

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Special Referee

Martin S. Driggers, Jr., Special Referee, Darlington County

Case No: 2012-CP-16-1021

RECEIVED
JAN 08 2016
SC Court of Appeals

Vanderbilt Mortgage and Finance, Inc.,.....Respondent

v.

Ashton C. Bull, Linda Bull, Park Avenue Homes, South Carolina Department of Motor
Vehicles.....Appellant

MOTION TO DISMISS BY RESPONDENT

B. LINDSAY CRAWFORD, III
THEODORE VON KELLER
SARA C. HUTCHINS
JONATHAN M. RIDDLE
CRAWFORD & VON KELLER, LLC
POST OFFICE BOX 4216
COLUMBIA, SOUTH CAROLINA 29240
(803) 790-2626
ATTORNEYS FOR RESPONDENT VANDERBILT
MORTGAGE AND FINANCE

The Respondent, Vanderbilt Mortgage and Finance, (hereinafter referred to as "Vanderbilt"), pursuant to Rule 72, SCRPC, moves the Court for an order dismissing the appeal filed by the appellant. In support of the motion, the respondent shows the following to the court:

1. That on May 6, 2015, the Special Referee granted Respondent's Motion for Partial Summary Judgment by way of an Order filed May 11, 2015.
2. That on June 8, 2015, Appellant filed a Motion to Alter or Amend.
3. That on August 20, 2015, the Special Referee denied the Motion to Alter or Amend Judgment by way of an Order filed August 26, 2015.
4. That Respondent has scheduled the case for a final hearing on the merits.
5. That on September 23, 2015, Appellant filed a Notice of Appeal in the above captioned action.
6. That, pursuant to 72, SCRPC and *Hagood v. Sommerville*, 362 S.C. 191, 194-195, 607 S.E.2d 707, 708 (2005), South Carolina adheres to the final judgment rule and does not allow interlocutory appeals.
7. That the neither the Order Denying Alteration or Amendment nor the Order Granting Summary Judgment are final judgments under Rule 72 and *Hagood v. Sommerville*.

WHEREFORE, Respondent moves for dismissal of the appeal based on the failure to comply with the South Carolina Appellate Court Rules.

CRAWFORD & VON KELLER, LLC

BY: 

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Attorneys for Respondent

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October 4, 2015

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MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS

B. LINDSAY CRAWFORD, III
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ATTORNEYS FOR RESPONDENT VANDERBILT
MORTGAGE AND FINANCE

The Notice of Appeal filed on September 23, 2015, states that the Appellants are appealing the Order Denying Alteration or Amendment dated August 20, 2015 and filed August 26, 2015.

Rule 72, SCRCP provides that “[a]ppel may be taken, as provided by law, from any final judgment or appealable order.” “South Carolina adheres to the final judgment rule . . . with certain exceptions, an appeal lies only from a final judgment.” *Brunson v. American Koyo Bearings*, 367 S.C. 161, 165, 623 S.E.2d 870, 872 (Ct.App. 2005). “An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.” *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005). Exceptions to the final judgment rule arise under South Carolina Code Annotated Section 14-3-330. Under Section 14-3-330(2), appeals can be heard from interlocutory orders when the order affects “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.” The Court narrowly construes these provisions and generally denies immediate appeal of orders issued before or during trials so that “piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial.” *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709.

This appeal arises out of an order denying Appellant’s Motion to Alter or Amend. That motion arose out of an Order Granting Partial Summary Judgment to Respondent. The underlying action was seeking foreclosure on property owned by Appellants. The Order Granting Summary Judgment did not end the case. Instead, the Order simply determined that Respondent was entitled to an equitable lien on the subject property. At no time was this order a

final judgment, as the case is still scheduled for a final hearing to determine whether to grant the foreclosure. Once a final judgment is entered, a higher court will be able to review all intermediate orders, including the Order that is the subject of this appeal, as provided by Section 14-3-330(1).

Like in *Hagood*, this order did not finally end the case, so the order should be considered interlocutory and the appeal dismissed until a final judgment. Furthermore, the order does not effect a substantial right to bring it under the statutory exception. The order did not in effect determine or discontinue the action. In a final hearing, Appellants will still have every right to put up a defense to the underlying foreclosure action. The mere granting of an equitable lien does not automatically give Respondent the right to foreclose. Since those rights and issues still need to be heard at a final hearing in front of the Special Referee, this appeal is untimely and should be dismissed.

CONCLUSION

For the reasons stated, this Court should dismiss the appeal.

Respectfully submitted,

CRAWFORD & VON KELLER, LLC

BY: 

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Columbia, South Carolina
October 6, 2015

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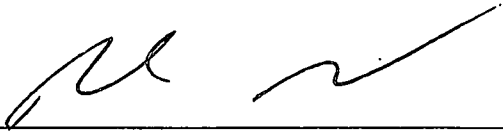
v.

Ashton C. Bull, Linda Bull, Park Avenue Homes, South Carolina Department of Motor
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CERTIFICATE OF SERVICE

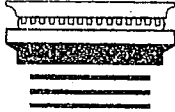
I, Paul Talbot, an employee of Crawford & von Keller, LLC, do hereby certify that on this date, I served a copy of **PLAINTIFF'S MOTION TO DISMISS** on counsel listed below, by hand on the said date, addressed as follows:

Marcus Woodson
P.O. Box 1657
Marion, South Carolina 29571



Paul Talbot

Columbia, South Carolina
October 6, 2015



CRAWFORD & VON KELLER, LLC

October 6, 2015

The Honorable Jenny Abbot Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

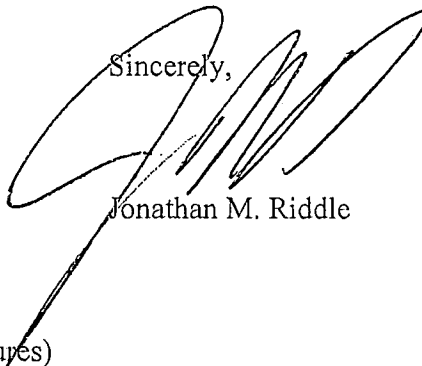
RE: Vanderbilt Mortgage and Finance, Inc. v. Ashton C. Bull, et al.
C/A No. : 2012-CP-16-1021
File No.: 6310.4587

Dear Ms. Kitchings:

Enclosed herewith please find an original and one (1) copy of **the Motion to Dismiss Appeal** in the above-referenced matter. Please file same and return a clocked copy to this office in the enclosed self-addressed, stamped envelope.

By copy of this letter I am serving the opposing counsel with same. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Jonathan M. Riddle

/emk

cc: Marcus Woodson (w/enclosures)
Sean Cook (w/ enclosure via email)

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PRT