

1 Carolyn Brantley
2 200 Oak Plantation Drive
3 Ridgeland, SC 29936
4 Phone: 843-812-4724

5 **The South Carolina Court of Appeals**
6 **State of South Carolina**

7 **Case No. 2024-000039**

8 NATIONSTAR MORTGAGE LLC, d/b/a MR. COOPER §

9 NATIONSTAR MORTGAGE LLC, d/b/a §
10 MR. COOPER §

11 **RESPONDENT** §
12 **VS** §

13 **MOTION FOR STAY**
14 **PENDING APPEAL**

15 Carolyn Brantley, et al. §

16 **APPELLANT** §

17 **I. INTRODUCTION**

18 Appellant respectfully moves this court for a stay pending appeal and
19 asserts that there is a strong likelihood of success on the merits of the
20 appeal, as the foreclosure judgment directly contravenes the bankruptcy
21 discharge order previously granted, which is protected under 11 U.S.C. §
22 524. Appellant also asserts that she will experience irreparable harm if
23 the motion is not granted and show the court all of the following:

24 **II. GROUNDS & RELIEF SOUGHT**

25 The grounds of this motion is that appellant is entitled to a stay
26 pending appeal for the reasons stated in this motion, and appellant
27 would be prejudiced on appeal absent a stay pending appeal in this case.

28 **RELIEF SOUGHT:**

- 1. GRANT A STAY PENDING APPEAL
- 2. ANY AND ALL OTHER RELIEF THAT MAY BE APPROPRIATE IN THIS CASE.

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VII. STATEMENT OF ISSUES

 1. The Appellant has a strong likelihood of success on the merits of the appeal because the foreclosure judgment violates the explicit terms of the bankruptcy discharge order (citing 11 U.S.C. § 524)2

 2. Without a stay the Appellant faces irreparable harm, including the loss of real property and loss of the property for a special needs child3

 3. The harm to the Appellant in the absence of a stay far outweighs any potential harm to the Respondent. The Respondent's interest in the enforcement of the judgment is outweighed by the Appellant's right to protection under bankruptcy law.5

 4. Granting a stay serves the public interest by upholding the integrity of the bankruptcy discharge, Bankruptcy law, and ensuring that debtors are not unlawfully burdened with pre-discharge debts.7

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A United States Bankruptcy is currently in Effect from a Recent Discharge Order

This case originated with the filing of a foreclosure action by Plaintiff, NationStar Mortgage LLC, dba Mr. Cooper, filed a foreclosre against Defendant, Carolyn Brantley, concerning the property located at 200 Oak Plantation Dr, Ridgeland SC 29936 who was the recipient of a bankruptcy discharge order, discharging her in personam liability.(BK Case no 19-05734-dd).

The foreclosure action, initiated under Case No. 2022CP2700306 against Carolyn Brantly individually rather than in rem sought to enforce the mortgage obligations against appellant. A judgment of foreclosure was issued on December 11, 2023. An objection and motion to set aside the judgment was filed in the Common Pleas trial case, but no ruling was made on that motion.

IV. ISSUES PRESENTED

I. Likelihood of Success on the Merits

II. Irreparable Harm

III. Balance of Harms

IV. Public Interest

V. No Bond Should Be Required Due to the Egregious Errors of the Special Referee

SUMMARY OF THE ARGUMENT

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Before this Honorable Court, Appellant, respectfully submits this Motion for Stay Pending Appeal, seeking to suspend the enforcement of the foreclosure judgment issued by the Court of Common Pleas dated December 11, 2023. This motion is predicated on the premise that the judgment in question was rendered in violation of the Appellant's rights under federal bankruptcy law and, if executed, will cause irreparable harm that far outweighs any potential harm to the Respondent, Nationstar Mortgage LLC d/b/a Mr. Cooper. Furthermore, the stay is sought in the interest of upholding the public interest in the integrity of the bankruptcy discharge process.

The Appellant asserts that there is a strong likelihood of success on the merits of the appeal, as the foreclosure judgment directly contravenes the bankruptcy discharge order previously granted, which is protected under 11 U.S.C. § 524. The enforcement of this judgment poses not only a significant threat to the Appellant's housing stability but also adversely impacts the welfare of a special needs child, for whom the Appellant is responsible.

The balance of harms in this case is skewed significantly towards the Appellant, and the absence of a stay would result in substantial and irreversible detriment. Furthermore, the enforcement of the judgment runs counter to the public interest, which is best served by adhering to the principles and protections afforded by federal bankruptcy law.

In light of these considerations, the Appellant respectfully requests that this Court grant a stay of the foreclosure judgment pending the outcome of the appeal, thereby preventing irreparable harm to the Appellant and upholding the integrity of the bankruptcy discharge process.

MEMORANDUM IN SUPPORT

I. Likelihood of Success on the Merits

2. The Appellant has a strong likelihood of success on the merits of the appeal because the foreclosure judgment violates the explicit terms of the bankruptcy discharge order (citing 11 U.S.C. § 524)

The Appellant, presents a compelling argument for the success on the merits of this appeal based on the clear violation of the bankruptcy discharge order by the foreclosure judgment issued against them. Respondent certainly had right in rem rights against the property, but not against the Appellant (debtor) This forelosure lawsuit and judgment was against the appellant individually, and this was a violation of law, and the discharge order.

The foreclosure judgment directly contravenes the protections afforded under 11 U.S.C. §524, thereby undermining the fundamental purpose and legal efficacy of the bankruptcy discharge. Prohibition Against Post-Discharge Collection Efforts: Crucially, 11 U.S.C. §524(a)(2) establishes that a discharge in bankruptcy operates as an injunction against the commencement or continuation of any action to collect, recover, or offset any such discharged debt. This statutory injunction is a cornerstone of bankruptcy relief, ensuring that debtors are not pursued for personal debts that have been legally extinguished.

II. Irreparable Harm

2. Without a stay the Appellant faces irreparable harm, including the loss of real property and loss of the property for a special needs child

Immediate Risk of Loss of Property: The Appellant faces the imminent risk of losing real property if the decision of the lower court is not stayed. The loss of property is not merely a financial or economic setback; it represents a fundamental loss of home and security. This is particularly significant given that property, once lost, cannot be reclaimed or adequately compensated for in monetary terms, thus qualifying as irreparable harm.

Impact on Special Needs Child: Of paramount concern is the well-being of the Appellant's special needs child, who resides on the property. The stability and continuity of environment are crucial for the child's health and development. The upheaval and dislocation resulting from the loss of the property would pose severe and lasting harm to the child, beyond the scope of financial compensation. The unique needs of the child make this situation particularly exigent, as finding suitable alternative accommodation that meets these specific needs can be exceptionally challenging and disruptive.

Legal precedents establish the granting of a stay to prevent irreparable harm, particularly when the wellbeing of vulnerable individuals is at stake. In cases such as *Nken v. Holder*, 556 U.S. 418 (2009), the Supreme Court has acknowledged the importance of considering the potential for irreparable harm when deciding on a stay of proceedings.

III. Balance of Harms

3. The harm to the Appellant in the absence of a stay far outweighs any potential harm to the Respondent. The Respondent's interest in the enforcement of the judgment is outweighed by the Appellant's right to protection under bankruptcy law.

The harm that the Appellant faces in the absence of a stay is profound and far-reaching, significantly outweighing any potential harm that the Respondent might incur due to the delay in enforcing the judgment. The loss of the Appellant's real property, a fundamental asset, represents not just a financial loss but a devastating upheaval of life and stability. This loss is irreparable in nature; once the property is lost, it cannot be restored or adequately compensated for monetarily.

Special Consideration for Vulnerable Parties: The situation is further aggravated by the presence of a special needs child in the Appellant's care. The disruption caused by the loss of the property extends beyond the Appellant to this vulnerable individual, whose specific needs make the stability of their environment crucial. The potential psychological and developmental impacts on the child are severe and constitute irreparable harm.

In balancing the equities, the harm to the Appellant, including the significant impact on the wellbeing of a special needs child, overwhelmingly outweighs any inconvenience or minimum delay experienced by the Respondent.

Therefore, a stay is not only justified but imperative to prevent irreparable harm and uphold the Appellant's rights under bankruptcy law. It is essential that the court grants this stay to preserve the status quo and protect the Appellant from irreversible damage while the appeal is pending.

IV. Public Interest

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4 Granting a stay in this case aligns with the broader public interest by
5 upholding the integrity of the bankruptcy discharge system. Bankruptcy
6 law is designed to provide a fresh start to debtors, freeing them from the
7 shackles of pre-discharge debts. Enforcing this principle is not only a
8 matter of individual justice but also a cornerstone of maintaining trust
9 and efficacy in the bankruptcy system as a whole.
10

11 Public Interest and Bankruptcy Integrity: Granting a stay in this case
12 aligns with the broader public interest by upholding the integrity of the
13 bankruptcy discharge system. Bankruptcy law is designed to provide a
14 fresh start to debtors, freeing them from the shackles of pre-discharge
15 debts. Enforcing this principle is not only a matter of individual justice
16 but also a cornerstone of maintaining trust and efficacy in the
17 bankruptcy system as a whole.
18

19 Balancing Equities in Favor of the Appellant: In considering the
20 balance of equities, it becomes evident that granting a stay not only
21 protects the Appellant but also serves the public interest by reinforcing
22 the principles of bankruptcy law. Upholding these principles ensures that
23 all parties, including future debtors, can trust in the bankruptcy system
24 to provide the relief and protection it promises.
25

26 Granting a stay in this case is aligned with the public interest and is
27 essential for upholding the integrity of the bankruptcy discharge process
28

V. No Bond Should Be Required Due to the Egregious Errors of the Special Referee

5. Obvious Errors Appear On the Face of the Record which warrant a stay pending appeal with no bond necessary

Egregious Errors by the Special Referee: The Special Referee's decision in this case is marred by egregious errors, which have led to a fundamentally flawed judgment against the Appellant. These errors include misinterpretations of law, failure to adhere to procedural standards, and overlooking critical factual evidence. Such significant errors undermine the fairness and correctness of the legal process, making the imposition of a bond for a stay unjust.

Obvious Errors on the Record: The record in this case clearly reveals substantial mistakes that impact the legitimacy of the judgment. These errors are not minor or technical but go to the heart of the case, affecting crucial aspects of the decision. The presence of such blatant errors on the face of the record justifies a stay pending appeal, as it indicates a strong likelihood of reversal or remand upon appellate review.

Unnecessary Burden of Bond Requirement: Requiring a bond in this situation places an undue and unnecessary financial burden on the Appellant.

Given the clear errors and the likelihood of success on appeal, the bond requirement serves no practical purpose other than to create an additional barrier to justice for the Appellant.

POINTS AND AUTHORITIES

STAY PENDING APPEAL

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4 Rule 62(d) - Stay Upon Appeal: When an appeal is taken, a party
5 can obtain a stay by giving a supersedeas bond, subject to
6 exceptions in subdivision (a) of this rule and the South Carolina
7 Appellate Court Rules.

8
9 Automatic Stay; Exceptions: No execution shall issue upon a
10 judgment nor shall proceedings be taken for its enforcement until
11 the expiration of 10 days after its entry, except in cases of
12 injunctions, receiverships, or accountings.

13
14 Discretionary Stay: The court may stay execution or any
15 proceedings to enforce a judgment pending the disposition of certain
16 motions (e.g., for a new trial, to alter or amend a judgment).

17
18 Injunction Pending Appeal: The court may suspend, modify,
19 restore, or grant an injunction during the pendency of an appeal.

20
21 Stay in Favor of the State or Agency: No bond or security is required
22 from the appellant when an appeal is taken by the State or an officer
23 or agency thereof.

24
25 Cumulative Rights for Stay: Rule 62 is cumulative to the right of
26 any party to a stay of execution accorded by statute.

27
28

POINTS AND AUTHORITIES - PERSONAL JURISDICTION

1 Ex parte South Carolina Department of Revenue, 422 S.C. 149, 810
2 S.E.2d 454 (2018): This case provides insight into the standards and
3 considerations for granting a stay pending appeal, particularly in matters
4 involving state agencies.
5

6 Ex parte Whetstone, 289 S.C. 580, 347 S.E.2d 881 (1986): This case is
7 important for understanding the discretionary power of the court in
8 granting stays and the criteria used in making such decisions.
9

10 McGee v. Bruce, 321 S.C. 340, 468 S.E.2d 633 (1996): In this case, the
11 court discusses the factors that should be considered when determining
12 whether to grant a stay pending appeal, including the likelihood of
13 irreparable harm such as this case.
14

15 In South Carolina Electric & Gas Co. v. South Carolina Public Service
16 Commission, 275 S.C. 539, 273 S.E.2d 768 (1981): This case offers
17 guidance on the balancing of equities and public interest considerations
18 in granting a stay.
19

20 In Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 518
21 S.E.2d 591 (1999): This decision discusses the role of potential harm and
22 the likelihood of success on appeal in the context of granting a stay.
23

24 In Sloan v. South Carolina Board of Physical Therapy Examiners, 370
25 S.C. 452, 636 S.E.2d 598 (2006): In this case, the court addresses the
26 issue of stays in the context of administrative decisions and appeals.
27
28

CONCLUSION & PRAYER

THE ISSUES WARRANT THAT A STAY PENDING APPEAL SHOULD BE GRANTED IN THIS CASE SO THAT APPELLANT IS NOT PREJUDICED ON APPEAL

In light of the foregoing arguments and authorities, it is evident that this Court's intervention is necessary to rectify the errors of the lower court and to uphold the principles of justice and fairness.

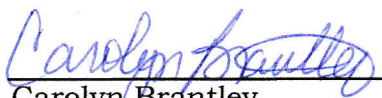
The Appellant has demonstrated a strong likelihood of success on the merits of the appeal, and the balance of equities tilts decidedly in favor of granting a stay. The absence of a stay would result in irreparable harm to the Appellant, including the loss of real property and severe impacts on a special needs child, which far outweigh any potential harm to the Respondent. Furthermore, the public interest is best served by upholding the integrity of the bankruptcy discharge process and ensuring that debtors are not unlawfully burdened with pre-discharge debts.

Wherefore, the Appellant respectfully requests that this Honorable Court:

1. Grant a stay of the lower court's judgment pending the resolution of the appeal, thereby preserving the status quo and preventing irreparable harm to the Appellant and the Appellant's family, particularly the special needs child.
2. Waive the requirement for a supersedeas bond, considering the egregious errors committed by the Special Referee, the apparent errors on the face of the record, and the undue financial burden such a requirement would impose on the Appellant.
3. Issue any further or other relief that this Court deems just and proper under the circumstances.

Respectfully Submitted,

Dated: *January 22*, 2024



Carolyn Brantley
200 Oak Plantation Drive
Ridgeland, SC 29936
Phone: 843-812-4724

The South Carolina Court of Appeals

State of South Carolina

NATIONSTAR MORTGAGE LLC, d/b/a
MR. COOPER

RESPONDENT

vs

Carolyn Brantley, et al.

APPELLANT

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Case No. 2024-000039

ORDER

On this day before this court came for hearing the motion before the court which is entitled:

MOTION FOR STAY PENDING APPEAL

After considering the answer filed by the opposing party (if any), the court is the opinion that the motion should be GRANTED in its entirety. Accordingly, **IT IS HEREBY ORDERED**, that,

1. GRANT A STAY PENDING APPEAL IS HEREBY GRANTED.

2. ANY AND ALL OTHER RELIEF THAT MAY BE APPROPRIATE IN THIS CASE.

RECEIVED

Jan 22 2024

SC Court of Appeals

PROOF OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument entitled:

MOTION FOR STAY PENDING APPEAL

has been forwarded on 1/22/2024 to all counsel of record, and parties, by depositing a true and correct copy of the same on the date and manner indicated below, to wit:

FINKEL LAW FIRM, LLC Thomas A. Shook P.O. BOX 71727 NORTH CHARLESTON, SC 29415	FINKEL LAW FIRM, LLC Thomas A. Shook 4000 Faber Place Dr., Ste 450 NORTH CHARLESTON, SC 29405	<input checked="" type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email
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Carolyn Brantley

 Carolyn Brantley

Dated:
 January 22, 2024