., T. Lowndes Pope, Esq., Security Connections, Inc., Krystal Hall, ABC Appraisal Group, Inc., Mark A. Ruplinger, Linda Heller, Harry Jones, Colonial Coast Title Agency, Inc., Fidelity National Title Insurance Company, successor by merger to Lawyers Title Insurance Corp., and Corelogic, Inc.

B. Rush Smith III
Brian P. Crotty
Michael J. Anzelmo
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, South Carolina 29201
803.799.2000

Attorneys for Attorneys for Respondent/Counterclaim Respondent CitiMortgage, Inc., and Third-Party Respondents Bayview Loan Servicing, LLC, MERSCORP Holdings, Inc. f/k/a Merscorp, Inc., Mortgage Electronic Registration Systems, Inc., CitiMaster Servicing, Citigroup Global Markets Realty Corp., and Citigroup Mortgage Loan Trust, Inc., Jennifer Oakes, and Robert G. Hall.

John T. Lay
Childs C. Thrasher
Gallivan, White & Boyd, PA.
P.O. Box 7368
Columbia, SC 29202
803.779.1833

Attorneys for Third-Party Respondents Riley Pope & Laney, LLC, Heidi Carey, Esq., Roy Laney, Esq., and T. Lowndes Pope, Esq.

Sean Michael Bolchoz
Bolchoz Law Firm, PA
PO Box 828
Bluffton, SC 29910

Attorneys for Third-Party Respondents Security Connections, Inc., and Krystal Hall

Susan Taylor Wall
Amanda C. Williams
McNair Law Firm
P.O. Box 1431
Charleston, SC 29402

Attorneys for Third-Party Respondents ABC Appraisal Group, Inc., Mark A. Ruplinger, Linda Heller, and Harry Jones

Elizabeth Van Doren Gray
Tina Cundari
Sowell Gray Stepp & Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211
803.929.1400

Attorneys for Third-Party Respondents Colonial Coast Title Agency, Inc.

Demetri "Jim" Koutrakos
Callison Tighe & Robinson
P.O. Box 1390
Columbia, SC 29202

Attorneys for Third-Party Respondents Fidelity National Title Insurance Company, successor by merger to Lawyer Title Insurance Corporation

James Y. Becker
Hamilton Osborne, Jr.,
Haynsworth Sinkler Boyd, P.A.
P.O. Box 11889
Columbia, SC 29211-1889

Attorneys for Third-Party Respondents Corelogic, Inc.

Table of Contents

Table of Authorities

CASES

STATUTES

RULES

OTHER AUTHORITIES

Statement of Issues on Appeal

1. Should the Order dismissing the third-party complaint be affirmed under the two-issue rule because the Junks failed to appeal all grounds supporting that dismissal?

2. Should the Orders dismissing the third-party complaint and the counterclaims be affirmed where the Master properly directed Respondents' counsel to draft the order, or where Respondents' counsel submitted a proposed order, and where such practice is permitted under our rules, the Junks failed to preserve the issue, and no prejudice has been established?

3. Did the Master correctly dismiss the Junks' third-party professional negligence claim against RPL, Carey, Laney and Pope?

4. Should the Orders dismissing the third-party complaint and the counterclaims be affirmed with regard to the Junks' claims regarding the enforceability of the note where this the Junks' argument has not been preserved and it is not ripe for adjudication?

5. Should the dismissal of the third party complaint claim for civil conspiracy be affirmed where the Junks' argument has not been preserved and the Master properly construed the claim as, being in substance an impermissible claim for malicious prosecution?

6. Should the Order denying joinder of the Third-Party Defendants as counterclaim defendants be affirmed where the Junks have limited their argument to only joinder under Rules 14(c) and 19, dismissal of the third party complaint in its entirety was proper under Rule 14(a), and the Master properly determined that joinder was neither required under Rule 19, nor appropriate under Rule 20?

7. Should the order dismissing the counterclaims be affirmed where, based on the Junks' own admissions, the Master properly determined the claims were barred by the applicable statute of limitations, where the rescission was neither timely invoked nor adequately pleaded, and where the slander of title claim was unsupported?

8. Did the Master properly grant the Third-Party Defendants' motions for relief from the entry of default and properly deny the Junks' motion for default judgment?

9. Should the order denying the Junks' motion for default judgment against a Third-Party Defendant be affirmed where the third-party complaint that is the basis for such default judgment has been properly dismissed in its entirety and therefore any default relating to that complaint was rendered moot by the dismissal?

Statement of the Case

This appeal stems from a simple foreclosure action that Appellants, Daniel and Christine Junk ("the Junks"), have continuously and unnecessarily complicated in an attempt to avoid their responsibility on a $1,200,000.00 mortgage loan the Junks entered into on November 3, 2006 ("the Loan"). Junk, an unlicensed law school graduate, has sued every entity or person associated with this loan including appraisers, lawyers, title companies, and the bank that loaned the money. After making payments on the Loan for only two years of the Loan's thirty-year term, beginning on March 1, 2009, and continuing to the present, the Junks have refused to make any further payments. As a result of the Junks' default on the Loan, the then-servicer of the Loan, Bayview Loan Servicing, LLC ("Bayview"), filed this foreclosure action on October 27, 2009.[1] {Complaint filed 10/27/2009; R. ___}. By Order filed April 12, 2011, CitiMortgage, Inc. ("CitiMortgage") was substituted as the Plaintiff after taking over servicing of the loan. {Order filed 4/12/2011; R. ___ ("The 2011 Order")}.[2]

---

[1] In accordance with South Carolina Supreme Court Administrative Order 2011-05-02-01, foreclosure intervention was made available to the Junks. While the Junks requested to participate in foreclosure intervention, they refused to provide ***any*** of the requested information that would have allowed consideration of a loan modification. {Certification Mortgagor Non-Compliance with S.C. Court Admin. Ord. 2011-05-02-01, filed 1/5/2012; R. ___}.

[2] Shortly before the foreclosure Complaint was filed, the Junks brought a separate action for quiet title. {Junks' Quiet Title Complaint filed 9/11/2009; R. ___} ("Quiet Title Action"). We call the Court's attention to this action because it is a source of certain admissions by the Junks. The Junks' Quiet Title Action was dismissed without prejudice by the 2011 Order. {Order filed 4/12/2011; R. ___} The Junk's appealed the 2011 Order but that appeal was dismissed by this Court because the appealed orders were not immediately appealable. {Notice of Appeal dated 5/12/2011; Amended Notice of Appeal dated 5/23/2011; Court of Appeals' Order dismissing appeal filed 9/13/2011; R. ___}. After petitioning this Court for rehearing, the Junks filed a Petition for Writ of Certiorari with the South Carolina Supreme. By order filed February 7, 2013, the Supreme Court denied the Junks' certiorari petition. {Supreme Court Order denying certiorari filed 2/7/2013; R. ___}.

On June 16, 2011, the Junks filed the First Amended Answer, Counterclaim and Third Party Complaint.[3] {First Am. Answer, Counterclaim, and Third Party Complaint filed 6/16/2011 ("Junks' Answer"); R. ___}. In addition to asserting numerous counterclaims against CitiMortgage, this pleading attempted to assert a "third party complaint" against twenty-three persons and/or entities which were not parties to the foreclosure and bore little, if any, relationship to the issues in dispute in the foreclosure action.[4] CitiMortgage and several of the Third-Party Defendants filed motions to dismiss as to the counterclaims and/or the third-party complaint.[5] In addition to these motions to dismiss, Third-Party Defendants Security Connections, K. Hall, Colonial, Heller, and Jones filed motions for relief from the entry of default.[6] In response to the motions to dismiss, on September 23, 2011, the Junks filed a motion to join the Third-Party Defendants as counterclaim defendants. {Junks' joinder motion filed 9/23/2011; R. ___}.

Hearings on the motions relating to the third-party complaint were held before the Honorable Marvin H. Dukes, III ("the Master") on September 14, 2011, and January 17,

---

[3] The Junks' original Answer, Counterclaim and Third-Party Complaint was filed on May 17, 2011, but was apparently not served on any party prior to the filing of their amended pleading.

[4] The twenty-three Third-Party Defendants were: (1) Riley Pope & Laney, LLC ("RPL"); (2) Heidi Carey, Esq. ("Carey"); (3) Roy Laney, Esq. ("Laney"); (4) T. Lowndes Pope, Esq. ("Pope"); (5) Bayview; (6) MERSCORP, Inc. ("MERSCORP"); (7) Mortgage Electronic Registrations Systems, Inc. ("MERS"); (8) CitiMaster Servicing ("CitiMaster"); (9) CitiGroup Global Markets Realty Corp. ("CitiGroup Global"); (10) CitiGroup Mortgage Loan Trust, Inc. ("CitiGroup Trust"); (11) Jennifer Oakes ("Oakes"); (12) Robert G. Hall ("R. Hall"); (13) Security Connections, Inc. ("Security Connections"); (14) Krystal Hall ("K. Hall"); (15) Danielle Sterling ("Sterling"); (16) ABC Appraisal Group, Inc. ("ABC"); (17) Mark A. Ruplinger ("Ruplinger"); (18) Linda Heller ("Heller"); (19) Harry Jones ("Jones"); (20) Colonial Coast Title Agency, Inc. ("Colonial"); (21) Fidelity National Title Insurance Company, successor by merger to Lawyers Title Insurance Corp. ("Lawyers Title"); (22) Corelogic, Inc. ("Corelogic"); and (23) American Home Mortgage Holdings, Inc. ("AHMH"). A description of the alleged role of each Third-Party Defendant can be found in the Order filed of February 22, 2012. {Order filed 2/22/2012 at pp. 3-5; R. ___}.

[5] See RPL's, Carey's, Laney's and Pope's motion to dismiss filed 7/25/2011 {R. ___}; CitiMortgage's, motion to dismiss filed 8/22/2011 {R. ___}; MERS', MERSCORP's, CitiMaster's, CitiGroup Global's, CitiGroup Trust's, and Oakes' motion to dismiss filed 8/22/2011 {R. ___}; Bayview's and R. Hall's motion to dismiss filed 8/22/2011 {R. ___}; and Corelogic's motion to dismiss filed 8/29/2011 {R. ___};

[6] See Security Connections' and K. Hall's motion for relief from entry of default filed 8/18/2011 {R. ___}; Colonial's motion for relief from entry of default filed 8/29/2011 {R. ___}; and Heller's and Jones' motion for relief from entry of default filed 9/9/2011 {R. ___}.

2012.[7] {Transcripts of Hearing dated 9/14/2011 and Transcript of Hearing dated 1/17/2012; R. ___}. By e-mail dated January 18, 2012, the Master indicated his intent to grant the motions to dismiss the third-party complaint and his view that any remaining default issues were therefore moot. {E-mail from Dukes to all counsel dated 1/18/2012; R. ___}. In this e-mail, the Master specifically requested that counsel for the Third-Party Defendants "collaborate on an Order" to this effect.[8] {Id.} Per the Master's instructions, counsel for the Third-Party Defendants collaborated in the drafting of a proposed order and sent a copy to the Master, copying the Junks, on February 10, 2012. {E-mail from Becker to Dukes dated 2/10/2012; R. ___}. On February 15, 2012, the Junks responded to the submission of the proposed order by filing an "Objection on the Record to the February 10, 2012 Proffered *Decision* Written by Plaintiffs, Counterclaim Defendants, and Third Party Defendants at the Direction of the Court" ("Junks' Objection filed 2/15/2012") {R. ___}.

On February 22, 2012, the Master filed an order ruling on the Third-Party Defendants' motions. {Order filed 2/22/2012 ("February 22 Order"); R. ___}. Specifically, the February 22 Order: (a) dismissed the third-party complaint in its entirety under Rule 14(a), SCRCP, because none of the claims alleged against the Third-Party Defendants were founded upon derivative liability with regard to the foreclosure complaint's claims; (b) denied the Junks' motion to join all of the Third Party Defendants as counterclaim defendants under Rules 13(h), 14(c), 19, and 20, SCRCP, because the

---

[7] On October 3, 2011, an order was entered relieving Third-Party Defendants Security Connections and K. Hall from default. {Order filed 10/3/2011; R. ___}. This order has not been appealed.

[8] The Master later clarified his default ruling by requesting that the order incorporate the facts that the movants met the standard for relief from entry of default, no prejudice had been asserted, and that because dismissal was appropriate for all Third-Party Defendants, the default issues were moot. {E-mail from Dukes to all counsel dated 1/19/2012; R. ___}.

they were not necessary parties and their permissive joinder was inappropriate; (c) dismissed the "civil conspiracy" claim as an improper attempt to assert a malicious prosecution claim as to an action that was still pending; (d) dismissed the slander of title claim because it was based on the filing of documents that were absolutely privileged; (e) dismissed the professional negligence claim asserted against RPL, Carey, Laney, and Pope because attorneys are immune from liability to third persons arising from their representation of their clients; (f) dismissed the quiet title claim because it failed to allege facts supporting a plausible inference that any Third-Party Defendant claimed or might claim an interest in the subject property; and (g) granted Heller, Jones and Colonial's motions for relief from the entry of default because "good cause" was shown supporting such ruling. {Id.}. The Junks filed no motion under Rule 59, SCRCP, as to the February 22 Order, and on March 23, 2012, filed a Notice of Appeal as to that order. {Notice of Appeal dated 3/23/2012; R. ___}.

On February 23, 2012, the Master held a hearing on CitiMortgage's motion to dismiss the Junks' Counterclaims. {Transcript of Hearing dated 2/23/2012; R. ___}. Additional briefing by the parties was requested, and on April 11, 2012, counsel for CitiMortgage submitted a supplemental memorandum in support of its motion to dismiss the counterclaims along with a proposed order in the event the Master was inclined to grant CitiMortgage's motion.[9] {E-mail from Crotty to Dukes dated 4/11/2012; R. ___}.

On April 24, 2012, the Master filed an order granting CitiMortgage's motion to dismiss the counterclaims. {Order filed 4/24/2012 ("April 24 Order"); R. ___}. Specifically, pursuant to Rule 12(b)(6) , SCRCP, the April 24 Order dismissed the counterclaims for negligent misrepresentation; fraud (three separate counts); breach of

[9] In accordance with Rule 5(b)(3), SCRCP, Appellants were copied on this communication.

contract; rescission under the Truth-in-Lending Act; slander of title; and civil conspiracy.[10] All of the counterclaims, with the exception of the slander of title counterclaim (defense number 21), were dismissed because they were brought outside of their applicable statute of limitations. {Id.}. The counterclaim for rescission under the Truth-in-Lending Act ("TILA") (defense number 19) was also dismissed because the Junks failed to allege the required element that the borrower is able to tender the loan proceeds in the event rescission of the loan is ordered, and because this claim is time-barred under the TILA. {Order dated 4/24/2012 at pp. 5-11; R. ___}. Finally, the counterclaim for slander of title (defense number 21) was dismissed because it was based upon the mortgage and the foreclosure action filings which did not, as a matter of law, support this claim. {Id. at p.12; R. ___}. The Junks filed no motion under Rule 59, SCRCP, as to the April 24 Order, and on May 2, 2012, filed a Notice of Appeal as to that order. {Notice of Appeal dated 5/2/2012; R. ___}.

Following the filing of the April 24 Order, the Junks specifically requested that the Master issue an order denying the Junks' motion for a default judgment against Third-Party Defendant AHMH. {E-mail from Junk to McCleod dated 4/24/2012; R. ___}. The Junks made this request despite the fact that their third-party complaint had been dismissed in its entirety in the February 22 Order, leaving no pending complaint or action against AHMH that could support a default judgment. On May 3, 2012, a Form 4 Order

[10] The April 24 Order identified as counterclaims the defenses in the Junks' Answer numbered 13, 14, 15, 16, 17, 19, 21, and 22. Number 13 was a negligent misrepresentation claim; numbers 14, 15, and 17 were claims of fraud; number 16 was a breach of contract claim; number 19 was a claim for rescission under the Truth-in-Lending Act; number 21 was a claim for slander of title; and number 22 was a civil conspiracy claim. {Order dated 4/24/2012; R. ___}. At the February 23, 2012 hearing, the Junks agreed that these characterizations of the counterclaims were correct. {Transcript dated 2/23/2012; R. ___}. While defenses numbered 18 and 20 in the Junks' Answer were also styled as counterclaims, the Court held that the Junks admitted at the hearing they were actually mere affirmative defenses. {Order dated 4/24/2012 at pp. 12-18; R. ___}.

was filed denying the Junks' motion for default judgment as to AHMH and holding that the motion for default was moot due to the February 22 Order. {Order filed 5/3/2012 ("May 3 Order"); R. ___}. The Junks filed no motion under Rule 59, SCRCP, as to the May 3 Order, and on May 21, 2012, filed a Notice of Appeal as to that order. {Notice of Appeal dated 5/21/2012; R. ___}. On November 8, 2012, this Court ordered that the appeals of the February 22, April 24, and May 3 Orders be consolidated.

Statement of the Facts

On November 3, 2006, the Junks borrowed $1,200,000.00 from America Home Mortgage ("AHM") as part of a mortgage loan secured by the property known as 181 Oakfield Way, Okatie, South Carolina ("the Loan").[11] The Junks have admitted they signed the adjustable rate note and mortgage for the Loan.[12] MERS was named as the original mortgagee and held the security lien as nominee for Lender and Lender's successors and assigns.[13] The Junks also have acknowledged that they received written notice of their right to cancel the Loan at the loan closing. {Complaint in the Quiet Title Action filed 9/11/2009, at ¶ 35; R. ___}.

On or about January 22, 2007, CitiMortgage purchased the Junks' indebtedness evidenced by the promissory note from the Loan. {Supp. Oakes Aff. at ¶ 7; R. ___}. In addition to acquiring the note, as of February 1, 2007, CitiMortgage also became the

---

[11] The Loan was a refinance of a 2005 mortgage loan, at which time the Junks received $140,267.74. {Settlement Statement; R. ___}.

[12] In the Junks' Quiet Title Action complaint, the Junks alleged that they executed a note and mortgage on November 3, 2006, and copies of those instruments were attached to that pleading as its Exhibit A. {Complaint in the Quiet Title Action filed 9/11/2009, at ¶ 11 and Ex. A; R. ___}. In other filings with the Trial Court, the Junks admit to signing these instruments. {Junks' brief in opposition to MERS' motion to dismiss the Quiet Title Action at pp. 2, 13-14, 27, 30; Junks' motion to reconsider the 2011 Order at pp. 2-3; R. ___}.

[13] The first page of the mortgage stated that "**MERS is the mortgagee under this Security Instrument**" (emphasis in original) and stated that "MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns." Page 3 states, "... Borrower does hereby mortgage, grant and convey to MERS ... and to the successors and assigns of MERS, the following described property ..." {Mortgage from the Loan at pp. 1 and 3, ¶ (C); R. ___}.

servicer of the Loan.[14] {Id. at ¶ 9; R. ___}. The Junks have acknowledged that they received notice of this change in the servicing of their loan. {Junks' brief in opposition to MERS' motion to dismiss the Quiet Title Action at p. 3; R. ___}.

The Junks made payments on the Loan for approximately two years, until March 1, 2009, when they unilaterally stopped making any further payments due on the note and mortgage. {Id. at p. 5; R. ___}. On March 6, 2009, the Junks sent CitiMortgage a letter requesting a copy of the note, and CitiMortgage responded by providing the Junks with copies of both the note and mortgage. {Id. at p. 4; R. ___}. The Junks then sent a letter purporting to be a Qualified Written Request under RESPA to both CitiMortgage and AHM.[15] {Id.}. CitiMortgage responded to the Junks stating that their letter did not qualify as a Qualified Written Request under RESPA. {Id. at p. 5; R. ___}.

On March 23, 2009, the Junks sent another purported Qualified Written Request to ***only*** AHM which included a "Notice of Claim and Rescission" that purported to rescind the Loan. {Junks' Am. Compl. in the Quiet Title Action at ¶ 34; R. ___}. The Junks neither attempted nor offered to return the Loan's $1,200,000.00 in proceeds. The Junks sent this "Notice of Claim and Rescission" to ***only*** AHM despite the fact that they knew that their loan had been serviced by CitiMortgage ever since February 2007. {Junks' brief in opposition to MERS' motion to dismiss the Quiet Title Action at p. 3; R. ___}. In this "Notice of Claim and Rescission", the Junks declared that AHM's failure to rebut their claim (to their apparent satisfaction) would result in the Junks considering themselves to be granted an "unlimited Power of Attorney" and "full authorization" to

---

[14] The original servicer of the Loan was American Home Mortgage Servicing, a fact which the Junks acknowledge was disclosed to them at the closing. {Junks' brief in opposition to MERS' motion to dismiss the Quiet Title Action at p. 3; R. ___}.

[15] At this time, the Junks were well aware that the ***servicing*** of their loan was handled by CitiMortgage and not AHM.

sign a satisfaction of the obligation.[16] {Junks' brief in opposition to MERS' motion to dismiss the Quiet Title Action at p. 5; R. ___}.

On April 20, 2009, Daniel Junk executed and recorded a document purporting to be a "Satisfaction of Mortgage" of the Loan's mortgage. {Junks' brief in opposition to MERS' motion to dismiss the Quiet Title Action at p. 7; R. ___}. This bears repeating: Mr. Junk filed a document with the Beaufort County Clerk of Court purporting to satisfy the mortgage from the Loan. {Satisfaction of Mortgage filed on 4/20/2009; R. ___}. Mr. Junk, stating falsely that he was acting as "agent for American Home Mortgage," swore that he was the "bona fide owner and holder of the [mortgage from the Loan]" and that "the debt which was secured [by the Loan] has been paid in full and the lien of the mortgage is satisfied and cancelled." {Id.}. None of these sworn statements was true.

CitiMortgage, the owner of the note and the servicer of the loan since early 2007, corresponded with the Junks regarding their loan default status. The Junks acknowledge receiving default notices from CitiMortgage on April 1, 2009, May 4, 2009, and May 19, 2009. {Junks' brief in opposition to MERS' motion to dismiss the Quiet Title Action at p. 7; R. ___}.

In June 2009, CitiMortgage transferred the servicing rights for the Loan to Bayview.[17] Bayview then sent the Junks correspondence and notices regarding their default status on July 6, 2009, July 9, 2009, and July 17, 2009. {Junks' brief in opposition to MERS' motion to dismiss the Quiet Title Action at p. 8; R. ___}. On July 21, 2009,

---

[16] The Junks also declared in this letter that this power they were granting themselves was also not subject to Bankruptcy preemption. {Junks' brief in opposition to MERS' motion to dismiss the Quiet Title Action at p. 5; R. ___}.

[17] The Junks have acknowledged receiving written notice from CitiMortgage dated June 15, 2009, and written notice from Bayview dated July 1, 2009, informing them that the servicing of the Loan was transferred to Bayview. {Junks' brief in opposition to MERS' motion to dismiss the Quiet Title Action at p. 7; R. ___}.

three months after Mr. Junk filed the false satisfaction of mortgage, the Junks sent a letter to Bayview disputing the debt. {Id.}. Bayview responded by identifying itself as the servicer of the loan, providing a loan history for the Junks' Loan and informing them of the date of their default. {Id.}.

On September 11, 2009, the Junks filed the Quiet Title Action.[18] The Defendants named in the Quiet Title Action are AHM[19], MERS, and John Does 1 – 5000. The Junks did not name or serve either CitiMortgage or Bayview as defendants in the Quiet Title Action, even though they acknowledged in subsequent briefing in the action that they had received default notices from CitiMortgage and Bayview in April, May, and July 2009. {Junks' brief in opposition to MERS' motion to dismiss the Quiet Title Action at pp. 7-8; R. ___}. Instead, the Junks would maintain in the Quiet Title Action that CitiMortgage and Bayview were among the "John Doe" defendants who were served by publication.[20]

On September 25, 2009, MERS executed an assignment of the mortgage to Bayview, and this assignment was recorded on October 19, 2009. {Assignment of Mortgage recorded on 10/19/2009; R. ___}. Following the recording of that assignment, Bayview initiated the foreclosure action that is the subject of this appeal on October 26, 2009. Bayview's counsel in the foreclosure action was Third-Party Defendant Riley Pope & Laney, LLP.

---

[18] An amended complaint in the Quiet Title Action was filed on September 14, 2009. {Am. Compl. in Quiet Title Action filed 9/14/2009; R. ___}.

[19] AHM was subsequently dismissed by Plaintiffs after it filed a Suggestion of Bankruptcy, which shows that AHM and its related entities filed bankruptcy on August 6, 2007. {Suggestion of Bankruptcy filed 9/29/2009 in Quiet Title Action; R.___; Order granting voluntary non-suit to AHM filed 10/5/2009; R. ___}.

[20] The Junks' theory that "John Doe" defendants could be served by publication and that this service was effective against Bayview and CitiMortgage was rejected by the Master in the 2011 Order. {Order filed 4/12/2011; R. ___}.

In March 2010, Bayview transferred servicing rights for the Loan back to CitiMortgage, and also assigned the mortgage to CitiMortgage.[21] The assignment of the mortgage by Bayview to CitiMortgage was recorded on March 19, 2010. {Assignment of Mortgage recorded 3/19/2010; R. ___}. The law firm Nelson Mullins Riley & Scarborough, LLP, was then substituted as counsel for Bayview in this action. {Consent Order Substituting Counsel filed 5/13/2010; R. ___}. Additionally, as part of the 2011 Order that dismissed the Quiet Title Action, CitiMortgage was substituted in the place of Bayview as the Plaintiff in this action. {Order filed 4/12/2011; R. ___}. This appeal then followed from the February 22, April 24, and May 3 Orders in the underlying foreclosure action.

Argument

I. The two-issue rule requires that this Court affirm the Master's February 22 Order because the Junks failed to appeal all grounds supporting the Master's decision.

The Junks have failed to appeal all grounds upon which the Master dismissed the third-party complaint in the February 22 Order. Therefore, the two-issue rule applies and requires this Court to affirm the Master's February 22 Order dismissing the third-party complaint in its entirety.

The Master's February 22 Order was supported by several independent grounds. {Order dated 2/22/2012; R. ___}. Specifically, as to the dismissal of the third-party complaint, the Master: (a) ruled that the Junks' third-party complaint was procedurally improper **in its entirety** under Rule 14(a) of the South Carolina Rules of Civil Procedure; (b) denied the Junks' motion to join the improper Third-Party Defendants as counterclaim

[21] As with all of the other servicing transfers, the Junks have acknowledged they received notice of this servicing transfer. {Junks' brief in opposition to MERS' motion to dismiss the Quiet Title Action at p. 12; R. ___}.

defendants; **and** (c) held that the Junks' purported claims for civil conspiracy, slander of title, professional negligence, and quiet title failed as a matter of law. {Id.} The Junks' appeal of the February 22 Order, however, is limited to: (1) the Junks' argument that it was improper for the Master to request that counsel for the Third-Party Defendants collaborate in drafting the February 22 Order (Argument I in Appellants' Brief, pp. 26-27); (2) the Junks' argument that the Master applied the incorrect standard in dismissing the professional negligence claim asserted against RPL, Carey, Laney and Pope (Argument II in Appellants' Brief, pp. 27-30); (3) the Junks' argument that "the Quiet Title Action was impermissibly dismissed a second time" because the Junks contend that CitiMortgage cannot enforce the note and mortgage (Argument III in Appellants' Brief, pp. 30-32); (4) the Junks' argument that the Master improperly interpreted the civil conspiracy claim as a malicious prosecution claim (Argument IV in Appellants' Brief, pp. 32-33}; and (5) the Junks' argument that the Third-Party Defendants are necessary parties requiring joinder under Rules 14(c) and 19, SCRCP (Argument V in Appellants' Brief, pp. 33-35).[22]

The Junks failed to appeal the first ground for dismissing the third-party complaint in its entirety pursuant to Rule 14(a), SCRCP. That ruling, standing alone, was sufficient to dismiss the third-party complaint in its entirety. Thus, this Court must affirm pursuant to the two-issue rule.[23]

---

[22] Notably, the specific error the Junks allege is the "lower court erred in dismissing Appellants [sic] Motion for **Joinder** of Third Parties as Counterclaim Defendants if it found that the use of third party practice was improper." {Appellants' Br. at p. 35 (emphasis added)}. Thus, the Junks' challenge is limited to arguing the Master erred in denying their motion to join the Third-Party Defendants under Rule 19, and not as to the dismissal of the third-party complaint under Rule 14(a)'s requirements for third-party practice.

[23] Additionally, the Junks' failure to appeal several specific rulings in the February 22 and April 24 Orders renders those rulings law of case. As to the February 22 Order, the Junks failed to appeal the ruling that (1) the third-party complaint was procedurally improper in its entirety under Rule 14(a), SCRCP; (2) the

Under the two-issue rule, "when a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case." Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010). This rule is grounded on our court's recognition that an "unchallenged ruling, right or wrong, is law of the case and requires affirmance." See, e.g., First Union Nat'l Bank v. Soden, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998). In Jones, the trial court granted relief based on two independent grounds. The Supreme Court applied the two-issue rule to affirm when appellant failed to appeal both grounds. The court reasoned that:

> It should be noted that although cases generally have discussed the "two issue" rule in the context of the appellate treatment of general jury verdicts, the rule is applicable under other circumstances on appeal, including affirmance of orders of trial courts . . . the order would be affirmed under the "two issue" rule if the plaintiff failed to appeal both grounds or if one of the grounds required affirmance.

Id.

As noted, the February 22 Order dismissed the Junks' third-party complaint in its entirety under Rule 14(a), SCRCP, and also provided additional grounds supporting dismissal of the civil conspiracy, slander of title, professional negligence, and quiet title third-party claims. Although the Junks appealed other aspects of the February 22 Order, they did not appeal the Master's decision to dismiss the third-party complaint pursuant to

---

Master's ruling denying the Junks' request to join the improper third-party defendants per Rule 13(h) and 20, SCRCP, (3) the ruling that the slander of title and quiet title claims failed as a matter of law; and (4) the relief from default granted to Heller and Jones. As to the April 24 Order, the Junks did not appeal the Master's dismissal of the negligent misrepresentation, breach of contract, civil conspiracy, or slander of title counterclaims. These unappealed rulings are now the law of the case. Bone v. U.S. Food Serv., 399 S.C. 566, 576, 733 S.E.2d 200, 205 (2012) (holing that the law of the case doctrine applies where a party does not challenge an issue on appeal when there has been an opportunity to do so); Ables v. Gladden, 378 S.C. 558, 569, 664 S.E.2d 442, 448 (2008) ("An unappealed order, right or wrong, is the law of the case").

Rule 14(a), SCRCP. This ruling caused the third-party complaint to be dismissed **in its entirety**. Thus, the Junks failed to appeal all grounds that supported dismissal in the February 22 Order. The failure to appeal that ruling is fatal to each of the Junks' challenges to the February 22 Order because the unappealed ruling is now the law of the case. Therefore, the two-issue rule applies and requires this Court to affirm the February 22 Order.[24]

II. The Master properly directed Respondents' counsel to draft the February 22 Order and CitiMortgage's counsel submission of a proposed order as to the April 24 Order was proper.

The Junks assert that the February 22 and April 24 Orders should be reversed because the Master directed opposing counsel[25] to draft the orders consistent with the Master's rulings at the hearings. {Appellants' Br. at pp. 26-27}. Specifically, the Junks allege that requesting opposing counsel to draft the orders constituted the impermissible use of "interested experts" in violation of the rules of judicial conduct. {Id.}. As a primary matter, the Junks are mistaken in their assertion that the Master directed CitiMortgage's counsel to draft the April 24 Order. The transcript from the hearing relating to that order contains no such directive, and instead shows that the Master requested additional briefing from the parties. {Transcript of Hearing dated 2/23/2012; R. ___}. On April 11, 2012, when counsel for CitiMortgage submitted its supplemental brief, a proposed order was also included in the event the Master was inclined to grant CitiMortgage's motion. {E-mail from Crotty to Dukes dated 4/11/2012; R. ___}. There

[24] The Junks cannot use their reply brief to remedy this failure to appeal all grounds supporting the dismissal of the third-party complaint in the February 22 Order. See, e.g., Glasscock, Inc. v. U.S. Fidelity & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001) (applying the general rule that an appellant cannot present an issue to the appellate court in a reply brief if that issue was not addressed in the initial brief); Bochette v. Bochette, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1998) (holding that "[a]n appellant may not use . . . the reply brief as a vehicle to argue issues not argued in appellant's brief").

[25] Counsel for CitiMortgage ultimately drafted both of the orders with input from counsel for the Third-Party Defendants as to the February 22 Order.

is absolutely nothing improper about the submission of a proposed order to the court. To the contrary, the rules of civil procedure specifically contemplate such submissions and require only that all counsel of record also be provided with the proposed order at the same time and by the same means. Rule 5(b)(3) , SCRCP. CitiMortgage's counsel fully complied with the provisions of this rule.[26] {E-mail from Crotty to Dukes dated 4/11/2012; R. ___}.

With regard to the February 22 Order, the Junks' argument lacks merit for three reasons. First, the Junks failed to preserve this issue for review. Second, the Master possessed the authority to direct counsel to draft the order for the court. Third, even assuming the Master erred, the Junks failed to establish any prejudice resulting from the Master's decision. This Court should reject this argument on these grounds.

A. The Junks' argument is not preserved for appellate review.

As an initial matter, the Junks failed to preserve this issue as to both the February 22 Order and the April 24 Order, and this Court should decline to address this argument. "Preserving issues for appellate review is a fundamental component of appellate practice." Kennedy v. South Carolina Retirement Sys., 349 S.C. 531, 532-33, 564 S.E.2d 322, 323 (2001). "The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). A litigant must specifically raise an issue to the trial court **and** then obtain a ruling from the court on that specific issue in order for the issue to be preserved for appellate review. See, e.g., Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733

[26] Mr. Junk (appearing *pro se*) and Parker Barnes (counsel for Mrs. Junk) were copied on this communication. {E-mail from Crotty to Dukes dated 4/11/2012; R. ___}.

(1998) (holding that an issue must be raised to **and** ruled upon by the trial judge in order to be preserved for appellate review); see also Holy Loch Distribs., Inc. v. Hitchcock, 340 S.C. 20, 531 S.E.2d 282 (2000); Roche v. South Carolina Alcoholic Beverage Control Comm'n, 263 S.C. 451, 211 S.E.2d 243 (1975) (recognizing that imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments).

Moreover, the issues raised on appeal must be the same as those raised to the trial court. See, e.g., Morris v. Anderson County, 349 S.C. 607, 564 S.E.2d 649 (2002) (holding that an appellant cannot raise new arguments or change their grounds between trial and appeal); Hanahan v. Simpson, 326 S.C. 140, 155, 485 S.E.2d 903, 911 (1997) (recognizing that if the appellate argument differs from the basis for the argument to the trial court, then the issue is not preserved for appellate review). This requirement "prevents a party from keeping an ace card up his sleeve-intentionally or by chance-in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case." I'On, 338 S.C. at 422, 526 S.E.2d at 724.

Additionally, if the trial court does not initially rule on the issue, then it is incumbent on the party to file an applicable post-trial motion requesting a ruling on the argument from the trial court. S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Grp., 347 S.C. 333, 343, 554 S.E.2d 870, 876 (Ct. App. 2001) (recognizing that when an issue is raised but not ruled on by the trial judge, the party must file a motion to alter or amend, or the issue is not preserved for appellate review); see also I'On, 338 S.C. at 422, 526 S.E.2d at 724 (holding that a party must file a motion to alter or amend if the trial court fails to rule on an issue in order to preserve it

for appellate review). Failure to follow these explicit rules renders the issue not preserved for appellate review. S.E.C.U.R.E. Underwriters, 347 S.C. at 343, 554 S.E.2d at 876.

The Junks argue in their brief to this Court that the Master committed reversible error by requesting opposing counsel to draft the February 22 Order because such a request constituted the impermissible use of "interested experts" in violation of the rules of judicial conduct. {Appellants' Br. at pp. 26-27}. However, this argument differs from that presented to the Master. Prior to the filing of the February 22 Order, the Junks filed a document objecting to opposing counsels' drafting of that order. {Junk's Objection filed 2/15/2012; R. ___}. Significantly, the Junks did not object to the ***content*** of the order, rather only to the fact that it was drafted by opposing counsel. {Id.} Additionally, in that filing, the Junks did not argue that the Master's decision to have counsel draft the order impermissibly used "interested experts" in violation of the rules of judicial conduct. Rather, the Junks argued that the Master's decision (1) showed "impartiality evidenced by . . . the court's delegation process, and (2) such delegation "rises to the level of a civil rights violation under 42 U.S.C. § 1983." {Id. at p. 2; R. ___}. The Junks' present argument, therefore, is not preserved for review by this Court because the issues raised on appeal must be the same as those raised to the trial court. See, e.g., Hanahan, 326 S.C. at 155, 485 S.E.2d at 911 (recognizing that if the appellate argument differs from the basis for the argument to the trial court, then the issue is not preserved for appellate review).

The Junks also failed to preserve this issue for review as it relates to the April 24 Order. This issue was not raised either before or after the filing of the April 24 Order, and the order itself contains no ruling on this issue. {Order dated 4/24/2012; R. ___}.

Thus, the Master had no opportunity to rule on this argument, and the argument is not preserved as to the April 24 Order. See I'On, 338 S.C. at 422, 526 S.E.2d at 724 (holding that a party must file a motion to alter or amend if the trial court fails to rule on an issue in order to preserve it for appellate review); Soden, 333 S.C. at 569, 511 S.E.2d at 379 (holding the appellant's arguments were not preserved for review because appellant failed to raise them to the court by post-trial motion to allow the master an opportunity to address them).

In sum, the Junks' challenge to the Master's request to have opposing counsel draft the February 22 and April 24 Orders is not preserved for appellate review. This Court should adhere to well-settled preservation precedent and decline to address this argument.

B. The Master possessed the authority to direct counsel to prepare the Orders.

Even if the Junks properly preserved this argument, which they have not, this Court should still affirm the February 22 and April 24 Orders because the Master had authority to direct counsel to proposed orders for consideration. Courts recognize that a trial judge is empowered to require a party's attorney to prepare the order of the court. See Doe v. Doe, 324 S.C. 492, 501-02, 478 S.E.2d 854, 859 (Ct. App. 1996) (holding that "Rule 58(a), SCRCP, authorizes a judge to require a party's lawyer to prepare a proposed order"). In fact, this principle is well-settled and can form the basis for discipline should the attorney violate the judge's request to draft the order. See In re Rast, 360 S.C. 96, 98, 600 S.E.2d 534, 535 (2004) (disciplining an attorney for "failure to timely file a family court order" at the request of the judge). Similarly, the rules specifically contemplate that proposed orders may be submitted by a party. See Rule

5(b)(3), SCRCP. Lastly, the Rules of Judicial Conduct cannot provide the basis for the relief sought by the Junks. The rules are not designed to provide relief in the course of litigation, nor are they to be "invoked by lawyers for mere tactical advantage in a proceeding." See Rule 501, SCACR (providing that "the Code is designed to provide guidance . . . It is not designed or intended as a basis for civil liability . . . . Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding"). Therefore, this Court should reject this argument and affirm the February 22 and April 24 Orders.

C. This Court should affirm the orders because the Junks failed to establish any prejudice from the Master's decision.

Assuming without conceding that the Master erred in requesting or accepting a proposed order, this Court must still affirm the February 22 and April 24 Orders. The Junks did not establish any prejudice suffered as a result of the Master's request that opposing counsel draft an order or use of a submitted proposed order. Thus, any error by the Master is not reversible error and should be affirmed by this Court. See, e.g., S.C. Dept. of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 667-68, 667 S.E.2d 7, 19-20 (Ct. App. 2008) (holding that an error will not be reversed if the appellant fails to demonstrate prejudice from the alleged error of the trial court).[27]

III. The Master correctly dismissed the Junks' third-party professional negligence claim against RPL, Carey, Laney and Pope ("RPL Respondents").

As outlined in the Master's February 22 Order, the Junks' third-party professional negligence claim against the RPL Respondents should be dismissed for two reasons, either of which is independently sufficient: (1) the RPL Respondents owed no duty to the

[27] As explained in footnote 24, the Junks cannot use their reply brief to remedy this failure to establish prejudice.

Junks that could have been breached; and (2) the purported third-party claim was not proper under Rule 14(a), SCRCP, because it was not derivative of the Junks' liability to CitiMortgage.[28] {Feb. 22 Order, R. ___}. This Court need not reach the merits of the Master's dismissal order because the Junks have appealed only the Master's first finding of no duty, neglecting to challenge the alternative Rule 14(a) basis for dismissal, which has become the law of the case.[29]

Assuming, without conceding, that the Junks' arguments regarding the February 22 Order are not barred by the two-issue rule as set forth in section I, supra, affirmance of the Master's dismissal of this claim is warranted because the RPL Respondents could not have been professionally negligent as they owed no duty to the Junks in the first instance. Although South Carolina law is devoid of any basis for imposing a duty on an attorney owed to a third-party non-client, the Junks attempt to create such an obligation from whole cloth. The Junks have never cited any case law supporting their position that the RPL Respondents breached a duty owed to the Junks *while they were representing Third-Party Defendants Bayview in their mortgage foreclosure action against the Junks.* {First Am. Answer, Counterclaim, and Third Party Complaint filed 6/16/201; R. ___; Appellants' Initial Brief at pp. 27- 31}. To the contrary, the only duty owed by the RPL Respondents was to their actual clients, Bayview.[30]

---

[28] As set forth in Section VI(A), infra, Rule 14(a), SCRCP, requires that the Junks, as third-party plaintiffs, have a substantive claim against Third-Party Defendants based upon derivative liability. First Gen., infra, at 442. No such liability has been argued by the Junks, nor, as the Master properly found, does any such liability in fact exist in this case. {Feb. 22 Order, R. ___}.

[29] As set forth in Section I, supra, the two-issue rule bars consideration of the Junks' professional negligence argument and requires affirmance of the February 22 Order. Failure to appeal both of the Master's reasons for dismissal requires affirmance under the two-issue rule. Jones, 387 S.C. at 346, 692 S.E.2dat 903 (2010).

[30] The Junks' citation to various South Carolina Rules of Professional Conduct, Rule 11 SCRCP, and S.C. Code Ann. §15-36-10 cannot resuscitate this argument. {First Am. Answer, Counterclaim, and Third Party

Moreover, the RPL Respondents are immune from liability to third parties, including the Junks, arising out of the performance of their professional activities as attorneys. Gaar v. North Myrtle Beach Realty Co., Inc., 287 S.C. 525, 528-29, 339 S.E.2d 887, 889 (Ct .App. 1986). As the Court recognized in Gaar, litigation is typically conducted in the attorney's professional capacity and not in, or for, his own personal interest. {See Order filed 2/22/2012; R. ___, citing Gaar}.[31] The Junks have not claimed that the RPL Respondents acted outside of the scope of their representation or for their own personal gain. As such the RPL Respondents' litigation activities cannot form the basis for third party liability.

Without any South Carolina law to support their argument, the Junks now claim that the Master "substitute[ed] his judgment for the sworn testimony of the [A]ppellants' expert, Thomas Pendarvis" by choosing to reject Mr. Pendarvis' legal opinion that the RPL Respondents breached a duty owed to the Junks. {Appellants' Initial Brief at p. 29}. It has long been the law of this State that the Judge has the sole authority to interpret the law. Eason v Miller & Kelly, 15 S.C. 194, 1881 WL 5891, S.C.1881 (1881). The Master's decision not to accept Pendarvis' interpretation of the law was not error – it was his prerogative.

The Junks' failure to challenge both reasons provided by the Master for dismissal is dispositive of their appeal, and even the appealed reason remains unsubstantiated by any South Carolina law to legitimize the Junks' position. Accordingly, the Master's

---

Complaint filed 6/16/2011; R. ___}. None of these sources creates an independent duty owed by the RPL Respondents to a non-client third party.

[31] See also Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions, 388 S.C. 394, 697 S.E.2d 551 (2010). "Generally, an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client . . .Further, an attorney owes no duty to a non-client unless he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client."

dismissal of the Junks' third-party professional negligence claim against the RPL Respondents should be affirmed.[32]

IV. Any issue as to CitiMortgage's ability to enforce the note and mortgage has not been preserved and is not ripe for review.

The Junks claim that the February 22 and April 24 Orders should be reversed because an issue of fact exists as to whether CitiMortgage holds the mortgage under Section 36-3-308 of the South Carolina Code. {Appellant's Br. p. 30-32}. This argument should be rejected because it has not been preserved and because it is not ripe for review by this Court.[33]

A. The Junks failed to preserve this argument for appellate review.

The Junks presented this argument to the Master at the hearings on various motions related to the third-party complaint and on CitiMortgage's motion to dismiss the counterclaims. {Transcript dated 1/17/2012 at p. 34; Transcript dated 2/23/2012 at p. 96; R. ___}. However, the Master did not rule on the Junks' "holder argument" in either the February 22 or April 24 Orders. {Order dated 2/22/2012; Order dated 4/24/2012; R. ___}. Therefore, it was incumbent on the Junks to file a post-trial motion requesting that the Master rule on this argument. The Junks failed to do so. Thus, this issue is not preserved for review. See I'On, 338 S.C. at 422, 526 S.E.2d at 724; S.E.C.U.R.E. Underwriters, 347 S.C. at 343, 554 S.E.2d at 876. For this reason alone, this Court should decline to address this argument.

---

[32] The Junks also brought a claim against the RPL Respondents for Sanctions for Fraud Upon the Court, Filed November 24, 2010. This claim was dismissed by the Master during a hearing which took place on April 9, 2011. The Junks have not appealed this ruling and therefore, the dismissal of the Junks' claims for Sanctions for Fraud Upon the Court is law of the case. See Jones, 387 S.C. at 346, 692 S.E.2d at 903 (stating that an unchallenged ruling becomes law of the case).

[33] In addition, this Court should reject this argument as it relates to the February 22 Order. As set forth in Section I, supra, the two-issue rule bars consideration of this argument and requires affirmance of the February 22 Order.

B. This argument is not ripe for review by this Court.

This Court should also decline to address this argument because the Junks are attempting to present this Court an issue that is not ripe for review. This argument—whether CitiMortgage is able to enforce the Junks' note and mortgage—has no bearing or impact on whether the Junks properly pleaded a third-party complaint and counterclaims to the foreclosure action. Any issues regarding CitiMortgage's ability to enforce the note and mortgage remain to be determined in the foreclosure action. Thus, this issue is contingent, hypothetical, and abstract. This Court should decline to address this issue because any ruling would be merely academic, speculative, and advisory. See Colleton Cnty. Taxpayers Ass'n v. Sch. Dist. Of Colleton Cnty., 371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006) (holding that "an issue that is contingent, hypothetical, or abstract is not ripe for judicial review"); Sloan v. Dept. of Transp., 379 S.C. 160, 666 S.E.2d 236 (2005) (holding an appellate court "will not pass on . . . academic questions" and will not adjudicate a matter when no specific relief exists); Hitter v. McLeod, 274 S.C. 616, 619, 266 S.E.2d 418, 420 (1980) (declining to rule on an issue that was not ripe for adjudication and noting it "presents [the court] with nothing more than a vehicle for rendering an advisory opinion"); S.C. Dept. of Rev. v. Club Rio, 392 S.C. 636, 643, 709 S.E.2d 690, 694 (Ct. App. 2011) ("The court does not concern itself with . . . speculative questions").

V. The Master properly dismissed the Junks' purported claim for civil conspiracy.

The Junks assert that the February 22 Order should be reversed because the Master's decision to construe the Junks' purported civil conspiracy claim as a claim for

malicious prosecution constituted an impermissible election of remedies.[34] {Appellant's Br. at pp. 32-33}. This argument should be rejected because it has not been properly preserved for appellate review and because the Master correctly construed the claim as one for malicious prosecution.[35]

A. The Junks failed to preserve this argument for appellate review.

At the hearings on the motions to dismiss the third-party complaint, the Junks argued only that they properly pleaded a cause of action for civil conspiracy. {Transcript dated 1/17/2012 at pp. 72-81; R. ___}. The Junks never argued that construing the claim as a claim for malicious prosecution would constitute an impermissible "election of remedies." In addition, the Master did not rule on this argument in the February 22 Order. {Order dated 2/22/2012; R. ___}. Thus, this issue is not preserved for review. See I'On, 338 S.C. at 422, 526 S.E.2d at 724; Wilke, 330 S.C. at 76, 497 S.E.2d at 733; Morris, 349 S.C. at 611 n.4, 564 S.E.2d at 651 n.4. This Court should decline to address this argument.

B. The Master correctly construed the Junks' claim as one for malicious prosecution, and as a result, the claim was properly dismissed in the February 22 Order.

It is well-settled that the substance of the relief sought controls over the form in which the party sought the relief. Here, the Master correctly applied this established principle in construing the Junks' claim. The Master properly ruled that the Junks' titling of the claim as one for civil conspiracy was not determinative because the allegations

---

[34] We note that the Junks' use of the term "election of remedies" is inaccurate. "Election of remedies" refers to the act of choosing between different remedies allowed by law on the same state of facts. Tzouvelekas v. Tzouvelekas, 206 S.C. 90, 33 S.E.2d 73, 74 (1945). In the February 22 Order, the Master did not cause the Junks to choose between two separate claims. Rather, the Master construed the claim, as pleaded, to be one for malicious prosecution.

[35] In addition, as set forth in Section I, supra, the two-issue rule bars consideration of this argument and requires affirmance of the February 22 Order.

actually constituted an improper attempt to assert a claim for malicious prosecution of an action that remains pending. As a result, the Master correctly dismissed the claim in the February 22 Order. This Court should affirm.

The South Carolina Rules of Civil Procedure state that "[a]ll pleadings shall be so construed as to do substantial justice to all parties." Rule 8(f), SCRCP. This rule requires that a court should review the entire pleading and probe the substance of its allegations to determine the true nature of a claim alleged. See, e.g., Cole Vision Corp. v. Hobbs, 394 S.C. 144, 153-54, 714 S.E.2d 537, 542 (2011) ("It is the substance of the requested relief that matters regardless of the form in which the request for relief was framed") (internal quotations omitted); Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 437, 673 S.E.2d 448, 458 (2009) (holding that "[o]ur courts have held that it is the substance of the requested relief that matters regardless of the form in which the request for relief was framed"); Richland Cnty. v. Kaiser, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002).

Application of this established principle allowed only one conclusion: The substance of the Junks' requested relief was for malicious prosecution stemming from the foreclosure action. The fact that the Junks labeled the third-party claim as a cause of action for civil conspiracy cannot alter that conclusion. The elements of a cause of action for malicious prosecution are (1) institution or continuation of original judicial proceedings, either civil or criminal; (2) by, or at the instance of, the defendant; (3) termination of such proceedings in his favor; (4) malice in instituting the proceedings; (5) lack of probable cause; and (6) resulting injury or damage. See, e.g., Law v. S.C. Dep't

of Corr., 368 S.C. 424, 441, 629 S.E.2d 642, 651 (2006); McBride v. Sch. Dist., 389 S.C. 546, 565, 698 S.E.2d 845, 855 (Ct. App. 2010).

Despite the Junks' arguments to the contrary, the form and labels that the Junks applied to their third-party claim are not determinative of the legal nature of those claims. Rather, a review of the substance of the Junks' claim established that the Junks sought relief based on the filing of the foreclosure complaint. Specifically, the Junks alleged that this claim arose from the "filing of a malicious and knowingly fraudulent foreclosure action against the Junks." {The Junks' Amended Answer, Counterclaim and Third-Party Complaint at p. 90, ¶211}. The Junks further alleged that as a result of the "numerous malicious and knowingly false and fraudulent pleadings," they have suffered "money damages, special damages, statutory damages, and punitive damages." {Id. at ¶¶212-13}. The substance of these allegations establishes that the relief requested stemmed from a claim that the foreclosure action against the Junks has been maliciously prosecuted and that they have been damaged by such prosecution. Therefore, the Master correctly categorized the claim as one for malicious prosecution.

By probing the substance of the claim over the form, the Master ruled that the claim for civil conspiracy actually constituted a claim for malicious prosecution. As a claim for malicious prosecution, the Junks' first cause of action in the third-party complaint failed as a matter of law because the foreclosure action the Junks alleged was being maliciously prosecuted had not been terminated in their favor. As noted above, an essential requirement for a claim of malicious prosecution is that such a claim cannot be asserted unless and until the prosecution on which the claim is based has been terminated in favor of the person asserting the claim. See Law, 368 S.C. at 435, 629 S.E.2d at 648.

Therefore, the Master correctly categorized the cause of action as one for malicious prosecution and properly dismissed it in the February 22 Order on this basis. This Court should affirm.

VI. The Master properly dismissed the Junks' third-party complaint and denied the Junks' motion to join the Third-Party Defendants as counterclaim defendants.

The Junks challenge the denial of their motion to join the Third-Party Defendants as counterclaim defendants. {Appellants' Br. Argument V at pp. 34-35}. Specifically, the Junks attempt to support their argument that the February 22 Order should be reversed by claiming that "[w]hether any of the Third Party Respondents are necessary parties requiring **joinder**, is a question of fact for discovery . . . ." {Appellants' Br. Argument V at p. 34} (emphasis added). Further, the Junks argue that "[i]t is within the Court's discretion to correct any err [sic] in the form of the Junks' pleading by renaming the alleged Third Party Defendant [sic] alleged joint tortfeasors as Counterclaim Defendants and necessary parties under **Rules 14(c) and 19 SCRCP**." {Appellants' Br. at p. 35 (emphasis added)}. Notably, the specific error the Junks allege is the "lower court erred in dismissing Appellants [sic] Motion for **Joinder** of Third Parties as Counterclaim Defendants if it found that the use of third party practice was improper." {Id.}. These joinder arguments are without merit. The Master properly denied the motion. This Court should affirm for the reasons set forth below.[36]

[36] As noted in section I, supra, the Junks' failed to appeal each ground supporting the Master's dismissal of the third-party complaint in the February 22 Order. Specifically, the Junks do not appeal from the Master's decision to dismiss the third-party complaint pursuant to Rule 14(a), SCRCP. This failure precludes this Court from considering the Junks' Rule 14(c) and 19, SCRCP, joinder arguments and requires affirmance of the February 22 Order.

A. The dismissal of the third-party complaint was proper under Rule 14(a), SCRCP, because the Junks' failed to establish their third-party claims were founded on derivative liability.

Assuming without conceding that the Junks' arguments regarding the February 22 Order are not barred by the two-issue rule as set forth in section I, supra, this Court should still affirm because the Master properly applied Rule 14(a), SCRCP, to dismiss the third-party complaint. Third-party practice under Rule 14 is applicable only as to "a person not a party to the action who is or may be liable to [the third-party plaintiff] for all or part of the [original] plaintiff's claims against [the third-party plaintiff]." Rule 14(a), SCRCP. "Under Rule 14, the third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability." First Gen. Servs. v. Miller, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994). Thus, the liability of the impleaded parties must be **dependent** upon the original action such that "[t]he outcome of the principle claim must impact the third-party defendant's liability." Id. (emphasis added). A prerequisite to the use of Rule 14 third-party practice is a legal theory based on indemnification, contribution, express or implied warranty, subrogation, indemnity contract, or some other derivative liability theory that permits the defendant to shift some or all of his liability to the impleaded party. James F. Flanagan, South Carolina Civil Procedure 14 (2d ed. 1996). "Without a substantive right to shift liability to the third-party defendant, impleader is improper." Id.

Here, the Master correctly recognized that third-party practice would be proper only if the Third-Party Defendants would be liable to the Junks for all or part of CitiMortgage's claims against the Junks. The foreclosure action centers upon the Junks' November 3, 2006 note and mortgage. In the third-party complaint, the Junks did not

found their claims on the Third-Party Defendants' derivative liability to the Junks for all or part of the debt evidenced by the note and mortgage. Nor were the claims dependent upon the original foreclosure action.[37] Therefore, the Junks' third-party claims failed as a matter of law under Rule 14(a), SCRCP. The Master properly dismissed the third-party complaint in its entirety on this basis. This Court should affirm.

B. The Junks' arguments fail because Rules 19 and 20, SCRCP, do not allow joinder of the Third-Party Defendants in this foreclosure action.

The Junks attempted to avoid the procedural defects in their third-party claims by moving to join all Third-Party Defendants as counterclaim defendants. The Master, exercising his discretion, correctly rejected this request. {Order dated 2/22/2012 at pp. 6-10; R. ___}. This Court should reject the Junks' argument and affirm.

The Junks based their joinder motion on Rules 13(h), 14(c), 19, and 20 SCRCP. Rule 13(h), SCRCP, provides that "[p]arties other than those to the original action may be made parties to a counterclaim or cross-claim in accordance with Rule 19 and 20." Likewise, Rule 14(c), SCRCP, provides that "the Court may order that a party designated as a third-party defendant be joined as a plaintiff or defendant under Rules 19 or 20, when the ends of justice and efficiency in proceedings would be served thereby . . . ." Significantly, neither Rule 13(h), SCRCP, nor Rule 14(c), SCRCP, ***requires*** joinder of additional parties or provides an independent method for exercising joinder separate from the standards imposed by Rules 19 and 20, SCRCP.

[37] The Junks attempt to avoid Rule 14's requirement of derivative liability by asserting that, because a deficiency judgment was waived in the foreclosure action, CitiMortgage is not suing on the note. {Appellants' Brief at p. 34}. The Junks are mistaken. Aside from the fact that the Junk's argument does nothing to relieve them of Rule 14's requirement of derivative liability, even where a deficiency judgment has been waived, a foreclosure action is a suit based on the debt evidenced by the note, and the lien established by the related mortgage.

Here, the Master properly held that the Third-Party Defendants did not constitute necessary parties to the foreclosure action under Rule 19, SCRCP. That rule authorizes a party to be impleaded only when "(1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject matter of the action . . . ." Rule 19(a), SCRCP. This is a foreclosure action. None of the Third-Party Defendants are the current holder of the note and mortgage over CitiMortgage. Also, no Third-Party Defendant claims any interest in the real property that is the subject of the foreclosure action. Thus, none of the Third-Party Defendants claimed "any interest relating in the subject matter of the action" as required by Rule 19(a), SCRCP. Therefore, the Third-Party Defendants did not need to be joined as parties in order for complete relief to be granted on the claims and defenses in the foreclosure action. Moreover, the fact that the Junks contended that some or all of the Third-Party Defendants are joint tortfeasors with CitiMortgage does not render them "necessary" parties. See, e.g., South Carolina Dep't of Health & Envtl. Control v. Fed-Serv Indus., Inc., 294 S.C. 33, 362 S.E.2d 311 (Ct. App. 1987) (holding that a joint tortfeasor is not required to be joined because the existing defendant is jointly and severally liable and accords the plaintiff complete relief). Therefore, the Master properly found that the Third-Party Defendants did not need to be joined as parties under Rule 19(a), SCRCP. This Court should affirm.

The Master also correctly ruled that no basis existed to allow permissive joinder of the Third-Party Defendants under Rule 20(a), SCRCP. As an initial matter, the Junks failed to appeal this ruling. That unappealed ruling is now law of the case. See, e.g., Resolution Trust Corp. v. Eagle Lake & Golf Condos, 310 S.C. 473, 427 S.E.2d 646

(1993) (holding that the trial judge's unappealed ruling is the law of the case). This Court should affirm on that basis. In addition, Rule 20, SCRCP, does not support the Junks' argument.

Rule 20(a), SCRCP, allows joinder of parties if the relief sought arises "out of the same transaction [or] occurrence . . . ." The relief sought in the Junks' third-party complaint does not arise out of the same transaction or occurrence upon which CitiMortgage's foreclosure is based. CitiMortgage's claims against the Junks arose from the November 3, 2006 note and mortgage. The Junks' claims arise, at best, from the foreclosure of that note and mortgage instituted on October 26, 2009. Thus, the Junks asserted independent claims arising out of a separate and distinct transaction or occurrence. Therefore, the Master correctly denied the Junks' joinder motion under Rule 20, SCRCP. This Court should affirm the February 22 Order.

VII. The Master properly dismissed the Junks' counterclaims in the April 24 Order pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

In their brief, the Junks attempt to support their assertion that the Master erred in dismissing their counterclaims based on the statute of limitations by claiming that the limitations period did not begin to run until February 18, 2009, the date of the original mortgagee's (AHM's) bankruptcy. {Appellants' Br. Argument VI at p. 37}. However, the Junks limit their appeal to the TILA and fraud-based counterclaims. {Id. at 35-37}. The Junks state that the "statute of limitations for causes of action for fraud is governed by the discovery rule." {Id. at p. 35}. The Junks also aver that they "rescinded the Refi [sic] Note under TILA Reg. Z. Since we are at the pleading stage . . . the Junks' TILA Rescission should be reviewed to see whether it was properly plead . . . ." {Id. at p. 37}.

The Junks' brief does not set forth arguments, or even mention, the dismissal of the negligent misrepresentation (defense number 13), breach of contract (counterclaim number 16), civil conspiracy (defense number 22), or slander of title (defense number 21) counterclaims. Thus, the Junks' challenges are limited to the dismissal of the purported fraud and TILA counterclaims. Even assuming the Junks presented a challenge to the dismissal of each of their counterclaims, this Court should still affirm the April 24 Order. The Master properly applied Rule 12(b)(6), SCRCP, to dismiss each claim as a matter of law.

The Junks asserted counterclaims for fraud (defenses numbered 14, 15, and 17), negligent misrepresentation (defense number 13), breach of contract (counterclaim number 16), and civil conspiracy (defense number 22). A three-year statute of limitations applies to these purported counterclaims based in tort and breach of contract. See S.C. Code Ann. § 15-3-530 (2005) (applying a three-year statute of limitations to tort actions in South Carolina); S.C. Code Ann. § 15-3-530(5), (7) (Supp. 2007); S.C. Code Ann. § 15-3-530(1) (2005) (establishing a three-year limitations period for "an action upon a contract, obligation, or liability, express or implied . . ."); Dixon v. Dixon, 362 S.C. 388, 400, 608 S.E.2d 849, 854-55 (2005) (recognizing section 15-3-530 "applies to actions for fraud"); Quail Hill, LLC v. County of Richland, 387 S.C. 223, 240, 692 S.E.2d 499, 508 (2010) (setting forth the elements of "the common law tort of negligent misrepresentation"); Watters v. Terminix Servs., Inc., 376 S.C. 632, 658 S.E.2d 110 (Ct. App. 2008) (affirming the application of a three-year statute of limitations to a negligent misrepresentation action); Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 18-19, 567

S.E.2d 881, 890 (2002) (analyzing the historical origins of slander of title and holding such an action sounds in tort).

Thus, the discovery rule governs as to each of these counterclaims. See S.C. Code Ann. § 15-3-535 (Supp. 2007) (noting that the discovery rule applies to actions initiated under section 15-3-530(5)); Anonymous Taxpayer v. S.C. Dept. of Rev., 377 S.C. 425, 438-39, 661 S.E.2d 73, 80 (2008) (holding that the discovery rule applies to contract actions); RWE NUKEM, Corp. v. ENSR Corp., 373 S.C. 190, 196, 644 S.E.2d 730, 733 (2007) (holding that under the discovery rule, a cause of action for breach of contract accrues on the date the injured party discovered or should have discovered the breach). Under the discovery rule, the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist. Moore v. Benson, 390 S.C. 153, 161, 700 S.E.2d 273, 277 (Ct. App. 2010); Abba Equip., Inc. v. Thomason, 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999). The date on which discovery of the cause of action should have been made is an objective question. Moore, 390 S.C. at 161, 700 S.E.2d at 277; Joubert v. S.C. Dept. of Soc. Servs., 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). The limitations period begins to run when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. See also S.C. Code Ann. § 15-3-535 (Supp. 2007) (noting that actions initiated under section 15-3-350 "must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action"). Further, this Court has noted that:

> [W]hether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether

> the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

Young v. S.C. Dept. of Corr., 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999).

"A party cannot escape the application of this rule by claiming ignorance of existing facts and circumstances, because the law also provides that if such facts and circumstances *could have been known* to the party through the exercise of ordinary care and reasonable diligence, the same result follows." Burgess v. American Cancer Soc'y., S.C. Div., Inc., 300 S.C. 182, 185, 386 S.E.2d 798, 799 (Ct. App. 1989) (citing Tucker v. Weathersbee, 98 S.C. 402, 408-09, 82 S.E. 638, 640 (1914) (emphasis in original)). Thus, "either actual or constructive knowledge of facts or circumstances, indicative of fraud, trigger a duty on the part of the aggrieved party to exercise reasonable diligence in investigating and, ultimately, in pursuing a claim arising therefrom." Id. Lastly, "[t]he statute is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to 'act with some promptness.'" Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998) (internal citations omitted).

Here, the above rules establish that the Junks' purported counterclaims are barred by the statute of limitations. The Junks have admitted that the conduct complained of in the counterclaims occurred in November 2006. Despite knowledge of the alleged conduct, the Junks failed to bring their claims within the three-year statute of limitations for such claims. Instead, the Junks sat on their rights and waited over five years to seek relief. Contrary to the Junks' assertion, they cannot avoid application of the discovery rule by purporting to plead that they "should not have been aware of any issues with their

refinance note." {Appellants' Br. at Argument VI at p. 36}. If application of this rule could be avoided through pleading, the rule would be meaningless. Rather, as was done here, it is for the court to decide whether the facts and circumstances *could have been known* to the party through the exercise of ordinary care and reasonable diligence. The Master correctly made that determination based on the Junks' admissions at the hearing. Each counterclaim is addressed below.

A. The fraud claims were properly dismissed.

The Master properly dismissed the Junks' fraud counterclaims (defenses numbered 14, 15, and 17) based on the statute of limitations. The relief sought in these fraud counterclaims related back to the refinance and associated closing that occurred in November 2006. As a result, the claims were untimely.

The Junks admitted at the hearing that counterclaims numbers 14, 15, and 17 were each based in fraud and arose at the November 2006 closing:

> **Mr. Junk**: 14 is fraudulent inducement.
> **Mr. Crotty**: And by inducement you mean inducement to enter the loan, right?
> **Mr. Junk**: Yes.
> **Mr. Crotty**: Okay. So that has to do with the closing?
> **Mr. Junk**: Yes.

{Transcript dated 2/23/2012 at pp. 52-53; R. ___}.

> **Mr. Junk**: 15 is promissory fraud.
> . . . .
> **Mr. Crotty**: And that would have been from the inception?
> **Mr. Junk**: Yes, it's promissory fraud.

{Transcript dated 2/23/2012 at p. 53; R. ___}.

> **Mr. Crotty**: The next one [number 17] starts at Page 44.
> **Mr. Junk**: That's fraud in the factum.
> . . . .

Mr. Crotty: And that would have occurred in 2006.
Mr. Junk: The—the transaction, yes.

{Transcript dated 2/23/2012 at p. 56; R. ___}. Further, the Junks admitted that these fraud based counterclaims related "to all the claims and defenses I have against American Home Mortgage," the original lender in 2006. {Transcript dated 2/23/2012 at p. 51; R. ___}.

By Mr. Junk's own statements to the Court, the Junks admitted the allegedly actionable fraudulent conduct arose in November 2006. The above colloquies established that the Junks knew, or, at a minimum, should have known that a fraud claim might exist in 2006. The applicable three-year statute of limitations expired in November 2009. However, the Junks did not bring these fraud counterclaims until May 2011, which was more than one and a half **years** after the statute of limitations ran on this counterclaim. The Junks' purported ignorance cannot toll or otherwise save this cause of action. See Young, 333 S.C. at 719, 511 S.E.2d at 416 (holding that "whether the particular plaintiff actually knew he had a claim is not the test"). The fact of the matter is the Junks were aware, or could have been aware, of the alleged conduct at the November 2006 closing but took no action until long after the foreclosure action was filed. As a result, these claims were not brought until long after the statute of limitations expired. Thus, the claims were barred, and the Master properly dismissed these counterclaims.

B. The negligent misrepresentation claim was properly dismissed.

The Master also properly dismissed the Junks' negligent misrepresentation counterclaim (defense number 13) based on the statute of limitations. The Junks admitted the alleged negligent misrepresentation occurred at the time of the November 2006 loan closing. However, the Junks delayed and failed to bring this counterclaim

within the applicable three-year statute of limitations. The Junks admitted the negligent misrepresentation was based solely on representations made by the original lender (AHM) in the November 2006 closing of the Loan. {The Junks' Amended Answer and Counterclaim ¶63; R. ___}. At the hearing, the Junks admitted that the alleged misrepresentation at issue accrued at the 2006 closing:

> **Mr. Junk**: All right. What is the first paragraph we're dealing with?
> **Mr. Crotty**: 13th, yeah, Page 27.
> **Mr. Junk**: So, yes, 13 has to do with the closing.

{Transcript dated 2/23/2012 at p. 52; R. ___}. Further, the Junks stated the misrepresentation took place even earlier as part of the Junks' prior loan[38]:

> **The Court**: When were you tricked?
> **Mr. Junk**: I've alleged—I—at the original—twice.
> **The Court**: Okay. When is the first time?
> **Mr. Junk**: With the original note. . .
> **Mr. Crotty**: The 2005 note that he says—
> **Mr. Junk**: Yeah.

{Transcript dated 2/23/2012 at p. 31; R. ___}.

As Mr. Junk admitted, the negligent misrepresentation allegedly occurred at the time of their 2005 loan mortgage but certainly not later than the November 2006 closing of the Loan at issue in this appeal. The Junks knew, or, at a minimum, should have known, that the alleged negligent misrepresentation occurred at this time. Despite this knowledge, the Junks did not bring this counterclaim until 2011. Therefore, the statute of limitations expired prior to the initiation of this counterclaim.[39] This Court should affirm the Master's dismissal of this counterclaim.

---

[38] The Loan at issue in this appeal was a cash-out refinance of a 2005 mortgage loan in which AHM was also the original lender. The Junks received $140,267.74 cash at the November 2006 refinance.

[39] The Junks' subjective ignorance of this claim cannot toll or otherwise save this cause of action. See Young, 333 S.C. at 719, 511 S.E.2d at 416 (holding that "whether the particular plaintiff actually knew he

C. The breach of contract claim was properly dismissed.

The Master properly dismissed the Junks' breach of contract counterclaim (defense number 16). The Junks based the relief sought in this counterclaim on an allegation that their prior 2005 mortgage loan was not paid off in the November 2006 closing and that the alleged failure to satisfy the 2005 loan was a breach of a contract stemming from the 2006 loan. However, the Junks admitted the alleged breach of that contract occurred at the time of the November 2006 closing. Therefore, the Junks failed to bring this contract action within the three-year statute of limitations for such claims.

The contract relied upon to support this counterclaim was the refinanced note and mortgage. The refinance occurred in November 2006. The Junks admitted the purported breach of that contact occurred at that time:

> **The Court**: All right. And the breach of contract is the—a breach of contract between you and—
>
> **Mr. Junk**: And the refi. Yes, between American Home Mortgage who, if CitiMortgage is not a holder in due course stands in their shoes, had a condition precedent. The refi was based on satisfying the prior debt of American Home Mortgage.
> **The Court**: And when were they supposed to do that?
> **Mr. Junk**: [T]hey were supposed to do it **at the closing or with the closing**.

{Transcript dated 2/23/12 at pp. 55-56; R. ___ (emphasis added)}. This colloquy established that the Junks knew, or, at a minimum, should have known, that the claim might exist in November 2006. However, this counterclaim was not brought until 2011. The Master properly held the counterclaim was brought subsequent to the expiration of the statute of limitations. This Court should affirm.

---

had a claim is not the test"); see also Maher v. Tietex Corp., 331 S.C. at 377, 500 S.E.2d at 207. The fact of the matter is he was aware of the alleged conduct at the November 2006 closing and took no action until well after he was in default.

D. The civil conspiracy claim was properly dismissed.

The Master properly dismissed the Junks' civil conspiracy counterclaim (defense number 22). The Junks again admitted the relief sought related back to the November 2006 refinance and associated closing. Further, the Junks admitted the alleged conspiracy occurred at the time of closing. However, the Junks failed to bring this conspiracy action within the applicable three-year statute of limitations.

The Junks admitted at the hearing that this counterclaim seeks relief under a civil conspiracy theory:

> **Mr. Crotty**: Is the civil conspiracy, that's the next one—
> **Mr. Junk**: Yeah.
> . . . .
> **Mr. Junk**: I—I believe it was—it was—it was a civil conspiracy to take my money and my property . . . .

{Transcript dated 2/23/2012 at pp. 61, 63; R. ___}. The Junks further admitted the purported conspiracy arose with the closing of the loan in question. As noted at the hearing:

> **The Court**: I guess I'm just trying to understand . . . this conspiracy was—was what exactly?
> **Mr. Junk**: As I said—as I alleged before and I think I just read, it was to get my property, credit score, and name to issue securities without telling me . . . .
> **The Court**: And when did they—I mean, again, is this one that's categorized as something that happened at the closing? That's when you gave them your credit score, name . . .
> . . . . .
> **Mr. Junk**: It's—it's part of a conspiracy from the beginning.

{Transcript dated 2/23/2012 at pp. 67-69; R. ___}. As the Junks admitted, they knew that the actions and conduct of which they now complain took place at the November 2006 closing or even earlier. Further, the dialogue proved that, at a minimum, the Junks

should have known that an alleged conspiracy claim existed.[40] The statute of limitations expired in November 2009. However, the Junks did not bring any action before the expiration of that period. Therefore, the Master properly dismissed this counterclaim. This Court should affirm.

E. The Truth-In-Lending Act claim was properly dismissed.

The Master dismissed the Junks' alleged TILA counterclaim (defense number 19) on three grounds. The Master first dismissed the claim because the Junks failed to plead the required elements. {Order dated 4/24/2012 at p. 9; R. ___}. The Master also dismissed the claim because the TILA counterclaim was time-barred under the TILA rescission time limits. {Id. at pp. 10-11; R. ___}. Lastly, the counterclaim was dismissed because it was time-barred under the applicable statute of limitations. {Id. at pp. 11-12; R. ___}. The Master properly dismissed the counterclaim on these grounds and this Court should affirm these rulings from the April 24 Order.[41]

The Master's first ground for dismissal of the TILA rescission counterclaim focused on the Junks failed to plead the required elements.[42] {Order dated 4/24/2012 at

---

[40] At the hearing, the Junks did not claim that an objective person did not know, nor should he have known, that the cause of action existed as of November 2006. Rather, the Junks merely argued the limitations period does not apply because **they** claimed they did not know. {Transcript dated 2/23/2012 at p. 73 ("Mr. Junk: I didn't know . . . Mr. Barnes: he didn't know—he didn't . . . .")}. The Junks' subjective ignorance cannot toll or otherwise save this cause of action. See Young, 333 S.C. at 719, 511 S.E.2d at 416.

[41] As a threshold matter, this Court should affirm the dismissal of the TILA counterclaim based on the two-issue rule. The Junks only challenge the statute of limitations dismissal in their brief. {Appellants' Br. Argument VI at pp. 36-37}. They failed to appeal the other two grounds supporting the master's decision to dismiss the TILA counterclaim. Therefore, this failure requires this Court to affirm the Master's dismissal under the two-issue rule. See Jones, 387 S.C. at 346, 692 S.E.2d at 903.

[42] The Junks based their counterclaim on a contention that rescission was automatic. {The Junks' Amended Answer and Counterclaim ¶¶ 124-125; R. ___}. This position lacks merit. See American Mortgage Network, Inc. v. Shelton, 486 F.3d 815, 821 (4th Cir. 2007) (applying the majority rule to hold that "unilateral notification of cancellation does not automatically void the loan contract"). As the Shelton court explained, if such a right existed, then "a borrower could get out from under a secured loan simply by claiming TILA violations, whether or not the lender had actually committed any." Shelton, 486 F.3d at 821. Rather, a rescission notice from the debtor "merely advanced a claim seeking rescission." It did not establish their right to rescission. Id. (explaining rescission is not effective until the creditor or assignee consents to it or a court rules that plaintiff is entitled to rescind); see also Yamamoto v. Bank of N.Y., 329

pp. 9-10; R. ___}. Section 1635(b) of TILA provides the framework for exercising the right of rescission. In particular, when a borrower exercises a valid right to rescission, the creditor must take steps to rescind the transaction within twenty days of receipt of consumer's demand for rescission, and this obligation applies to assignees. 15 U.S.C. § 1635(b), 1641(c); 12 C.F.R. § 226.23(d)(2). Relying on the Fourth Circuit's decision to apply the majority rule rejecting unilateral rescission under TILA, courts hold that in order to properly plead a claim for rescission and to survive a motion to dismiss, the plaintiff must "plausibly allege that he or she will be able to tender the loan proceeds in the event the court orders rescission." American Mortgage Network, Inc. v. Shelton, 486 F.3d 815, 821 (4th Cir. 2007); Wordell v. Fed Nat'l Mortg. Ass'n, 2011 U.S. Dist. LEXIS 25245 at *6 (D. Md. March 11, 2011) (dismissing plaintiffs' claim for rescission because the complaint failed to specify an ability or intent to repay the loan and collecting cases holding the same); Brown v. HSBC Mortg. Corp., 2011 U.S. Dist. LEXIS 80943 at *11 (E.D. Va. July 22, 2011) (dismissing a claim for rescission because the complaint contained "no representation or indication that [p]laintiff is willing or may become able to tender the proceeds of the loan"); Mosley v. OneWest Bank, 2011 U.S. Dist. LEXIS 120647 at *15 (D. Md. Oct. 19, 2011) (finding plaintiff's allegation that she "is prepared to discuss a tender obligation, should it arise, and satisfactory ways to meet this obligation" speculative and insufficient to demonstrate that plaintiff will be able to tender the amount necessary to effectuate a rescission).

Here, the Junks failed to meet this pleading requirement. They did not plead or otherwise allege in the counterclaims that they possessed the ability to tender the loan

F.3d 1167, 1170 (9th Cir. 2003) (explaining under TILA, a lender's "security interest becomes void only when the consumer rescinds the transaction [and] [i]n a contested case, this happens when the right to rescind is determined in the borrower's favor").

proceeds as required to maintain a TILA rescission counterclaim. Moreover, the counterclaim established that the Junks do not actually seek rescission. Rather, they seek to avoid their mortgage obligation altogether while keeping the house and the $1,200,000.00 proceeds from the Loan. See Counterclaim Number 19 ¶ 130 (setting forth rescission but, rather than alleging tender, actually alleging that CitiMortgage were to "return to the Junks any money or property that has been given to anyone in connection with the loan" in direct contradiction with the nature of a true TILA rescission action). This failure to plead that the Junks had the ability to tender the loan proceeds is fatal to a TILA rescission counterclaim. Therefore, the Master properly dismissed the counterclaim on this basis. This Court should affirm.

The Junks' TILA rescission counterclaim was also time-barred. The closing occurred in November 2006. The Junks attempted rescission in March 2009. This was untimely. The regulations implementing TILA provide that when a loan is secured by a borrower's principle residence, the borrower has the right to rescind the transaction within three business days of the closing.[43] 12 C.F.R. § 226.23(a). The Junks based the entire counterclaim solely on their mistaken belief that rescission was automatic, and CitiMortgage's failure to rescind violated TILA. Id. Such a contention was incorrect and could not extend the rescission period. Therefore, the rescission period was limited to

[43] No party disputes the fact that the Junks received notice of the right to rescind at the 2006 closing and that they did not rescind within three business days of the 2006 closing. However, if "material disclosures" were not given to the borrower, then the borrower has three years to rescind. In this matter, the allegations set forth in paragraphs 120-133 of the Junks' counterclaim, even if accepted as true, do not involve "material disclosures" that can be used to extend the rescission period. Section 226.23 defines the only material disclosures that must be pleaded to extend the rescission period to three years. Those disclosures are "the annual percentage rate, the finance charge, the amount financed, the total payments, the payment schedule, and the disclosures and limitations referred to in Sec. 226.32(c) and (d)." 12 C.F.R § 226.23(a)(3). The Junks' allegations, even taken as true, do not allege any non-disclosure of these material terms. {The Junks' Amended Answer, Counterclaim, and Third-Party Complaint ¶¶ 120-133; R. ___}.

three business days. The Junks' March 2009 attempted rescission was well outside of that three-day period, and, as such, it was time-barred. This Court should affirm.

The Master also found the statute of limitations barred the Junks' TILA counterclaim for damages.[44] {Order dated 4/24/2012 at pp. 11-12; R. ___}. This Court should affirm. TILA establishes that damages claims are subject to a one-year statute of limitations that begins to run on the "date of the occurrence of the violation." 15 U.S.C. § 1640(e). "The 'date of the occurrence of the violation' is the date on which the borrower accepts the creditor's extension of credit." Wittenberg v. First Independent Mortg. Co., 2011 U.S. Dist. LEXIS 39310 (N.D. W.Va. 2011); Mosley v. Countrywide Home Loans, Inc., 2010 U.S. Dist. LEXIS 114164 (E.D. N.C. 2010); Davis v. Wilmington Fin. Inc., 2010 U.S. Dist LEXIS 29263 (D. Md. 2010).

In this matter, the date of occurrence was the November 3, 2006 closing of the Loan because the Junks accepted the extension of credit at that time. Thus, any action for damages under TILA was required to be made no later than November 2, 2007. The Junks' damages counterclaim, based on alleged failure to provide notice under the act, was not brought until May 2011. Therefore, the counterclaim is nearly four years untimely. The statute of limitations bars this counterclaim and This Court should affirm.

F. The slander of title claim was properly dismissed.

The Master properly dismissed the Junks' slander of title counterclaim (defense number 21). The Junks based this counterclaim on the filing of the foreclosure action, lis pendens, and the judicial proceedings themselves. {The Junks' Amended Answer and Counterclaim ¶¶ 140-148; R. ___}. The Master correctly found those claims cannot

[44] The Junks sought monetary damages under TILA in the counterclaim. {The Junks' Amended Answer, Counterclaim, and Third-Party Complaint ¶134; R. ___}.

support a slander of title action as a matter of law because those processes are "absolutely privileged." See Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002) (holding that judicial proceedings are absolutely privileged and cannot form the basis of a claim for slander of title); Mulherin-Howell v. Cobb, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005) (finding a claim for slander of title cannot be established when based on the filings of pleadings in the underlying action). This Court should affirm.

VIII. The Master properly granted the Third-Party Defendants' motions for relief from the entry of default and properly denied the Junks' motion for default judgment.

A. The Master properly granted Third-Party Defendant Colonial Coast Title Agency's motion to set aside entry of default.

The Master properly granted Third-Party Defendant Colonial Coast Title Agency's motion to set aside the entry of default because Colonial Coast demonstrated good cause for granting the relief, and the Junks could not articulate any prejudice. The order should be affirmed.

A court may set aside an entry of default for "good cause shown." Rule 55(c), SCRCP. The standard for relief from the entry of default under Rule 55(c) is less rigorous than the standard for relief from a default judgment under Rule 60(b). Sundown Operating Co., Inc. v. Intedge Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009); see also Top Value Homes, Inc. v. Harden, 319 S.C. 302, 306, 460 S.E.2d 427, 429 (Ct. App. 1995) (explaining that under Rule 55(c), courts exercise a "a broader, more liberal discretion than otherwise would be exercised under Rule 60(b)"). To demonstrate "good cause," a party must "provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." Sundown, 383 S.C. at 607, 681 S.E.2d at 888.

"Once a party has put forth a satisfactory explanation for the default, the trial court must also consider (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." Id. at 607-08, 681 S.E.2d at 888 (citing Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989)). "Prejudice is not significant unless it is something greater than would be experienced by the ordinary litigant in being required to litigate on the merits." 10 James Wm. Moore et al., Moore's Federal Practice ¶ 55.70 [2][c] (3d. ed. 2010).

"The decision whether to set aside an entry of default or default judgment lies solely within the sound discretion of the trial judge." Sundown, 383 S.C. at 606, 681 S.E.2d at 888. "The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." Id. "An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support." Id. at 607, 681 S.E.2d at 888.

Here, the Junks have failed to make a clear showing that the Master abused his discretion in granting Colonial Coast's motion for relief from entry of default. The motion was filed before the entry of a default judgment and was supported by the affidavits of Susan P. McWilliams. Ms. McWilliams explained that Colonial Coast is owned by Nexsen Pruet LLC, and that she was general counsel for Nexsen Pruet LLC at the time the third-party complaint was served. {Affidavits of Susan P. McWilliams; R. ___}. Ms. McWilliams stated that she never received a hard copy of the third-party

complaint and she did not recall seeing an email forwarding the third-party complaint to her. Id.

After learning of the entry of default, Ms. McWilliams searched her emails and discovered that the third-party complaint was emailed to her on or about June 22, 2011. Id. This was the same week that she was out of the office dealing with a very serious family medical emergency. Id. On August 24, 2011, the day that Ms. McWilliams learned of the existence of the third-party complaint, she retained outside counsel to file a motion on behalf of Colonial Coast setting aside the entry of default. Id. Ms. McWilliams did not learn of the entry of default sooner because the Certificate of Default submitted by the Junks to the Clerk of Court on or around August 2, 2011, was never served on Colonial Coast. Id.

Given these facts, the Master properly determined that Colonial Coast satisfied the good cause standard. Colonial Coast provided an explanation for the entry of default and gave reasons why the vacation of the default entry would serve the interests of justice. The Master also considered and correctly applied the factors set forth in Wham. Colonial Coast acted promptly in seeking the relief, filing the motion on the day it learned of the existence of the third-party complaint. Colonial Coast set forth meritorious defenses, including the statute of limitations. Additionally, the Junks could not articulate any prejudice that would result from the granting of the relief requested. When Mr. Junk was asked at the hearing whether he could assert any prejudice as to the motion to set aside of entry of default filed by another third-party defendant, Mr. Junk admitted that he could not. {Tr. 66:9-13; R. ___}. Similarly, when asked to articulate the prejudice as to Colonial Coast, Mr. Junk stated: "The prejudice is that we did everything proper under

the rules." {Tr. 93:14-19; R. ___}. Doing everything proper under the rules does not constitute prejudice.

Indeed, in their brief to this Court, the Junks do not provide any argument or analysis as to how the Master allegedly abused his discretion or how the Junks were prejudiced by the granting of the relief. Instead, the Junks recite case law regarding the legal standard for granting relief from the entry of default. They then cite the case of Roberts v. Peterson, 292 S.C. 149, 355 S.E.2d 280 (Ct. App. 1987), for the proposition that negligence of an attorney or insurance company is imputed to a defaulting litigant and cannot constitute good cause under Rule 55(c). But Roberts does not involve Rule 55(c) and the good cause standard. It involves a motion for relief from entry of default judgment under Rule 60. Further, Roberts does not stand for the proposition that attorney negligence can never constitute good cause. Instead, it stands for the proposition that negligence in the failure to act "is more excusable" in cases involving non-lawyers than in cases involving lawyers. In any event, Roberts does not apply here because there was no finding of attorney negligence, and Ms. McWilliams was not acting as the lawyer for Colonial Coast. Ms. McWilliams hired outside counsel to file the motion to set aside the entry of default.

Because the Junks have failed to make a clear showing of abuse of discretion, the Master's order granting the motion to set aside the entry of default should be affirmed.

B. The Junks have abandoned their right to appeal the Master's ruling lifting the entry of default as to Heller and Jones.

The Junks' brief does not address that portion of the Master's February 22 Order granting Third-Party Defendants Heller and Jones' motion to set aside entry of default. The Master held that though the dismissal of the third-party complaint rendered moot any

default issue against Heller and Jones, Heller and Jones met the standard for lifting the entry of default because they established "good cause," acted promptly in filing their Motion to Set Aside Entry of Default, and set forth meritorious defenses. {Order filed 2/22/2012 at p. 15; R. ___}. In addition, the Master held the Junks were unable to show prejudice. {Id.}. In fact, at the January 7, 2012 hearing, when the Junks were asked by the Court if they could assert any prejudice in the setting aside of the default as to Heller and Jones, Mr. Junk stated, "On this one, no, we have no issue with this one." {Transcript dated 1/17/2012, at p. 66; R. ___}.

Because the Master's grant of Heller and Jones' motion was not contested by the Junks at the hearing, was not addressed in the Junks' Statement of Issues on Appeal, and is not addressed anywhere in their brief, the issue is abandoned as a matter of law. "Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal." Rule 208(b)(1)(B), SCACR. "Every ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to 'grope in the dark' to ascertain the precise point at issue." Jones, 387 S.C. at 346, 692 S.E.2d at 903 (quoting Elam v. S.C. Dep't of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004)); see also Cannon v. Cannon, 321 S.C. 44, 54, 467 S.E.2d 132, 138 (Ct. App. 1996) (holding that failure to raise issue in brief constitutes abandonment of the issue on appeal).

Because the Junks have abandoned any argument regarding the lifting of the entry of default as to Heller and Jones, the February 22 Order setting aside the entry of default as to those Third Party Defendants is the law of the case and must be affirmed.

C. The Master properly denied the Junks' motion to hold AHMH in default because the motion was moot.

The Junks claim that the Master erred in the May 2 Order by denying their motion to hold AHMH in default despite that fact that the third party complaint, which purported to make AHMH a party in the action, had been dismissed in its entirety by virtue of the February 22 Order. {Appellants' Br. Argument VIII at pp. 38-40}. In the May 3 Order, the Master denied the default motion "as it is moot due to the order granting the motion to dismiss the third party complaint being issued on February 22, 2012." {Order dated 5/3/2012; R. ___}. The Junks now assert that their default motion was subject to the exceptions to the mootness doctrine. {Appellants' Br. Argument VIII at pp. 38-40}. This argument lacks merit for two reasons. First, the Junks failed to preserve this argument for review by this Court. Second, the motion was mooted by the dismissal of the Junks' third-party complaint in its entirety, which necessarily dismissed any claims against AHMH. This Court should affirm.

The Master addressed the Junks' motion to hold AHMH in default at the hearing held on February 23, 2012. {Transcript dated 2/23/2012, at pp. 7-12; R. ___}. At that hearing, the Junks only argued the motion was not moot. {Id.}. They never argued any of the exceptions to the mootness doctrine that are presented for the first time in their brief to this Court. In addition, because these arguments were never presented, the Master has never ruled on them. Thus, this issue is not preserved for review. See I'On, 338 S.C. at 422, 526 S.E.2d at 724; Wilke, 330 S.C. at 76, 497 S.E.2d at 733; Morris, 349 S.C. at 611 n.4, 564 S.E.2d at 651 n.4. Therefore, this Court should decline to address this argument.

Additionally, the Master held that the dismissal of the Junks' third-party complaint, in which AHMH was a named Third-Party Defendant, rendered the default motion moot. The dismissal of the third-party complaint in its entirety rendered the Junks' default judgment motion nonjusiticiable because any decision by the Master on that motion would not have any practical effect in the action as AHMH was already out of the case pursuant to the February 22 Order. Thus, any opinion from this Court addressing the denial of the motion for default judgment relating to the now void pleading would be merely advisory and improper. It is well-settled that courts will not pass on moot and academic questions or make an adjudication where there remains no actual controversy. Jackson v. State, 331 S.C. 486, 489 S.E.2d 915 (1997). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy." Curtis v. State, 345 S.C. 557, 567-68, 549 S.E.2d 591, 596 (2001). Thus, even if this Court were to reverse the May 2 Order, the Junks would be afforded no relief. AHMH could not be held in default on remand as there is no action pending against it at the trial level. Thus, it is impossible for this Court to grant effectual relief to the Junks. As a result, the Junk's motion for default as to AHMH was properly denied as being moot. This Court should reject the Junks' arguments and affirm.

Conclusion

Based on the foregoing, this Court should affirm the orders dated February 22, 2012, April 24, 2012, and May 3, 2012.

{Signature Pages Follows}

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

B. Rush Smith III
SC Bar No. 012941
Brian P. Crotty
SC Bar No. 16983
Michael J. Anzelmo
SC Bar No. 72933
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, South Carolina 29201
803.799.2000

Attorneys for Respondent/Counterclaim Respondent CitiMortgage, Inc., and Third-Party Respondents Bayview Loan Servicing, LLC, MERSCORP Holdings, Inc. f/k/a Merscorp, Inc., Mortgage Electronic Registration Systems, Inc., CitiMaster Servicing, Citigroup Global Markets Realty Corp., and Citigroup Mortgage Loan Trust, Inc., Jennifer Oakes, and Robert G. Hall.

Columbia, South Carolina

February 21, 2013

By:_____
John T. Lay
Childs C. Thrasher
Gallivan, White & Boyd, P.A.
P.O. Box 7368
Columbia, SC 29202
803-779-1833

Attorneys for Third-Party Respondents Riley Pope & Laney, LLC, Heidi Carey, Esq., Roy Laney, Esq., and T. Lowndes Pope, Esq.

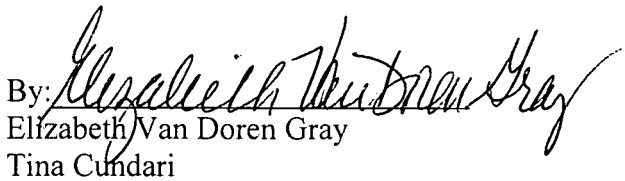
By: _____
Sean Michael Bolchoz
Bolchoz Law Firm, PA
PO Box 828
Bluffton, SC 29910

Attorneys for Third-Party Respondents Security Connections, Inc., and Krystal Hall

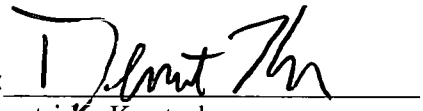
By: Amanda C. Williams

Susan Taylor Wall
Amanda C. Williams
McNair Law Firm
P.O. Box 1431
Charleston, SC 29402

Attorneys for Third-Party Respondents ABC Appraisal Group, Inc., Mark A. Ruplinger, Linda Heller, and Harry Jones

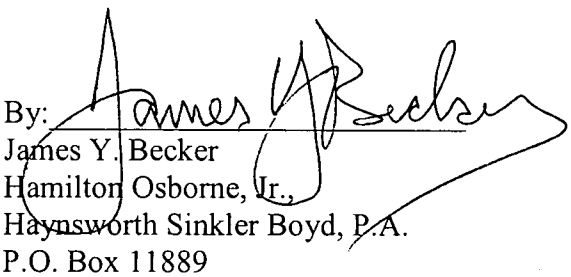
By: 
Elizabeth Van Doren Gray
Tina Cundari
Sowell Gray Stepp & Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211
803-929-1400

Attorneys for Third-Party Respondent Colonial Coast Title Agency, Inc.

By: 

Demetri K. Koutrakos
Callison Tighe & Robinson, LLC
P.O. Box 1390
Columbia, SC 29202
(803) 404-6900

Attorneys for Third-Party Respondents
Fidelity National Title Insurance Company,
successor by merger to Lawyers Title Insurance Corporation

By: 
James Y. Becker
Hamilton Osborne, Jr.,
Haynsworth Sinkler Boyd, P.A.
P.O. Box 11889
Columbia, SC 29211-1889

Attorneys for Third-Party Respondents Corelogic, Inc.