

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2013-000560

The Bank of New York Mellon Trust
Company, National Association as grantor
Trustee of the Protium Master Grantor Trust,.....Respondent.

v.

Glen Allen Mitchum, Sr. aka Glenn Allen Mitchum,.....Appellant.

**RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL
AND INCORPORATED MEMORANDUM OF LAW**

Jane H. Downey
M. Brooks Biediger
Moore, Taylor & Thomas, P.A.
Post Office Box 5709
West Columbia, SC 29169
Telephone: (803)-796-9160
Facsimile: (803)-791-8410
Attorneys for Appellant

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INTRODUCTION

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, the Appellant Glen Mitchum respectfully submits this Return to the Respondent's Motion to Dismiss and incorporated memorandum of law. This appeal commenced upon the filing and service of a notice of appeal by the Appellant on March 11, 2013. The appeal is taken from the February 20, 2013, Order of the Honorable Frank R. Addy, Jr., in the Court of Common Pleas for Lexington County. On March 28, 2013, Appellant was served with the Respondent's motion to dismiss. Appellants respectfully request this Court deny the Respondent's Motion to Dismiss because the Order for Partial Judgment on the Pleadings is immediately appealable pursuant to S.C. Code § 14-3-330(2)(c).

STATEMENT OF THE CASE

The facts relevant to the present motion to dismiss are relatively straightforward and procedural in nature. On June 27, 2011, the Respondent/Plaintiff commenced this action by the filing of a Summons and Complaint in the Court of Common Pleas for Lexington County. The Complaint was in the nature of a mortgage foreclosure action on the Appellant/Defendant's residence.

On August 11, 2011, the Appellant/Defendant timely answered and counterclaimed. The six counterclaims were of the nature of a declaratory judgment, negligence, accounting, and various improper banking practices. On August 12, 2012, the Respondent/Plaintiff moved for Partial Judgment on the Pleadings and asked the Court to dismiss the Appellant/Defendant's counterclaims for failure to state a claim.

On February 4, 2013, the Respondent/Plaintiff's motion was heard before the Honorable Frank R. Addy, Jr. Judge Addy ultimately dismissed the Appellant/Defendant's counterclaims

and directed Respondent's counsel to prepare the order. The present appeal stems from this Order Granting Partial Judgment on the Pleadings.

On March 28, 2013, the Respondent filed the present Motion to Dismiss. The Respondent did not provide any supporting affidavits with this motion.

The Appellant submits this Return and incorporated memorandum in opposition to the Respondent's Motion to Dismiss.

ARGUMENT

The Respondent claims the appeal should be dismissed because the Order Granting Partial Judgment on the Pleadings did not "resolve the entire case" and is interlocutory. The Respondent also claims the Order does "not involve the merits, affect a substantial right, or prevent a judgment from which an appeal may be later taken." Even if the Court were to accept the Respondent's claims as true, the Order would still be immediately appealable under S.C. Code § 14-3-330(2)(c).

Pursuant to S.C. Code § 14-3-330(2)(c), an appeal may be taken when a Circuit Court order "strikes out an answer or any part thereof or any pleading in any action." The Appellant/Defendant answered the Respondent/Plaintiff's Complaint by raising several affirmative defenses and six counterclaims. In the Order Granting Partial Judgment on the Pleadings, the Circuit Court dismissed all of the Appellant's counterclaims. Therefore, the Circuit Court struck out part of the Appellant/Defendant's Answer and all of the Defendant's counterclaims. Therefore, the Circuit Court Order was immediately appealable pursuant to S.C. Code § 14-3-330(2)(c) because it struck out part of the Appellant's pleadings.

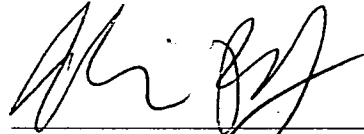
The Respondent's motion to dismiss rests entirely on the appealability of the Circuit Court's Order Granting Partial Judgment on the Pleadings. The Circuit Court Order is

immediately appealable pursuant to S.C. Code § 14-3-330(2)(c), and therefore the Respondent's motion should be denied.

CONCLUSION

For the reasons stated above, Appellant Glen Mitchum respectfully requests this Court deny the Respondent's Motion to Dismiss Appeal.

Respectfully submitted,



Jane J. Downey
M. Brooks Biediger
Moore, Taylor & Thomas, P.A.
Post Office Box 5709
West Columbia, SC 29169
Telephone: (803)-796-9160
Facsimile: (803)-791-8410
Attorneys for Appellant

West Columbia, South Carolina
April 22, 2013.

Other Counsel of Record:
Brian Steed Tatum, Esquire
Tatum Law Firm, PLLC
P.O. Box 11250
Charlotte, NC 28220
Attorney for Respondent

January Nicole Taylor, Esquire
Brock and Scott, PLLC
3455 Peachtree Road NE, 5th Floor
Atlanta, GA 30326
Attorney for Respondent

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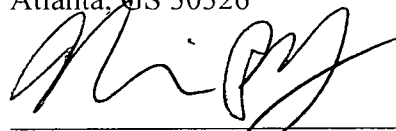
PROOF OF SERVICE

I certify that I have served the Return to Repondent's Motion to Dismiss Appeal and Incorporate Memorandum of Law on the Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on April 22, 2013, addressed to its attorneys of record:

Brian Steed Tatum
Tatum Law Firm, PLLC
P.O. Box 11250
Charlotte, NC 28220

January Nicole Taylor
Brock and Scott, PLLC
3455 Peachtree Road NE, 5th Floor
Atlanta, GS 30326

April 22, 2013.



M. Brooks Biediger
Moore, Taylor & Thomas, P.A.
Post Office Box 5709
West Columbia, South Carolina 29171
(803) 796-9160
Attorney for Appellant

S. JAHUE MOORE
J. MARK TAYLOR*
DAVID L. THOMAS†
C. VANCE STRICKLIN, JR.
JAMES EDWARD BRADLEY
SHEILA McNAIR ROBINSON
ROBERT D. HAZEL
CHRISTIAN G. SPRADLEY††
C. DAVID SAWYER, JR.††
WILLIAM H. EDWARDS
STANLEY L. MYERS
JANE H. DOWNEY**
S. JAHUE MOORE, JR.
JOHN C. BRADLEY, JR.



1700 SUNSET BOULEVARD (HWY. 378)
POST OFFICE BOX 5709
WEST COLUMBIA, SOUTH CAROLINA 29171
TELEPHONE (803) 796-9160
FAX (803) 791-8410

April 22, 2013

MELISSA K. MOORE
WILLIAM B. FORTINO
R. NICHOLS "NICK" RILEY, JR.
M. BROOKS BIEDIGER
AMBER L. FULMER
SARAH TAYLOR CASSIDY
MARGARET "MEG" HAZEL

RETIRED:
BILLY C. COLEMAN††

††SALUDA OFFICE:
(864) 445-4544 OR (866) 604-4544
†GREENVILLE OFFICE:
(864) 271-6371

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

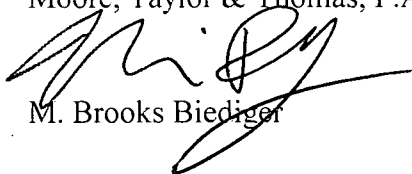
Re: The Bank of New York Mellon Trust Company, National
Association as grantor Trustee of the Protium Master Grantor
Trust, vs. Glenn Allen Mitchum Sr. aka Glenn Allen Mitchum
Appellate Case No. 2013-000560

Dear Mrs. Kitchings:

Enclosed for filing is the Appellant's Return to the Respondent's Motion
to Dismiss Appeal and Incorporated Memorandum of Law in the above case. By
copy of this letter, I am serving Respondent's counsel with the same.

Thank you very much for your attention in this matter.

Respectfully yours,
Moore, Taylor & Thomas, P.A.



M. Brooks Biediger

JHD/mbb
Enclosures

cc: Brian Steed Tatum, Esquire
January Nicole Taylor, Esquire
(via U.S. Mail with enclosures)

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