THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas
Kristi F. Curtis, Circuit Judge

Appellate Case No. 2020-001490

New Residential Mortgage, LLC, ... Plaintiff,

v.

Todd S. Crawford, Tricia L. Crawford, William T. Geddings, Jr., Jane U. Geddings, and USAA Federal Savings Bank, ... Defendants,

Of Whom William T. Geddings, Jr. and Jane U. Geddings are the ..... Appellants-Respondents,

and

New Residential Mortgage LLC is the ..... Respondents-Appellant,

and USAA Federal Savings Bank is the .....Respondent.

RETURN TO RESPONDENT-APPELLANT NEW RESIDENTIAL MORTGAGE, LLC'S MOTION TO DISMISS

Appellants-Respondents (hereinafter "the Geddings") hereby submit this return to Respondent-Appellant New Residential Mortgage, LLC ("New Residential")'s motion for the court to dismiss this appeal.

The Geddings do not take issue with New Residential's contention that the Geddings' amended pleading superseded their prior pleading. There is an appealable issue, here, however: this case, at the circuit court level, is referred to the master-in-equity with the Geddings' jury demand stricken, even though the Geddings plead at-law claims with a jury demand made on them.

In Judge Curtis' order that reconsidered her judgment on the pleadings as the Geddings' legal counterclaims and allowed the Geddings leave to amend and replead them, Judge Curtis did not undo her previous striking of the Geddings' jury demand, nor did she undo her original order's reference of this case to the master-in-equity.

Whether the Geddings or New Residential ultimately prevail on the issue of whether it was proper for Judge Curtis to strike the jury demand or refer the case to the master-in-equity remains to be seen. That her order referring the case to the master-in-equity is an appealable one, however, is well established by precedent in this state. E.g., Creed v. Stokes, 285 S.C. 542, 331 S.E.2d 351, 352 (1985).

> Pursuant to § 14-3-330(2), this Court has held on numerous occasions that when a trial court's order deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable. Lester v. Dawson, 327 S.C. 263, 491 S.E.2d 240 (1997); C & S Real Estate Services, Inc. v. Massengale, 290 S.C. 299, 350 S.E.2d 191 (1986); Creed v. Stokes, 285 S.C. 542, 331 S.E.2d 351; First Union Nat'l Bank of South Carolina v. Soden, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998); Preferred Sav. Bank, Inc. v. Elkholy, 303 S.C. 95, 399 S.E.2d 19 (Ct. App. 1990). These cases not only permit, but indeed *require*, immediate appeal in the event of denial of a mode of trial to which one is entitled as a matter of right. Failure to immediately appeal such an order forever bars appellate review.

Flagstar Corp. v. Royal Surplus Lines, 341 S.C. 68, 73, 533 S.E.2d 331 (2000) (emphasis added); (see also Goddard v. Fairways Dev. Gen. P'ship, 310 S.C. 408, 426 S.E.2d 828, 833 (Ct. App. 1992) ("[A]n order of reference which deprives a party of a mode of trial to which he is entitled as a matter of right is immediately appealable. Appellants' failure to immediately appeal the issue leaves it unpreserved for review.")).

The Geddings have been denied their right to a jury trial on their now-amended law claims, since, under the lower court's order, they must now be tried before the master-in-equity. See

Wachovia Bank, Nat'l Ass'n v. Blackburn, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014). That is an immediately appealable issue. Indeed, the Geddings were required to appeal it immediately.

Respectfully submitted,

/s/ Andrew S. Radeker
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December 11, 2020

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New Residential Mortgage LLC is the ..... Respondents-Appellant,

and USAA Federal Savings Bank is the ..... Respondent.

PROOF OF SERVICE

I certify that I have served the foregoing return on the date given below by emailing it to opposing counsel at the addresses noted below.

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December 11, 2020