

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale Van Slambrook, Master in Equity

Appellate Case No. 2019-001572

RECEIVED
JUL 27 2020
SC Court of Appeals

Wilmington Savings Fund Society, FSB, as
Owner Trustee of the Residential Credit
Opportunities Trust V-C,

Respondent,

v.

Nehemiah Bryant,

Appellant.

RESPONDENT'S MOTION TO DISMISS APPEAL AS UNTIMELY

FINKEL LAW FIRM LLC

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MEMORANDUM

Undersigned counsel for Respondent Wilmington Savings Fund Society, FSB, as Owner Trustee of the Residential Credit Opportunities Trust V-C, hereby submits the instant Motion to Dismiss the appeal filed by Appellant Nehemiah Bryant pursuant to Rule 240 of the South Carolina Appellate Court Rules (SCACR). The Appellant's failure to timely serve his notice of appeal pursuant to Rule 203(b), SCACR, renders his appeal untimely and divests this Court of jurisdiction. As further grounds for the dismissal, Appellant did not serve Respondent with either the Appellant's Initial Brief or Designation of Matter, or any amendments thereto, despite his filing of a Proof of Service for same on March 23, 2020. Accordingly, an immediate dismissal of the appeal is required.

I. PROCEDURAL HISTORY

Respondent commenced a foreclosure action against Appellant by the filing of a Lis Pendens, Summons, and Complaint on September 28, 2016. On October 21, 2016, Appellant filed a document captioned "Response to Plaintiff's Offer" *pro se*. A Certification of Mortgagor Non-Compliance with S.C. Administrative Order 2011-05-02-01 was filed on November 14, 2016, and the action was referred to the Berkeley County Master in Equity. Appellant filed for protection under Chapter 13 of the U.S. Bankruptcy Code on November 30, 2016; that case was later dismissed by order entered April 17, 2017. Appellant was served with Notice of the Final Hearing, which was held on May 24, 2018. Appellant did not attend the hearing, and a Judgment of Foreclosure and Sale was entered by the Master on May 30, 2018. On June 14, 2018, Appellant was served with a Notice of Sale and Notice of Entry of Judgment, and a corresponding Certificate of Service was filed with the Court on June 18, 2018.

Thereafter, the scheduled foreclosure sale was cancelled due to the Appellant's filing for protection under chapter 7 of the U.S. Bankruptcy Code on June 27, 2018. Appellant's second bankruptcy case was dismissed on October 3, 2018. Appellant was served with Notice of a Supplemental Hearing, which was held on December 19, 2018. Appellant filed a document captioned "Motion to Demand Trial by Jury" on December 14, 2018. The Master denied Appellant's "Motion" at the supplemental hearing, which Appellant did not attend. A Supplemental Order was entered on December 19, 2018, and the property was scheduled to be sold on the February 6, 2019.

On January 2, 2019, Appellant filed for protection under Chapter 13 of the U.S. Bankruptcy Code and the foreclosure sale was thus cancelled. Appellant's third bankruptcy case was dismissed on February 25, 2019, and a Second Supplemental hearing was scheduled on April 16, 2019. Appellant attended the second supplemental hearing, where he objected to the proceedings, but demanded a jury trial and requested discovery. As outlined in the Second Supplemental Order, the Master denied Appellant's requests as untimely and the property was scheduled for sale on June 5, 2019. On May 14, 2019, Appellant was served with the Notice of Sale and Notice of Entry of Judgement, and a corresponding Certificate of Service was filed with the Court on May 14, 2019. The subject property was thereafter sold to Respondent as the successful bidder, and the corresponding deed was recorded in the Berkeley County Register of Deeds Office on June 26, 2019.

Respondent filed a Rule to Show Cause on June 28, 2019, and Writ of Assistance was issued on August 28, 2019.

Appellant filed a Notice of Appeal on September 19, 2019, which included copies of the Judgment entered May 30, 2018 and the Rule to Show Cause filed on June 28, 2019.

II. ARGUMENT

Rule 203(b), SCACR requires that a party serve his or her notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment. Rule 203(b), SCACR. Failure to do so divests this Court of subject matter jurisdiction and requires dismissal of the appeal. *See Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 5-6, 524 S.E.2d 416, 418 (Ct. App. 1999) (citing *First Carolina Nat'l Bank v. A & S Enters., Inc.*, 272 S.C. 339, 251 S.E.2d 762 (1979); *Burnett v. S.C. State Highway Dep't*, 252 S.C. 568, 167 S.E.2d 571 (1969)). The Supreme Court of South Carolina has previously stated that “[s]ervice of the notice of appeal is a jurisdictional requirement, and [the] Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.” *Camp v. Camp*, 386 S.C. 571, 574-575, 689 S.E.2d 634, 636 (2010) (internal quotations omitted); *Elam v. S.C. DOT*, 361 S.C. 9, 602 S.E.2d 772 (2004) (if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to extend or ignore the deadline for service of the notice.)

The record in this case shows that Appellant was properly served with all required notices, including the entry of the Judgment of Foreclosure which he now seeks to appeal. His appearance at the second supplemental hearing confirms he had actual notice, at least as of April 16, 2019, of the entry of the Judgment of Foreclosure. Over five months later, the Notice of Appeal was filed. Since Appellant did not file the notice of appeal within the required time period, the Court of Appeals lacks jurisdiction and the appeal must be dismissed.

To the extent Appellant is attempting to appeal the Rule to Show Cause, the Rule is not an appealable order and even if it were, the attempt to appeal it is also untimely. Only final judgments and certain interlocutory orders are appealable. S.C. Code § 14-3-330 (Supp. 2011);

Brown v. County of Berkeley, 366 S.C. 354, 361, 622 S.E.2d 533, 537 (2005) (“It is well settled that an interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right.”)

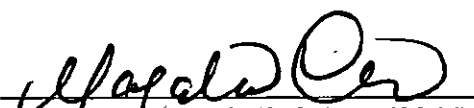
Finally, Appellant did not serve his Initial Brief and Designation of Matter, or any amendments thereto, on Respondent. Pursuant to Rule 208(a)(4), SCACR, this is an additional basis to dismiss the appeal.

III. CONCLUSION

Appellant did not file a notice of appeal within thirty days of receipt of written notice of the entry of the trial court’s judgment. Therefore, the Court of Appeals does not have jurisdiction to consider the appeal and the appeal filed by Appellant must therefore be dismissed. As additional grounds for dismissal, Appellant failed to serve Respondent with his Initial Brief and Designation of Matter.

Respectfully submitted,

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July 24, 2020

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APPEAL FROM BERKELEY COUNTY
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Dale Van Slambrook, Master in Equity

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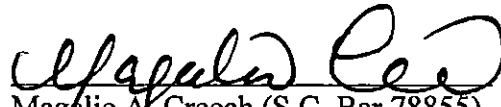
Nehemiah Bryant,

Appellant.

PROOF OF SERVICE

I certify that I have served the *Notice of Appearance for Respondent, Respondent's Motion to File and Serve Motion to Dismiss Out of Time and Respondent's Motion to Dismiss Appellant's Appeal as Untimely* by depositing a copy of same in the United States Mail, postage prepaid, on July 24, 2020, addressed to Appellant, Nehemiah Bryant, 151 Saint Johns Bethel Street, Moncks Corner, SC 29461.

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July 24, 2020



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REPLY TO:
CHARLESTON LITIGATION

July 24, 2020

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

RE: Wilmington Savings Fund v. Nehemiah Bryant
Appellate Case No.: 2019-001572
Our File No.: 90473.55482

Dear Ms. Kitchings:

Enclosed for filing is the *Notice of Appearance for Respondent, Respondent's Motion to File and Serve Motion to Dismiss Out of Time, Respondent's Motion to Dismiss Appellant's Appeal as Untimely* and related *Proof of Service* in the above-referenced case, along with six (6) copies, which we kindly ask you to file and return in the attached, self-addressed, stamped envelope. Enclosed also are check numbers 74408 and 74409 in the amounts of \$25.00 each for the respective motion filing fees.

Should you have any questions concerning this matter, please do not hesitate to contact our office at your earliest convenience.

With kind personal regards, we are

Yours very truly,

FINKEL LAW FIRM

Magalie A. Creech

CC: Nehemiah Bryant

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