

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable James O. Spence
Master In Equity

Appellate Case No. 2019-000653
Circuit Court Case No. 2015-CP-32-00547

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MAY 15 2019
SC Court of Appeals

Wells Fargo Bank, N.A..... Respondent,

v.

Eric L. McGlaughlin, Gary L. McGlaughlin, and Onetta C.
McGlaughlin..... Defendants,

of whom

Eric L. McGlaughlin is the Appellant.

WELLS FARGO'S MEMORANDUM REGARDING APPEALABILITY

The Court has requested that the parties submit memoranda regarding whether the orders on appeal are immediately appealable. Respectfully, they are not, and this appeal should be dismissed for lack of appellate jurisdiction.

This is a routine mortgage foreclosure action that Mr. McGlaughlin has attempted to disrupt through allegations that Wells Fargo Bank does not currently own the note and mortgage underlying his debt. The Lexington County Master In Equity denied Mr. McGlaughlin's motion to dismiss based on Rule 12(b)(8), but he has not yet ruled on Mr. McGlaughlin's motion for summary judgment or to dismiss based on Mr. McGlaughlin's standing argument. (December 19, 2018 Order.) Likewise, the Master In Equity denied Mr. McGlaughlin's motion to reconsider the denial of his Rule 12(b)(8) motion. (March 26, 2019 Order.) Finally, in response to Mr.

McGlaughlin's allegations that Mortgage Electronic Registration Systems, Inc., is the true holder of the note and mortgage underlying this case, the Master In Equity directed Wells Fargo to serve a summons on MERS to have it appear in court and explain whether it has an interest in the note and mortgage. (April 1, 2019 Summons and Rule to Show Cause.)

Mr. McGlaughlin has noticed this appeal based on these rulings and the related order authorizing MERS to appear in this case. None are immediately appealable.

Motion to Dismiss Rulings. It is hornbook law that a party may not immediately appeal an order denying a Rule 12(b) motion. *See, e.g., Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000) (“[T]his Court does not allow immediate appellate review of the *denial* of any Rule 12(b), SCRPC motion.”) (emphasis supplied by the *Breland* Court). Accordingly, neither the Master In Equity's denial of Mr. McGlaughlin's Rule 12(b)(8) motion, nor the denial of Mr. McGlaughlin's motion for reconsideration, are immediately appealable.

Rule to Show Cause. Because the Master In Equity's rule to show cause order only potentially adds a party to the litigation, it is also not immediately appealable. *See, e.g., Duncan v. GEICO*, 331 S.C. 484, 484, 449 S.E.2d 580, 580 (1994) (“We now hold that an order granting a motion to intervene is not immediately appealable.”); *Edgefield County Hosp. Trs. v. Cannon Constr. & Supply Co.*, 273 S.C. 500, 501, 257 S.E.2d 501, 501 (1979) (holding that an order adding third parties as defendants to an action was not immediately appealable); *Lake City Dev. Corp. v. Gilbert Constr. Co.*, 283 S.C. 10, 11, 320 S.E.2d 494, 494 (Ct. App. 1984) (dismissing as interlocutory the appeal of an order adding third-party defendants).


No Other Issues Have Been Decided. The Master In Equity has specifically declined to rule on Mr. McGlaughlin's dispositive motions regarding Wells Fargo's standing to proceed as a foreclosure plaintiff. Because they do not resolve that issue, those orders are interlocutory and

unappealable. See *Charlotte-Mecklenburg Hosp. Auth. v. S.C. DHEC*, 387 S.C. 265, 267, 692 S.E.2d 894, 894 (2010) (“If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory.”).

Because there are no appealable orders before the Court, it lacks appellate jurisdiction over this matter. Accordingly, Wells Fargo respectfully requests that the Court dismiss this appeal as interlocutory.

Respectfully submitted,

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Attorneys for Respondent

May 13, 2019

PROOF OF SERVICE

I, the undersigned Legal Assistant of the law offices of Womble Bond Dickinson (US) LLP, Attorneys for Respondent, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by mailing a copy of the same, postage prepaid, to the following address(es):

Pleading: Wells Fargo's Memorandum Regarding Appealability

Parties Served: Andrew S. Radeker
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
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Counsel for Appellant



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May 13, 2019

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

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SC Court of Appeals

Re: Wells Fargo Bank, NA v. Eric McGlaughlin
Appellate Case 2019-000653

Dear Ms. Kitchings:

Enclosed for filing please find Wells Fargo's Memorandum Regarding Appealability and six copies. Please file the original and return a clocked copy in the enclosed envelope.

Very truly yours,



M. Todd Carroll



MTC/tm
Enclosure

cc: Andrew S. Radeker



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