

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 17 2025
SC Court of Appeals

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

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(Rules 219 & 221, SCACR)

Pursuant to Rules 219 and 221, 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 were **overlooked or misapprehended** by the panel.

I. STANDARD FOR EN BANC REVIEW

(Rule 219(a), SCACR)

Rehearing en banc is appropriate when necessary to:

1. Secure or maintain uniformity of decisions; or
2. Address questions of exceptional importance.

This case satisfies each of these criteria independently and collectively.

II. SUGGESTION FOR REHEARING EN BANC

(Rule 219(b), SCACR)

Appellant respectfully suggests rehearing en banc because the panel resolved the appeal on a non-dispositive representation issue while failing to address a preserved jurisdictional challenge under Rule 53(b), SCRCP, which is antecedent to all other issues.

Failure to address whether the lower court possessed authority to act presents a question of exceptional importance affecting foreclosure proceedings statewide and warrants review by the full Court to ensure uniformity of decisions.

III. JURISDICTIONAL DEFECT UNDER RULE 53(b), SCRCP (DISPOSITIVE ISSUE NOT ADDRESSED)

The panel denied relief without addressing Appellant's threshold jurisdictional challenge under Rule 53(b), SCRCP—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.

IV. 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.

V. ISSUE OF EXCEPTIONAL IMPORTANCE

This appeal presents issues of exceptional importance, including:

- The scope of clerk authority under Rule 53(b), SCRCP;
- 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.

VI. 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.

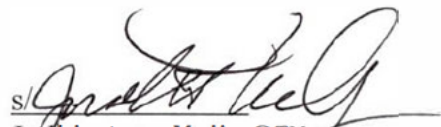
VII. RELIEF REQUESTED

Appellant respectfully requests that the Court:

1. Grant rehearing en banc;
2. Vacate the panel orders; and
3. Address the preserved jurisdictional challenge under Rule 53(b), SCRPC, before any other issue.

Respectfully submitted,

December 17, 2025


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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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Court of Common Pleas

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PROOF OF SERVICE

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, first-class postage prepaid, addressed as follows, on December 17, 2025:

Other Counsel of Record:

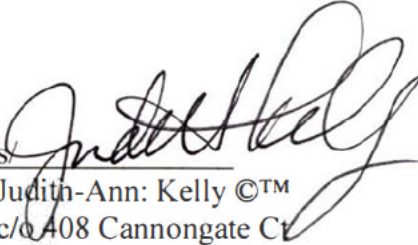
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December 17, 2025


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