

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

RECEIVED

Cynthia Graham Howe, Master-in-Equity JAN 25 2017

Appellate Case No. 2016-002267

SC Court of Appeals

Wells Fargo Bank, N.A.....Respondent,

vs.

Daniel L. Belfield; Mortgage Electronic Registration Systems Inc., as nominee for
Homecomings Financial Network, In.c (MIN# 100062604288914361); American
Express Bank, F.S.B.....Defendants,

Of whom

Daniel L. Belfield is the.....Appellant.

INITIAL BRIEF OF RESPONDENT

Charles S. Gwynne Jr. (SC Bar # 73844)
Rogers Townsend & Thomas, PC
Post Office Box 100200 (29202)
1221 Main Street 14th Floor
Columbia, South Carolina 29201
(803)771-7900
charlie.gwynne@rtt-law.com
Attorney for the Respondent
Rogers Townsend & Thomas, PC and its staff are debt collectors

January 25, 2017

TABLE OF CONTENTS

Table of Authorities3

Statement of Issues on Appeal.....5

Statement of the Case.....6

Statement of Facts.....7

Standard of Review.....9

Arguments.....10

 I. NONE OF THE ISSUES RAISED ON APPEAL ARE PRESERVED
 FOR APPELLATE REVIEW10

 II. AN ORDER DENYING A MOTION TO AMEND COMPLAINT IS
 NOT A PROPER INTERLOCUTORY APPEAL11

 III. APPELLANT FAILED TO REFUTE THE MASTER’S LEGAL
 CONCLUSIONS WITH CITATION TO AUTHORITIES.....13

Conclusion13

TABLE OF AUTHORITIES

CASES

Baldwin Const. Co., Inc. v. Graham
357 S.C. 227, 593 S.E.2d 146 (2004)11, 12

Boyd v. Liberty Life Ins. Co.
399 S.C. 401, 732 S.E.2d 180 (Ct. App. 2012)9

Ex parte Wilson
367 S.C. 7, 625 S.E.2d 205 (2005)11

Hayne Fed. Credit Union v. Bailey
327 S.C. 242, 489 S.E.2d 472 (1997).....9

l'On v. Town of Mt. Pleasant
338 S.C. 406, 526 S.E.2d 716 (2000).....9, 10

Mid-State Distribs., Inc. v. Century Importers, Inc.
310 S.C. 330, 426 S.E.2d 777 (1993)12

Mortgage Elec. Sys., Inc. v. White
384 S.C. 606, 682 S.E.2d 498 (Ct. App. 2009).....9

Pye v. Estate of Fox
369 S.C. 555, 633 S.E.2d 505 (2006)10

Sabb v. South Carolina State University
350 S.C. 416, 567 S.E.2d 231 (2002)11

Woodard v. Westvaco Corp.
319 S.C. 240, 460 S.E.2d 392 (1995)11

OTHER AUTHORITIES

South Carolina Rules of Civil Procedure
Rule 56(c).....9

South Carolina Rules of Civil Procedure
Rule 59(e).....10

South Carolina Appellate Court Rules
Rule 220(c).....9

South Carolina Statute

S.C. Code Ann. § 14-3-330(2).....11, 12

STATEMENT OF ISSUES ON APPEAL

- I. DID THE APPELLANT PRESERVE ANY OF THE ISSUES FOR APPELLATE REVIEW?**
- II. IS AN ORDER DENYING A MOTION TO AMEND COMPLAINT A PROPER INTERLOCUTORY APPEAL?**
- III. DID APPELLANT FAIL TO REFUTE THE MASTER'S LEGAL CONCLUSIONS?**

STATEMENT OF THE CASE

This lawsuit arises out of the foreclosure of a residential real estate mortgage. Wells Fargo Bank, N.A. ("Respondent"), filed its Lis Pendens, Summons, and Complaint on April 29, 2014. (Complaint) Appellant, Daniel L. Belfield, filed an Answer on October 21, 2014. (Answer)

On August 12, 2015, Respondent filed a Notice of Motion and Motion of the Plaintiff for Summary Judgment. (Summary Judgment Motion) On October 6, 2015, Respondent filed a Memorandum in Support of Plaintiff's Motion for Summary Judgment (Memorandum in Support of Summary Judgment). On October 8, 2015, Appellant filed a Motion to Amend Answer (Motion to Amend Answer).

On March 4, 2016, an Order Granting Plaintiff's Motion for Summary Judgment and Denying Defendant Daniel L. Belfield's Motion to Amend Answer was filed. (Order)

On March 18, 2016, Appellant filed a Motion to Alter or Amend the Court's March 4, 2015 Order. (Motion to Alter or Amend)

On April 25, 2016, an Order Granting Motion to be Relieved was filed, which relieved Attorney George W. Redman, III, Esquire as counsel for Appellant. (Order Granting Motion to be Relieved)

On August 15, 2016, an Order was filed denying the Appellant's Motion to Amend. (Order Denying Motion to Amend)

On or about November 28, 2016, Appellant filed his Initial Brief and Designation of Matter to be Included in the Record on Appeal. (Initial Brief of Appellant)

STATEMENT OF THE FACTS

This appeal involves the outcome of a motions hearing held on October 12, 2015 in which Respondent's Summary Judgment Motion and Appellant's Motion to Amend Answer were heard before the Honorable Cynthia Graham Howe, Horry County Master-in-Equity. (Order)

In its Summary Judgment Motion Respondent argued that Plaintiff is entitled to an order granting it summary judgment on its foreclosure cause of action because there is no genuine issue of material fact that Appellant defaulted on his mortgage loan. (Memorandum in Support of Summary Judgment)

In his proposed amended answer, Appellant sought to add affirmative defenses of Breach of Contract and Violation of the Unfair Debt Collection Practices Act. In his Motion to Amend Answer and Motion to Alter or Amend, Appellant's sole argument is that Plaintiff has failed to follow certain requirements related to loss mitigation efforts. Specifically, Appellant argued that Respondent failed to follow the South Carolina Supreme Court Administrative Order 2011-05-02-01 regarding foreclosure intervention and failed to follow certain federal loan servicing guidelines for loans guaranteed by the Department of Veterans Affairs. Appellant argues that a face-to-face meeting between the parties was required to assist in obtaining a loan modification review prior to initiating a foreclosure action. (Motion to Amend Answer and Motion to Alter or Amend)

In the Court's Order and Order Denying Motion to Amend, the Court held: (1) the South Carolina Supreme Court Administrative Order 2011-05-02-01 does not specifically require a face-to-face meeting as a condition of complying with the order; (2) a face-to-

face meeting in this situation would have been futile, as Respondent had previously determined Appellant did not qualify for a loan modification; and (3) Appellant did not raise a genuine issue as to any material fact regarding the right of the Respondent to foreclose the loan. (Order and Order Denying Motion to Amend)

In the Initial Brief of Appellant, Appellant now argues that the trial court should not have granted summary judgment because Respondent offered no evidence to support its claim that the current Plaintiff, Wells Fargo Bank, N.A., is the successor by merger to the original lender, Wells Fargo Home Mortgage, Inc. Therefore, Plaintiff lacks standing to bring the foreclosure action. Appellant makes no mention of the arguments raised in his Motion to Amend Answer and Motion to Alter or Amend and does not address the trial Court's reason for denying his Motion to Amend Answer. (Initial Brief of Appellant)

STANDARD OF REVIEW

The Court may affirm for any ground appearing in the record. Rule 220(c), SCAR; *see also Mortgage Elec. Sys., Inc. v. White*, 384 S.C. 606, 614, 682 S.E.2d 498, 502 n. 2 (Ct. App. 2009)(citing *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000)).

“A mortgage foreclosure is an action in equity.” *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997).

Summary judgment is appropriate if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCF. “When reviewing the trial court’s decision to grant summary judgment, an appellate court applies the same standard of review applied by the trial court.” *Boyd v. Liberty Life Ins. Co.*, 399 S.C. 401, 406, 732 S.E.2d 180, 183 (Ct. App. 2012).

ARGUMENTS

I. NONE OF THE ISSUES RAISED ON APPEAL ARE PRESERVED FOR APPELLATE REVIEW

Appellant failed to preserve any of the issues raised in his appeal for review by this Court. “It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved.” *Pye v. Estate of Fox*, 369 S.C. 555, 565, 633 S.E.2d 505, 510 (2006). “If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.” *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); *see also* Rule 59(e), SCRPC. This preservation requirement “prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.” *Id.*

The only issue Appellant has raised on appeal is whether summary judgment should have been granted by the trial court when Respondent has failed to provide any evidence that it is the successor by merger to the original lender. This standing argument was never raised in the lower court and never ruled on by the lower court. The Master did not rule on or even address this issue in the Order or the Order Denying Motion to Amend. Additionally, in his Initial Brief, the Appellant failed to raise the loss mitigation arguments that comprised his entire reasoning in the trial Court as to why summary judgment was not proper. Therefore, none of the issues that Appellant has raised on appeal are preserved for appellate review, and the Court must affirm the trial Court's Orders.

II. AN ORDER DENYING A MOTION TO AMEND COMPLAINT IS NOT A PROPER INTERLOCUTORY APPEAL

If this Court were to find that Appellant has preserved issues for appellate review, the part of the lower Court's Orders denying Appellant's Motion to Amend Answer is not properly appealable at this stage of the case.

An Order denying a Motion to Amend is interlocutory and not immediately appealable. South Carolina courts have repeatedly held that as a general rule, appeal may only be taken after a final judgment has been rendered. *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final." *Id.*

'Absent some specialized statute, determining if an interlocutory order is immediately appealable depends on whether the order falls within one of the several categories of appealable judgments, decrees, or orders listed in S.C. Code Ann. § 14-3-330.' *Baldwin Const. Co., Inc. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004) (quoting *Woodard v. Westvaco Corp.*, 319 S.C. 240, 242, 460 S.E.2d 392, 393 (1995), overruled on other grounds; *Sabb v. South Carolina State University*, 350 S.C. 416, 567 S.E.2d 231 (2002)). Under Section 14-3-330(2), an appellate court may review on appeal:

[a]n 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.

S.C. Code Ann. § 14-3-330(2).

In *Baldwin*, the appellants sought to amend their answer over a year after filing their summons and complaint, in an effort to assert counterclaims which would have entitled them to a jury trial. *Id.* However, after the Court of Appeals heard the case, the Supreme Court of South Carolina granted certiorari and vacated the decision of the Court of Appeals. *Id.* The court explicitly held that the denial of a motion to amend an answer was an interlocutory order that was not immediately appealable when the party “[has] not ‘arrived at the end of the road’ and will be able to appeal the decision after the trial is finished. *Id.* at 230, 593 S.E.2d at 147-48 (citing *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993).

When analyzing whether the appeal could fall under one of the categories enumerated in Section 14-3-330, the Court indicated:

The only subsection that might conceivably be implicated by the order denying petitioners' request to be allowed to file an amended answer is subsection (c). In *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 368 S.E.2d 456 (1988), this Court held that an order denying a party's motion to file a late answer was a [sic] not directly appealable. The Court reached this conclusion because the trial judge did not rule on the substantive contents of the answer, nor did the order strike a pleading, *but refused to allow its filing*. This case is similar, as the judge did not strike a pleading but refused to allow its filing.

Baldwin Constr. Co., Inc. at 230, 593 S.E.2d at 147-48 (emphasis original)

Like the facts in *Baldwin*, in this case the trial court did not strike a filed Answer; the Court refused to allow its filing. Therefore, the part of the lower Court's Order denying Appellant's Motion to Amend Answer is not properly appealable at this stage of the case.

III. APPELLANT FAILED TO REFUTE THE MASTER'S LEGAL CONCLUSIONS WITH CITATION TO AUTHORITIES

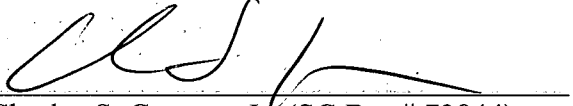
Again, if this Court were to find that Appellant has preserved issues for appellate review, Appellant has failed to refute or counter any of the Master's legal conclusions in the Orders with citation to authorities. As further grounds for affirmance, Respondent hereby incorporates by reference all of the Master's legal conclusions and legal authorities set forth in the Final Order.

CONCLUSION

Based on the foregoing and any additional sustaining grounds appearing in the record, Respondent respectfully requests that the Court affirm the Master's Orders entered on March 4, 2016 and August 15, 2016.

Respectfully submitted,

January 25, 2017



Charles S. Gwynne Jr. (SC Bar # 73844)
Rogers Townsend & Thomas, PC
Post Office Box 100200 (29202)
1221 Main Street 14th Floor
Columbia, South Carolina 29201
(803)771-7900
charlie.gwynne@rtt-law.com
Attorney for the Respondent
Rogers Townsend & Thomas, PC and its staff are debt collectors

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Cynthia Graham Howe, Master-in-Equity

Appellate Case No. 2016-002267

Wells Fargo Bank, N.A.....Respondent,

vs.

Daniel L. Belfield; Mortgage Electronic Registration Systems Inc., as nominee for
Homecomings Financial Network, In.c (MIN# 100062604288914361); American
Express Bank, F.S.B.....Defendants,

Of whom

Daniel L. Belfield is theAppellant.

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the **INITIAL BRIEF OF RESPONDENT** on Appellant Daniel L. Belfield by depositing copies of it in the United States Mail, postage prepaid, on January 25, 2017, addressed to the parties of record shown on the attachment listing Other Parties.

January 25, 2017



Charles S. Gwynne Jr. (SC Bar # 73844)
Rogers Townsend & Thomas, PC
Post Office Box 100200 (29202)
1221 Main Street 14th Floor
Columbia, South Carolina 29201
(803)771-7900
charlie.gwynne@rtt-law.com
Attorney for the Respondent

Rogers Townsend & Thomas, PC and its staff are debt collectors

Other Parties:

Daniel L. Belfield
814 Finger Lake Drive
Myrtle Beach, SC 29588-8863

ROGERS TOWNSEND & THOMAS, PC
POST OFFICE BOX 100200 (29202)
1221 MAIN STREET 14TH FLOOR
COLUMBIA, SOUTH CAROLINA 29201
P 803.771.7900 F 803.343.7017
W RTT-LAW.COM

CHARLES S. GWYNNE JR.
SHAREHOLDER
CHARLIE.GWYNNE@RTT-LAW.COM
P 803.744.1933
F 803.343.7017

LICENSED IN SOUTH CAROLINA



January 25, 2017

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED

JAN 25 2017

SC Court of Appeals

RE: Wells Fargo Bank, N.A. v. Daniel L. Belfield; Mortgage Electronic Registration Systems Inc., as nominee for Homecomings Financial Network, In.c (MIN# 100062604288914361); American Express Bank, F.S.B
Appellate Case # 2016-002267
Our file # 513263.05369

Dear Ms. Kitchings:

Enclosed are the original and one copy of the Initial Brief of Respondent and the original and one copy of Respondent's Designation of Matter to be Included in the Record on Appeal, along with a Proofs of Service. Please return a filed copy of the documents to me.

By copy of this letter, I am serving a copy of the Initial Brief of Respondent and Respondent's Designation of Matter to be Included in the Record on Appeal and Proof of Service on all parties to this appeal.

Thank you for your assistance in this matter.

With kind personal regards, I am

Sincerely yours,

A handwritten signature in black ink, appearing to read "Charles S. Gwynne Jr.", written in a cursive style.

Charles S. Gwynne Jr.

/ow
Enclosures as stated

cc:

Daniel L. Belfield
814 Finger Lake Drive
Myrtle Beach, SC 29588-8863