

**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
Common Pleas Case No. 2020-CP-14-00023**

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

Respondent/Appellant,

and

USAA Federal Savings Bank is the

Respondent.

**RETURN TO APPELLANT-RESPONDENTS' MOTION TO DISMISS
RESPONDENT-APPELLANT NEW RESIDENTIAL MORTGAGE, LLC'S
CROSS-APPEAL**

Respondent-Appellant New Residential Mortgage, LLC ("New Residential") noticed a

conditional cross-appeal in this matter, expressly stating in its Notice of Cross-Appeal that “[t]his cross-appeal is contingent on the Court’s determination that it has appellate jurisdiction over this appeal.” New Residential is appealing from the denial of its Rule 12(c) motion for judgment on the pleadings on Appellant-Respondent Williams T. Geddings, Jr. and Jane U. Geddings’ (the “Geddings”) equitable counterclaim for unjust enrichment. As explained in its pending motion to dismiss the Geddings’ appeal, New Residential does not believe this Court has jurisdiction over the Geddings’ interlocutory appeal, and the Geddings’ appeal should be dismissed. However, if this Court chooses to exercise jurisdiction over the Geddings’ interlocutory appeal, it should also exercise jurisdiction over New Residential’s cross-appeal from the same order.

The Geddings’ focus their argument on SCRAP 201(b), which provides that “[o]nly a party aggrieved by an order, judgment, sentence or decision may appeal.” New Residential does not dispute that rule,¹ and it also does not disagree with the Geddings’ contention that the denial of Rule 12(c) motion for judgment on the pleadings, standing alone, is normally not immediately appealable under S.C. Code Ann. § 14-3-330. (Motion at 2 (citing *Rose v. Thrash*, 291 S.C. 459, 459, 354 S.E.2d 378, 378 (1987)).

¹ The Geddings’ reliance on SCACR 201(b) and whether New Residential is “aggrieved” is misplaced. Rule 201(b) is effectively a standing inquiry. *See Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 447, 665 S.E.2d 237, 242 (Ct. App. 2008) (“There is no material distinction in general standing principles juxtaposed to the ability of an ‘aggrieved party’ to appeal pursuant to 201(b) of the South Carolina Appellate Court Rules.”). New Residential has standing because the denial of its Rule 12(c) motion leaves a counterclaim against it intact, which clearly “bears directly on [its] interest.” *Beaufort Realty Co., Inc. v. Beaufort Cnty.*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001). The question for the Court – properly framed – is if the denial of New Residential’s Rule 12(c) motion, standing alone, is not directly appealable, then whether the existence of an appealable issue before the Court allows this Court to exercise jurisdiction – akin to supplemental jurisdiction in the federal context – over New Residential’s cross-appeal.

However, New Residential has not filed a standalone appeal from an interlocutory order. To the contrary, New Residential's appeal is contingent on the Court determining that the Geddings' appeal is properly before the Court. In that circumstance, the Court may exercise jurisdiction over New Residential's appeal because "[a]n order that is not directly appealable may be considered if there is an appealable issue before the court." *Edge v. State Farm Mut. Auto Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005); *see Tate v. Oxner*, 236 S.C. 313, 317, 114 S.E.2d 225, 225 (1960).

South Carolina appellate courts apply this principle to exercise jurisdiction over multiple issues raised by an appellant where at least one of those issues is properly appealable. *See Briggs v. Richardson*, 273 S.C. 376, 379 & n.1, 256 S.E.2d 544, 546 & n.1 (1979) (considering appeal from denial of motion for more definite statement and noting, "While not normally appealable, this issue is before the Court due to the appealability of the first issue"); *Cox v. Woodmen of World Ins. Co.*, 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001) (considering appeal from denial of Rule 12(b)(8) motion to dismiss and explaining, "an order that is not directly appealable will be considered if there is an appealable issue before the court").

Importantly, this Court and the Supreme Court also apply this principle to exercise jurisdiction over cross-appeals by a respondent (or a respondent-appellant) where at least one issue raised by the appellant (or an appellant-respondent) is properly before the court. *See Edge*, 366 S.C. at 517, 623 S.E.2d at 390 (considering cross-appeal from denial of motion to dismiss where leading appeal from order granting a motion to dismiss was properly before the court); *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 413 & n.1, 574 S.E.2d 228, 231 & n.1 (Ct. App. 2002) (considering cross-appeal from denial of Rule 12(b)(6) motion to dismiss where

leading appeal from denial of temporary injunction was properly before the court, and explaining “an order that is not directly appealable can be considered if there is an appealable issue before the court”).

Here, if the Court exercises jurisdiction over the Geddings’ appeal, it should also exercise jurisdiction over New Residential’s appeal from the denial of its Rule 12(c) motion for judgment on the pleadings. The Geddings themselves point out that the denial of a motion for judgment on the pleadings “is the same as the denial of a motion to dismiss” (Motion at 2), and this Court and the Supreme Court have previously exercised jurisdiction over a cross-appeal from the denial of a motion to dismiss in light of there being an appealable issue before the court. *See Edge*, 366 S.C. at 517, 623 S.E.2d at 390; *FOC Lawshe Ltd. P’ship*, 352 S.C. at 413, 574 S.E.2d at 231. Moreover, if New Residential prevails on its cross-appeal, further litigation in the trial court concerning the Geddings’ unjust enrichment counterclaim could be avoided, which would further one of the policies underlying the above-described rule. *See Oxner*, 236 S.C. at 317, 114 S.E.2d at 225 (court may consider appeal “to avoid unnecessary litigation”).

New Residential stands by its argument that this Court lacks jurisdiction over the Geddings’ appeal because the underlying order – including the dismissal without prejudice under Rule 12(c), the decision to strike the Geddings’ jury demand for an equitable claim, and the reference to the master in equity – are not immediately appealable. In the event the Court dismisses the Geddings’ appeal, New Residential agrees that this Court would not have jurisdiction over its cross-appeal. But if the Court chooses to exercise jurisdiction over the Geddings’ interlocutory appeal, it should also exercise jurisdiction over New Residential’s cross-appeal.

This the 4th day of January 2021.

/s/ Jonathan E. Schulz

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PROOF OF SERVICE

I hereby certify that a copy of the foregoing RETURN TO APPELLANT-RESPONDENTS' MOTION TO DISMISS RESPONDENT-APPELLANT NEW RESIDENTIAL MORTGAGE, LLC'S CROSS-APPEAL was sent via first-class U.S. Mail,

postage prepaid, and addressed as follows:

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This the 4th day of January 2021.

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