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Mar 13 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 REPLY TO APPELLANT’S RETURN
TO MOTION TO DISMISS APPEAL**

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Attorneys for Respondent Select Portfolio Servicing,
Inc.

March 13, 2026

Respondent Select Portfolio Servicing, Inc. (“Respondent”) hereby replies to the return of Appellant Nicholas Wilson a/k/a Nicholas F. Wilson (“Wilson”) to Respondent’s Motion to Dismiss Appeal.

ARGUMENT

1. Wilson has conceded that the orders denying his motion to stay and denying his request for relief from the entry of default are not immediately appealable.

Wilson’s Return fails to address Respondent’s contention that the Order Denying Defendant Wilson’s Motion to Lift Default filed on March 4, 2025, and the Form 4 Order filed on March 25, 2025, denying its reconsideration are not immediately appealable. Wilson’s Return also fails to address Respondent’s contention that the portion of the Order¹ filed on November 10, 2025, denying Wilson’s Motion to Stay is not immediately appealable.

Wilson has thereby conceded² that these orders are not immediately appealable. Wilson’s appeal from those orders must therefore be dismissed.

2. The Order filed on November 10, 2025, denying Wilson’s motion to dismiss does not affect any of the “substantial rights” contemplated by S.C. Code Ann. § 14-3-330(2).

The Order filed on November 10, 2025, denying Wilson’s motion to dismiss is not immediately appealable under S.C. Code Ann. § 14-3-330(2).

“The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal ... [a]n 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...” S.C. Code Ann. § 14-3-330(2).

¹ “Order Denying Defendant’s Motion to Dismiss and Defendant’s Motion To Stay”.

² See Rule 240(e), SCACR (“Failure of a party to timely file a return may be deemed a consent by that party to the relief sought in the motion or petition.”).

The “mode of trial” is one of the substantial rights contemplated by S.C. Code Ann. § 14-3-330(2). *Creed v. Stokes*, 285 S.C. 542, 543, 331 S.E.2d 351, 352 (1985). “If an order deprives a party of a mode of trial to which that party is entitled as a matter of right, the order is immediately appealable and failure to do so forever bars appellate review.” *Cobb v. S.C. DOT*, 365 S.C. 360, 363, 618 S.E.2d 299, 300 (2005).

The Order denying Wilson’s motion to dismiss did not prevent a judgment from which an appeal might be taken or discontinue this action. There has been no final judgment entered in this foreclosure action. Once the final foreclosure judgment is entered, Wilson will have the opportunity to file a motion under Rule 60(b), SCRCP, for relief from that judgment and then, if that motion is denied, appeal from the order denying the motion.³ As such, the order denying Wilson’s motion to dismiss is not immediately appealable under S.C. Code Ann. § 14-3-330(2)(a).

The order denying Wilson’s motion to dismiss did not grant or refuse a new trial. Wilson never filed a motion for a new trial in this case. As such, the order denying his motion to dismiss is not immediately appealable under S.C. Code Ann. § 14-3-330(2)(b).

The order denying Wilson’s motion to dismiss did not strike out an answer or any part thereof or any pleading in any action. Wilson failed to plead at all in this action and he is in default. As such, the order denying his motion to dismiss is not immediately appealable under S.C. Code Ann. § 14-3-330(2)(c).

Finally, the order denying Wilson’s motion to dismiss did not deprive him of a mode of trial to which he was entitled in this case. This case was properly referred to the Master in Equity

³ *Winesett v. Winesett*, 287 S.C. 332, 334, 338 S.E.2d 340, 341 (1985)(“[A] default judgment may not be appealed to this Court. The proper procedure for challenging a default judgment is to move the trial court to set aside the judgment pursuant to Rule 60(b), SCRCP.”); *Thynes v. Lloyd*, 294 S.C. 152, 154, 363 S.E.2d 122, 123 (Ct. App. 1987)(“[T]he denial of a motion under Federal Rule 60(b) to set aside a default judgment is immediately appealable.”).

under Rule 53(b), SCRCP⁴, because it is a foreclosure action and because Wilson is in default. As shown by the Record of Hearing filed in this case on April 8, 2025, the Master held the type of foreclosure trial required by Rule 71(a), SCRCP,⁵ on that date.

To the extent that Wilson ever had a right to a different mode of the foreclosure trial, he waived that right by 1) defaulting and thereby waiving any defenses and counterclaims that may have entitled him to a different mode of trial, and 2) by failing to immediately appeal from the Order of Reference entered on April 24, 2024, in this action. *Creed*, 285 S.C. at 542, 331 S.E.2d at 352 (“The order [of reference] was not interlocutory, and should have been appealed immediately because it affected the mode of trial, a substantial right.”); *see also Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997)(“Moreover, the failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue.”).

For these reasons, the Order filed November 10, 2025, denying Wilson’s motion to dismiss is not immediately appealable pursuant to the “substantial rights” exception of S.C. Code Ann. § 14-3-330(2).

3. The Order filed November 10, 2025, denying Wilson’s motion to dismiss did not “involve the merits” as required for immediate appealability by S.C. Code Ann. § 14-3-330(1).

The Order filed on November 10, 2025, denying Wilson’s motion to dismiss is not immediately appealable under S.C. Code Ann. § 14-3-330(1).

“The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal ... [a]ny intermediate judgment, order or decree in a law case

⁴ “In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court.” Rule 53(b), SCRCP (emphasis added).

⁵ “Actions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53.” Rule 71(a), SCRCP.

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...” S.C. Code Ann. § 14-3-330(1).

In arguing that the Order denying his motion to dismiss is immediately appealable under this subsection, Wilson’s Return never actually addresses whether that order “involved the merits” of this foreclosure action. That is because it did not.

Instead, Wilson’s Return argues that the denial of his motion to dismiss this foreclosure somehow involves the merits of his claims in a different lawsuit: *Nicholas F. Wilson v. Janet P. Gochenour et al.*, C/A # 2023CP2602475 (Horry County Court of Common Pleas)(filed April 19, 2023)(the “2023 Action”). Specifically, Wilson contends that the Order denying his motion to dismiss is immediately appealable because “the consequences of such a ruling would be to deny Appellant Wilson the right to pursue his earlier filed claims against Respondent MERS / Flagstar / SPS on their merits” in the 2023 Action. (Return p. 4.)

Following that statement, Wilson embarks upon a convoluted argument that fails to articulate why Wilson cannot pursue whatever claims he has pending in his other lawsuit as a result of the Master simply denying his motion to dismiss this foreclosure. Further confusing the matter, Wilson appears to be arguing that the denial of his motion to dismiss this foreclosure action is somehow prejudicing claims that he has not even filed yet in his other lawsuit.⁶

⁶ “Because the Respondent Lender’s agent, the loan closing attorney failed to procure the deed as required by Appellant Wilson’s contract, and as it was underwritten by the Respondent Lender (i.e., as an 8.24 acre tract), Appellant Wilson has claims he can bring against Respondent in the 2023 Fraud Case that would impact the enforceability of the note and mortgage.” (Return p. 6)(emphasis added).

Ultimately, the Order denying his motion to dismiss this foreclosure action did not “involve the merits” of Wilson’s claims in the 2023 Action for the reasons the Master clearly explained in that order:

“This action involves a claim for foreclosure of the lien of the Mortgage against only Tracts A, B, and C based on Wilson’s loan default in March 2021. The 2023 Action, on the other hand, involves a claim seeking a ‘declaratory judgment’ as to Wilson’s ownership of the Driveway Parcel based on issues arising out of the property purchase transaction in March 2020. The 2023 Action includes no claim for rescission or reformation of the Mortgage, or any other type of claim challenging the enforceability of the lien of the Mortgage against Tracts A, B, and C.”

(Order filed November 10, 2025, pp. 5-6.)

“SPS is not seeking foreclosure of the Driveway Parcel currently in dispute as part of the 2020 purchase of the Property ... [t]he two transactions are mutually exclusive. The 2023 Action involves a dispute over whether a driveway was to be included in the purchase and this action involves default on a loan.”

(Order filed November 10, 2025, pp. 6-7.) The Order made no findings of fact or conclusions of law as to the claims pending in the 2023 Action and therefore did not “involve the merits” of that action.

For these reasons, the Order filed on November 10, 2025, denying Wilson’s motion to dismiss is not immediately appealable pursuant to the “involving the merits” exception of S.C. Code Ann. § 14-3-330(1).

4. Wilson’s Rule 15 argument is misplaced.

Wilson’s contention that he has the right to amend his claims against Respondent is perplexing. Wilson is in default in this action, has no pleadings or claims in this action, and has not filed any motion to amend in this action. None of the orders being appealed concern any denial of any motion to amend his pleadings. As such, that issue is not before the Court in this case.

Whether or not Wilson will amend his pleadings in the 2023 Action at some point in the future has no bearing on the issue of the immediate appealability of the orders currently before the Court.

CONCLUSION

For these reasons, Respondent implores the Court to dismiss this appeal and shut down Wilson's blatant attempt to avoid the supersedeas bond requirement of S.C. Code Ann. § 18-9-170⁷.

Respectfully submitted,

s/ Sean M. Foerster

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⁷ Conditioning the stay of an order for 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.

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PROOF OF SERVICE

I certify that I have served the Respondent’s Reply to Appellant’s Return to Motion to Dismiss Appeal on Appellant Nicholas Wilson a/k/a Nicholas F. Wilson by email on March 13, 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
wes@wesleyfew.com

s/ Sean M. Foerster

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

Sean Foerster

From: Sean Foerster
Sent: Friday, March 13, 2026 4:04 PM
To: 'Wes Few'
Cc: 'Cassy Young'
Subject: 2025-002471 - Select Portfolio Servicing, Inc., v. Nicholas Wilson
Attachments: Respondent's Reply to Return to Motion to Dismiss Appeal (2025-002471).pdf; Proof of Service - Respondent's Reply to Return to Motion to Dismiss Appeal (2025-002471).pdf

Hi Wes –

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



Sean Foerster
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