

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2025 NOV 14 PM 3:25

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

PennyMac Loan Services, LLC,

LISA W. LINDSEY
CLERK OF COURT
LEXINGTON, SC

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.

ORDER

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Nov 17 2025

SC Court of Appeals

This matter came before the Court at a virtual hearing on November 13, 2025, on the Motion for Supersedeas Stay Pending Appeal of Defendant Judith-Ann Kelly as co-trustee of Judith Ann Kelly Family Trust (the "Trustee") filed herein on October 31, 2025, which asked the Court to stay the enforcement of the Judgment of Foreclosure and Sale in this case during the pendency of her appeal to the South Carolina Court of Appeals.

As shown by the Notice of Motion Hearing and Certificate of Service filed herein on November 4, 2024, the Trustee was properly served with a notice of the date and time of the hearing, but neither the Trustee nor any representative on her behalf appeared at the hearing. The Court further notes that it provided the Trustee with additional notice of the hearing by email on November 4, 2024.

The Court denies the Trustee's Motion for Supersedeas Stay Pending Appeal because the Trustee is not a South Carolina-licensed attorney authorized to practice law in this State and a non-attorney trustee cannot represent a trust in this court.

"No person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina." S.C. Code Ann. § 40-5-310. A non-attorney citizen is permitted to prosecute or defend his or her "own cause", if he or she so desires. S.C. Code Ann. § 40-5-80.

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However, “section 40-5-80 does not authorize a non-attorney trustee of a valid trust to represent the trust in the court of common pleas because the action would not be the trustee’s ‘own cause’ but rather that of the trust and its beneficiaries.” *Real Estate Unlimited, L.L.C. v. Rainbow Living Tr.*, No. 2004-UP-019, 2004 S.C. App. Unpub. LEXIS 8, at *5 (Ct. App. Jan. 15, 2004)(unpublished); *cf. Brown v. Coe*, 365 S.C. 137, 142, 616 S.E.2d 705, 708 (2005) (person “not admitted to the practice of law, cannot represent the estate in court as administratrix of the estate.”).

Because the Trustee is not permitted to represent the trust in this Court, the motion was improperly filed and is denied.

If the Trustee retains counsel to pursue a similar motion for a stay of the foreclosure sale, or if any other defendant files a motion for a stay of the foreclosure sale, the Court sets the amount of the supersedeas bond required by S.C. Code Ann. § 18-9-170 at \$66,000.


Based on the arguments of Plaintiff’s counsel, Plaintiff’s Memorandum of Law in Opposition to the Trustee’s motion, and the evidence admitted at the final foreclosure hearing, the Court finds that \$66,000 is a reasonable rental value for the use and occupation of the property for the expected duration of the appeal when considering the interest that will accrue and the tax payments and insurance premiums that will need to be advanced during that time.

IT IS THEREFORE ORDERED THAT:

1. The Motion for Supersedeas Stay Pending Appeal of Defendant Judith-Ann Kelly as co-trustee of Judith Ann Kelly Family Trust filed herein on October 31, 2025, is DENIED;
2. In the event that the Trustee retains counsel to pursue a similar motion for a stay of the foreclosure sale or any other defendant files a motion for a stay of the foreclosure sale, the enforcement of the Judgment of the Foreclosure and Sale shall not be stayed unless one of the following occurs no later than November 26, 2025:
 - a. The filing of a bond in the amount of \$66,000 with two good and valid sureties thereon that satisfies the requirements of S.C. Code Ann. §§ 18-9-170, 18-9-210, and 18-9-230; or

- b. The deposit¹ of the amount of \$66,000 with the Lexington County Clerk of Court, which the Clerk of Court is hereby ordered to hold pending further order of the Court upon remittitur from the South Carolina Court of Appeals;
3. In the event of compliance with Paragraph 2 above:
 - a. Plaintiff and/or its agents or assigns shall be stayed from enforcing the Judgment of the Foreclosure and Sale during the pendency of the appeal of the party who complied with that bond or deposit requirement; and
 - b. Plaintiff is permitted to move the Court to increase the bond amount set herein after a period of six months from the entry of this Order if it is unsatisfied with the progress of the appeal.
4. If no party files the bond or deposits its cash equivalent as required by Paragraph 2, then Plaintiff, or its agents or assigns, may immediately proceed with enforcement of the Judgment of the Foreclosure and Sale, including, but not limited to, proceeding with the foreclosure sale on December 1, 2025.

AND IT IS SO ORDERED.


J. Kershaw Spong
Special Referee

¹ S.C. Code Ann. § 15-1-250 (“Whenever it shall be necessary for a party to any action or proceeding to give a bond or an undertaking with surety or sureties he may, in lieu thereof, deposit with the officer or into the court, as the case may require, money to the amount for which the bond or undertaking is to be given.”).