

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APR 18 2014

SC Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

S. Jackson Kimball, Special Circuit Judge

John S. Hayes, Circuit Court Judge

Charles S. Bradford, Special Referee

Civil Action No. 2012-CP-46-1328

Wells Fargo Bank, N.A., Respondent,

v.

Alice Roseboro a/k/a Alice L. Roseboro, Citibank South Dakota, N.A.,
the South Carolina Department of Revenue, Founders Federal Credit
Union, LVNV Funding, LLC, Defendants,

Of whom Alice Roseboro is the Appellant.

**RESPONDENT'S MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS APPEAL**

This appeal arises out of a foreclosure action brought against Appellant Alice Roseboro by Respondent Wells Fargo Bank, N.A.. In answering the Complaint, Appellant, appearing *pro se*, brought counterclaims against Respondent, including a counterclaim for violation of Section 1977A of the Civil Rights Act of 1971. Thereafter, numerous motions were filed by Appellant. On August 14, 2013, Plaintiff filed a motion for an order of reference to the York County Master-in-Equity and a motion for summary judgment seeking dismissal of Respondent's counterclaims. On September 17, 2014, a

hearing was held on all pending motions. By Order dated September 20, 2013, Judge Kimball denied Appellant's motion to compel proof of loan ownership because Wells Fargo had provided Ms. Roseboro with the promissory note, mortgage, and assignments, but granted Appellant's motion to compel production of payment history. This same Order granted Wells Fargo's motion for summary judgment on Ms. Roseboro's counterclaim for violation of Section 1977A of the Civil Rights Act of 1991, but denied the motion with respect to her counterclaims arising out of the handling of her mortgage loan and her application for a loan modification. A copy of Judge Kimball's Order is attached as Exhibit A.

On October 8, 2013, a hearing was held on Respondent's Motion for Order of Reference. Judge Hayes granted the motion and referred the matter to Charles Bradford, Esquire, as Special Referee. A copy of the Order of Reference is attached as Exhibit B.

Following the hearing before Judge Hayes, Appellant filed a number of motions generally complaining of procedural errors and discovery disputes, challenging the Order of Reference, and seeking sanctions against Respondent. A hearing on all of the motions was held on January 10, 2014. Thereafter, on January 23, 2014, the Special Referee signed an Order denying Appellant's motions. A copy of the Special Referee's Order is attached as Exhibit C.

Ms. Roseboro timely appealed the Order entered by the Special Referee. However, her Initial Brief also raises issues with regard to the Orders entered by Judge Kimball and Judge Hayes.

ARGUMENTS

Appellant appeals the Special Referee's Order that: 1) found notice of the hearing before the Special Referee was proper; 2) denied Appellant's dispositive motions for failure to support by affidavits; 3) denied Appellant's motion for default judgment against Respondent; 4) denied Appellant's motion to strike and motion to compel in regard to Respondent's responses to interrogatories; 5) denied Appellant's request that Respondent be sanctioned and held in contempt; and 6) denied Appellant's motion to strike the Order of Reference. In addition, Appellant apparently attempts to bring an appeal of the circuit court's order dated September 20, 2013, granting summary judgment to Respondent on Appellant's counterclaim and the Order of Reference entered October 11, 2013. (See Appellant's Brief, p. 2) Because most of Appellant's grounds for appeal involve interlocutory matters not immediately appealable or appealable at all, and her other grounds are untimely, this appeal should be dismissed in its entirety.

1. The Special Referee's ruling that notice of hearing was proper does not involve the merits or affect a substantial right; therefore, this issue is not immediately appealable.

In her Brief, Appellant argues that the Notice of Hearing served upon her by Respondent's counsel was in error because the Notice was not sent directly from the Special Referee. Appellant's Initial Brief, p. 6. Appellant acknowledges she received the notice, but apparently refused to accept the notice as legitimate. *Id.* The Special Referee ruled that the Notice was proper because the hearing "was set with the knowledge and approval of the Special Referee." (Exhibit C, p. 1); *see also* Rule 5(a), SCRCF (stating that written notices must be served upon each party). Appellant does not assert that she did not receive notice of the hearing, thus denying her notice and an opportunity to be

heard. Indeed, the Notice of Hearing was mailed to Appellant on December 12, 2013, several weeks before the hearing. A copy of the Notice of Hearing is attached as Exhibit D.

Pursuant to S.C. Code Ann. § 14-3-330, this Court has appellate jurisdiction over any “intermediate judgment, order or decree ... involving the merits in actions commenced in the court of common pleas, and “an order affecting a substantial right ... when such order ... in effect determines the action and prevents judgment from which an appeal might be taken or discontinues the action” The Special Referee’s finding that the notice was proper does not “finally determine a substantial matter forming the whole or a part of some cause of action or defense.” *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 306, 705 S.E.2d 475, 480 (Ct. App. 2011). Further, the Special Referee’s decision did not affect a substantial right which forecloses Appellant’s counterclaim or prevents her from appealing any subsequent final judgment. Consequently, the Special Referee’s ruling that the notice of hearing was proper is not appealable at this juncture.

2. The Special Referee’s denial of Appellant’s Dispositive Motions is not appealable.

The Special Referee denied Appellant’s dispositive motions due to her failure to support her motion with affidavits. (Exhibit C, p.1). Appellant did not raise this issue in her Initial Brief. Therefore, this Court should not review the Special Referee’s ruling on Appellant’s dispositive motions. Rule 208(b)(1)(b), SCACR. To the extent this Court finds otherwise, an order denying a dispositive motion is not appealable. *Ballenger v. Bowen*, 313 S.C. 476, 476, 443 S.E.2d 379, 380 (1994). “A denial of a motion for summary judgment decides nothing about the merits of the case, but simply decides the

case should proceed to trial.” *Id.* at 477, 380. Any appeal of the Special Referee’s denial of dispositive motions must be dismissed. However, Appellant is free to raise these arguments again at the hearing on the merits before the Special Referee.

3. The Special Referee’s denial of Appellant’s application for default judgment is not appealable.

Under Rule 55, SCRCP, default judgment may be entered against a defendant who fails to plead or otherwise defend. The Special Referee denied Appellant’s request for default judgment against Wells Fargo because Wells Fargo timely filed a Reply to Appellant’s counterclaims. Similar to denial of a motion for summary judgment, the denial of motion for default judgment is not a final judgment. *C.f. Ballenger v. Bowen*, 313 S.C. 476, 476, 443 S.E.2d 379, 380 (1994). Nor is the denial of default judgment a decision on the merits of the case. *Id.* Therefore, the Special Referee’s denial of her motion for default judgment is not appealable. Appellant’s appeal of this decision must be dismissed.

4. The Special Referee’s decision that Appellant’s discovery motions were moot is not immediately appealable.

Appellant filed a motion to strike and a motion to compel concerning Wells Fargo’s responses to her interrogatories. (Exhibit C, p. 2) The Special Referee ruled that her motion was moot due to Wells Fargo’s agreement to supplement its responses by a date certain. *Id.* Appellant did not raise this issue in her Initial Brief. Therefore, this Court should not review the Special Referee’s ruling on Appellant’s discovery motions. Rule 208(b)(1)(b), SCACR. To the extent this Court funds otherwise, orders denying discovery motions are not immediately appealable. *Hamm v. S.C. Pub. Serv. Comm’n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994). Discovery orders “do not, within the

meaning of the appealability statute, involve the merits of the action or affect a substantial right.” *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008). Accordingly, any appeal of the Special Referee’s discovery order must be dismissed.

5. The Special Referee’s denial of Appellant’s motion for sanctions and contempt against Wells Fargo is not appealable.

Appellant filed numerous motions seeking sanctions and a finding of contempt against Wells Fargo. The Special Referee denied these motions. (Exhibit C, p. 2). Pursuant to Rule 201, SCACR, “only a party aggrieved by an order ... or decision may appeal.” “An aggrieved party is one who is injured in a legal sense; one who has suffered an injury to person or property.” *Cisson v. McWhorter*, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970). Because the Special Referee’s order declining to hold Wells Fargo in contempt or impose sanctions upon Wells Fargo does not deny Appellant any personal or property right, Appellant’s appeal of this issue should be dismissed. *See Toyota of Florence v. Lunch*, 314 S.C. 257, 267, 442 S.E.2d 611, 617 (1994) (dismissing appeal of order vacating contempt finding against opposing party because appellant was not aggrieved by the order).

6. To the extent that Appellant challenges the Special Referee’s decision regarding her motion to compel review of a court transcript, the Special Referee’s decision is not appealable.

Appellant moved to compel the court to allow her to review the transcript of a prior proceeding. (Exhibit C, p. 2). The Special Referee stated that Appellant “has the right to obtain a transcript, at her expense, from any hearing in this matter.” *Id.* Because Appellant’s Brief does not raise this portion of the Order as a ground for appeal, this issue is unreviewable. 208(b)(1)(b), SCACR. To the extent that this Court reviews this portion of the Special Referee’s Order, such an appeal must be dismissed because Appellant

cannot be aggrieved by the Special Referee simply explaining to her that she may obtain a hearing transcript at her expense. *See* Rule 201, SCACR (“only a party aggrieved by an order ... or decision may appeal.”)

7. To the extent that Appellant challenges the Special Referee’s denial of her motion for a more definite pleading, the Special Referee’s decision is not immediately appealable.

Appellant apparently moved to require Wells Fargo to make certain statements or allegations within its Complaint more definite. The Special Referee denied the motion because he was unable to ascertain from the motion the basis for the motion or what more definite statement was sought. (Exhibit C, p. 2). Appellant’s Brief does not raise this portion of the Order as a ground for appeal; therefore, this Court should not review the Special Referee’s ruling on the question of a more definite statement. Rule 208(b)(1)(b), SCACR. To the extent that this Court reviews all decisions within the Special Referee’s Order, the Special Referee’s denial of Appellant’s motion for a more definite statement is not immediately appealable.

“An order granting or denying a motion to require a pleading to be made more definite and certain is not appealable until final judgment, unless the motion involves the merits.” *Mason v. S. S. Kresge Co.*, 247 S.C. 144, 147, 146 S.E.2d 158, 160 (1966). So long as the allegations within the Complaint are sufficient to apprise Appellant of the basis of the action against her, a decision denying a motion to make the Complaint more definite does not involve the merits and therefore, is not immediately appealable. *Arctic Ice & Coal Co. v. Southern Ice Co.*, 194 S.C. 60, 66, 9 S.E.2d 38, 40 (1940). A review of Appellant’s statement of facts within her Initial Brief makes clear that she understands

the basis of the action against her. Thus, the Special Referee's decision is not appealable at this stage in the litigation.

8. The Special Referee's denial of Appellant's motion to strike an Order of Reference or otherwise seek to disqualify the Special Referee is not appealable.

Appellant moved to strike the Order of Reference in this case entered on October 11, 2013. The Special Referee denied the motion because it complied with the applicable Rules of Civil Procedure and Appellant had not appealed the Order. (Exhibit C, p. 2). Further, a motion to strike is not the proper means by which to challenge an order. *See* Rule 12(f) (stating that, under Rule 12(f), "a court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter."). Even construing Appellant's motion as a motion to disqualify the Special Referee based upon Appellant's belief that the Special Referee had a conflict of interest in deciding a foreclosure action brought by Wells Fargo, "denial of a motion for disqualification of a judge is an interlocutory order not affecting the merits and, thus, is reviewable only on appeal from a final order." *Townsend v. Townsend*, 323 S.C. 309, 312, 474 S.E.2d 424, 427 (1996).

9. Appellant's appeal of the Order of Reference and Order Granting Partial Summary Judgment on Appellant's counterclaim is barred as untimely.

Appellant's Initial Brief indicates that Appellant is also appealing the Order of Reference, entered October 11, 2013 (Exhibit B) and the Order granting Wells Fargo partial summary judgment on Appellant's counterclaim entered September 20, 2013 (Exhibit A). Appellant's Initial Brief, p. 2. Under Rule 203, SCACR, a notice of appeal must be served and filed within thirty days of receipt of written notice of entry of the order. Appellant filed the Notice of Appeal on February 20, 2014. To the extent that

Appellant seeks to appeal the Orders entered on September 20, 2013 and October 11, 2013, the appeal is untimely. “The failure to timely serve a notice of appeal “divests this court of subject matter jurisdiction and results in dismissal of the appeal.” *Holroyd v. Requa*, 361 S.C. 43, 54, 603 S.E.2d 417, 423 (Ct. App. 2004).

CONCLUSION

In concluding, the Order entered by the Special Referee is interlocutory, and there is nothing in the Order that is immediately appealable. With regard to the Orders entered by Judge Kimball and Judge Hayes, any attempt to appeal those Orders is untimely. Accordingly, this appeal should be dismissed and the case remanded to the lower court for further proceedings.

McANGUS, GOUDELOCK & COURIE, L.L.C.



Thomas E. Lydon
1320 Main Street, 10th Floor
Post Office Box 12519
Columbia, South Carolina 29211
Attorney for Respondent Wells Fargo Bank, N.A.

April 18, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Wells Fargo Bank, N.A.,)
)
Plaintiff,)

Case No. 2012-CP-46-1328

vs.)
)

ORDER

Alice Roseboro a/k/a Alice L.)
Roseboro, Citibank South Dakota,)
N.A., The South Carolina)
Department of Revenue; Founders)
Federal Credit Union, LVNV)
Funding, LLC;)
Defendants.)

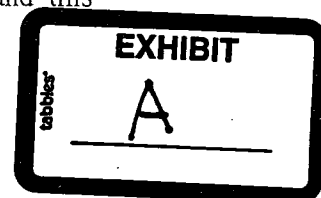
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DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This matter came before me on September 17, 2013, upon Defendant Alice Roseboro's Motion to Compel, and Plaintiff's Motion for Summary Judgment. Present at the hearing were Thomas E. Lydon, on behalf of Plaintiff, and Defendant Alice Roseboro, appearing *pro se*.

With regard to the Motion to Compel, Defendant Roseboro asserts that she has requested proof from Plaintiff that it owns the mortgage loan that is the subject of this action, as well as a payment history. Having reviewed the documents filed with the Court, and having heard the arguments of the parties, it appears that Plaintiff has provided Defendant Roseboro with copies of the promissory note, mortgage, and assignments for the loan that is the subject of this action. However, Plaintiff's counsel acknowledges that he has not provided Defendant Roseboro with a payment history and has agreed to provide her with a payment history within fifteen days of the date of this Order.

Concerning the Motion for Summary Judgment, Plaintiff's counsel acknowledged at the hearing that there may be issues of fact raised by Defendant Roseboro with regard to the foreclosure complaint, but sought dismissal of the counterclaims asserted against Plaintiff by Defendant Roseboro. Having reviewed the pleadings and other documents filed by Defendant Roseboro, and having heard her arguments, it appears that she is asserting a counterclaim for violation of Section 1977A of the Civil Rights Act of 1991, along with counterclaims that arise out of the handling of her mortgage loan, her application for a loan modification, and this foreclosure action.

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Section 1977A of the Civil Rights Act of 1991 pertains to damages in cases of intentional discrimination in employment. Since Defendant Roseboro does not contend that she was ever an employee of Plaintiff, this counterclaim fails as a matter of law and must be dismissed. As to the remaining counterclaims concerning Plaintiff's handling of her mortgage loan, her application for a loan modification, and this foreclosure action, there may be genuine issues of material fact, and the merits of these counterclaims should be determined at a full hearing on the merits.

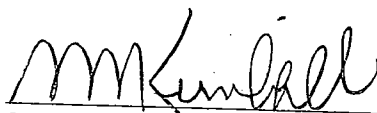
Accordingly, based on the foregoing discussion, it is ordered that Defendant Roseboro's Motion to Compel be denied with respect to the promissory note, mortgage, and assignments which have previously been provided, but granted with respect to her request for a payment history. A payment history shall be provided to her within fifteen days of the filing of this Order.

It is further ordered that Plaintiff's Motion for Summary Judgment be granted with respect to Defendant Roseboro's counterclaim for violation of Section 1977A of the Civil Rights Act of 1991, and that counterclaim is hereby dismissed.

It is further ordered that Plaintiff's Motion for Summary Judgment with respect to the remaining counterclaims asserted by Defendant Roseboro be denied.

AND IT IS SO ORDERED.

September 20, 2013



S. Jackson Kimball
Presiding Judge
York County



STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Wells Fargo Bank, N.A.,)
)
Plaintiff,)

Civil Action No. 2012-CP-46-1328

vs.)

ORDER OF REFERENCE

Alice Roseboro a/k/a Alice L.)
Roseboro, Citibank South Dakota,)
N.A., The South Carolina)
Department of Revenue; Founders)
Federal Credit Union, LVNV)
Funding, LLC;)
Defendants.)

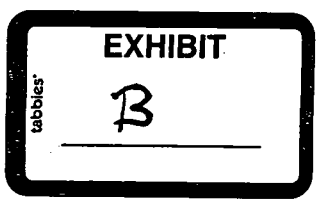
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DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

This matter came before the Court upon Plaintiff's motion requesting an Order of Reference. Having reviewed the pleadings and other filings by the parties, it appears that this is a mortgage foreclosure action which should be referred to the Master in Equity or a Special Referee pursuant to Rule 53 of the South Carolina Rules of Civil Procedure. Mortgage foreclosures in York County are typically referred to the Honorable S. Jackson Kimball, III, the Master in Equity for York County. However, Judge Kimball has presided over two prior hearings in this matter as a special circuit judge, and Defendant Alice Roseboro has raised objections to how those hearings were handled. Therefore, I find that this matter should be referred to a Special Referee.

Accordingly, based on the foregoing and pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure,


IT IS ORDERED that the above-captioned case be and the same hereby is referred to Charles Zindorf, Esq. as Special Referee for York County, to take the testimony and other evidence offered and to direct entry of judgment in this action, without further

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order of this Court. Any appeal from the final judgment entered by the Special Referee should be made directly to the South Carolina Court of Appeals.

AND IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge *H 2*
York County Court of Common Pleas

York, South Carolina

10/10, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Wells Fargo Bank, N.A.,)
)
Plaintiff,)

Civil Action No. 2012-CP-46-1328

ORDER

vs.)
)

Alice Roseboro a/k/a Alice L.)
Roseboro, Citibank South Dakota,)
N.A., The South Carolina)
Department of Revenue; Founders)
Federal Credit Union, LVNV)
Funding, LLC;)
)
Defendants.)

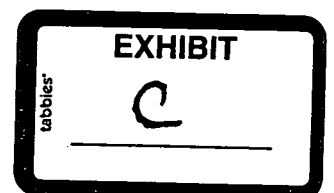
This matter came before the Court on January 10, 2014, for a hearing on all of Defendant Alice Roseboro's pending motions. Present at the hearing was Thomas E. Lydon, on behalf of Plaintiff. Ms. Roseboro was given notice of the hearing, but did not attend.

Having reviewed the motions and the supporting documentation filed by Defendant Alice Roseboro, I find and conclude as follows:

1. The notice of the hearing served by counsel for Plaintiff was proper. The date and time of the hearing was set with the knowledge and approval of the Special Referee, so any objections Ms. Roseboro has regarding the manner in which the hearing was noticed are overruled.

2. Several of the motions filed by Ms. Roseboro appear to be dispositive in nature. However, the dispositive motions are not supported by affidavits. Therefore, they must be denied.

3. Several of Ms. Roseboro's motions request that a default judgment be entered against Plaintiff. However, Plaintiff timely filed a Reply to the counterclaims alleged against it, so the application for default judgment is denied.



4. Ms. Roseboro has filed a motion to strike and a motion to compel with regard to Plaintiff's responses to her interrogatories. Plaintiff has agreed to supplement its responses to interrogatories by January 20, 2014. Therefore, this motion is moot.

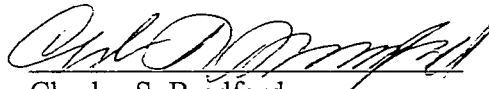
5. Ms. Roseboro has filed several motions for hindrance in which she asks that Plaintiff and its attorneys be sanctioned and held in contempt of court. Having reviewed the pleadings, motions, and supporting documents filed in this matter, I find nothing in the record to support sanctions or the holding of any party in contempt of court. Accordingly, these motions are denied.

6. Regarding the motion to compel review of transcript, Ms. Roseboro has the right to obtain a transcript, at her expense, from any hearing in this matter.

7. Regarding the motion to amend or for more definite statement, based on my review of the motion, it is unclear what the basis for the motion is or what relief is being sought. Therefore, the motion is denied.

8. Ms. Roseboro has also filed a motion to strike order of reference. Having reviewed the Order of Reference, I find that it complies with all of the applicable rules of civil procedure, and no appeal has been taken from the Order. Accordingly, this motion is denied.

AND IT IS SO ORDERED.



Charles S. Bradford
Special Referee

York, South Carolina

January 23, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Wells Fargo Bank, N.A.,)
)
)
Plaintiff,)

Civil Action No. 2012-CP-46-1328

vs.)
)
Alice L. Roseboro,)
)
Defendant.)


NOTICE OF HEARING

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DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

TO: Defendant Alice L. Roseboro

You will please take notice that arguments on all pending motions will be heard by Charles S. Bradford, Esquire, Special Referee for York County, on January 10, 2014, at 10:00 a.m. at 4 East Liberty Street, York, South Carolina.

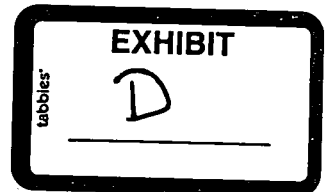
McANGUS, GOUDELOCK & SOURIE, LLC

By: 

Thomas E. Lydon
1320 Main Street, 10th Floor
Post Office Box 12519
Columbia, South Carolina 29211
803-779-2300

December 12, 2013

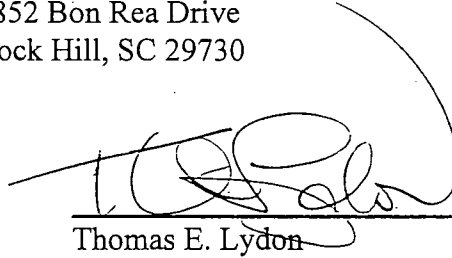
Attorneys for Plaintiff



CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of December, 2013, served a copy of the foregoing Notice of Hearing, by mailing a copy of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

Ms. Alice Roseboro
1852 Bon Rea Drive
Rock Hill, SC 29730



Thomas E. Lydon

DAVID HAMILTON
C.C.P. & U.S.
YORK COUNTY, SC

2013 DEC 13 PM 12:15

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RECEIVED

APR 18 2014

SC Court of Appeals

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Reply To

THOMAS E. LYDON
Direct Dial: (803) 227-2292
tlydon@mgclaw.com

April 18, 2014

RECEIVED

APR 18 2014

SC Court of Appeals

Via Hand Delivery
The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

**Re: Wells Fargo, N.A. v. Alice Roseboro
Case Tracking No. 2014-000346
Civil Action No. 2012-CP-46-1328**

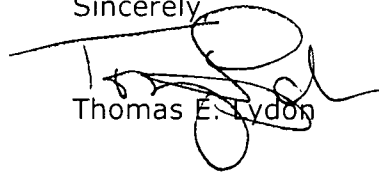
Dear Ms. Kitchings:

Enclosed please file the original and seven copies of the following:

1. Respondent's Motion to Dismiss;
2. Respondent's Memorandum in Support of Motion to Dismiss.

Also enclosed is a check in the amount of \$25.00 to cover the filing fee for the Motion and Proof of Service showing that the Motion and Memorandum have been served on the Appellant.

Sincerely



Thomas E. Lydon

Encl.

Cc: Ms. Alice L. Roseboro
1852 Bon Rea Drive
Rock Hill, SC 29730