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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Diane Schafer Goodstein

RECEIVED

Case No. 2012-CP-40-00138
Appellate Case No. 2015-001273

DEC 10 2015
SC Court of Appeals

U.S. Bank National Association, as Trustee,
as successor-in-interest to Bank of America, N.A.,
as Trustee, as successor by merger to LaSalle Bank, N.A.,
as trustee for the holders of the Credit Suisse Seasoned
Loan Trust 2006-1 Home Equity Pass-Through
Certificates, Series 2006-1 Respondent,

v.

Lydia Elaine Haggwood (a minor), Felicia Wells as
Personal Representative of the Estate of Essie L. Morgan,
Daniel K. Felkner, First Financial Corporation; Susan M. Brown Defendants,

Of whom Felicia Wells as
Personal Representative of the
Estate of Essie L. Morgan is the Appellant.

**RESPONDENT'S MOTION TO
DISMISS THE APPEAL**

Sean M. Foerster (SC Bar # 77466)
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Attorneys for the Respondent

Respondent U.S. Bank National Association, as Trustee, as successor-in-interest to Bank of America, NA, as Trustee, as successor by merger to LaSalle Bank NA, as trustee for the holders of the Credit Suisse Seasoned Loan Trust 2006-1 Home Equity Pass-Through Certificates, Series 2006-1 (“U.S. Bank”) hereby moves to dismiss the appeal of Appellant Felicia Wells as Personal Representative of the Estate of Essie L. Morgan (“Wells”) on the grounds that 1) the form order from which she appeals is not appealable, 2) she has failed to file and serve an Initial Brief of Appellant that complies with the South Carolina Appellate Court Rules, and 3) she has failed to file and serve a designation of matter to be included in the Record on Appeal.

FACTS

On May 18, 2015, Wells filed a Notice of Appeal from a Form 4 Order entered in the circuit court on April 22, 2015. According to her Proof of Service, Wells did not serve the Notice of Appeal until May 28, 2015.

On the Form 4 Order from which Wells appeals, the circuit court judge checked the boxes for “does not end the case” and “see attached order (formal order to follow).” While the Form 4 Order contains “additional information for the Clerk” stating “counterclaims and standing defense only,” it contains no actual ruling from the circuit court judge. The circuit court judge left the box for “decision by the court” unchecked.

By Order entered on October 16, 2015, the Court ordered Wells to serve and file her initial brief and designation of matter no later than November 15, 2015.

On November 12, 2015, Wells served Respondent with a one and a half page letter addressed to the Court complaining that Respondent had not produced her original promissory note to the circuit court and asking the Court for a jury trial. Attached to the

letter were copies of the following: 1) the Order of October 16, 2015, entered herein; 2) Wells's incomplete draft responses to discovery requests that Respondent served on her in the lower court, 3) a printout of *Heintz v. Jenkins*, 514 U.S. 291 (1995), 4) pages 2 and 3 of the circuit court's order entered on June 9, 2015, and 5) what appears to be the signature page to the Mortgage signed by Essie L. Morgan.

To date, Respondent has received no Initial Brief of the Appellant or Designation of Matter from Wells.

ARGUMENT

Wells's appeal must be dismissed for the following reasons:

1. The Form 4 Order entered on May 15, 2015, is not appealable.

The Form 4 Order from which Wells appeals is not appealable. "Appeal may be taken, as provided by law, from any final judgment, appealable order or decision." Rule 201(a), SCACR. "South Carolina adheres to the final judgment rule." *Brunson v. Am. Koyo Bearings*, 367 S.C. 161, 165, 623 S.E.2d 870, 872 (Ct. App. 2005). "Accordingly, with certain exceptions, an appeal lies only from a final judgment."

The Form 4 Order from which Wells appeals is not a final order. A form order is a final order only if the circuit court indicates that nothing else remains to be done after it is signed. *See Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 605, 567 S.E.2d 514, 518 (Ct. App. 2002). A form order indicating that a formal order will follow is not in any way final. *Metts v. Mims*, 384 S.C. 491, 499, 682 S.E.2d 813, 817 (2009); *see also* Rule 203(b)(1), SCACR ("When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.").

An immediate appeal from an interlocutory order is permitted only when the order is one “involving the merits” or “affecting a substantial right,” or when it concerns a request for injunction or appointment of a receiver. S.C. Code Ann. § 14-3-330.

The Form 4 Order that Wells appeals from is not a final order because it specifically states that it “does not end the case” and that a formal order will follow it. The Form 4 Order does not involve the merits or affect a substantial right because it contains no ruling at all.

Because the Form 4 Order is not an appealable order, Wells’s appeal must be dismissed.

2. Wells failed to file and serve an Initial Brief of Appellant that complies with the South Carolina Appellate Court Rules.

Wells failed to serve and file an Initial Brief of Appellant as required by the Order entered on October 16, 2015. Therefore, her appeal must be dismissed.

To the extent that Wells intended her letter of November 12, 2015, to be her initial brief, the appeal must be dismissed nonetheless as this letter does not comply with the South Carolina Appellate Court Rules. *See* Rule 208(b), SCACR (requiring the initial brief to comply with Rule 267 and also contain a table of contents and cases, statement of issues on appeal, statement of the case, argument, conclusion, and references to the lower court materials).

3. Wells failed to file and serve a designation of matter to be included in the Record on Appeal.

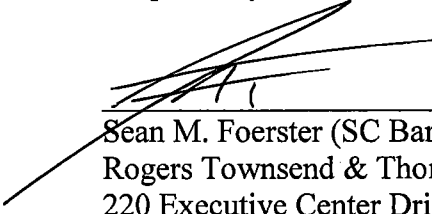
Wells failed to serve and file a Designation of Matter to be included in the Record on Appeal as required by the Order entered on October 16, 2015. Therefore, her appeal must be dismissed.

To the extent that Wells intended the attachments to her letter of November 12, 2015, to be considered her designation of matter, the appeal must be dismissed nonetheless as the attachments include documents not presented to the circuit court. Rule 210(c), SCACR (“The Record shall not, however, include matter which was not presented to the lower court or tribunal.”). The following attachments to her letter of November 12, 2015, were not part of the circuit court records for this case: 1) the incomplete draft responses to the discovery requests that Respondent served on her in the lower court, 2) the printout of *Heintz v. Jenkins*, 514 U.S. 291 (1995), and 3) the signature page to the Mortgage signed by Essie L. Morgan.

CONCLUSION

For these reasons, U.S. Bank respectfully moves for an Order dismissing this appeal. In the event that this appeal is not dismissed, U.S. Bank respectfully requests relief from having to serve and file its Initial Brief of the Respondent until Wells serves it with both an Initial Brief of Appellant and Designation of Matter that comply with the South Carolina Appellate Court Rules.

Respectfully submitted,



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Attorneys for Respondent U.S. Bank National Association, as Trustee, as successor-in-interest to Bank of America, NA, as Trustee, as successor by merger to LaSalle Bank NA, as trustee for the holders of the Credit Suisse Seasoned Loan Trust 2006-1 Home Equity Pass-Through Certificates, Series 2006-1

December 10, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
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Loan Trust 2006-1 Home Equity Pass-Through
Certificates, Series 2006-1 Respondent,

v.

Lydia Elaine Haggwood (a minor), Felicia Wells as
Personal Representative of the Estate of Essie L. Morgan,
Daniel K. Felkner, First Financial Corporation; Susan M. Brown Defendants,

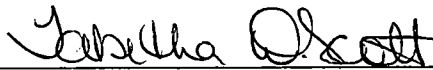
Of whom Felicia Wells as
Personal Representative of the
Estate of Essie L. Morgan is the Appellant.

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the Respondent's Motion to Dismiss the Appeal on December 10, 2015, by depositing a copy of each in the United States Mail, postage prepaid, addressed to the following party of record:

Felicia Wells
7435 Innisfree Place
Charlotte, NC 28226

Felicia Wells
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Columbia, SC 29203



Tabitha D. Scott
Paralegal to Sean M. Foerster, Esquire
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RECEIVED

December 10, 2015

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SC Court of Appeals

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *U.S. Bank National Association, as Trustee, as successor-in-interest to Bank of America, NA, as Trustee, as successor by merger to LaSalle Bank NA, as trustee for the holders of the Credit Suisse Seasoned Loan Trust 2006-1 Home Equity Pass-Through Certificates, Series 2006-1 vs. Lydia Elaine Haggwood (a minor), Felicia Wells as Personal Representative of the Estate of Essie L. Morgan, Daniel K. Felkner, First Financial Corporation; Susan M. Brown*
Appellate Case No.: 2015-001273
Our File# 511847-2634

Dear Ms. Kitchings:

Enclosed is an original and eight copies of Respondent's Motion to Dismiss the Appeal in reference to the above matter, along with \$25.00.

By copy of this correspondence, I am serving a copy of this motion on the Appellant.

Please have your staff return a clocked copy of this document with the courier.

Very truly yours,

A handwritten signature in black ink, appearing to read "S. M. Foerster", is written over a horizontal line.

Sean M. Foerster

/tds
Enclosure

cc:

Felicia Wells
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Charlotte, NC 28226

Felicia Wells
14 Silver Oak Circle
Columbia, SC 29203