

**RECEIVED**

**Nov 10 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Joseph Kershaw Spong, Special Referee

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Case No. 2023-CP-32-02327

Appellate Case# 2025-002221

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PennyMac Loan Services, LLC,

Respondent,

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; and South Brook Community Association, Inc.,  
Defendants,

of which Judith-Ann Kelly as co-trustee  
of Judith Ann Kelly Family Trust,

Appellant.

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APPELLANT’S REPLY IN OPPOSITION TO RESPONDENT’S RETURN TO  
MOTION FOR STAY PENDING APPEAL AND EMERGENCY MOTION  
FOR WRIT OF SUPERSEDEAS

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**I. Introduction**

Appellant Judith-Ann Kelly respectfully submits this Reply in Opposition to Respondent’s Return filed November 7, 2025. Respondent misstates the procedural posture and the governing law under Rule 241 of the South Carolina Appellate Court Rules (SCACR). These

motions are properly before this Court due to extraordinary irregularities in the lower-court proceedings, imminent irreparable harm through foreclosure sale, and the need to preserve appellate jurisdiction pending review.

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## II. Procedural Background and Extraordinary Circumstances

1. On September 8, 2025, counsel for Respondent unilaterally filed a *Proposed Consent Order of Reference* seeking reassignment to a Special Referee after the prior referee's recusal. That proposed order was executed only by a Deputy Clerk of Court, even though Rule 53(b), SCRCF, permits a clerk to issue an order of reference only in three limited circumstances — "in an action where the parties consent, in a default case, or an action for foreclosure." Although this matter originated as a foreclosure, it was no longer a simple or uncontested one. At the time of the clerk's action, multiple dispositive motions, constitutional objections, discovery requests, and jurisdictional challenges were pending. Because live controversies existed, judicial—not clerical—authority was required. The clerk therefore acted *ultra vires*, and the referral and all subsequent proceedings before the referee are void ab initio.
2. South Carolina precedent strictly constrains a clerk's power to refer cases and confirms that contested foreclosures fall outside Rule 53(b)'s narrow exception:
  - *Ex parte South Carolina State Ports Authority*, 350 S.C. 369 (2002): A clerk may refer a case only where Rule 53(b) expressly authorizes it—by consent, default, or an uncontested foreclosure—and "absent consent or default, the reference must be ordered by a circuit judge."

- *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20 (2006): An order entered by one without statutory authority "is void ab initio and without legal effect."
- *Crawford v. Henderson*, 356 S.C. 389 (2003): A clerk's authority under Rule 53(b) is "strictly limited," and any reference outside those confines is jurisdictional error.
- *In re Matthews*, 345 S.C. 638 (2001): A foreclosure "ceases to be a simple foreclosure when counterclaims or defenses requiring judicial resolution are asserted," at which point only a circuit judge may issue the order of reference.

These authorities establish that once a defendant contests a foreclosure, the matter no longer qualifies for the Rule 53(b) clerk exception. The clerk's September 8, 2025 Order of Reference therefore exceeded the clerk's jurisdiction and rendered the proceedings before the referee void.

3. Appellant filed timely objections, including a *Motion to Strike and Vacate* (Sept 8), *Objection* (Sept 9), and *Motion to Recuse* (Sept 11), asserting that the referral violated Rule 53(b) and deprived her of due process under Article I § 22 of the South Carolina Constitution. No rulings were entered on any of these motions.
4. When Appellant appeared before Judge Kelsey, he declined to hear those motions, stating the matter "had already been referred" and that "Plaintiff's counsel was not properly notified," and advised that Appellant could "appeal later." That refusal constitutes error and denial of due process because every litigant is entitled to rulings on properly filed motions in order to preserve appellate review.

Authority: *Thompson v. Hovis*, 320 S.C. 190 (1995); *Ex parte Gregory*, 378 S.C. 430 (2008); *Mathews v. Eldridge*, 424 U.S. 319 (1976).

5. Because the referral was unauthorized and the trial judge declined to act, the case proceeded under defective jurisdiction before an unconfirmed referee. Such a breakdown in procedure constitutes "extraordinary circumstances" under Rule 241(d)(1), SCACR, warranting immediate intervention to preserve appellate jurisdiction and the integrity of the judicial process. (See Exhibit Index, Ex. A–E, filed contemporaneously herewith.)

**Authority:** *McKnight v. S.C. Dep't of Corr.*, 385 S.C. 380 (2009); *Ex parte Keller*, 323 S.C. 344 (1996); *Hamm v. S.C. Pub. Serv. Comm'n*, 287 S.C. 180 (1985).

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### **III. Likelihood of Success on the Merits: Defective Allonge and Broken Chain of Title**

1. Respondent's own exhibit history shows that no properly endorsed negotiable note was in PennyMac's possession when the foreclosure action was filed. The version of the note filed by the Respondent on October 24, 2023 contained no endorsements; yet the version presented at the October 22, 2025 hearing included a newly created allonge naming PennyMac as endorsee, without any of the required intermediate transfers from the originating lender and depositor.
2. Under *Carpenter v. Longan*, 83 U.S. 271 (1872), and *BAC Home Loans Servicing v. Kinder*, 398 S.C. 619 (2012), a party may foreclose only if it was the lawful holder of the note at the time of filing. A subsequently attached allonge cannot retroactively confer standing or cure a break in the chain of title. Moreover, under the *Ginnie Mae Document Custodian Manual* (2005), only the custodian of record for a pooled mortgage trust may certify or possess the original note. PennyMac's failure to produce

a certified true copy despite repeated RESPA and Qualified Written Requests demonstrates that it was not the lawful holder at inception, as required by South Carolina law.

3. The inconsistencies between the version of the note filed in October 2023 and the one presented at the 2025 hearing raise a substantial question as to who, if anyone, currently holds a valid original. When two conflicting versions of a negotiable instrument exist in the record—with endorsements appearing only after litigation has commenced—the authenticity of any alleged “original” becomes doubtful, and the chain of title is fatally uncertain. Such discrepancies constitute prima facie evidence of a defective endorsement history and warrant appellate scrutiny under *Federal Home Loan Mortgage Corp. v. Madison*, 375 S.C. 62 (2007), and *In re Kiser*, 51 B.R. 150 (Bankr. D.S.C. 1985).
4. The combination of a retroactively endorsed allonge, unverified possession, and refusal to provide certification creates at minimum a substantial likelihood of success on the merits of Appellant’s appeal. The record supports the inference that Respondent’s claimed ownership interest may have been derived through improper or undocumented assignment practices, in contravention of both UCC Article 3 and South Carolina foreclosure precedent requiring proof of standing at the time of filing.
5. These defects demonstrate a substantial likelihood that the foreclosure judgment was entered in favor of a party lacking standing to enforce the instrument, rendering the judgment void. South Carolina law, consistent with federal persuasive authority, requires the foreclosing party to prove it held the note at the time of filing and that the chain of endorsements is complete and verifiable.

Authority: *In re Veal*, 450 B.R. 897 (9th Cir. BAP 2011) (servicer must demonstrate actual ownership or agency relationship to enforce note); *Horvath v. Bank of N.Y.*, 641 F.3d 617 (4th Cir. 2011) (securitized trust could not foreclose without proof of proper transfer into trust); *BAC Home Loans Servicing v. Kinder*, 398 S.C. 619 (2012); *Carpenter v. Longan*, 83 U.S. 271 (1872).

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#### **IV. Irreparable Harm and Medical Hardship**

The scheduled foreclosure sale on December 1, 2025, will divest Appellant of her primary residence and trust property, causing irreparable injury that money cannot redress. Appellant is under active cancer treatment and dependent on short-term disability income; loss of housing would create an immediate medical and humanitarian crisis.

**Authority:** *Long v. Seabrook*, 260 S.C. 562 (1973); *Rogers v. Wilkins*, 275 S.C. 28 (1980).


These facts meet Rule 241(c)'s criteria for supersedeas by showing both likelihood of success and irreparable harm.

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#### **V. Conclusion**

For the foregoing reasons, Appellant respectfully requests that this Court grant a stay pending appeal and issue a Writ of Supersedeas to preserve the status quo and protect Appellant's home until the appeal is resolved.

November 8, 2025

  
Judith Ann Kelly  
408 Cannongate Ct

Lexington, South Carolina 29073  
(678) 790-8425  
Appellant

Other Counsel of Record:  
Sean M. Foerster, Esq.  
John J. Hearn, Esq.  
Rogers Townsend, LLC  
1221 Main Street, 14th Floor  
Columbia, South Carolina 29201  
Attorney for Respondent

## EXHIBIT INDEX

### *In Support of Appellant's Response and Motion for Stay Pending Appeal*

Case: *Kelly v. PennyMac Loan Services, LLC*

Court of Appeals Case No.: 2025-002221

Lower Court Case No.: 2023-CP-32-02327

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Exhibit Description	Filed / Dated	Purpose / Reference in Motion
<b>A</b> Proposed "Consent" Order of Reference signed by Deputy Clerk of Court (Lexington County)	Sept. 8, 2025	Demonstrates referral was entered without judicial authority, contrary to Rule 53(b), SCRPC. Referenced in Section II, ¶ 1.
<b>B</b> Appellant's Objection to Order of Reference	Sept. 9, 2025	Shows Appellant objected to the improper referral and preserved the issue. Referenced in Section II, ¶ 2.
<b>C</b> Appellant's Motions to Strike and Vacate and Motion to Recuse Special Referee	Sept. 8 & Sept. 11, 2025	Supports Appellant's assertion that motions were pending and unruled before referral. Referenced in Section II, ¶ 2–3.
<b>D</b> Transcript Excerpts (October 22, 2025 Hearing)	Oct. 22, 2025	Demonstrates denial of Rule 40(i) continuance and statements by referee regarding Appellant's inability to appear due to treatment. Referenced in Section IV.
<b>E</b> Cover Page of Rule 40(i) Physician's Letter Filed Under Seal	Oct. 23, 2025	Confirms Appellant's medical continuance filing and contradicts referee's claim of non-receipt. Referenced in Section IV.

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#### **Note:**

Exhibit E is filed *under seal* in the lower-court record pursuant to Rule 40(i), SCRPC, and is referenced here solely to confirm its existence and date of filing; no medical or identifying information is reproduced in this submission.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Joseph Kershaw Spong, Special Referee

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Case No. 2023-CP-32-02327

Appellate Case# 2025-002221

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PennyMac Loan Services, LLC,

Respondent,

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; and South Brook Community Association, Inc.,  
Defendants,

of which Judith-Ann Kelly as co-trustee of Judith Ann Kelly Family Trust,

Appellant.

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FILED WITH APPELLANT'S RESPONSE TO RESPONDENT'S RETURN  
TO MOTION FOR STAY PENDING APPEAL

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EXHIBIT INDEX

*In Support of Appellant's Response and Motion for Stay Pending Appeal*

November 7, 2025

  
s/ Judith Ann Kelly  
408 Cannongate Ct  
Lexington, South Carolina 29073  
(678) 790-8425  
Appellant

Other Counsel of Record:

Sean M. Foerster, Esq.  
John J. Hearn, Esq.  
Rogers Townsend, LLC  
1221 Main Street, 14th Floor  
Columbia, South Carolina 29201  
Attorney for Respondent

# EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

PennyMac Loan Services, LLC,

Plaintiff,

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.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2023-CP-32-02327

ORDER OF REFERENCE

WHEREAS, pursuant to Rule 53(b), SCRPC, the above-entitled foreclosure case is an action that may be referred to a Master in Equity or Special Referee by order of a Circuit Court Judge or the Clerk of Court;

WHEREAS, the above-entitled foreclosure case was previously referred to The Honorable James O. Spence, as Master in Equity for Lexington County, by Order of Reference entered on October 12, 2023;

WHEREAS, on January 8, 2024, Judge Spence entered a Form 4 in this action recusing himself due to a conflict;

WHEREAS, Plaintiff now moves to have this case referred to a Special Referee in light of the Master in Equity's recusal;

WHEREAS, Joseph Kershaw Spong, Esquire, has agreed to accept the reference of this case and preside as a Special Referee in this action;

IT IS HEREBY ORDERED, that this action is referred to Joseph Kershaw Spong, as Special Referee, to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRPC, and all matters arising from or reasonably related to such action. The Special Referee shall retain jurisdiction to perform all necessary acts incident to this action including issuance of any rule to show cause, including, but not limited to, any rule to show cause why a party should not be bound by the judgment. Further, the Special Referee shall retain jurisdiction to hear any action or any motions pursuant to the South Carolina Rules of Civil Procedure, including, but not limited to, Rule 60(b). Pursuant to Rule 53(e), SCRPC, any appeal from any

# EXHIBIT A

order or judgment entered by the Special Referee shall be directly to the South Carolina Supreme Court or the South Carolina Court of Appeals as provided by the South Carolina Appellate Court Rules.

*(Court's signature page to follow)*

# EXHIBIT A



## Lexington Common Pleas

**Case Caption:** Pennymac Loan Services, Llc VS Judith A Kelly , defendant, et al

**Case Number:** 2023CP3202327

**Type:** Order/Referred to Master or Special Referee

So Ordered

Lisa Comer, Clerk of Court by Mona Huggins  
Chief Deputy Clerk of Court

# EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

PennyMac Loan Services, LLC,

Plaintiff,

v.

Judith A. Kelly, sui generis as Co-Trustee of the Judith Ann Kelly Family Trust;  
Judith-Ann Kelly, as Co-Trustee of the Judith Ann Kelly Family Trust;  
Ann Cornell, as Co-Trustee of the Judith Ann Kelly Family Trust;  
South Brook Community Association, Inc.,

Defendants.

C/A No.: 2023-CP-32-02327

LISA H. COMER  
CLERK OF COURT  
LEXINGTON, SC

2025 SEP -9 AM 8:06

FILED

## DEFENDANT'S OBJECTION TO CONSENT ORDER OF REFERENCE

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Defendant, Judith-Ann Kelly, sui generis, Co-Trustee respectfully submits this Objection to the purported "Consent Order of Reference" (EXHIBIT A) filed September 8, 2025, and shows the Court as follows:

### **1. Prior Assignment and Hearing Already Scheduled**

This Court has already assigned the Honorable Judge Kelsey to preside over a hearing on September 25, 2025, for review of Defendant's pending motions. The Court Roster reflects Judge Kelsey's assignment. Defendant has relied upon that scheduling and prepared

# EXHIBIT B

accordingly.

## **2. Lack of Consent**

The Plaintiff's "Consent Order of Reference" falsely implies consent. The Trust has never consented to the transfer of this case to a Special Referee, nor waived the right to have a duly assigned Circuit Court Judge hear and decide its pending motions.

## **3. Timing Shows Prejudice and Forum Shopping**

The Plaintiff filed the Order of Reference only seventeen days before the scheduled hearing. This maneuver, if allowed, would strip jurisdiction from the duly assigned Circuit Judge and deprive the trust of its fair opportunity to be heard by Judge Kelsey. Such last-minute reassignment constitutes prejudice to the Trust and creates the appearance of forum shopping by Plaintiff's counsel.

## **4. Rule 53(b), SCRPC**

While Rule 53(b) authorizes reference in foreclosure matters, such reference is discretionary and typically occurs at the outset of litigation. In this case, after the original Master in Equity recused himself, the case remained within the Circuit Court. The Court already reassigned Judge Kelsey to preside. To now remove the case on the eve of hearing undermines due process and orderly procedure.

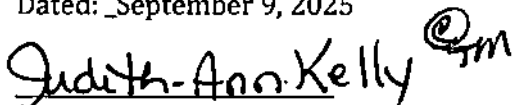
## **5. Relief Requested**

The Trust respectfully requests that this Court:

1. Reject or vacate the purported Consent Order of Reference filed September 8, 2025;
2. Confirm that Judge Kelsey retains jurisdiction over this matter; and
3. Allow the September 25, 2025 hearing to proceed as scheduled before Judge Kelsey.

Respectfully submitted,

Dated: September 9, 2025

 Judith-Ann Kelly @sm

Judith-Ann Kelly, Sui Generis, Co-Trustee  
c/o 408 Cannongate Court  
Lexington, SC [29073]

# EXHIBIT B

## CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this day served a copy of the foregoing Defendant's Objection to Consent Order of Reference upon the Plaintiff's counsel by placing a copy in the United States Mail, postage prepaid, addressed as follows:

Sean M. Foerster, Esq.  
Rogers Townsend, LLC  
1221 Main Street, 14th Floor  
Post Office Box 100200  
Columbia, SC 29202-3200

Priority Express mail  
ER 214 954 572 US

Dated: September 9, 2025

Judith-Ann Kelly ©<sub>TM</sub>

Judith-Ann Kelly, sui generis, Co-Trustee  
c/o 408 Cannongate Court  
Lexington, SC [29073]

LISA M. COHER  
CLERK OF COURT  
LEXINGTON, SC

2025 SEP -9 AM 8:06

FILED

# EXHIBIT B

## SUPPORTING LEGAL AUTHORITY

In further support of this Objection, Defendant respectfully submits the following authorities:

1. **Ex parte Condon, 349 S.C. 511 (2002)** – Referral cannot override due process. A party is entitled to a fair hearing before a duly assigned judge when prejudice would result from referral.
2. **Crawford v. Crawford, 297 S.C. 36 (1988)** – Referral is inappropriate when it results in prejudice to a party's rights. Here, the attempted reassignment on the eve of hearing would severely prejudice Defendant.
3. **In re Matthews, 345 S.C. 638 (2001)** – Courts must avoid creating situations where one party is disadvantaged by procedure, even if appellate rights technically exist. Appeal is not a substitute for a fair hearing.
4. **Bank of New York Mellon v. Ashmore, 418 S.C. 310 (Ct. App. 2016)** – While foreclosure cases may be referred, defendants retain the right to object where fairness and due process are at stake.

These authorities make clear that although foreclosure actions may be referred under Rule 53(b), SCRPC, such referral is not automatic and must not be exercised in a way that deprives a party of due process, creates prejudice, or facilitates forum shopping.

The Trust respectfully requests this Court deny the Plaintiff's attempt to reassign jurisdiction away from Judge Kelsey and permit the September 25, 2025 hearing to proceed as scheduled.

# EXHIBIT B EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

PennyMac Loan Services, LLC,

Plaintiff,

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.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2023-CP-32-02327

ORDER OF REFERENCE

WHEREAS, pursuant to Rule 53(b), SCRPC, the above-entitled foreclosure case is an action that may be referred to a Master in Equity or Special Referee by order of a Circuit Court Judge or the Clerk of Court;

WHEREAS, the above-entitled foreclosure case was previously referred to The Honorable James O. Spence, as Master in Equity for Lexington County, by Order of Reference entered on October 12, 2023;

WHEREAS, on January 8, 2024, Judge Spence entered a Form 4 in this action recusing himself due to a conflict;

WHEREAS, Plaintiff now moves to have this case referred to a Special Referee in light of the Master in Equity's recusal;

WHEREAS, Joseph Kershaw Spong, Esquire, has agreed to accept the reference of this case and preside as a Special Referee in this action;

IT IS HEREBY ORDERED, that this action is referred to Joseph Kershaw Spong, as Special Referee, to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRPC, and all matters arising from or reasonably related to such action. The Special Referee shall retain jurisdiction to perform all necessary acts incident to this action including issuance of any rule to show cause, including, but not limited to, any rule to show cause why a party should not be bound by the judgment. Further, the Special Referee shall retain jurisdiction to hear any action or any motions pursuant to the South Carolina Rules of Civil Procedure, including, but not limited to, Rule 60(b). Pursuant to Rule 53(e), SCRPC, any appeal from any

EXHIBIT B

EXHIBIT A

order or judgment entered by the Special Referee shall be directly to the South Carolina Supreme Court or the South Carolina Court of Appeals as provided by the South Carolina Appellate Court Rules.

*(Court's signature page to follow)*



Lexington Common Pleas

**Case Caption:** Pennymac Loan Services, Llc VS Judith A Kelly , defendant, et al  
**Case Number:** 2023CP3202327  
**Type:** Order/Referred to Master or Special Referee

So Ordered

Lisa Comer, Clerk of Court by Mona Huggins  
Chief Deputy Clerk of Court

FILED

2025 SEP 11 AM 8:39

**MOTION TO RECUSE SPECIAL REFEREE**

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON  
IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2023-CP-32-02327

LISA H. COMER  
CLERK OF COURT  
LEXINGTON, SC.

PennyMac Loan Services, LLC, Plaintiff,

v.

The JUDITH ANN KELLY FAMILY TRUST, by and through its Co-Trustees, Defendant.

**DEFENDANT'S MOTION TO RECUSE SPECIAL REFEREE**

The Defendant, the JUDITH ANN KELLY FAMILY TRUST, appearing sui generis and by and through its co-trustee, respectfully moves for the recusal of Special Referee Joseph Kershaw Spong from further participation in this matter.

**I. FACTUAL BACKGROUND**

1. On September 8, 2025, a "Consent Order of Reference" was filed by the Clerk's office, appointing Mr. Spong as Special Referee (**EXHIBIT A, B**).
2. The order includes the recital: "WHEREAS, Joseph Kershaw Spong, Esquire, has agreed to accept the reference ..."
3. This indicates Plaintiff's counsel communicated with Mr. Spong prior to court approval, outside the presence of the Trust, creating the appearance of ex parte communications.
4. While the Trust does not accuse Mr. Spong of misconduct, the circumstances create an appearance of impropriety that undermines confidence in the impartiality of these proceedings.

**II. LEGAL ARGUMENT**

Canon 3(E)(1) requires recusal where impartiality might reasonably be questioned. In re Ferguson, 304 S.C. 216 (1991). The appearance of impropriety requires disqualification (Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988)). Due process requires a neutral tribunal (Tumey v. Ohio, 273 U.S. 510 (1927)).

**III. RELIEF REQUESTED**

The Trust respectfully requests this Court:

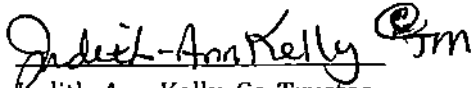
1. Recuse Joseph Kershaw Spong;

## EXHIBIT C

2. Restore jurisdiction to the assigned Circuit Judge;
3. Grant such further relief as justice requires.

Respectfully submitted this 11th day of September, 2025.

The JUDITH ANN KELLY FAMILY TRUST  
By and through its Co-Trustee, appearing sui generis



Judith-Ann Kelly, Co-Trustee  
c/o 408 Cannongate Court  
Lexington, SC 29073

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

PennyMac Loan Services, LLC,

Plaintiff,

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.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2023-CP-32-02327

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WHEREAS, on January 8, 2024, Judge Spence entered a Form 4 in this action recusing himself due to a conflict;

WHEREAS, Plaintiff now moves to have this case referred to a Special Referee in light of the Master in Equity's recusal;

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IT IS HEREBY ORDERED, that this action is referred to Joseph Kershaw Spong, as Special Referee, to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRPC, and all matters arising from or reasonably related to such action. The Special Referee shall retain jurisdiction to perform all necessary acts incident to this action including issuance of any rule to show cause, including, but not limited to, any rule to show cause why a party should not be bound by the judgment. Further, the Special Referee shall retain jurisdiction to hear any action or any motions pursuant to the South Carolina Rules of Civil Procedure, including, but not limited to, Rule 60(b). Pursuant to Rule 53(e), SCRPC, any appeal from any

order or judgment entered by the Special Referee shall be directly to the South Carolina Supreme Court or the South Carolina Court of Appeals as provided by the South Carolina Appellate Court Rules.

*(Court's signature page to follow)*



Lexington Common Pleas

**Case Caption:** Pennymac Loan Services, Llc VS Judith A Kelly , defendant, et al  
**Case Number:** 2023CP3202327  
**Type:** Order/Referred to Master or Special Referee

So Ordered

Lisa Comer, Clerk of Court by Mona Huggins  
Chief Deputy Clerk of Court

**Certificate of Electronic Notification**

**Recipients**

**Joseph Spong** - Notification transmitted on 09-08-2025 04:17:50 PM.

**John Hearn** - Notification transmitted on 09-08-2025 04:17:49 PM.

**Sean Foerster** - Notification transmitted on 09-08-2025 04:17:49 PM.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

NOTICE OF ELECTRONIC FILING [NEF]

-

**A filing has been submitted to the court RE: 2023CP3202327**

**Official File Stamp:** 09-08-2025 04:17:40 PM

**Court:** CIRCUIT COURT

Common Pleas

Lexington

**Case Caption:** Pennymac Loan Services, Llc VS Judith A Kelly ,  
defendant, et al

**Document(s) Submitted:** Order/Referred to Master or Special Referee  
Order/Referred to Master or Special Referee

**Filed by or on behalf of:** Mona Huggins

This notice was automatically generated by the Court's auto-notification system.

-

**The following people were served electronically:**

Joseph Kershaw Spong

Sean Matthew Foerster for Pennymac Loan  
Services, Llc

John Judson Hearn for Pennymac Loan Services,  
Llc

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

Ann Cornell as Co Trustee of Judith Ann Kelly  
Family Trust

Judith-Ann Kelly as co Trustee Of Judith Ann  
Kelly Family Tr

South Brook Community Association, Inc.

Judith A Kelly

**Certificate of Electronic Notification**

**Recipients**

**John Hearn** - Notification transmitted on 09-04-2025 04:12:45 PM.

**Sean Foerster** - Notification transmitted on 09-04-2025 04:12:45 PM.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2023CP3202327

Official File Stamp: 09-04-2025 04:10:41 PM

Court: CIRCUIT COURT

Common Pleas

Lexington

Case Caption: Pennymac Loan Services, Llc VS Judith A Kelly , defendant, et al

Event(s):

Order/Order Cover Sheet \$25.00

Document(s) Submitted: Proposed Order/Referred to Master or Special Referee

Filed by or on behalf of: Sean Matthew Foerster

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

John Judson Hearn for Pennymac Loan Services, Llc

Sean Matthew Foerster for Pennymac Loan Services, Llc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Ann Cornell as Co Trustee of Judith Ann Kelly Family Trust

Judith-Ann Kelly as co Trustee Of Judith Ann Kelly Family Tr

South Brook Community Association, Inc.

Judith A Kelly

ELECTRONICALLY FILED - 2025 Sep 04 5:10 PM - LEXINGTON - COMMON PLEAS - CASE#2023CP3202327

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

PennyMac Loan Services, LLC,

Plaintiff,

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.

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WHEREAS, the above-entitled foreclosure case was previously referred to The Honorable James O. Spence, as Master in Equity for Lexington County, by Order of Reference entered on October 12, 2023;

WHEREAS, on January 8, 2024, Judge Spence entered a Form 4 in this action recusing himself due to a conflict;

WHEREAS, Plaintiff now moves to have this case referred to a Special Referee in light of the Master in Equity's recusal;

WHEREAS, Joseph Kershaw Spong, Esquire, has agreed to accept the reference of this case and preside as a Special Referee in this action;

IT IS HEREBY ORDERED, that this action is referred to Joseph Kershaw Spong, as Special Referee, to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRPC, and all matters arising from or reasonably related to such action. The Special Referee shall retain jurisdiction to perform all necessary acts incident to this action including issuance of any rule to show cause, including, but not limited to, any rule to show cause why a party should not be bound by the judgment. Further, the Special Referee shall retain jurisdiction to hear any action or any motions pursuant to the South Carolina Rules of Civil Procedure, including, but not limited to, Rule 60(b). Pursuant to Rule 53(e), SCRPC, any appeal from any

order or judgment entered by the Special Referee shall be directly to the South Carolina Supreme Court or the South Carolina Court of Appeals as provided by the South Carolina Appellate Court Rules.

*(Court's signature page to follow)*



Lexington Common Pleas

**Case Caption:** Pennymac Loan Services, Llc VS Judith A Kelly , defendant, et al  
**Case Number:** 2023CP3202327  
**Type:** Order/Referred to Master or Special Referee

So Ordered

Lisa Comer, Clerk of Court by Mona Huggins  
Chief Deputy Clerk of Court

**Certificate of Electronic Notification**

**Recipients**

**Joseph Spong** - Notification transmitted on 09-08-2025 04:17:50 PM.

**John Hearn** - Notification transmitted on 09-08-2025 04:17:49 PM.

**Sean Foerster** - Notification transmitted on 09-08-2025 04:17:49 PM.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2023CP3202327

Official File Stamp: 09-08-2025 04:17:40 PM

Court: CIRCUIT COURT

Common Pleas

Lexington

Case Caption: Pennymac Loan Services, Llc VS Judith A Kelly ,  
defendant, et al

Document(s) Submitted: Order/Referred to Master or Special Referee  
Order/Referred to Master or Special Referee

Filed by or on behalf of: Mona Huggins

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Joseph Kershaw Spong

Sean Matthew Foerster for Pennymac Loan  
Services, Llc

John Judson Hearn for Pennymac Loan Services,  
Llc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Ann Cornell as Co Trustee of Judith Ann Kelly  
Family Trust

Judith-Ann Kelly as co Trustee Of Judith Ann  
Kelly Family Tr

South Brook Community Association, Inc.

Judith A Kelly

**Certificate of Electronic Notification**

**Recipients**

**John Hearn** - Notification transmitted on 09-04-2025 04:12:45 PM.

**Sean Foerster** - Notification transmitted on 09-04-2025 04:12:45 PM.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING [NEF]

-

**A filing has been submitted to the court RE: 2023CP3202327**

**Official File Stamp:** 09-04-2025 04:10:41 PM

**Court:** CIRCUIT COURT  
Common Pleas  
Lexington

**Case Caption:** Pennymac Loan Services, Llc VS Judith A Kelly ,  
defendant, et al

**Event(s):**  
Order/Order Cover Sheet \$25.00

**Document(s) Submitted:** Proposed Order/Referred to Master or Special  
Referee

**Filed by or on behalf of:** Sean Matthew Foerster

This notice was automatically generated by the Court's auto-notification system.

-

**The following people were served electronically:**

- John Judson Hearn for Pennymac Loan Services, Llc
- Sean Matthew Foerster for Pennymac Loan Services, Llc

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

- Ann Cornell as Co Trustee of Judith Ann Kelly Family Trust
- Judith-Ann Kelly as co Trustee Of Judith Ann Kelly Family Tr
- South Brook Community Association, Inc.
- Judith A Kelly

ELECTRONICALLY FILED - 2025 Sep 04 5:10 PM - LEXINGTON - COMMON PLEAS - CASE#2023CP3202327

FILED

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

2025 SEP 22 AH 8: 33

LISA M. COHER  
CLERK OF COURT  
LEXINGTON SC

IN THE COURT OF COMMON PLEAS

PennyMac Loan Services, LLC, |  
Plaintiff, |  
v. | Case No. 2023-CP-32-02327  
Judith A. Kelly, sui generis, as Co-Trustee of the Judith Ann Kelly Family Trust; |  
Judith-Ann Kelly, as Co-Trustee of the Judith Ann Kelly Family Trust, |  
Defendants. |

**MOTION TO VACATE AND/OR STRIKE SEPTEMBER 8, 2025 ORDER OF REFERENCE**

(And to Preserve Jurisdiction of the Assigned Circuit Judge; Request for Immediate Hearing)

COMES NOW Defendants, Judith A. Kelly, sui generis, and Judith-Ann Kelly, Co-Trustees of the Judith Ann Kelly Family Trust, and move this Court to vacate and/or strike the purported "Order of Reference" dated September 8, 2025, electronically signed by a Deputy Clerk, on the following grounds:

**1. Lack of Judicial Authority (SCRCP 53(b)).**

Rule 53(b), SCRCP, requires a judicial order of reference defining the scope of any reference. A deputy clerk is not a judicial officer and lacks authority to issue a substantive order transferring a case and empowering a special referee to "take testimony and direct entry of final judgment." Such an act is judicial—not ministerial—and is void or voidable for want of authority.

**2. Due Process and Prejudice.**

Defendants have multiple pending motions calendared for hearing on September 25, 2025 before the assigned Circuit Court judge, including motions under Rules 11, 12(f), 36, and 37, SCRCP. Entering a reference that purports to bypass those motions and push the matter to a "final hearing" (Exhibit A - Plaintiff's Letter Dated Sept. 18, 2025) before a Special Referee deprives Defendants of a meaningful opportunity to be heard.

# EXHIBIT C

Moreover, Plaintiff's letter improperly asserts that a "witness" will be presented at a so-called "final hearing" (Exhibit A). No witness list or disclosures have been provided under Rule 26, SCRCF; no deposition has been conducted; and no pretrial order authorizes such testimony. To permit Plaintiff to spring a witness at this stage would deny Defendants their right to discovery and cross-examination, in violation of due process. Such tactics further underscore that Plaintiff is mischaracterizing the posture of this case in order to shortcut the required process and prejudice Defendants.

### **3. Mischaracterization of Posture; Fraud on the Court (Rule 60).**

Plaintiff's subsequent letter to the Special Referee styling this matter as ready for "final hearing," despite unresolved motions and outstanding discovery, is misleading and invites error. To the extent the Order of Reference is used to shortcut due process, relief is warranted under Rule 60(b) and preserved under Rule 60(d)(3) (fraud upon the court).

### **Improper Addressing and Appearance of Conflict (Robinson Gray Stepp & Laffitte, LLC)**

Plaintiff's September 2025 correspondence to the Special Referee was improperly addressed. Specifically, the address block listed not only "Hon. Joseph Kershaw Spong, Esquire, Special Referee, Lexington County Judicial Center" but also directly underneath included the name of the private law firm "Robinson Gray Stepp & Laffitte, LLC."

This creates the misleading appearance that the Special Referee is affiliated with, or receives judicial correspondence through, a private law firm. The inclusion of a private firm in the judicial address block is irregular, undermines confidence in the impartiality of the judiciary, and raises a potential conflict of interest.

If Judge Spong has any present or prior affiliation with Robinson Gray, then recusal is mandatory under Rule 501, SCACR (Code of Judicial Conduct), Rules 1.2, 2.2, and 2.11, to avoid even the appearance of impropriety. If there is no such affiliation, the misaddressing nonetheless constitutes a misrepresentation by Plaintiff's counsel under Rule 11, SCRCF, and supports striking the letter from the record.

### **4. Preservation of Assigned Judge's Jurisdiction.**

This case was re-assigned to a Circuit Judge with motions noticed for September 25, 2025. The Court should preserve that judge's jurisdiction to adjudicate the pending motions before any reference proceeds.

**Non-Consent to Reference (Rule 53(b), SCRCF):** Defendants explicitly withhold consent to any reference of this case to a Special Referee or Master in Equity. Rule 53(b) requires consent of the parties before a reference may be ordered. Defendants assert their right to have all motions and substantive issues adjudicated by the assigned Circuit Court judge, and any purported order of reference absent such consent is void and without effect.

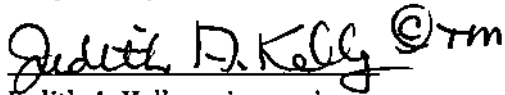
# EXHIBIT C

## RELIEF REQUESTED

Defendants respectfully request that the Court:

- a. Vacate and/or strike the September 8, 2025 Order of Reference issued by a Deputy Clerk;
- b. Alternatively, limit any reference to post-motion proceedings and expressly retain the assigned Circuit Judge to hear Defendants' pending motions; and
- c. Grant such other and further relief as is just, including setting this motion for immediate hearing on shortened notice given the September 25 calendar.

Respectfully submitted,



Judith A. Kelly, sui generis

Co-Trustee of the Judith Ann Kelly Family Trust

c/o 408 Cannon Gate Court

Lexington, South Carolina 29073

# EXHIBIT C

## CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served upon Plaintiff's counsel by depositing the same in the U.S. Mail, first-class postage prepaid, addressed as follows:

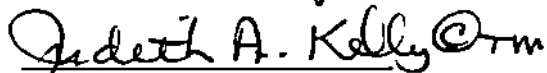
VIA - Priority Mail Express #EI 522 154 387 US

Return Receipt #9590 9402 9489 5069 2008 08

### SERVE UPON:

Sean M. Foerster, Esq.  
Rogers Townsend, LLC  
1221 Main Street, 14th Floor  
Columbia, South Carolina 29201  
Attorneys for Plaintiff PennyMac Loan Services, LLC

This the 23 day of Sept, 2025.



Judith A. Kelly, sui generis  
Co-Trustee of the Judith Ann Kelly Family Trust  
c/o 408 Cannon Gate Court  
Lexington, South Carolina [29073]

# EXHIBIT C

## STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON

---

IN THE COURT OF COMMON PLEAS

PennyMac Loan Services, LLC, |

Plaintiff, |

v. | Case No. 2023-CP-32-02327

Judith A. Kelly, sui generis, as Co-Trustee of the Judith Ann Kelly Family Trust; |

Judith-Ann Kelly, as Co-Trustee of the Judith Ann Kelly Family Trust, |

Defendants. |

**\*\*EXHIBIT A – Plaintiff’s Letter Dated  
Sept. 18, 2025\*\***



# EXHIBIT C

ROGERS TOWNSEND LLC  
POST OFFICE BOX 100200 (29202)  
1221 Main Street, 14<sup>th</sup> Floor  
COLUMBIA, SOUTH CAROLINA 29201  
P 803 771 7900 F 803 343 7017  
W ROGERSTOWNSEND.COM

SEAN M. FOERSTER, ESQUIRE  
MEMBER  
SEAN.FOERSTER@ROGERSTOWNSEND.COM  
D 803 744 1855  
F 803 343 7017  
LICENSED IN SOUTH CAROLINA



September 17, 2025

**VIA REGULAR USPS MAIL**

Joseph Kershaw Spong, Esquire  
Robinson Gray Stepp & Laffitte, LLC  
2151 Pickens Street, Suite 500  
Columbia, SC 29201

RE: *PennyMac Loan Services, LLC v. Judith A. Kelly; Judith-Ann Kelly as co-trustee of Judith Ann Kelly Family Trust; Ann Cornell as co-trustee of Judith Ann Kelly Family Trust; South Brook Community Association, Inc.*  
Case # 2023-CP-32-02327  
Our File: 516487-01191

Dear Mr. Spong:

Pursuant to the Order of Reference entered on September 8, 2025, in this case, I'm writing to respectfully request dates on which you might be available to hold a final hearing in this case on the Plaintiff's complaint for foreclosure and all outstanding motions filed by Defendant Judith A. Kelly. I intend to bring a witness from the Plaintiff to this hearing to testify in support of its foreclosure claim. Please let us know of your availability for this hearing at your convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sean M. Foerster", written over a set of horizontal lines.

Sean M. Foerster

CC:  
Judith-Ann Kelly  
Individually and as co-trustee of Judith Ann  
Kelly Family Trust  
408 Cannongate Court  
Lexington, SC 29073

Ann Cornell as co-trustee of Judith  
Ann Kelly Family Trust  
408 Cannongate Court  
West Columbia, SC 29169

South Brook Community Association, Inc.  
C/O CAMS  
1612 Military Cutoff Road, Suite 108  
Wilmington, NC 28403

FILED

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

---

2025 SEP 22 AM 8:33

LISA H. COMER  
CLERK OF COURT  
LEXINGTON SC

IN THE COURT OF COMMON PLEAS

PennyMac Loan Services, LLC, |

Plaintiff, |

v. | Case No. 2023-CP-32-02327

Judith A. Kelly, sui generis, as Co-Trustee of the Judith Ann Kelly Family Trust; |

Judith-Ann Kelly, as Co-Trustee of the Judith Ann Kelly Family Trust, |

Defendants. |

**COVER PAGE**

**MOTION TO VACATE AND/OR STRIKE SEPTEMBER 8, 2025 ORDER OF  
REFERENCE**

**\*\*Respectfully submitted to bring urgent attention to the lack of judicial authority, due  
process concerns, and mischaracterization of this case's posture.\*\***

Page 10

1 be with us at this hearing?

2 MS. CEJAS: North of Tampa, Florida.

3 THE REFEREE: So, you've traveled up  
4 from Tampa, Florida to be here today?

5 MS. CEJAS: I did.

6 THE REFEREE: All right. At this time,  
7 then, I think based on the arguments to counsel, I'm  
8 going to deny the request for a continuance. It seems  
9 like it was a late filing, and this case has been  
10 proceeding really since 2023.

11 Obviously, I take the issue very  
12 seriously of health. However, I have not received any  
13 statements from the doctor, the age of the case, 2023,  
14 the lateness of the filing, and the lack of  
15 specificity in providing us with a treating doctor or  
16 any kind of medical statement.

17 We also have the fact that the witness  
18 has traveled here from Tampa, Florida to testify here  
19 today and in addition, that there seems to be at least  
20 the appearance of some issue of unauthorized practice  
21 of law of multiple filings by a pro se plaintiff.

22 So, for that reason, I'm going to deny  
23 the motion for continuance.

24 And if you'll proceed with your case  
25 and call your first witness or however you want to

EXHIBIT E

FILED

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON  
IN THE COURT OF COMMON PLEAS

2025 OCT 23 PM 1:17

LISA H. GUNER  
CLERK OF COURT  
LEXINGTON, SC

Case No. 2023-CP-32-02327

PennyMac Loan Services, LLC, Plaintiff,

v.

Judith Ann Kelly Family Trust, Defendant.

COVER LETTER – FILING UNDER SEAL (Rule 40(i), SCRCP)

To: Clerk of Court, Lexington County

Re: Filing of Physician's Statement – Confidential Medical Information

Dear Clerk,

Please find enclosed a Physician's Statement from Dr. Malshundria Prophet, MD, treating oncologist for Judith-Ann Kelly, which contains confidential medical information.

Pursuant to Rule 40(i), South Carolina Rules of Civil Procedure, the Defendant respectfully requests that this document be filed under seal to preserve medical privacy. This submission is provided solely for the Court's consideration regarding scheduling and the pending request for continuance.

Please ensure that the document and envelope are clearly marked:  
"Confidential – Filed Under Seal (Medical Information)."

Thank you for your assistance.

Respectfully submitted,

EXHIBIT E

  
/s/ Judith-Ann Kelly ©™

c/o 408 Cannongate Ct

Lexington, South Carolina [29073-9998]

FILED

2025 OCT 23 PM 1:17

LISA M. COHER  
CLERK OF COURT  
LEXINGTON, SC

Delivered to the Clerk of Court by Co-Trustee Reginald Wayne Kelly on behalf of  
Judith-Ann Kelly.

(Enclosure: Physician Statement – Confidential / Filed Under Seal)

Confidential Filed Under Seal  
(Medical Information)

Filed Pursuant to Rule 40(d), sRCP

Case # 2023-CP-32-02327

PennyMac Loan Sucs LLC v. Judith Ann Kelly  
Family Trust

FORM 7  
PROOF OF SERVICE of APPELLANT'S RESPONSE TO  
RESPONDENT'S RETURN TO MOTION FOR STAY

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

RECEIVED

Nov 10 2025

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Joseph Kershaw Spong, Special Referee

Case No. 2023-CP-32-02327

Appellate Case# 2025-002221

PennyMac Loan Services,  
LLC,

Respondent,

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; and South Brook  
Community Association, Inc., Defendants,

of which Judith-Ann Kelly as co-trustee of  
Judith Ann Kelly Family Trust,

Appellant.

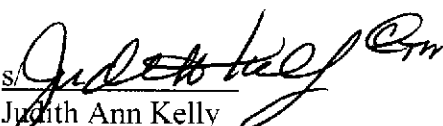
PROOF OF SERVICE

I certify that I have served a copy of this *APPELLANT'S RESPONSE TO RESPONDENT'S RETURN TO MOTION FOR STAY* upon counsel for Respondent by depositing the same in the United States Mail, Certified Mail No. 9589 0710 5270 1721 1451 38, first-class postage prepaid, addressed as follows, on November 7, 2025:

9589 0710 5270 1721 1451 38

Sean M. Foerster, Esq.  
John J. Hearn, Esq.  
Rogers Townsend, LLC  
1221 Main Street, 14th Floor  
Columbia, South Carolina 29201

November 8, 2025

s/   
Judith Ann Kelly  
408 Cannongate Ct  
Lexington, South Carolina 29073  
(678) 790-8425 Appellant