

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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MAY 26 2017  
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge  
Mikell R. Scarborough, Master In Equity, Charleston County

Appellate Case No. 2017-000613

U.S. Bank Trust, N.A., as  
Trustee for LSF9 Master  
Participation Trust

Respondent,

v.

Robert E. Hammond,

Appellant.

PETITION FOR REHEARING ON APPEALABILITY ISSUE

Appellant files this Petition for Rehearing on Appealability Issue ("Petition") to request that this Court reconsider its order filed May 11, 2017 ("Order Dismissing Appeal"). In the Order Dismissing Appeal, this Court ruled, in a four sentence order, that an order substituting a plaintiff as the real party in interest is not an immediately appealable order. Based on the authorities cited below, the Appellant respectfully disagrees with this holding.

CONFLICTING SUPREME COURT AUTHORITY

The Appellant respectfully suggests that the Order Dismissing Appeal is in direct conflict with a prior case on this same issue that was decided by our state's Supreme Court. In Appellant's Brief of Appellant on Appealability Issue

("Appellant Brief"), which was filed with this Court on April 4, 2017, and which Appellant incorporates herein by reference, Appellant cited to the case of Neeltec Enterp., Inc. v. Long, 397 S.C. 563, 566-7, 725 S.E.2d 926, 928-9 (2012), which held that an order requiring a plaintiff to substitute another party as a defendant affected a substantial right of the plaintiff to choose its own defendant was therefore an immediately appealable interlocutory order. In that case, the Supreme Court also cited to its decision in Watts v. Copeland, 170 S.C. 449, 456-7, 170 S.E. 780, 783 (1933), where a defendant failed to appeal an order substituting a plaintiff until after final judgment was rendered in that case. The Supreme Court held that the defendant's failure to appeal the order substituting the plaintiff at the time it was issued, and the defendant's subsequent defense of the action without immediately appealing the interlocutory substitution order barred the defendant from appealing the substitution order after final judgment was entered in the case. Appellant cited to both of these Supreme Court cases in the Appellant Brief, but neither this Court nor the Respondent addressed or attempted to distinguish those cases from the present case. The only case that this Court did cite in support of its ruling in this matter was a generic case on interlocutory orders that did not address the issue in this case, which is whether or not this type of interlocutory order substituting a plaintiff is an appealable interlocutory order. Indeed, it appears that both of the Supreme Court cases cited by Appellant stand for the proposition that a defendant must immediately appeal an order substituting a plaintiff at the time the order is issued, or else the defendant will be forever barred from raising that issue later. Therefore, Appellant was right to rely upon those Supreme Court cases in filing this

appeal, and this Court's Order Dismissing Appeal prejudices Appellant from ever being able to challenge the improper order of substitution.

### SUBSTANTIAL CONSTITUTIONAL ISSUE

Even if this Court were to find that Appellant's simple reliance on the Supreme Court's ruling in the two cases cited above that an order substituting a plaintiff is an immediately appealable interlocutory order is not legally sufficient grounds for appeal, this appeal does involve a substantial right that is founded in constitutional law, so this Court should reconsider its Order Dismissing Appeal on that ground as well.

In his Notice of Appeal filed with this Court on March 13, 2017, Appellant actually challenges two orders on appeal. The first order challenged was the Order Substituting Plaintiff ("Substitution Order") filed in the trial court on December 1, 2016. The basis for Appellant's challenge to the Substitution Order was that it was entered without providing the Appellant with procedural due process. To be precise, although the trial court signed a proposed order substituting the plaintiff in the underlying case, it was not a consent order, and no hearing was ever held on Respondent's request to substitute the plaintiff. Respondent's counsel merely submitted a proposed order of substitution, and the trial court judge signed it without providing Appellant an opportunity to be heard on the requested substitution.

Procedural due process is a substantial constitutional issue, since the right to procedural due process in state court is guaranteed by the 14<sup>th</sup> Amendment to the United States constitution, and also by Article 1, Section 3 of the South Carolina

constitution. As has been held by the United States Supreme Court, constitutional due process of law requires both notice and an opportunity to be heard, Powell v. Alabama, 287 U.S. 45, 68 (1932). Appellant therefore respectfully suggests that the trial judge's denial of Appellant's opportunity to be heard before ruling on the Substitution Order implicates a substantial right that merits an interlocutory appeal. Indeed, if this Court does not reconsider its Order Dismissing Appeal, then Appellant will be forced to incur unnecessary attorney fees defending the underlying case against a newly substituted plaintiff without ever having the opportunity to be heard on the issue of whether or not the substituted plaintiff is the real party in interest. Therefore, even if Appellant prevails against the substituted plaintiff when the case is finally adjudicated, then in the event that the substituted plaintiff was not the real party in interest, the Appellant may be forced to incur another round of additional legal fees defending any case that may be brought by another alleged real party in interest, ad infinitum, in the event that the Appellant does not have the right to be heard on whether or not any plaintiff that might be substituted in the future is the real party in interest at the time that party is actually substituted as plaintiff. Appellant therefore believes that this appeal should not be dismissed, since it raises a serious constitutional issue in regards to a substantial right to due process of law.

#### FAILURE TO ADDRESS BOTH ORDERS

Appellant also respectfully requests that this Court reconsider the Order Dismissing Appeal in regards to the second order appealed from in Appellant's Notice of Appeal. As the Court will notice upon examining its dismissal order, the Court completely fails to make any ruling regarding the Form 4 Order Denying

[Appellant's] Motion to Reconsider (“Reconsideration Order”), which was filed in the underlying case on January 26, 2017, and is attached as an exhibit to this Petition. In the event that the Court were to eventually rule in favor of Appellant on the merits in regards to the Substitution Order, then perhaps the issue with the Reconsideration Order becomes moot, but at this time, two orders were appealed in this action, and the Court didn't rule on the appealability of the Reconsideration Order, so Appellant believes that it is appropriate to raise this issue and get a ruling on the Reconsideration Order as well, for the record and to preserve Appellant's rights to challenge this order.

Appellant also believes that the Reconsideration Order needs to be immediately appealed, since Appellant believes it to be based on clear error of law, and since Appellant was not provided with procedural due process of law during the hearing in the trial court that issued the Reconsideration Order. As can be seen by reference to the Reconsideration Order, the trial court's denial of Appellant's Motion to Reconsider was based on the trial judge's ruling that the motion was not properly filed under Rule 59(e), SCRCPC, which states that a motion to reconsider must be served within 10 days after receipt of written notice of entry of the order that is being reconsidered. As can be seen by reference to the attached copy of the Motion to Reconsider, filed in the underlying case on December 22, 2016, and of which motion Appellant requests that this Court take judicial notice, Appellant received notice of entry of the Substitution Order on December 7, 2016. The certificate of service attached to the Motion to Reconsider states that it was served on December 19, 2016. The Reconsideration Order appears to be based on the trial

judge's incorrect belief that the Motion to Reconsider was not served within 10 days after notice of entry of the Substitution Order, which is a clear error of law since December 17, 2016 was a Saturday, of which Appellant requests that this Court take judicial notice, and the Motion to Reconsider was served on December 19, 2016, which was the following Monday. It therefore appears that the trial judge is ignorant of Rule 6(a), SCRCP, which has led him to an incorrect legal conclusion regarding the timeliness of the Motion to Reconsider.

In addition to the fact that the trial judge's ruling on the timeliness of the Motion to Reconsider was wrong as a matter of law, Appellant was also denied procedural due process during the hearing on the Motion to Reconsider. Although the Appellant did have a hearing date on the Motion to Reconsider, and although Appellant's counsel was permitted to speak for a few minutes on the motion, reference to the transcript of that hearing (which has not yet been received due to this Court's suspension of the appeal timeline in order to consider the appealability issue) will show that Appellant's counsel was not permitted to fully raise all issues and arguments in support of the Motion to Reconsider, so that Appellant was also denied procedural due process of law in that he was not given a full and fair opportunity to be heard at the hearing on the Motion to Reconsider.

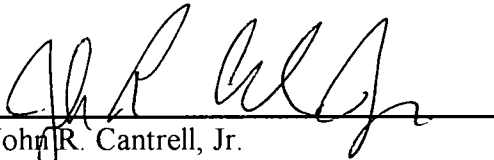
It is also necessary at this time that this Court determine whether the Reconsideration Order was legally correct or not as a matter of law in regards to whether or not the Motion to Reconsider was timely served, since if the Motion to Reconsider was not timely served, then Appellant's appeal would have to be denied on that basis due to Rule 59(f), SCRCP and the fact that Appellant is relying upon

the timeliness of the Motion to Reconsider to properly calculate the required service date of the Notice of Appeal that has been filed with this Court on March 13, 2017. If the trial judge was correct that the Motion to Reconsider was untimely, then this appeal must also be untimely as well. However, Appellant believes that both the Motion to Reconsider and this appeal were timely, and respectfully requests that this Court so find.

Therefore, since the Motion to Reconsider was timely, and since the Motion to Reconsider was filed to protect the Appellant's substantial constitutional right to procedural due process of law, and since Appellant alleges that he was denied procedural due process of law at the hearing on the Motion to Reconsider, Appellant respectfully requests that this Court issue a ruling regarding the appealability of the Reconsideration Order and allow Appellant to challenge that order at this time.

WHEREFORE, Appellant respectfully requests that this Court rehear its Order Dismissing Appeal and find that the orders appealed from are appealable interlocutory orders and allow this appeal to proceed.

Dated this May 25, 2017.

  
\_\_\_\_\_  
John R. Cantrell, Jr.  
Cantrell Legal, PC  
Post Office Box 1276  
Goose Creek, SC 29445-1276  
(843) 797-2454  
Attorney for Appellant  
SC Bar # 10309

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge  
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Appellate Case No. 2017-000613

U.S. Bank Trust, N.A., as  
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MAY 26 2017

**SC Court of Appeals**

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on Appealability Issue on U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust by depositing a copy of it in the United States mail, postage prepaid, on May 25, 2017, addressed to its attorney of record, William P. Stork, at his address indicated below.



John R. Cantrell, Jr.  
Cantrell Legal, PC  
Post Office Box 1276  
Goose Creek, SC 29445-1276  
(843) 797-2454  
Attorney for Appellant

Other Counsel of Record:  
William P. Stork  
Scott & Corley, P.A.  
Post Office Box 2065  
Columbia, SC 29202  
(803) 252-3340  
Attorney for Respondent

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

U.S. BANK TRUST, N.A., AS TRUSTEE )  
FOR LSF9 MASTER PARTICIPATION )  
TRUST )

Plaintiff, )

v. )

ROBERT E. HAMMOND )

Defendant. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-10-0744

JULIE J. ARMSTRONG  
CLERK OF COURT

2016 DEC 22 PM 2:12

FILED

**MOTION TO RECONSIDER ORDER  
SUBSTITUTING PLAINTIFF AND  
FOR SANCTIONS**

Comes now the Defendant, Robert E. Hammond, by and through his undersigned counsel, and moves the Court for the following relief. Please take notice that on the tenth day after today's service date, or as soon thereafter as this motion can be heard, defendant will request the following relief from this court:

1. On November 30, 2016, Defendant's attorney of record received by mail a copy of a proposed Order Substituting Plaintiff.
2. On December 1, 2016, this court entered its Order allowing the plaintiff named in the caption above to be substituted as the plaintiff in this action.
3. On December 7, 2016, the defendant's attorney of record received notice of the entry of the subject Order.
4. The proposed order that was submitted by plaintiff was not a consent order as the defendant's consent to the Order was neither requested nor given. Defendant did

not know about the proposed order until it was received by defendant's counsel on November 30, 2016.

5. Plaintiff did not file a Motion to Substitute Plaintiff in connection with the proposed order, in violation of Rule 7(b), SCRCP.
6. Plaintiff also did not file a Notice of Motion giving defendant the required 10 days to object to plaintiff's requested substitution of plaintiff.
7. If plaintiff had filed a motion to substitute plaintiff and given defendant the required 10 days to object to plaintiff's motion, then defendant would have objected to plaintiff's proposed substitution of plaintiff.
8. Defendant has been prejudiced by plaintiff's failure to follow the SCRCP and has been denied the right to procedural due process, as granted by both the United States and South Carolina constitutions.
9. Plaintiff knew or should have known that its actions in depriving defendant of procedural due process were improper and in violation of applicable law and procedural rules.
10. Plaintiff's actions in filing the improper proposed order substituting plaintiff were in violation of Rule 11(a), SCRCP, since there were not good grounds to support submitting the proposed order without either first obtaining the defendant's consent or by submitting the required motion to obtain the requested relief.
11. Upon information and belief, plaintiff's actions in filing the improper proposed order substituting plaintiff were not done in good faith.

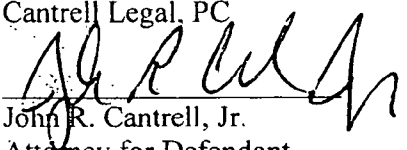
12. Defendant has incurred damages, including unnecessary attorney fees and costs,  
as a result of plaintiff's submission of the improper order substituting plaintiff.

WHEREFORE, Defendant respectfully requests that the court provide the defendant with the following relief:

- A. Reconsider and vacate its prior Order Substituting Plaintiff.
- B. Restore the caption of the case as it was before the prior Order Substituting Plaintiff.
- C. Find that Nationstar Mortgage, LLC, and/or its attorneys as may be appropriate, have violated Rules 7(b) and 11(a), SCRPC.
- D. Find that Nationstar Mortgage, LLC, and/or its attorneys as may be appropriate, are liable to compensate defendant for his damages incurred as a result of plaintiff's improper actions.
- E. Find that Nationstar Mortgage, LLC's complaint against defendant is now moot due to its admissions in the proposed order substituting plaintiff regarding the transfer of any interest that it might have had in the note and mortgage that are the subject of the pending complaint.
- F. For such other relief as the court may find just and proper.

Dated this December 19, 2016.

Cantrell Legal, PC

  
John R. Cantrell, Jr.  
Attorney for Defendant

P.O. Box 1276

Goose Creek, SC 29445

Telephone: (843) 797-2454

Facsimile: (309) 213-0922

Email: [lawyer@comcast.net](mailto:lawyer@comcast.net)

SC Bar # 10309

2011-CR-10-7440

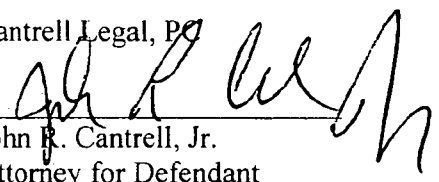
**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day served the attached Motion to Reconsider Order Substituting Plaintiff and for Sanctions on all the parties to this case by serving the below named attorney for Plaintiff by regular mail, with sufficient postage attached, to the address below on this date.

Vance L. Brabham, Esq.  
Scott & Corley, P.A.  
PO Box 2065  
Columbia, SC 29202

Dated this December 19, 2016.

Cantrell Legal, PC

  
\_\_\_\_\_  
John R. Cantrell, Jr.  
Attorney for Defendant

**FILED**  
2016 DEC 22 PM 2:12  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-10-7446

Nationstar Mortgage, LLC

Hammond

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

FILED  
 2017 JAN 26 AM 11:03  
 JUDGE J ARMSTRONG  
 CLERK OF COURT  
 BY

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court: This matter came before the court on January 23, 2017 on Defendant Hammond's Motion to Reconsider Order Granting Substitution of Plaintiff and for Sanctions filed December 22, 2016. The court DENIES the motion finding the Motion was not properly filed per Rule 59(e), SCRPC, and that no prejudice has been shown other than Defendant Hammond's delay in the filing of his First Amended Answer and Third Party Complaint.

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
NA	NA	\$NA
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

*[Handwritten signature]*

3062

Judge Code

Date

*1/24/17*

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**CLERK OF COURT**

**Court Reporter:**

CANTRELL LEGAL, PC  
PO BOX 1276  
GOOSE CREEK SC 29445-1276  
843-797-2454 (voice) 309-213-0922 (fax)  
Email: lawyer@comcast.net

May 25, 2017

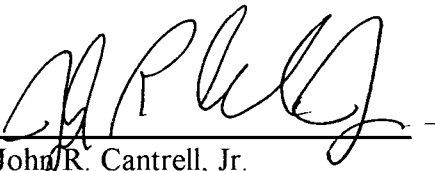
The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

RE: U.S. Bank Trust, N.A. As Trustee v. Robert E. Hammond, Appellant  
Appellate Case No. 2017-000613

Dear Miss Kitchings:

Enclosed are the following:

The original Appellant's Petition for Rehearing on Appealability Issue with  
6 copies and \$25.00 motion filing fee check from my office.



John R. Cantrell, Jr.  
Cantrell Legal, PC  
PO Box 1276  
Goose Creek, South Carolina 29445-1276  
(843) 797-2454  
Attorney for Appellant

cc : William P. Stork (with attachments)

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MAY 26 2017

**SC Court of Appeals**



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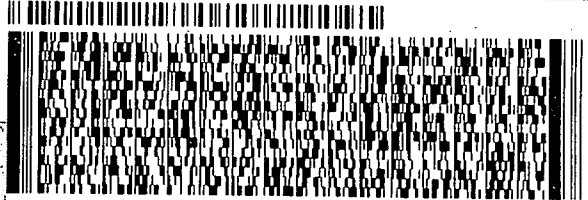
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State SC ZIP 29201

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address, someone at a neighboring address may sign for delivery. For residential deliveries only. Fee applies.

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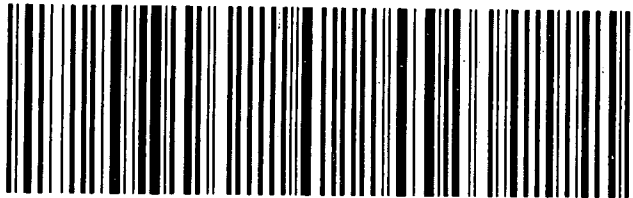
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Total Packages Total Weight

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