

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Maite Murphy

Appellate Case No.: 2023-001762

Andrey Gergel and Sonja M. Wyatt. Respondents,

v.

Alexander Opoulous, III, Tina B. Opoulous, Sebrina Leigh Jones and Luxury Land and Homes, Inc. Defendants,

Of whom Tina B. Opoulous, individually, and as personal representative for the Estate of Alexander Opoulous, III are the Appellants.

PETITION FOR SUPERSEDEAS

Pursuant to Rule 241 SCACR(c), Appellants petition this Court for a supersedeas of the matters decided in the lower court’s Form 4 order filed on May 6, 2022, awarding Respondents over \$217,000.00 against Appellants.

BACKGROUND

In South Carolina, civil actions such as this matter are subject to mandatory mediation. Rule 3(a), SCRADR. If the parties have not mediated within 210 days after filing an action, the Clerk of Court must appoint primary and secondary mediators. Rule 4(c), SCRADR. Also, Rule

4(c) requires a plaintiff or plaintiff's attorney to immediately notify the Clerk of Court if the parties cannot agree to the selection of a mediator.

Here, there is no dispute that: (1) this case was subject to mandatory mediation; (2) the Clerk of Court failed to appoint a primary and secondary mediator pursuant to Rule 4(c); (3) Respondents and their counsel failed to notify the court that no mediator was agreed upon by the parties pursuant to Rule 4(c); and (4) the lower court allowed the parties to try this case without mandatory mediation.

Because of the lower court's failings described herein, Appellants filed a motion seeking relief from the judgment pursuant to Rule 60, SCRCF. **Exhibit A - Rule 60 Motion.** Also, Appellants filed a Motion to Stay Execution of Judgment Pursuant to Rule 62(b), SCRCF. **Exhibit B - Rule 62 Motion.** Approximately one year after Appellants filed their motions, and after several requests to schedule a hearing, Appellant Alexander Opoulous, III passed away. Thereafter, the lower court issued a Form 4 Order denying Appellants' motions without a hearing. **Exhibit C - Form 4 Order.** This appeal followed.

I. ARGUMENTS

Appellants appeal from a money judgment which is not stayed pursuant to Rule 241(b)(1), SCACR. Pursuant to Rule 241(c)(1), SCACR, "[a]fter service of notice of appeal, . . . any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal." In deciding whether to grant a supersedeas, this Court "should consider whether such an order is necessary to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR. "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy.

This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.” Mathis v. S.C. State Highway Dept., 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973).

Here, the contested issue of whether this Court should reverse the lower court and set aside the judgment would be rendered moot if Respondents collect their money judgment from Appellants. Specifically, Appellant Tina Opoulous would likely lose her home to satisfy Respondents’ judgment. Accordingly, if Respondents are allowed to collect over \$217,000.00 from Appellant Tina Opoulous and her husband’s estate, it will be impossible for this Court to grant effectual relief to Appellants.

CONCLUSION

Appellant Tina Opoulous could lose her home to satisfy Respondents’ money judgment. Unless this Court grants Appellants’ Petition for Supersedeas, the issues raised on appeal will be moot. Specifically, if Respondents are permitted to collect their money judgment, then it will be impossible for this Court to grant effectual relief to Appellants. Accordingly, Appellants request this Court grant the Petition for Supersedeas.

Respectfully submitted,

FUTERAL & NELSON, LLC

/s/Stephan V. Futeral

Stephan V. Futeral

SC Bar ID 66427

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Dated: February 5, 2024

Attorney for Appellants

Other Counsel of Record:

Hamlin O'Kelley, III

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Attorney for Respondents

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO.: 2019-CP-18-0980

ANDREY GERGEL AND SONJA M.
WYATT,

Plaintiffs,

vs.

**NOTICE OF MOTION AND
MOTION FOR RELIEF FROM
JUDGMENT PURSUANT TO RULE
60(b)(1), SCRPC**

ALEXANDER OPOULOUS, III, TINA B.
OPOULOUS, SEBRINA LEIGH JONES,
AND LUXURY LAND AND HOMES,
INC.,

Defendants.

**TO THE HONORABLE MAITE MURPHY and GEORGE HAMLIN O’KELLEY, III,
ATTORNEY FOR PLAINTIFFS:**

YOU WILL PLEASE TAKE NOTICE that the Defendants, by and through their undersigned counsel, will move on the ____ day of _____, 2022, at _____ o’clock AM/PM, in the Dorchester County Court of Common Pleas, 5200 E Jim Bilton Boulevard, St George, SC 29477, for an Order, pursuant to Rule 60(b)(1), SCRPC relieving Defendants Alexander and Tina Opoulos from the judgment entered on May 6, 2022. This is a case of novel impression involving the failure of the clerk of court, the court, and the parties to ensure that this case complied with mandatory mediation. Defendants make this motion because: (1) this case was not exempt from mandatory alternative dispute resolution through mediation; (2) the clerk of court did not appoint a mediator; (3) the Plaintiff and their counsel failed to notify the court of the need for the appointment of a mediator; (4) neither Plaintiff nor Defendants moved to exempt this case from mandatory mediation; (5) no court order was issued exempting this case from mediation for case-specific reasons and good cause shown; and (6) the trial court and the parties mistakenly and



inadvertently violated the Supreme Court's order mandating ADR by allowing this case to proceed with a jury trial without participating in mandatory mediation.

I. THE TRIAL COURT AND THE PARTIES MISTAKENLY AND INADVERTENTLY VIOLATED OUR SUPREME COURT'S ORDER MANDATING ADR IN THIS CASE.

In 2006, our Supreme Court adopted Court-Annexed Alternative Dispute Resolution (ADR) Rules which govern court-annexed ADR processes in South Carolina Circuit Courts in civil suits in counties designated by this Court to participate in mandatory ADR according to a pilot program or as required by statute. Thereafter, our Supreme Court extended the requirement of mandatory mediation of civil disputes to every county of South Carolina. Circuit Court Arbitration & Mediation & Family Court Mediation, S.C. Sup. Ct. Order dated November 12, 2015.

South Carolina Rule of Alternative Dispute Resolution provides, in part, as follows:

All civil actions filed in the circuit court . . . are subject to court-ordered mediation under these rules. Except for exempt cases, in all civil actions filed in the circuit court . . . the parties may agree, in lieu of mediation, to conduct an arbitration or early neutral evaluation under these rules. The parties may select their own neutral and may mediate, arbitrate or submit to early neutral evaluation at any time.

Rule 3(a), SCRADR (emphasis added).

Rule 3(b), SCRADR, provides for exceptions for mediation. In this case, none of the exceptions for mediation are applicable.

Under Rule 3(c), SCRADR:

A party may file a motion to exempt a case from ADR for case specific reasons. For good cause, the Chief Judge for Administrative Purposes of the circuit may grant the motion. For example, it may be appropriate to completely exempt a case from the requirement of ADR where a party is unable to participate due to incarceration or physical condition.

Here, neither Plaintiffs nor Defendants made a motion for exemption from ADR. Also, it is undisputed that the parties, in this case, did not participate in mediation. Instead, ostensibly by mistake and inadvertence (*i.e.*, inattention or oversight), the trial court allowed this case to be tried before a jury without complying with our Supreme Court's order mandating ADR.

Under Rule 4(c), SCRADR, “[i]n circuit court cases subject to ADR in which no Proof of ADR has been filed on the 210th day after the filing of the action, the Clerk of Court shall appoint a primary mediator and a secondary mediator from the current Roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.” Here, the clerk of court mistakenly or inadvertently failed to appoint a mediator.

Assuming, for argument's sake, that the Plaintiffs respond to this motion by asking this court to exempt this case from mediation retroactively, this court should not do so for the sake of expedience or because the Plaintiffs spent time and effort trying this case for two reasons. First, the Plaintiffs failed to comply with Rule 4(c), SCRADR. Specifically, Rule 4(c) requires that “if the parties have not agreed to the selection of an alternative mediator, the plaintiff or the plaintiff's attorney shall immediately file with the Clerk of Court a written notice advising the court of this fact and requesting the appointment of two more mediators.” (emphasis added). In other words, the burden is solely upon the Plaintiffs to ensure that a mediator is appointed. Here, remarkably, Plaintiffs and their counsel failed to file a written notice requesting the appointment of mediators. Therefore, to the extent time, effort, and expenses have been wasted in trying this case without mandatory mediation, the Plaintiffs and Plaintiffs' counsel are at fault for failing to comply with Rule 4(c).

Second, as this court is aware, many trials throughout South Carolina must be conducted a second time because of post-trial motions granted by the court or appellate decisions determining

that mistakes were made during a trial. In other words, the possibility of conducting a second trial, in this case, is not a basis to retroactively address the error in issue by retroactively exempting this case from mediation. Indeed, even if the parties had moved this court to exempt this dispute from mediation, the record reveals that are no case specific reasons, such as a party who is incarcerated, a party in default, or a party who is physically unable to participate in mediation, to show cause why this case should be exempt from mandatory mediation.

II. BECAUSE THE TRIAL COURT AND THE PARTIES MISTAKENLY OR INADVERTENTLY OVERLOOKED OUR SUPREME COURT'S ORDER MANDATING MEDIATION, THIS COURT MUST CORRECT THE MISTAKE BY RELIEVING DEFENDANTS FROM JUDGMENT UNDER RULE 60(B), SCRPC.

At this juncture, there is only one way this court can correct this glaring mistake that deprived the parties of the opportunity to participate in mediation. Namely, this court must grant the Defendants' Rule 60(b) motion.

Rule 60(b)(1), SCRPC provides that “[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for . . . [m]istake [or] inadvertence” Rule 60(b) further provides that “[t]he motion shall be made within a reasonable time, and for reasons (1) . . . not more than one year after the judgment, order or proceeding was entered or taken.”¹ “[T]he power to set aside a . . . judgment is addressed to the sound discretion of the trial court whose decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion.” Raby Constr., L.L.P. v. Orr, 358 S.C. 10, 17, 594 S.E.2d 478, 482 (S.Ct. 2004).

¹ “Rule 60(b) is substantially the same as Code § 15-27-130. There are two differences. First, existing State law provides for relief from a ‘judgment taken against him through his mistake.’ Rule 60(b) deletes ‘his’ and thus there may be a motion for relief from other mistakes. Rule 60(b), SCRPC Note (emphasis added).

When determining whether to grant relief, this court must consider: (1) the timing of the motion for relief, (2) whether the party requesting relief has a meritorious defense, and (3) the degree of prejudice to the opposing party if relief is granted. Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989).

Regarding the timing of this motion, the Defendants move before this court less than thirty days after the judgment on May 6, 2022. Therefore, Defendants did not delay in making this motion.

Regarding a meritorious defense, this court denied Plaintiffs' motions for a directed verdict during the trial, thereby ruling that Defendants had meritorious defenses that warranted a decision by a jury.

Regarding the degree of prejudice to Plaintiffs should the court grant this motion, the blame for the failure to mediate largely falls upon Plaintiffs' shoulders and their counsel. As this court is aware, the Defendants represented themselves *pro se*. As shown by Defendants' affidavits, attached hereto as **Exhibits A and B**, Defendants had no knowledge of mandatory ADR in South Carolina.

Albeit Defendants are held to the same standards as an attorney regarding the rules of procedure, there is a critical distinction this court should make between these *pro se* Defendants and the Plaintiffs who were represented by a seasoned attorney. Specifically, the ADR rules place an obligation upon plaintiffs to conduct mediation and to inform the court of the need to appoint a mediator for two reasons. First, Rule 6(a), SCRADR places a formal duty upon Plaintiffs' counsel to inform the Plaintiffs of mandatory mediation. Second, Rule 6(a) provides, "**Duty to Inform.** In cases subject to ADR under these rules, all attorneys should fairly and objectively inform their

clients about mediation and arbitration.” Here, under Rule 6(a), Plaintiffs knew about the requirement of mandatory mediation.

Additionally, as previously stated, both Plaintiffs and their counsel had a duty under Rule 4(c) to inform the clerk of court of the need to appoint a mediator. As shown from Defendants’ affidavits, Plaintiffs’ counsel never attempted to schedule mandatory mediation. Ostensibly, it appears that Plaintiffs took advantage of the Defendants’ inexperience to avoid mandatory mediation.

CONCLUSION

At multiple stages in this case, via either mistake or inadvertence, the Supreme Court’s Order requiring mandatory ADR was not met in this case. First, the Plaintiffs and their counsel failed to inform the court that a mediator had not been selected in this case as required by Rule 4(c), SCRADR. Second, the clerk of court failed to comply with Rule 4(c), SCRADR which requires the clerk to appoint mediators if no Proof of ADR has been filed on the 210th day after the filing of the action. Third, through mistake or inadvertence, this court and the parties conducted a trial in this case, although there was no Proof of ADR or order exempting this case from mediation in the record of this case.

Accordingly, Defendants respectfully request this Court issue an order as follows:

- (1) Relieving Defendants from the judgment;
- (2) Appointing a mediator if the parties are unable to agree upon one;
- (3) Requiring the parties to participate in mediation before the court conducts another jury trial if the case remains unsettled; and

- (4) During a second trial, if any, prohibiting Plaintiff from seeking attorney's fees and costs Plaintiffs incurred during the first trial because Plaintiffs failed to follow Rule 4(c) to notify the court that it needed to appoint a mediator in this case.

RULE 11 CERTIFICATION

Counsel for the Defendants hereby certifies that consultation with Plaintiffs' counsel regarding the matters contained in this motion would serve no useful purpose.

FUTERAL & NELSON, LLC

s/Stephan V. Futeral
Stephan V. Futeral, Esquire
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Dated: May 31, 2022

Attorney for Defendants Alexander
and Tina Opoulos

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

ANDREY GERGEL AND SONJA M.
WYATT,

Plaintiffs,

vs.

ALEXANDER OPOULOUS, III, TINA B.
OPOULOUS, SEBRINA LEIGH JONES,
AND LUXURY LAND AND HOMES, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO.: 2019-DR-18-0980

AFFIDAVIT OF
ALEXANDER OPOULOUS, III

PERSONALLY APPEARED before me, Alexander Oopoulos, III, who being duly sworn, deposes and states as follows:

I was unaware of the requirement of mandatory mediation in South Carolina. Neither Plaintiffs nor Plaintiffs' counsel contacted regarding mediation. Had they done so, I would have cooperated in selecting a mediator, participated in mediation in good faith, and welcomed the opportunity to settle this dispute through the mediation process. I am distraught that Plaintiffs may have taken advantage of my lack of knowledge regarding mediation, that Plaintiffs failed to notify the court that mediation did not take place before trial, and that somehow both the clerk of court and the trial judge allowed this case to be tried before a jury without mediation. I am hopeful that this court will use its discretion to grant the relief my wife and I have requested to set aside the judgment and allow my wife and I to participate in mediation before trial.

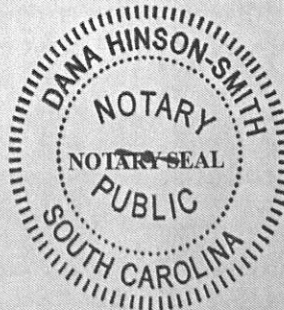
FURTHER AFFIANT SAYETH NAUGHT!

Alexander Oopoulos, III

SWORN to and subscribed before me)
this 31th day of May 2022)

NOTARY PUBLIC FOR SOUTH CAROLINA)

My commission
expires: ~~06/5~~
06/01/31



FILED - 2022 May 31 5:41 PM - DORCHESTER - COMMON PLEAS - CASE#2019CP1800980

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

ANDREY GERGEL AND SONJA M.
WYATT,

Plaintiffs,

vs.

ALEXANDER OPOULOUS, III, TINA B.
OPOULOUS, SEBRINA LEIGH JONES,
AND LUXURY LAND AND HOMES, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO.: 2019-DR-18-0980

AFFIDAVIT OF
TINA B. OPOULOS

PERSONALLY APPEARED before me, Tina Opoulos,
who being duly sworn, deposes and states as follows:

I was unaware of the requirement of mandatory mediation in South Carolina. Neither Plaintiffs nor Plaintiffs' counsel contacted regarding mediation. Had they done so, I would have cooperated in selecting a mediator, participated in mediation in good faith, and welcomed the opportunity to settle this dispute through the mediation process. I am distraught that Plaintiffs may have taken advantage of my lack of knowledge regarding mediation, that Plaintiffs failed to notify the court that mediation did not take place before trial, and that somehow both the clerk of court and the trial judge allowed this case to be tried before a jury without mediation. I am hopeful that this court will use its discretion to grant the relief my husband and I have requested to set aside the judgment and allow my husband and I to participate in mediation before trial.

FURTHER AFFIANT SAYETH NAUGHT!

Tina Opoulos

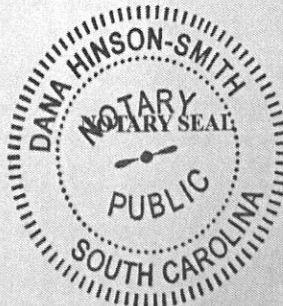
Tina Opoulos

SWORN to and subscribed before me)
this 31th day of May 2022)

Dana Hinson-Smith

NOTARY PUBLIC FOR SOUTH CAROLINA)

My commission expires: 06/01/31)



FILED ELECTRONICALLY FILED BY CLERK OF COURT - DORCHESTER - COMMON PLEAS - CASE#2019CP1800980

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO.: 2019-DR-18-0980

ANDREY GERGEL AND SONJA M.
WYATT,

Plaintiffs,

vs.

**NOTICE OF MOTION AND
MOTION TO STAY EXECUTION OF
JUDGMENT PURSUANT TO RULE
62(b), SCRPC**

ALEXANDER OPOULOUS, III, TINA B.
OPOULOUS, SEBRINA LEIGH JONES,
AND LUXURY LAND AND HOMES,
INC.,

Defendants.

**TO THE HONORABLE MAITE MURPHY and GEORGE HAMLIN O'KELLEY, III,
ATTORNEY FOR PLAINTIFFS:**

YOU WILL PLEASE TAKE NOTICE that the Defendants, by and through their undersigned counsel, will move on the ____ day of _____, 2022, at _____ o'clock AM/PM, in the Dorchester County Court of Common Pleas, 5200 E Jim Bilton Boulevard, St George, SC 29477, for an Order, pursuant to Rule 62(b), SCRPC, staying the execution of the judgment in this matter pending the disposition of Defendants' Rule 60(b) Motion filed with this Court on May 31, 2022.

Rule 62(b), SCRPC provides:

In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion . . . for relief from a judgment or order made pursuant to Rule 60”

Defendants respectfully request this Court issue an order staying the execution of the judgment until such time as this Court issues its ruling in Defendant's Rule 60(b) Motion.



FUTERAL & NELSON, LLC

/Stephan V. Futeral

Stephan V. Futeral, Esquire

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email to: sfuteral@charlestonlaw.net

Dated: June 8, 2022

Attorney for Defendants,
Alexander and Tina Opoulos

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1800980

Andrey Gergel et al
PLAINTIFF(S)

Alexander Opoulous, III et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This case comes before the Court on Defendants' Motion to Reconsider on the grounds that the trial took place prior to mediation. Under Rule 10(b), SCADR, courts may impose sanctions for parties' failure to comply with the mediation requirement. However, this rule is permissive rather than mandatory, and the Court declines to impose sanctions in this case where the matter has already been properly decided before an impartial jury. Therefore, Defendants' Motion is DENIED. Defendant also submitted a Motion for Stay of Execution of Judgment, pending the outcome of the Motion to Reconsider. The Motion for Stay is also DENIED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/17/2023 .

Tina B Opoulous for Tina B Opoulous
Alexander Opoulous, III for Alexander Opoulous, III
Tina B Opoulous for Tina B Opoulous
Alexander Opoulous, III for Alexander Opoulous, III

NAMES OF TRADITIONAL FILERS SERVED BY MAIL



Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Dorchester Common Pleas

Case Caption: Andrey Gergel , plaintiff, et al VS Alexander Opoulous III ,
defendant, et al
Case Number: 2019CP1800980
Type: Order/Electronic Form 4

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2023-10-17 18:12:51 page 3 of 3

RECEIVED

Feb 05 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Maite Murphy

Appellate Case No.: 2023-001762

Andrey Gergel and Sonja M. Wyatt. Respondents,

v.

Alexander Opoulous, III, Tina B. Opoulous, Sebrina Leigh Jones and Luxury Land and Homes, Inc. Defendants,


Of whom Tina B. Opoulous, individually, and as personal representative for the Estate of Alexander Opoulous, III are the Appellants.

PROOF OF SERVICE

I certify that I have served Appellants' *Motion for Supersedeas* on the following recipient by email and US Mail with proper postage on this 5th day of February 2024:

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