

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
The Master in Equity Judge M. Anderson Griffith

Case No. 2015-CP-02-0578
Appellate Case No. 2018-000798

RECEIVED
JUL 03 2018
SC Court of Appeals

US Bank National Association as Trustee successor in interest
to Bank of America, National Association as Trustee
Successor by merger to LaSalle Bank National Association, as
Trustee for Structured Asset Investment Loan Trust Mortgage
Pass-Through Certificates, Series 2004-3,..... Respondent,
v.
Anthony J. West and Janet L. West, Appellants.

MOTION TO STRIKE RETURN TO MOTION TO DISMISS APPEAL

Pursuant to Rules 203 and 240 of the South Carolina Appellate Court Rules, Respondent US Bank National Association as Trustee successor in interest to Bank of America, National Association as Trustee Successor by merger to LaSalle Bank National Association, as Trustee for Structured Asset Investment Loan Trust Mortgage Pass-Through Certificates, Series 2004-3 (“Respondent”) hereby moves to strike the return to the motion to dismiss the above-captioned appeal. Appellants Anthony J. West and Janet L. West (“Appellants”) filed the return to the motion to dismiss appeal on June 28, 2018. For the reasons outlined herein, the return is not timely and must be stricken.¹

¹ The arguments herein may also be considered as reply arguments in response to the return to the motion to dismiss appeal.

Appellants' return to the motion to dismiss appeal is not timely and fails to comply with Rule 267 of the South Carolina Appellate Court Rules. Rule 240(e) provides that "[a]ny party opposing a motion or petition shall have ten (10) days from the date of service thereof to file . . . his return with the clerk and serve on all parties a copy of the return." The return must also comply with Rule 240(c), which requires compliance with Rule 267. *See* Rule 240(c), SCACR ("All motions or petitions filed in an appellate court shall be in writing, shall state the grounds thereof, and shall comply with the requirements of Rule 267."). Respondent filed and served the motion to dismiss appeal on June 12, 2018. Appellants had until June 22, 2018, to file and serve a return to that motion. *See* Rule 240(e), SCACR. In this case, Appellants did not serve their return until June 25, 2018, and did not file the return until June 28, 2018. Appellants' failure to timely file and serve the return should be deemed "consent by [Appellants] to the relief sought in the motion[.]" *Id.* Additionally, the return fails to comply with Rule 267's form requirements. For these reasons, the Court should decline to consider the return and strike the same.

Moreover, Appellants fail to outline a single substantive reason for why the Notice of Appeal is timely. As outlined in Respondent's motion to dismiss appeal, a notice of appeal must be served "within thirty (30) days after receipt of written notice of entry of the order or judgment." Rule 203(b)(1), SCACR. This requirement is jurisdictional, meaning that if a party fails to appeal in a timely manner, the appellate court lacks jurisdiction over the appeal. *See Coker v. Cummings*, 381 S.C. 45, 52, 671 S.E.2d 383, 387 (Ct. App. 2008) (citing *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004)); *see also Connor v. City of Forest Acres*, 348 S.C. 454, 461, 560 S.E.2d 606, 609 (2002). Here, Appellants received written notice of entry of the order on April 3, 2018. Appellants had until May 3, 2018, to timely file and serve a notice of appeal. However, Appellants did not serve the notice of appeal until May 11, 2018 and, therefore, was not

timely. Appellants' return does not dispute the timeliness issue. Instead, Appellants make various arguments regarding the trial court hearing, including that certain evidence was not admitted and that certain purported evidenced filed as exhibits to an amended answer were not considered by the trial judge. Appellants also argue that they have a "right" to appeal the master in equity's order. None of these arguments render the Notice of Appeal served on May 11, 2018 timely. Because the return fails to address the substance of the motion to dismiss appeal, it should be stricken.

Finally, Appellants include one line appearing to request an extension of the time to file and serve their return to the motion to dismiss appeal. The extension request seems to relate to correspondence from the undersigned counsel for Respondent related to a trial period payment plan. An extension of time is not necessary and would serve only to cause unnecessary delay. Further, neither the trial period payment plan nor any settlement discussions have any bearing on the dismissal of the appeal for lack of jurisdiction. *See, e.g.*, Rule 408, SCRE. For these additional reasons, Respondent respectfully requests that the return be stricken.

In sum, Appellants' return to the motion to dismiss appeal was not timely, it fails to address the substance of the motion, and does not state a sufficient basis to extend the time for a return. Respondent respectfully requests that the Court grant its motion to strike the return and dismiss the appeal.

SIGNATURE PAGE ATTACHED

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July 3, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Respondent,

v.

Anthony J. West and Janet L. West,

Appellants.

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins
Riley & Scarborough LLP, attorneys for Respondent, do hereby certify that I have served all
counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of
the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Respondent's Motion to Strike the Return to Motion to Dismiss
Appeal

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July 3, 2018

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

RECEIVED
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SC Court of Appeals

RE: US Bank National Association v. Anthony J. West and Janet L. West
Appellate Case No. 2018-000798
Our File No. 011281/02614

Dear Ms. Kitchings:

Enclosed are the original and seven copies each of Respondent's Motion to Strike the Return to Motion to Dismiss Appeal, in the above-referenced matter. We would appreciate it if you would file the original document and return a clocked in copy to our courier.

Very truly yours,

Sarah B. Nielsen /krs

Sarah B. Nielsen

SBN:krs

Enclosures

cc: Anthony J. West
Janet L. West
William Price Stork, Esquire