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**THE STATE OF SOUTH CAROLINA
In The Court Of Appeals**

RECEIVED

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

JUL 22 2019

Benjamin H. Culbertson, Circuit Court Judge

SC Court of Appeals

**CASE NO. 2009-CP-26-05915
APPEAL NO. 2019-001119**

Plantation Federal BankRespondent,

v.

Chester A. Crocket Appellant

and

C&C Development, LLC; Michael Chaffin; Bruce J. Ahmes;
S&D General Contractors, LLC; Col-Cor Industries, Inc.
d/b/a Active Glass and Mirror; First Electric, Inc.; Wallcraft
Construction, Inc. and Carolina Dirt Works, LLC..... Other Defendants.

**RESPONDENT'S MOTION TO DISMISS APPEAL
FOR LACK OF APPEALABILITY**

J. René Josey, Esq.
Jeffrey L. Payne, Esq.
Harriett P. Wallace, Esq.
TURNER, PADGET, GRAHAM & LANEY, P.A.
Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
843-413-5818 (Fax)
JJosey@TurnerPadget.com (Email)

ATTORNEYS FOR RESPONDENT

Other Counsel:

Robert S. Shelton, Esq.
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400

Attorneys for the Appellant

NATURE OF THE CASE

This is an appeal from an order of reference, a discovery order, and an order of substitution in post-foreclosure judgment supplemental proceedings – proceedings seeking to collect a now million-dollar judgment¹ that is almost a decade old. Appellant has filed multiple motions, positions, procedures, and demands in an obvious effort to try and run out the expiration clock on this debt to a lender.²

Since the lender initiated supplemental proceedings in an effort to collect its outstanding judgment, the Appellant:

- (1) has moved to vacate the Circuit Court's Order of Reference;
- (2) has asserted a jury trial demand in the supplemental proceedings;
- (3) has asserted a counter-claim in the supplemental proceedings (alleging that the Respondent's collection efforts on an unappealed judgment were an Unfair Trade Practice);
- (4) has made a motion to vacate a Rule to Show Cause issued in the supplemental proceedings for an alleged violation of SCRCP 53(b)³;

¹ A deficiency judgment of \$773,471.01 was awarded by the Circuit Court on March 9, 2010 following the Master-in-Equity's sale of the mortgaged property securing an unpaid debt. With applicable post-judgment interest, this unsatisfied debt is now well over a million dollars.

² Fortunately, money judgments and the collection thereof are one of the clear exceptions to the automatic stay generally triggered by an appeal under SCACR 241. Nevertheless, Appellant has already made an effort to use the appeal to further thwart the collection of the adjudicated merits of the case – asserting applicability of the automatic stay. (See Exhibit A). As Respondent's counsel has now discussed with Appellant's counsel by phone, Respondent intends to continue its collection efforts but ask the Court to consider this motion expeditiously so as to effectuate SCACR 241 and its exceptions.

³ Appellant argued that his post-judgment concocted jury trial demand rendered an initial reference invalid under SCRCP 53 and the matter was sent back to Circuit Court for the Judge there to confirm that there was no entitlement to jury trial and the matter was indeed equitable and appropriate for reference.

- (5) has made a motion to dismiss supplemental proceedings asserting that the named Plaintiff and judgment creditor had “no capacity to sue” because it was a failed bank (although it had transferred its assets including this judgment to a successor);⁴ and then,
- (6) opposed the Respondent’s ministerial clarifying substitution of South State Bank as the successor in interest to the original lender; and
- (7) has even sought his own discovery with regard to the regulator-approved South State Bank acquisition of Respondent’s assets.⁵

NATURE OF THESE APPEALS

By Order dated June 10, 2019, the Circuit Court dealt with debtors’ obvious efforts to delay collection efforts by disposing of numerous pending motions. A copy of this Order is attached to Appellant’s Notice of Appeal. Appellant filed his notice of appeal on July 8, 2019 specifically identifying three provisions of the Order from which appeal is taken:

- (1) The granting of Respondent’s repeated⁶ effort to refer the matter to a Master or Special Referee;

⁴ Appellant’s Notice of Appeal does not take appeal from the Circuit Court’s denial of his Motion to Dismiss. An identical Motion to Dismiss (for “no capacity to sue”) by Appellant’s co-debtor is listed in the Circuit Court’s Order as withdrawn.

⁵ In addition to this list of dilatory actions, the Appellant’s co-debtor also moved to quash depositions noticed by the Judgment-creditor (in addition to also filing multiple motions/actions like those listed for Appellant above).

⁶ As noted in footnote 3 above, a previous order of reference to the Master in Equity was challenged by Appellant based upon a jury trial demand filed years after the judgment (in response to the supplemental proceedings effort). Appellant argued that the jury trial demand rendered this initial reference invalid under SCRCP 53 and the matter was sent back to Circuit Court for the Judge there to confirm that there was no entitlement to jury trial and the matter was indeed equitable and appropriate for reference.

- (2) The granting of Respondent's motion for Protection from Discovery (again, related to debtor's sudden desire to explore the details of South State Bank's regulatory-approved assumption of the original lender's assets); and
- (3) The granting of Respondent's ministerial clarifying substitution of South State Bank as the successor in interest to the original lender.

THE ORDER OF REFERENCE

“Ordinarily, a decision granting or denying an order of reference is not immediately appealable.” Toal, Appellate Practice in South Carolina (3rd Edition 2016), page 155 (citing Mountain Lake Colony v. McJunkin, 308 S.C. 202, 417 S.E.2d 578 (1992); Williford v. Downs, 265 S.C. 319, 218 S.E.2d 242 (1975); and N.C.Fed Sav. & Loan Ass'n v. Twin State Dev. Corp., 289 S.C.480, 347 S.E.2d 97 (1986)(noting applicability in mortgage foreclosure context)). The exceptions to this rule arise when reference would deprive a party of the right to a particular mode of trial or where the reference is erroneously refused.

The latter exception does not apply here because the reference *was* granted. And the former exception does not apply here because the Appellant has no right to trial at all because judgment has been rendered years ago – and Appellant certainly has no right to a jury trial despite previously unsuccessfully asserting the same to the Circuit Court (without appeal therefrom – the law of the case). Accordingly, appeal from this provision of the Circuit Court order should be dismissed.

THE ORDER OF DISCOVERY PROTECTION

Appellant also appeals the Circuit Court order protecting the Respondent from post-judgment discovery. Discovery orders are ordinarily not immediately appealable in the pretrial

context. Lowndes Products, Inc. v. Brower, 262 S.C. 431, 205 S.E.2d 184 (1974); Patterson v. Specter Broadcasting Corp., 287 S.C. 249, 335 S.E.2d 803 (1985).

The holding in Ex Parte Wilson, 367 S.C. 7, 625 S.E.2d 205 (2005), is also perhaps illustrative. In Wilson, the Court found an order quashing a subpoena duces tecum to a non-party (someone other than the debtor) was *not* immediately appealable and was premature under SCRCP 69 prior to any writ of execution or supplementary proceedings.

Moreover, in this specific context, the Appellant, as a judgment creditor, has no right to discovery. The merits of the matter have been determined and the post-judgment proceedings are legislatively limited in purpose by the scope of South Carolina Code §15-39-310 (discovery of the debtor regarding property available to satisfy the judgment). In addition, SCRCP 69 provides rights and remedies to the “judgment creditor or his successor in interest” (emphasis added) -- *not the judgment debtor*.

**THE ORDER SUBSTITUTING RESPONDENT AS SUCCESSOR TO ORIGINAL
LENDER**

The final aspect of the Circuit Court Order appealed now is the substitution of South State Bank as the successor to the original lender and judgement creditor in this case. Respondent’s effort to make this clarifying substitution was driven by Appellant’s earlier erroneous and inappropriate efforts to undermine the soundness of the judgment itself – which stands as the law of the case.

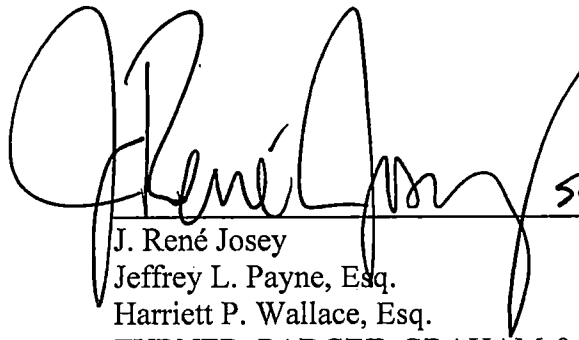
The subsequent acquisition of assets, including the unsatisfied judgment which is the now undeniable law of the case, by South State Bank from Plantation Federal Bank is not part of the long-ago resolved merits of the debt. As noted above, SCRCP 69 specifically anticipates that there may be successors in interest to judgment creditors “when that interest appears of record.”

In this case, a detailed affidavit was placed in the record (copy attached hereto as **Exhibit B**) to clarify the succession for the Court. Indeed, if the Appellant were to satisfy the outstanding judgment, it would be an officer of the successor – not the original lender – authorized to execute any satisfaction. And as a matter unrelated to the merits of the action, the mode of the trial, or any substantial right of the Appellant, this substitution is likewise not subject to immediate appeal and should be dismissed.

CONCLUSION

The Appellant’s most recent notice of appeal from the trial court’s Order or Reference, Order of Discovery, and Order of Substitution should be dismissed as not immediately appealable.

July 17th, 2019



SC Bar #03230

J. René Josey
Jeffrey L. Payne, Esq.
Harriett P. Wallace, Esq.
TURNER, PADGET, GRAHAM & LANEY, P.A.
Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
843-413-5818 (Fax)
JJosey@TurnerPadget.com (Email)

ATTORNEYS FOR RESPONDENT

EXHIBIT

A

Josey, J. Rene

From: Payne, Jeff L.
Sent: Wednesday, July 17, 2019 1:29 PM
To: Josey, J. Rene
Subject: South State Bank v. Crockett

From: Shelton, Robert S. [<mailto:RShelton@bellamylaw.com>]
Sent: Monday, July 15, 2019 3:35 PM
To: Payne, Jeff L.
Subject: RE: South State Bank v. Crockett

Jeff,

I am of the opinion this matter, including discovery, is stayed pending appeal. I have left you two voicemails in an attempt to discuss this. Please call at your earliest convenience. Thanks,

-Rob. [cell: 843-450-6881]



Robert S. Shelton
Bellamy, Rutenberg, Copeland, Epps,
Gravely & Bowers, P.A.
1000 29th Avenue North (29577)
Post Office Box 357
Myrtle Beach, SC 29578-0357
Direct: (843) 916-7163
Fax: (843) 448-3022
www.BellamyLaw.com

From: Payne, Jeff L. [<mailto:JPayne@TurnerPadget.com>]
Sent: Friday, June 28, 2019 11:24 AM
To: Shelton, Robert S. <RShelton@bellamylaw.com>
Subject: South State Bank v. Crockett

Rob, I have attached the subpoenas and notice of depositions that were just served on Mr. Crockett. As you will note the documents are due on July 16 and the deposition is on July 19.

Turner | Padget
Celebrating 90 Years

Jeff L. Payne
Attorney
PO Box 5478 | Florence, SC 29502
319 South Irby Street | Florence, SC 29501
843-656-4432 | Fax 843-413-5825
jpayne@turnerpadget.com
[Bio](#) | [vCard](#) | [Location](#)

EXHIBIT

B

(Exhibits to this Exhibit
Omitted For Convenience
But Available Upon Request
or in the On-Line Filings
with the Circuit Court)

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2009-CP-26-05915

Plantation Federal Bank,)
)
Plaintiff,)

vs.)

C&C Development, LLC; Michael Chaffin;)
Chester A. Crockett; Bruce J. Ahmes, S&D)
General Contractors, LLC; Col-Cor)
Industries, Inc. d/b/a Active Glass and)
Mirror; First Electric, Inc.; Wallcraft)
Construction, Inc. and Carolina Dirt Works,)
LLC,)

Defendant.)

**AFFIDAVIT OF
MICHELLE P. CLAYTON, ESQUIRE**

PERSONALLY APPEARED BEFORE ME, Michelle P. Clayton, Esquire who being
duly sworn deposes and says as follows

1. I am a Senior Vice President and Deputy General Counsel of South State Bank. In this position, I am familiar with First Federal Bank's acquisition of the assets of Plantation Federal Bank and South State Bank's subsequent merger with First Federal Bank.

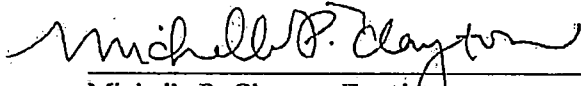
2. On March 11, 2010, Plantation Federal Bank obtained a deficiency judgment ("Judgment") against C&C Development, LLC, Michael Chaffin, Chester A. Crockett and Bruce J. Ahmes in the amount of \$773,471.01 in the Horry County Court of Common Pleas - Civil Action Number 2009-CP-26-05915.

3. On April 27, 2012, Plantation Federal Bank was closed by the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation (FDIC) was named Receiver. First Federal Bank purchased the assets of Plantation Federal Bank pursuant to the

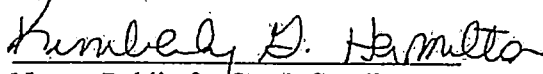
purchase and assumption agreement (Purchase and Assumption Agreement) dated April 27, 2012 and attached hereto as **Exhibit A**. First Federal Bank acquired the Judgment pursuant to the Purchase and Assumption Agreement.

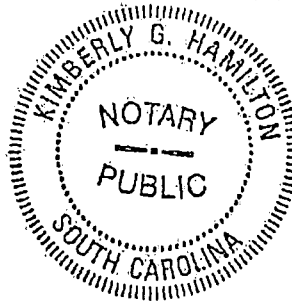
4. On July 26, 2013, First Federal Bank merged into SCBT and operated as SCBT, doing business as First Federal, a division of SCBT. See **Exhibit B** for Articles of Merger between First Federal Bank and SCBT.

5. On June 30, 2014, SCBT changed its name to South State Bank, effective as of June 30, 2014 (see **Exhibit C** – Articles of Amendment dated May 5, 2014). South State Bank is the current holder and owner of the Judgment and it is entitled to enforce it against the judgment debtors.


Michelle P. Clayton, Esquire
Sr. VP and Assistant General Counsel

SWORN to before me this
18th day of April, 2019


Notary Public for South Carolina
My Commission Expires: 4-13-2025



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Benjamin H. Culbertson, Circuit Court Judge

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Plantation Federal BankRespondent,

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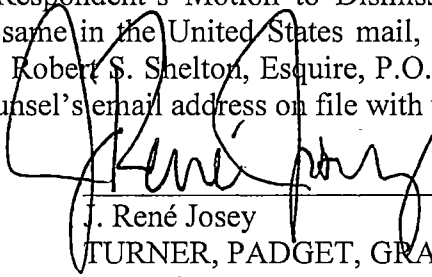
Chester A. Crocket Appellant

and

C&C Development, LLC; Michael Chaffin; Bruce J. Ahmes;
S&D General Contractors, LLC; Col-Cor Industries, Inc.
d/b/a Active Glass and Mirror; First Electric, Inc.; Wallcraft
Construction, Inc. and Carolina Dirt Works, LLC..... Other Defendants.

PROOF OF SERVICE

I certify that I have served Respondent's Motion to Dismiss Appeal on Chester A. Crocket, by depositing copies of the same in the United States mail, postage prepaid, on July 17th, 2019, to its attorney of record, Robert S. Shelton, Esquire, P.O. Box 357, Myrtle Beach, SC 29578 and by emailing same to counsel's email address on file with the South Carolina Bar.

 SC Bar #03230

J. René Josey
TURNER, PADGET, GRAHAM & LANEY, P.A.
Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
843-413-5818 (Fax)
JJosey@TurnerPadget.com (Email)

ATTORNEYS FOR RESPONDENT

Turner Padget

J. RENÉ JOSEY

REPLY TO: FLORENCE OFFICE
E-MAIL: RJOSEY@TURNERPADGET.COM
WRITER'S DIRECT DIAL: (843) 656-4451
WRITER'S DIRECT FAX: (843) 413-5818

July 17, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Plantation Federal Bank vs. C&C Development LLC
Case No.: 2009-CP-26-05915
Tracking No.: 2019-001119
TPGL File No.: 05930.00465

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JUL 22 2019

SC Court of Appeals

Dear Ms. Kitchings:

Enclosed for filing is a Motion to Dismiss this appeal presently pending in your court. In accordance with SCACR 240, I am enclosing the original (unbound) and 7 copies of our motion with supporting exhibits from the trial court; I ask that one copy be stamped as filed and returned to us in the self-addressed, stamped envelope.

Also enclosed you will find an original Certificate of Service and one additional copy; again I ask that the copy be stamped as filed and returned to us in the self-addressed, stamped envelope.

Finally, I am also enclosing our firm's check for the filing fee with regard to this motion.

By copy of this letter to attorney Robert S. Shelton, we are serving Appellant's counsel with this motion, the exhibits, and the certificate of service.

Because the underlying judgment in this matter is over 9 years old, we would ask the court to consider this motion at its earliest convenience. We will be happy to appear for oral argument if the court deems that necessary. If anything additional is needed, please let us know.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.

J. René Josey

JRJ:lp

Enclosures

Cc: Robert S. Shelton, Esquire (w/enclosures)

Hasler SECURITY MAIL
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USPS POSTAGE \$007.85⁰
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011E11680426

Turner | Padgett
PO Box 5178, Florence, SC 29502

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JUL 22 2019
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

UNITED STATES
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