

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Master-In-Equity

The Honorable James O. Spence, Master-in-Equity

APPELLATE CASE NO. 2017-000874

**RECEIVED**

JUN 29 2017

**SC Court of Appeals**

The Bank of New York Mellon, f/k/a The Bank of New York as successor-in-interest to JPMorgan Chase Bank, N.A. as successor in interest by merger to Bank One, N.A. as Trustee for Structured Asset Mortgage Investments, Inc., Mortgage Pass-Through Certificates, Series 2002-AR4 ..... Respondent,

vs.

Cathy C. Lanier; Branch Banking and Trust Company, Regions Bank, ..... Defendants,

Of Whom Cathy C. Lanier is the Appellant, ..... Appellant.

**RETURN TO RESPONDENT'S MOTION TO DISMISS**

This matter is before the Court pursuant to the Respondent's Motion to Dismiss Appellant's appeal. On June 7, 2017 the Respondent's filed a Motion to Dismiss the Appellant's appeal pursuant to Rule 240 of the South Carolina Appellate Court Rules on the grounds that Appellant does not possess a vested right to appeal based upon S.C. Code Ann. § 14-3-330.

**Procedural History**

Respondent initiated a foreclosure action against Appellant in 2013. Appellant defended this case pro se. Appellant filed a Motion for Summary Judgment on the issue of standing.

Respondent filed their own Motion for Summary Judgment on standing. In an order dated November 5, 2015, the circuit court granted summary judgment against Appellant. The Court allowed additional briefing on the issues in the case. In a Supplemental Order dated December 15, 2015, the court reiterated its grant of summary judgment against Appellant on the issue of standing. It also denied both parties' motions on the issue of the amount of debt.

Appellant filed a motion to reconsider on January 13, 2016. After filing the motion, Appellant hired undersigned counsel to represent her. The Circuit Court denied Appellant's motion to reconsider. This appeal timely followed.

### Argument

Section 14-3-330 of the South Carolina Code governs what orders may be immediately appealed. The section provides:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from.
- (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 pleadings in any action.

Under this statute, appellants have the option to immediately appeal an adverse intermediate order that involves the merits of the case, or they can wait until final order in the litigation to bring appeal of the intermediate order. The other option is to file a Rule 59(e), as Appellant did in this circumstance. After denial of that motion, Appellant timely appealed, as the time to appeal is stayed by a Rule 59(e) motion according to S.C.A.C.R. 203(b)(1). Because the December 15 order both reiterated the grant of summary judgment to Respondent and ruled

on a separate grant of summary judgment pertaining to the amount of debt at issue, it directly falls under S.C. Code Ann. 14-3-330(1) and (2). A grant of summary judgment has long been held to be immediately appealable under 14-3-330(1) as involving the merits and under 14-3-330(2)(c) as it has the effect of striking out a pleading. *Link v. Sch. Dist. of Pickens Cnty.*, 302 S.C. 1, 393 S.E.2d 176 (1990).

Since the December 15, 2015 order did contain an operative ruling under S.C. Code Ann. 14-3-330 (1) & (2), this appeal is not premature and Respondent's Motion to Dismiss should be denied.

MOORE TAYLOR LAW FIRM, PA

BY: 

S. Jahue Moore,  
Post Office Box 5709  
West Columbia, South Carolina 29171  
(803) 796-9160  
Attorney for Appellants

West Columbia, South Carolina  
June 29, 2017

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

James O. Spence, Master-In-Equity

Appellate Case No. 2017-000874

**RECEIVED**  
JUN 29 2017  
SC Court of Appeals

The Bank of New York Mellon, f/k/a The Bank of New York as  
successor-in-interest to JPMorgan Chase Bank, N.A. as successor  
in interest by merger to Bank One, N.A. as Trustee for  
Structured Asset Mortgage Investments Inc., Mortgage Pass-Through  
Certificates, Series 2002-AR4, ..... Respondent,

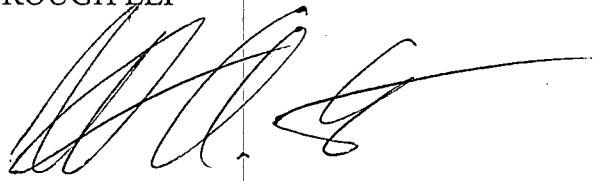
v.

Cathy C. Lanier; Branch Banking and Trust Company, Regions Bank, ..... Defendants,  
Of Whom Cathy C. Lanier is the ..... Appellant.

**PROOF OF SERVICE**

I certify that I have served the Appellant's Return to Respondent's Motion to  
Dismiss by U. S. Mail on June 29, 2017, to the following counsel of record addressed as  
follows:

Michael J. Anzelmo  
NELSON MULLINS RILEY & SCARBOROUGH LLP  
Post Office Box 11070  
Columbia, SC 29211



Martin A. Ebert

West Columbia, South Carolina  
June 29, 2017