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Feb 25 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
The Honorable Alan D. Clemmons, Master in Equity

Case No. 2024CP2600567
Appellate Case No.: 2025-002471

Select Portfolio Servicing, Inc.,Respondent,

v.

Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi
Lending Corp.; Wells Fargo Bank, N.A.; and
Midland Credit Management, Inc., Defendants.

of which Nicholas Wilson a/k/a Nicholas F. Wilson is the Appellant.

RESPONDENT’S MOTION TO DISMISS APPEAL

Sean M. Foerster (SC Bar # 77466)
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Attorneys for Respondent Select Portfolio Servicing,
Inc.

February 25, 2026

Respondent Select Portfolio Servicing, Inc. (“Respondent”) hereby respectfully moves the Court for an order dismissing the appeal of Appellant Nicholas Wilson a/k/a Nicholas F. Wilson (“Wilson”).

FACTS

This is an appeal by a mortgage foreclosure defendant from the following orders entered by the Master in Equity for Horry County (the “Master”) in this foreclosure action:

- (i) Order Denying Defendant’s Motion to Dismiss and Defendant’s Motion To Stay (filed November 10, 2025), which denied Wilson’s motion¹ to dismiss this foreclosure action and denied Wilson’s motion² to stay this foreclosure action pending the outcome of a separate lawsuit³;
- (ii) Order Denying Defendant Wilson’s Motion to Lift Default (filed March 4, 2025), which denied Wilson’s motion⁴ for relief from the entry of default made pursuant to Rule 55(c), SCRCP; and
- (iii) Form 4 Order (filed March 25, 2025), which denied Wilson’s motion⁵ made pursuant to Rule 59(e), SCRCP, seeking reconsideration of the Order of March 4, 2025, denying his motion for relief from the entry of default.

While the Master held a foreclosure hearing on April 8, 2025, he took the foreclosure claim under advisement while deciding on Wilson’s motions to dismiss and/or stay the foreclosure and

¹ “Motion to Dismiss Based on Compulsory Counterclaims Filed in Earlier Case under Rules 12 and 13, SCRCP” filed January 16, 2025.

² “Defendant Nicholas Wilson’s Joint Motion to Stay Foreclosure Action” filed April 6, 2025.

³ *Nicholas F. Wilson v. Janet P. Gochenour et al.*, C/A # 2023CP2602475 (Horry County Court of Common Pleas)(filed April 19, 2023).

⁴ “Notice of Motion and Motion for Relief from Default by Nicholas Wilson” filed June 21, 2024.

⁵ “Nicholas Wilson’s Motion to Reconsider Denial of Motion for Relief from Default” filed March 14, 2025.

has not yet entered a Judgment of Foreclosure and Sale in this case. As such, no final order has yet been entered in the lower court.

ARGUMENT

The orders being appealed—which simply denied Wilson’s request for relief from the entry of default and denied his requests for a stay or dismissal of the foreclosure case—are not immediately appealable. The Court must therefore dismiss this appeal.

This Court’s ability to hear appeals is limited by statute to only final judgments and certain interlocutory orders. “The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.”

S.C. Code Ann. § 14-3-330.

The Order Denying Defendant’s Motion to Dismiss and Defendant’s Motion To Stay filed November 10, 2025, does not meet the requirements of S.C. Code Ann. § 14-3-330 and is not immediately appealable.

“Currently, this Court does not allow immediate appellate review of the *denial* of any Rule 12(b), SCRCP motion.” *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000). “[T]he denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings.” *McLendon v. S.C. Dep’t of Highways & Pub. Transp.*, 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 (1994).

Further, the grant or denial of a motion to stay is not immediately appealable. *Edwards v. SunCom*, 369 S.C. 91, 94-95, 631 S.E.2d 529, 530-31 (2006)(“The order here does not discontinue the proceeding. It merely temporarily stays the matter pending a ruling ... [a]ccordingly, we find an order granting a stay is not immediately appealable.”); *see also Serv. Corp. v. Bahama Sands Dev., LLC*, No. 2011-UP-300, 2011 S.C. App. Unpub. LEXIS 351, at *3 (Ct. App. June 14, 2011)(“[T]he order denying Appellants’ motion to stay did not involve the merits, affect a substantial right, or prevent a judgment from which an appeal may later be taken. Therefore, we hold Appellants’ appeal is not immediately appealable.”).

Likewise, neither the Order Denying Defendant Wilson’s Motion to Lift Default filed March 4, 2025, nor the Form 4 Order filed March 25, 2025, denying its reconsideration meets the requirements of S.C. Code Ann. § 14-3-330 and are therefore not immediately appealable.

The denial of a motion to set aside an entry of default is not appealable until after final judgment. *5Star Life Ins. Co. v. Peek Performance, Inc.*, 434 S.C. 334, 335, 863 S.E.2d 468, 469 (Ct. App. 2021); *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 635-36, 856 S.E.2d 150, 151 (2021)(“A party in default has three primary options: (1) do nothing pending the entry of judgment by default under Rule 55(b), SCRCP; (2) file an appearance under Rule 55(b)(2), SCRCP, in an attempt to protect its interests before the entry of judgment by default;

or (3) request the entry of default be set aside pursuant to Rule 55(c), SCRCF. Under either option, the party has no right of appeal until after final judgment.”).

None of these orders are immediately appealable because they do not involve the merits, do not affect a substantial right, do not strike a pleading, do not determine the action, do not prevent a judgment from which an appeal may later be taken, do not grant or refuse a new trial, do not grant, continue, modify, or refuse an injunction, and do not grant, continue, modify, or refuse the appointment of a receiver.

These orders simply allowed the foreclosure action to proceed toward the next steps in the case: a damages hearing to establish the current debt amount secured by the mortgage followed by the entry of a default judgment of foreclosure and sale against Wilson.

Further, the immediate appeal of these interlocutory orders is a backdoor attempt by Wilson to force the stay of the foreclosure that the Master denied to him and to avoid the supersedeas bond requirement of S.C. Code Ann. § 18-9-170⁶ in the process. The Court must dismiss this premature appeal, and Wilson must wait until the entry of the final judgment of foreclosure and sale. Thereafter, Wilson can appeal from that foreclosure judgment if he so chooses and can seek a stay of its enforcement in accordance with S.C. Code Ann. § 18-9-170.

⁶ Conditioning the stay of a foreclosure sale upon the filing of a supersedeas bond executed by two sureties in an amount equal to the value of the use and occupation of the property during the expected duration of the appeal.

CONCLUSION

For these reasons, Respondent respectfully moves for an Order dismissing the appeal of Appellant Nicholas Wilson a/k/a Nicholas F. Wilson. Pursuant to Rule 240(b), SCACR, Respondent also respectfully requests that the time to serve and file the Initial Briefs of the parties be stayed until this motion is decided by the Court.

Respectfully submitted,

s/ Sean M. Foerster

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PROOF OF SERVICE

I certify that I have served the Respondent’s Motion to Dismiss Appeal on Appellant Nicholas Wilson a/k/a Nicholas F. Wilson by email on February 25, 2026, to the following email address from the Attorney Information System (“AIS”) for his attorney of record:

Wesley D. Few, Esquire
Post Office Box 9398
Greenville, South Carolina 29604
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s/ Sean M. Foerster

Sean M. Foerster (SC Bar# 77466)
ROGERS TOWNSEND LLC

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Sean Foerster

SC Court of Appeals

From: Sean Foerster
Sent: Wednesday, February 25, 2026 11:48 AM
To: Wes Few
Cc: 'Cassy Young'
Subject: 2025-002471 - Select Portfolio Servicing, Inc., v. Nicholas Wilson
Attachments: Respondent's Motion to Dismiss Appeal (2025-002471).pdf; Proof of Service - Respondent's Motion to Dismiss Appeal (2025-002471).pdf

Hi Wes –

Please find attached Respondent's Motion to Dismiss Appeal and Proof of Service, which I hereby serve on you. Thanks.



ROGERS TOWNSE

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