

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

PennyMac Loan Services, LLC, Respondent,

v.

Judith A. Kelly; Judith-Ann Kelly as co-trustee of the Judith Ann Kelly Family Trust,
and individually as borrower/obligor,

Ann Cornell as co-trustee of the Judith Ann Kelly Family Trust;

and South Brook Community Association, Inc., Defendants.

Of which Judith-Ann Kelly, individually and as co-trustee of Judith Ann Kelly Family Trust, is
Appellant-Petitioner.

Court of Appeals Case No. **2025-002221**

Lower Court Case No. **2023-CP-32-02327**

REPLY TO RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

I. Respondent Mischaracterizes the Jurisdictional Question

Respondent's argument assumes the validity of the order of reference while ignoring the threshold question raised in the Petition: whether the Special Referee ever obtained lawful jurisdiction over this matter.

The Petition challenges the validity of the referral itself.

Respondent's brief simply assumes the referral was proper and therefore argues that jurisdiction existed.

Under South Carolina law, **subject-matter jurisdiction must be determined before a court may proceed to the merits of any dispute.**

The South Carolina Supreme Court has repeatedly held:

"Jurisdiction is the power to hear and determine cases... and must exist before a court may act."

Lake v. Reeder, 298 S.C. 195 (1989).

If jurisdiction is absent, all subsequent proceedings are void.

"Orders entered without subject matter jurisdiction are void ab initio."

Ex parte Strom, 343 S.C. 257 (2001).

Thus the central question is not whether the Special Referee exercised authority properly, but whether that authority was ever lawfully conferred.

I-A. Respondent's Argument Is Circular

Respondent's reasoning is circular.

The Petition challenges the validity of the reference order itself.

If the reference was invalid, the Special Referee never obtained jurisdiction.

A court cannot bootstrap jurisdiction by assuming the validity of the very order being challenged.

See *Ex parte Strom*, 343 S.C. 257 (2001) (orders entered without jurisdiction are void ab initio).

II. The Clerk-Signed Reference Did Not Resolve Jurisdiction in a Contested Foreclosure Action

Respondent relies on Rule 53(b), SCRCF, which allows certain matters to be referred by order of the clerk of court.

However, Respondent's argument omits the procedural reality of this case.

This foreclosure was actively contested from its inception and became contested immediately upon Petitioner's filing of jurisdictional objections and related motions.

Once contested, the action required the court to resolve the jurisdictional objections raised by Petitioner.

Instead, the proceedings moved forward without any judicial determination of the jurisdictional challenge.

A clerical reference does not eliminate the court's obligation to resolve jurisdictional challenges raised by a party.

Once Petitioner challenged the validity of the reference order and the authority of the Special Referee, the court was required to determine that jurisdictional issue before proceeding further.

Neither the Special Referee nor the Court of Appeals addressed the jurisdictional objection.

Instead, the proceedings continued as though jurisdiction had already been established.

Because jurisdiction was never determined, the proceedings below rest on an unresolved

jurisdictional foundation.

Thus Respondent's reliance on Rule 53(b) does not resolve the jurisdictional issue raised in the Petition.

II-A. Even If Rule 53 Permits Clerk Referral, Jurisdiction Must Be Established

Respondent relies on Rule 53(b), SCRCF, to argue that the clerk's referral conclusively established jurisdiction.

This argument misstates the rule.

Rule 53(b) merely permits administrative referral of certain matters to a master or referee. It does not eliminate the court's duty to determine jurisdiction when that jurisdiction is directly challenged.

Where a party raises a jurisdictional objection, the court must resolve that objection before proceeding to the merits.

See *Lake v. Reeder*, 298 S.C. 195 (1989).

Here, Petitioner specifically challenged the jurisdiction of the Special Referee and the validity of the reference order. Yet neither the Special Referee nor the Court of Appeals addressed the jurisdictional challenge.

Because jurisdiction was never determined, the proceedings below rest on an unresolved jurisdictional foundation.

III. The Court of Appeals Improperly Resolved Representation Before Jurisdiction

The Court of Appeals denied relief on the basis that Petitioner, a non-lawyer, could not represent the Trust.

However, that conclusion presupposes that the lower court proceedings were valid.

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South Carolina law requires the opposite sequence.

A court must first determine whether it possesses jurisdiction before addressing standing, representation, or the merits of the dispute.

“Jurisdiction is a threshold issue and must be resolved before the court addresses the merits of a claim.”

Lake v. Reeder, 298 S.C. 195.

Here, the Court of Appeals did not address the jurisdictional defect raised by Petitioner. The Court of Appeals therefore resolved a secondary procedural issue while leaving the threshold jurisdictional question unanswered.

That approach bypassed the dispositive jurisdictional question.

By resolving the appeal on a secondary procedural issue while leaving the jurisdictional question unanswered, the Court of Appeals effectively denied appellate review of the dispositive issue raised by Petitioner.

Certiorari review is appropriate where an appellate decision fails to address a controlling legal question necessary to resolve the case. When an appellate court declines to resolve a threshold jurisdictional challenge, Supreme Court review is necessary to preserve the proper sequencing of judicial authority.

This case presents precisely that circumstance.

IV. Petitioner Appears to Defend Personal Liability as Borrower and Obligor

Respondent argues that Petitioner cannot participate in the litigation because the property was conveyed to the Judith Ann Kelly Family Trust.

This argument mischaracterizes Petitioner’s role in the underlying foreclosure.

Petitioner executed the promissory note and mortgage and is the borrower obligated under the loan.

The foreclosure judgment was entered against Petitioner as borrower and obligor.

Petitioner therefore appears **pro se to defend her own legal interests**, not to represent the Trust as counsel.

South Carolina law distinguishes between representing another entity and appearing on one's own behalf.

A non-attorney may not represent a separate legal entity but may appear on his or her own behalf.

Ex parte Moore, 367 S.C. 121 (2006).

The cases cited by Respondent involve individuals attempting to represent separate legal entities.

Petitioner, however, appears to defend her own legal liability as borrower and obligor under the promissory note.

Respondent's argument incorrectly treats the Trust as the sole party in interest. The foreclosure judgment, however, was entered against Petitioner as borrower and obligor under the promissory note.

Petitioner therefore appears pro se to defend her own legal liability, not to represent the Trust as counsel. The prohibition against non-lawyers representing separate entities does not prevent an individual defendant from defending herself in litigation.

V. Respondent's Preservation Argument Fails

Respondent asserts that certain issues raised in the Petition were not preserved for certiorari

review.

However, jurisdictional defects are not subject to ordinary preservation rules.

The Supreme Court has repeatedly held that subject-matter jurisdiction may be raised at any time.

See **State v. Gentry**, 363 S.C. 93, 610 S.E.2d 494 (2005); **Dove v. Gold Kist, Inc.**, 314 S.C. 235, 442 S.E.2d 598 (1994).

Because the Petition raises a fundamental jurisdictional defect, this Court may review the issue regardless of preservation arguments.

VI. This Case Presents Important Questions of Statewide Significance

- The scope of clerical authority to refer foreclosure actions under Rule 53(b);
- The requirement that courts determine jurisdiction before addressing representation or merits;
- The procedural protections afforded to pro se litigants in foreclosure proceedings.

The administration of justice requires that courts address jurisdictional challenges before resolving procedural or representation issues. When a jurisdictional objection is raised but left unresolved, litigants are deprived of meaningful appellate review of the court's authority to act. Clarification from this Court will ensure that jurisdictional questions are addressed consistently and transparently in foreclosure proceedings throughout South Carolina. Certiorari review is therefore warranted to maintain the integrity of the judicial process.

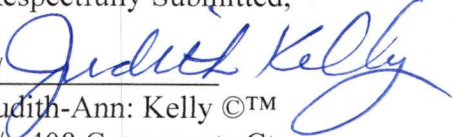
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CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the Petition for Writ of Certiorari and review the unresolved jurisdictional defect presented in this case.

March 10, 2026

Respectfully Submitted,

s/ 

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