THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Judge

Appellate Case No. 2022-000704

South Carolina Community Bank,..……...……...…...Respondent,

v.

Salon Proz, LLC, Columbia Empowerment Zone, Inc. d/b/a The Columbia Empowerment Zone, and Frank Mitchell, Defendants,

Of whom Salon Proz, LLC is the……Appellant.

APPELLANT'S REPLY TO RETURN TO PETITION FOR REHEARING OR REHEARING *EN BANC*

Appellant (and Yvonne Jones, Office Suites, LLC, and The Event Hall, LLC, to the extent there is actually some ruling against them to challenge) hereby submits this reply to the Respondent's return to the pending petition for rehearing or rehearing *en banc* in this case.

Simply put, the cases cited in the Respondent's return do not stand for the propositions Respondent claims they do. Further, as did the panel in the challenged opinion, the Respondent continues to conflate substantive contempt powers with procedural requirements (absent here) needed for a court to have proceedings about whether to hold a non-party in contempt and impose sanctions.

The panels' decision and the circuit court's below were based, at least in part, on the idea that a receivership order, issued in an action to which Office Suites, LLC and The Event Hall, LLC were not parties, obligated those limited liability companies to turn over their rents – owed to them, not to Salon Proz – to the receiver and that those separate entities' retention of the rents paid to them put both Yvonne Jones (also not a party) and Salon Proz in violation of an order issued only to Salon Proz. As the record shows, Salon Proz directed *its* tenants to turn their rents over to the receiver (at least until it became apparent that the receiver was not going to pay utility bills for the subject property). In other words, the ostensible contempt that the lower court found (and this court surprisingly upheld) was based on non-parties not doing what *Salon Proz*, not the non-parties, were ordered to do.

Respondent's contention that those non-parties were obligated to turn *their* rents, rents owed to them, over to the receiver is based on a misreading, and indeed a broad and unlawful expansion, of the partial *in rem* nature of a foreclosure action. A foreclosure action is *not* an *in rem* proceeding brought against all the world. Perpetual Bldg. & Loan Assn. v. Braun, 270 S.C. 338, 340, 242 S.E.2d 407 (1978); Bartles v. Livingston, 282 S.C. 448, 454, 319 S.E.2d 707, 711 (Ct. App. 1984). To be sure, a foreclosure action has the *in rem* aspect of being about the parties' rights to a specific piece of property, but that does not do away with personal jurisdiction requirements for an order to affect a person's rights. Our Supreme Court has expressly rejected the idea that a foreclosure action is an *in rem* proceeding such as that argued by the Respondent. In Perpetual, the Court expressly rejected the notion that a foreclosure action is solely *in rem*. Perpetual, 270 S.C. at 340. In Green Tree

Servicing, LLC v. Adams, 375 S.C. 583, 654 S.E.2d 100 (Ct. App. 2007), this court held that a non-party to a foreclosure action could not be bound by the foreclosure decree or sale without proceedings being brought for the purpose of giving that party an opportunity to contest the foreclosure and show why the non-party should not be bound by the decree. Id. at 586-87. This court noted the principle that "[a] court may not act against a party without jurisdiction." Id. at 586.

There is no "foreclosure action" exception to the requirement of personal jurisdiction. Id.

On pages 6-8 of its return, the Respondent cites a number of cases for the idea that it is nearly universally accepted that a non-party in Yvonne Jones' position can be sanctioned for contempt. Here is where the Respondent confuses the concept of potential substantive contempt liability with the rather different procedural prerequisites for an entity to be before the court to answer for a claimed contempt. With two exceptions, both from the same foreign jurisdiction, each of those cases had in its background that the ostensible non-party contemnor was served with some process directing the non-party to appear and defend the accusations of contempt – which Appellant has been noting this whole time was never done in this case with regard to Yvonne Jones. Only the New York state cases cited by the Respondent involved sanctions against non-parties to whom no process was ever directed.

New York ignores bedrock principles of Anglo-American jurisprudence, not to mention the Due Process clause, at its peril. South Carolina does not ignore them.

The Respondent also makes what seems a last-ditch argument for the proportionality of the sanctions issued here, contending that the receiver-collected

money would be used to fund the defense of the counterclaims. First of all, that has nothing to do with the *ability* to defend the counterclaims; it has to do with paying for that defense, which is a rather different matter. Second, there is no factual support for it. The receiver was not ordered to turn the funds he collected over to the Respondent for defense costs or anything else, and his testimony reveals that what he has done with the funds he collected is hold them, not give them to the Respondent. Any noncompliance by Salon Proz with the receivership order did not take any funds away from the Respondent. Indeed, it has never been determined that the Respondent is to get any of those funds.

The Respondent cannot escape that the circuit court acted without the required personal jurisdiction and based its rulings on incorrect conceptions of both the record and the law.

WHEREFORE Appellant prays for an order granting the petition for rehearing or rehearing *en banc*.

Respectfully submitted,

/s/ Andrew S. Radeker
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PROOF OF SERVICE

I certify that I have served the foregoing reply to return on the date given below by emailing it to counsel for the Respondent at the address(es) noted below.

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/s/ Andrew S. Radeker
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March 18, 2026