THE STATE OF SOUTH CAROLINA
In the Supreme Court

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

S. Ct. Appellate Case No. _________ (not yet assigned)
(Ct. App. 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……………………………………………Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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INTRODUCTION

The Petitioner ("Salon Proz"), along with Yvonne Jones, Office Suites, LLC, and The Event Hall, LLC, to the extent there is any order or decision against them, asks this Court to issue a writ of certiorari to review the Court of Appeals' opinion that has affirmed the circuit court's decision to 1) sanction a non-party to whom no process had ever been directed, of whom no personal jurisdiction was ever obtained, and who was not the entity sought to be sanctioned in any of the proceedings that led to the appealed orders, 2) issue sanctions when the same court had already determined that the procedural requisites for sanctions had not been met, 3) issue sanctions quite harsh in character (striking of counterclaims) that bore no relation to the conduct that ostensibly provided the basis for sanctions, and 4) refer the case to the master-in-equity in defiance of the law of the case that Salon Proz has the right to a jury trial on its counterclaims.

The essential purpose of appellate courts is to reverse error committed by lower courts. S.C. Const. Art. V, § 5; see S.C. Code Ann. § 14-8-200(a). The appealed orders are grounded in errors, most of them of a fundamental character. Salon Proz pointed out those errors and put them squarely before the circuit court and the Court of Appeals. The undersigned counsel for Salon Proz cannot understand why or how the Court of Appeals concluded that the law allows the circuit court's rulings to stand. All this state's law on the issues present here requires reversal. Courts are not permitted to act against an entity in the absence of personal jurisdiction.

CERTIFICATE OF COUNSEL

The Court of Appeals issued its opinion in this case on January 14, 2026. Counsel for the Petitioner certifies that the petition for rehearing was served and filed on January 28, 2026. The petition for rehearing was finally ruled on by the Court of Appeals by an order filed on May 29, 2026.

This petition for a writ of certiorari is timely served and filed on June 24, 2026.

QUESTIONS PRESENTED

The questions presented here are closely related.

1) Did the Court of Appeals err in affirming the issuance of sanctions against a non-party against whom no proceedings had ever been brought and over whom no jurisdiction had been obtained?

2) Did the Court of Appeals err in affirming the issuance of sanctions against Salon Proz and the non-party where the record demonstrated no willful disobedience of a court order but, rather, showed acts done in desperation in light of the failure of the receiver to meet his responsibilities?

3) Did the Court of Appeals err in affirming the issuance of sanctions against Salon Proz, including striking and dismissing its counterclaims, where the sanctions issued were drastically harsh and bore no relation to the ostensible conduct the circuit court's order addressed?

4) Did the Court of Appeals err in affirming the circuit court's conclusion that previous orders required a receiver to be paid rent that was owed to non-parties over whom the court had no jurisdiction?

5) Did the Court of Appeals err in affirming the circuit court's reference of this case to the master-in-equity, where the Court of Appeals had previously issued an opinion deciding that Salon Proz has the right to a jury trial?

6) Did the Court of Appeals err in employing demonstrably false statements about what occurred below to articulate a basis for its decision?

7) Did the Court of Appeals err in affirming the issuance of sanctions where the circuit court had already made the unchallenged determination that the procedural requirements to seek them were not met?

STATEMENT OF THE CASE

This is an appeal of orders sanctioning Salon Proz, purporting to sanction its manager, Yvonne Jones (who joins in this appeal and this petition to the extent there is any order against her, as do The Event Hall, LLC and Office Suites, LLC), and striking Salon Proz's counterclaims. (R. pp. 1-9.)

This is case is a commercial mortgage foreclosure action with counterclaims and a jury demand on those counterclaims. (R. pp. 24-33, 47-57.) Previous appellate proceedings were had in this case, resulting in this court's reversal of the master-in-equity's denial of the motion to return this case to the general jury docket of the circuit court. S.C. Community Bank v. Salon Proz, LLC, 420 S.C. 89, 800 S.E.2d 488 (Ct. App. 2017).

After remand, the circuit court granted the Respondent (hereinafter "SCCB")'s motion to appoint a receiver and appointed D. Christopher Twitty (hereinafter "Twitty") as receiver. (R. pp. 12-15.)

SCCB later sought a rule to show cause, claiming that Salon Proz had not complied with the order appointing the receiver. (R. pp. 58-60.) The court held a hearing on October 25, 2021, and ruled as follows:

> After the Order was entered but prior to the hearing of this matter on October 25, 2021, Defendant provided a few additional documents; however, the Receiver confirms that he has still not been provided with a substantial amount of documents and information both he and Plaintiff's counsel have requested from Defendant. Specifically, the Receiver has not yet received the following:

1. Historical rent rolls, rental agreements, and accounting of all tenants, rent received, and where rent payments went for the time period preceding the Order;
2. Keys to all areas of the property;
3. All current leases not yet provided;
4. All rental payments received since October 2, 2020 and documents related to where payments were deposited, otherwise negotiated, or spent; and
5. All documents related to any bank account(s) owned, used, or accessible by Defendant. Moreover, as set forth on page 2 of the Order, Defendant is to immediately transfer access and oversight of the aforementioned accounts to the Receiver, provide a copy of the Order to the bank where any account is held, and facilitate Receiver's ability to exercise control over the account.

Based on the filings and evidence properly before the Court, I find that the Defendant has failed to comply with Judge Lee's March 2, 2020 Order. I further find that Defendant shall have 30 days from the date of this Order to provide the above documents and information and complete the associated arrangements with any bank. Defendant and Defendant's counsel shall provide copies of all such documents and communications to Plaintiff's attorney as well.

Also, because the Receiver has not been able to recover rents and other proceeds at this time, he has requested that the Court order Defendant to make arrangements so that he can be paid for his work. Defendant's obligation to compensate the Receiver is expressly provided for in Judge Lee's Order. However, this Court will hold in abeyance its ruling on the details of the Receiver's compensation until Defendant has fully complied with her obligations set forth above. Once this has been done, counsel for Plaintiff shall notify the Court and seek further instructions on how to proceed with seeking this relief. Alternatively, if Defendant has not complied with this Order by the deadline set above, Plaintiff's counsel shall promptly notify the Court so that it can take further action.

Lastly, in its Petition, Plaintiff also requested its attorneys' fees and costs associated with the enforcement of the Order from the preparation and filing of the Petition through Defendant's full compliance with same. As with the Receiver's fees and costs, the Court holds

> this matter in abeyance under the same conditions as described above.

(R. pp. 21-22.)

SCCB moved shortly thereafter for contempt sanctions on the basis that Salon Proz had not complied with the latest order. (R. pp. 101-05.) SCCB did not file this motion with an affidavit or other sworn testimony. (R. pp. 106-32.) SCCB did not petition for the issuance of a rule to show cause, and no rule to show cause issued. (R. pp. 101-05.)

A hearing on SCCB's motion was set for January 28, 2022. The hearing began on January 28, but the court determined that not enough time had been allocated for the parties' presentations and that the hearing would need to be rescheduled to resume. (R. p. 140 ln. 1-8, p. 150 ln. 20 through p. 157 ln. 15.)

Resumption of the hearing was scheduled for February 8. In an effort to streamline the time needed for live witness examination, Salon Proz filed an affidavit of Yvonne Jones (hereinafter "Jones") in advance of the hearing. (R. p. 163 ln. 18 through p. 165 ln. 6, pp. 218-85.) Jones' affidavit was filed with 21 exhibits and noted that she had asked Salon Proz's tenants to pay one month's rent to Salon Proz, rather than the receiver, because the receiver had failed to pay utility bills for the subject property and put every business operating in the building in danger of being unable to function. (R. pp. 218-85.)

The court called Jones to testify. (R. p. 181 ln. 12-19.) Jones testified that she had provided the documents that SCCB claimed had not been provided to the receiver. (R. p. 182 ln. 13 through p. 185 ln. 10, p. 186 ln. 1-6.) She testified she had provided the receiver with the leases for all of Salon Proz's tenants. (R. p. 182 ln. 24 through p. 184 ln. 6, p. 186 ln. 1-6.) She also testified as follows:

THE COURT: Alright. Now, is it your position that all rent payments that you received since Judge Lee's order has been turned over to Mr. Twitty?

MS. JONES: If they were leases for Salon Proz, LLC, yes. I turned all, anyone that had a lease with Salon Proz, LLC, I gave him all, yes.

THE COURT: Well, he stated that he hasn't gotten all the rent.

MS. JONES: I have.

THE COURT: Alright. What sort of proof do you have that, that every rent payment since Judge Lee's order has been turned over to, to Mr. Twitty? What sort of proof do you have?

MS. JONES: The tenants pay him directly, so -

THE COURT: No. Apart from what has been paid directly to Mr. Twitty, what proof do you have that every rent payment given to you has been turned over to Mr. Twitty since Judge Lee's order of October 2020?

MS. JONES: The tenants paid their bank directly; they don't give me money. It either drafts from out of their account or they pay it directly. So I have paid Mr. Twitty personally, The Event Hall, LLC, and Office Suites, LLC a thousand dollars per month, and that's in my bank statement, so, I mean -

THE COURT: Well, you just heard the reverend testify that some rent was paid to you by the, by the church.

MS. JONES: That rent paid by the church went to The Event Hall, LLC, not, how can I explain it. I'm the owner of The Event Hall, LLC and I pay rent to Salon Proz. The pastor, they are a sublease, and they pay The Event Hall, I guess that's the best way I can explain it. I paid Mr. Twitty rent, The Event Hall, LLC, I'm the owner of The Event Hall and I pay him rent, I pay him rent -

THE COURT: Alright. Let's, let's, you're just dancing all around my question, Ms. Jones. What do you mean in paragraph 31 of your affidavit that you chose to not lose tenants and not having the building cease to function as opposed to complying with the orders of the Court? What, what did you mean by that?

MS. JONES: I'm sorry -

THE COURT: Alright. I'm going to read to you. This is paragraph 31 of your affidavit. Salon Proz never wanted to disobey any order of this Court and tried to comply with them. Mr. Twitty put Salon Proz in such a position that it had to choose between having the building cease to function and losing all tenants and complying with the orders of the Court. I read that to mean that you chose, right or wrong, you chose to not comply with the orders of the Court in order to keep the building functioning and in order not to lose tenants. So what did you decide to do in not complying with the orders of the Court?

MS. JONES: When I received disconnection notices and when I was notified that utilities were going to be turned off less than 24 hours, I felt like that was an emergency and I had no choice but to pay the utilities because Mr. Twitty was not paying the utilities since October, November, December, even though we were paying him rent, he had not paid any of the utilities. So -

THE COURT: How is you paying the utilities not complying with the prior Court orders?

MS. JONES: Had I not paid the utilities -

THE COURT: No. Listen to my question, ma'am. I'm not trying to be rude or disrespectful.

MS. JONES: Okay.

THE COURT: But you said you did not, in your affidavit, that you did not comply with the prior Court orders, you stated that in your sworn affidavit. How is paying the utilities not complying with prior Court orders?

MS. JONES: All I can state is I paid the utilities to avoid the lights being turned off, the water and the building to stop functioning, and being shut down. I just, I didn't have a choice, I mean, I didn't want the lights to be turned off, the utilities, the hair salons, they need utilities to do hair, they would have been out of work. They have leases that state their utilities are included in their rent, so I didn't want them to not be able to function and not earn income and, and lose tenants and money because I didn't know when Mr. Twitty was going to take that money and apply it to the bills because he wasn't paying any bills, I was still paying the bills.

> **THE COURT:** And you were paying it with rent money from the tenants?
>
> **MS. JONES:** The tenants? Yes. They deposited their rent money, and I paid the utilities.
>
> **THE COURT:** Alright. So you're admitting that not all rent payments were turned over to the receiver, correct?
>
> **MS. JONES:** The last three months, October, November, and December, that rent money that was Salon Proz, LLC rent money, that was paid to the receiver. The only month that, January was when I paid the utilities with the rent money that I collected to keep the utilities on, January. December, we all paid Mr. Twitty rent. November, we all paid Mr. Twitty rent. Salon Proz, Office Suites, and The Event Hall. October, we all paid Mr. Twitty rent. I didn't meet Mr. Twitty until August, the end of August, after the bankruptcy case. I went to his office, introduced myself and asked him what did he need from me, and that's when I gave him everything he asked of me. And so, you know, he didn't, when I turned everything over to him, when he did not pay the bills then that's when I stepped in and paid them to stop the building from being shut down. Because the hair salon, they need electricity to do hair, they need water to do hair, so I felt like I didn't have a choice if he, I felt like I was being forced to do it, you know, if I didn't do it, then we would have just been shut down, everybody would have just been shut down completely.

(R. p. 186 ln. 7 through p. 190 ln. 21)

Salon Proz argued against the imposition of any sanctions. (R. p. 194 ln. 12 through p. 196 ln. 8.)

The court issued an order on March 22, 2022, that ruled as follows:

> 1. That the Defendant, Salon Proz, LLC., and its managing partner, Yvonne Jones, have willfully failed to comply with the above two Orders. Because there has not been a filing and service of a Rule to Show Cause, this Court is not going to make a finding of contempt but will sanction the Defendant and its managing partner for non-compliance of the above two Orders. The sanctions imposed is that the Defendant, Salon Proz, LLC., and its managing partner, Yvonne Jones, are jointly and individually liable for the payment of attorney's

> fees/costs, in the amount of $8,531,57 and payment of receiver fees of $10,292.00. These fees are to be paid within forty-five (45) days from the date of this Order;
>
> 2. That on the issue of granting Plaintiff's request to strike the Counterclaims from the Answer, the Court requests that Plaintiffs counsel submit a proposed Order for the Court's consideration (Note: The Court has not decided for sure to grant this request notwithstanding what the Court ruled from the Bench);
>
> 3. That this case is referred to the Richland County Master-In-Equity for hearing and disposition as soon as possible;
>
> 4. That all rental payments from this date forward shall be paid to the Receiver and there shall be no interference by the Defendant and its managing partner;
>
> 5. That if the Defendant and its managing partner has collected any rent since the hearing of February 8, 2022 then the same shall be reimbursed to the Receiver within fifteen (15) days from the date of this Order;
>
> 6. That refinancing is encouraged.

(R. pp. 2-3.)

A week later, the court issued an order dismissing and striking Salon Proz's counterclaims with prejudice. (R. p. 8.) That order found that both Salon Proz and Jones were in contempt of court for willfully failing to comply with court orders. (R. p. 7.) That order concluded as follows:

> In the case at bar, this Court finds that Defendant Salon Proz, LLC and its managing partner, Yvonne Jones, have willfully failed or refused to comply with the Order of Appointment and RTSC Order. This finding is consistent with prior rulings of this Court. The continued failure or refusal to comply with the orders is sufficient to justify the striking of Defendant Salon Proz, LLC's counterclaims against the Plaintiff. This case has been pending for nearly 11 years and no mortgage payments have been made in that time. Defendant has had ample opportunity to comply with this Court's orders.

> Defendant's actions or inaction has caused Plaintiff prejudice by hindering its fundamental ability to defend against the counterclaims. Moreover, Plaintiff has had to expend substantial time, fees, and costs to seek Defendant's compliance with the Court Orders. Plaintiff has proven that court orders and awards of fees and costs are insufficient remedies for Defendant's actions.

(R. pp. 7-8.)

Salon Proz moved for reconsideration of both these orders. (R. pp. 133-38.) Jones, Office Suites, and The Event Hall "join[ed] in this motion to echo it and to note that this court had no jurisdiction over them and that the court lacked the power or authority to issue any orders against them." (R. p. 138.) The court denied that motion. (R. pp. 10-11.)

Salon Proz appealed, which resulted in the decision Salon Proz now asks this Court to review. The Court of Appeals issued a decision that affirmed the circuit court's orders in full. The Court of Appeals wrote that S.C. Code Ann. § 36-2-802 allowed the court to exercise personal jurisdiction over Jones. The Court of Appeals wrote that "Jones signed the note and mortgage agreement with SCCB and is therefore a party to the foreclosure action, and subject to the Receivership Order." The Court of Appeals wrote that "Jones filed an answer, appeared in court, and defended the case without raising an objection to personal jurisdiction." The Court of Appeals wrote that the circuit court could and did exercise jurisdiction over Jones, The Event Hall, and Office Suites because they had disregarded the corporate form. The Court of Appeals found the striking of the counterclaims proper and upheld all sanctions.

ARGUMENT

If we are to live in a democratic republic, our government must be one of laws, not of men. John Adams, "Thoughts on Government" (1776). The undersigned lawyer likes Judge Hocker a great deal and does not consider his ruling to have been born of malice, but one thing is unmistakable: Judge Hocker declined to follow the law and instead did what he thought ought to happen. Upon review, the Court of Appeals did essentially the same thing, affirming Judge Hocker's plainly extralegal exercise of power and his decision to impose nearly the harshest sanction in a civil case without an attempt to meet the required standard to mete out such a punishment.

The undersigned can only observe, as respectfully as possible under the circumstances, that Judge Hocker and the Court of Appeals have demonstrated that South Carolina has a government of men (themselves), not of laws. Their decisions are grounded in the idea that a judge may act against anyone, at any time, regardless of whether that person has been called before the court or given an opportunity to argue against that exercise of power and regardless of whether the judge's decision comports with the law.

Such thinking is inimical to the principles that underlie our judicial system and is dangerous to the public and to the continued legitimacy of the system itself.

I. The circuit court never obtained or even attempted to obtain personal jurisdiction over Yvonne Jones, Office Suites, LLC, or The Event Hall, LLC. The court was without the power to impose sanctions or anything else on those entities.

"Without jurisdiction, a court cannot proceed at all in any cause[,]" and a court without personal jurisdiction over a party cannot issue an order that affects that party's rights. Limehouse v. Hulsey, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013). "A judgment is void if a court acts without personal jurisdiction." BB&T v. Taylor, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006).

Neither Yvonne Jones, Office Suites, LLC, nor The Event Hall, LLC have ever been parties to this case. (R. p. 135, p. 192 ln. 1-8.) The Court of Appeals wrote that

S.C. Code Ann. § 36-2-802 allowed the court to exercise personal jurisdiction over Jones, but nothing in that statute eliminates the procedural prerequisites for personal jurisdiction, none of which were present here with regard to these non-party entities. "A court usually obtains personal jurisdiction by the service of the summons and complaint." Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 644 S.E.2d 793, 796 (Ct. App. 2007). It is also possible to obtain jurisdiction over a non-party, usually for a limited purpose, through the issuance and service of a rule to show cause. Ex parte S.C. Dept. of Revenue, 350 S.C. 404, 407-08, 566 S.E.2d 196 (Ct. App. 2002). Here, neither Jones, nor The Event Hall, nor Office Suites was ever joined as a party to this case or any proceeding within it through the service of a summons, nor was any rule to show cause directed at any of them. (R. pp. 2, 24-33, 101-06.)

The Court of Appeals reasoned that "Jones signed the note and mortgage agreement with SCCB and is therefore a party to the foreclosure action, and subject to the Receivership Order." That is simply not true. Look at the caption; look at the summons; look at the complaint. Jones is not a party to this case. Jones signed the note and mortgage documents in her representative capacity; in other words, Salon Proz signed them and Jones just made Salon Proz's mark. Moreover, though, even if Jones were a party to each and every part of the loan arrangement, that would not make her a party to this action, to which she has never been made a party. (R. pp. 2, 24-33, 101-06.) There is no law that supports the idea that one who is a party to some contractual arrangements but is not named as a party to a lawsuit somehow really is a party to that lawsuit. The Court of Appeals' opinion repeatedly conflates Jones and Salon Proz, but they are distinct entities. "A corporation is not a natural person and maintains a separate and distinct identity apart from its shareholders." Mangum v. Maryland Cas. Co., 330

S.C. 573, 576, 500 S.E.2d 125 (Ct. App. 1998). This "principle is equally applicable, whether the corporation has many or only one stockholder." Id. (quoting Costas v. First Fed. Sav. & Loan Ass'n, 283 S.C. 94, 102, 321 S.E.2d 51, 56 (1984)).

The opinion subject of this petition sates that "Jones filed an answer, appeared in court, and defended the case without raising an objection to personal jurisdiction." Nothing of the sort ever occurred. One wonders where the Court of Appeals could have gotten such an idea. Jones gave an affidavit and appeared in court to testify – *as a witness*. Jones never answered any process in this matter, and it is easy to see why: none was ever directed to her. There was never anything for Jones to answer. There was never an attempt made to exercise personal jurisdiction over Jones until Judge Hocker surprisingly ordered sanctions against this non-party.

Further, even if this Court were to believe that *substantively* these entities ignored the corporate form, the Court cannot ignore that none of them except Salon Proz was ever made a party to the case; *procedurally*, a decision to ignore the corporate form was not possible. The circuit court never gained the personal jurisdiction of these entities that would it would have needed in order to disregard the corporate form. In every case in which this Court has allowed the separate personhood of corporate entities to be ignored, all of those entities were parties over which the trial court had already obtained personal jurisdiction. E.g., Stoneledge at Lake Keowee Owners' Assn., Inc. v. IMK Development Co., LLC, 435 S.C. 109, 120, 866 S.E.2d 542, 548 (2021); Pertuis v. Front Roe Restaurants, Inc., 423 S.C. 640, 643-57, 817 S.E.2d 273 (2018). Entering orders disregarding the distinction between Salon Proz, Jones, Event Hall, or Office Suites was not procedurally possible in the instant case, since the prerequisite jurisdiction over Jones, Event Hall, and Office Suites was never obtained. When it comes to affecting the rights of an entity, obtaining personal jurisdiction over that entity is not a step a court can skip.

As for the indication in the Court of Appeals' opinion that the receivership order provided the requisite personal jurisdiction, the undersigned simply points out the lack of legal support for this notion and notes that it would have been impossible for the receivership order to have affected the rights of The Event Hall and Office Suites – non-parties to this case – to collect rents owed to them under their leases with their tenants, who are also not parties.

The Court of Appeals' 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 the Court of Appeals surprisingly upheld) was based on non-parties not doing what *Salon Proz*, not the non-parties, were ordered to do.

In response to Salon Proz's petition for rehearing, SCCB contended that those non-parties were obligated to turn *their* rents, rents owed to them, over to the receiver because a foreclosure action is an *in rem* proceeding that binds all the world. A foreclosure action is *not* such an *in rem* proceeding. <u>Perpetual Bldg. & Loan Assn. v. Braun</u>, 270 S.C. 338, 340, 242 S.E.2d 407 (1978); <u>Bartles v. Livingston</u>, 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. This Court has expressly rejected the idea that a foreclosure action is an *in rem* proceeding such as that argued by SCCB. In Perpetual, this Court held that a foreclosure action is ***not*** a proceeding 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), the Court of Appeals – contrarily to its actions in this case – 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.

Action was taken by the lower court against entities of which the court never gained personal jurisdiction. It is undisputed and indisputable that no event by which the circuit court might have gained jurisdiction of those entities ever occurred. Judge Hocker and the Court of Appeals believe that this fundamental threshold step – gaining personal jurisdiction – is not required for a court to act against someone.

It is now incumbent upon this Court to decide whether to grant review to see whether to correct such extralegal action or to, instead, condone this unlawful exercise of power by letting the decision stand without even review.

II. In the case here at issue, the court lacked the procedural prerequisites to sanction Salon Proz.

Judge Hocker ruled that the required procedural requisites for contempt sanctions had not been met. (R. p. 2.) SCCB did not appeal that ruling. It is, thus, the law of the case that the procedural requirements for a contempt proceeding were absent. See, e.g., Carolina Chloride, Inc. v. Richland Cnty., 394 S.C. 154, 714 S.E.2d 869 (2011) (unappealed ruling is the law of the case). The orders subject of this appeal are internally inconsistent. (R. p. 136.) One expressly decides that the proper procedure for contempt sanctions was not followed and declines to impose sanctions on a contempt basis. (R. pp. 2, 136.) The other, on the basis of contempt, sanctions Salon Proz by striking its counterclaim. (R. pp. 7-8, 136.)

The contempt that SCCB contended occurred was constructive contempt, defined as contempt occurring outside the presence of the court, as opposed to in the courtroom or otherwise in the presence of the court. Toyota of Florence, Inc. v. Lynch, 314 S.C. 257, 267, 442 S.E.2d 611, 617 (1994). Constructive contempt proceedings must be brought by a rule to show cause based upon an affidavit or verified petition. Id. Failure of the proceedings to be brought in this way "is a fatal defect." Id. In an unappealed ruling, the lower court decided that the procedural requirements to sanction Salon Proz had not been met. (R. pp. 101-32, p. 194 ln. 12-16.) Salon Proz, thus, could not lawfully be held in contempt. See id.

As noted in Salon Proz' motion to reconsider, "[t]he only theoretically possible basis for sanctions here would be for contempt, but, as the court has ruled, contempt sanctions would not be proper procedurally. No basis for sanctions remained." (R. p. 136.) Indeed, SCCB sought sanctions only for violation of court orders. (R. pp. 101-06.) There was indeed no other possible basis for sanctions other than contempt. See

State ex rel. McLeod v. Hite, 272 S.C. 303, 251 S.E.2d 746 (1979) (nature of contempt sanctions is to ensure enforcement of judgments); State v. Goff, 228 S.C. 17, 88 S.E.2d 788 (1955) (same). As the requirements for contempt sanctions were not met, contempt was taken off the table as an available basis for sanctions. Toyota of Florence, 314 S.C. at 267.

The Court of Appeals' opinion discusses substantive contempt powers but does nothing to address that the lower court decided that the procedural requisites to get to make a contempt decision were not met. Similarly to what is noted above, when it comes to the fundamental procedural requirements to do something, courts do not get to skip steps to get to the part at the end.

III. The law of the case barred reference to the master-in-equity.

It is also the law of this case that Salon Proz is entitled to a jury trial on its counterclaims, as the Court of Appeals' previous decision that Salon Proz has the right to a jury trial on those counterclaims was not challenged by SCCB and is a final determination on that matter. S.C. Community Bank v. Salon Proz, LLC, 420 S.C. 89, 800 S.E.2d 488 (Ct. App. 2017).

This action should not have been referred to the master-in-equity, who cannot conduct jury trials. Rule 53, SCRCP. Reference to a master-in-equity does not serve as a punishment; rather, it is only appropriate where there is no right to a jury trial or none has been demanded. See Rule 53, SCRCP. Here, this case was referred to the master-in-equity at a time when compulsory at-law counterclaims were still pending, and this was error. Salon Proz, 420 S.C. at 97. The order referring the case to the master-in-equity was issued *before* the order that struck the counterclaims. At that time, it had already been finally established in this case that reference of these counterclaims to the master-in-equity is unlawful. Id.

IV. There were no grounds for the harsh sanctions issued.

"It is well settled that contempt results from willful disobedience of a court order; and before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which the contempt is based." State v. Bevilacqua, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct. App. 1994) (citing Whetstone v. Whetstone, 309 S.C. 227, 420 S.E.2d 877 (Ct. App. 1992)).

There is no basis for any sanction here. The lower court did not take into account the evidence that was before it. Any noncompliance with previous orders by Salon Proz arose from desperation at the receiver's failure to meet his responsibilities and from the receiver lulling Salon Proz's operating member into believing that Salon Proz had done what was needed to comply or that strict compliance would not be required. (R. p. 182 ln. 1 through p. 193 ln. 9, pp. 218-85.) Jones provided detailed testimony showing efforts to comply with the orders and that disobedience of the orders was undertaken only as a last resort to prevent collapse of the business altogether when Twitty failed to pay the utilities. (R. p. 182 ln. 1 through p. 193 ln. 9, pp. 218-85.)

The record shows no willful disobedience of any order, no bad faith, and no ill intention on the part of Salon Proz. (R. pp. 134, 162-97, 216-21.) Acts done in desperation to save a business because of a receiver's failure to perform his duties do not constitute contempt, willful disobedience of an order, or sanctionable conduct. Cf. Bevilacqua, 316 S.C. at 129.

But even if some sanction were proper, the sanctions imposed here would still be inappropriately harsh. (R. p. 136.) The record lacks support for the imposition of a sanction as harsh as dismissal of the counterclaims, let alone dismissal with prejudice *and* payment of fees and costs. (R. p. 136.)

This Court has held that where a "sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Davis v. Parkview Apts., 409 S.C. 266, 762 S.E.2d 535, 544 (2014) (quoting Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999)). While SCCB's claim will remain pending and a default judgment was not rendered, the court's decision to strike and dismiss Salon Proz's counterclaims is somewhat similar in that it ends Salon Proz's counterclaims without a trial on their merits. (R. pp. 8, 136.) The Court of Appeals has correctly observed that "[a] sanction that results in a default or dismissal is a severe punishment that should be imposed only if there is some showing of *bad faith, willful disobedience, or gross indifference* to the rights of the adverse party." Rickerson v. Karl, 412 S.C. 215, 770 S.E.2d 767, 770 (Ct. App. 2015) (emphasis in original). No bad faith, willful disobedience, or gross indifference to SCCB's rights was shown here. (R. p. 136.) Salon Proz violated the order and directed its tenants to pay their rent to Salon Proz rather than Twitty because Twitty had sat on ample funds to pay the property's utility bills and had declined to pay them, frightening Salon Proz that strict compliance with the orders would result in collapse of the business altogether. (R. pp. 134-35, 136.)

The lower court made the conclusion – without supporting findings and without support in the record – that failure to comply with the receivership orders hindered SCCB's ability to defend against Salon Proz's counterclaims. (R. pp. 8, 137-38.) No such hindrance occurred, and none was shown. (R. pp. 139-98, 216-85.) It makes no logical sense that any noncompliance with the orders at issue would have affected SCCB's ability to defend against the counterclaims in any way. (R. pp. 137-38.) The counterclaims are not about the matters subject of the receivership orders, and compliance with the orders would not help or do anything to maintain SCCB's ability to meet the counterclaims on their merits. (R. pp. 52-56.) Notwithstanding the circuit court's conclusory assertion, noncompliance with the orders did not affect the defense of the counterclaims in any way, and the sanction of dismissing and striking the counterclaims was anything but tailored to the conduct that was before the court. (R. p. 8.)

The closest that the lower court came to articulating a basis for prejudice does not come very close at all. The court in both of its orders stated that the case had been pending for nearly 11 years and that no mortgage payments had been made. (R. pp. 2, 7-8.) This case has indeed been pending for a long time. Salon Proz did not cause that. Indeed, at every turn, Salon Proz has cooperated in and sometimes led the charge to get this case on trial and motions dockets. (R. p. 137, p. 150 ln. 1-10.)

Moreover, the length of time the case has been pending has no logical connection to the issues that were before the court on SCCB's motion for sanctions. (R. pp. 101-06.) Salon Proz not making mortgage payments is not a permissible basis for sanctions. The lower court's orders assume, wrongly, that SCCB is entitled to victory in this case. (R. pp. 1-9, 137.) Whether SCCB or Salon Proz has the right to prevail remains to be proven. In accordance with the general principle that in a civil action the plaintiff bears the burden of proof, it is incumbent upon the party seeking foreclosure of a mortgage to prove all the elements of its case. See Baugh & Sons Co. v. Graham, 150 S.C. 398, 401, 148 S.E. 220 (1926) (plaintiff bears burden of proof in civil case); Paramount Fund, Inc. v. Cusaac, 282 S.C. 497, 499, 319 S.E.2d 354, 355 (Ct. App. 1984) ("[i]n an action to foreclose a mortgage on real property, the mortgagee has the burden of proving a disputed mortgage by the preponderance of the evidence"). The lower court, it seems, sanctioned Salon Proz for asserting counterclaims at all, for not lying down and taking whatever SCCB would have the courts do to Salon Proz.

The Court of Appeals has upheld this harsh sanction, which bears no relation to the conduct for which it is an ostensible punishment. Sanctions "should be aimed at the specific misconduct of the party sanctioned. In other words, the sanction should be a rifle-shot, not a shotgun blast. In the instant case, the sanction was a hydrogen bomb." Balloon Plantation, Inc. v. Head Ballons, Inc., 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct. App. 1990). So it is here.

V. To those who work in the legal system, the extra-jurisdictional exercise of power by a court must always be regarded as anathema, condemned, and corrected. Too much is at stake to tolerate it even a little.

As noted above, the Court of Appeals' opinion in this case exhibits a manifest disregard for established principles of law, including this Court's precedent. Rule 242(b)(3), SCACR, applies to this petition.

But there is something even more important here: the integrity of the operation of the judicial system. If judges may take the law into their own hands and their deviations from the law are not corrected, the necessary public confidence in our system of government is in danger of eroding to nothing.

"Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges." Cmt. to Canon 1, S.C. Code of Judicial Conduct.

"A judge shall be faithful to the law[.]" Canon 3B(2), S.C. Code of Judicial Conduct.

"We cannot expect people to have respect for law and order until we teach respect to those we have entrusted to enforce those laws." Hunter S. Thompson, Songs of the Doomed 348 (Simon and Schuster 2002).

Our nation's Supreme Court put it well:

> We have recognized the "vital state interest" in safeguarding "public confidence in the fairness and integrity of the nation's elected judges." Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 889, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009) (internal quotation marks omitted). The importance of public confidence in the integrity of judges stems from the place of the judiciary in the government. Unlike the executive or the legislature, the judiciary "has no influence over either the sword or the purse; ... neither force nor will but merely judgment." The Federalist No. 78, p. 465 (C. Rossiter ed. 1961) (A. Hamilton) (capitalization altered). The judiciary's authority therefore depends in large measure on the public's willingness to respect and follow its decisions. As Justice Frankfurter once put it for the Court, "justice must satisfy the appearance of justice." Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 99 L.Ed. 11 (1954). It follows that public perception of judicial integrity is "a state interest of the highest order." Caperton, 556 U.S., at 889, 129 S.Ct. 2252 (quoting White, 536 U.S., at 793, 122 S.Ct. 2528 (KENNEDY, J., concurring)).
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> . . .
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> But a State's interest in preserving public confidence in the integrity of its judiciary extends beyond its interest in preventing the appearance of corruption in legislative and executive elections.
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> . . .
>
> The concept of public confidence in judicial integrity does not easily reduce to precise definition, nor does it lend itself to proof by documentary record. But no one denies that it is genuine and compelling.

Williams-Yulee v. Florida Bar, 575 U.S. 433, 445-46, 447 (2015).

The undersigned lawyer has described the facts that show the lack of personal jurisdiction over Jones to several laypeople. They may not know the definition of personal jurisdiction, but they understand the concept. Without fail, each of them has stated that the circuit court acted unlawfully in punishing Jones without notice and without having some proceeding about whether to punish her. The regrettable actions of Judge Hocker and the Court of Appeals undermine the legitimacy of the court system, and the public understands enough to know when a court is acting against someone utterly without the power or authority to do so.

The people of South Carolina need a government of laws, not of men. Adams, *supra*. Please show them we have one.

CONCLUSION

WHEREFORE, Salon Proz and the non-parties that join in this petition pray for this Court to issue a writ of certiorari to review the Court of Appeals' opinion and decision in this case.

Respectfully submitted,

/s/ Andrew S. Radeker
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