

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Master-In-Equity

The Honorable James O. Spence

Civil Action No. 2013-CP-32-01709

Appellate Case No. 2017-000874

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JUL 03 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,

Appellant.

Respondent's Reply to Lanier's Return to the Motion to Dismiss Appeal

Respondent 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"), replies to Lanier's return to the motion to dismiss the appeal. In the return, Lanier asks this Court to overlook the fact that Lanier chose to not take an immediate appeal of the circuit court's rejection of Lanier's standing arguments

by orders dated January 17, 2014¹ and November 5, 2015². Both orders ruled definitively on the standing arguments raised by Lanier. Lanier chose to not take an immediate appeal of either order. Instead, Lanier chose to continue to raise the standing issue to the circuit court at other times in the litigation.

By continuing to raise the issue, Lanier forced the master-in-equity to continue to rule on the previously decided standing issue. For instance, the November 5, 2015 order found that:

First, there is no genuine issue of material fact that Plaintiff has possession of the original subject note and mortgage, had possession at the time the foreclosure action was filed, and the note is made payable to Plaintiff through an allonge. Thus, Plaintiff has standing to enforce the note and mortgage. S.C. Code Ann. §§ 36-3-301, 36-3-205. Plaintiff's Motion is granted on this issue, and Defendant's Motion is denied.

See Exhibit I at p. 1. Rather than appeal that ruling, Lanier again raised standing when the circuit court allowed additional briefing on other issues—not standing—that remained for consideration by the court in the case. See Supplemental Order dated December 15, 2015 p. 1, attached as Exhibit J to the Motion to Dismiss the Appeal (emphasis added). As a result of Lanier raising the issue again, the court was forced to reiterate that it had ruled on and rejected the standing argument in the November 5th order. The circuit court ruled that:

¹ This order granted Respondent's motion to strike Lanier's affirmative defense that Respondent lacked standing to initiate the action. See Order dated January 17, 2014, attached as Exhibit E to the Motion to Dismiss the Appeal.

² This order again ruled on Lanier's standing argument, found Respondent had standing, and granted summary judgment on that issue. See Order on Cross Motions for Summary Judgment dated November 5, 2015, attached as Exhibit I to the Motion to Dismiss the Appeal.

Following the hearing, the Court issued an Order on Cross Motions for Summary Judgment . . . in which the Court **ruled** that Plaintiff had possession of the original note and mortgage, and had standing to enforce the notice and mortgage.

Id.


Lanier now claims that the court's reconfirmation in the above-quoted December 15, 2015 order allows Lanier to take immediate appeal to this Court from that December 15, 2015 order. See Return p. 2. That position ignores the fact that the language of the December 15, 2015 order merely reconfirmed that the court ruled on Lanier's standing arguments in prior orders (that Lanier chose not appeal).

The November 17, 2014 and November 5, 2015 orders contain the operative rulings on Lanier's standing claim. Either order would have allowed Lanier to take an immediate appeal of the court's decision on the standing issue. See S.C. Code Ann. § 14-3-330(1), (2); Link v. Sch. Dist. of Pickens Cnty., 302 S.C. 1, 6, 393 S.E.2d 176, 179 (1990) (holding that a party has the option to immediately appeal the grant of summary judgment or waiting until final judgment). Lanier did not do so and now must comply with Section 14-3-330(1) that mandates that no appeal can be perfected until after the final foreclosure judgment. Therefore, this appeal is premature, and this Court should dismiss.

{Signature Page Follows}

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July 3, 2017

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Defendants,

Of Whom Cathy C. Lanier is the Appellant,

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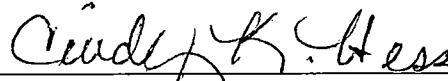
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for JPMorgan Chase Bank, N.A., do hereby certify that I have served all counsel in this action with copies of the pleading(s) hereinbelow specified to the following address(es):

Pleadings: **Respondent's Reply to Lanier's Return to the Motion to Dismiss Appeal**

Counsel Served:

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Cindy K. Hess
Sr. Administrative Assistant

July 3, 2017

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July 3, 2017

Hand Delivered

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

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SC Court of Appeals

RE: The Bank of New York Mellon v. Cathy C. Lanier, et al.
Civil Action No. 2013-CP-32-01709
Appellate Case No. 2017-000874
Our File No. 11281/02473

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter please find the original and seven copies of Respondent's Reply to Lanier's Return to the Motion to Dismiss Appeal. Please return a clocked-in copy to us via our courier.

By copy of this letter to counsel of record, we are serving him with a copy of this document.

Very truly yours,



Michael J. Anzelmo

MJA:ckh
Enclosures
cc: S. Jahue Moore, Esquire