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**Dec 30 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

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Appellate Case No. 2022-001678

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Southern First Bank, N.A. d/b/a Greenville First Bank,.....Respondent,

v.

Kenneth J. Vilcheck and Renee M. Vilcheck,.....Appellants.

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RETURN TO RESPONDENT'S MOTION TO DENY APPELLANTS' MOTION  
TO CONSOLIDATE APPEAL NO. 2022-000958 WITH APPEAL NO. 2022-  
001678

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Appellants hereby submit this return to the Respondent's motion to deny  
Appellants' motion consolidate Appeals No. 2022-000958 and 2022-001678.

Respondent's motion should be denied, as the following shows:

1. The Respondent's motion is unnecessary. Respondent has doubled down on the duplication of proceedings, making a motion to deny its opponents' motion. The content of Respondent's motion is the same as its return to the motion it now moves be denied.
2. Much of the Respondent's motion is filled with attacks upon the Appellants and seems to be the expression of resentment at

Appellants for having brought either of the subject appeals at all. That has nothing to do with the issue subject of the motions.

3. That Respondent takes this tack reveals the lack of a good argument against consolidation. “*Ad hominem* arguments, of course, constitute one of the most common errors in logic: Trying to win an argument by calling your opponent names (‘Jane you ignorant etcetera . . .’) only shows the paucity of your own reasoning.” Huntington Beach City Council v. Superior Ct., 115 Cal. Rptr. 2d 439, 448, 94 Cal. App. 4th 1417, 1430 (Cal. App. 4th 2002).
4. Respondent seems to contend that Appellants have been in charge of the order in which these appeals were brought, but that is not an accurate portrayal. The first appeal was brought as the result of Respondent’s success on motions to strike Appellants’ jury demand and to refer to the master-in-equity. It is well established that Appellants either had to appeal this ruling or waive their right to challenge it at all. E.g., Flagstar Corp. v. Royal Surplus Lines, 341 S.C. 68, 73, 533 S.E.2d 331 (2000). The same is true of the denial of Appellants’ motion for relief from the judgment involved here. See Ex parte Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. of Zoning Appeals, 340 S.C. 57, 530 S.E.2d 383 (2000); Winesett v. Winesett, 287 S.C. 332, 338 S.E.2d 340 (1985).
5. Respondent complains that the motion to consolidate does not state why the decision in the appeal of the denial of Appellants’ motion for

relief from the judgment may importantly affect the decision in this appeal. Respectfully, the motion to consolidate spells that out plainly. Moreover, it is obvious: if the judgment is determined to be void, the independent action brought to enforce it fails as a matter of law, and the mode of trial question in the independent action will then be moot. A case is nonjusticiable for mootness where, if the party prevails, it has become impossible for the court to grant him any “effectual relief” that would have “practical legal effect[.]” Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) (internal quotation marks omitted). Since a determination that the judgment is void would as a matter of law determine that Respondent’s success is impossible in the independent action to enforce it, the mode of trial issues in that case will be moot. See id.

6. Appellants are at a loss to see why Respondent complains that the motion to consolidate was brought before the briefs were written in the subject appeals. Avoiding the need for two sets of briefs where one set is likely to address the issues efficiently and consistently is much of the reason consolidation is sought.
7. Respondent does not suffer from some service problem related to the motions. Respondent is even represented by the same law firm in both appeals. Obviously, the lawyer in that firm who is counsel of record in the second appeal received Appellant’s motion – he responded to it.

8. Respondent presents the court with no good reason to deny consolidation.
9. The undersigned has served this document on opposing counsel by email to registered AIS email address on the date given below.

WHEREFORE Appellant prays for an order that consolidates Appeals No. 2022-000958 and 2022-001678.

Respectfully submitted,

/s/ Andrew S. Radeker  
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**PROOF OF SERVICE**

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I certify that I have served the foregoing reply to return to motion to consolidate on the date given below by emailing it to counsel for the Respondent(s) and all other counsel of record in the underlying action at the address(es) noted below.

Aaron J. Angel, Esq., at aaron@angellmolony.com

Luke R. Hoopes, Esq., at luke@angellmolony.com

December 30, 2022

Respectfully submitted,

/s/ Andrew S. Radeker

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