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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

William C. Tindal, Special Referee

Appellate Case No. 2025-002111

BOKF, N.A.,

Respondent,

v.

Joshua Ovalle,

Appellant,

RESPONDENT'S RETURN TO APPELLANT'S FILING TITLED EMERGENCY PETITION
IN EQUITY FOR STAY AND/OR INJUNCTION OF PROPERTY PENDING APPEAL

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(803) 454-3540
Attorney for Respondent

NOW COMES Respondent, BOKF, N.A. (“Respondent” or “BOKF”), by and through its undersigned attorney, and pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, hereby submits its Return to the November 1, 2025 filing of Joshua Ovalle (“Appellant” or “Ovalle”) titled “Emergency Petition in Equity for Stay and/or Injunction of Property Pending Appeal”, averring as follows:

BRIEF PROCEDURAL HISTORY

This matter is an action to foreclose a mortgage on real property in Lancaster County, South Carolina. Appellant initiated his appeal on October 13, 2025.

On or about December 29, 2020, Appellant was loaned the sum of \$261,250.00 by Thrive Mortgage, LLC, which is evidenced by a promissory note (“Note”) secured by a mortgage on real property owned by Appellant commonly known as 8866 Ross Hill Road, Fort Mill, SC 29707 (“Mortgage”). The Note and Mortgage were signed by Appellant on December 29, 2020 (the Note and Mortgage shall hereinafter be referred to collectively as the “Loan”). The Mortgage was recorded in the Lancaster County Registry on December 30, 2020, in Book 4248 at Page 253.

The Note and Mortgage were subsequently transferred to Respondent. The installments of principal and interest falling due from and after September 1, 2024, have not been paid, thereby placing Appellant in default under the terms of the Loan. As a result of Appellant’s default, Respondent filed the subject foreclosure action on June 23, 2025.

Respondent was personally served with the foreclosure Summons and Complaint on June 30, 2025. This action was referred to William C. Tindal, as Special Referee for Lancaster County on July 8, 2025. On July 28, 2025, Appellant filed a document titled “Plea in Abatement, Notice of Liability and Praecipe” which can only be described as a sovereign citizen filing. This filing

did not constitute an answer or other legally cognizable pleading responsive to the Complaint. As a result, counsel for Respondent filed an Affidavit of Default on August 13, 2025.

A foreclosure hearing was held on September 2, 2025, attended by Appellant and counsel for Respondent. On September 17, 2025, the Special Referee entered an order awarding Respondent judgment of foreclosure and setting a judicial sale for November 3, 2025. This appeal followed.

ARGUMENT AND CITATION OF AUTHORITY

Appellant's request for a stay of the foreclosure sale is improperly before the Court of Appeals. Pursuant to Rule 241(b)(4) SCACR, the Special Referee's order directing the sale of the subject property is not automatically stayed by Appellant's filing of his appeal. Pursuant to Rule 241(d)(1) SCACR, "[e]xcept where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal". Appellant's filing asserts no extraordinary circumstances but rather gives a confusing recitation of equitable principals without context as to how they apply to this action. The filing asserts, without any factual or legal support, that seeking a stay from the Special Referee would be impractical and that the sale would moot the appeal. Both assertions are without merit. There exist no extraordinary circumstances which would have prevented the Special Referee from considering Appellant's request for a stay before conducting the scheduled November 3, 2025 foreclosure sale had Appellant timely sought such relief. Despite being served with the foreclosure order and notice of the pending foreclosure sale on September 22, 2025, Appellant waited until November 1, 2025, the Saturday before the scheduled foreclosure sale, to seek a stay of the sale from the Court of

Appeals. Therefore, Appellant's request is also untimely in addition to being improperly before the Court of Appeals.

Even if Appellant had timely requested a stay from the Special Referee, Appellant would be required to post a bond as required by the applicable statute. SC Code §18-9-170, outlines the parameters for setting and obtaining a bond:

If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaking. When the judgment directs the sale of land to satisfy a mortgage thereon or other lien, the undertaking shall provide that in case the judgment appealed from be affirmed and the land be finally sold for less than the judgment debt and costs then the appellant shall pay for any waste committed or suffered to be committed on the land and shall pay a reasonable rental value for the use and occupation of the land from the time of the execution of the undertaking to the time of the sale, but not exceeding the amount of such deficiency, which sum shall be duly entered as a payment on the judgment; and in case the land shall be unimproved land, then in any action or proceedings now pending or hereafter begun in any of the courts of this State the undertaking shall further provide for the payment by appellant, if the judgment be affirmed, of any taxes due at the time of the appeal or already paid by the mortgagee, or becoming due during the pendency of the appeal, and also for the payment by appellant of the interest on the debt falling due during the pendency of such appeal.

Appellant's filing does not address the posting of a statutorily required bond to impose a stay on the foreclosure sale. The Special Referee established the debt due and owing to Respondent as \$247,499.47 based upon Appellant's default on his mortgage loan dating back to September 1, 2024. It would be fundamentally unfair to Respondent, and in direct opposition to the clear and unambiguous statutory requirement, to stay the pending foreclosure sale without requiring Appellant to post a bond. Since Appellant has not asked the Special Referee to set a

bond, and since there are no extraordinary circumstances that would have prevented the Special Referee from setting a bond and requiring Appellant to post a bond, Appellant's motion to stay should be denied.

CONCLUSION

Appellant's motion to stay is untimely and improperly before the Court of Appeals and should therefore be denied. Had Appellant timely made such a request, the Special Referee could have set a bond and the sale stayed upon Appellant posting the bond secured by two sureties in compliance with SC Code §18-9-170. Based on the foregoing, Respondent respectfully requests that Appellant's request for a stay be denied, and requests such other relief this Court deems just and proper.

Respectfully submitted,

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Attorney for Respondent BOKF, N.A.

Dated: November 3, 2025

CERTIFICATE OF SERVICE

The undersigned certifies that, on November 3, 2025, the Respondent's Return to Appellant's Filing Titled Emergency Petition in Equity for Stay and/or Injunction of Property Pending Appeal was served on the below-listed parties by depositing a copy thereof in the United States Mail, first Class, postage prepaid, addressed to:

Joshua Ovalle
8866 Ross Hill Road
Fort Mill, SC 29707

Served By:

s/Chad W. Burgess
Chad W. Burgess, Esq.
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3800 Fernandina Road, Suite 110
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Chad.Burgess@BrockandScott.com
Attorney for Respondent BOKF, N.A.

Date: November 3, 2025

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