

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

ANNETTE JOHNSON AND
HAROLD JOHNSON, ET AL.,

Appellants,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D10-6223

v.

HSBC BANK USA, NATIONAL
ASSOCIATION, AS TRUSTEE
FOR HOME EQUITY LOAN
TRUST SERIES ACE 2005-HE5,

Appellee.

Opinion filed June 2, 2011.

An appeal from the Circuit Court for Duval County.
Michael R. Weatherby, Judge.

Annette Johnson, pro se; Harold Johnson, pro se, Appellants.

Dean A. Morande and Michael K. Winston of Carlton Fields, P.A., West Palm
Beach, for Appellee.

PER CURIAM.

Upon consideration of the appellants' response to the Court's order of
January 7, 2011, as well as the attached documents, the Court has determined that

this appeal is premature. On May 6, 2009, the lower tribunal granted a motion to dismiss the appellants' counterclaims. However, because it did so without prejudice to amend, the order failed to actually dispose of the counterclaims. Augustin v. Blount, 573 So. 2d 104 (Fla. 1st DCA 1991) (noting that the appellant's proper course is to request entry of a final order which may be appealed); Ponton v. Gross, 576 So. 2d 910 (Fla. 1st DCA 1991). Although a great deal of litigation has followed entry of the Order Granting Plaintiff's Motion to Dismiss Counterclaims, including the entry of the Final Summary Judgment of Mortgage Foreclosure without mention of the counterclaims, the fact that the counterclaims remain pending, whether through oversight or by design, renders this appeal premature.

DAVIS, LEWIS, and WETHERELL, JJ., CONCUR.