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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Joseph Kershaw Spong, as Special Referee

Case No. 2023-CP-32-02327
Appellate Case No. 2025-002221

PennyMac Loan Services, LLCRespondent,

v.

Judith A. Kelly; Judith-Ann Kelly
as co-trustee of Judith Ann Kelly
Family Trust; Ann Cornell as
cotrustee of Judith Ann Kelly Family
Trust; South Brook Community
Association, Inc..... Defendants.

of which Judith-Ann Kelly as co-trustee of Judith Ann Kelly Family Trust is
the Appellant.

**RESPONDENT’S RETURN TO APPELLANT’S MOTION TO STAY FORECLOSURE
PENDING APPEAL AND EMERGENCY MOTION FOR WRIT OF SUPERSEDEAS
AND STAY OF FORECLOSURE SALE PENDING APPEAL**

Respondent PennyMac Loan Services, LLC (“Respondent”) hereby responds to the following two motions of Appellant Judith-Ann Kelly as co-trustee of Judith Ann Kelly Family Trust (the “Trustee”) that seek identical relief in the form of a stay of the foreclosure sale: 1) “Motion to Stay Foreclosure Pending Appeal” dated October 31, 2025, and 2) “Emergency Motion for Writ of Supersedeas and Stay of Foreclosure Sale Pending Appeal” dated November 4, 2025 (collectively the “Stay Motions”).

FACTS

This is an appeal from a Judgment of Foreclosure and Sale by a *pro se* trustee of the trust currently holding recorded title to the property being foreclosed through this action. The Trustee did not appear at the final foreclosure hearing despite being properly noticed, but nonetheless is now attempting to appeal from the foreclosure judgment. The Trustee has filed the Stay Motions with this Court despite the fact that she already filed a “Motion for Supersedeas Stay Pending Appeal” in the lower court on October 31, 2025, seeking the same relief—a stay of the foreclosure sale pending this appeal. The Special Referee has scheduled a hearing on the Trustee’s lower court motion for November 13, 2025, at which time he will decide whether and on what conditions the Trustee may be entitled to a stay.

ARGUMENT

The Trustee’s motion for a stay of the foreclosure sale must first be presented to and heard by the lower court.

Judgments of foreclosure and sale are excepted from the automatic stay of enforcement of judgments during an appeal. Rule 241(b)(4), SCACR. “After service of notice of appeal, ... [i]n a case subject to an exception, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal.” Rule 241(c)(1), SCACR.

“Except where extraordinary circumstances make it impracticable, an application for an order ... for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal.” Rule 241(d)(1), SCACR.

The Trustee has already filed a motion for a stay of the foreclosure sale in the lower court, and the Special Referee has already scheduled a hearing on that motion for November 13, 2025.

The Stay Motions filed in this Court present no extraordinary circumstances permitting the Trustee to seek a stay from this Court prior to a determination on that issue by the lower court.

CONCLUSION

For these reasons, the Trustee's Motions for Stay are procedurally improper and must be denied.

Respectfully submitted,

s/ Sean M. Foerster

Sean M. Foerster (SC Bar # 77466)
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Attorneys for Respondent PennyMac Loan Services,
LLC

November 7, 2025

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PROOF OF SERVICE

I certify that I have served the Respondent's Return to the Motion to Stay Foreclosure Pending Appeal and Emergency Motion for Writ of Supersedeas and Stay of Foreclosure Sale Pending Appeal of Appellant Judith-Ann Kelly as co-trustee of Judith Ann Kelly Family Trust by depositing a copy of it in the United States Mail, postage prepaid, on November 7, 2025, addressed to 408 Cannongate Court, Lexington, SC 29073.

s/ Sean M. Foerster

Sean M. Foerster (SC Bar# 77466)
ROGERS TOWNSEND LLC