

68408

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master in Equity

Mikell R. Scrborough, Master in Equity, Charleston County

Case No.: 2005-CP-10-1224

Green Tree Servicing, LLC as servicer for Bankers Trust Company
of California, N.A Respondent
v.

Isaih Ulmer and Deborah J. Ulmer Appellant.

MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS

B. LINDSAY CRAWFORD, III
THEODORE VON KELLER
SARA C. HUTCHINS
CRAWFORD & VON KELLER, LLC
POST OFFICE BOX 4216
COLUMBIA, SOUTH CAROLINA 29240
(803) 790-2626
ATTORNEYS FOR RESPONDENT

RECEIVED

MAY 1 6 2013

SC Court of Appeals

The Notice of Appeal filed on April 9, 2013, states that the Appellants are appealing the following orders: (1) Order Dismissing Motion to Set Aside Sale dated January 28, 2013 and filed February 13, 2013; (2) Master's Order of Sale and Disbursement dated July 13, 2012 and filed July 18, 2012; and (3) Master's Order and Judgment of Foreclosure and Sale dated November 13, 2007, and filed on November 14, 2007.

Rule 203(b), SCACR requires that a notice of appeal be served on all respondents within thirty (30) days after receipt of written notice of the entry of the order of judgment. The requirement of service of the notice of appeal within 30 days after receiving written notice of the entry of a final order or judgment is jurisdictional, and if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal. USAA Property and Casualty Insurance Company v. Clegg, 377 S.C. 643, 661 SE.2d 791 (2008) Furthermore, the appellate court has no authority or discretion to rescue the delinquent party by extending or ignoring the deadline for service of the notice. Id

(1) Order Dismissing Motion to Set Aside Sale dated January 28, 2013 and filed February 13, 2013

As to the Order Dismissing Motion to Set Aside Sale dated January 28, 2013 and filed February 13, 2013, the appellants' service of the notice of appeal on April 9, 2013 is untimely. A copy of the Order Dismissing the Motion to Set Aside Sale was served on Brian N. Davis on February 22, 2013 via U.S. Mail. See Exhibit J. Additional copies of the order were provided to Mr. Davis on February 22, 2013 via facsimile and e-mail. See Exhibit J. The Notice of Appeal was served forty-six days after written notice of the entry of the order. Pursuant to 203(b), SCACR , the appeal of said order is untimely and this Court has no jurisdiction to consider the appeal.

(2) Master's Order of Sale and Disbursement dated July 13, 2012 and filed July 18, 2012

As to the Master's Order of Sale and Disbursement dated July 13, 2012 and filed July 18, 2012, the appellants' service of the notice of appeal on April 9, 2013, is also untimely. Written notice of the Master's Order of Sale and Disbursements was provided to Mr. Davis, as attorney for appellants by the Office of the Clerk of Court for Charleston County on July 18, 2012. See Exhibit G. Therefore, the subject notice of appeal was served eight months and twenty-two days after receipt of the written notices of the entry of the order. Pursuant to 203(b), SCACR, the appeal of said order is untimely and this Court has no jurisdiction to consider the appeal.

(3) Master's Order and Judgment of Foreclosure and Sale dated November 13, 2007, and filed on November 14, 2007

As to the Master's Order and Judgment of Foreclosure and Sale dated November 13, 2007 and filed November 14, 2007, the appellant's service of the notice of appeal on April 9, 2013 is untimely. Respondent served the Master's Order and Judgment of Foreclosure and Sale on Appellants on two occasions, the first being on March 21, 2012 and the second being June 14, 2012. See Exhibits D and E Therefore, the subject notice of appeal was served one year and nineteen days after receipt of the first written notice of entry of the order. Pursuant to 203(b), SCACR , the appeal of said order is untimely and this Court has no jurisdiction to consider the appeal.

CONCLUSION

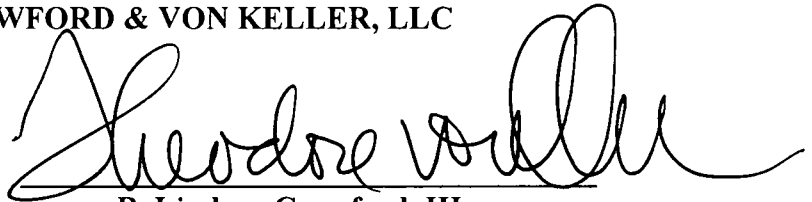
For the reasons stated, this Court should dismiss the appeal..

Respectfully submitted,

May 14, 2013

CRAWFORD & VON KELLER, LLC

BY:

A handwritten signature in black ink, appearing to read "Theodore von Keller", written over a horizontal line.

B. Lindsay Crawford, III

Theodore von Keller

Sara C. Hutchins

Adam Schanz

Post Office Box 4216

Columbia, South Carolina 29240

Telephone: (803) 790-2626

Attorney for Respondent