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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Joseph Kershaw Spong
Special Referee, Lexington County

Appellate Case No. 2026-000104
Court of Appeals Case No. 2025-002221
Trial Court Case No. 2023-CP-3202327

| | |
|---|-------------|
| 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, individually and co-trustee of Judith Ann Kelly Family Trust is the | Appellant. |

PENNYMAC’S RETURN TO PETITION FOR A WRIT OF CERTIORARI

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March 6, 2026

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COUNTER-STATEMENT OF THE CASE

This case presents a straightforward application of South Carolina law. In this underlying foreclosure action, Petitioner Judith A. Kelly executed a fixed-rate promissory note and purchase-money mortgage dated May 27, 2022, encumbering residential real property located at 408 Cannongate Court, Lexington, South Carolina. Later, on January 25, 2023, Ms. Kelly conveyed her interest in the property to Judith-Ann Kelly and Ann Cornell, as trustees of the Judith Ann Kelly Family Trust (“The Trust”).

The loan went into default due to failure to make the January 1, 2023 payment and all payments thereafter, prompting Respondent PennyMac Loan Services, LLC to accelerate the debt and initiate the underlying action on June 20, 2023. Pursuant to Rule 53, SCRCF, the matter was referred to a Special Referee, who conducted a properly noticed final foreclosure hearing on October 22, 2025, at which no defendants appeared. After the hearing, the Special Referee found the mortgage in default, determined that PennyMac was entitled to enforce the note and mortgage, and issued a Judgment of Foreclosure and Sale.

Following the Special Referee’s order, Petitioner appealed on grounds that the Special Referee lacked jurisdiction. In denying the appeal and related motions, the Court of Appeals also noted that Ms. Kelly—a non-attorney—cannot represent the Trust under South Carolina law prohibiting the unlicensed practice of law.

QUESTIONS PRESENTED

1. Is an order that assigns a foreclosure action to a master or special referee proper under Rule 53, SCRCF, when the order is signed by the Clerk of Court?
2. Whether the Court of Appeals correctly applied South Carolina law to find that a non-lawyer may not represent a trust in court?

STANDARD OF REVIEW

Certiorari review is reserved for cases “where there are special and important reasons” for this Court to review the work of a lower court. Rule 242(b), SCACR. The Appellate Court Rules illustrate when such “special and important reasons” may exist: “where there are novel questions of law,” “where there is a dissent in the decision of the Court of Appeals,” “where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court,” “where substantial constitutional issues are directly involved,” or when the case includes a federal question and the ruling below conflicts with a ruling by the U.S. Supreme Court. *Id.* 242(b)(1)–(5).

This case matches none of these illustrative criteria. The Court of Appeals’ unanimous decision is fully supported by precedent from this Court and others, and it addresses questions of law that are settled. Certiorari should be denied.

ARGUMENT

I. The Clerk’s Order of Reference to a special referee was lawful.

“In an action where the parties consent, in a default case, *or an action for foreclosure*, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge *or the clerk of court.*” Rule 53(b), SCRCP (emphasis added).

In this foreclosure action, Ms. Mona Huggins, Chief Deputy Clerk of Lexington County, signed the order on behalf of Lisa Comer, Lexington County Clerk of Court, referring this matter to a master in equity, who then recused himself and referred the case to a special referee. While Petitioner contends that the Order of Reference is invalid because it was not signed by a judge, Rule 53(b) expressly states that foreclosure actions may be referred “by order of a circuit judge *or the clerk of court*”—as occurred here. Accordingly, this matter was properly referenced pursuant to Rule 53, SCRCP.

II. The special referee retained jurisdiction over this matter at all times.

Upon referral, the “special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.” *Id.* Rule 53(c).

Because this matter was properly referred to the Special Referee, he retained jurisdiction over this matter. Ms. Kelly’s allegations that the Court of Appeals failed to address whether the special referee had jurisdiction over her matter are unfounded. Even if the Court of Appeals had “failed” to consider jurisdictional concerns, it had no need to do so, because the Special Referee’s statutorily granted jurisdiction was never in doubt.

III. Ms. Kelly cannot legally represent The Trust.

South Carolina law is clear: a trust can be represented only by someone authorized to practice law. *See, e.g., Real Est. Unlimited, LLC v. Rainbow Living Tr.*, No. 2004-UP-019, 2004 WL 6248341 (S.C. Ct. App. Jan. 15, 2004) (holding that a non-attorney trustee cannot represent a trust in court); *Brown v. Coe*, 365 S.C. 137, 142, 616 S.E.2d 705, 708, *order clarified*, 365 S.C. 664, 620 S.E.2d 323 (2005) (finding a person “not admitted to the practice of law, cannot represent the estate in court as administratrix of the estate”). Ms. Kelly is not a South Carolina-licensed attorney. Accordingly, both the Special Referee and the Court of Appeals properly found that Ms. Kelly could not represent The Trust.

Ms. Kelly’s attempt to differentiate her representation of herself in her individual capacity with that of the trustee of the Judith Ann Kelly Trust fails. The subject property of this foreclosure action was conveyed by Ms. Kelly to the Judith Ann Kelly Family Trust on January 25, 2023, extinguishing any personal interest she holds in the property.¹ Accordingly, even if Ms. Kelly could

¹ This transfer of the property interest to the Judith Ann Kelly Trust by Quit Claim Deed was recorded March 16, 2023 in Deed Book 21048 at Page 5791 and also shown by the Certificate of Trust dated March 15, 2023 and recorded March 15, 2023 in Book 21048 at Page 5422.

separate her individual interest from her role as the trustee, The Trust—as the owner of the subject property—is the real party in interest, and it cannot be represented by Ms. Kelly in litigation.

IV. The remaining questions raised by Ms. Kelly were not preserved for certiorari review.

In her Petition, Ms. Kelly raises two additional questions for review: (1) “Whether the Court of Appeals failed to address material filings, pending motions, a written motion for medical continuance pursuant to Rule 40(i), SCRCF, supplied by ongoing chemotherapy treatment, transcript record, and note/allonge/chain-of-title challenges, contrary to Rule 220(c), SCACR” and (2) “Whether foreclosure may continue when endorsement chain, custodial vault, and agency transfer under securitization remain unproven, affecting statewide foreclosure practice.”

These questions were not raised in the Court of Appeals, Ms. Kelly’s Petition for Rehearing, or her “Motion to Reinstate Appeal” and are, therefore, improper for certiorari review. *See* Rule 242(d)(1), SCACR (“Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.”).

CONCLUSION

The referral of this matter to a Special Referee by the Lexington County Clerk of Court is fully compliant with Rule 53(b), SCRCF. Because that referral was proper, the Special Referee lawfully maintained jurisdiction over the matter for its entirety. Similarly, the Special Referee’s and Court of Appeals’ orders, which found that Ms. Kelly—a non-attorney—cannot represent The Trust, are equally supported by South Carolina law.

For the foregoing reasons, Respondent respectfully requests that Ms. Kelly’s Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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