

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
Mikell R. Scarborough, Master In Equity, Charleston County

Appellate Case No. 2017-000613

Nationstar Mortgage LLC

Respondent,

v.

Robert E. Hammond,

Appellant.

REPLY TO RESPONDENT'S RETURN TO PETITION FOR REHEARING

Appellant herewith files this Reply to Respondent's Return to Appellant's
Petition for Rehearing. Respondent's Return was served on July 24, 2017.

Respondent's Return attempts to address several statutory sections that do
not apply to the pending Petition for Rehearing. Appellant will attempt to redirect
the court's focus on the relevant authority.

The bottom line in this case is that there are published opinions of our state
Supreme Court that cannot be ignored, since they are directly on point. This court's
Order Dismissing Appeal completely ignored those published opinions, and this was
clear error. The Respondent attempts to distinguish them in the Return that has
been filed with this court, but cannot successfully do so.

The first published opinion that Appellant refers to is *Neeltec Enterp., Inc. v. Long*, 397 S.C. 563, 566-7, 725 S.E.2d 926, 928-9 (2012). In that case, the court held that “[t]he right of the plaintiff to choose her defendant is a substantial right within the meaning of this subsection [SC Code § 14-3-330(2)(a)], and also that “this order effectively discontinues petitioner's suit against Long, thus bringing the order under 2(a)”. The current case does not involve the substitution of a defendant, but rather the substitution of a plaintiff. However, just like in the *Neeltec* case, the lower court's Order Substituting Plaintiff effectively discontinued the suit of the former plaintiff (Nationstar Mortgage LLC) against the Respondent in this appeal. Respondent therefore believes that the holding in the *Neeltec* case is instructive by analogy, although not as directly on point as the other case from our state Supreme Court.

The second published opinion that controls the decision in this case is the case of *Watts v. Copeland*, 170 S.C. 449, 456-7, 170 S.E. 780, 783 (1933), and this case is directly on point. *Watts* involved a substitution of plaintiff, just as does the current appeal, which the Court of Appeals has dismissed as not immediately appealable. In the *Neeltec* case, the Supreme Court cited to the *Watts* decision and held that “*Watts* holds that a party who does not immediately appeal an order of substitution may not appeal this interlocutory order after final judgment. This Court has held that an interlocutory order that falls within the purview of § 14-3-330(2)(a) must be immediately appealed if it is to be considered at all, and that there is no review available after final judgment. *E.g., Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985). We hold the order of substitution is appealable under § 14-3-

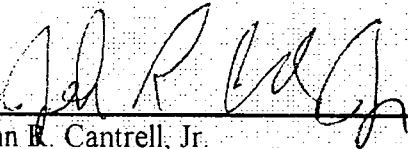
330(2)(a), and that the failure to take such an immediate appeal would bar consideration of the order in an appeal from final judgment. *Watts, supra*; *Neeltec* at 567. Therefore, Respondent's contention in its Return that *Watts* does not apply to the facts of this case is in error. *Watts* not only directly applies to this case, since it also involved a substitution of plaintiff, as does this case, but the Supreme Court has made it clear that not only is an order substituting a plaintiff immediately appealable, but that if a plaintiff were to wait until after final judgment to appeal such an interlocutory order, then the right to appeal has expired, since such an order must be immediately appealed, as the Appellant has done in this case. Appellant therefore believes that *Watts* is directly on point, and requires the Court of Appeals to allow the appeal in this case to proceed. Also, since the language quoted above from the *Watts* case makes it clear, by citing to S.C. Code § 14-3-330(2)(a), that an order substituting a plaintiff affects a substantial right, it appears that Respondent's argument to the contrary is contradicted by that case. *Neeltec* makes it clear that any order substituting a party, whether a plaintiff or defendant, affects a substantial right and must be immediately appealed, or the right to appeal will be lost at the time final judgment is issued.

Although Respondent also responds to other issues raised by Appellant in the Petition for Rehearing, Appellant believes that the Supreme Court opinions cited above are controlling on the issue of whether or not the lower court's interlocutory order substituting the plaintiff is immediately appealable. Appellant therefore limits this Reply to that subject.

WHEREFORE, Appellant respectfully requests that this Court reverse its

Order Dismissing Appeal and find that the orders appealed from are immediately
appealable interlocutory orders.

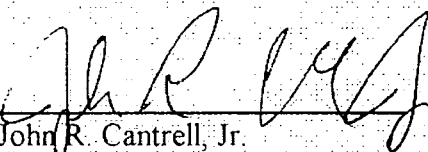
Dated this July 31, 2017.



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PROOF OF SERVICE

I certify that I have served the Reply to Respondent's Return to Petition for
Rehearing on Nationstar Mortgage LLC by depositing a copy of it in the United
States mail, postage prepaid, on July 31, 2017, addressed to its attorney of record,
William P. Stork, at his address indicated below.



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