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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Ben N. Miller, III, Special Referee

Appellate Case No. 2024-001062
Case No. 2017-CP-40-01687

Deutsche Bank National Trust Company, as Trustee for Home
Equity Mortgage Loan Asset-Backed Trust, Series SPMD 2002-B,
Home Equity Mortgage Loan Asset-Backed Certificates, Series
SPMD 2002-B under the Pooling and Servicing agreement dated
Sept. 1, 2002 Respondent,

v.

Janet L. Nelums a/k/a Janet Nelums, Christopher Nelums, Imperial
Warehouse Finance, Inc., and Best Distributing Company, Defendants,

of which Janet L. Nelums and Christopher Nelums are the Appellants.

Respondent’s Initial Brief

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Counterstatement of the Issues on Appeal

Appellants list five issues on appeal. (App.’s Br. at 4). The first three issues rely on federal procedural law not applicable to this state-court foreclosure. The fifth issue asks, “Did DBNTC, SCOTT and CORLEY, NELSON MULLINS, Intentionally conceal, with deception, the menacing the Appellants with a screwdriver?”

Respondent respectfully submits that the proper questions presented—best it can discern from Appellants’ Corrected and Amended Opening Brief filed September 23, 2024—are:

- I. Whether this appeal is moot following the Special Referee’s issuance of a foreclosure deed, entry of a writ of assistance, and the ejectment of Appellants from the property by the Richland County Sheriff?
- II. Whether Appellants deprived the Court of jurisdiction over this appeal by failing to timely file a notice of appeal from the Order and Judgment of Foreclosure and Sale and by failing to deposit the requisite appeal bond as ordered by the Circuit Court?
- III. Whether the duly appointed special referee had jurisdiction to conduct the foreclosure sale of the property?
- IV. Whether any remaining arguments raised are preserved for review?

Statement of the Facts and Case

A. Overview

This appeal stems from a foreclosure action involving 813 N. Highland Forest Drive, Columbia, South Carolina 29203 (Tax Parcel 11916-16) (the “Property”), pending in some form since 2013. The Honorable Jeffrey M. Tzerman—a special referee appointed by the Richland County Clerk of Court after Master in Equity Joseph M. Strickland recused himself—issued his Order and Judgment of Foreclosure Sale in June 2021 (the “Foreclosure Order”). (*See* Order and J. of Foreclosure, Jul. 1, 2021; R. p. ____). Judge Tzerman eventually recused himself as well.

Due to repeated abuses of the state and federal judicial process by Appellants Janet L. Nelums and Christopher Nelums—including proceedings before nine judges across four state and federal courts—the Property would not be sold at foreclosure sale for more than three years after the Foreclosure Order. The Property was not auctioned until the Honorable Kristi F. Curtis issued an Order on Plaintiff’s Motion for Sanctions and Gatekeeper Order (the “Gatekeeper Order”), prohibiting Appellants from further abuses of the judicial process and ordering that the matter be referred to a new special referee. (Gatekeeper Order, Oct. 31, 2023; R. p. ____). After his appointment, Special Referee Ben N. Miller, III conducted a foreclosure sale in April 2024, where Respondents bought the Property. (Rep. on Sale, May 15, 2024; R. p. ____).

No appeal was taken from Special Referee Tzerman’s 2021 Foreclosure Order or the 2023 Gatekeeper Order. This appeal is from Special Referee Miller’s 2024 post-foreclosure Report, (Rep. on Sale, May 15, 2024; R. p. ____), and it was not accompanied by the bond set by Special Referee Tzerman, (Order on Appeal Bond, Jul. 1, 2021; R. p. ____). During this appeal, Special Referee Miller issued a Foreclosure Deed and Writ of Assistance, and Appellants were removed from the Property in October 2024. (Writ of Assistance; R. p. ____; Aff. of Service; R. p. ____).

B. The 2002 Note and Mortgage

In August 2002, Janet L. Nelums executed a \$112,000 note given to the predecessor-in-interest of Respondent Deutsche Bank National Trust Company, as Trustee (“DBNTC”). (Foreclosure Order ¶ 11; R. p. ____). Appellants then both signed a first-priority mortgage on the Property, that was recorded in the Register of Deeds. (*Id.* ¶ 12; R. p. ____). DBNTC has held the note and mortgage on the Property since April 2004. (*See* Foreclosure Order at 5–6; R. p. ____).

C. The 2013 Foreclosure Proceedings

Appellants defaulted on their mortgage, and DBNTC sued for foreclosure (Case No. 2013-CP-40-03334). (*Id.* ¶¶ 4, 10; R. p. ____). Represented by counsel, Appellants answered and counterclaimed for (1) accounting; (2) failure to provide default notice; (3) breach of contract/rescission; (4) violation of the Truth in Lending Act; (5) violation of the Real Estate Settlement and Procedures Act; (6) predatory lending; (7) predatory servicing; (8) violation of the Fair Debt Collection Practices Act; and (9) malicious prosecution. (*Id.* ¶ 5; R. p. ____). The Clerk referred the case to the Master in Equity, (Order of Reference, Feb. 18, 2014; R. p. ____), but the Master recused himself. (Order of Recusal, Nov. 13, 2014; R. p. ____). The circuit court then granted DBNTC’s motion for judgment on the pleadings brought in response to the counterclaims. (Order Granting J. on the Pleadings, July 16, 2015; R. p. ____). The case was then stricken from the active roster under Rule 40(j), SCRCF in November 2015. (Foreclosure Order ¶ 4; R. p. ____).

D. The 2017 Foreclosure and Ms. Nelums Bankruptcy

The case was restored to the roster in March 2017 and given a new case number: 2017-CP-40-01687. (Consent Order Restoring Case, March 22, 2017; R. p. ____).¹ With

¹ Given the number of proceedings filed across four courts, DBNTC filed the dockets from the different cases as a composite exhibit for the Circuit Court. (Mot. for Sanctions, Ex. 1; R. p. ____).

Appellants' consent—while they were represented by counsel—the Clerk of Court referred the case to the Honorable Jeffrey M. Tzerman, Special Referee. (*Id.*; R. p. ____).

Ms. Nelums then petitioned for relief under Chapter 13 of the Bankruptcy Code (Case No. 18-05885-jw) in November 2018, and the Court stayed the foreclosure. (Foreclosure Order ¶ 9; R. p. ____). Ms. Nelums next filed an adversary proceeding against DBNTC and its servicing agent, Specialized Loan Servicing LLC (the “Servicer”) (Case No. 19-80032-jw). (*See* Pl.s' Mot. Sanctions Ex. 4, Bankr. Order on Summ. J., March 17, 2020; R. p. ____).

After Appellants' counsel completed discovery and after a hearing, the Bankruptcy Court granted summary judgment against Ms. Nelums. (*Id.* at 1; R. p. ____). Among other arguments, the Bankruptcy Court rejected Ms. Nelums' claims that DBNTC and the Servicer (1) were not creditors under the Bankruptcy Code; (2) lacked rights of payment under Article 3 of the Uniform Commercial Code; (3) lacked standing to foreclose on the note and mortgage; (4) could not enforce the note and mortgage because of securitization; and (5) had no valid note and mortgage because servicing/pooling agreements between Respondent and the Servicer rendered them void. (*Id.* at 6–19; R. p. ____). The Bankruptcy Court ultimately rejected Ms. Nelums's pro se 112-page motion (with 353 pages of attachments) titled “Motion Fraud Upon the Court Bogus Adversary Proceeding We Demand for a Mistrial,” in a detailed 17-page order. (Pl.s' Mot. for Sanctions Exhibit 5, Order Denying Motion, May 22, 2020; R. p. ____). The Bankruptcy Court also dismissed Ms. Nelums' petition for bankruptcy. (Pl.s' Mot. Exhibit 6, Order Dismissing Bankr., April 21, 2020; R. p. ____).

Dismissal of Ms. Nelums' petition for bankruptcy and adversary proceeding caused then Special Referee Tzerman to restore the foreclosure to the active docket and issue his Foreclosure Order and Judgment in July 2021. (Foreclosure Order; R. p. ____). In the Foreclosure Order, Special Referee Tzerman rejected Appellants' claim that DBNTC lacked standing and could not

foreclose on the Property, concluding that the Bankruptcy Court already ruled on these arguments. (Foreclosure Order at 8; R. p. ___). Special Referee Tzerman then issued a \$150,000 appellate-bond order. (Order Setting Appeal Bond, July 1, 2021; R. p. ___).

E. Appellants' Other Federal Lawsuits

While this case was proceeding towards foreclosure sale, Appellants again turned to the federal courts by filing a *pro se* complaint alleging RICO claims against Bankruptcy Judge John E. Waites, Special Referee Jeffrey Tzerman, foreclosure counsel, Appellants' prior retained counsel, DBNTC, and the Servicer (Case No. 3:21-cv-2161). (Pl.s' Mot. for Sanctions Ex. 7, Report and Recommendation, Aug. 31, 2021; R. p. ___; *Id.* Ex. 8, Order Adopting R&R, Feb. 2, 2022; R. p. ___). The District Court dismissed the action and Appellants appealed (Case No. 22-1223). (*Id.*) The Fourth Circuit Affirmed the dismissal in June 2022. (Pl.s' Mot. for Sanctions, Ex. 9, Unpublished Op., June 27, 2022; R. p. ___).²

F. The 2023 Gatekeeper Order and Order of Reference

In August 2022, DBNTC gave Appellants notice of a September 7, 2022, foreclosure sale. (Not. of Sale; R. p. ___). Six days before the sale, Appellants filed a *pro se* Temporary Injunction Motion. (Gatekeeper Order at 5; R. p. ___). The 47-page motion asserted eleven causes of action attacking the foreclosure. (*Id.*) Without any evidentiary support, Appellant's motion accused DBNTC, its counsel, and the Circuit Court of wrongdoing, fraud, ethics violations, and even treason. (*Id.*) Because the allegations created the appearance of impropriety, Special Referee

² In September 2024, Appellants again turned to the federal courts, this time suing undersigned counsel (Case No. 3:24-cv-04898-MGL; R. p. ___). The District Court recently dismissed this action without issuance of any process. (*See Judgment*, Case No. 3:24-cv-04898-MGL (D.S.C. filed Nov. 13, 2024); [ECF No. 21])).

Tzerman recused himself in November 2022. (Recusal Order, Nov. 16, 2022; R. p. ____). DBNTC’s counsel also withdrew for the same reasons. (Gatekeeper Order at 5; R. p. ____).

In light of Appellants’ continued abuse of the legal process, DBNTC retained new counsel in February 2022 and sought sanctions and entry of a gatekeeper order. (See Mot. for Sanctions, Feb. 27, 2022; R. p. ____). Judge Curtis held a hearing on the motion on August 21, 2023, at which Appellants appeared and argued *pro se*; Judge Curtis granted DBNTC’s motion and issued a Gatekeeper Order. (Gatekeeper Order at 9; R. p. ____). Judge Curtis’ Gatekeeper Order found that the *Cromer*³ elements were met due to Appellants’ (1) “history of ‘vexatious, harassing, or duplicative lawsuits;’” (2) meritless accusations of fraud, ethical violations, and threats of jail time against “well-respected members of the South Carolina bar;” (3) repeated frivolous filings . . . [considered by] nine judges across four courts;” and (4) the insufficiency of mandatory sanctions to “address Appellants’ repeated abuses of the court system and waste of time their filings have caused.” (Gatekeeper Order; R. at ____). The Gatekeeper Order specifically ordered that Appellants were

PROHIBITED from filing, presenting, or serving additional documents, papers, or pleading related to the Property, [DBNTC], [the Servicer], and/or this foreclosure until the Property can be sold and the foreclosure proceedings completed unless (i) [Appellants] secure leave of the undersigned to present the document to the Clerk of Court, or (ii) the filing is signed by a member of the South Carolina Bar in good standing. This order is not meant to prohibit [Appellants] from resorting to the judicial branch to redress the claims, but is necessary to prevent additional frivolous proceedings from being initiated by [Appellants].

³ Citing *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 818 (4th Cir. 2004), when discussing the four-prong test utilized by the Fourth Circuit with determining whether a Gatekeeper Order is warranted, and identifying the following factors: “(1) the party’s history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good-faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party’s filings; and (4) the adequacy of alternative sanctions.” (See Gatekeeper Order, at 7).

(*Id.* at 9; R. p. ____).

In that same order, Judge Curtis directed DBNTC to file a motion to refer. (*Id.* at 9; R. p. ____). And further ordered the Clerk of Court to “refer this matter to another appropriate special referee for the resolution of all remaining issues and judgments necessary in this action.” (*Id.*) Judge Curtis empowered the Special Referee “to enforce, modify, or amend the terms of this gatekeeper order as he or she deems appropriate to remedy the frivolous litigation in which Defendants have engaged to date.” (*Id.* at 10; R. p. ____). After DBNTC filed its Motion to Refer, (Mot. to Refer; R. p. ____), the Clerk of Court issued its Order of Reference to Special Referee Miller, (Order of Reference, Jan. 9, 2024). The “action” was “referred with finality” to Special Referee Miller, who was empowered to “oversee the foreclosure sale of the Property and enforce the [Gatekeeper Order].” (Order of Reference; R. p. ____). The Order of Reference confirmed that Special Referee Miller would “retain jurisdiction to perform all necessary acts incident to the foreclosure sale and to the enforcement of the [Gatekeeper Order].” (*Id.*)⁴

G. The 2024 Foreclosure Sale

As detailed in Special Referee Miller’s Report on Sale, Order of Confirmation, and Order for Deficiency Judgment (the “Report”), “after due legal advertisement and publication according to law,” he conducted a judicial sale of the Property on April 1, 2024. (Report on Sale at 2, May 15, 2024; R. p. ____). At the sale, DBNTC made the highest bid of \$201,388.37. (*Id.*; R. p. ____). Special Referee Miller allowed bidding to remain open for an additional 30 days. (*Id.* at 3; R. p. ____). No further bids were made, and Appellants never challenged the sale. (*Id.*) Special Referee

⁴ In violation of the Gatekeeper Order and after being made aware of their violation by the Clerk of Court, Appellants filed three motions with the Richland County Clerk of Court. (Mot., March 24, 2024; R. p. ____).

Miller then issued his Report, finding that (1) DBNTC was the highest bidder and thus the rightful owner of the Property, (2) Appellants' pending motions "were in contravention of the" Gatekeeper Order, and (3) ordering that the foreclosure sale be confirmed. (*Id.* at 3–4; R. at __). Around the same time, Special Referee Miller issued and recorded a Special Referee's Deed of Foreclosure, transferring the Property to DBNTC. (Special Referee's Deed, May 13, 2024).

H. Appellate Proceedings and Eviction

Appellants then filed this appeal. (Not. of Appeal, June 25, 2024; R. p. ____). The Notice of Appeal states that this is an appeal from "the order [judgment] of the Honourable BEN N. MILLER III as Special Referee dated May 13, 2024. Appellant received written notice of entry of this order [judgment] on May 19, 2024." (Not. of Appeal, June 13, 2024 (alterations in original)). Attached to the Notice of Appeal is Special Referee Miller's Report, as well as 124 pages of attachments titled "WE CHALLENGED ORDER[S] AND JUDGMENT ON APPEAL." (*Id.*) These attachments include (1) U.S. Courts Form AO85, Notice, Consent, and Reference of a Civil Action to a Magistrate Judge, (2) copies of the federal lawsuit filed against Judge Curtis, Special Referee Miller, and undersigned counsel in March 2024, (3) the Gatekeeper Order, and (4) a host of other pleadings. (*Id.*)

After notifying the Court that no transcript of the proceedings at issue existed,⁵ Appellants filed an Initial Brief on September 12, 2024. Because of the form and contents of the brief, DBNTC moved to dismiss the appeal and for sanctions, which this Court denied. (Order Denying Motion to Dismiss, Oct. 23, 2024). Appellants then filed an amended initial brief that was later accepted by the Court as filed on September 23, 2024. (Order, Oct. 23, 2024; Clerk's Letter

⁵ If Appellants challenge the Foreclosure Order or Gatekeeper Order, they should have requested and purchased transcripts of those proceedings. (*See* Record of Hearing, Jul. 19, 2021; R. p. ____).

Setting Timeline, Dec. 6, 2024).⁶ Thereafter, Appellants filed their Motion for Leave to Seek Sanctions. (Mot. for Leave, Dec. 18, 2024). DBNTC opposed this motion. (Return, Jan. 9, 2025). Because Appellants failed to pay the appellate bond, the foreclosure proceeded and Special Referee entered a Writ of Assistance for Appellants' ejection from the Property. (Writ of Assistance; R. p. ____). The Richland County Sheriff served the Writ on Appellants at the Property on September 23, 2024. (Affidavit of Service, Oct. 21, 2024; R. ____). When the Sheriff returned to complete the ejection of Appellants on October 10, 2024, the Property was "unoccupied." (*Id.*)

⁶ It is this "Corrected Amended Opening Brief" to which DBNTC responds.

Standard of Review

“A mortgage foreclosure is an action in equity. In actions in equity referred to a Special Referee with finality, the appellate court may view the evidence to determine the facts in accordance with its own view of the preponderance of the evidence, though it is not required to disregard the findings of the Special Referee.” *Buffalo Creek Invs., Inc. v. Pettus*, 440 S.C. 111, 118-19, 889 S.E.2d 608, 611–12 (Ct. App. 2023) (quotations and citations omitted). Whether to set aside a judicial sale is a matter left to the special referee’s sound discretion. *Id.* at 119, 889 S.E.2d 612. When evaluating the facts and conclusions of law relied on by a special referee, appellate courts will only find an abuse of discretion if the factual findings and legal conclusions of the special referee are controlled by an error of law or wholly unsupported by the evidence. *Id.*

Questions about a court’s subject-matter jurisdiction are questions of law that are reviewed *de novo*. See *Deborah Dereede Living Tr. dated Dec. 18, 2013 v. Karp*, 427 S.C. 336, 346, 831 S.E.2d 435, 441 (Ct. App. 2019) (“Whether a court has subject matter jurisdiction is a question of law [appellate courts] review *de novo*.”). Questions about the propriety of sanctions entered by the circuit court are reviewed for an abuse of discretion. See *Pee Dee Health Care, P.A. v. Est. of Thompson*, 424 S.C. 520, 537, 818 S.E.2d 758, 767 (2018) (“We review the decision [of sanctions] for abuse of discretion.”) (citing *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008)).

Argument

This appeal lacks merit for four main reasons: (1) Because Appellants have not occupied the Property since October 2024, remanding this case to the circuit court for reconsideration of the foreclosure will have no practical effect, rendering this case moot and there being no justiciable controversy for this Court to hear; (2) Appellants failed to timely appeal the Foreclosure Order, and improperly proceeded in this appeal absent depositing the ordered appeal bond with the Court, depriving the Court of jurisdiction and mandating affirmance of the orders below as law of the case; (3) Any challenge Appellants could have made to the authority of Special Referee Miller are waived due to their consent to the proceedings and the statutory grant of subject matter jurisdiction over foreclosure actions to the circuit court, with allowable references to a special referee; and (4) Appellants failed to preserve their arguments for review.

I. In light of the Foreclosure Deed, Writ of Assistance, and Appellants’ eviction from the Property, this appeal is moot and relief from this Court would have no practical effect.

“A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.” *Bristol v. Lipnevicius*, 444 S.C. 373, 384, 906 S.E.2d 618, 624 (Ct. App. 2024). Special Referee Miller’s Foreclosure Deed, the Writ of Assistance, and the eviction of Appellants render this appeal moot.

The Order of Reference issued pursuant to Judge Curtis’s directive in the Gatekeeper Order referred the action “with finality” to Special Referee Miller, who was authorized to “perform all necessary acts incident to the foreclosure sale[.]” (Order of Reference, R. p. ____). Consistent with that authority, Special Referee Miller sold the Property at foreclosure and declared DBNTC to be the rightful owner. (Report at 2–3; R. p. ____). Evidencing this transfer to DBNTC, Special Referee

Miller recorded the Foreclosure Deed. (Foreclosure Deed; R. p. ____). DBNTC then petitioned for a Rule to Show Cause, which Special Referee Miller issued, before entering his Writ of Assistance on September 11, 2024. (Rule to Show Cause; R. p. ____). The Richland County Sheriff personally served Appellants at the Property on September 23, 2024. (Affidavit of Service; R. p. ____). When deputies returned on October 10, 2024, they noted the Property was vacant and placed DBNTC into possession of the Property as required by the Writ. (*Id.*)

Because Appellants failed to pay the appeal bond into the circuit court or otherwise secure a stay of the foreclosure proceeding, nothing prevented Special Referee Miller from issuing the Foreclosure Deed, the Rule to Show Cause, and the Writ of Assistance to secure possession of the Property. (Foreclosure Deed; R. p. __; Rule to Show Cause, Aug. 20, 2024; R. p. ____; Writ of Assistance; R. p. ____). For the same reason, the Notice of Appeal did not deprive Special Referee Miller of jurisdiction to evict Appellants. *See* Rule 241(b)(4), SCACR (exempting judgments directing the sale or delivery of possession of real property from an automatic stay pending appeal). Thus, the relief sought by Appellants, which appears to be remand so they can recover possession of the Property, would have no legal ramifications or practical effect.

A court of competent jurisdiction has already ordered Appellants' removal from the Property. Because those proceedings were unaffected by the Notice of Appeal, this Court lacks the ability to provide Appellants any meaningful relief. *Bristol*, 444 S.C. at 384, 906 S.E.2d at 624. ("A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical[,] or abstract character."). Therefore, this appeal was not only untimely filed, but no longer presents a justiciable controversy. *Jowers v. S.C. Dep't of Health & Env't Control*, 423 S.C. 343, 353, 815

S.E.2d 446, 451 (2018) (“This Court will not . . . make an adjudication where there remains no actual controversy.”). The Court should dismiss the appeal or otherwise affirm the foreclosure.

II. Appellants deprived the Court jurisdiction over this appeal by failing to timely file a notice of appeal from the Foreclosure Order and by failing to deposit the requisite appeal bond.

A. This appeal is untimely, so the Foreclosure Order and Gatekeeper Order are law of the case.

Under the South Carolina Appellate Court Rules, a “notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.” Rule, 203(b)(1), SCACR; *Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC*, 422 S.C. 211, 214, 810 S.E.2d 856, 857–58 (2018) (finding a notice of appeal filed thirty-one days after an email notification of the entry of judgment was untimely). The thirty-day timeline is jurisdictional and “if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (quoting *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004)). “A judicial sale should not be set aside except for cogent reasons. The purpose of the law and of the proceedings in which a sale has been decreed is that it shall be final.” *E. Sav. Bank, FSB v. Sanders*, 373 S.C. 349, 355, 644 S.E.2d 802, 805 (Ct. App. 2007).

DBNTC has been seeking finality in this foreclosure for over a decade. The Foreclosure Order was entered on July 1, 2021, and notice was mailed to Appellants the next day. (Foreclosure Order; R. p. ____). Under South Carolina law, the June 2021 Foreclosure Order was the final order from which Appellants should have appealed. S.C. Code Ann. § 29-3-650 (“The court may also render judgment against the parties liable for the payment of the debt secured by the mortgage and direct at the same time the sale of the mortgaged premises. Such judgment so rendered may be

entered and docketed in the clerk's office in the same manner as other judgments.”). Indeed, Mr. Nelums advised the Special Referee of his intent to appeal the Foreclosure Order at a hearing on the matter on June 4, 2021, and was the underlying reason that the Special Referee entered the Appeal Bond Order. (*See* Or. Setting Appeal Bond; R. p. __ (“[T]he Defendant Christopher Nelums stated his intention to appeal the . . . Order and Judgment of Foreclosure and Sale. Therefore, this order is for the purpose of setting an appeal bond should the Appellants seek to stay the foreclosure sale during the pendency of any appeal.”)).

Appellants, however, did not file their appeal until 2024—almost three years after the Foreclosure Order and the Order Setting the Appeal Bond. Accordingly, the time to file a notice of appeal under the South Carolina Appellate Court Rules has long since expired. Rules 203(b) and 263(1), SCACR. Because “[a]ll that is required to trigger the time to appeal is that the parties receive such notice[,]” notice of the judgement against Appellants in the foreclosure was effective at the time of mailing. *See Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC*, 422 S.C. 211, 215–16, 810 S.E.2d 856, 858 (2018) (determining an email from the court noticing the party of the order of judgment was sufficient to trigger the thirty-day timeframe to file the notice of appeal); Rule 5(b)(1), SCRCR (“Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.”). Moreover, a host of other written filings were served on Appellants, including detailed references to the Foreclosure Order, which confirms Appellants had actual written notice of entry of the Foreclosure Order long before this appeal. (*See, e.g.,* Mot. for Sanctions; R. p. __).

But even if the Report on Sale, and not the Foreclosure Order, was the court filing from which the deadline to appeal was properly calculated, Appellants seek no meaningful relief from an error in that Report. Given that Appellants have failed to challenge the Foreclosure Order, it is

now law of the case. *Daufuskie Island Util. Co., Inc. v. S.C. Off. of Regul. Staff*, 440 S.C. 523, 531, 892 S.E.2d 302, 306 (2023) (“An unappealed ruling is the law of the case and requires affirmance.”); accord *Innovative Waste Mngmt. Inc. v. Crest Energy Partners GP, LLC et al.*, Op. No. 28251 (S.C. Sup. Ct. filed Jan. 15, 2025). Appellants’ failure to challenge the Foreclosure Order then governed all subsequent court proceedings related to that order including Appellants’ eviction. See *Buffalo Creek Invs., Inc. v. Pettus*, 440 S.C. 111, 119, 889 S.E.2d 608, 612 (Ct. App. 2023) (“[A] party may not seek relief from an order not appealed because the order has become the law of the case”) (quotation omitted)). Appellants cannot backdoor an appeal from the foreclosure by merely challenging the math included in Special Referee Miller’s Report.

Accordingly, the Court should dismiss this appeal or affirm the orders below.

B. Appellants failed to deposit the appeal bond previously ordered by Special Referee Tzerman, which they also failed to challenge.

Under South Carolina law, execution of the judgment for the sale of real property “shall not be stayed” unless an adequate bond is rendered on behalf of the appellant. S.C. Code Ann. § 18-9-170. Here, Special Referee Tzerman ordered that if Appellants sought to appeal the Foreclosure Order, a bond amounting \$150,000.00 was required. (Bond Order at 1; R. p. __) (“After careful consideration of the factors set forth in the statute, the Court finds the Defendant(s) shall post an appeal bond of not less than One Hundred Fifty Thousand and 11/100ths (\$150,000.00) Dollars to stay the foreclosure sale”). For three years, Appellants have not once attempted to pay this bond into the Court and instead have refused to follow direct court orders. Rather than comply with court requirements, they have jammed the judicial process with frivolous motions and wholly unsound allegations of ethical misconduct, lobbed at multiple officers of the court and members of the bar. Because their Notice of Appeal was not properly filed with the accompanying appeal bond, as ordered by Special Referee Tzerman in 2021, this Court should

disregard Appellants' attempts to manipulate the judicial process any further and should affirm the Foreclosure Order and all subsequent proceedings.

III. The sale of the Property was properly conducted under South Carolina law and Special Referee Miller had subject matter jurisdiction.

Under South Carolina law, subject matter jurisdiction of a mortgage foreclosure lies with the Court of Common Pleas in the county where the affected real property is located regardless of the residence of the defendant. *Meaders Bros. v. Skelton*, 234 S.C. 134, 136, 107 S.E.2d 1, 2 (1959) (finding that a foreclosure action related to a property located within Greenville County was properly initiated in the Court of Common Pleas of Greenville County). The circuit court is then statutorily authorized to transfer foreclosure actions to a master in equity or a special referee. S.C. Code Ann. § 15-39-635 (“In the counties which do not have a master-in-equity, judicial sales of real property which a master has authority to perform may be performed by a referee in those matters referred to him by the presiding judge of the court of common pleas, or by a referee appointed by the presiding judge for this purpose.”). “Actions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53.” Rule 71(a), SCRCP. “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 or special referee by order of a circuit judge or the clerk of court.” Rule 53(b), SCRCP (emphasis added). In an action of equity, no right to a trial by jury exists. *Collier v. Green*, 244 S.C. 367, 374, 137 S.E.2d 277, 281 (1964) (“This being an action in equity, the parties were not entitled to a trial by jury as a matter of right.”).

The facts and procedural history of this case are painstakingly set out in the un-appealed Gatekeeper Order. (Gatekeeper Order at ____; R. p. ____). Special Referee Tzerman also recounted the history of these proceedings in his un-appealed Foreclosure Order. (Foreclosure Order at ____;

R. p. ____). That history confirms that DBNTC properly initiated the foreclosure of the Property in 2013 by the filing of the Summons and Complaint in the Richland County Court of Common Pleas, and Appellants were properly served. (Foreclosure Order at __; R. p. ____). After Appellants responded and some brief motions practice, the case was referred to Richland County Master in Equity, Joseph M. Strickland under Rule 53. (Or. of Ref., Feb. 10, 2014; R. p. ____). After Judge Strickland recused himself and the case was restored to the active docket in 2017, Appellants—still represented by counsel—*consented* to refer this case to a special referee even though consent of the parties is not required to refer a foreclosure matter. (Consent Order to Restore and of Reference Case, Mar. 22, 2017; R. p. ____). Thus, contrary to their arguments now, Appellants agreed that this case should be referred to a master or special referee under Rule 53, SCRCP. They cannot now claim prejudice from that which they agreed to while represented by counsel.

Regardless, authority to hear the foreclosure action again vested again with the circuit court after Special Referee Tzerman recused himself due to Appellants’ baseless ethical allegations. (Order of Recusal, Nov. 16, 2022; R. p. ____). Properly vested with authority to hear DBNTC’s Motion for Sanctions, Judge Curtis entered the Gatekeeper Order and directed the Clerk of Court to refer this case to a special referee. (Gatekeeper Order at 9; R. p. ____). Special Referee Miller then was referred the case “with finality” by the Order of Reference, as authorized by the circuit court and Rule 53, SCRCP.

Appellants’ claims that they have been prejudiced by referral of this case to the Master and Special Referee misapply federal law related to Magistrate Judges. *See* 28 U.S.C. § 636 (“Jurisdiction, powers, and temporary assignment”). By its own terms, this statute applies only to “United States magistrate judge[s],” a term defined by 28 U.S.C. § 639(6). By contrast, the authority and powers of masters and special referees are set forth in state law and Rule 53 of the

South Carolina Rules of Civil Procedure; though the rule tracks the federal rule “as to form [it] is considerably modified to conform to State practice and needs.” Rule 53 Note, SCRCPP. Here, Appellants are inappropriately trying to apply federal procedure related to U.S. Magistrates that has no bearing on this state court action for foreclosure. Section 636 does not apply and has no bearing on the application of Rule 53, SCRCPP. But even if it did, the record confirms Appellants consented to refer the case with the benefit of counsel thereby acknowledging the authority of the master or special referee to hear this case. (Consent Order to Restore and of Reference; R. p. ____).

Nevertheless, Appellants have long since waived this argument. They appeared and participated in this case before the Master and Special Referee Tzerman without objection. Thus, they have waived any objection that they may have had to the reference of this case, especially following entry of the un-appealed Foreclosure Order and the un-appealed Gatekeeper Order. *Cf. Triangle Auto Spring Co. v. Gromlovitz*, 270 S.C. 386, 391, 242 S.E.2d 430, 432 (1978) (“Having disposed of the respondents’ contentions as to subject matter jurisdiction, and respondents having waived jurisdiction over the person, it follows that the present judgment was properly enrolled[.]”). Therefore, the Court should affirm the Foreclosure Order and all related, subsequent proceedings.

IV. Any other issues are not preserved for review.

Appellants have filed no motions to reconsider the Foreclosure Order, Gatekeeper Order, Report of Sale, or Writ of Assistance. Even dating back to the 2013 Foreclosure Action and the circuit court’s July 16, 2015, Order Granting DBNTC judgment on the pleadings, Appellants have failed to seek relief under Rule 59 or 60, SCRCPP, or to raise specific objections to the procedural and substantive issues they allege here. Apart from Appellants’ meritless jurisdictional challenge, any remaining arguments they raise have not been considered by tribunals of first impression and are not preserved for consideration by this Court on appeal. *See Doe v. Roe*, 369 S.C. 351, 375–

76, 631 S.E.2d 317, 330 (Ct. App. 2006).⁷ Therefore, the Court should affirm the Foreclosure Order and all subsequent orders related to the Property.

Conclusion

For the foregoing reasons, the Court should dismiss this appeal or affirm the lower court.

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Columbia, South Carolina
January 17, 2025

⁷ This includes Appellants' frivolous assertion that someone "intentionally conceal[ed], with deception, the menacing of [sic] Appellants with a screwdriver." (Appellant's Br. at 4).