THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from the Court of Common Pleas
For Lexington County
Honorable James O. Spence, Master-In-Equity
Civil Action No.: 2009-CP-32-5373
Appellate Case No.: 2013-001487

Regions Bank,

Plaintiff,

v.

William S. Owens; David S. Hostetler; Roland G. Paddy; and Greer State Bank,

Defendants,

Of Whom William S. Owens is the

Petitioner,

And Regions Bank; Roland G. Paddy; and Greer State Bank are the

Respondents.

RETURN TO PETITION FOR WRIT OF CERTIORARI
Of The
RESPONDENT, REGIONS BANK

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I. INTRODUCTION

A party has a duty to monitor his or case and cannot reasonably be entitled to relief if he takes no action after being properly served with a lawsuit. The Court of Appeals applied this well-established rule to the particular facts of this case, and held that because the Petitioner, William S. Owens ("Mr. Owens"), was unable to demonstrate "good cause" as required by Rule 55(c), *SCRCP*, the Master-in-Equity correctly denied his motion to set aside an entry of default.**1** Although Mr. Owens would have this Supreme Court believe otherwise, he is essentially arguing that the Court of Appeals simply "got the facts wrong." Mr. Owens, however, wholly ignores the proposition that the Court of Appeals both ***correctly*** viewed this case through the "abuse of discretion" lens and ***correctly*** determined that the evidence in the record supported the Master-in-Equity's ruling.

Furthermore, this case does not satisfy any of the grounds identified by Rule 242(b), *SCACR*, as indicative of certiorari review. The Court of Appeals' decision was unanimous, it does not present and/or implicate a novel question of law, it is in line with decades of this Supreme Court's precedent, and the opinion does not involve any substantial constitutional issues.

The Respondent, Regions Bank ("Regions Bank"), respectfully requests this Supreme Court to deny Mr. Owens' Petition for Writ of Certiorari and allow this appellate matter to finally end.

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1 *See* Regions Bank v. Owens, 402 S.C. 642, 741 S.E.2d 51 (Ct.App. 2013).

II. STATEMENT OF THE CASE

A. The Loan

Mr. Owens took out a loan, defaulted on that loan, was served with a foreclosure complaint, failed to respond, and an entry of default was filed. When Mr. Owens sought to set aside the default, his motion was denied, a monetary judgment was entered, and he appealed. Consequently, as the Court of Appeals correctly surmised, this is a ***procedural*** case focusing on Mr. Owens' actions ***after*** he was served with the instant foreclosure complaint.[2] Therefore, any events occurring ***before*** Mr. Owens was served (i.e. the *merits* of the foreclosure action) are largely irrelevant. Regions Bank briefly details these facts herein for background purposes only.

In 2004, the Defendant, David S. Hostetler ("Mr. Hostetler"), was seeking potential investors for the purchase of certain real property in Lexington County, South Carolina (the "Property") and he contacted, *inter alia*, the Defendant, Roland G. Paddy ("Mr. Paddy"), to gauge his interest. (R.p.440, lines 5-7). Mr. Paddy agreed to invest $100,000.00 and, in turn, asked Mr. Owens if he wanted to join the partnership. (R.p.367, lines 7-14; R.p.441, lines 2-24). Mr. Paddy and Mr. Owens discussed the idea for several months and Mr. Owens eventually decided to also invest $100,000.00. (R.p.367, line 13-R.p.368, line 4). On 24 June 2005, Mr. Hostetler, Mr. Paddy, and Mr. Owens (the "Investors") took their $200,000.00, borrowed an additional $700,000.00 from Regions Bank, and purchased the Property. (R.pp.35-36, paras. 6, 8; R.p.129, lines 10-22; R.p.373, lines 10-12;

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2 *See* Regions Bank v. Owens, 402 S.C. 642, 741 S.E.2d 51.

R.p.366, line 23-R.p.367, line 14; R.pp.399-400; R.p.442, lines 10-12; R.p.448, line 4-R.p.450, line 9). To secure the loan, the Investors contemporaneously executed a promissory note and mortgage to Regions Bank. (R.p.554, lines 4-20; R.pp.599-607). Mr. Paddy intended to "turn around and sell" the Property to a bottling company for which Mr. Owens expected to receive a significant return on his investment.[3] (R.p.368, line 16-R.p.369, line 1; R.p.373).

The Investors and Michele Paddy Refosco, Esquire ("Attorney Refosco")[4] attended the loan closing at Attorney Refosco's office. (R.p.454, lines 8-9; R.p.554, lines 4-7). Attorney Refosco explained the contents of each of the loan documents to all the Investors and each of them, including Mr. Owens, signed the documents in her office and in her presence. (R.p.554, lines 10-20; R.p.556, lines 20-22; R.p.557, lines 6-24; R.p.560, lines 3-7; R.p.574, lines 12–13).[5] According to Attorney Refosco, Mr. Owens visited her office at least twice regarding the Property in order to sign the loan documents. (R.p.573, line 22–R.p.574, line 1).[6]

In March 2009, in consideration for an extension of the note's maturity date to 1 July 2009, the Investors executed a second promissory note and assignment of rents to Regions Bank. (R.pp.36-37, paras. 11-14; R.pp.399-417; R.pp.421-429). Unfortunately, the Investors to pay the loan by 1 July 2009, and defaulted under the note. (R.p.38, paras. 15-16).

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3 The Property apparently contained several natural springs.

4 Ms. Refosco is Mr. Paddy's daughter. Regions Bank v. Owens, 402 S.C. 642, 645 n.1, 741 S.E.2d 51, 53 n.1.

5 Regions Bank v. Owens, 402 S.C. 642, 646, 741 S.E.2d 51, 53.

6 Attorney Refosco was very familiar with Mr. Owens and has known him for many years. (R.p.563, lines 6-18; R.p.573, lines 10-14).

B. The Foreclosure Action

After offering the Investors an opportunity to cure the default, Regions Bank filed this foreclosure action on 1 December 2009. (R.pp.35-39). Mr. Paddy answered on 15 January 2010. (R.p.42).[7] Mr. Owens, however, despite being admittedly personally served at his business address on 26 January 2010, failed to respond or take any steps to contact Regions Bank regarding the matter. (R.p.43). As this case was a foreclosure, the matter was appropriately referred to the Master-in-Equity on 2 March 2010. (R.p.30).[8] On 18 March 2010, Regions Bank sought an entry of default against Mr. Owens and the Master-in-Equity scheduled the foreclosure hearing for 19 July 2010. (R.p.44).

Regions Bank notified Mr. Owens of the foreclosure hearing by letter dated 22 June 2010. (R.p.23). Nevertheless, Mr. Owens waited until 16 July 2012, now three months after the entry of default and only three days before the foreclosure hearing - before seeking to set aside the default. (R.pp.47-48). As a result of the motion, the foreclosure hearing was put off. Regions Bank, in an effort to defeat Mr. Owens' motion, deposed him, Mr. Paddy, and Attorney Refosco. Not unsurprisingly, Mr. Owens' and Mr. Paddy's recollections of the events differed somewhat as to what occurred after Mr. Owens was served with the foreclosure pleadings.

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[7] Mr. Paddy admitted participating in the loan and essentially admitted all of the material allegations except the amount of the outstanding loan and Regions Bank's entitlement to attorneys' fees, litigation costs, *etc.* (R.pp.40-41). He did not assert any counterclaims and/or crossclaims. (R.pp.40-41).

[8] *See generally* Rules 53, 71(a), SCRCivP.

i. Mr. Paddy's Recollections

Mr. Paddy responded to the foreclosure on 15 January 2010, by answering solely on his own behalf - some eleven days before Mr. Owens was even served. (R.p.41). According to Mr. Paddy, he and Mr. Owens later met to discuss the situation with Mr. Paddy noting that Mr. Owens was "understandably very upset" since he was likely going to lose his investment and "was on a mortgage that might have a deficit." (R.p.474, line 22-R.p.475, line 4). Although Mr. Paddy advised Mr. Owen that he (Mr. Paddy) had hired an attorney, that attorney did not represent Mr. Owens and Mr. Paddy did not tell Mr. Owens that the attorney would appear on behalf of or answer for him. (R.p.38, lines 12-16; R.p.472, line 20-R.p.473, line 8).

ii. Mr. Owens' Recollections

Mr. Owens admits he was personally served at his business address in Myrtle Beach on 26 January 2010. (R.p.393, line 22-R.p.394, line 3; R.p.395, line 22-R.p.396, line 4; *Cert. Pet.*, p.1). Mr. Owens also agrees that he and Mr. Paddy discussed the lawsuit at some point after he (Mr. Owens) was served. (R.p.389, lines 1-3). Mr. Owens explained that he contacted Mr. Paddy when "papers were sent to the shop from Regions Bank." (R.p.388, line 25-R.p.389, line 1; R.p.390, lines 1-8). However, Mr. Owens claimed Mr. Paddy told him he "got a lawyer and they were taking care of it." (R.p.389, lines 4-5). Based upon this, Mr. Owens took no further steps to protect himself, failed to follow-up with Mr. Paddy, and failed to contact Regions Bank.

C. Procedural History

i. Master-in-Equity

On 19 November 2010, the Master-in-Equity heard Mr. Owen's motion to set aside the default. (R.pp.120-163). Considering Mr. Owens' affidavit and the several depositions into account, the Master-in-Equity determined Mr. Owens failed to meet the "good cause" standard for setting aside an entry of default. (R.pp.23-29). The Master-in-Equity made several important findings. First, he held that "nowhere in the record before the Court does [Mr.] Paddy agree or suggest he would hire an attorney to answer for [Petitioner]." (R.p.26). Second, he held that, even if Mr. Owens did rely on Mr. Paddy, "misplaced reliance in a fellow defendant is worse than relying on one's own attorney, and the latter explanation was soundly rejected in *Pilgrim v. Miller*." (R.p.27). Thus, "if reliance on one's own attorney is insufficient to show 'good cause,' the reliance on another defendant and his attorney is equally insufficient." (R.p.27). Finally, the Master-in-Equity held that Mr. Owens' alleged reliance was also unreasonable because, in his proposed answer, Mr. Owens' entire defense was that Mr. Paddy misled and induced him into entering into the loan. (R.p.28). In other words, Mr. Owens could not have reasonably believed Mr. Paddy would answer for him when he intended to place all of the blame for the failed loan on Mr. Paddy and, in turn, accuse Mr. Paddy of fraud. (R.p.28). The Master-in-Equity denied Mr. Owens' motion for reconsideration. (R.pp.18-22).

ii. ***Court of Appeals***

Mr. Owens appealed the denial of his motion and raised several issues. First, and for the first time, Mr. Owens argued the Master-in-Equity erred because the Lexington County Clerk of Court did not formally enter the default into the court records before the case was referred to the Master-in-Equity.**9** The Court of Appeals did not rule on this issue because it had not be previously raised to and ruled upon by the Master-in-Equity.**10** Second, Mr. Owens argued he was entitled to relief under the "good cause" standard.**11** The Court of Appeals disagreed, holding that evidence in the record supported the Master-in-Equity's finding that Mr. Owens had failed to demonstrate "good cause."**12** Moreover, because Mr. Owens never put forth a satisfactory explanation for his default, he was not entitled to consideration of the *Wham* factors.**13** Finally, the Court of Appeals summarily dismissed Mr. Owens' argument that the Master-in-Equity erred in relying on *Pilgrim v. Miller*,[**14**] a case that was vacated by this Supreme Court.**15** The Court of Appeals explained that the *proposition* announced in

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9 Regions Bank v. Owens, 402 S.C. 642, 647, 741 S.E.2d 51, 54.

10 Regions Bank v. Owens, 402 S.C. 642, 647, 741 S.E.2d 51, 54.

11 Regions Bank v. Owens, 402 S.C. 642, 647, 741 S.E.2d 51, 54.

12 Regions Bank v. Owens, 402 S.C. 642, 648, 741 S.E.2d 51, 54.

13 Regions Bank v. Owens, 402 S.C. 642, 649, 741 S.E.2d 51, 55. *See* Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501–502 (Ct.App.1989)).

14 *See* Pilgrim v. Miller, 350 S.C. 637, 567 S.E.2d 527 (Ct.App.2002).

15 Regions Bank v. Owens, 402 S.C. 642, 650, 741 S.E.2d 51, 55 (*citing* Bage, LLC v. Southeast Roofing Co. of Spartanburg, Inc., 383 S.C. 489, 490, 681 S.E.2d 867 (2009)) (noting "the parties in Pilgrim settled while the petition for certiorari was pending before [this] [S]upreme [C]ourt; therefore, the decision was vacated")).

Pilgrim v. Miller was not overturned and remained good law.[16] Instead, the *Pilgrim v. Miller decision* was vacated because the parties settled during the pendency of the appeal.[17] The Court of Appeals subsequently denied Mr. Owens' Petition for Rehearing and he filed the instant Petition for Writ of Certiorari. Regions Bank now files its Return to the Petition for Writ of Certiorari and respectfully request that the petition be denied.[18]

III. STANDARD OF REVIEW

The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the Master-in-Equity.[19] The Master-in-Equity's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion.[20] An abuse of discretion occurs when the presiding judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support.[21]

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16 Regions Bank v. Owens, 402 S.C. 642, 649-650, 741 S.E.2d 51, 55.

17 Regions Bank v. Owens, 402 S.C. 642, 649-650, 741 S.E.2d 51, 55.

18 Regions Bank expressly reserves the right to seek appropriate appellate costs pursuant to Rule 222(b), SCRCP, both in this Supreme Court and in the Court of Appeals.

19 Harbor Island Owners' Ass'n v. Preferred Island Props., Inc., 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006).

20 Mitchell Supply Co., Inc. v. Gaffney, 297 S.C. 160, 162–63, 375 S.E.2d 321, 322–23 (Ct.App.1988).

21 *In re* Estate of Weeks, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App.1997).

IV. ARGUMENT AND CITATION OF AUTHORITY

The confusing nature of Mr. Owens' asserted errors coupled with his "circular logic" necessitates a certain amount of weeding and summarizing in order to address the issues. Mr. Owens appears to essentially argue that the Court of Appeals erred in three respects. First, Mr. Owens asserts the Court of Appeals erred in finding his "cart before the horse" issue unpreserved. (*Cert. Pet.*, pp.3-6). Second, Mr. Owens generally submits that the Court of Appeals erred in affirming the Master-in-Equity's lack of "good cause" holding. (*Cert. Pet.*, pp.6–9). Finally, Mr. Owens raises the "late answer" issue for the first time that is both unappealable and unpreserved.

All of these issues are meritless and none of them warrants any further appellate review.

A. Mr. Owens' "Jurisdictional" Argument Was Not Preserved And, In Any Case, Is Meritless.

As noted, this case was referred to the Master-in-Equity on 2 March 2010. (R.pp.30-31). Specifically, the Circuit Court concluded that "the above-titled action is an action for foreclosure . . . and, it is proper to refer to the [Master-in-Equity]." (R.p.30). In the Order of Reference, the Circuit Court also noted that Mr. Owens had failed to answer the Summons and Complaint. (R.p.30). On 18 March, 2010, by way of affidavit, Regions Bank sought an entry of default. (R.pp.44-45). The Master-in-Equity subsequently denied Mr. Owens' motion to set aside the default. (R.pp.47-48). In the Court of Appeals, Mr. Owens argued - for the first time -that the Master-in-Equity should not have addressed the "good cause" standard Rule under 55(c), *SCRCivP*, because the Lexington County

Clerk of Court had not filed the entry of default prior to the case being referred to the Master. (*Final Brief*, p.4). The Court of Appeals correctly found this issue unpreserved.

While Mr. Owens concedes the issue was unpreserved, he submits that counsel for Regions Bank "put the cart before the horse" by having the case "referred to the Master before holding [Mr. Owens] in default or filing an affidavit of Default." (*Cert. Pet.*, p.3). Mr. Owens then correctly sets forth the referral timeline. (*Cert. Pet.*, p.3). He argues that his issue need not be preserved because the referral timeline somehow deprived the Master-in-Equity of "subject matter jurisdiction" and, in turn, violated Mr. Owens' "due process rights." In addition to being twice unpreserved, Mr. Owens' argument is entirely illogical and, more importantly, irrelevant.

At the time this matter was referred to the Master-in-Equity, Mr. Owens *was* already in default.[22] Nevertheless, Mr. Owens is correct that the *entry of default* was not formally filed by the Lexington County Clerk of Court before this matter was referred to the Master-in-Equity. Indeed, Regions Bank had not even *sought* an entry of default before the matter was referred to the Master-in-Equity - and for good reason. Quite simply, this case was not referred to the Master-in-Equity because Mr. Owens was in default; this case was referred because it is a foreclosure case and that is where a foreclosure case is traditionally handled.

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22 *See* Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 82, 504 S.E.2d 311, 315 (1998) ("Young Brothers clearly defaulted by failing to answer Roche's complaint within the prescribed time.").

The South Carolina Rules of Civil Procedure provides that "in an action where the parties consent, in a default case, *or an action for foreclosure*, some or all of the causes of action in a case may be referred to a master. . . ."**23** Furthermore, once a foreclosure matter is referred to a Master-in-Equity, he "shall retain jurisdiction to resolve the action to the extent the order of reference provides, and with the authority a circuit court judge would have in a similar matter."**24**

In the instant case, the Circuit Court's Order of Reference could not have been clearer that this matter was referred because it is a *foreclosure case*, not because Mr. Owens was in default. (R.p.30). Consequently, the Order of Reference and the formal entry of default did not necessarily have anything to do with each other. Furthermore, Mr. Owens does not allege - nor could he - that the Master-in-Equity exceeded the scope of the Order of Reference. Therefore, Mr. Owens' attempt to tie his status as a "defaulting party" to the Order of Reference and, in turn, to argue that this somehow implicates "jurisdiction" is entirely misplaced and irrelevant.

Consequently, in addition to being unpreserved, Mr. Owens' first issue is meritless on its face and does not warrant any further appellate review.**25**

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23 Rule 53(b), SCRCivP.

24 Wells Fargo Bank, NA v. Smith, 398 S.C. 487, 493, 730 S.E.2d 328, 332 (Ct.App. 2012).

25 Even if Mr. Owens' default status somehow played some role in the Order of Reference - and it did not - the fact that the default was not entered in the Lexington County Circuit Court's records prior to the referral would not deprive the Master-in-Equity of jurisdiction. *See* Thynes v. Lloyd, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (holding that the act of formally entering a default into the court records is a purely ministerial act and is of no consequence to the master's authority).

B. The Court of Appeals Correctly Affirmed The Master-In-Equity's Decision That Mr. Owens Failed To Establish "Good Cause"

The crux of Mr. Owens' "good cause" argument is three-fold. First, Mr. Owens argues the Court of Appeals erred in its interpretation of the events following his receipt of the Summons and Complaint. Mr. Owens is, therefore, arguing the Court of Appeals should be reversed because it "got the facts wrong." He arrives at this erroneous conclusion because Mr. Owens has not accounted for the fact that the Court of Appeals and this Supreme Court must view the Master-in-Equity's decision only for an abuse of discretion.

Second, Mr. Owens "suggests" that the Court of Appeals' "failure" to apply the *Wham* factors was an "error of law." It was not an error of law and, in any event, Mr. Owens is factually incorrect because the Master-in-Equity *did* apply the *Wham* factors – not just once- but twice.

Finally, Mr. Owens asserts it was reversible error for the Master-in-Equity to cite a case that was subsequently vacated. As will be explained below, and as was explained by the Court of Appeals, this argument has no merit.

i. The Master-in-Equity's "Good Cause" Ruling is Supported by Record Evidence and the Court of Appeals Applied the Correct Standard of Review.

Admittedly, the standard for setting aside an entry of default under Rule 55(c), *SCRCivP*, is less rigorous than the standard for granting relief from a final order under Rule 60(b), *SCRCivP*.[26] Applicable here, Rule 55(c), *SCRCivP*, permits a grant of relief from an entry of default if the party seeking relief

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[26] Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

demonstrates "good cause."[27] This standard requires a party seeking relief to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.[28] The Master-in-Equity's application of this standard to the particular facts of this case and the Court of Appeals' subsequent application of the standard of review was correct in all respects and does not warrant review here.

Undisputedly, Mr. Owens was personally served with the Summons and Complaint at his place of business on 26 January 2010. (*Cert. Pet.*, p.6). It is also undisputed that, other than having one conversation with Mr. Paddy, Mr. Owens did nothing to protect himself regarding this case - let alone file an answer - between 26 January 2010, and 16 July 2010, when he moved to set aside the entry of default. Almost six months passed between service of the complaint and Mr. Owens' first official action. Consequently, Mr. Owens' entire "good cause" argument hinges on a single conversation he had with Mr. Paddy.

According to Mr. Owens' version of the facts, at some point after receiving the Summons and Complaint, he met with Mr. Paddy who ostensibly told Mr. Owens that he (Mr. Paddy) "got a lawyer and they were taking care of it." (R.p.389, lines 4-5). Mr. Paddy disputed this testimony, explaining that his lawyer did not represent anyone but him and that he thought Mr. Owens would himself take the appropriate steps to protect his interests in the litigation. (R.p.38, lines 12-16; R.p.472, line 20-R.p.473, line 8).

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[27] Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888).

[28] Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601,

The Master analyzed this factual conflict and held that the single conversation between Mr. Owens and Mr. Paddy did not constitute "good cause" because "nowhere in the record before the Court does [Mr.] Paddy agree or suggest he would hire an attorney to answer for [Mr. Owens]." (R.pp.26-28).

On appeal, the Court of Appeals correctly looked for an abuse of discretion.[29] Through the "abuse of discretion" lens, the Court of Appeals analyzed Mr. Owens' and Mr. Paddy's testimony and correctly found that "evidence in the record support[ed] the master's finding Mr. Owens did not show good cause for failing to answer the complaint."[30] In his Petition for Writ of Certiorari, Mr. Owens argues this finding was incorrect by again referring to his entirely biased "version" of the conversation. (*Cert. Pet.*, pp.6-7). In other words, he takes his "got the facts wrong" argument a step further by asking this Supreme Court to analyze the Court of Appeals' analysis of the Master-in-Equity's view of the facts.

As an initial matter, even if this Supreme Court were to accept Mr. Owens' premise and agree to re-analyze the Court of Appeal's analysis of the Master's view of the facts, Mr. Owens' "version" of events is not credible. Specifically, Mr. Owens submits that he established "good cause" because after he was served – on 26 January 2012 - Mr. Paddy told him that he (Mr. Paddy) would file an answer for all three of the co-Defendants. (*Cert.Pet.*, pp.6-7). As noted, both Mr.

607, 681 S.E.2d 885, 888.

29 Regions Bank v. Owens, 402 S.C. 642, 647, 741 S.E.2d 51, 54 (*citing* Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 163, 375 S.E.2d 321, 322 (Ct. App. 1988)).

30 Regions Bank v. Owens, 402 S.C. 642, 648, 741 S.E.2d 51, 54.

Paddy and Mr. Owens agreed that this conversation took place *after* Mr. Owens was served with the foreclosure pleadings. (*Cert. Pet.*, p.6). Consequently, Mr. Owens would have this Supreme Court believe that Mr. Paddy said he would file an answer for Mr. Owens despite the fact that at the time they spoke, Mr. Paddy's attorney had already submitted Mr. Paddy's answer. (R.p.41).

Furthermore, as evidenced by the fact Mr. Owens has not cited a single case in support of his argument, our courts resoundingly reject a wholesale review of the lower court's factual findings under the abuse of discretion standard and this Court should not endorse it today.**31** Therefore, even if the Master-in-Equity believed the wrong party, the Master-in-Equity's *factual finding* is not *without evidentiary support* and must be upheld.**32**

Finally, it is beyond dispute that Mr. Owens ***did nothing*** after he was served other than contact Mr. Paddy. Thus, he cannot demonstrate "good cause" because "a party has a duty to monitor the progress of his case" and "[l]ack of familiarity with legal proceedings is unacceptable. . . ."**33**

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31 *See* Stark Truss Co., Inc. v. Superior Const. Corp., 360 S.C. 503, 510, 602 S.E.2d 99, 103 (Ct.App. 2004) ("In reviewing the court's exercise of discretion, the issue before the appellate court is not whether it believes good cause existed to set aside the default, but rather, whether the trial judge's determination is supportable by the evidence. . . ."); *Accord* Rish v. Rish By and Through Barry, 296 S.C. 14, 15, 370 S.E.2d 102, 103 (Ct.App. 1988) ("Overly simplified, abuse of discretion involves the extent of disagreement. When an appellate court is in agreement with a discretionary ruling or is only mildly in disagreement, it says that the trial judge did not abuse his discretion. On the other hand, when the appellate court is in substantial or violent disagreement, it says that there has been an abuse of discretion.").

32 *See* Harbor Island Owners' Ass'n v. Preferred Island Props., Inc., 369 S.C. 540, 546, 633 S.E.2d 497, 500 ("The master's findings of fact [in a default case] must be upheld unless wholly unsupported by the evidence or controlled by an error of law."); *see also* Ricks v. Weinrauch, 293 S.C. 372, 375, 360 S.E.2d 535, 537 (Ct. App. 1987) (explaining that an abuse of discretion occurs only when a factual conclusion is entirely without evidentiary support).

33 Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct.App. 2001).

The Court of Appeals correctly recognized that its role was not to take its own view of the facts, but rather was limited to examining whether the Master-in-Equity's view was "without evidentiary support."**34** Because the Master-in-Equity's finding was not "without evidentiary support," the Court of Appeals correctly affirmed. Furthermore, and perhaps more importantly, Mr. Owens' "fanciful" version of events is essentially impossible.**35**

Mr. Owens' argument is without merit and does not warrant further appellate review.

ii. The Wham factors.

In *Wham v. Shearson Lehman Bros., Inc.*,**36** the Court of Appeals reversed the master's decision not to set aside an entry of default because the master erroneously applied the more rigorous Rule 60(b), *SCRCivP*, "excusable neglect" standard instead of the appropriate Rule 55(c), *SCRCivP*, "good cause" standard.**37** On remand, the master was directed to consider the defaulting party's "(1) timing of the motion for relief; (2) whether he had a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief were granted."**38**

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34 *See* South Carolina Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 668 n.12, 667 S.E.2d 7, 20 n.12 (Ct.App. 2008) (holding the Master-in-Equity as trier of fact is free to accept or reject any or all of a witness's testimony and "must determine the weight to be accorded the testimony of the witnesses. . . .").

35 This Supreme Court may affirm for any reason appearing in the record. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

36 *See* Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 381 S.E.2d 499.

37 Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501.

38 Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 502.

In the instant case, the Master-in-Equity held that because Mr. Owens could not provide a satisfactory explanation for the default, he was not required to make specific factual findings regarding the *Wham* factors. (R.p.28). The Court of Appeals agreed.**39** According to Mr. Owens, this holding was incorrect "under the law." (*Cert. Pet.*, p.7).

As an initial matter, Mr. Owens' argument borders on the absurd because the Master-in-Equity *did* apply the *Wham* factors - ***twice***. Specifically, the Master-in-Equity held that (1) Mr. Owens' proposed answer was well beyond the acceptable time limit typically allowed under *Wham*; (2) Mr. Owens did not have a meritorious defense; and (3) Regions Bank would suffer substantial prejudice if the entry of default was set aside. (R.pp.20-21;R.p.29). On Mr. Owens' Motion for Reconsideration, the Master-in-Equity again explicitly applied the *Wham* factors and again found, in great detail, that Mr. Owens was not entitled to relief under *Wham*. (R.pp.20-22). Therefore, even if the Court of Appeals somehow erred in finding the Master-in-Equity was *not required* to apply the *Wham* factors, this error makes no difference whatsoever because the Master-in-Equity *actually applied them*.**40** On this basis alone, Petitioner's argument is entirely without merit and does not warrant further review.**41**

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39 Regions Bank v. Owens, 402 S.C. 642, 649, 741 S.E.2d 51, 55.

40 Again, the Court of Appeals need not have ruled upon this issue because it is an additional sustaining ground. I'On, L.L.C., 338 S.C. 406, 420, 526 S.E.2d 716, 723.

41 See McNair v. Fairfield Cnty., 379 S.C. 462, 466, 665 S.E.2d 830, 832 (Ct.App. 2008) (explaining the overriding rule of civil procedure which says, "whatever doesn't make any difference, doesn't matter"). Although the Master-in-Equity applied the Wham factors, Mr. Owens believes he did not. Thus, Mr. Owens does not challenge the Master-in-Equity's actual ruling on the factors. To the extent this Supreme Court undertakes an analysis; Mr. Owens simply cannot survive even a cursory Wham review.

Furthermore, other than claiming the Court of Appeals erred "under the law" Mr. Owens has not cited any case which supports his conclusory statement. This is because no such case exists. In a long line of cases since *Wham*, no South Carolina appellate court has ever held that the trial court is *always* required to make specific findings of fact regarding the *Wham* factors and many have expressly held the opposite.**42** Importantly, the only case cited by Petitioner, a case that was relied upon by the Court of Appeals, explicitly holds that a court need only consider the *Wham* factors "[o]nce a party has put forth a satisfactory explanation for the default."**43**

The timeliness of Mr. Owens' motion—almost six months after service—far exceeds what other South Carolina courts have permitted. *See* Stark Truss Co., Inc. v. Superior Const. Corp., 360 S.C. 503, 510, 602 S.E.2d 99, 102-103 (90 days); Dixon v. Besco Eng'g, Inc., 320 S.C. 174, 177, 463 S.E.2d 636, 638 (Ct.App. 1995) (106 days); Richardson v. P.V., Inc., 383 S.C. 610, ___, 682 S.E.2d 263, 366-67 (60 days); Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 604-605, 681 S.E.2d 885, 888 (51 days). Mr. Owens also failed to establish a potentially meritorious defense. Essentially, he alleged that he did not sign the Note or Mortgage. (R.pp.51-52). However, two disinterested witnesses, Mr. Paddy and Attorney Refosco, controverted this account and demonstrated that Mr. Owens, among other things, signed the loan documents and had the terms and conditions explained to him at closing. Finally, Regions Bank would have been prejudiced if the entry of default were set aside and would be especially prejudiced at this point in the litigation. As demonstrated in his proposed Answer and Counterclaim, Mr. Owens will greatly expand the scope of this litigation and move this case back to the circuit court for a jury trial because Mr. Owens alleges that Regions Bank violated the South Carolina Unfair Trade Practices Act. Moreover, by his failure to participate in this litigation for almost six months and the subsequent appeals of the Master-in-Equity's decision, Mr. Owens has greatly increased the cost of this litigation.

42 *See* Melton v. Olenik, 379 S.C. 45, 55, 664 S.E.2d 487, 492 (Ct.App. 2008) (holding the trial judge is not required to make specific findings of fact on the record for each factor if there is sufficient evidentiary support in the record for the finding of the lack of good cause); Dixon v. Besco Eng'g, Inc., 320 S.C. 174, 179, 463 S.E.2d 636, 639 ("We decline to read Wham as requiring the trial judge to make specific findings of these factors.").

43 Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888.

The Court of Appeals correctly determined that an analysis of the *Wham* factors was unnecessary. More importantly, the Master-in-Equity *did apply* the *Wham* factors and correctly held that Petitioner could not establish "good cause" under a *Wham* analysis.

Mr. Owens' argument is meritless and does not warrant further appellate review.**44**

iii. Neither the Court of Appeals nor the Master-in-Equity Erred in Referring To Pilgrim v. Miller.

As noted, Mr. Owens' sole claim to "good cause" is his allegation that Mr. Paddy told him he would file an answer for all parties. Again, Mr. Paddy denied making this statement and Mr. Owens' allegation is essentially impossible because Mr. Paddy had ***already filed his response before*** Mr. Owens was even served.

The Master-in-Equity concluded that even if Mr. Paddy made this statement, Mr. Owens' alleged reliance on it was, under the circumstances, wholly unreasonable. (R.p.27). In support of this holding, the Master-in-Equity cited *Pilgrim v. Miller*, in which the Court of Appeals explained "[t]he courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant."**45** On appeal, Mr. Owens claimed

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44 To the extent Mr. Owens relies on events preceding the foreclosure action (*i.e.*; the facts of the underlying loan transaction) such reliance, as noted above, is wholly inappropriate. *See* Limehouse v. Hulsey, 397 S.C. 49, 90, 723 S.E.2d 211, 233 (Ct. App. 2011) (Few, C.J., dissenting) ("Neither the general guidance to liberally construe Rule 55(c) in order to promote justice and dispose of cases on the merits nor the Wham factors instruct a trial court to require, or even to consider, the reason the party went into default.") (Emphasis added) *reversed on other grounds*, 404 S.C. 93, 744 S.E.2d 566 (2013).

45 Pilgrim v. Miller, 350 S.C. 637, 642, 567 S.E.2d 527, 529.

that because *Pilgrim v. Miller* was vacated, the Master-in-Equity's citation was an error justifying reversal.**46** The Court of Appeals dismissed this argument, noting that the *proposition* in *Pilgrim* remains good law.**47** Mr. Owens again finds error with this citation. (*Cert. Pet.*, pp.8-9). As noted, it is difficult to decipher *why* Mr. Owens believes this was in error; indeed, at one point, Mr. Owens refers back to the *Wham* factors. (Cert. Pet., p.8). In any event, the citation was correct.

Pilgrim v. Miller simply stands for the proposition that, in a default case, the conduct of the defaulting party's attorney or insurance company is imputable to the defendant.**48** Thus, a defaulting defendant cannot establish "good cause" merely by claiming that he reasonably relied on his attorney to file an answer.**49** Numerous other cases stand for the exact same proposition.**50**

In the instant case, the Master-in-Equity explained that because a defendant cannot establish "good cause" by claiming that he reasonably relied on *his attorney* to file an answer, it is equally, if not more unreasonable to claim reliance on a *co-defendant's attorney*. (R.p.27). Thus, the Master-in-Equity

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46 Regions Bank v. Owens, 402 S.C. 642, 649-650, 741 S.E.2d 51, 55. As the Court of Appeals explained, while the certiorari petition was pending in Pilgrim v. Miller, the parties settled and this Supreme Court vacated the opinion. However, the vacating order was never published. *See* Bage, LLC v. Se. Roofing Co. of Spartanburg, Inc., 383 S.C. 489, 490, 681 S.E.2d 867.

47 Regions Bank v. Owens, 402 S.C. 642, 649-650, 741 S.E.2d 51, 55.

48 Pilgrim v. Miller, 350 S.C. 637, 641-642, 567 S.E.2d 527, 529.

49 Pilgrim v. Miller, 350 S.C. 637, 641-642, 567 S.E.2d 527, 529.

50 *See* Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 609, 681 S.E.2d 885, 889 ("[T]he law is clear that an attorney or insurance company's misconduct is imputable to the client."); *see also* Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct.App.1994) (observing that an attorney's negligence in failing to answer is imputable to the defendant); Roberts v. Peterson, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct.App.1987) (recognizing that negligence of an attorney or insurance company is imputable to a defaulting litigant).

merely noted that, by extension, Mr. Owens' alleged reliance was even less reasonable than the defaulting party's reliance in *Pilgrim v. Miller*. Other than the fact that *Pilgrim v. Miller* itself was vacated, the Master-in-Equity's conclusion was entirely reasonable and, as recognized by the Court of Appeals, was not an error justifying reversal because many other cases stand for the exact same proposition.**51**

Mr. Owens' argument is meritless and does not warrant any further appellate review.

C. Mr. Owens Did Not File A Motion For A "Late Answer" And Whether The Court Of Appeals Should Have Allowed A "Late Answer" Is Not Immediately Appealable, Is Unpreserved, And Is Meritless.

Mr. Owens submits that this Supreme Court "should reverse the Court of Appeals and allow a later Answer of Owens" in order to set a "bright line standard" for the "bench and bar." (*Cert. Pet.*, p.9). According to Mr. Owens, "the issue of a late Answer has been discussed in many cases but without a definitive answer by this [Supreme] Court." (*Cert. Pet.*, p.9).

As an initial matter, Mr. Owens (a) never asked opposing counsel for an extension of time in which to answer or otherwise respond, (b) never sought an enlargement of time, and (c) never filed a motion for leave to file a late answer under Rule 6(b), *SCRCivP*. Instead, Mr. Owens, almost six months after being served, filed a motion to set aside the entry of default under Rule 55(c),

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51 Moreover, this holding did not form the basis of the Master's ruling because the Master explicitly held that Mr. Paddy *did not* tell Mr. Owens that he would answer for him. Therefore, this portion of the Master-in-Equity's order was, at best, *dicta*.

SCRCivP.**52** Furthermore, even if Mr. Owens had filed a Rule 6(b), *SCRCivP*, motion and even if it had been denied, the denial of a motion to file a late answer is not immediately appealable.**53** In any event, this issue is twice unpreserved because it was not raised to or ruled upon by the Court of Appeals nor was it raised in the petition for rehearing.**54** Thus, Mr. Owens is seeking an impermissible advisory opinion reversing a ruling that was not made and is not immediately appealable based on an issue that he failed to raise on two separate occasions.**55** Finally, to the extent this Supreme Court deems Mr. Owens' "late answer" issue preserved *and* immediately appealable, it is nevertheless without merit.**56**

Mr. Owens' "late answer" issue is not immediately appealable, is unpreserved, is meritless, and does not warrant any further appellate review.

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52 *See* Jefferson by Johnson v. Gene's Used Cars, Inc., 295 S.C. 317, 318, 368 S.E.2d 456 (1988) (order explaining the difference between the two rules and motions).

53 Jefferson by Johnson v. Gene's Used Cars, Inc., 295 S.C. 317, 318, 368 S.E.2d 456 (holding that a ruling on a Rule 6(b), SCRCivP, motion that does not involve the merits is not immediately appealable).

54 *See* Doe v. Doe, 370 S.C. 206, 212, 634 S.E.2d 51, 54 (Ct.App. 2006) ("To preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court."); *see also* Rule 242, SCACR ("Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari . . . .").

55 *See* Grazia v. South Carolina State Plastering, LLC, 390 S.C. 562, 577 n.6, 703 S.E.2d 197, 204 n.6 (2010) ("It is elementary that the courts of this State have no jurisdiction to issue advisory opinions.").

56 *See* Stark Truss Co., Inc. v. Superior Const. Corp., 360 S.C. 503, 509, 602 S.E.2d 99, 102 (explaining that the filing of a late answer does not alter the fact that a party is in default because an entry of default is a purely ministerial act).

V. CONCLUSION

Based upon the foregoing arguments and citation of authority, the Respondent, Regions Bank, respectfully requests this Supreme Court to deny Mr. Owens' Petition for Writ of Certiorari.

Respectfully submitted:

NEXSEN PRUET, LLC

By:_____

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Charleston, South Carolina

19 September 2013

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from the Court of Common Pleas
For Lexington County
Honorable James O. Spence, Master-In-Equity
Civil Action No.: 2009-CP-32-5373
Appellate Case No.: 2013-001487

Regions Bank,

Plaintiff,

v.

William S. Owens; David S. Hostetler; Roland G. Paddy; and Greer State Bank,

Defendants,

Of Whom William S. Owens is the

Petitioner,

And Regions Bank; Roland G. Paddy; and Greer State Bank are the

Respondents.

PROOF OF SERVICE

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Attorneys for Respondent, Regions Bank

I, Stephen P. Groves, Esquire, hereby certify that on 19 September 2013 (*originally sent out on 9 September 2013*), I again served one copy of the ***Return to Petition for Writ of Certiorari*** submitted by the Respondent, Regions Bank, on all counsel of record herein via United States Mail, postage pre-paid, and addressed as follows:

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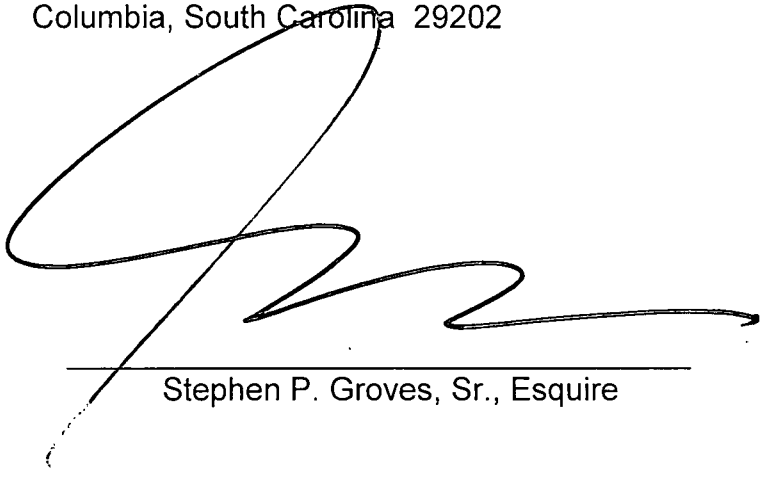
I also hereby certify that on 19 September 2013 (*originally sent out on 9 September 2013*), I again also served one copy of the ***Return to Petition for Writ of Certiorari*** submitted by the Respondent, Regions Bank, on the Office of the Clerk of Court for the South Carolina Court of Appeals via the United States Mail, postage pre-paid, and addressed as follows:

Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29202



Stephen P. Groves, Sr., Esquire

Charleston, South Carolina

19 September 2013

NEXSEN|PRUET

Stephen P. Groves, Sr.
Member
Admitted in South Carolina

19 September 2013

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

Re: ***Regions Bank v. William S. Owens; David S. Hostetler; Roland G. Paddy; and Greer State Bank***
Appeal from the Lexington County Court of Common Pleas
Civil Action No.: 2009-CP-32-5373
Case Tracking No.: ***2011193586***
NP File No.: 024340-00059

Dear Ms. Kitchings:

Enclosed please two copies of the ***Return to Petition for Writ of Certiorari*** of the Respondent, Regions Bank, in the above-referenced appellate matter. I also enclose two copies of a ***Proof of Service*** indicating service of the ***Return to Petition for Writ of Certiorari*** upon all other counsel of record. I would appreciate your filing one copy each of Regions Bank's ***Return to Petition for Writ of Certiorari*** and the ***Proof of Service***, with the Court of Appeals and returning one stamped copy of each to my attention in the enclosed self-addressed stamped envelope.

As you may be aware, we originally sent the ***Return to Petition for Writ of Certiorari*** and the ***Proof of Service*** out on 9 September 2013, and addressed the package to the Supreme Court's "street address" as opposed to the "Post Office Box address". The Supreme Court never received the package and I have no idea what happened to the original mailing and it has not yet been returned to us as having been "undeliverable". Out of an abundance of caution, I am re-sending your office what I previously sent just in case my transmittal to you also did not arrive as mailed.

If you need anything else or I otherwise may be of any assistance to you regarding this matter, please feel free to contact me at your convenience. My direct telephone number is 843.720.1725, direct telecopier is 843.414.8206, and the e-mail is sgroves@nexsenpruet.com.

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With kindest regards, I remain

Very truly yours,

NEXSEN PRUET, LLC

Stephen P. Groves, Sr.

SPGsr:spg
Enclosures
CC Hon. Daniel Shearouse, Clerk of Supreme Court
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