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Nov 10 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The 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.

EMERGENCY MOTION FOR RECONSIDERATION AND RENEWAL OF
STAY PENDING

I. Introduction

Appellant, appearing as Co-Trustee and Beneficiary of the *Judith Ann Kelly Family Trust*, respectfully moves pursuant to Rules 221(a) and 241(d)(1), SCACR, for emergency reconsideration of the Court's Order dated November 10, 2025, which denied Appellant's

Motion for Stay and concluded that Appellant, as a non-attorney trustee, may not represent the Trust.

This ruling rests on an incorrect interpretation of South Carolina law and overlooks a fatal jurisdictional defect in the lower court's proceedings under Rule 53(b), SCRCF.

II. Grounds for Reconsideration

1. Misapplication of Federal-Style Precedent.

The Court's reliance on *Brown v. Coe*, 365 S.C. 137 (2005), and *Real Estate Unlimited, LLC v. Rainbow Living Trust*, Op. No. 2004-UP-019, is misplaced.

- *Brown* involved an estate, not a trust. The representative there had no personal or beneficial ownership. Here, Appellant is both trustee and beneficiary, holding legal and equitable title to the property and acting under statutory duty.

- *Rainbow Living Trust* is unpublished and therefore non-precedential under Rule 268(d)(2), SCACR. It predates adoption of the South Carolina Uniform Trust Code (UTC), which now expressly authorizes trustees to litigate.

2. Controlling South Carolina Authority.

- S.C. Code § 62-7-816(24): A trustee may "prosecute or defend actions, claims, or judicial proceedings" concerning trust property.

- Rule 17(a), SCRCF: The trustee is the *real party in interest*.

- *Burns v. Wilmington Trust Co.*, 303 S.C. 136 (1990): Trustees may sue or be sued in their representative capacity.

- *Hampton v. Haltiwanger*, 362 S.C. 274 (Ct. App. 2004): Distinguishes unauthorized

representation of others from a fiduciary acting to protect her own and the trust's rights.

3. Rule 53(b) Referral Was Void Ab Initio.

The record (See Exhibit A) shows that the Order of Reference assigning this matter to a Special Referee was executed by a deputy clerk, not by a circuit judge, at a time when the case was contested and active.

Rule 53(b), SCRPC, permits the clerk to issue such orders only (1) where the parties consent, (2) in a default case, or (3) in an action for foreclosure that is uncontested.

Because Appellant had filed multiple motions and objections, this case did *not* fall within those exceptions.

Proceedings conducted before an improperly appointed referee are therefore void ab initio. *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20 (2006); *Crawford v. Henderson*, 356 S.C. 389 (2003); *Ex parte Keller*, 323 S.C. 344 (1996).

4. Denial of Standing Eliminates Access to Remedy.

By barring the trustee from defending trust property, the Court's order effectively leaves the Trust with no legal representative and allows a void foreclosure judgment to proceed unchallenged contrary to due process and the right to petition protected by Article I, § 22 of the South Carolina Constitution. This denial effectively strips the Trust of any means to defend its title, even though South Carolina law vests the trustee with both legal and equitable interests, leaving no independent counsel or co-trustee authorized to act.

III. Renewal of Emergency Stay

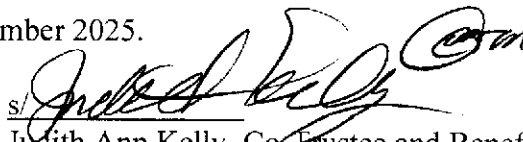
1. The foreclosure sale is scheduled for December 1, 2025, and without immediate intervention the property will be irreparably lost before appellate review can occur.
 2. Because both jurisdictional and standing errors are now evident on the face of the record, a temporary stay of enforcement is necessary to maintain the status quo and preserve the Court's jurisdiction.
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IV. Relief Requested

Appellant respectfully requests that this Court:

1. Reconsider and vacate the portion of its November 10, 2025 Order finding that Appellant lacks authority to appear as trustee;
2. Recognize Appellant's statutory authority under § 62-7-816(24) and Rule 17(a) to defend actions concerning trust property;
3. Find that the Rule 53(b) referral and all actions before the special referee were void ab initio for lack of jurisdiction;
4. Reinstate or issue a Stay Pending Appeal to prevent transfer or sale of the property; and
5. Grant any other relief this Court deems just and proper.

Respectfully submitted this 10th day of November 2025.


s/ Judith Ann Kelly
Judith Ann Kelly, Co-Trustee and Beneficiary
JUDITH ANN KELLY FAMILY TRUST
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

FORM 7
**PROOF OF SERVICE OF EMERGENCY MOTION FOR
RECONSIDERATION AND RENEWAL OF STAY PENDING**

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

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APPEAL FROM LEXINGTON COUNTY
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PennyMac Loan Services,
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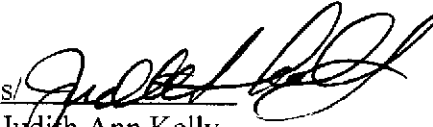
Appellant.

PROOF OF SERVICE

I certify that I have served a copy of this *EMERGENCY MOTION FOR RECONSIDERATION AND RENEWAL OF STAY PENDING* upon counsel for Respondent by depositing the same in the United States Mail, Certified Mail No. 9589 0710 5270 1721 1449 95, first-class postage prepaid, addressed as follows, on November 10, 2025:

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

November 10, 2025

s/ 
Judith Ann Kelly
408 Cannongate Ct

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