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SC Court of Appeals

Case No. 2025-001632

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Court of Common Pleas

First Judicial Circuit

James Chellis, Master In Equity (BY ORDER OF REFERENCE)

Trial Court Case No. 2023-CP-18-00658

Cornerstone Ventures International, LLC Respondent,

v.

Alvin E. Burch, Sr. Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Whether the circuit court erred in denying Appellant's Rule 60(b)(4), SCRCP, motion to vacate a confession of judgment that was void *ab initio* for failure to comply with the statutory requirements of S.C. Code Ann. § 15-35-360.
2. Whether the circuit court erred in denying Appellant's Rule 60(b)(4), SCRCP, motion where the Order of Reference was entered without jurisdictional basis in violation of Rule 53(b), SCRCP, thereby rendering all subsequent proceedings before the Master-in-Equity void.
3. Whether the circuit court erred in denying relief where the purported confession of judgment was founded upon a disputed settlement agreement introduced into the record for the first time at the Rule 60(b)(4) hearing, which Appellant unequivocally denied authorizing or executing.
4. Whether the circuit court erred in denying Appellant's Rule 60(b)(4), SCRCP, motion where the confession of judgment was obtained through the unauthorized participation of an attorney who was not Appellant's counsel of record, exceeded the scope of his engagement, and worked in concert with opposing counsel to use the instrument as leverage in an unrelated real-estate transaction.

5. Whether the circuit court erred in denying relief where the writ of execution—issued during the ten-day automatic stay period mandated by Rule 62(a), SCRCP—was void ab initio, thereby depriving the court of jurisdiction to enforce the judgment or conduct subsequent supplemental proceedings.

STATEMENT OF THE CASE

This appeal arises from the denial of Appellant's motion for relief from judgment under Rule 60(b)(4), SCRCP. Respondent filed a Summons and Complaint on April 26, 2023 in the Court of Common Pleas for Dorchester County, seeking monetary relief of approximately $100,000. (R. pp. 15-18). Appellant filed an Answer on June 5, 2023. (R. pp. 19-23).

On October 2, 2023, a document styled "Confession of Judgment" was filed, and judgment was entered in the amount of $100,000, less prior partial payments. (R. pp. 1-2). A Transcript of Judgment was recorded on October 26, 2023. (R. pp. 3-4). On October 5, 2023, the clerk issued a Writ of Execution; the Sheriff returned nulla bona on November 3, 2023. (R. pp. 188-190).

On December 28, 2023, the circuit court entered an Order of Reference to the Master-in-Equity. On April 3, 2025, a Supplemental Order of Reference issued. (R. pp. 7-9). On April 8, 2024, an Order and Rule to Show Cause initiated supplemental proceedings. .

Appellant moved on May 19, 2025 for relief from judgment under Rule 60(b)(4). (R. pp. 26-47) and an evidentiary hearing was set for June 3, 2025. At the June 3, 2025 hearing, Respondent produced a document styled "Settlement Agreement." (R. pp. 185-187). Appellant's motion for subpoena duces tecum and in-camera review of the original document was denied by order dated July 9, 2025. (R. pp. 9-11).

By order dated July 28, 2025, the court denied Rule 60(b)(4) relief. (R. pp. 12-14). This appeal followed. The amount in controversy is approximately $98,000. Appellant filed a notice of appeal on August 1, 2025.

STANDARD OF REVIEW

A motion brought under Rule 60(b)(4), SCRCP, challenges the validity of a judgment alleged to be void *ab initio.* Questions of voidness present pure issues of law and are reviewed *de novo,* without deference to the trial court's conclusions. *Floyd v. Floyd,* 365 S.C. 56, 60, 615 S.E.2d 465, 467 (Ct. App. 2005); *BB&T v. Taylor,* 369 S.C. 548, 554, 633 S.E.2d 501, 504 (2006).

A judgment is void when the issuing court lacked jurisdiction or lawful authority to render it, or when it was obtained in violation of fundamental due process. *Huggins v. Huggins,* 280 S.C. 306, 308, 312 S.E.2d 554, 555 (Ct. App. 1984) ("A void judgment is a complete nullity and may be vacated at any time."). Once voidness appears on the face of the record, the trial court has no discretion to refuse vacatur. *Allison v. Greenville Cnty.,* 301 S.C. 455, 457, 392 S.E.2d 474, 476 (Ct. App. 1990).

Rule 60(b)(4) relief is therefore limited to cases where the judgment is void for lack of jurisdiction or for a fundamental due process violation. *Coon v. Coon,* 364 S.C. 563, 568–69, 614 S.E.2d 616, 619 (2005). As the Supreme Court explained, a judgment is void only when the court lacked "the power to hear and determine

cases of the general class to which the proceedings in question belong." *Id.* (quoting *Dove v. Gold Kist, Inc.,* 314 S.C. 235, 237–38, 442 S.E.2d 598, 600 (1994)).

Under these settled principles, once the record demonstrates jurisdictional or constitutional invalidity, the reviewing court must reverse; the trial court possesses no discretion to leave a void judgment standing. Because voidness presents a pure question of law, review is plenary.

ARGUMENT

This appeal presents five interrelated errors of law arising from the denial of Appellant's motion under Rule 60(b)(4), SCRCP, to vacate a void confession of judgment. Each issue presents a pure question of law reviewed *de novo*, because a void judgment is a legal nullity that a trial court has no discretion to leave standing. *Coon v. Coon*, 357 S.C. 200, 592 S.E.2d 743 (Ct. App. 2003). The following sections address, in sequence, the five principal errors of law identified in the Statement of Issues on Appeal.

I. The confession of judgment is void ab initio because it failed to comply with the mandatory statutory prerequisites of S.C. Code Ann. § 15-35-360.

Section 15-35-360 requires that a confession of judgment (1) be in writing, (2) be signed *and verified by the defendant*, and (3) concisely state the facts out of which the debt arose and show that the sum confessed is "justly due." These safeguards are jurisdictional, not procedural. When any element is missing, the resulting judgment is *void, not voidable*. *BB&T v. Taylor*, 369 S.C. 548, 633 S.E.2d 501 (2006).

The document styled "Confession of Judgment" was never verified by oath and contained no sworn statement showing that the sum confessed was "justly due". Under Rule 11(c), SCRCP, a document is "verified" only when the signer swears or affirms to the truth of its contents before an officer authorized to administer oaths and that officer certifies the act by jurat. *McKenzie v. McKenzie*, 332 S.C. 542, 548, 505 S.E.2d 408 (Ct. App. 1998). Rule 11(a) exempts ordinary pleadings from verification "except when otherwise specifically provided by rule or statute," and § 15-35-360 is precisely such a statute. The absence of any jurat, seal, or officer's acknowledgment on the face of the paper demonstrates that no oath was administered; thus, the statutory requirement of verification was unsatisfied. (R. pp. 1-2). These are not minor irregularities but jurisdictional defects that rendered the judgment void ab initio.

II. The Order of Reference was entered without jurisdictional basis under Rule 53(b), SCRCP.

In addition to the statutory defects in the confession itself, the Order of Reference delegating adjudicatory authority to the Master-in-Equity was issued without jurisdictional foundation. Rule 53(b) permits reference only by consent of the parties, in an equitable matter, or upon default. Here, Appellant had filed an Answer—curing any default—and the case was purely legal, not equitable. The

record contains no written consent or stipulation. (R. pp. 19-23). Accordingly, the December 28, 2023 Order of Reference exceeded the circuit court's authority and rendered all subsequent proceedings before the Master-in-Equity void. *Hensel Phelps Constr. Co. v. S.C. Nat'l Bank*, 308 S.C. 529, 419 S.E.2d 701 (Ct. App. 1992); *Bank of N.Y. Mellon Tr. Co. v. BB&T*, 422 S.C. 584, 813 S.E.2d 764 (2018). At the Rule 60(b)(4) hearing, Judge Chellis observed: "What I don't understand is how you filed an affidavit of default when he filed over his answer. How did that happen?" (Tr. p. 32, ll. 14–16). This remark confirms that Appellant's Answer was already on file when the affidavit of default was submitted, eliminating any lawful basis to treat the case as a default. Because Rule 53(b) authorizes reference only by consent, in equitable matters, or upon default, the Order of Reference was entered without jurisdictional foundation and all proceedings before the Master-in-Equity were *ultra vires* and void. (R. pp. 5-6). Referral without consent, equity, or default was void, not merely erroneous.

III. The purported "settlement agreement" introduced as the factual basis for the confession of judgment was never executed, verified, or authenticated, and its use as jurisdictional proof violated statute and due process.

The document styled "Settlement Agreement" that Respondent offered as the foundation for the confession of judgment was not part of the record when

judgment was entered and did not exist in any authenticated form at that time. A copy surfaced for the first time nearly two years later, at the June 3, 2025 Rule 60(b)(4) hearing. The document was undated, bore no jurat or notarization, and no original was produced for examination. (R. pp. 185-187).

Appellant unequivocally testified that he had never seen or signed the purported agreement, and that his prior affidavit described a two-page confession of judgment—not a multi-page settlement document. (R. pp. 1-2). Thus, the "Settlement Agreement" was not contemporaneously executed with any valid instrument and could not lawfully serve as the factual basis for a Judgment required under S.C. Code Ann. § 15-35-360. That statute mandates a *verified statement* establishing that the debt confessed is "justly due." A confession predicated upon an unexecuted, unsworn, or fabricated instrument fails that requirement and is void for want of jurisdiction. See *Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n, 294 S.C. 9, 12, 362 S.E.2d 176, 178 (1987) (*holding that an agency's reliance on an unsworn or defective record renders its order void for want of lawful evidentiary basis); *BB&T v. Taylor*, 369 S.C. 548, 633 S.E.2d 501 (2006).

At the hearing, the presiding judge recognized this evidentiary void: "I don't see an original. That's a legitimate issue.… Mr. Hershon, do you have the original?"

(Hr'g Tr. 43:8–11). Counsel replied that the original was "in my office, I presume," but produced no evidence. Moments later, the court remarked that it would rely on *email correspondence between counsel* to infer execution: (Hr'g Tr. 56:14–21). Unsworn representations of counsel, however, are not evidence and cannot supply the statutory verification necessary to sustain jurisdiction. See *Coon v. Coon*, 364 S.C. 563, 569, 614 S.E.2d 616 (2005).

By accepting the existence and validity of an unverified, unexecuted, and unauthenticated instrument—and by refusing to compel production of the original after Appellant's subpoena motion—the circuit court effectively deprived Appellant of due process. The resulting judgment rests on no competent evidence and violates the constitutional guarantees of notice and fair opportunity to contest the asserted debt. See *S.C. Const.* art. I, § 3; *U.S. Const.* amend. XIV.

Because jurisdiction under § 15-35-360 depends upon a verified and voluntary statement of indebtedness, a judgment founded upon an unsworn and disputed instrument is void *ab initio*. The trial court therefore erred as a matter of law in denying relief under Rule 60(b)(4), SCRCP.

IV. A confession executed by an unauthorized attorney and used as leverage in an unrelated transaction is void ab initio.

At the same hearing, Judge Chellis noted: "I'm a little confused, Mr. Hershon, because he does not appear of record in this case. Mr. Burch filed an answer to the complaint. I don't see where Mr. Closser has ever been recognized as counsel in this particular matter for Mr. Burch." (Hr'g Tr. 30–33).

The court further confirmed that Appellant's Answer was signed personally on June 5, 2023, demonstrating that the pleading was filed pro se. (Id.) Because § 15-35-360 contemplates a confession executed personally and voluntarily by the debtor, a judgment entered on a paper signed through an unauthorized agent lacks consent and is void ab initio. *Huggins v. Huggins*, 280 S.C. 306, 312 S.E.2d 554 (Ct. App. 1984).

The record shows that attorney Zachary Closser was retained only to negotiate an unrelated LLC dispute and had no authority to represent Appellant in this case or to execute any confession of judgment. Nevertheless, Closser worked with Plaintiff's counsel Lawrence Hershon—who simultaneously represented Appellant's former business partner—to hold the confession "in escrow" as leverage for payment from a separate real-estate transaction. A confession so procured is inherently non-

voluntary and cannot confer jurisdiction. See Floyd v. Floyd, 365 S.C. 56, 615 S.E.2d 465 (Ct. App. 2005) (de novo review of void judgments). Once the court recognized that Closser was not Appellant's attorney of record and that the confession originated from a collateral transaction orchestrated by opposing counsel, it had no discretion to leave the judgment standing. Huggins, 280 S.C. at 308. By denying relief, the court validated an instrument executed without authority and contrary to statute—reversible error requiring vacatur. § 15-35-360 contemplates a personal, sworn confession by the debtor; agency without authority cannot supply consent.

V. The writ of execution was issued during the ten-day automatic stay of Rule 62(a), SCRCP, and is therefore void ab initio.

Rule 62(a) provides that "no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ten days after its entry." The judgment was entered on October 2, 2023, and the writ of execution issued three days later. (R. pp. 188-190). During the ten-day stay, the court and its officers were divested of enforcement authority. A writ issued in contravention of Rule 62(a) is *ultra vires* and void from inception; every derivative enforcement action—such as the sheriff's return and supplemental proceedings—is likewise

void. *Floyd v. Floyd*, 365 S.C. 56, 615 S.E.2d 465 (Ct. App. 2005). During the June 3rd evidentiary hearing, Judge Chellis acknowledges this defect: "And my question is whether or not that affects the issuance of the petition for supplemental proceedings, whether that defect -- it's kind of a -- it's akin, but not like. It's similar to a question of whether that failure of the execution to be properly issued would affect the legitimacy of the petition for the rule to show cause, which is why we are here to begin with". (Hr'g Tr. 79-80).

Because Rule 62(a) temporarily divests the court of enforcement power, any execution issued during that period is jurisdictionally void.

Taken together, these errors demonstrate that the judgment below was entered and enforced without lawful authority. Each defect independently renders the judgment and writ void *ab initio*; collectively, they reflect a fundamental departure from the procedural and statutory safeguards governing confessions of judgment in South Carolina. Because these defects are jurisdictional rather than discretionary, this Court should reverse the denial order, vacate the confession of judgment and writ of execution, and declare all derivative enforcement actions null and void.

CONCLUSION

Even if viewed separately, each of the errors identified herein renders the judgment and its enforcement void *ab initio*. Considered together, they expose a deeper constitutional defect: the proceedings departed so far from statutory and due-process requirements that they ceased to operate within the bounds of law. See S.C. Const. art. I, § 3; U.S. Const. amend. XIV.

The record demonstrates a convergence of jurisdictional and procedural violations that deprived Appellant of the fair and impartial process guaranteed by both the United States and South Carolina Constitutions. The judgment was entered on an unsworn and facially defective confession of judgment that failed to satisfy the mandatory prerequisites of S.C. Code Ann. § 15-35-360. It was adjudicated under a defective *Order of Reference* issued without consent, equity basis, or default—contrary to Rule 53(b), SCRCP—thereby stripping the Master-in-Equity of jurisdiction and rendering all subsequent proceedings *ultra vires*. The judgment further rested upon a disputed "settlement agreement" first introduced at the Rule 60(b)(4) hearing—an undated and unauthenticated document that Appellant denied executing and for which no original was ever produced, despite the court's own acknowledgment of that omission on the record. The confession itself was

procured through an attorney who lacked authority to act for Appellant and was used in concert with opposing counsel as leverage in an unrelated private transaction. Finally, the judgment was enforced through a writ of execution issued in direct violation of the ten-day automatic stay mandated by Rule 62(a), SCRCP. Taken cumulatively, these defects are not mere irregularities; they constitute a systemic collapse of the statutory and procedural safeguards designed to ensure voluntariness, authenticity, and judicial integrity in confession-of-judgment practice. The combined effect was to produce a judgment that is void both as a matter of statute and of constitutional law. Once voidness appears on the face of the record, the duty to vacate is not discretionary. *Huggins v. Huggins*, 280 S.C. 306, 308, 312 S.E.2d 554, 555 (Ct. App. 1984).

Accordingly, Appellant respectfully requests that this Court reverse the order denying Rule 60(b)(4) relief; vacate the confession of judgment, the defective Order of Reference, and all derivative enforcement actions, including the writ; and enter final judgment declaring the confession of judgment void ab initio.

CERTIFICATE OF SERVICE

I hereby certify that I have this day, November 4, 2025, served a true and correct copy of the **Initial Brief of Appellant** upon counsel for the Respondent by depositing the same in the United States Mail, postage prepaid, and properly addressed as follows:

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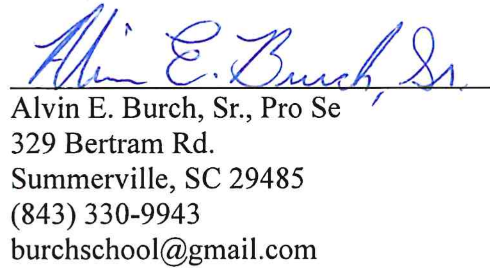

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