

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

**RECEIVED**

DEC 16 2025

SC Court of Appeals

106713

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.

**PETITION FOR REHEARING EN BANC**

Pursuant to Rule 221(b), SCACR, Appellant respectfully petitions for rehearing en banc of the Court's Orders dated December 3, 2025 and December 9, 2025. This Petition is limited to matters of law and procedure of exceptional importance that were raised, preserved, and briefed, but not addressed by the panel.

**I. STANDARD FOR EN BANC REVIEW**

Rehearing en banc is appropriate where: (1) The panel decision conflicts with prior decisions

of this Court or the Supreme Court of South Carolina; (2) The proceeding involves a question of exceptional importance; or (3) Clarification is required to ensure uniformity of decisions.

Rule 221(b), SCACR.

This case satisfies each of these criteria independently and collectively.

## **II. JURISDICTIONAL DEFECT UNDER RULE 53(b), SCRPC (DISPOSITIVE ISSUE NOT ADDRESSED)**

The panel denied relief without addressing Appellant’s threshold jurisdictional challenge under Rule 53(b), SCRPC—a dispositive issue that determines whether the lower court possessed authority to act at all. Appellant consistently argued that the Order of Reference executed by a Deputy Clerk—without consent, without default, and while dispositive motions were pending—was ultra vires and void ab initio. Because jurisdiction is antecedent to all other questions, failure to resolve this issue leaves the validity of every subsequent proceeding legally indeterminate.

Jurisdictional defects cannot be waived, cured, or bypassed. A court acting without jurisdiction lacks authority to conduct hearings, issue orders, or enter judgment. All proceedings following a void referral are themselves void.

The failure to address this jurisdictional issue leaves unresolved a matter that directly affects the validity of foreclosure proceedings statewide.

## **III. PANEL RESOLUTION ON NON-DISPOSITIVE GROUNDS**

The panel resolved the appeal on a representation-of-trust rationale, relying on case law addressing non-attorney representation of separate legal entities, without reaching whether the lower court possessed jurisdiction to act at all.

The cited authority presupposes the existence of a lawfully convened court proceeding—an

assumption that is disputed and unresolved here.

A court lacking jurisdiction cannot reach issues of representation. Jurisdiction is antecedent to all other questions. By resolving the appeal on a secondary issue while leaving the jurisdictional defect unaddressed, the panel departed from settled principles of appellate review.

#### **IV. ISSUE OF EXCEPTIONAL IMPORTANCE**

This appeal presents issues of exceptional importance, including:

- The scope of clerk authority under Rule 53(b), SCRPC;
- The consequences of ultra vires referrals in foreclosure actions;
- The treatment of jurisdictional challenges when raised by self-represented litigants;
- Uniform application of jurisdictional safeguards in equity proceedings.
- Whether foreclosure judgments entered following ultra vires referrals are void or voidable as a matter of law.

These issues extend beyond the parties and impact foreclosure practice across South Carolina.

#### **V. NEED FOR UNIFORMITY AND CLARIFICATION**

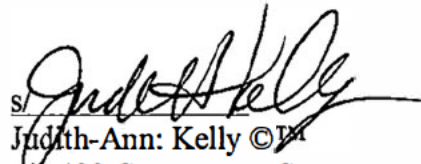
This Court and the Supreme Court of South Carolina have consistently held that jurisdictional defects must be addressed before any merits-based or procedural determinations. Clarification is required to ensure consistent application of Rule 53(b) and to prevent foreclosure judgments entered without lawful authority.

#### **VI. RELIEF REQUESTED**

Appellant respectfully requests that the Court grant rehearing en banc, vacate the panel orders, and consider the jurisdictional challenge under Rule 53(b), SCRPC, before any other issue.

Respectfully submitted,

December 15, 2025

  
s/ Judith-Ann Kelly  
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Appellant

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**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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**PROOF OF SERVICE**

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I certify that I have served a copy of this *PETITION FOR REHEARING EN BANC* upon counsel for Respondent by depositing the same in the United States Mail, Certified Mail No. 9589 0710 5270 1721 1451 14 and 9589 0710 5270 1721 1451 21, first-class postage prepaid, addressed as follows, on December 15, 2025:

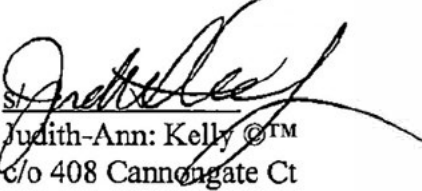
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