

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY COURT OF COMMON PLEAS

The Honorable Letitia Verdin, Circuit Court Judge

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Appellate Case No. 2021-000333

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Nationstar Mortgage, LLC

Appellant,

v.

Louise Doyle,

Respondent.

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**MEMORANDUM ON ISSUE OF APPEALABILITY**

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Respondent Louise Doyle, by and through undersigned counsel, submits this memorandum on the issue of the appealability of the underlying order in the above-captioned matter. Based on a review of the relevant South Carolina law, Respondent believes the order is not immediately appealable, and the order is interlocutory.

**PROCEDURAL HISTORY**

Plaintiff filed the summons and complaint in the underlying action on or about September 15, 2017.

By order dated December 30, 2016, the action was stricken from the active docket pursuant to Rule 40(j), SCRCF.

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Respondent filed an answer and counterclaims on or about January 5, 2016, in which Respondent requested a jury trial on the counterclaims.

By consent order dated May 17, 2020, the underlying case was restored to the active docket.

On or about June 8, 2020, Appellant filed a motion for non-jury adjudication of action and for order of reference (hereinafter the “Motion”). A hearing on the motion was held on February 23, 2021.

By order dated February 23, 2021, the Motion was denied and this appeal follows.

## ARGUMENT

### **I. The trial court’s order is not immediately appealable.**

Appellant’s appeal should be dismissed as the trial court’s order is not immediately appealable. The determination of whether a trial court’s order is immediately appealable is governed by statute. Hagood v. Sommerville, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005); *see* S.C. Code Ann. § 14–3–330 (1976 & Supp. 2014). Pursuant to Section 14–3–330, appellate courts have jurisdiction to immediately review:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

The Court's ruling at issue in this case denied the Plaintiff's motion to refer the case to a Master-In-Equity. The motion was denied because "a party does not waive its right to a jury trial on a counterclaim if the counterclaim is legal and compulsory in nature." North Carolina Federal S&L v DAV Corp., 298 S.C. 514, 517, 381 S.E. 2d 903, 905 (1989). The denying of Plaintiff's motion does not fall under any of the guidelines set forth in S.C. Code Ann. § 14-3-330. The provisions of this section have been construed by Courts to serve the underlying policy favoring judicial economy by avoiding "piecemeal appeals," Hagood, 362 S.C. at 196, 607 S.E.2d at 709. "By its nature, the question of whether an order is immediately appealable is determined on a case-by-case-basis. Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 773 S.E.2d 144 (S.C. 2015).

The issue at hand was denying the remand of the case to a master-in-equity and allowing the case to move forward to a trial by jury. It did not involve the merits of the case. It does not affect a substantial right made in the action or prevent a judgement from being taken to appeal, nor does it grant or refuse a new trial. In addition, it was not a final judgment, and the appeal should be dismissed based the fact that it does not meet the statutory requirements set forth above, and on the basis of judicial economy and the interest of avoiding "piecemeal appeals."

**II. The appeal be dismissed on the basis that it constitutes an interlocutory appeal.**

"South Carolina case law has established what constitutes an interlocutory appeal. If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory." Adickes v. Allison & Bratton, 21 S.C. 245 (1884). If a judgment determines the applicable law while leaving open questions of fact, it is not a final

judgment. Mid-State Distributors, Inc. v. Century Importers, Inc., 426 S.E.2d 777, 310 S.C. 330 (S.C. 1993)”

The motion for summary judgment was held in abeyance by both parties, and therefore not relevant to this appeal. The only issue was the denial of the Plaintiff’s Motion to refer the case to a Master in Equity. Therefore, there is further action to be done by the court to determine the rights of the parties, namely, a trial by jury that the Circuit Court judge correctly ruled that the Defendant has a right to. The judgement clearly determined the applicable law in question, that the counterclaim is legal and compulsory in nature, and also leaves open questions of fact that should be decided by a jury, and therefore it was not a final judgment subject to appeal.

#### CONCLUSION

For the reasons set forth herein, Respondent respectfully requests that this Court dismiss Appellant's appeal and award appropriate attorney’s fees as the Court deems just and proper.



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April 15, 2021

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April 15, 2021

**VIA U.S. MAIL**

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

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RE: *Nationstar Mortgage, LLC v. Louise Doyle, et. al.*  
Appellate Court No: 2021-000333

Dear Ms. Kitchings:

Enclosed please find an original and one (1) copy of Respondent's memorandum on the issue of appealability in the above-referenced matter. Please return a time-stamped copy in the self-addressed stamped envelope provided.

If you have any questions or need anything further regarding this matter, please do not hesitate to contact my office.

With kind regards,



Marcus W. Meetze

cc: Amanda K. Cutler, Esq.  
Reginald Corley, Esq.  
William Stork, Esq.  
Dorothy Rabon  
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The Honorable Jenny Abbott Kitchings  
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