

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Appellate Case No. 2016-001054

**RECEIVED**

MAY 31 2016

**SC Court of Appeals**

HSBC Bank USA, National Association,  
as Trustee for the Holders of the Deutsche  
ALT-A Securities, Inc. Mortgage Loan Trust,  
Mortgage Pass-Through Certificates  
Series 2007-OA4.....Plaintiff/Appellant,

v.

Clifford L. Ryba; Beverly Ryba;  
Regions Bank; First Federal Savings  
and Loan Association of Charleston;  
Citibank (South Dakota) N.A.;  
Carol Garfield Goldberg ..... Defendants,

Of whom Carol Garfield Goldberg is the .....Respondent.

**MOTION TO REINSTATE APPEAL**

This Motion is in response to the Order Dismissing the Appeal filed on May 25, 2016.  
Appellant respectfully requests that the Court reinstate the Appeal on the following grounds:

## **BRIEF RECITATION OF FACTS**

The underlying matter in this case is an unusual foreclosure action as the owner of the property and the borrowers are different individuals. Respondent Carol Garfield Goldberg is the sole owner of the property. The mortgage loan borrowers, Clifford L. Ryba and Beverly Ryba, quit-claimed their interests in the property to Goldberg post-mortgage, following a lawsuit filed by Goldberg against the Rybas for fraud. The Rybas did not make an appearance in the underlying foreclosure action, and it was Goldberg alone who challenged the foreclosure.

Plaintiff/Appellant sought entry of judgment against the Rybas for the sole purpose of establishing the debt necessary to foreclose the mortgage loan, as it is unlikely that collection efforts against the Rybas would produce any assets suitable for satisfaction of the judgment. Clifford L. Ryba was discharged from Chapter 7 bankruptcy on October 24, 2012, as is more fully preserved in the records of the United States Bankruptcy Court, District of South Carolina, Case number 12-03220-dd, and is therefore not subject to collection of the debt. Further, a cursory review of assets held by Beverly Ryba alone did not produce evidence of any significant assets suitable for collection. The issue of entry of judgment against the Rybas was held in abeyance to make a determination regarding collectability of a judgment, but also to determine whether it was moot, pending the results of the remainder of the Plaintiff's Motion to Alter, Amend, or for a New Trial.

The entry of the Order Denying Foreclosure and the subsequent Order Granting in Part and Denying in Part Plaintiff's Motion to Alter, Amend, or for a New Trial was in favor of Goldberg and denied the foreclosure of the subject property.

## ANALYSIS

“Appeal may be taken, as provided by law, from any final judgment, appealable order or decision.” Rule 201(a), SCACR. “As a general rule, only final judgments are appealable.” *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) (citing *Culbertson v. Clemens*, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996)). If there is some further action required by the court prior to a determination of the parties’ rights, then the order is interlocutory, not final. *Charlotte-Mecklenburg Hosp. Auth. V. S.C. Dept’ of Health & Env’tl. Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 894 (2010) (citations omitted). “A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.” *Id.* at 267, 692 S.E.2d at 895 (citing *Good v. Hartford Accident & Indem. Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942)).

Here, the Order Denying Foreclosure operates as a final order on the issue of foreclosure. Further, due to the apparent uncollectability of a judgment against the Rybas, the resolution of the issue as to judgment against the Rybas is moot, unless the Order Denying Foreclosure is overturned on appeal. The Orders on appeal terminate the foreclosure action, barring any further action on the part of Plaintiff to recoup the debt amount. Resolution of the issue regarding judgment against the Rybas is not necessary for determination of the parties’ rights as to the foreclosure, as it would only be relevant if the Orders on appeal were overturned. Should the Order Denying Foreclosure and subsequent Order Granting in Part and Denying in Part Plaintiff’s Motion to Alter, Amend, or for a New Trial be overturned, the final judgment figures would need to be updated and a Supplemental Order be entered as to the final judgment prior to a judicial sale. Therefore, the Orders on appeal are final as to the foreclosure and there is no reason for this appeal to be dismissed to allow entry of a judgment which would provide no benefit to either party, and which would become stale before the conclusion of the appeal.

Accordingly, pursuant to Rule 201(a), SCACR, the Orders on appeal are final for purposes of appellate jurisdiction, thereby granting this Court the ability to review the Orders and render a decision.

In the event that the Court disagrees with this analysis and requires a final ruling on the issue of judgment against the Ryba defendants for an appeal to be considered, Plaintiff/Appellant requests confirmation that an appeal taken from that subsequent order would constitute a timely appeal of the Order Denying Foreclosure and Order Granting in Part and Denying in Part Plaintiff's Motion to Alter, Amend, or for a New Trial.

**CONCLUSION**

Based on the foregoing, Appellant respectfully requests this Court grant the Motion to Reinstate the Appeal, withhold a Remittitur, and allow allowing this Appeal to proceed.

Respectfully submitted,



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May 31, 2016

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In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

MAY 31 2016

**SC Court of Appeals**

Mikell R. Scarborough, Master in Equity

Case No. 2011-CP-10-07885

HSBC Bank USA, National Association,  
as Trustee for the Holders of the Deutsche  
ALT-A Securities, Inc. Mortgage Loan Trust,  
Mortgage Pass-Through Certificates  
Series 2007-OA4.....Plaintiff/Appellant,

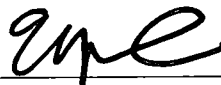
v.

Clifford L. Ryba; Beverly Ryba;  
Regions Bank; First Federal Savings  
and Loan Association of Charleston;  
Citibank (South Dakota) N.A.;  
Carol Garfield Goldberg ..... Defendants,

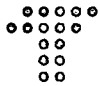
Of whom Carol Garfield Goldberg is the ..... Respondent.

PROOF OF SERVICE

I certify that I have served the **Motion to Reinstate Appeal** on counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on May 31, 2016.



Erica G. Lybrand (SC Bar # 79052)



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May 31, 2016

The Honorable Jenny Abbott Kitchings  
The South Carolina Court of Appeals Clerk of Court  
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Columbia, SC 29201

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SC Court of Appeals

RE: *HSBC Bank USA, National Association, as Trustee for the Holders of the Deutsche ALT-A Securities, Inc. Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-OA4, v. Clifford L. Ryba; Beverly Ryba; Regions Bank; First Federal Savings and Loan Association of Charleston; Citibank (South Dakota) N.A.; Carol Garfield Goldberg*  
Case No. 2011-CP-10-07885  
RTT File # 511792.00392

Dear Ms. Kitchings:

Enclosed please find the Original and six copies of a Motion to Reinstate Appeal and Certificate of Service in the above referenced matter. Also enclosed is a check in the amount of \$25.00 representing the filing fee. Please file the Original and return a clocked copy to me in the envelope enclosed for the Court's convenience.

With kind regards, I remain

Cordially yours,

Erica G. Lybrand

Enclosures

cc:

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