

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

IN THE COURT OF COMMON PLEAS
15th Judicial Circuit

Alan D. Clemmons, Master-in-Equity

Appellate Case No.: 2025-002471

(Circuit Court Case No.: 2024-CP-26-00567)

Select Portfolio Servicing, Inc., Respondent,

v.

Nicholas Wilson a/k/a Nicholas F. Wilson; SoFi Lending Corp.; ¹ 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.

APPELLANT'S PETITION FOR REHEARING

Pursuant to Rule 221, SC ACR, Appellant Nicholas Wilson respectfully files this petition for rehearing of the Court's August 28, 2026, Order dismissing this appeal. Rehearing is warranted because the Order treats the November 10, 2025, lower court ruling as the denial of an ordinary motion to dismiss governed by McLendon v. S.C. Dep't of Highways & Pub. Transp., 313 S.C. 525, 526 (1994), without addressing the distinct and preserved ground for which

¹ The August 28, 2026, Order identifies SoFi Lending Corp. in the caption. SoFi was identified in the Circuit Court pleading for a recorded judgment in Case No. 2022-CP-26-02258, which is now marked as satisfied on the sccourts.org online docket, as of July 5, 2024. Similarly, prior recorded judgments of Wells Fargo Bank, N.A. in an amount of \$8,263.25 (2022-CP-26-06012), and Midland Credit Management (2023-CP-26-05566) in an amount of \$11,577.69, are also paid off or being paid off, but are not yet marked as satisfied on the record. These parties are not part of this appeal.

Wilson sought review, namely the Master finally adjudicated Wilson's Rule 13(a), SCRPC, compulsory-counterclaim defense, and authorized Respondent to prosecute a later foreclosure action outside the earlier-filed action involving the same loan, mortgage, title, and property transaction.

POINTS OVERLOOKED OR MISAPPREHENDED

1. The motion denied on November 10, 2025, was not merely a Rule 12 motion, as was the case in McClendon. *Id.* at 540 (noting, “Respondent now moves to dismiss this appeal asserting the order denying the motion to dismiss is not immediately appealable.”). It was expressly titled a “Motion to Dismiss Based on Compulsory Counterclaims Filed in Earlier Case under Rules 12 and 13, SCRPC.” Respondent’s Motion to Dismiss Appeal acknowledged that title. (Resp. Mot. Dismiss Appeal, at p. 2 n.1). Appellant Wilson’s Return then noted Respondent relied on decisions involving ordinary Rule 12 denials while “skip[ping] over,” the Rule 13 issue. (Appellant's Return, at p. 2). The dismissal Order cites McLendon² for the general proposition that denial of a motion to dismiss is not immediately appealable, but does not decide or address whether an order conclusively adjudicating a Rule 13 defense is an intermediate order involving the merits under S.C. Code Ann. § 14-3-330(1).

2. The November 10, 2025, Order did finally decide the Rule 13 question. It did not merely decline to dismiss without reaching the defense. The Master ruled that the two actions

² McClendon is also not applicable here for at least the reason that Appellant in this action has been held to be in default, therefore, he has no opportunity to prevail at summary judgment, and the resultant remittitur pursuant to the August 28, 2026, Order will result in Appellant being permanently deprived of his property, the same property for which Respondent’s predecessor, Flagstar Bank, N.A., previously joined with Appellant in the prior filed action, Circuit Court Case No. 2023-CP-26-02475, seeking an order declaring “Flagstar is entitled to an order from this Court declaring that its mortgage encumbers the driveway/Tract D.” (Ans. and Cross-Claim of Flagstar Bank, N.A., filed June 19, 2023, Case No. 2023-CP-26-02475, at ¶ 176). Flagstar then asserted, “Such order / declaration should be recorded in the RMC office for Horry County.” (*Id.* at ¶ 177). That same cross-claim was pending when Flagstar filed this foreclosure action.

involved “mutually exclusive” transactions, that the 2023 action concerned only the driveway parcel, and that the foreclosure claim arose from a separate loan-default transaction. (Resp. Reply, at pp. 5-6 (quoting Nov. 10, 2025, Order, at pp. 5-7)). Those determinations rejected the factual and legal premise of Appellant Wilson’s compulsory-counterclaim defense. Whether a counterclaim is compulsory is a question of law reviewed *de novo*. Deutsche Bank National Trust Co. v. Estate of Houck, 439 S.C. 280, 286, 887 S.E.2d 411, 414 (2023).

3. Because both actions were commenced after Houck, the Rule 13 question is governed by the rule’s plain language, not by a generalized characterization of the claims. Houck prospectively abolished the former “logical-relationship” test and held that courts must ask whether the claim “arises out of the transaction or occurrence that is the subject matter of the opposing party's claim.” Id. at 414-15. The Court’s dismissal Order does not address Houck or the effect of the Master’s conclusive Rule 13 determination.

4. Appellant Wilson’s Return argued both statutory routes for immediate review: Section 14-3-330(1), because the ruling finally determined the compulsory-counterclaim defense, and Section 14-3-330(2), because allowing the later foreclosure to proceed separately defeats the right protected by Rule 13 to have transactionally related claims adjudicated in one action before the collateral is sold. (Return, at pp. 3-8). The dismissal Order does not address either argument in the Rule 13 posture.

ARGUMENT

I. THE NOVEMBER 10, 2025, ORDER FINALLY DETERMINED A SUBSTANTIAL RULE 13 DEFENSE AND THEREFORE INVOLVED THE MERITS UNDER SECTION 14-3-330(1).

Section 14-3-330(1) authorizes immediate review of an intermediate order in a law case that involves the merits. 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 Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993); Peterkin v. Brigman, 319 S.C. 367, 368, 461 S.E.2d 809, 810 (1995).³

McLendon does not establish that every ruling captioned as a denial of dismissal falls outside that definition. McLendon also involved much simpler facts than this case. McLendon explained that an ordinary denial of a motion to dismiss does not establish the law of the case and may be raised later. Id. at 540, n.2. Here, by contrast, the Master reached and rejected the legal defense itself. He determined that the actions involve different transactions and that Respondent / SPS’s foreclosure claim was not compulsory in the earlier action. Those conclusions finally disposed of Wilson’s Rule 13 defense unless reversed or revisited, they were not a refusal to reach it.

As also noted in Midland, “A party who is denied a dismissal under Rule 12 has forfeited nothing, they must simply continue to trial.” Id. at 780. Such is not the case here, as the denial of the motion under Rule 13(a), will result in Appellant’s loss of his primary residence property via foreclosure of a mortgage, for which the scope of that mortgage was already being litigated in the 2023 action.

³ In Peterkin, the Supreme Court stated, “The order in this case does not prevent a judgment from being rendered in the action, and appellant can seek review of the current order in any appeal from final judgment.” Id. at 810. Here, however, the Order would preclude Appellant Wilson from obtaining and enforcing the judgment he sought in the earlier filed 2023 action, absent some stipulation from Respondent which they will undoubtedly not agree to provide. In addition, Appellant here can amend his pleadings in the 2023 action, to add more claims against Respondent, which they will also allege are not permitted due to the final judgment in this 2024 foreclosure case.

Rule 13(a) is mandatory. A pleading “shall state” a qualifying counterclaim. As Appellant Wilson showed in his Return, the foreclosure Complaint alleged a March 1, 2021, default. (Return, at p. 5). The 2023-CP-26-02475 action was filed in April 2023, and Flagstar asserted a pleading concerning reformation of the deed and mortgage on June 19, 2023. (*Id.* at pp. 2, 5). According to the jurisdictional record, the loan default had occurred “after March 1, 2021,” (Foreclosure Complaint at ¶ 14), and the foreclosure claim existed when the lender litigated the deed-and-mortgage dispute in the first filed action, 2023-CP-26-02475.

Houck confirms that this is a merits issue, not merely docket administration. There, borrowers asserted that a bank’s later foreclosure was barred because foreclosure had been a compulsory counterclaim in earlier litigation involving the same loan. The Supreme Court treated compulsoriness as a question of law, applied Rule 13(a), and reviewed the ruling on the merits. 439 S.C. at 284-87, 887 S.E.2d at 413-15. Houck ultimately found the foreclosure claim was not compulsory on its facts, but it establishes the governing legal inquiry and the substantive consequence of the determination. Here, the distinguishing fact is the June 19, 2023 voluntarily pursuit by Respondents Flagstar / SPS in the 2023 action to reform the mortgage to include the driveway, which was pending when the foreclosure action as filed.

The November 10, 2025, Order performed that inquiry and resolved it adversely to Wilson. It finally determined a substantial defense to SPS’s separate foreclosure action. It therefore satisfies Section 14-3-330(1), even though the foreclosure case remains pending. The Court should rehear the dismissal and distinguish an ordinary Rule 12 denial from this conclusive Rule 13 adjudication.

II. THE RULE 13 DETERMINATION CANNOT BE SEPARATED FROM THE MERITS BY LABELING THE FIRST ACTION A DIFFERENT LAWSUIT.

Respondent's Reply argued that Wilson relied on claims in a "different lawsuit" and that the November 10, 2025, Order, therefore, did not involve the "merits" of this foreclosure. (Reply at pp. 5-6). That reasoning overlooks the nature of Rule 13. The rule necessarily asks a court in one action to examine the claims and pleadings in the earlier action and decide whether the later claim had to be asserted there. The relationship between the two actions is the merits of the Rule 13 defense.

Nor does the Master's subjective conclusion that the first action concerns a driveway parcel while the foreclosure concerns loan default remove the issue from appellate jurisdiction. That conclusion is the disputed Rule 13 ruling. Appellant contends both cases arise from the same financed purchase and closing: (i) the lender underwrote the purchase as an 8.24-acre tract, (ii) the lender's closing agent allegedly failed to secure the contracted deed, (iii) the deed and mortgage required reformation, (iv) the lender made title claims regarding that failure, and (v) the later foreclosure seeks enforcement of the same note and mortgage. (Appellant's Return, at pp. 5-7). Whether those facts satisfy Rule 13(a) is the appellate merits question.

The Court need not decide at rehearing that the foreclosure claim was compulsory. It need decide only that the Master's definitive rejection of that defense was an intermediate merits ruling eligible for review under Section 14-3-330(1). Reinstatement would allow the issue to be resolved on a complete record and full briefing under the Houck plain-language standard. Id. at 413 (noting, "Judges and lawyers are well-equipped to determine whether a claim is compulsory under the plain language of this rule."). In addition, the claims brought by Respondent in this action violated Rule 12(b)(8), which provides for dismissal of "another action is pending between the same parties for the same claim." Id.

III. THE ORDER ALSO AFFECTS THE SUBSTANTIAL RIGHT RULE 13 PROTECTS AGAINST DUPLICATIVE AND POTENTIALLY INCONSISTENT ADJUDICATION.

Rule 13(a) is designed to prevent a party from withholding a transactionally related claim and prosecuting it separately after the first action begins. *Beach Co. v. Twillman, Ltd.*⁴, 351 S.C. 56, 61-63, 566 S.E.2d 863, 865-66 (Ct. App. 2002). The rule protects more than a defense that can always be restored after a second final judgment. It protects the right to a single adjudication of interdependent claims before inconsistent judgments or irreversible consequences occur.

Appellant Wilson's Return explained the concrete consequence here. The separate foreclosure determines enforceability of the note and mortgage and permits sale of the collateral while the earlier action concerning the lender's closing, title, deed, and (scope of the) mortgage conduct remains unresolved. (*Appellant's Return*, at pp. 3-8). If the foreclosure proceeds first, the practical availability and mode of adjudicating Wilson's earlier claims are fundamentally altered. South Carolina recognizes that the availability of trial itself is intrinsic to the mode-of-trial analysis. *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 452-53, 661 S.E.2d 81, 87 (2008) (noting, "Pursuant to § 14-3-330(2), this Court has held on numerous occasions that when a trial court's order deprives a party of a mode of trial to which it is entitled to as a matter of right, such order is immediately appealable." (citing *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000))).

Appellant cited North Carolina decisions recognizing immediate review when a compulsory-counterclaim ruling affects a substantial right. (*Appellant's Return* at 2-3 (citing

⁴ As noted in *Twillman*, "The purpose of the amendment was 'to insure against the 'undesirable possibility presented under the original rule whereby a party having a . . . compulsory counterclaim could avoid stating it . . . by bringing an independent action in another court after the commencement of the federal action but before serving his pleading in the federal action.'" *Id.* at 866 (citing *Sparrow v. Nerzig*, 228 S.C. 277, 283, 89 S.E.2d 718, 721 (1955) (quoting Rule 13, SCRCF, advisory committee's notes on amendments)).

House Healers Restorations v. Ball, 112 N.C. App. 783, 785, 437 S.E.2d 383, 385 (1993))).

Those decisions are persuasive rather than controlling, but they reinforce the point overlooked here: a compulsory-counterclaim ruling is materially different from an ordinary Rule 12 denial because the very right asserted is freedom from a second, separate adjudication of the same transaction.

At minimum, these circumstances warrant rehearing and a ruling directed to the preserved Rule 13 argument rather than application of the categorical rule governing ordinary Rule 12 motions.

CONCLUSION

Appellant respectfully requests the Court grant rehearing, withdraw the August 28, 2026, dismissal to the extent it dismisses the appeal from the November 10, 2025, Order denying Wilson's Rule 13 motion, deny Respondent's Motion to Dismiss Appeal as to that Order, and reinstate the appeal limited to whether Respondent SPS's foreclosure was a compulsory counterclaim in the earlier-filed action, at the time it was filed. Appellant Wilson does not request rehearing concerning the independent appealability of the March 4 and March 25, 2025 default-related orders.

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s/Wesley D. Few/
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Greenville, South Carolina
September 15, 2026

The South Carolina Court of Appeals

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.

Appellate Case No. 2025-002471

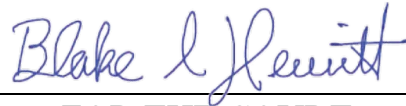
ORDER

Appellant has filed a notice of appeal from three orders: (1) an order denying Appellant's motion to dismiss and motion to stay, (2) an order denying Wilson's motion to lift default in a foreclosure action, and (3) an order denying Appellant's motion for reconsideration of the order denying his motion to lift default.

Respondent has now filed a motion to dismiss, arguing the orders on appeal are interlocutory and not immediately appealable. Appellant filed a return, opposing dismissal. Respondent filed a reply.

After careful consideration of the filings, we grant the motion to dismiss. *See* S.C. Code Ann. § 14-3-330 (2017) (defining appellate jurisdiction); *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) ("Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final."); *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526, 443 S.E.2d 539, 540 (1994) (holding the denial of a motion to dismiss is not immediately appealable); *Edwards v. SunCom*, 369 S.C. 91, 93, 631 S.E.2d 529, 530 (2006) (holding an order granting a stay is not immediately appealable); *Carolina Water Serv., Inc. v. Lexington Cnty. Joint Mun. Water & Sewer Comm'n*, 373 S.C. 96, 98, 644 S.E.2d 681, 682 (2007) (holding an order lifting a stay is not immediately appealable); *Palmetto Constr. Grp., LLC v.*

Restoration Specialists, LLC, 432 S.C. 633, 636, 856 S.E.2d 150, 151 (2021) (holding an order denying a motion to lift an entry of default is not immediately appealable). Remittitur will be sent in accordance with Rule 221(b) of the South Carolina Appellate Court Rules.



J.

FOR THE COURT

Columbia, South Carolina

FILED
Aug 28 2026

cc:

Wesley D. Few, Esquire

Sean Matthew Foerster, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

IN THE COURT OF
COMMON PLEAS
15th Judicial Circuit

Alan D. Clemmons, Master-in-Equity

Appellate Case No.: 2025-002471

CASE NO.: 2024-CP-26-00567

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.

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ATTORNEYS FOR APPELLANT

PROOF OF SERVICE

I, Cassy Young, on behalf of the law office of Wesley D. Few, LLC, attorneys for Appellant in this matter, do hereby certify that I have served the below parties and / or their counsel of record by E-File/Hand-Delivery as set forth below on this date in this action with a copy of the document(s) listed below.

- 1) Appellant's Petition for Rehearing of the Order dated August 28, 2026, Order Granting the Respondent's Motion to Dismiss**
- 2) Order dated August 28, 2026, Order Granting the Respondent's Motion to Dismiss**

The Hon. Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
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/s/Cassy Young
Cassy Young

Columbia, South Carolina
September 14, 2026

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September 14, 2026

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SC Court of Appeals

Via E-File and Hand-Delivery:

The Hon. Jenny Abbott Kitchings, Clerk of Court

South Carolina Court of Appeals

Columbia, South Carolina 29211

ctappfilings@sccourts.org

RE: Select Portfolio Servicing, Inc. v. Nicholas Wilson
Case No.: 2024-CP-26-00567
Appellate Case No. 2025-002471
Our File No.: 00334-001

Dear Ms. Kitchings:

Enclosed for filing please find Appellant's Petition for Rehearing of the Order dated August 28, 2026, Order Granting the Respondent's Motion to Dismiss (attached), \$50.00 filing fee check and proof of service for same.

If you have any questions or need anything further, please do not hesitate to contact me at either number above.

Sincerely Yours,



Wesley D. Few

Enclosures

WDF/cgy

CC: Counsel of Record (*Via E-File*)
Client (*Via email*)