

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Mikell Scarborough  
Master-in-Equity

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Appellate Case No. 2019-000575  
Charleston County Case No. 2010-CP-10-7838

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**RECEIVED**  
MAY 17 2019  
SC Court of Appeals

Ditech Financial, LLC ..... Respondent,

v.

Kevin G. Snyder, individually and  
As Personal Representative of the  
Estate of Mary Snyder.....Appellant.

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**RESPONDENT’S MEMORANDUM REGARDING APPEALABILITY**

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Pursuant to the May 6, 2019 Letter from the Clerk of Court, Respondent Ditech Financial, LLC (“Respondent” or “Ditech”), through undersigned counsel, hereby submits the following Memorandum Regarding Appealability.

1. The underlying case before the Court of Common Pleas involves a foreclosure claim by Ditech and counterclaims and defenses to foreclosure alleged in response by Appellant Kevin G. Snyder (“Appellant” or “Snyder”).

2. On April 1, 2019, Appellant filed an Initial Notice of Appeal purporting to appeal the orders of the Honorable Mikell Scarborough dated March 12, 2014, March 18, 2019, and March 27, 2019.

3. The Court's March 12, 2014 Order amended the case caption to reflect the proper plaintiff as Green Tree Servicing, LLC (Ditech's former company name).

4. The Court's March 18, 2019 Order denied Appellant's Motion to Compel and vacated an Affidavit of Default entered in error against Appellant.

5. The Court's March 27, 2019 Order recognized the stay of Snyder's breach of contract and unfair trade practices claims imposed by Ditech's February 11, 2019 filing for bankruptcy, granted Ditech partial summary judgment on Appellant's cause of action for Civil Compensatory Contempt, and struck Appellant's defense invoking the Attorney Preference Statute. The Court denied Ditech's Motion for Summary Judgment on its foreclosure claim and Appellant's counterclaim for quiet title, and repeated its denial of Appellant's Motion to Compel.

6. The Court scheduled trial on the non-stayed claims that survived summary judgment, and on April 23, 2019, Appellant lost at trial and an order of foreclosure, denying Appellant's claim for quiet title, was entered in Ditech's favor.

7. On May 2, 2019, Appellant filed an Amended Notice of Appeal repeating his appeal of the three Orders appealed in the Initial Notice, and further appealing the Court's April 23, 2019 Order.

8. On May 6, 2019, the Clerk of this Honorable Court requested briefing as to whether all of the foregoing Orders are in fact immediately appealable.

9. The issue of whether a party is entitled to an immediate appeal is jurisdictional and may be raised *ex mero motu* by the appellate court – if an appealing party has no right to appeal, an appellate court may, on its own, dismiss the appeal. *Levi v. N. Anderson Cty. EMS*, 409 S.C. 374, 379, 384, 762 S.E.2d 44, 47 50 (Ct. App. 2014).

10. S.C. Code Ann. § 14-8-200 provides that the Court of Appeals “shall apply the same scope of review that the Supreme Court would apply in a similar case.” S.C. Code Ann. § 14-3-330 limits the scope of appellate jurisdiction to the following:

- (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 pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330.

11. Because Appellant’s claims for breach of contract and unfair trade practices remain pending, albeit stayed, until Ditech is discharged from bankruptcy, there has been no final judgment resolving all claims yet entered in the case, thus rendering parts of Appellant’s appeal impermissibly interlocutory. *See Ashenfelder v. City of Georgetown*, 389 S.C. 568, 575, 698 S.E.2d 856, 860 (Ct. App. 2010) (quoting SCRCF 54(b) and holding that “when fewer than all claims have been adjudicated, ‘the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties’” and an appeal of the same is only allowed where it involves the merits or a substantial right); *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006) (“Absent a specialized

statute, an order must fall into one of several categories set forth in Section 14-3-330 in order to be immediately appealable.”).

12. Respondent does not dispute the immediate appealability of the portion of the Court’s March 27, 2019 Order granting Ditech partial summary judgment and striking Appellant’s defense, nor does Respondent contest the appealability of the Court’s April 23, 2019 Order with respect to the judgment of foreclosure and judgment in favor of Ditech on Snyder’s quiet title claim.

13. However, the March 12, 2014 Order amending the case caption does not involve the merits, nor any substantial right, and is accordingly not appropriate for review pursuant to S.C. Code § 14-3-330. *See Jefferson by Johnson v. Gene’s Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988) (holding that where “the judge expressed no opinion on the substantive contents,” a matter is not immediately appealable).

14. Similarly, with respect to Appellant’s motion to compel (referenced in the March 18, 2019 and March 27, 2019 Orders),<sup>1</sup> immediate appeal is inappropriate because the denial of the motion did not discontinue the action nor prevent the case from proceeding to further stages of litigation. *See Estate of King ex rel. King v. Richland Cty.*, No. 2008-UP-274, 2008 WL 9841679, at \*2 (S.C. Ct. App. May 21, 2008).

15. Finally, to the extent Appellant is appealing the Order denying him partial summary judgment, it is well-established that orders denying summary judgment are never appealable. *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 168, 580 S.E.2d 440, 444 (2003).

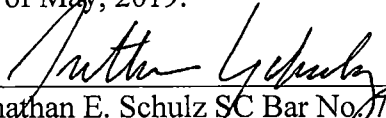
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<sup>1</sup> Appellant does not identify from what holdings in the Court’s March 27, 2019 Order he appeals, but to the extent he challenges the Court’s recognition of the automatic stay, an appeal to this Court is inappropriate. Once removed to the federal jurisdiction of the bankruptcy court, the state court lost jurisdiction. *See e.g., Davis v. Davis*, 267 S.C. 508, 511, 229 S.E.2d 847, 848 (1976). Any challenge regarding the applicability of the automatic stay should have been filed in the bankruptcy court. *See In re Gruntz*, 202 F.3d 1074, 1083 (9th Cir. 2000) (“[T]he federal courts have the final authority to determine the scope and applicability of the automatic stay.”).

WHEREFORE, for the reasons stated above, Respondent requests as follows:

- a. That the Court dismiss Appellant's appeal of the following orders:
  - a. the March 12, 2014 Order amending the case caption;
  - b. the March 18, 2019 and March 27, 2019 Orders denying Appellant's motion to compel; and
  - c. the March 27, 2019 Order staying Appellant's counterclaims for breach of contract and unfair trade practices and denying summary judgment (to the extent he is seeking to appeal that portion of the Order); and
- b. That the Court issue such other and further relief as it deems appropriate.

Respectfully submitted this the 16th day of May, 2019.

  
Jonathan E. Schulz SC Bar No. 19850  
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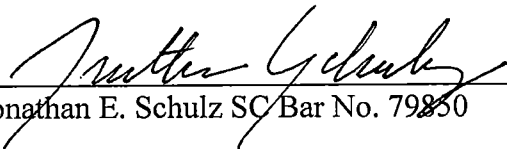
Kevin G. Snyder, individually and  
As Personal Representative of the  
Estate of Mary Snyder ..... Appellant.

PROOF OF SERVICE

I certify that I have served the foregoing to the person(s) set forth below by depositing a copy of it in the United States Mail, postage prepaid, on the date set forth below:

Jason Scott Luck  
Garret Law Offices, LLC  
1075 E. Mantague Ave.  
North Charleston, SC 29405

Dated: May 16, 2019

  
Jonathan E. Schulz SC Bar No. 79850

Jonathan Schulz  
Direct Dial: (704) 338-6127  
E-mail: [jschulz@bradley.com](mailto:jschulz@bradley.com)

May 16, 2019

**VIA FEDEX OVERNIGHT**

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

**RECEIVED**  
MAY 17 2019  
SC Court of Appeals

Re: *Ditech Financial, LLC v. Kevin G. Snyder, individually and As Personal Representative of the Estate of Mary Snyder*  
Appellate Case No. 2019-000575

Dear Ms. Kitchings:

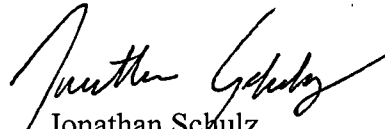
In connection with the above appeal, enclosed for filing please find the following:

- Notice of Appearance of Jonathan E. Schulz on behalf of Respondent, Ditech Financial, LLC; and
- Respondent's Memorandum Regarding Appealability.

By copy of this letter, I am serving same upon all counsel of record.

Thank you for your assistance. Please do not hesitate to contact me should you have any questions or concerns about the above.

Best regards,

  
Jonathan Schulz

Enclosures

cc: Jason Scott Luck (with encl. via US Mail)  
Garret Law Offices, LLC

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**COLUMBIA SC 29201**

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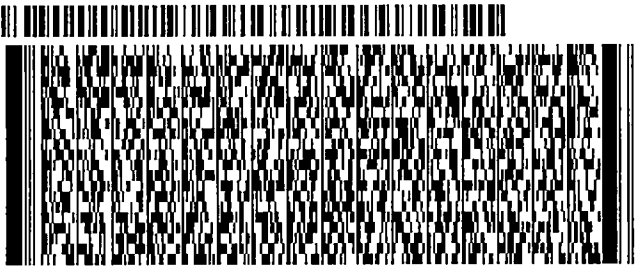
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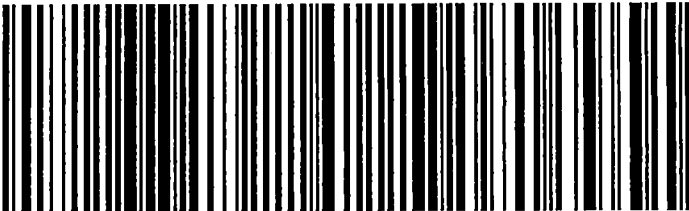
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