THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

James C. Campbell, Clerk of Court

Case No. 2024-CP-43-00703
Appellate Case No. 2024-001073

Christol Morton, ... Respondent,

v.

Carolina Cutting Coring, LLC and Sean Michael Shaffer, Jr., ... Appellants.

INITIAL BRIEF OF RESPONDENT

John S. Nichols
SC Bar No. 4210
Bluestein Thompson Sullivan, LLC
PO Box 7965
Columbia, SC 29202
(803) 779-7599
john@bluesteinattorneys.com

Brendan J. Green
SC Bar No. 104648
Richardson Thomas, LLC
1513 Hampton Street
Columbia, SC 29201
(803) 281-8153
brendan@richardsonthomas.com

Attorneys for Respondent

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COUNTER-STATEMENT OF THE CASE

On April 22, 2024, Respondent filed a Summons and Complaint against Appellants for claims arising out of an automobile collision that occurred on September 29, 2022. Respondent demanded a jury trial in the caption of the Complaint. (Summons & Complaint).

Respondent served the pleadings on Appellant Sean Michael Shaffer on April 28, 2024. (Affidavit of Service of April 30, 2024). Respondent served Appellant Carolina Cutting Coring, LLC on May 3, 2024. (Proof of Service of May 13, 2024, with attachments).

On June 10, 2024, Respondent filed a Motion for Entry of Default and sought a reference to a special referee. Respondent suggested attorney Christopher Paschal, who had consented to serve. (Motion filed June 10, 2024 with attachments). The Sumter County Clerk of Court entered the entry of default on June 12, 2024. (Order on Entry of Default dated June 12, 2024). Also on June 12, 2024, the Sumter County Clerk of Court entered an order of referral to Mr. Paschal as special referee. (Order of Reference filed June 12, 2024).

On June 13, 2024, both Appellants appeared by the same counsel and moved to set aside the entry of default pursuant to Rules 55(c) and 60(b), SCRCP. (Motion to Set Aside Default). Appellants also filed a "Motion to Reconsider and Vacate Order for Referral to Special Referee," asserting the referral was not proper under S.C. Code Ann. § 14-11-60 (1989). (Motion of June 13, 2024).

On June 24, 2024, Appellants filed Memorandum of Law in support of their Motions for Reconsideration pursuant to Rule 59(e), SCRCP. (Memorandum of June 24, 2024). Before the Clerk of Court could address the pending Motion to Reconsider, however, Appellants filed and served a Notice of Appeal from the Order of Reference. (Notice of Appeal with attachments).

On July 1, 2024, Respondents moved to dismiss the appeal and for the Court to expedite its ruling. Appellants filed a Return on July 10, 2024. The Court of Appeals granted the motion to expedite but denied the motion to dismiss "without prejudice to the parties presenting these arguments in their briefs."

STANDARD OF REVIEW

The issue Appellants present involves the construction of a statute, S.C. Code Ann. § 14-11-60 (2017), and a rule of civil procedure, Rule 53, SCRCP. Assuming the matter is appropriately before this Court pursuant to S.C. Code Ann. § 14-3-330 (2017), those issues involve questions of law for the Court's review *de novo*. *See, e.g., Garrison v. Target Corp.*, 435 S.C. 566, 566-567, 869 S.E.22d 797, 803 (2022) ("'Determining the proper interpretation of a statute is a question of law, which this Court reviews *de novo*. Thus, we may interpret statutes 'without any deference to the court below.' Similarly, '[i]n interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.'") (citations omitted); *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) ("Determining the proper interpretation of a statute is a question of law, and the appellate court reviews questions of law *de novo*."). Accordingly, this Court reviews these questions *de novo* without any deference to the construction by the court below.[1]

[1] Because Appellants did not wait for a ruling on their motions before serving the notice of appeal there is no construction of these matters by a court below or by the Clerk of Court.

ARGUMENTS

Respondents assert first that the arguments in the Appellants' Brief are so conclusory that the Court should deem them abandoned. Alternatively, because there is a pending motion pursuant to Rule 59, SCRCP, which the circuit court has not ruled upon, this appeal is premature. Next, even if the issues are appropriately argued and the existence of the pending Rule 59 motion does not render the appeal premature, the clerk's order in this case is not immediately appealable because it did not deprive the Appellants of a mode of trial to which they are entitled as a matter of right. Finally, assuming the appeal and arguments are properly before the Court, the clerk of court's reference to a special referee is valid pursuant to statute, rule and the Supreme Court's administrative order despite the existence of a "standing master" in the County.

This Court should either dismiss this appeal or should affirm the order of reference.

I. The Arguments in the Appellants' Brief Are So Conclusory That the Court Should Deem Them Abandoned

Appellants' arguments are conclusory and do not contain sufficient argument or citation to proper authority. The Court should deem the issues abandoned.

Where an argument in the brief is conclusory in nature and does not provide proper authority for the arguments made, the appellate court should deem the issues abandoned. *Crawford v. Central Mortg. Co.*, 404 S.C. 39, 44 n. 2, 744 S.E.2d 538, 541 n. 2 (2013) (deeming abandoned an argument that was "not grounded in proper law or supported by appropriate argument"). *See, also, Brouwer v. Sisters of Charity Providence Hosps.*, 409 S.C. 514, 520 n.4, 763 S.E.2d 200, 203 n.4 (2014) (refusing to consider an argument in the appellant's brief that was "conclusory" and "not supported by any authority"); *Savannah Bank, N.A. v. Stalliard*, 400

S.C. 246, 253 n.3, 734 S.E.2d 161, 164 n.3 (2012) (stating an issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting when a party fails to cite authority or when the argument is simply a conclusory statement, the party is deemed to have abandoned the issue on appeal); *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 421–22, 526 S.E.2d 716, 724 (2000) (stating that although an appellate court may affirm a decision on any ground appearing in the record, "[a]n appellate court may not, of course, reverse for any reason appearing in the record"). An appellant must make a cogent, non-conclusory argument and back those purported statements of law up with proper and relevant authority. Appellants' brief fails to do so.

For instance, in Argument I.(a) at p. 4, the actual argument is contained in two conclusory sentences without citation to proper authority. While Appellants contend "it is clear that the law in South Carolina is that Orders of Reference must be immediately appealed or that right to appeal will be waived," they cite nothing for this conclusory proposition. Although Appellants cite to two cases and a statute on the requirement to immediately appeal an order "affecting a mode of trial," they fail to include critical language from those cases: The mode of trial must be one to which a party is entitled as a matter of right. *See, e.g., Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997) (noting appellant, *who was not in default*, always contended the entitlement to a jury trial as a matter of right pursuant to Rule 38, SCRCP; hence, the failure to immediately appeal an order placing the matter on the nonjury roster waived the issue); *Edwards v. Timmons*, 297 S.C. 314, 315-316, 377 S.E.2d 97, 98 (1988) (appellant, *who was not in default*, brought legal but permissive counterclaim in the action in equity and therefore waived the right

to a jury trial, so there was no right to a jury; Court added in *dictum* "[i]n any event, [Appellant] did not appeal the order of reference which is therefore the law of the case").

Furthermore, Appellants' Argument I.(b) at p. 4 is contained in three conclusory sentences with citation to one case that actually stands contrary to Appellants' position. In *Roche v. Young Brothers, Inc. of Florence*, 332 S.C. 75, 504 S.E.2d 311 (1998), the Supreme Court actually stated:

> It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability. *Howard v. Holiday Inns Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978); *Schenk v. National Health Care, Inc.*, 322 S.C. 316, 471 S.E.2d 736 (Ct. App.1996); *State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 334 S.E.2d 528 (Ct. App.1985). Though a defaulting party may be entitled to notice of the damages hearing, that party is limited to cross-examining witnesses and objecting to evidence. *Howard*, 271 S.C. 238, 246 S.E.2d 880; *Ammons v. Hood*, 288 S.C. 278, 341 S.E.2d 816 (Ct. App.1986). *Moreover, once a party defaults, the trial court "may conduct such hearings or order such references as it deems necessary and proper" to enter the default judgment.* Rule 55(b)(1), SCRCP. Thus, although section 14–11–60 and Rule 53(a) do not specifically address default situations, *it would be anomalous to interpret these provisions as requiring the consent of a defaulting party whenever the circuit court chose to refer the case to a special referee.*

Roche, at 81-82, 504 S.E.2d at 315 (emphasis added). Appellants cite to no authority to support their general statements of what they purport is "clear" law.

Although Argument II.(a) at pages 5 and 6 covers two pages in the Appellants' brief, the argument contains nothing but conclusory statements without citation to proper authority. For instance, Appellants cite to Rule 53(a), SCRCP and contend, without citation to authority, that "[t]his language clearly requires special referees to be appointed in the manner that does not conflict with the requirements of S.C. Code Ann. § 14-11-60." (App. Br. p. 5). They also cite to the statute, claiming its "clear" language limits appointment of a special referee only when there

is a vacancy in the office of master-in-equity or if the sitting master become disqualified. (App. Br. pp. 5-6. They cite to no cases construing the statute, however, for this proposition. They contend that only a circuit court judge may make the determination to refer a case to a referee (App. Br. p. 6), but again cite to no proper authority.

Argument II.(b) continues the conclusory arguments of II.(a) and offers no proper authority to support Appellants' contention that permitting a plaintiff in a default matter to obtain an order of reference to a special referee in a county with a sitting master is "contrary to the clear and unambiguous language of SCRCP Rule 53 and S.C. Code [Ann.] § 14-11-60." (App. Br. p. 7-8). Appellants cite no case law or other authority supporting this argument, and they offer a construction of the statute that does not accord with its plain language.[2]

Argument II.(c) contains conclusory statements without any citation to authority for the proposition that a plaintiff, who has demanded a jury trial in the complaint, does not waive that request by seeking an order of reference but must file some kind of official, written waiver. This presupposes that a defaulting defendant can rely on a plaintiff's demand for a jury trial, but the law is contrary to that position. *Roche*, *supra*. Appellants contend "Respondent should be required to affirmatively, and in writing, waive its jury demand prior to the mode of trial changing from a jury case to a non-jury case," but cites to nothing to support this conclusory statement. (App. Br. p. 8).

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[2] Respondent provides specific arguments on these points in Part IV of this Brief. Respondent mentions these arguments here in support of the contention that the arguments are so conclusory as to be deemed abandoned.

For these reasons, the Court should deem Appellants' arguments to be abandoned.[3]

II. The Existence of a Pending Motion Pursuant to Rule 59, SCRCP, Renders this Appeal Premature

Prior to serving a notice of appeal, Appellants moved before the Clerk of Court to reconsider the order of reference. Before the Clerk could address the motion, however, Appellants took this appeal. This Court should dismiss the appeal.

Our appellate courts have ruled that when a timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature. *Hudson v. Hudson*, 290 S.C. 215, 216, 349 S.E.2d 341, 341-42 (1986) ("[I]n the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, the appellant shall notify the Clerk of this Court in writing. Upon receipt of such notice, the appeal shall be dismissed without prejudice."); *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 20 n.2, 602 S.E.2d 772, 778 n.2 (2004) (citing to *Hudson* for the holding that when a timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature).[4] *See, also, Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208

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[3] Appellants may try to remedy the shortcomings of their principal brief through a reply brief. However, a party cannot make vague, conclusory arguments on an issue in the opening brief and then reserve substantive argument as to that issue until the reply brief. *See Divine v. Robbins*, 385 S.C. 23, 44 n.4, 683 S.E.2d 286, 297 n.4 (Ct. App. 2009) ("The reply brief is not the appropriate vehicle to raise new issues on appeal; thus, we decline to address this argument."); *Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989) ("An appellant may not use either oral argument or the reply brief as a vehicle to argue issues not argued in the appellant's brief.").

[4] In the interest of candor, this analysis is taken from *Bauknight v. Pope*, 2020-UP-216 (S.C. Ct. App. filed July 15, 2020). Citation directly to *Bauknight*, an unpublished opinion, is improper under Rule 268(d)(2), SCACR. Therefore, Respondent quotes this material set forth in that opinion.

(2005) ("Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final."); *id.* at 13, 625 S.E.2d at 208 ("[T]he immediate appealability of an interlocutory or intermediate order depends on whether the order falls within [South Carolina Code section] 14-3-330."); S.C. Code Ann. § 14-3-330(1)-(2) (2017) (stating a party may appeal an intermediate or interlocutory order only if it "involve[s] the merits", "determine[s] the action and prevent[s] a judgment from which an appeal may be taken", or "discontinue[s] the action"); *Ashenfelder v. City of Georgetown*, 389 S.C. 568, 571, 698 S.E.2d 856, 858 (Ct. App. 2010) ("Even if not raised by the parties, this court may address the issue of appealability *ex mero motu*.").

Because of the pending Rule 59 motion there is no final order for this Court to review. The Court should therefore dismiss this appeal as premature.

III. The Clerk of Court's Order of Reference Is Not Immediately Appealable

Both Appellants are in default. As such, they waived any right to a jury trial. *Gossett v. Gilliam*, 317 S.C. 82, 87, 452 S.E.2d 6, 9 (Ct. App. 1994) ("Where a party is in default, the right to a jury trial is waived pursuant to Rule 38(d), SCRCP."). Thus, a jury trial is not a mode of trial to which they are entitled as a matter of right. *Compare Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985) (party must appeal interlocutory order that deprives party of a mode of trial to which the party is entitled as a matter of right). The order before this Court is, therefore, not an appealable interlocutory or intermediate order. S.C. Code Ann. § 14-3-330 (2017).

As mentioned in Part I of this Brief, Appellants cite to two cases they contend not only permit but require immediately appeal an order "affecting a mode of trial." (App. Br. p. 4).

Appellants conspicuously failed to include critical language from those cases that distinguish them meaningfully from this case: The mode of trial must be one to which a party is entitled as a matter of right. *See, e.g., Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997) (noting appellant, *who was not in default*, always contended the entitlement to a jury trial as a matter of right pursuant to Rule 38, SCRCP; hence, the failure to immediately appeal an order placing the matter on the nonjury roster waived the issue); *Edwards v. Timmons*, 297 S.C. 314, 315-316, 377 S.E.2d 97, 98 (1988) (appellant, *who was not in default*, brought legal but permissive counterclaim in the action in equity and therefore waived the right to a jury trial, so there was no right to a jury; Court added in *dictum* "[i]n any event, [Appellant] did not appeal the order of reference which is therefore the law of the case"). Unlike the appellants in *Lester* and *Edwards*, these Appellants *are* in default and, therefore, are not entitled to a jury trial as a matter of right.

Also as mentioned in Part I, above, Appellants contend that a plaintiff, who has demanded a jury trial in the complaint, may not waive that request by seeking an order of reference but must file some kind of official, written waiver. Appellants contend "Respondent should be required to affirmatively, and in writing, waive its jury demand prior to the mode of trial changing from a jury case to a non-jury case," but cites to nothing to support this conclusory statement. (App. Br. p. 8).

The Court should reject this argument. The argument presupposes that a defaulting defendant can rely on a plaintiff's demand for a jury trial, but the law in contrary to that position. *Roche v. Young Brothers, Inc. of Florence*, 332 S.C. 75, 504 S.E.2d 311 (1998) (once a party defaults, the trial court "may conduct such hearings or order such references as it deems

necessary and proper" to enter the default judgment, citing Rule 55(b)(1), SCRCP).

Furthermore, by requesting, and therefore consenting to, the reference, Respondent waived his demand for a jury trial. *Lyons v. Butler*, 288 S.C. 498, 500, 343 S.E.2d 630, 632 (1986) ("By consenting to a reference, a party ordinarily waives his right to a jury trial."); *Family Loan Co. v. Surratt*, 248 S.C. 113, 117, 149 S.E.2d 334, 335-336 (1966) ("where one agrees to a reference of all issues in an action, he waives any right to a jury trial"); *Rhodes v. Russell*, 32 S.C. 585, 586-587, 10 S.E. 828, 828-829 (1890) (where the parties consented to a reference both parties waived a jury trial). Although the consenting party in those cases was a defendant who was not in default, the principle should apply equally where a plaintiff, who previously demanded a jury trial, has decided to forego that demand and consents to a reference. This is especially true in light of Rule 38(d), SCRCP, which provides "[a] demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties, *except where an opposing party is in default under Rule 55(a)*." (emphasis added)

To adopt Appellants' argument would be to render the last clause of Rule 38(d) a nullity. The rule provides that in default cases a previous demand for jury trial may be withdrawn in any fashion; it is only where the other party is not in default that a consent is required, and Rule 43(k), SCRCP, would require that agreed upon consent to be in writing.

Furthermore, requiring a written withdrawal of a prior demand for a jury trial where the opponent is in default would be a futile act. Who benefits from such a useless requirement? Certainly not a defendant who is in default who, therefore, cannot oppose the waiver. *Cf. Drury Devel. Corp. v. Foundation Ins. Co.*, 380 S.C. 97, 102, 668 S.E.2d 798, 801 (2008) ("Equity will not require the doing of a futile task."); *Shealy v. SC Dept. of Soc. Servs.*, 334 S.C. 187, 192 at n.

6, 511 S.E.2d 713, 715 at n. 6 (Ct. App. 1999) ("The law does not require the doing of a futile act."), *overruled on other grounds I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).

At bottom, Appellants are not entitled to a jury trial as a matter of right. Thus, the Clerk's order of reference does not deprive them of such, and the order is therefore not immediately appealable. This Court should dismiss this appeal.

IV. The Clerk of Court's Order Referring this Matter to a Special Referee Is Valid

Appellants argue essentially that if a county has an appointed Master in Equity, then a Clerk of Court may not appoint a special referee. (App. Br. p. 5). Further, they claim that if there is a "sitting master in equity" in a county then only a circuit court judge may appoint a special referee and only for the reasons stated in S.C. Code Ann. § 14-11-60 (2017). The Court should reject these contentions.

Under the current version of Rule 53(b), SCRCP, "In...a default case..., some or all of the causes of action in a case may be referred to a ... special referee by order of ... the clerk of court." At one time Rule 53 provided "[t]he court in which any action is pending may appoint a special master for that action; *but where practicable* the master appointed by statute for that county, or for that court, or for the particular type of action involved shall act." (emphasis added). However, the Supreme Court removed that language in the 1999 rewrite of Rule 53, which the legislature accepted[5], and the 2002 Amendment to Rule 53 replaced the first two sentences of Rule 53(b) to reaffirm that the Clerk of Court may refer matters in default. *See Re: Amendments to the SCRCP*, Order (S.C. Sup. Ct. filed June 18, 2002). *See also Re: Orders of Reference in Foreclosure Cases*, Order (S.C. Sup. Ct. filed July 15, 2010) (ordering clerks of court to sign orders of reference in, among other matters, default cases).

There is a presumption that the Court (and hence the legislature, to whom the Court

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[5] See S.C. Const. art. V, Section 4A ("All rules and amendments to rules governing practice and procedure in all courts of this State promulgated by the Supreme Court must be submitted by the Supreme Court to the Judiciary Committee of each House of the General Assembly during a regular session, but not later than the first day of February during each session. Such rules or amendments shall become effective ninety calendar days after submission unless disapproved by concurrent resolution of the General Assembly, with the concurrence of three-fifths of the members of each House present and voting.").

submitted the rule amendment[6]) meant something by this amendment to the Rule. *See, e.g., Key Corporate Capital, Inc. v. County of Beaufort*, 373 S.C. 55, 60, 644 S.E.2d 675, 678 (2007) ("an amendment which materially changes the terminology of a statute...raises a presumption that a departure from the original law was intended"); *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003) ("In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes."). In this case, the Court removed the operative language from Rule 53 and thus its preclusive effect for appointing a special referee in a county that has a standing Master in Equity.

It is true that Section 14-11-60 provides:

> In case of a vacancy in the office of master-in-equity or in case of the disqualification or disability of the master-in-equity from interest or any other reason for which cause can be shown the presiding circuit court judge, upon agreement of the parties, may appoint a special referee in any case who as to the case has all the powers of a master-in-equity. The special referee must be compensated by the parties involved in the action.

S.C. Code Ann. § 14-11-60 (1989). Section 14-11-60, however, does not conflict with Rule 53(b). Instead, the statute provides guidance as to what to do *only* in those situations where there is no available master in equity as the result of a vacancy, disqualification or disability. That is, the statute does not preclude the appointment of a special referee in any appropriate case regardless of whether there is a sitting master in that county. Instead, the statute is designed to deal only with the "empty office" situation. Had the legislature intended for the statute to apply in all situations where there is a sitting master in equity in a county the legislature could have said

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[6] The Court should presume the General Assembly knew the existing law when it approved the amendments to Rule 53. *Williams v. Government Employees Ins. Co.*, 409 S.C. 586, 602, 762 S.E.2d 705, 714 (2014) ("The General Assembly is presumed to know the law...").

so. It did not. *See Riverwoods, L.L.C. v. Cnty. of Charleston*, 349 S.C. 378, 384, 563 S.E.2d 651, 655 (2002) ("'The canon of construction *expressio unius est exclusio alterius* or *inclusio unius est exclusio alterius* holds that to express or include one thing implies the exclusion of another, or of the alternative.'" (quoting *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000)) (internal quotation marks omitted)).

By its terms the first clause of Section 14-11-60 is not an exclusive requirement for appointing a special referee where a county has a sitting master.[7] Rule 53(b) and the Supreme Court's administrative order are wholly consistent with Section 14-11-60.

Insofar as there may be a conflict between the statute and the Rule (and there is no such conflict), the legislature enacted the statute as part of the 1902 Code of Laws, the statute remained unchanged until 1979, and the legislature last amended the statute in 1989. These

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[7] This Court recently addressed a similar situation in an unpublished opinion. *Rickenbaker v. Schumacher Homes of SC*, 2021-UP-243 (S.C. Ct. App. filed June 30, 2021). Although the opinion has no precedential value, Rule 268(d)(2), SCACR, the Court's analysis is informative:

> [S]ection 15-31-150 of the South Carolina Code (Supp. 2020) provides that section 14-11-60 of the South Carolina Code (2017) does not preclude a circuit court from appointing a special referee, and Rule 53(b) explicitly states that a special referee may be appointed by order of the circuit court in default cases. *See* § 15-31-150 ("The provisions of §§ 14-2-50, 14-11-10 to 14-11-90; 14-11-310; 15-31-10 to 15-31-80; 15-39-380 to 15-39-400, and 15-39-490 shall not be construed as preventing a circuit court from appointing a special referee in the manner as provided in § 15-31-140.... Special referees shall have the same authority as masters-in-equity and shall be accountable to the appointing court."). Thus, the special referee had subject matter jurisdiction over the hearing and the power to conduct the hearing in the same manner as a circuit court. *See Smith Cos. of Greenville, Inc. v. Hayes*, 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993) ("When a case is referred to a [special referee], Rule 53(c)[, SCRCP,] gives the [special referee] the power to conduct hearings in the same manner as the circuit court, unless the order of reference specifies or limits his powers.").

enactments predate the amendments to Rule 53(b) in its current form (2002), which the Supreme Court submitted to the General Assembly for its approval. *E.g.*, *Williams v. Town of Hilton Head Island, S.C.*, 311 S.C. 417, 421, 429 S.E.2d 802, 804 (1993)("[T]he Last Legislative Expression Rule requires that in instances where it is not possible to harmonize two section of a statute, the later legislation supersedes the earlier enactment.").

"The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 439, 581 S.E.2d 836, 838 (2003). The Court must give the words in a statute their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation, and when the words are unambiguous, the Court must apply their literal meaning. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). The Court "should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless." *Hinton v. SC Dept. of Probation, Parole and Pardon Services*, 357 S.C. 327, 342, 592 S.E.2d 335, 343 (Ct. App. 2004), *citing McClenaghan v. McClenaghan*, 20 S.C. Eq. (1 Strob. Eq.) 295 (1847) (observing "if the clause means any thing, and we are obliged to find some meaning for it, on the maxim *ut res magis valeat quam pereat*"[8]); *Florence County Democratic Party v Florence County Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) (the Court should seek a construction of a statute that gives effect to every word of the statute rather than adopting an interpretation that renders a portion meaningless). Full effect must

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[8] This Latin phrase means "that the whole subject matter may rather operate than fail"; "The interpretive doctrine that a legal text, esp. a statute or contract, should be interpreted in a way that gives the document force rather than makes it fail." Black's Law Dictionary (12th Ed. 2024) at 1867,

be given to each section of a statute, giving words their plain meaning, and, in the absence of ambiguity, words must not be added or taken away. *Hartford Acc. and Indem. Co. v. Lindsay*, 273 S.C. 79, 85, 254 S.E.2d 301, 304 (1979), *citing Home Building & Loan Ass'n v. City of Spartanburg*, 185 S.C. 313, 194 S.E. 139 (1938).

Section 14-11-60 is limited to those cases where there is a vacancy in the office of the master in equity for a county or that master cannot sit due to a disqualification or a disability. In any other case the statute does not apply. Instead, Rule 53 and the Supreme Court's administrative orders govern. Since this is not a case where there is a vacancy, disqualification or disability of the sitting master in equity, the general provisions of Rule 53, as ordered by the Chief Justice, permits the clerk of court to enter an order of reference to a special referee in this default matter. That order is valid.

Appellants also contend Plaintiffs have engaged in "Abuse of the Special Referee System." They assert:

> Respondent's view of the special referee system in South Carolina appears to be that if a party is in default, Rule 53 allows the Plaintiff's attorney to appoint his own special referee anywhere in the state without any judicial oversight and regardless of whether the county where the case is pending has a sitting master-in-equity.

(App. Br. p. 7). They contend, without citation to authority:

> Additionally, even in counties without a sitting master-in-equity, Rule 53 does not grant a Plaintiff's attorney the power to appoint the special referee to whom the case is referred. Clerk of courts should be required to appoint attorneys deemed qualified to act as special referees. A clerk of court who signs an order of reference without having any knowledge of that attorney's qualifications to serve as a special referee violates Defendant's due process rights. This action by the clerk of court deprives Defendants of a hearing before a neutral and detached judicial officer.

(App. Br. pp. 7-8). The Court should reject this argument.

This argument ignores that it is the clerk of court, not the Plaintiff, who decides whether to refer the matter to a suggested lawyer to serve as the special referee. Nothing requires the clerk to accept the Plaintiff's suggestion. Second, even a party in default may raise issues regarding the qualifications of a special referee whom the clerk has appointed should the party desire to do so. *See Roche v. Young Bros.* (Supreme Court addressed allegations by defendant in default who challenged the impartiality of a special referee pursuant to Canon 3(E)(1)(a) of Rule 501, SCACR).

This Court should reject Appellants' arguments that only a sitting master in equity may hear this matter or, alternatively, only a circuit court judge may enter an order of reference to a special referee.[9] The Court should affirm the Clerk of Court's order referring this matter to Mr. Paschal.

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[9] As persuasive authority Respondent points to an opinion by the Attorney General's office rejecting the very arguments Appellants advance in this case. See *RE: The Honorable Carol E. Reeves*, 1984 S.C. Op. Atty. Gen. No. 84-52 (May 9, 1984) (rejecting contention by sitting master in equity for Allendale County that appointment of a special referee to hear certain equity matters in that County was "illegal"; AG opined that the applicable statutes at the time permitted the appointment of a special referee on a case-by-case basis even though a county has a sitting master in equity).

Conclusion

For the reasons stated, the Court should dismiss this appeal because: (1) the arguments in the Appellants' Brief are so conclusory as to be deemed abandoned; (2) the existence of a pending and un-ruled upon Rule 59 motion deprives the Court of jurisdiction; or (3) the Clerk's order is not an appealable intermediate order under S.C. Code Ann. § 14-3-330 because it does not deprive Appellants of a mode of trial to which they are entitled as a matter of right. Alternatively, the Court should affirm the Clerk of Court's order appointing the special referee in this matter.

Respectfully submitted,

/s/ John S. Nichols
John S. Nichols
SC Bar No. 4210
Bluestein Thompson Sullivan, LLC
PO Box 7965
Columbia, SC 29202
(803) 779-7599
john@bluesteinattorneys.com

Brendan Green
SC Bar No. 104648
Richardson Thomas, LLC
1513 Hampton Street
Columbia, SC 29201
(803) 281-8153
brendan@richardsonthomas.com

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