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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis, Master-In-Equity

Appellate Case No. 2025-001632

Cornerstone Ventures International, LLC

Respondent,

v.

Alvin E. Burch, Sr.,

Appellant.

APPELLANT'S REPLY BRIEF

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STATEMENT OF ISSUES ON APPEAL

1. Whether the confession of judgment is void for facial noncompliance with the mandatory prerequisites of S.C. Code Ann. § 15-35-360, requiring vacatur under Rule 60(b)(4), SCRCP.
2. Whether a settlement agreement introduced at the June 3, 2025 evidentiary hearing, but not filed with or incorporated into the confession of judgment on October 2, 2023, can sustain the confession, requiring vacatur under Rule 60(b)(4), SCRCP.
3. Whether the writ of execution issued on October 5, 2023, in violation of Rule 62(a), SCRCP's automatic stay, must be vacated along with all dependent post-judgment proceedings.

STATEMENT OF THE CASE

This appeal arises from the Master-in-Equity's July 28, 2025 order denying Appellant's motion for relief from a confession of judgment under Rule 60(b)(4), SCRCP, in Dorchester County Court of Common Pleas Case No. 2023-CP-18-00658.

Respondent filed a summons and verified complaint on April 26, 2023, alleging breach of a \$65,000 promissory note dated April 1, 2022 (R. __). Appellant, pro se, answered on June 5, 2023 (R. __).

A confession of judgment was filed on October 2, 2023, confessing \$100,000 less payments under a referenced but unattached settlement agreement (R. __). It lacks a jurat or notarial certificate despite reciting it was made "under oath." A writ of execution issued on October 5, 2023 (R. __), and the sheriff returned nulla bona on November 3, 2023 (R. __). An order of reference to the Master-in-Equity issued on December 28, 2023 (R. __). Supplemental proceedings began with an April 8, 2024 order and rule to show cause (R. __), followed by an April 3, 2025 supplemental order (R. __).

Appellant moved for Rule 60(b)(4) relief on April 14, 2025 (amended May 14 and May 19, 2025), asserting voidness for noncompliance with S.C. Code Ann. § 15-35-360 (R. __). An evidentiary hearing occurred on June 3, 2025 (Tr. __). The Master denied relief on July 28, 2025 (R. __). Appellant noticed appeal on August 1, 2025 (R. __).

Respondent's brief misframes the case as involving no voidness grounds (Resp. Br. at 4) and asserts substantial compliance with the statute (Resp. Br. at 5-8), among other points. This reply demonstrates the confession's voidness as a matter of law.

STANDARD OF REVIEW

The denial of a Rule 60(b)(4), SCRCF motion asserting voidness presents a question of law reviewed de novo. *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002) (whether a judgment is void is a legal question); *Kosciusko v. Parham*, 428 S.C. 481, 489, 836 S.E.2d 362, 366 (Ct. App. 2019) (voidness reviewed de novo, no deference). Void judgments are nullities that must be vacated, with no discretion to affirm. *Branch Banking & Trust Co. v. Taylor*, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006).

Respondent erroneously frames review as abuse of discretion throughout (Resp. Br. at iv, 1, 4-13), ignoring that Rule 60(b)(4) challenges legal validity—here, the clerk's statutory authority under S.C. Code Ann. § 15-35-360—leaving no room for discretion. *Taylor*, 369 S.C. at 552, 633 S.E.2d at 503.

STATEMENT OF THE FACTS

Respondent filed suit on April 26, 2023, for breach of a \$65,000 note (R. __). Appellant answered pro se on June 5, 2023; no attorney appeared for him (R. __).

The October 2, 2023 confession references a settlement agreement but neither attaches it nor incorporates its terms (R. __). It recites "under oath" but lacks a jurat, notarial certificate, or evidence of oath administration (R. __). It omits concise facts of the debt's origin or why \$100,000 is justly due (R. __). A transcript of judgment was recorded October 26, 2023 (R. __). The writ issued October 5, 2023—three days post-entry (R. __). Orders of reference issued December 28, 2023, and April 3, 2025 (R. __). Supplemental proceedings began April 8, 2024 (R. __).

Appellant's Rule 60(b)(4) motion asserted statutory noncompliance (R. __). At the June 3, 2025 hearing, Respondent introduced an undated settlement agreement (Ex. B; Tr. __ at 16). Appellant testified he first saw it then, did not execute it to resolve the case, and was unsure of the signature's context (Tr. __). Respondent's former counsel, Zachary Closser, testified no oath was administered for the confession (Tr. __), the agreement was undated, no original's location known, and it was not filed (Tr. __). Gus Olalere testified for Respondent on the agreement's execution (Tr. __). The Master denied relief (R. __).

Respondent's facts (Resp. Br. at 2-4) downplay the confession's facial defects and extrinsic evidence's irrelevance, as addressed below.

ARGUMENT

This reply directly rebuts Respondent's arguments, demonstrating the Master erred as a matter of law in denying Rule 60(b)(4) relief. The confession lacks statutory authority under S.C. Code Ann. § 15-35-360, rendering it void ab initio. *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002); *Kosciusko v. Parham*, 428 S.C. 481, 489, 836

S.E.2d 362, 366 (Ct. App. 2019); Branch Banking & Trust Co. v. Taylor, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006).

I. IN RESPONSE TO RESPONDENT'S ARGUMENTS I AND II: THE CONFESSION OF JUDGMENT IS VOID FOR FACIAL NONCOMPLIANCE WITH S.C. CODE ANN. § 15-35-360'S MANDATORY PREREQUISITES.

Respondent contends Appellant raises no voidness grounds under Rule 60(b)(4) (Resp. Br. at 4) and the confession met § 15-35-360 (Resp. Br. at 5-8). This ignores that confessions are purely statutory; the clerk's authority exists only if the filed statement facially satisfies § 15-35-360. No facial compliance means no authority, yielding a void judgment. Ex parte Cannon, 385 S.C. 643, 655, 685 S.E.2d 814, 821 (Ct. App. 2009) (strict statutory construction); Linda Mc Co. v. Shore, 390 S.C. 543, 703 S.E.2d 499 (2010) (facial compliance required); McKinney, 349 S.C. at 183, 561 S.E.2d at 661.

A. Respondent claims the confession was verified (Resp. Br. at 5-6), but § 15-35-360 requires the statement be "verified by [defendant's] oath." The filed document lacks a jurat or notarial certificate evidencing administration (R. __). Verification by oath incorporates notary standards under § 26-1-120(B), mandating personal appearance, oath/affirmation, and certification. Absent that, the condition precedent fails. Dawkins v. Fields, 345 S.C. 24, 29-30, 545 S.E.2d 513, 516 (Ct. App. 2001) (jurat or evidence required; recitals insufficient). Even Respondent's counsel testified no oath was administered (Tr. __).

B. Respondent asserts the facts of the debt were stated (Resp. Br. at 6-7), but § 15-35-360(2) requires a concise statement in the defendant's verified document. The confession merely references a "Certain Settlement Agreement" without stating (i) the original note's date, parties, or terms; (ii) any breach; or (iii) how it matured to \$100,000 (R. __). Standalone references do not suffice.

C. Respondent argues the sum was shown justly due (Resp. Br. at 7-8), but § 15-35-360(2) demands the defendant's statement show why. The confession provides a naked "\$100,000 less payments" without calculation or sworn basis bridging from \$65,000 (R. __). Ambiguity defeats this statutory shortcut. McKinney, 349 S.C. at 183, 561 S.E.2d at 661.

These defects are failures of conditions precedent, voiding the judgment. Thus, this Court must vacate it as void under Rule 60(b)(4).

II. IN RESPONSE TO RESPONDENT'S ARGUMENTS III, IV, AND V: THE CONFESSION OF JUDGMENT CANNOT BE SUSTAINED BY EXTRINSIC EVIDENCE SUCH AS THE DISPUTED SETTLEMENT AGREEMENT OR COUNSEL'S INVOLVEMENT.

Respondent claims no error in the order of reference (Resp. Br. at 8-10), settlement agreement (Resp. Br. at 10-11), or counsel's execution without appearance (Resp. Br. at 11-12). This fails because § 15-35-360 prerequisites must appear in the filed statement; extrinsic evidence cannot cure. Roche v. Young Bros., Inc., 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995).

The agreement was not attached, incorporated, or filed with the confession (R. __; § 15-35-370). Introduced at hearing (Tr. __ at 16), it is undated (Tr. __). Appellant testified he first saw it then and did not execute it for resolution (Tr. __). Counsel testified no original known and not filed (Tr. __). Even assuming execution, it cannot retroactively authorize entry. Kosciusko, 428 S.C. at 489, 836 S.E.2d at 366. Because the clerk's authority is tested at filing, Exhibit B (introduced June 3, 2025) is irrelevant to the October 2, 2023 judgment's validity; at most, it raises a contract dispute needing adjudication, not upholding a confession.

The execution of the confession of judgment—obtained through Appellant's former counsel (who thereafter ceased representation) and filed by Respondent's counsel without ever having

appeared as counsel for Appellant (Resp. Br. at 11-12)—and the order of reference (Resp. Br. at 8-10) are derivative of and dependent upon the validity of the underlying confession of judgment; because the confession is void for noncompliance with S.C. Code Ann. § 15-35-360, these acts lack any lawful basis and must be vacated along with the judgment. *Branch Banking & Trust Co. v. Taylor*, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006) (void judgments are nullities; dependent acts cannot stand).

III. IN RESPONSE TO RESPONDENT'S ARGUMENT VI: THE PREMATURE WRIT OF EXECUTION VIOLATED RULE 62(a), SCRPC, AND MUST BE VACATED ALONG WITH DEPENDENT PROCEEDINGS.

Respondent concedes the writ issued three days post-entry but claims no effect or harm (Resp. Br. at 12-13). Rule 62(a) imposes an automatic 10-day stay; premature issuance lacks authority. *Hagood v. Riley*, 21 S.C. 321, 325 (1884) (acts during stay invalid). Violation is not excused by prejudice absence; the stay protects post-judgment rights.

As the judgment is void, enforcement lacks predicate. This Court must vacate the October 5, 2023 writ (R. ___), November 3, 2023 nulla bona return (R. ___), April 8, 2024 rule to show cause (R. ___), and April 3, 2025 supplemental order (R. ___).

CONCLUSION

The confession fails § 15-35-360 on its face, rendering it void under Rule 60(b)(4). Extrinsic evidence cannot cure, and the writ violation compounds the defects. Appellant requests reversal of the July 28, 2025 order, vacatur of the October 2, 2023 judgment, October 5, 2023 writ, and all dependent proceedings, with remand for entry of an order vacating the judgment and granting such further relief as is consistent with this opinion.

Respectfully submitted,

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