

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

AUG 01 2018

SC Court of Appeals

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

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.

**RETURN TO MOTION TO STRIKE
RESPONDENT’S MOTION TO DISMISS APPEAL**

On June 12, 2018, 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”) filed a Motion to Dismiss the above-captioned appeal as untimely. By Order dated July 10, 2018, this Court granted Appellants Anthony J. West and Janet L. West (“Appellants”) an extension of time to file and serve a return to the Motion to Dismiss in accordance with Rule 240(e) of the South Carolina Appellate Court Rules. The extended deadline for filing and serving a return was July 23, 2018. Rather than filing a return to

the Motion to Dismiss, Appellants filed a document titled Motion to Strike Respondent's Motion to Dismiss Appeal (hereinafter "motion to strike").¹ The motion to strike should be denied.

Appellants fail to cite any case law or other relevant authority to support striking the Motion to Dismiss. Appellants state that the motion to strike is "relevant to SC Rule 37, Federal Statutes Respa, TILA, Credit Report, Pursuant SC Rule 240." (Mot. to Strike at p.1.) None of the listed "authority" provides a basis for striking the Motion to Dismiss. First, Rule 37, SCRCF addresses the failure to make or cooperate in discovery and does not mention or relate to whether an appeal is timely noticed. Second, the Real Estate Settlement Procedures Act ("RESPA") and the Truth in Lending Act ("TILA") are federal statutes that relate to certain disclosures and other requirements in the real estate settlement or closing process and in billing. They simply do not have any relevance to the timeliness question before this Court. Third, the generic reference to a "Credit Report" is not authoritative and has no bearing on whether the appeal was timely filed. Fourth, and finally, Rule 240 is the motions and petitions rule in the South Carolina Appellate Court Rules, which again lacks any relationship to whether the notice of appeal was timely in this case. Accordingly, Appellants fail to state any basis in law for striking the Motion to Dismiss.

Moreover, in the motion to strike, Appellants restate that they received written notice of entry of the appealed order on April 3, 2018. (*See* Mot. to Strike at p.1 ("Order dated: March 26, 2018 and Appellants received on April 03, 2018.")) As outlined in Respondent's Motion to Dismiss, a notice of appeal must be served "within thirty (30) days after receipt of written notice

¹ The motion to strike was filed on July 25, 2018. It includes a certificate of service stating service was accomplished on July 23, 2018 by U.S. Mail post pre-paid to "Nelson Mullins Riley and Scarborough Law Firm, 1320 Main Street 17th Floor, Columbia, SC 29201." To date, counsel for respondent has not received the service copy. Going forward, counsel for Respondent respectfully requests that Appellants address all service documents to the named attorneys of record.

of entry of the order or judgment.” Rule 203(b)(1), SCACR. Because Appellants admittedly received written notice of entry of the order on April 3, 2018, they had until May 3, 2018 to timely file and serve a notice of appeal. In this case, Appellants did not serve the notice of appeal until May 11, 2018. Thus, the notice of appeal is untimely and this Court should dismiss 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).

In addition to confirming receipt on April 3, 2018, Appellants fail to outline a single substantive reason for why the notice of appeal is timely despite it being served on May 11, 2018. Appellants make vague references to “unknown perpetrators” as “causes of affirmative questionable procedures and the fact that the Motion to Dismiss was filed on June 12, 2018, but fail to connect how those unknown individuals and unidentified procedures render the May 11, 2018 notice of appeal timely or the Motion to Dismiss improper. Thus, Appellants have not identified a basis for striking the Motion to Dismiss or denying the same.

Finally, by failing to file a Return to the Motion to Dismiss by the extended deadline of July 23, 2018, Appellants concede the relief sought in the motion. Rule 240(e) of the South Carolina Appellate Court Rules provides that “[f]ailure of a party to timely file a return may be deemed a consent by that party to the relief sought in the motion or petition.” In this case, Appellants received an extension of the return deadline and still failed to file a return in accordance with Rules 240 and 267, SCACR. Accordingly, this Court should deem the failure to file a Return as consent to dismissal of the appeal for lack of jurisdiction.

In sum, Appellants fail to identify a basis to strike the Motion to Dismiss and the motion to strike should be denied. The notice of appeal was not timely, this Court lacks jurisdiction over the appeal, and the Motion to Dismiss appeal should be granted. Respondent respectfully requests denial of the motion to strike and dismissal of the appeal.

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August 1, 2018

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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:

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

Counsel & Pro Se Parties Served:

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Kim R. Smith

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Administrative Assistant

August 1, 2018



NELSON MULLINS

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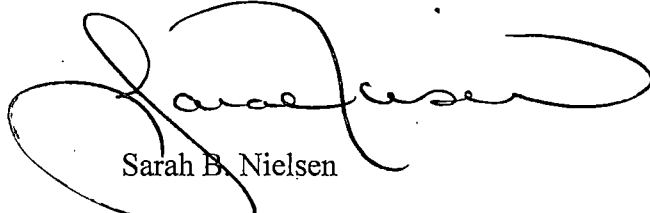
The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

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 a Return to Motion to Strike Respondent's 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

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