

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM HORRY COUNTY
Court of Common Pleas

FEB 12 2016

SC Court of Appeals

The Honorable William H. Seals, Jr., Circuit Court

Case No. 2014-CP-26-08298

Appellate Case No. 2016-000175

TD Bank, N.A., Appellant,

v.

Kenneth A. Hucks and Kenlar Investments, LLC, Respondent.

RESPONDENT'S MEMORANDUM OF LAW

Pursuant to Rule 212, SCACR, Respondents Kenneth A. Hucks and Kenlar Investments, LLC (the "Respondents"), hereby submit this memorandum of law in response to this Court's request for this party to address whether the Appellant has a right to immediately appeal the matter before this Court. The grounds for this appeal involve the circuit court's interlocutory order denying Appellant's motion to strike and motion to reconsider. The Appellant's motions concern the Respondents' proper demand for trial by jury in its answer and response to Appellant's complaint.

The right to appeal an order is controlled by statute. *N. Carolina Fed. Sav. & Loan Ass'n v. Twin States Dev. Corp.*, 289 S.C. 480, 347 S.E.2d 97 (1986). As a general rule, interlocutory orders are not immediately appealable, but there are exceptions. "An appeal ordinarily may be pursued only after a party has obtained a final judgment." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). Absent a

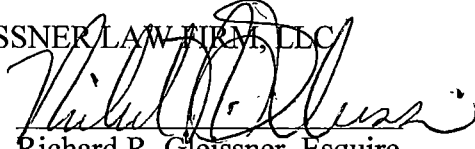
specialized statute, an order must fall into one of several categories set forth in section S.C.Code Ann. § 14-3-330 in order to be immediately appealable. Section 14-3-330, has been narrowly construed and the immediate appeal of various orders issued before or during trial have generally not been allowed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). “The basic policy behind denying immediate review of pretrial motions is avoidance of piecemeal litigation where the rights of the parties have not been substantially impacted.” *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 13 (2000). Generally, an order is not immediately appealable when appellants “have not ‘arrived at the end of the road’ and [would] be able to appeal the decision after the trial [was] finished.” *Baldwin Constr. Co. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004).

Orders affecting the mode of trial have been held to affect a substantial right as defined in section 14-3-330(2), “and must, therefore, be appealed immediately.” *Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997). Moreover, “[i]ssues regarding mode of trial must be raised in the trial court at the first opportunity, and the order of the trial judge is immediately appealable.” *Foggie v. CSX Transp., Inc.*, 313 S.C. 98, 23, 431 S.E.2d 587, 590 (1993). Section 14-3-330(2) states:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(2) An 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.

The “court should look to the effect of an interlocutory order to determine its appealability under section 14–3–330(2)(c).” *Thornton v. S. Carolina Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011). The Court's traditional analysis for determining whether a party has been denied a mode of trial “proceeds by determining whether or not a party is erroneously denied a trial by jury in a law case, or is erroneously required to proceed before a jury in an equity case.” *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000). The order of the circuit court denied the Appellant’s motion to strike. The effect of the Order was to grant Respondent’s proper demand for trial by jury and hold the Appellant had no right to a trial without a jury. Thus, it is argued that the interlocutory order had the effect of abridging Appellant’s alleged right to proceed to trial without a jury. See *Frampton v. S. Carolina Dep't of Transp.*, 406 S.C. 377, 752 S.E.2d 269 (Ct. App. 2013)(holding the appellants failure to immediately appeal a Form 4 order denying motion to transfer case to non-jury docket waived right to appeal). Thus, under the decisions of the Courts of South Carolina interpreting S.C.Code Ann. § 14–3–330, this Court likely has jurisdiction to hear this appeal.

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Columbia, South Carolina
February 12, 2016.

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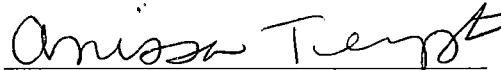
v.

Kenneth A. Hucks and Kenlar Investments, LLC, Respondent.

PROOF OF SERVICE

I, the undersigned employee of the Gleissner Law Firm, LLC, hereby certifies that on February 12, 2016, I served Respondent, Kenneth A. Hucks and Kenlar Investments, LLC's Memorandum of Law in the above captioned matter by placing a copy in the first class mail with sufficient postage prepaid addressed to the following:

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Dated: February 12, 2016