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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
William H. Porter, Master-in-Equity

Case No. 2025-CP-21-01885

Appellate Case No. 2025-002445

Gloria Darrell,..... Respondent,

v.

Daisy H. Walden,..... Appellant.

BRIEF OF RESPONDENT

s/Leonard R. Jordan, Jr.

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Trial Court err in granting summary judgment in favor of Respondent?
- II. Did the Trial Court err in finding that Appellant's Confession of Judgment met statutory requirements?
- III. Did the Trial Court err in denying Appellant's Motion to Vacate Order of Reference?
- IV. Did the Trial Court err in denying Appellant's Motion to Stay Execution of Foreclosure Sale?

STATEMENT OF THE CASE AND FACTS

Appellant's Statement of the Case and Facts is, in general, sufficient to provide the circumstances important to this case. There are, however, certain statements, which Respondent believes are made without proper support.

Appellant issued to Respondent a Promissory Note (R.p. 131), which evidenced the loan made to Appellant by Respondent. There is no evidence of how the loan proceeds were utilized by Appellant or that Respondent was ever made aware of the purpose of the loan. The Promissory Note was prepared by Appellant and signed and voluntarily tendered by her to Respondent.

When the Promissory Note remained unpaid for over two and one-half years after the loan was made, Respondent instituted suit against Appellant to collect the debt, and that suit was settled by Appellant offering to issue, and then issuing, her Confession of Judgment in favor of Respondent. The Confession of Judgment ("Judgment") was filed in the Office of the Clerk of Court for Florence County on January 27, 2016. (R.p. 40)

An Execution on Judgment, which reflects a Nulla Bona Return, was filed in the Office of the Clerk of Court for Florence County on May 26, 2016. (R.p. 146)

The Judgment attached as a lien to the subject real property, which had been conveyed to Richard D. Walden and Daisy Walden, as joint tenants with right of survivorship (R.p. 43), when, upon the death of Mr. Walden in May 2025, the ownership of the property passed exclusively to Appellant. When Respondent learned of Mr. Walden's death, just over six months was left in the

10-year lifespan of the Judgment. The subject foreclosure suit was filed on July 14, 2025. It should be noted that the subject real property is not Appellant's home. She relocated to Florida to live with her daughter, apparently after the death of her husband (May 2025).

Importantly, the Respondent's Judgment is junior in priority to a Mortgage held by Carolina Bank & Trust Company (R.p. 161), which Mortgage secures a significant debt. The subject foreclosure suit and judgment were expressly subject to said Mortgage.

The Confession of Judgment, with post-judgment interest, totaled \$426,131.73, as of October 9, 2025. (R.p. 147) Due to the inflated interest added by Appellant in the Promissory Note (which she prepared) and then included in the Confession of Judgment signed by Appellant, Respondent voluntarily recalculated the Judgment debt before the hearing on Respondent's Motion for Summary Judgment, reducing the Principal to \$70,000.00 and adding thereon accrued statutory, pre-judgment and post-judgment interest (see S.C. Code Ann. §34-31-20). Upon applying the statutory interest to the significantly-reduced Principal, the total judgment debt, as of October 9, 2025, was reduced to \$210,837.90 (R.p. 156), which is less than 50% of the debt described in the Confession of Judgment.

No evidence was presented that the Promissory Note was not signed and delivered by Appellant or could not be enforced by Respondent after Appellant failed to repay the \$70,000.00 loan. No evidence was presented that the Confession of Judgment was not signed and delivered by Appellant or was not due and payable. Appellant's counsel informed the Court that he "cannot in good faith attest to the fact that she did or did not" sign either the promissory note or the confession. (R.p. 106)

The Confession of Judgment provides, in relevant part, as follows:

That she is justly and truly indebted to the Plaintiff, Reverend Gloria Darrell, on a Promissory Note dated March 4, 2013, in the principal sum of Seventy Thousand

and 00/100 Dollars (\$70,000.00), plus interest and fees in the fixed (stipulated) amount of \$100,000.00, for a total of \$170,000.00, which Promissory Note matured on April 3, 2013; that the indebtedness also includes pre-judgment interest, at the rate of 8.75% per annum from April 3, 2013, which amounts to \$11,125.68 as of December 31, 2015; that the pre-judgment interest continues after December 31, 2015, until this Confession of Judgment is filed, at the per diem rate of \$40.75; and that the indebtedness also includes court costs in the amount of \$205.00.

Appellant argued that the Confession of Judgment does not satisfy the requirements of S.C. Code Ann. §15-35-360, which provides, in relevant part, as follows:

Before a judgment by confession shall be entered a statement in writing must be made and signed by the defendant and verified by his oath to the following effect:
(1) It must state the amount for which judgment may be entered and authorize the entry of judgment therefor;
(2) If it be for the money due or to become due, it must state concisely the facts out of which it arose and must show that the sum confessed therefor is justly due or to become due;

This suit to foreclose a judgment lien resulted in a Master's Order and Judgment of Foreclosure of Sale to foreclose the lien upon the subject real property owned by Appellant, which Judgment was filed on October 27, 2025. (R.p. 8) The Master in Equity found “. . . that the Plaintiff has made a prima facie case in support of her Motion (for Summary Judgment), and . . . that the Defendant has not come forward with specific facts showing that there is a genuine issue for trial.” (R.p. 10)

On November 4, 2025, Appellant filed a Motion to Reconsider (R.p. 61), which was denied by Order Denying Motion to Reconsider filed on November 18, 2025. (R.p. 24) Appellant then sought to stay the sale by a Motion to Stay Execution filed on December 1, 2025. (R.p. 85) In response, the Master in Equity, in a telephone conference with the attorneys, agreed to set a bond; but ultimately no bond was posted by Appellant. The foreclosure sale was conducted on December 2, 2025. The foreclosure sale resulted in the purchase of the property by Respondent, who was the sole bidder, as reflected by a Master's Report on Sale and Disbursements and Order Confirming

Sale filed on December 30, 2025. (R.p. 31) The sale was subject to the Mortgage (mentioned above), which was unaffected by the foreclosure action.

STANDARD OF REVIEW

“In reviewing a grant of summary judgment, our appellate court applies the same standard as the trial court under Rule 56(c), SCRPC.” *Woodson v. DLI Props., LLC*, 406 S.C. 517, 528, 753 S.E.2d 428, 434 (2014). A trial court may properly grant a motion for summary judgment when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. “A grant of summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 109-10, 662 S.E.2d 40, 41 (2008). “In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.” *Brockbank v. Best Cap. Corp.*, 341 S.C. 372, 378-79, 534 S.E.2d 688, 692 (2000).

“Under Rule 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact.” *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). “Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003). “[T]he nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” *Id.*

ARGUMENTS

A. The Trial Court Correctly Granted Summary Judgment in favor of Respondent.

Appellant's argument appears to be: (a) I answered Respondent's suit to the best of my ability offering a variety of affirmative defenses and motions; (b) I have no evidence to support any of my affirmative defenses; and (c) I was not afforded the right to be heard, the right to present evidence and testimony and the right to engage in discovery. (R.pp. 69-70)

Appellant served no response via affidavit to Respondent's Motion for Summary Judgment to counter said Motion. Appellant, through counsel, raised points that, at the time of Respondent's loan to Appellant, Appellant's prior counsel oversaw a transaction in which all, or a large majority, of the \$70,000.00 loan was disbursed by Appellant to an oil tanker charter company located in Nigeria, claiming that Appellant never received any benefit from this disbursement. (R.p. 69) This does not constitute evidence. It does, however, imply that Appellant did, in fact, receive the said loan from Respondent.

No evidence whatsoever was presented in support of Appellant's defenses of unclean hands, unconscionability, usury, duress and undue influence. Any discussion by Appellant's counsel regarding these defenses (which is not evidence) was directed at persons other than Respondent. (R.pp. 69-70)

Neither Appellant, nor her guardian ad litem,¹ nor any other witness presented any testimony or any evidence whatsoever regarding the circumstances resulting in Appellant's delivery of the Promissory Note and/or the Confession of Judgment or the existence of any issue of material fact in dispute.

¹ On October 20, 2025, Mr. Holbrook informed the Master that, "I . . . have the Defendant's daughter here today with some plans to speak" (R.p. 106)

Appellant claims that she was not afforded due process, the right to be heard and the right to present evidence and testimony. These claims fail as Appellant was afforded three (3) hearings before the Master in Equity, each of which allowed the litigants all the time needed and requested by them to present evidence and arguments. Appellant also claims that she was not afforded the right to engage in discovery. This claim also fails as no such discovery was initiated or otherwise requested by Appellant.

B. The Trial Court Correctly Concluded that Appellant's Confession of Judgment Met Statutory Requirements.

The Master in Equity was presented with a valid Confession of Judgment, which was clearly executed by Appellant. Appellant produced no evidence of factual matters in dispute. The Master in Equity concluded that the Confession of Judgment was statutorily and factually sufficient and that the debt was properly established, declaring that, "[i]t is my opinion that the judgment stands" (R.p. 122) He properly issued his order directing the foreclosure of the judgment lien and the sale of the subject real property.

On November 4, 2025, Appellant filed a Motion to Reconsider (R.p. 61), which, after a hearing, was denied by Order Denying Motion to Reconsider filed on November 18, 2025. (R.p. 24) At the hearing on said Motion on November 13, 2025, the Master asserted that he had searched the Clerk of Court's file on the 2015 suit, which resulted in the Confession of Judgment, and found, and found compelling, an Order issued by Judge Thomas A. Russo on April 13, 2016. In his aforesaid Order, the Master referred to the 2016 Order, as follows: "Said Order was issued expressly 'to avoid future uncertainty with regard to the validity and enforceability of the Confession of Judgment,' and it 'ORDERED that . . . the Confession of Judgment shall remain fully enforceable until paid in full.'"

Appellant had argued that the Confession of Judgment did not comply with S.C. Code Ann.

§15-35-360, which provides as follows:

Before a judgment by confession shall be entered a statement in writing must be made and signed by the defendant and verified by his oath to the following effect: (1) It must state the amount for which judgment may be entered and authorize the entry of judgment therefor; (2) If it be for the money due or to become due, it must state concisely the facts out of which it arose and must show that the sum confessed therefor is justly due or to become due; and (3) If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability and must show that the sum confessed therefor does not exceed the liability.

In response to that argument, Respondent cited the case of *Linda Mc Co. v. Shore* (cited below), which was appealed to both the Court of Appeals and the Supreme Court, which courts considered the validity of the Judgment by Confession given by the Shores to Linda Mc Co., which provided, in relevant part, as follows:

[The Shores] confess judgment to [the Company] in the amount of \$110,000.00 and hereby authorize the Clerk of Court for Lancaster County, South Carolina, to enter judgment in favor of [the Company] against [the Shores], jointly and severally, for such amount, plus such costs and reasonable attorneys' fees incurred by [the Company] in enforcing the unconditional guaranty, a copy of which is attached hereto as Exhibit 1 ("the Guaranty") (p. 435)

The foregoing was the entirety of the concise statement of facts found in the (Shores') Confession of Judgment. The Court of Appeals, in 375 S.C. 432, 438, 653 S.E.2d 279 (2007), after quoting §15-35-360, concluded that

[t]he Judgment sets forth that the Shores owe '\$110,000.00, plus costs and reasonable attorney's fees incurred by Plaintiff in enforcing the Guaranty.' The Judgment was made in writing and signed by the Shores and verified by their oath. Post-judgment interest accrued as a matter of law. **The Judgment satisfies the statutory requirements.** (emphasis added)

Upon granting a writ of certiorari, the Supreme Court, in 390 S.C. 543, 552, 703 S.E.2d 499 (2010), also considered the same Confession of Judgment in light of §15-35-360; and it decided that

. . . The judgment complies with the statutory requirements of section 15-35-360 because it was made in writing, signed by Petitioners, and verified by their oath. Moreover, the lack of an affidavit does not render the judgment void

Appellant cited “very old” cases for the proposition that the confession of judgment herein failed under the predecessor of §15-35-360, which cases are listed below:

Weinges v. Cash, 15 S.C. 44 (1881);

Ex parte Carroll, 17 S.C. 446 (1882);

Kohn v. Meyer, 19 S.C. 190 (1883); and

Woods v. Bryan, 41 S.C. 74 (1894).

In *Weinges*, the Supreme Court reversed the lower court decision, which found that the judgment “. . . is fatally defective in form and substance, and the judgment entered thereon is **utterly void as against the other creditors . . . though it may stand as between the parties.**”

(emphasis added) The Supreme Court concluded that,

. . . we have a statement of the amount due, the consideration of the debt, the facts out of which such consideration grew, and that the amount was justly due. What more could be required to make it conform to the statute, which only requires the facts out of which the indebtedness arises to be stated *concisely*? . . . It fixed definitely the amount of the debt, and showed clearly the origin and consideration of the indebtedness, and, in our judgment, nothing more was necessary. . . All he could want to know would be what was claimed to be the origin and consideration of the debt, and he would inquire for himself into the details. . . .

It then further concluded that,

. . . where, as in this case, the origin and consideration of the debt are stated, the creditor is furnished with such starting point and may proceed with his own investigations, and there is no necessity for a detailed statement of the various items doing to make up the amount of the indebtedness. We are, therefore, unable to agree with the Circuit judge that the statement in this case was insufficient. (p. 66)

Weinges--like all of the four cases cited by Appellant-- involved a suit against the confessor (the issuer of a confession of judgment) by another creditor of the confessor unrelated to the subject confession of judgment.

Each of the other three cases cited by Appellant concluded with the confession of judgment being found defective; but, importantly, **in each case, the judgment was found to be effective as between the parties** – as discussed below:

In *Carroll*, the court affirmed the lower court decision to set aside the confession of judgment, holding that, “[t]he object of the statement required by the code is to protect creditors against fraudulent confessions of judgment . . . by giving them such information as will enable them, by inquiry, to ascertain whether the alleged indebtedness is *bona fide* or pretensive and fraudulent, and if the statement fails to furnish such information, then the judgment based upon it must be regarded as fraudulent and **void as to other creditors . . . even though it may be valid as between the parties to it, who may be estopped from questioning its validity.**” (emphasis added) (p. 450)

Appellant agrees with the foregoing. As stated in the Brief of Appellant (p.8), quoting from *Ex parte Carroll*,

The judgment in question derives its origin from a special statutory provision, and to make it valid the requirements of the statute must be strictly complied with. [citations omitted] The object of the statement required by the code is **to protect creditors** against fraudulent confessions of judgment by giving them such information as will enable them, by inquiry, to ascertain whether the alleged indebtedness is *bona fide* or pretensive and fraudulent, and if the statement fails to furnish such information, then the judgment based upon it must be regarded as fraudulent and **void as to other creditors even though it may be valid as between the parties to it who may be estopped from questioning its validity.** (emphasis added)

In *Kohn*, the court reversed the lower court, which had held that a confession of judgment made by the debtor in favor of his father was a valid lien, finding that judgment failed to comply with (the predecessor to §15-35-360). The Court held that,

The object of the statement required by the code is to protect creditors against fraudulent confessions of judgment by giving them such information as will enable them, by inquiry, to ascertain whether the indebtedness is *bona fide*, or pretensive

and fraudulent, and if the statement fails to furnish such information, then the judgment based upon it must be regarded as fraudulent and **void as to other creditors even though it may be valid as between the parties to it who may be estopped from questioning its validity.** (emphasis added) (p. 198)

In *Woods*, the Court, citing *Weinges* and *Carroll*, found that,

[i]t is certainly well settled in this State, that a description of a note, without a statement of the indebtedness for which the note was given, is not sufficient to sustain a confession before the clerk . . . If the statement required by the Code was not made, then there was no authority to enter the judgment, and, **so far as third persons are concerned**, it was without any validity, and absolutely void. (emphasis added) (p. 78)

As stated above, the point of the statute is **to protect the confessor's other creditors against frauded confessions of judgment.** The statute does **not seek to address or alter the contractual relationship between the parties to a confession of judgment.**

The issue of the Verification being signed and dated before the date inserted on the Confession of Judgment should not present any concern. The evidence is clear that the Confession of Judgment and the Verification were signed together (at the same time) by Appellant and that the document was returned to Appellant to complete the signing as one witness signature was omitted. (R.p. 112) The Master recognized this as a non-issue. He stated, "I think the explanation I have heard from Mr. Jordan on that, it's just a - - - a clerical error that could easily have happened. . . It is my opinion that the judgment stands" (R.p. 122)

C. The Trial Court Correctly Denied Appellant's Motion to Vacate Order of Reference.

This case, which is one in equity for the foreclosure of a judgment, was referred to the Master in Equity for Florence County by Order of Reference filed on September 3, 2025. Said Order was appropriate under Rule 53(b) and Rule 71(a) of the South Carolina Rules of Civil Procedure, which provide, in relevant part, as follows:

Rule 53 Masters and Special Referees

(b) References

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 (emphasis added)

Rule 71 Foreclosure and Partition

(a) Proceedings, Reference

Actions to foreclose liens . . . shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53 (emphasis added)

Appellant’s argument that Rule 38, SCRCP, is applicable is misplaced.

“Because a foreclosure action is one sounding in equity, a party is not entitled, as a matter of right, to a jury trial.” *S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 96, 800 S.E.2d 488, 491-92 (Ct. App. 2017), abrogated on other grounds by *Deutsche Bank Nat’l Tr. Co. v. Estate of Houck*, 440 S.C. 409, 412, 892 S.E.2d 280, 282 (2023).

D. The Trial Court Correctly Reacted to Appellant’s Motion to Stay Execution of Foreclosure Sale.

The Master in Equity took up the matter of Appellant’s Motion to Stay Execution, which was filed on December 1, 2025, in a telephone conference with counsel for Appellant and Respondent; and he agreed to stay the execution of the court-ordered foreclosure sale of Appellant’s real property subject to the posting of a stipulated bond by Appellant.² As stated in Appellant’s Brief (p. 13), Appellant was unable “. . . to obtain the statutorily required sureties . . .” The Master did not deny Appellant’s Motion to Stay Execution, but he instead took steps to enable Appellant to stay the lower court judgment during this appeal. In the end, however, Appellant did not file an appropriate bond, and the foreclosure sale was conducted by the Master in Equity on December 2, 2025.

² See S.C. Code Ann. §§18-9-130 and 170.

CONCLUSION

The Master in Equity correctly granted Respondent's Motion for Summary Judgment, as there was no evidence of any matter of fact in dispute.

As between the parties to the Confession of Judgment, the content of the instrument was satisfactory under all precedent considering S.C. Code Ann. §15-35-360, and considering the 2016 Order, which declared that this Confession of Judgment "shall remain fully enforceable until paid in full."

The Order of Reference of this foreclosure suit was appropriate under Rules 53(b) and 71(a) of the South Carolina Rules of Civil Procedure.

Upon considering Appellant's Motion to Stay Execution, the Master in Equity agreed to set a bond to allow Appellant to stay the sale of the property; but Appellant failed to post the requisite bond.

Respondent respectfully requests that this Court affirm the decision of the lower court.

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