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Feb 11 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Charles J. McCutchen, Circuit Court Judge

Appellate Case No. 2025-001756

Deutsche Bank National Trust Company, as Trustee for New Century Home
Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through
Certificates,Appellant,

vs.

Tommy Rush, Asia T. Rush Family Trust, and Australia B. Rush 29016 as
Trustee,Respondents,

MOTION TO DISMISS APPEAL

Respondents, by and through undersigned counsel, move to dismiss this appeal for lack of appellate jurisdiction pursuant to Rule 221 and Rule 227, SCACR, and S.C. Code Ann. § 14-3-330. Appellant seeks review of trial court orders entered on June 26, 2025, and July 30, 2025, denying Appellant’s motion to strike Respondents’ jury-trial demand on certain counterclaims¹. Those orders are interlocutory, do not finally determine any claim or defense, and are not within any category of immediately appealable orders under § 14-3-330. Because the orders merely regulate the mode of trial and do not affect a substantial right, this Court lacks appellate jurisdiction and the appeal must be dismissed.

¹ The said orders also denied the Appellant’s Motion for Partial Summary Judgment. However, the Appellant does not appeal this aspect of the orders.

INTRODUCTION AND PROCEDURAL HISTORY

This foreclosure action was filed by Respondents on July 1, 2020, and has been the subject of litigation for over five years. Discovery has been conducted and numerous substantive and procedural issues have been litigated. On November 17, 2020, the trial court granted Defendants' motion to strike Plaintiff's assignment, an order whose effects Plaintiff has addressed throughout the pendency of this case.

Most recently, the trial court entered orders dated June 26, 2025, and July 30, 2025, denying Appellant's motion to strike Respondents' request for a jury trial on certain counterclaims. Rather than proceed to trial and preserve any alleged error for review after final judgment, Appellant has attempted to appeal these interlocutory rulings. As a result, a case already pending for over five years is now stayed, causing further delay based solely on an attempted appeal from non-appealable interlocutory orders.

ARGUMENTS

I. The Order Denying Appellant's Motion to Strike the Jury-Trial Demand are Interlocutory in Nature and Not Subject to this Courts Jurisdiction

The orders challenged in this appeal do not determine and/or dispose of any claims or defenses, nor do they determine the rights of the parties with finality. Instead, they merely permit Respondent's counterclaims to proceed to a jury trial. Trial management and procedural orders are interlocutory and not immediately appealable. South Carolina appellate courts have held that "an interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right." *Richardson v. Halcyon Real Estate Services, LLP*, 439

S.C. 419 (2023). The Orders at issue address the right to a jury and only determines how claims will be tried rather than addressing whether the claims succeed or fail. As such, it leaves the merits unresolved and does not affect a substantial right. As such, the June 26, 2025 and July 30, 2025 orders are interlocutory. Pursuant to Rule 72, SCRPC, as well as S.C. Code Ann. § 14-3-330, the scope of interlocutory orders permitted for appeal are limited and the Orders Denying the Motion to Strike the Jury Demand do not fall within the categories of interlocutory orders subject to appeal.

II. Allowing a Jury Trial on Counterclaims Does Not Affect a Substantial Right of the Appellant.

An interlocutory order is immediately appealable only if it affects a “substantial right.” A substantial right is typically associated with “involving the merits” under S.C. Code Ann. § 14-3-330, is defined as an order which “must finally determine some substantial matter forming the whole or a part of some cause of action or defense.... *Mid-State Distributors, Inc. v. Cent. Importers, Inc.*, 426 S.E.2d 777, 780 (S.C. 1993). Furthermore, “an interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right” *Brown v. County of Berkeley*, 366 S.C. 354 (2005). *See Shields v. Martin Marietta Corp.*, 303 S.C. 469 (1991), (explaining further that interlocutory appeals are meant for merit-based appeals.) In the present appeal, an Order Denying a Motion to Strike a Jury Demand is merely a mode of trial management, and is not a substantial matter forming a cause of action or defense by either party.

The trial court’s denial of the Appellant’s Motion to Strike does not affect a substantial right. Even if the trial court erred in allowing a jury trial on certain counterclaims, that alleged error is fully correctable on appeal from a final judgment through reversal, vacatur, or remand for a non-jury proceeding. Because Appellant retains a complete and adequate remedy on appeal, no substantial right is lost by proceeding to trial. Procedural and trial-

management decisions, including those governing whether a matter is tried to a jury, do not satisfy the substantial-right exception for interlocutory review.

III. Because the Orders Are Interlocutory and Do Not Affect a Substantial Right, the Appeal Must Be Dismissed.

The orders from which Appellant appeals merely regulate the mode of trial and do not finally determine any issue or affect a substantial right. Appellate review, if appropriate, must await entry of a final judgment . Because no statutory or common-law basis exists for interlocutory review, this Court lacks jurisdiction and must dismiss the appeal.

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CONCLUSION
—————

For the foregoing reasons, Respondents/Defendants respectfully request that the Court dismiss the appeal in its entirety for lack of appellate jurisdiction.

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Charles J. McCutchen, Circuit Court Judge

Appellate Case No. 2025-00176
Civil Case No. 2020-CP-40-02998

Deutsche Bank National Trust Company, as Trustee for New Century Home
Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through
Certificates,.....Appellant

vs.

Tommy Rush, Asia T. Rush Family Trust, and Australia B. Rush 29016 as
Trustee,.....Respondents.

PROOF OF SERVICE

I certify that I have served the Respondents **MOTION TO DISMISS**, in the above-
captioned matter via email to the AIS email address of the following attorney(s)

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February 10, 2026