THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, Master-in-Equity

Appellate Case No. 2025-000506

Wells Fargo Bank, N.A. ····· Respondent,

v.

Michael G. Morgan; Margaret H. Fitch, M.D.; Eric J. Olig; South Carolina Department of Revenue; Linda Lawrence Bowen; Defendants,

Of which Michael G. Morgan is the ····· Appellant.

RESPONDENT'S MOTION TO DISMISS APPEAL

Stacie C. Knight
S.C. Bar No. 77968
WINSTON & STRAWN LLP
300 South Tryon Street, 16th Floor
Charlotte, North Carolina 28202
(704) 350-7700
sknight@winston.com

Attorneys for Respondent Wells Fargo Bank, N.A.

This appeal stems from an action filed in 2015 in Aiken County, which seeks to foreclose on a mortgage Appellant Michael G. Morgan executed in April 2008. Morgan has not made a payment on the underlying loan since 2011. Nonetheless, throughout the course of the litigation, he has embarked on a strategy designed to prevent a ruling on the merits of the foreclosure action so that he can retain possession of the subject property, payment-free, as long as possible. His Notice of Appeal is the latest such attempt.

In the Notice of Appeal, Morgan states that he is appealing the Master-in-Equity's February 28, 2025 Order denying his Amended Motion to Withdraw and Strike the Stipulation Dismissing Counterclaims, Consenting to Foreclosure, and Waiving Deficiency (the "Amended Motion to Withdraw the Stipulation of Dismissal" or "Amended Motion"). As shown below, the February 28, 2025 Order is a non-appealable interlocutory order. Accordingly, pursuant to Rules 201(a) and 240 of the South Carolina Rules of Appellate Procedure, Respondent Wells Fargo Bank, N.A. ("Wells Fargo"), moves to dismiss this appeal.

BACKGROUND

On or about April 25, 2008, Wachovia Mortgage FSB ("Wachovia") made a loan (the "Loan") to Morgan as evidenced by an adjustable-rate note (the "Note") Morgan executed on the same date in the original amount of $1,300,000.00. Appendix at 002. The maturity date of the Note is May 15, 2038. *Id*. The Note is secured by a mortgage (the "Mortgage") executed by Morgan in favor of Wachovia on the same date pursuant to which Morgan granted a lien on and a security interest in real property located at 415 Chesterfield Street South, Aiken, South Carolina 29801 (the "Property"). *Id*. at 002–003. The Mortgage was recorded on or about May 6, 2008, in the real property recording office in Aiken County, South Carolina at Book No. 4201, Page 1737. *Id*. at 003. Wells Fargo is Wachovia's successor in interest. *Id*.

Morgan has made no payments on the Loan since 2011. Appendix at 011, ¶ 4. On or about December 2, 2015, Wells Fargo filed the underlying foreclosure action in the Aiken County Court of Common Pleas. Appendix at 003. Morgan filed several counterclaims in response. After Wells Fargo moved to dismiss those counterclaims, Morgan filed an amended answer and counterclaim on May 10, 2018, asserting a single counterclaim entitled titled "Violation of Attorney Preference Statute with Unconscionability." Appendix at 016–021. Wells Fargo again moved to dismiss, and on August 24, 2018, the Circuit Court granted Wells Fargo's motion to dismiss the counterclaim with prejudice and later, referred the case to the Master-in-Equity. On September 1, 2021, this Court reversed the dismissal of Morgan's counterclaim, holding that, at the pleading stage, and assuming all pled facts as true, Morgan adequately pled his Attorney Preference claim. *Wells Fargo Bank, N.A. v. Morgan*, No. 2018-002068, 2021 WL 3910274 (S.C. Ct. App. Sept. 1, 2021).

After the underlying case was remanded and reopened in the Circuit Court, Wells Fargo filed an amended complaint on May 31, 2022. Appendix at 022–037. On June 15, 2022, Morgan filed an answer and replead the lone counterclaim for violation of the Attorney Preference Statute. *Id*. at 038–048.

Following extensive written and deposition discovery, the parties participated in a 7-hour, in-person mediation with Karl S. Folkens on March 31, 2023. *Id*. at 003; *see also id*. at 049–050, ¶¶ 4-5; *id*. at 070, ¶ 8. Both parties were represented by counsel. *Id*. at 003; *see also id*. at 049–050, ¶¶ 4-5; *id*. at 070, ¶¶ 8-9. The parties reached an agreement in principle, which was memorialized in a written agreement (the "Mediation Agreement") signed by Morgan; Morgan's then-counsel, Drew Radeker; Wells Fargo's Senior Company Counsel; and the undersigned counsel for Wells Fargo. *Id*. at 003; *see also id*. at 049–050, ¶¶ 4-5; *id*. at 070, ¶ 9; *id*. at 077–079. The key provisions were:

1. Wells Fargo shall pay to Morgan … the sum of $200,000.00 within thirty (30) days of this agreement.

2. Wells Fargo will proceed with the foreclosure action uncontested by Morgan, and Morgan will dismiss his counterclaims with prejudice.

3. The judicial foreclosure sale will be set no sooner than September 1, 2023, and Wells Fargo waives any deficiency judgment.

4. Morgan shall have the right prior to the judicial foreclosure sale to pay $1.3 million in certified funds or wired funds to Wells Fargo to pay the note and mortgage in full …

Id. As set forth in the Mediated Settlement Agreement, the parties acknowledged "that a more comprehensive release will be executed incorporating the terms of this Agreement." *Id*. Morgan was also informed that he would be required to execute a W-9 in order to receive his settlement payment. *Id*. at 071, ¶ 10.

Thereafter, the parties executed a written Confidential Settlement Agreement and Release (the "Settlement Agreement"). *Id*. at 003; *see also id*. at 049–050, ¶¶ 4-5; *id*. at 074, ¶ 26; *id*. at 226–240. Morgan signed the Settlement Agreement on May 24, 2023, and Wells Fargo's Senior Company Counsel signed it on May 26, 2023. *Id*. at 003; *see also id*. at 049–050, ¶¶ 4-5; *id*. at 074, ¶¶ 23, 25; *id*. at 226–240. The Settlement Agreement states, in pertinent part:

> 2. Settlement Payment by Wells Fargo Bank, N.A. Wells Fargo shall deliver to Morgan's Counsel the sum of Two Hundred Thousand and No/100 Dollars ($200,000.00) (the "Wells Fargo Payment") by check made payable to Morgan and Morgan's counsel within 14 days of the latter of the following events: (a) receipt by Wells Fargo's Counsel of one original counterpart of this Agreement executed by Morgan as set forth in Paragraph 1 of this Agreement; and (b) receipt by Wells Fargo's Counsel of completed 2023 W-9 tax forms for Morgan and Morgan's Counsel as set forth in Paragraph 1 of this Agreement. Electronic copies of said documents shall be acceptable.
>
> 3. Dismissal with Prejudice. Within five (5) business days of receipt of the Wells Fargo Payment, Morgan shall cause Morgan's Counsel to dismiss the Counterclaim with prejudice. From and after the execution of this Agreement,

> Morgan agrees to take no further action to prosecute the Counterclaim against Wells Fargo or otherwise impede the conclusion of the Litigation.

Id. at 003-004; *see also* id. at 227. The Settlement Agreement further states at paragraph 8:

> a. Foreclosure Sale. Wells Fargo agrees that a foreclosure sale of the Property will not occur before September 5, 2023.
>
> b. Morgan Settlement Payment. On or before September 4, 2023 at 11:59 p.m. EST, Wells Fargo will accept payment from or on behalf of Morgan, in the form of certified funds or wire transfer, in the amount of One Million Three Hundred and No/100 Dollars ($1,300,000.00) in exchange for a release of the Mortgage and full satisfaction of the Loan (the "Morgan Settlement Payment"). Morgan acknowledges that Wells Fargo may report any forgiveness of debt resulting from the Morgan Settlement Payment in accordance with the requirements of the Internal Revenue Service and any applicable state tax law. Within the time permitted by law after its receipt of the Morgan Settlement Payment, Wells Fargo shall record a Reconveyance / Release of Mortgage / Satisfaction of Mortgage in the County of Aiken, State of South Carolina.
>
> c. Departure Date. Should Morgan fail to make the Morgan Settlement Payment in accordance with Paragraph 8.b., then (i) Wells Fargo shall proceed with the foreclosure sale; (ii) Morgan waives all rights, title, and interest in the Property, including any right to redeem the Property; and (iii) Morgan and all other occupants of the Property shall vacate the Property by 9:00 a.m. EST on September 6, 2023 (the "Departure Date"), after which Morgan and all other occupants of the Property shall be deemed to be trespassers on the Property and Wells Fargo will have the unqualified right to enforce its right of possession.

Id. at 004; *see also id*. at 228.

Morgan received and accepted the $200,000.00 payment from Wells Fargo on June 7, 2023. *Id*. at 004; *see also id*. at 049–050, ¶¶ 4-5; *id*. at 074, ¶ 27; *id*. at 242–43. On July 13, 2023, Morgan's then-attorney, Mr. Radeker, filed the Stipulation Regarding Dismissal of Counterclaims, Consent to Foreclosure, and Waiver of Deficiency Judgment (the "Stipulation of Dismissal") on Morgan's behalf. *Id*. at 004; *see also id*. at 258–59. Consistent with the Mediation Agreement and the Settlement Agreement, that document specified that Morgan's counterclaims were being dismissed with prejudice:

a) Defendant Morgan's counterclaims are dismissed with prejudice;

b) Defendant Morgan consents to the entry of a deficiency-waived foreclosure judgment and withdraws his defenses to the same; and

c) The Plaintiff waives its right to have a personal money judgment (i.e., deficiency judgment) against Defendant Morgan.

Id.

Morgan did not make the $1.3 million "short payment" on the Loan by September 4, 2023, and he has not paid any amount to Wells Fargo as a result of either the Mediation Agreement or the Settlement Agreement. *Id*. at 004. Nor has he vacated the Property. Instead, he has continued to live there, payment-free, as he has done since 2011. Pursuant to the parties' written agreement, Wells Fargo scheduled the final foreclosure hearing for September 6, 2023. *Id*. On the eve of the hearing, Morgan filed a bankruptcy petition, which stayed the underlying action. *Id*. Wells Fargo filed a motion for relief from stay on January 11, 2024. *Id*.; *see also id*. at 050, ¶ 7; *id*. at 261–70. On January 25, 2024, Morgan filed an objection to the motion for relief from stay, wherein he claimed—without supporting evidence—that the Settlement Agreement was not binding on him because he made handwritten changes to the agreement that were not reflected in the final document. *Id*. at 272–279.

The Bankruptcy Court held a hearing on Wells Fargo's motion for relief from stay on May 16, 2024. Morgan appeared and was represented by a new attorney, W. Harrison Penn. *Id*. at 004, 054. At the hearing, Morgan testified that he had made handwritten changes to the Settlement Agreement he signed on May 24, 2023 before he returned the document to his then-attorney, Mr. Radeker, and that those changes were not in the final agreement. *Id*. at 056–057. Morgan notably presented no documentary evidence in support of his allegations, including a copy of the handwritten changes he claimed he made to the Settlement Agreement. *Id*.

The Bankruptcy Court rejected Morgan's allegations. As it concluded:

> The Settlement Agreement transmitted to [Wells Fargo] by [Morgan's] counsel and signed by [Wells Fargo] on May 26, 2023, does not include the changes allegedly made by [Morgan] on May 24, 2023. ***Nothing was submitted into evidence to substantiate [Morgan's] claims that he made handwritten amendments to the Settlement Agreement***.

Id. (emphasis added).

On April 9, 2024, the Bankruptcy Court granted Wells Fargo's motion for relief from stay based on its conclusion that the Settlement Agreement was enforceable and that Morgan was bound by its terms. *Id*. at 054–067. Specifically, the Bankruptcy Court found that Morgan was bound by the actions of his then-attorney, Mr. Radeker, and that his attempt to void the Settlement Agreement was without merit. *Id*. at 062–063. As the Court explained:

> There is no dispute that [Mr. Radeker] transmitted the Settlement Agreement to opposing counsel bearing [Morgan's signature and the opposition relied on that Settlement Agreement, [Wells Fargo] made the $200,000.00 payment that [Morgan] accepted in exchange for the releases set forth therein, and otherwise relied on the agreement. There is nothing in the record sufficient to convince the Court that there was a mistake or fraud sufficient to repudiate the agreement. [Morgan] is bound by the Settlement Agreement.

Id. at 063.

Following the Bankruptcy Court's order granting Wells Fargo's motion for relief from stay, the Circuit Court restored the underlying action to its active docket on May 17, 2024. Morgan then hired yet another attorney – his third – John W. Harte, and on July 12, 2024, Mr. Harte filed a motion, pursuant to Rules 41 and 60(b) of the South Carolina Rules of Civil Procedure, to withdraw and strike the Stipulation of Dismissal Mr. Radeker filed on Morgan's behalf on July 13, 2023. Later the same day, Mr. Harte filed the Amended Motion to Withdraw Stipulation of Dismissal. *Id*. at 281–284. The Amended Motion claimed—without any supporting affidavits, evidence, or caselaw—that the Stipulation of Dismissal Mr. Radeker filed on Morgan's behalf was void because (1) it was "filed without [Morgan's] consent," (2) it "ha[d] not been accepted or

approved by the Court … and [was] therefore without prejudice and [was] voidable by [Morgan] at [Morgan's] option," and (3) "there [was] no consideration for the stipulation." *Id*. As the Master-in-Equity noted, the Amended Motion made no mention of the Settlement Agreement, the $200,000 payment Wells Fargo had made to Morgan pursuant to the Settlement Agreement, or the Bankruptcy Court's order. *Id*. at 005; *see also id*. at 281–284.

Wells Fargo filed an opposition to the Amended Motion, with supporting affidavits and evidence, on August 12, 2024. *Id*. at 049–280. On October 11, 2024, two business days before the hearing, Morgan's new counsel served (but never filed) an Affidavit of Michael Morgan on Wells Fargo's counsel. *Id*. at 002. Wells Fargo moved to strike that affidavit as untimely under Rule 6 of the South Carolina Rules of Civil Procedure. *Id*. The Master-in-Equity held a hearing on the Amended Motion on October 15, 2025. Morgan appeared, but notably did not testify. On February 28, 2025, the Master-in-Equity entered the Order denying the Amended Motion in its entirety. *Id*. at 001–009

The Master-in-Equity first rejected Morgan's argument that the Stipulation of Dismissal was "voidable" at his option because it "ha[d] not been accepted or approved by the Court … and [was] therefore without prejudice." *Id*. at 005–006. As the Master reasoned, Rule 41(a)(2) of the South Carolina Rules of Civil Procedure did not apply because the dismissal of the counterclaims with prejudice was by agreement of the parties and not through an order of the court. *Id*. at 006. The Master also rejected Morgan's attempt to rescind the Stipulation of Dismissal pursuant to Rule 41(a)(1)(B) of the South Carolina Rules of Civil Procedure. *Id*. As the Master explained, that rule "would not allow Morgan to rescind his dismissal of the counterclaims" because the Stipulation of Dismissal "specifically states the dismissal of the counterclaims is with prejudice." *Id*.

The Master-in-Equity also rejected Morgan's argument that the Stipulation of Dismissal should be voided or rescinded under Rule 60(b)(1) because it was entered without his knowledge or consent. *Id*. at 007–008. As the Master reasoned, because Morgan presented no evidence in support of his allegations, and because he was bound by the actions of his then-attorney, Drew Radeker, Morgan had not met his burden under Rule 60(b)(1) and the Settlement Agreement and Stipulation of Dismissal were valid and enforceable:

> While [Morgan] alleges he was not aware of the stipulation being filed, he participated in a mediation which led to the execution of the Mediated Settlement Agreement. That document states, "[Wells Fargo] will proceed with the foreclosure action uncontested by [Morgan], and [Morgan] will dismiss his counterclaims with prejudice." This document is dated March 31, 2023. In May 2023, [Morgan] executed the Confidential Settlement Agreement and Release. Both parties were represented by counsel and [Wells Fargo] has submitted a chain of emails concerning the negotiations the attorneys conducted before the final agreement was submitted. There is no evidence [Morgan] questioned the payment of $200,000.00 to him and he retained that payment as part of the settlement. The settlement agreement expressly states the counterclaims will be dismissed with prejudice and that was filed on July 13, 2023.
>
> [Morgan] has failed to show any mistake or inadvertence related to the mediation, settlement documents, the payment to [Morgan], and the stipulation of dismissal filed by his attorney. Any relief requested pursuant to Rule 60 (b)(1) is denied.

Id. at 008.

On February 28, 2025, just a few hours after the Master-in-Equity entered the February 28, 2025 Order that is the subject of this appeal, Wells Fargo filed and served a Notice of Hearing, setting the final foreclosure hearing for March 12, 2025 at 10:00 a.m. *Id*. at 285–287. Morgan filed his Notice of Appeal on March 5, 2025.

ARGUMENT

The February 28, 2025 Order is a non-appealable, interlocutory order. The appeal should be dismissed.

"As a general rule, only final judgments are appealable." *Culbertson v. Clemens*, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996) (citation omitted); *see also* S.C. R. App. P. 201(a) ("Appeal may be taken, as provided by law, from any final judgment, appealable order or decision."). "A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution." *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (S.C. Ct. App. 2017) (citing *Good v. Hartford Acc. & Indem. Co*., 201 S.C. 32, 41–42, 21 S.E.2d 209, 212 (1942)). Accordingly, "[a]n order reserving an issue, or leaving open the possibility of further action by the trial court before the rights of the parties are resolved, is interlocutory." *Id*. (citation omitted).

The February 28, 2025 Order did not end the underlying foreclosure action, nor did it "leave[] the court with nothing to do but enforce the judgment by execution." *Tillman*, 420 S.C. at 249, 801 S.E.2d at 759. As shown above, Morgan's relentless stall tactics have prevented the Master-in-Equity from conducting a final foreclosure hearing and entering a final judgment. Accordingly, because further action by the Master-in-Equity is required, the February 28, 2025 Order is not a final judgment. It is an interlocutory order.

The determination of whether a party may immediately appeal an interlocutory order is governed primarily by S.C. Code Ann. § 14–3–330. "An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable." *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 708 (2005) (citations omitted). As the South Carolina Supreme Court has observed, § 14–3–330 "[has] been narrowly construed and immediate

appeal of various orders issued before or during trial generally has not been allowed. Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial." *Id*. at 196, 607 S.E.2d at 709 (citation omitted). Accordingly, "[a]n order is not immediately appealable when appellants have not arrived at the end of the road and would be able to appeal the decision after the trial is finished." *Watson v. Underwood*, 407 S.C. 443, 459, 756 S.E.2d 155, 163 (S.C. Ct. App. 2014) (quotations and citation omitted).

Only two subsections of § 14–3–330 are potentially relevant here, subsections (1) and (2).[1] Subsection (1) allows for the immediate appeal of an order "involving the merits." S.C. Code Ann. § 14–3–330(1). An order involves the merits when it "finally determine[s] some substantial matter forming the whole or a part of some cause of action or defense … ." *Mid-State Distribs., Inc. v. Century Importers, Inc*., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (quotations and citation omitted). As the South Carolina appellate courts repeatedly have held, "'[t]he phrase 'involving the merits' is narrowly construed,'" and "'[a]n order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties' rights.'" *Watson*, 407 S.C. at 458, 756 S.E.2d at 163 (quoting *Ex parte Capital U–Drive–It, In*c., 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006)).

The February 28, 2025 Order does not involve the merits. Indeed, in ruling on Morgan's Amended Motion, the Master "expressed no opinion on the substantive contents of [Morgan's answer and counterclaim], but determined only that Morgan had not met his burden, under Rule 60(b)(1), to withdraw the Stipulation of Dismissal his attorney filed on his behalf. *Jefferson by*

[1] Subsections (3) (appeal of a "final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment") and (4) (appeals of orders granting, continuing, modifying, or refusing an injunction or the appointment of a receiver) plainly do not apply here. *See* S.C. Code Ann. §§ 14–3–330(3), (4).

Johnson v. Gene's Used Cars, Inc., 295 S.C. 317, 318, 368 S.E.2d 456 (1988) (order denying Rule 6(b) motion to file a late answer did not involve the merits and was not immediately appealable under § 14–3–330(1)). Moreover, there is "some further act that must be done by the trial court prior to a determination of the parties' rights,"[2] namely, a final foreclosure hearing on the merits. The February 28, 2025 Order is not immediately appealable under § 14–3–330(1).

Nor is the February 28, 2025 Order immediately appealable under of § 14–3–330(2). That subsection allows for the immediate appeal of "[a]n order affecting a substantial right." S.C. Code Ann. § 14–3–330(2). "Orders affecting a substantial right" are those that "discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense." *Edwards v. SunCom*, 369 S.C. 91, 94, 631 S.E.2d 529, 530 (2006) (quotations and citation omitted); *see also* S.C. Code Ann. § 14–3–330(2). The February 28, 2025 Order does none of those things.

First, the February 28, 2025 Order does not discontinue the action or prevent an appeal. Quite the opposite. The action continues, because a final foreclosure hearing still needs to occur and a final judgment still needs to be entered. After that happens, Morgan can seek review of the February 28, 2025 Order in any appeal of the final judgment.

Second, the February 28, 2025 Order does not grant or refuse a new trial. Indeed, Morgan's persistent delay tactics have prevented a trial from ever going forward.

Finally, the February 28, 2025 Order did not strike out Morgan's answer, pleading, or defense. *See Jefferson by Johnson*, 295 S.C. at 318, 368 S.E.2d at 456 (order denying Rule 6(b) motion to file a late answer was not immediately appealable under § 14–3–330(2)(c) because the order did not strike the answer but instead refused to allow its filing); *see also Baldwin Constr. Co., Inc. v. Graham*, 357 S.C. 227, 230; 593 S.E.2d 146, 147 (2004) (order denying motion to file

[2] *Watson*, 407 S.C. at 458, 756 S.E.2d at 163.

an amended answer, set-offs, and counterclaim was not immediately appealable under § 14–3–330(2)(c) because "the trial judge did not rule on the substantive contents of the answer, nor did the order strike a pleading, but refused to allow its filing"). The July 13, 2023 Stipulation of Dismissal—filed on Morgan's behalf by his then-attorney, Mr. Radeker—accomplished that result.

CONCLUSION

The February 28, 2025 order is not an immediately appealable order under § 14–3–330. Morgan will be able to appeal that order after the underlying action is finished. The appeal should be dismissed.

Dated: April 3, 2025

s/ Stacie C. Knight

Stacie C. Knight
S.C. Bar No. 77968
WINSTON & STRAWN LLP
300 South Tryon Street, 16th Floor
Charlotte, North Carolina 28202
(704) 350-7700
sknight@winston.com

Attorneys for Respondent Wells Fargo Bank, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 3025, a copy of the foregoing was served upon counsel for Appellant Michael G. Morgan by electronic mail and first class mail, addressed as follows:

John W. Harte
John Harte Law
P.O. Box 7215
Aiken, South Carolina 29804
john@jwhartelaw.com

s/ Stacie C. Knight
Stacie C. Knight
S.C. Bar No. 77968
WINSTON & STRAWN LLP
300 South Tryon Street, 16th Floor
Charlotte, North Carolina 28202
(704) 350-7700
sknight@winston.com