

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY

Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2016-001025

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SC Court of Appeals

U.S. Bank National Association, as Trustee for the registered
holders of Credit Suisse Season Loan Trust 2006-1, Home Equity
Pass-Through Certificates, Series 2006-1.....Appellant,

v.

Anita Joye Bethea a/k/a Anita Joy; Jackson D. Joy, Jr. a/k/a
Jackson Joy, Jr.Respondents.

REQUESTED MEMORANDUM OF RESPONDENTS

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STATEMENT OF THE CURRENT ISSUE

I. WHETHER THE PLAINTIFF/APPELLANT'S APPEAL OF THE LOWER COURT'S ORDER OF REFERENCE IS TIMELY AND PROPER.

INTRODUCTION AND FACTS

The Appellant's original Motion for Reference and to Strike Jury Demand of Respondent Anita Joy ("Joy") was first heard on April 14, 2016. As stated in the Order of Reference (the "Order") following the hearing of the Motion, the court ordered the matter to be bifurcated with the counterclaim against U.S. Bank to remain on the active jury trial dockets and the remaining claims to be heard by Judge Tzerman, Special Referee for Kershaw County. Subsequent to this decision, U.S. Bank filed a motion to reconsider. The court denied the motion, finding that Joy's SCUPTA counterclaim against U.S. Bank is compulsory and warrants a jury trial. U.S. Bank filed an untimely Notice of Appeal.

LEGAL STANDARD

"The right of appeal arises from and is controlled by statutory law." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). Usually, an appeal may only be sought after a party has procured a final judgement; an order that does not end a case or prevent a final judgment from which a party could appeal is not generally considered immediately appealable. *Watson v. Underwood*, 407 S.C. 443, 458-59, 756 S.E.2d 155, 163 (Ct. App. 2014); S.C. Code Ann. § 14-3-330(1) (1977); Rule 72, SCRCF; Rule 201(a), SCACR. Whether a party can immediately appeal an order before final judgement depends upon whether the order falls into one of the categories that allows for immediate appeal as set forth in § 14-3-330. S.C. Code Ann. § 14-3-330 (1976 & Supp.2003). For an order to be appealable prior to final judgement, the order must

involve the merits of the case, affect a substantial right, or involve the granting, continuing, modifying, or refusing of an injunction or the appointment of a receiver. *Id.*

ARGUMENT

I. THE ORDER OF REFERENCE IS NOT AN IMMEDIATELY APPEALABLE ISSUE.

a. The Order of Reference bifurcates the matter and does not involve the merits of the case.

“An order ‘involves the merits,’ as that term is used in [s]ection 14–3–330(1)[,] and is immediately appealable when it finally determines some substantial matter forming the whole or part of some cause of action or defense.” *Watson v. Underwood*, 407 S.C. 443, 458, 756 S.E.2d 155, 163 (Ct. App. 2014) citing *Ex parte Capital U–Drive–It, Inc.*, 369 S.C. 7, 630 S.E.2d at 467. The phrase “involve the merits” is narrowly construed, and orders that require some further act by the trial court prior to determining the parties’ rights are typically found to be interlocutory orders and are not immediately appealable. The Order of Reference bifurcating the case in the present matter does not involve the merits of the case because the Order merely determines that one portion of the action will be heard by a jury while the other portion will be heard by a judge; the Order does not determine the outcome of the case or the rights of the parties. The Order does not involve the merits as above-described and, therefore, the Order is not immediately appealable pursuant to S.C. Code Ann. §14-3-330(1).

b. The Order of Reference does not affect a substantial right.

An order affects a substantial right and is immediately appealable when the order, “(a) in effect determines the action and prevents a judgement 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.” S.C. Code Ann. §14-3-330(2). In the present case, the Order to bifurcate does not affect a substantial right of U.S. Bank. In fact, pursuant to SCRCP 38, Joy has a right to a jury trial that the bifurcating Order allows. Further, pursuant to SCRCP 42(b), the bifurcation of a case is at the discretion of the court and, as such, any abuse of discretion that keeps the U.S. Bank from a fair trial can be remedied on appeal after final judgement. *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 77, 533 S.E.2d 575, 577 (2000). The Order does not grant or refuse a new trial; nor does it not strike out an answer or any part of that answer or pleadings in the action. The Order of Reference is, therefore, does not affect a substantial right and is not immediately appealable.

c. The Order of Reference is not a final order and does not involve injunctions or the appointment of a receiver.

The Order of Reference in the present case calls for a bifurcation of the matter and is not a final judgement. Further, the present case does not involve injunctions or the appointment of a receiver. The Order of Reference thereby does not fall within S.C. Code Ann. § 14-3-330(2) or § 14-3-330(3) and is not immediately appealable.

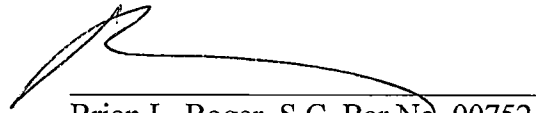
CONCLUSION

For the reasons stated above, the Order of Reference is not an immediately appealable issue, making the Notice of Appeal inappropriate at this time.

(SIGNATURE PAGE TO FOLLOW.)

Respectfully submitted,

May 26, 2015



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