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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Horry County Court of Common Pleas
Alan D. Clemmons, Master-in-Equity

Appellate Case No. [TO BE ASSIGNED]
Trial Court Case No. 2025-CP-26-00500

Shaftesbury Green Property Owners Association, Inc.,
Respondent,

v.

Cedric Javus Browne; Michelle Eblen; Nationstar Mortgage, LLC; American Express National Bank; Bank of America, N.A.; TD Bank USA, N.A.; and Portfolio Recovery Associates, LLC, Defendants; Cedric Javus Browne, Appellant, Pro Se.

EMERGENCY PETITION FOR WRIT OF SUPERSEDEAS (Rule 241, SCACR)

SUMMARY

The Master-in-Equity found Appellant's default set aside "based upon lack of actual service" and entered a foreclosure judgment following a full evidentiary hearing. On reconsideration, the court reversed course — calling Appellant "in default" and denying post-judgment relief for failure to show "good cause," the Rule 55(c) default standard, not the Rule 59(e)/60(b) standard applicable to a merits judgment. Appellant's Answer, sworn affidavit, and oral objection at the outset of the hearing all raised lack of personal jurisdiction before anything else was addressed; under Rule 12(g)–(h), SCRCP, none of that was waived. The court's briefing directive — the missed deadline cited as the second basis for denial — was sent by email only in violation of Rule 77(d), SCRCP, departing for the first time from the court's own established pattern of dual service by email and first-class mail, and no certificate of service or notice was filed for it in the public index as had been done for every prior court order. Because this

judgment directs sale of real property, Rule 241(b)(4), SCACR excepts it from the general automatic stay; Appellant seeks a writ of supersedeas. Sale is set August 3, 2026.

I. GOVERNING FRAMEWORK: NO AUTOMATIC STAY; WRIT OF SUPERSEDEAS IS THE ONLY VEHICLE

This is an HOA lien foreclosure. The Master's Report and Order of Foreclosure and Sale directs the public auction sale of Appellant's real property at 633 Notting Hill Court, Conway, SC 29526. A judgment of this character is not automatically stayed by the service of a notice of appeal. Rule 241(b), SCACR: "[t]he exceptions to the general rule are found in statutes, court rules, and case law." Rule 241(b)(4), SCACR excepts "[j]udgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170" from any automatic stay. S.C. Code Ann. § 18-9-170 provides: "[i]f the judgment appealed from direct[s] the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant." No such undertaking has been executed. Accordingly, absent relief from this Court, Respondent may proceed to sell Appellant's home on August 3, 2026, notwithstanding the pending appeal.

The vehicle for relief is a writ of supersedeas under Rule 241(c), SCACR. Rule 241(c)(1), SCACR: "[i]n a case subject to an exception, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal. The effect of the granting of a supersedeas is to suspend or stay the matters decided in the order, judgment, decree or decision on appeal." Rule 241(c)(2), SCACR: the court "should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." A completed foreclosure sale moots this appeal entirely, rendering the jurisdictional, procedural, and void-judgment issues raised herein permanently unreviewable.

II. RELIEF WAS FIRST SOUGHT BELOW

Rule 241(d)(1), SCACR: "[e]xcept where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal." Appellant filed motions under Rule 59(e) and Rule 60(b), SCRCP on May 1, 2026, and a Motion to Stay on June 11, 2026. All three were denied by Form 4 Order signed June 26, 2026, and electronically entered June 29, 2026 (Case No. 2025CP2600500), signed by the Honorable Alan D. Clemmons, Master-in-Equity. Appellant received written notice of the ruling by email on June 26, 2026. Appellant filed and served his Notice of Appeal with the Horry County Clerk of Court on July 14, 2026. Rule 241(d)(3), SCACR requires "a certified copy of the order, judgment, decree or decision of the lower court… and a copy of the notice of appeal with its proof of service," filed contemporaneously herewith.

III. STATEMENT OF FACTS

1. Nature of action, service by publication, and Appellant's first actual notice.

This is an HOA-lien foreclosure. The Lis Pendens, Summons, and Complaint were filed January 21, 2025. Service upon Appellant was by publication, completed June 2025. Appellant did not file a timely Answer and was entered in default. Appellant received no actual notice of this lawsuit through any of those steps. As attested in his sworn Affidavit filed March 20, 2026, Appellant was out of town caring for a sick family member during the alleged service attempts, was never personally served, had no knowledge of any attempts at service, was not present and could not have seen any publication, and had no knowledge of this lawsuit. Appellant's communications were further compromised by identity theft, of which Plaintiff was aware.

Appellant first learned of this action on or about late February or early March 2026, upon receiving by U.S. Mail a Notice of Hearing Via Webex filed by Plaintiff's counsel on February 26, 2026, and served by mail on February 24, 2026 — approximately eight to nine months after publication service was purportedly completed. Appellant subsequently received by U.S. Mail a formal Notice of Hearing for the rescheduled in-person hearing, filed March 27, 2026, and served by mail on March 26, 2026, setting the hearing for April 8, 2026, at 3:00 p.m., at the Master's Courtroom, third floor, Horry County Courthouse, Conway, South Carolina. That notice expressly stated that "[a]ll issues raised in the pleadings will be decided at this hearing" — a statement the Master received with Appellant's Answer, Affirmative Defenses, Motion to Dismiss, and sworn Affidavit all already on file. The February 24, 2026, Webex hearing notice was the first communication from any source that gave Appellant actual notice that a lawsuit had been filed against him. The complete failure of publication service to provide actual notice over an eight-month period is itself evidence that such service was not "reasonably calculated under all the circumstances to apprise" Appellant of the pendency of the action. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

Upon receiving the Notice of Hearing, Appellant immediately investigated and responded. Within approximately three weeks of first learning of the lawsuit, Appellant filed his

Answer, Affirmative Defenses, Motion to Dismiss, and sworn notarized Affidavit on March 18–20, 2026. On March 24, 2026, Appellant appeared at the scheduled Webex hearing and was informed that the hearing had been rescheduled to an in-person courtroom hearing and that he would receive written notice of the new date. Appellant subsequently received that written notice by U.S. Mail. The rescheduled in-person hearing was held on April 8, 2026, at 3:00 p.m., at which Appellant appeared in person. All court communications referenced in Fact ¶4 below — and the Rule 77(d) argument based upon them — concern an entirely separate phase of the proceedings: the post-appearance, post-hearing communications between the court and Appellant that developed after March 2026, and have no bearing on the threshold question of whether the original 2025 publication service was constitutionally adequate to confer personal jurisdiction.

2. Appellant's preserved jurisdictional objections.

Appellant's Answer, filed March 18, 2026, raised insufficient service of process (First Defense), failure of due diligence (Third Defense), improper service by publication (Fourth Defense), publication not reasonably calculated to provide notice (Fifth Defense), and lack of personal jurisdiction (Sixth Defense), verbatim: "Because proper service was not effectuated, this Court lacks personal jurisdiction over Defendant. Any judgment entered is void." Section IV of the Answer moved to dismiss under Rule 12(b)(2), (4), (5), SCRCP. A sworn notarized affidavit, filed March 20, 2026, attested Appellant was never personally served, was out of town during alleged service attempts, had no knowledge of any attempts at service, and could not have seen any publication.

3. The Master's own finding of lack of actual service.

The Master's Report and Order of Foreclosure and Sale, entered April 21, 2026, Finding of Fact ¶ 4: "The Defendant Browne did not file a timely Answer and was originally found in default. However, upon motion of Brown[e], I set aside his default based upon lack of actual service. Browne was permitted to participate in the hearing and offer any defenses he chose to raise." Judgment was entered following a full merits hearing on April 8, 2026 — not as a default judgment. At the outset of that hearing, before addressing any other matter, Appellant orally stated he was challenging the Court's jurisdiction and that service had not been done, and requested a continuance. The continuance was denied.

4. The Form 4 Order's internal contradiction and the Rule 77(d) violation.

The Form 4 Order entered June 29, 2026, gave two independent bases for denial. First, it found Appellant "in default" for an untimely Answer and applied a "good cause" standard — directly contradicting Finding of Fact ¶ 4 of the April 21 Order. Second, it cited Appellant's failure to file a supporting brief by May 14, 2026. That briefing deadline was communicated on May 4, 2026, by email only — the first and only time the court departed from its established practice of serving every notice and order by both email and first-class mail simultaneously. The public index shows that the April 21, 2026, Order was purportedly documented by a Certificate of Service by Mail, filed by opposing counsel's firm on May 4, 2026, certifying that the Order was mailed to Appellant on April 22, 2026. That certificate, however, was notarized March 26, 2026 — thirteen days before the April 8, 2026, hearing that produced the judgment, and twenty-six days before the April 21, 2026, Order it purports to certify was ever entered. The certificate therefore certifies, under oath, the mailing of a document that did not yet exist and the outcome of a hearing that had not yet occurred, rendering it facially impossible and unreliable as proof that Appellant was ever actually served with the final judgment. Appellant has no record of ever receiving the April 21, 2026, Order by mail. No corresponding certificate of service or notice of any kind was filed for the May 4, 2026, briefing directive. Appellant did not see the May 4, 2026, email until May 13, 2026, when an email from opposing counsel filing his opposition caused Appellant to review the chain. By that time the deadline had passed. On May 13, Appellant immediately notified both the Staff Attorney and opposing counsel in writing that he did not consent to email notice and required mail correspondence due to identity theft compromising all of his electronic devices and communications — the same issue for which the Master had excluded a corroborating police report at the April 8 hearing. See Affidavit of Cedric Javus Browne, ¶¶ 7–9 and Exhibit A, filed herewith. Sale is scheduled August 3, 2026.

IV. ARGUMENT

A. The Form 4 Order applied the wrong legal standard.

Rule 55(c), SCRCP: "[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." That is a standard for default relief — it applies when a party seeks to set aside an entry of default or a default judgment, not when a party challenges a merits judgment entered after a full evidentiary hearing. Rule 59(e), SCRCP: "[a] motion to alter or amend the judgment shall be served not later than 20 days after receipt of written notice of the entry of the order." Rule 59(e) contains no good-cause requirement. The April 21 judgment followed a full merits hearing after default had already been vacated and was not a default judgment. Applying Rule 55(c)'s good-cause standard to deny a Rule 59(e) motion challenging that judgment is legal error as a matter of law.

B. The court's own orders are internally contradictory.

Finding of Fact ¶ 4 of the April 21 Order: default set aside "based upon lack of actual service." Form 4 Order, June 29, 2026: Appellant "is in default." Both cannot be operative simultaneously. The Form 4 treats a vacated legal status as subsisting without explanation and without addressing Rule 12(g) and (h), SCRCP's prohibition on waiver-by-joinder of a jurisdictional defense. Rule 12(g), SCRCP: "[n]o defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or motion." Rule 12(h)(1), SCRCP: the defense is waived only "(A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a)." Appellant's Sixth Defense and Rule 12(b)(2)(4)(5) motion were expressly included in his Answer. Neither the April 21 Order nor the Form 4 Order rules on those on the merits.

C. If the jurisdictional defense is credited, the judgment is void.

Rule 60(b), SCRCP authorizes the court to relieve a party from a final judgment when "(4) the judgment is void." A judgment is void under Rule 60(b)(4) where the court acted without personal jurisdiction over the party against whom it was entered. Given the Master's own finding of lack of actual service and Appellant's preserved written and oral jurisdictional objections, the judgment is subject to void-judgment challenge on that ground alone. A second, independent basis exists: Rule 77(d), SCRCP requires that notice of entry of a judgment be served on every party by first-class mail, and due process under the Fourteenth Amendment and Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), requires that a party be given adequate notice of a judgment entered against him. The only record evidence purporting to show Appellant was served with the April 21, 2026, Order — the Certificate of Service by Mail described in Fact ¶4 above — is facially impossible, having been notarized thirteen days before the hearing that produced the judgment and twenty-six days before the judgment itself existed. Appellant has no record of ever receiving that Order by mail. A judgment entered and never lawfully served on the party against whom it runs is subject to challenge as void for failure of due process, independent of the jurisdictional grounds set out above. Neither order addresses either ground.

D. The court violated Rule 77(d), SCRCP and cannot penalize Appellant for the resulting missed deadline.

Rule 77(d), SCRCP: "[i]mmediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by first class mail upon every party affected thereby who is not in default for failure to appear." The E-Filing Rule: "[p]arties who are not proceeding in the E-Filing System must be served by Traditional Service as required under Rule 77(d), SCRCP." The Form 4 Order acknowledges Appellant is a pro se traditional filer and cites Rule 77(d) in its own boilerplate. From the time Appellant first appeared in this matter in March 2026 — after receiving the February 24, 2026, Notice of Hearing that gave him his first actual knowledge of this lawsuit — every formal court communication was served by both email and first-class mail simultaneously. As established in Fact ¶1 above, this dual-service pattern is entirely separate from the original June 2025 publication service, which is the subject of the jurisdictional argument in Section IV.B; the two issues arise at different stages of the proceedings and neither undermines the other. The post-appearance dual-service pattern is confirmed by certificates of service in the public index for each order issued during that period. The May 4, 2026, briefing directive was sent by email only — no first-class mail, no certificate of service in the public index — the first and only departure from that established practice after Appellant appeared. Appellant reasonably relied on the pattern; when no mail arrived, he had no reason to believe a deadline had been set. The Form 4 Order's second stated basis for denial — the missing brief — is therefore independently invalid.

V. IRREPARABLE HARM

Absent a writ of supersedeas, Appellant's home will be sold at foreclosure on August 3, 2026, before this appeal can be briefed or decided. A completed sale permanently moots all issues raised herein. Rule 241(c)(2), SCACR directs that the court "should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." That standard is met here. The total debt of $10,026.58 remains secured by the lien on the property during the pendency of the appeal; Respondent suffers only delay.

VI. RELIEF REQUESTED

Appellant respectfully requests that this Court:

1. Issue a writ of supersedeas staying the August 3, 2026, foreclosure sale and all enforcement of the Master's Report and Order of Foreclosure and Sale pending final resolution of this appeal;

2. Grant temporary relief under Rule 241(d)(2), SCACR preserving the status quo pending decision on this Petition;

3. Set such terms as the Court deems appropriate under Rule 241(c)(3), SCACR; and

4. Grant such other relief as is just and proper.

Respectfully submitted,

Cedric Javus Browne, Appellant, Pro Se
633 Notting Hill Court, Conway, SC 29526
(843)796-8386 | plainjane9955@gmail.com
July 15, 2026

VERIFICATION

Rule 241(d)(3), SCACR: "[a] person seeking an order lifting an automatic stay or granting a writ of supersedeas must file a written petition verified by the client."

I, Cedric Javus Browne, swear under penalty of perjury that the factual statements in the foregoing Petition are true and correct to the best of my knowledge, information, and belief.

Cedric Javus Browne

Sworn to before me this 15 day of July, 2026.

Kris Hendrick Dawes
Notary Public for South Carolina
My Commission Expires: March 14, 2030

KRIS HENDRICK DAWES
NOTARY PUBLIC
COMM. EXP. 03-16-2030
SOUTH CAROLINA

CERTIFICATE OF SERVICE

I certify that on July 15, 2026 I served a copy of the foregoing Petition upon Mark A. Nappier, Esq., Joye, Nappier, Risher & Hardin, LLC, 3575 Highway 17 Business, Murrells Inlet, SC 29576, by USPS –US mail service with sufficient postage.

Cedric Javus Browne, Pro Se