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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Shaftesbury Green Property Owners Association, Inc.,

Respondent,

v.

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

Defendants,

of whom Cedric Javus Browne is the Appellant.

Appellate Case No. 2026-001570

BRIEF OF APPELLANT

Appeal From Horry County

Court of Common Pleas, Master-in-Equity Division

Alan D. Clemmons, Master-in-Equity

Case No. 2025-CP-26-00500

Cedric Javus Browne, Pro Se

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TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

Cases

Bowers v. Bowers, 349 S.C. 85, 561 S.E.2d 610 (Ct. App. 2002)

Colonial Pacific Leasing Corp. v. Taylor, 326 S.C. 529, 484 S.E.2d 595 (Ct. App. 1997)

Duncan v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (Ct. App. 2011)

Ex Parte Cannon, 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009)

First Union National Bank of South Carolina v. Soden, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998)

Hickman v. Hickman, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990)

Ingram v. Kasey's Associates, 340 S.C. 98, 531 S.E.2d 287 (2000)

Moore v. Simpson, 322 S.C. 518, 473 S.E.2d 64 (Ct. App. 1996)

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950)

Statutes, Rules, and Orders

S.C. Code Ann. § 15-9-710(5)

Rule 4, SCRCP

Rule 5(b), SCRCP

Rule 8, SCRCP

Rule 12(b)(2), (4), (5), SCRCP

Rule 12(h), SCRCP

Rule 53, SCRCP

Rule 55(c), SCRCP

Rule 59(e), SCRCP

Rule 60(b), SCRCP

Rule 208, SCACR

Rule 267, SCACR

Order Regarding Service by E-Mail in the Trial Courts (S.C. Sup. Ct. Order dated May 6, 2022, Rule 613, SCACR)

STATEMENT OF ISSUES ON APPEAL

1. Did the Master err, in the June 29, 2026, Order denying Appellant's Rule 59(e) and Rule 60(b) motions and Motion to Stay, by finding Appellant "is in default" and that he "failed to show good cause," and relying on those findings as the basis for denial, where the Master's own April 21, 2026, Order had already set that same default aside for good cause — lack of actual service — under Rule 55(c), SCRCP?

2. Did the Master err in denying relief for failure to meet a briefing deadline that was communicated to Appellant, a self-represented litigant, only by e-mail, where Appellant never consented in writing to service by e-mail and the deadline appears nowhere in the docket or public index?

3. Did the Master err by denying Appellant's request for a continuance immediately after setting aside Appellant's default for lack of actual service, and proceeding instead to immediate final judgment, without affording Appellant a meaningful opportunity to defend as a non-defaulting party?

4. Did the Master err in relying on a Certificate of Service by Mail as proof that Appellant received notice of the entry of the Master's Report and Order of Foreclosure and Sale, where that certificate was sworn and notarized on March 26, 2026 — before the April 8, 2026, hearing occurred and before the Order itself was issued on April 21-22, 2026?

5. Did the Master-in-Equity err in adjudicating this action to judgment where the order authorizing service by publication rested on an affidavit that failed to establish the genuine and

reasonable diligence required for this extraordinary remedy, such that personal jurisdiction never attached and the resulting judgment is void under Rule 60(b)(4), SCRCP?

6. Did the Master-in-Equity err in entering judgment where Plaintiff proceeded at the hearing on a claim materially different from, and substantially altered from, the claim originally pled, and including fines assessed without compliance with the Association's own By-Laws — without amendment or notice — depriving Appellant of due process?

7. Did the Master err in awarding $3,200.00 in late fees against Appellant where that figure rests on an account ledger reflecting late-fee charges facially inconsistent with, and far in excess of, the one-charge-per-month formula set out in Section 13.8 of the Association's own Declaration of Covenants, Restrictions and Easements?

STATEMENT OF THE CASE

This is an appeal from Orders of the Horry County Master-in-Equity in a homeowners' association assessment foreclosure action.

Plaintiff Shaftesbury Green Property Owners Association, Inc. filed this action against Appellant Cedric Javus Browne and other named defendants on or about January 21, 2025. Plaintiff's counsel filed a Certificate of Exemption from Arbitration the same date.

Plaintiff was unable to personally serve Appellant. On May 6, 2025, the Clerk of Court signed an Order for Service via Publication pursuant to S.C. Code Ann. § 15-9-710(5) (Order for Service via Publication, p. 1), based on an affidavit of Plaintiff's counsel, Mark A. Nappier, filed May 5, 2025, attesting that four (4) attempts at personal service had been made and that Plaintiff "made every effort to obtain the proper address" for Appellant (Nappier Aff., pp. 1-2). The affidavit identifies no dates, no addresses attempted, and no alternative methods of locating Appellant beyond the four attempts (Nappier Aff., pp. 1-2). Service was thereafter made by publication, and Appellant did not receive actual notice of the action (Nappier Aff., p. 1; Order for Service via Publication, p. 1).

Appellant did not timely answer and was found in default. Appellant later moved to set aside that default on the ground that he had not been actually served (Motion to Set Aside Default). The Master granted that motion. In the Master's Report and Order of Foreclosure and Sale, issued April 21-22, 2026, the Master expressly found: "The Defendant Browne did not file a timely Answer and was originally found in default. However, upon motion of Brown, 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." (Master's Order ¶ 4).

A hearing on the merits was held April 8, 2026 (Master's Order ¶¶ 1-2). After the default was set aside, Appellant requested a continuance so that he could prepare and defend as a non-defaulting party; that request was denied, and the matter proceeded immediately to final judgment in the same session (Reply to Opposition, Preliminary Correction; §§ II, V). At the hearing, Plaintiff's evidence and the Master's ultimate findings differed materially from the claim as originally pled. Plaintiff's original Complaint sought $16,865.71, exclusive of fees and costs (Reply to Opposition § VIII), and Appellant's Rule 59(e) Motion characterized Plaintiff's claim as approaching $25,000 including approximately ninety-eight (98) separately assessed late charges (Rule 59(e) Motion § III). The Master's April 21-22, 2026, Order instead found a Total Debt of $10,026.58, itemized as $1,490.00 in past due assessments, $61.68 in trash fees, $3,200.00 in late fees, $4,089.34 in attorney's fees, $976.06 in costs, and $209.50 in additional attorney's fees (Master's Order ¶ 16) — and separately declined to award $300.00 in fines Plaintiff sought, finding no corroborating evidence to support them (Master's Order ¶ 14). No amendment to the pleadings was filed reflecting the substantial change in the claim between filing and judgment, and no formal notice of the revised claim was given to Appellant in advance of the hearing.

On May 1, 2026, Appellant, pro se, timely moved to alter or amend the judgment under Rule 59(e), SCRCP, and to set aside the judgment under Rule 60(b), SCRCP, raising the jurisdictional and due process defects described above (Rule 59(e) Motion; Rule 60(b) Motion). On June 11, 2026, Appellant additionally moved to stay the foreclosure sale pending resolution of those motions (Motion to Stay, June 11, 2026).

On June 29, 2026, the Master entered a Form 4 Order denying all three motions (Form 4 Order, p. 2). As to the Rule 59(e) and Rule 60(b) motions, the Order states: "Defendant Cedric Browne is in default. He failed to file a timely answer after service by publication was completed in June of 2025. His answer was not filed until nine months after service. He also failed to submit a timely brief in support of his motions filed May 1, 2026, as directed by the court on May 4, 2026. The brief was due May 14, 2026. Mr. Browne has failed to show good cause to support both the Motion to Alter or Amend and the Motion to Stay therefore both Motions are denied." (Form 4 Order, p. 2). As to the June 11, 2026, Motion to Stay, the Order relies on the same default finding (Form 4 Order, p. 2).

Appellant is aware of no docket entry, public index entry, or written order reflecting the May 4, 2026, directive referenced in the June 29, 2026, Order; the only record of it in Appellant's possession is an e-mail (Public Index/Docket). Appellant did not consent in writing to service by e-mail in this matter.

Appellant timely served and filed his Notice of Appeal. Following service of the Notice of Appeal, Appellant timely requested, in writing, a transcript of the April 8, 2026, hearing, consistent with Rule 207(a)(1), SCACR, contacting the Master-in-Equity, the Master's Clerk, and the Horry County Clerk of Court, and appearing in person at the courthouse. The Clerk of Court subsequently advised Appellant in writing that the Master-in-Equity's office does not provide a court reporter for these proceedings and directed Appellant to Plaintiff's counsel. Plaintiff's counsel, Mark A. Nappier, thereafter confirmed in writing that no court reporter was retained or present for the April 8, 2026, hearing and that no transcript exists. Appellant accordingly proceeds on this brief without a transcript, through no fault of his own, and has documented his diligent efforts to obtain one at every stage.

STANDARD OF REVIEW

Issues 1, 2, 3, 4, 6, and 7 (Rule 59(e) / Rule 60(b)(1), (b)(6)). Relief under Rule 59(e) and the discretionary provisions of Rule 60(b) is reviewed for abuse of discretion. *Bowers v. Bowers*, 349 S.C. 85, 561 S.E.2d 610 (Ct. App. 2002); *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990) (relief is appropriate where the court has overlooked or misapprehended controlling facts or law). An order resting on a finding directly contradicted by the court's own prior, unchallenged finding in the same case — including a good-cause determination the Master had already made under Rule 55(c), SCRCP in setting aside the same default — on a certificate of service that could not truthfully attest to what it purports to describe, or on the denial of a continuance leaving a non-defaulting party with no opportunity to prepare, reflects exactly this kind of misapprehension or irregularity.

Issue 5 (Rule 60(b)(4) — Void Judgment). Whether a judgment is void for lack of personal jurisdiction is a question of law, reviewed de novo; relief under Rule 60(b)(4) is mandatory once voidness is established. *Duncan v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (Ct. App. 2011); *Moore v. Simpson*, 322 S.C. 518, 473 S.E.2d 64 (Ct. App. 1996).

ARGUMENT

I. THE JUNE 29, 2026, ORDER RESTS ON A FINDING — THAT APPELLANT "IS IN DEFAULT" — THAT DIRECTLY CONTRADICTS THE MASTER'S OWN APRIL 21-22, 2026, ORDER, WHICH HAD ALREADY SET THAT DEFAULT ASIDE, AND IS THEREFORE AN ABUSE OF DISCRETION.

The Master's April 21-22, 2026, Report and Order of Foreclosure and Sale is unambiguous. It finds that Appellant "did not file a timely Answer and was originally found in default," but that "upon motion of Brown, I set aside his default based upon lack of actual service," and that Appellant "was permitted to participate in the hearing and offer any defenses he chose to raise." (Master's Order ¶ 4). That finding was never challenged by Plaintiff, was not reversed, and stands as the Master's own controlling determination in this case.

The June 29, 2026, Form 4 Order nonetheless states, as the lead basis for denying Appellant's Rule 59(e) and Rule 60(b) motions and his Motion to Stay: "Defendant Cedric Browne is in default." (Form 4 Order, p. 2). This is not a new or intervening finding based on new evidence; it is a flat reassertion of the same default the Master had already, on the record, set aside five weeks earlier (Master's Order ¶ 4). A court cannot treat a party as in default for purposes of denying relief while its own prior, standing order in the same case holds that the default was properly set aside. Relief under Rule 59(e) is warranted precisely where the court has "overlooked or misapprehended controlling facts." *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990). Here, the controlling fact — that the default was set aside — was not overlooked so much as directly contradicted, in an order entered by the same Master in the same case.

The contradiction runs deeper than the default label itself. Rule 55(c), SCRCP permits a court to set aside an entry of default only "for good cause shown." In granting Appellant's motion to set aside his default "based upon lack of actual service" (Master's Order ¶ 4), the Master necessarily found good cause under Rule 55(c) for Appellant's delay in answering — the lack of proper service was the good cause. The June 29, 2026, Order's finding that Appellant "failed to show good cause" to support his Rule 59(e) and Rule 60(b) motions rests, by its own terms, on the identical fact: that Appellant "failed to file a timely answer after service by publication was completed in June of 2025" and that his "answer was not filed until nine months after service." (Form 4 Order, p. 2). The Master cannot treat that same delay as excused for good cause in April and as unexcused for lack of good cause in June, without any intervening change in the underlying facts. The June 29, 2026, Order is accordingly not merely inconsistent with the April 21-22, 2026, Order — it directly reverses, without explanation, the Master's own good-cause determination in the same case.

This error is not harmless. The default finding is the first and lead reason given for denying both the Rule 59(e)/60(b) motions and the Motion to Stay. An order resting on a factual predicate squarely at odds with the court's own prior ruling cannot stand, and the June 29, 2026, Order should be reversed and the underlying motions remanded for consideration on their actual merits.

II. THE JUNE 29, 2026, ORDER'S ALTERNATIVE GROUND — THAT APPELLANT MISSED A MAY 14, 2026, BRIEFING DEADLINE COMMUNICATED ONLY BY E-MAIL — VIOLATES DUE PROCESS AND THE COURT'S OWN RULES GOVERNING SERVICE ON SELF-REPRESENTED LITIGANTS.

The June 29, 2026, Order's second stated ground for denial is that Appellant "failed to submit a timely brief in support of his motions filed May 1, 2026, as directed by the court on May 4, 2026," with the brief "due May 14, 2026." (Form 4 Order, p. 2). Appellant is aware of no docket entry, public index entry, or formal written order reflecting any such directive (Public Index/Docket). The only record of it is an e-mail (May 4, 2026, E-Mail).

Under South Carolina practice, a self-represented litigant who is not a licensed attorney may be served by e-mail only if that litigant has consented in writing and designated an e-mail address for that purpose. Order Regarding Service by E-Mail in the Trial Courts (S.C. Sup. Ct. Order dated May 6, 2022, issued pursuant to Rule 613, SCACR); Rule 5(b), SCRCP. Appellant gave no such written consent. Absent it, e-mail was not a proper method of serving a compliance deadline on Appellant, and the standard filing instructions applicable to self-represented parties directing service by mail controlled instead.

Due process requires notice reasonably calculated, under all the circumstances, to apprise a party of the pendency of an action or of a deadline affecting his rights, and to afford him an opportunity to respond. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). A deadline communicated only through a channel the recipient never agreed to receive, and that appears nowhere in the case's own docket, is not notice reasonably calculated to reach him. Penalizing Appellant for missing that deadline — as an independent, alternative basis for denying relief — compounds the error addressed in Section I above and independently requires reversal.

III. THE CERTIFICATE OF SERVICE BY MAIL FOR THE MASTER'S REPORT AND ORDER IS DEFECTIVE ON ITS FACE AND CANNOT ESTABLISH THAT APPELLANT RECEIVED PROPER NOTICE OF THE JUDGMENT.

The record contains a Certificate of Service by Mail, executed by an employee of Plaintiff's counsel's firm, stating that she "this 22nd day of April, 2026, mailed a copy of the Master's Report and Order of Foreclosure and Sale" to Appellant (Certificate of Service by Mail, p. 1). That certificate was sworn and notarized, however, on March 26, 2026 (Certificate of Service by Mail, p. 2) — nearly a month before the mailing it purports to describe, before the April 8, 2026, hearing occurred, and before the Master's Report and Order itself was issued on April 21-22, 2026 (Master's Order, cover).

A sworn certificate cannot truthfully attest, in advance, to an act that had not yet occurred and to a document that did not yet exist. The certificate is unreliable on its face and cannot establish that Appellant received proper notice of the entry of the judgment against him. This irregularity independently warrants relief under Rule 60(b)(1), SCRCP, and further undermines confidence in the procedural regularity of the proceedings below.

IV. THE DENIAL OF APPELLANT'S REQUEST FOR A CONTINUANCE, IMMEDIATELY AFTER HIS DEFAULT WAS SET ASIDE, DENIED HIM A MEANINGFUL OPPORTUNITY TO DEFEND.

After the Master set aside Appellant's default for lack of actual service (Master's Order ¶ 4), Appellant requested a continuance in open court so that he could properly prepare and defend as a non-defaulting party (Reply to Opposition, §§ II, V). That request was denied, and the matter proceeded immediately, in the same session, to final foreclosure judgment (Reply to Opposition, Preliminary Correction; § V).

Setting aside a default is meant to restore a defendant to the position of a non-defaulting party, entitled to the ordinary protections of a contested case. Those protections ordinarily include a meaningful opportunity to prepare: time to examine the claim and the accounting behind it, conduct discovery, request records, subpoena witnesses, and prepare defenses. Denying a continuance to a defendant whose default was just set aside, and proceeding immediately to a final judgment affecting his real property, converts the relief granted by setting aside the default into an empty formality, and denies him the same notice-and-opportunity-to-respond protection this brief invokes in Section II above. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

The resulting prejudice was concrete, not speculative. Appellant had no opportunity to examine or challenge Plaintiff's accounting, no opportunity to review the substantially reduced and altered claim before it was adjudicated, no opportunity to conduct discovery or request the Association's records, no opportunity to subpoena documents or witnesses, no opportunity to challenge the late fees, attorney's fees, and costs claimed, and no opportunity to evaluate settlement or cure options based on the amount actually being pursued (Reply to Opposition, § V). This same denial also left Appellant unable to contest, before judgment, whether this matter was properly exempt from mediation or ADR (Reply to Opposition, §§ V, VII) — a problem compounded by the fact that the ADR exemption in this case rests on a certificate filed by Plaintiff's own counsel, not a specific order of a judge determining that mediation was not required (Reply to Opposition, § VII).

V. THE ORDER AUTHORIZING SERVICE BY PUBLICATION WAS IMPROVIDENTLY GRANTED BECAUSE THE SUPPORTING AFFIDAVIT DID NOT ESTABLISH THE GENUINE, REASONABLE DILIGENCE REQUIRED FOR THIS EXTRAORDINARY REMEDY, AND THE RESULTING JUDGMENT IS THEREFORE VOID FOR LACK OF PERSONAL JURISDICTION.

Service by publication is an extraordinary remedy available only upon strict compliance with the governing statute and a genuine, reasonable showing of diligence in first attempting to locate and personally serve the defendant. S.C. Code Ann. § 15-9-710(5); Rule 4, SCRCP.

The affidavit submitted here does not meet that standard. Nappier's affidavit states only that a process server made "four (4) attempts" and that Plaintiff "made every effort to obtain the proper address." (Nappier Aff. ¶¶ 4-5). The underlying Affidavit of Non-Service it relies on shows what those four attempts actually were: knocks on the door with no answer on February 1, February 6, and February 7, 2025, each within a narrow one-week window and each at the same address by the same method, plus one attempt on February 2, 2025 in which the process server made no contact with Appellant at all but instead relayed an unsworn, secondhand statement from a neighbor identified only by a first name, that the occupants had "moved out... in the middle of the night" (Affidavit of Non-Service, pp. 1-2). No certified mail, skip-trace, database search, or inquiry beyond that single neighbor conversation is documented. A conclusory recitation that the plaintiff "made every effort" is not a substitute for a factual showing of what efforts were actually made, and the actual record of those efforts shows considerably less than the affidavit's characterization suggests.

Because the affidavit was legally insufficient to support this extraordinary remedy, the order authorizing publication should not have issued (Order for Service via Publication, p. 1), and the publication that followed did not confer personal jurisdiction over Appellant. Without personal jurisdiction, the Master-in-Equity lacked authority to proceed to judgment, and the judgment entered is void. *Duncan v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (Ct. App. 2011); *Moore v. Simpson*, 322 S.C. 518, 473 S.E.2d 64 (Ct. App. 1996).

This defect is not cured by Appellant's participation in the April 8, 2026, hearing after his default was set aside (Master's Order ¶ 4). Under Rule 12(h)(1), SCRCP, a defense of lack of personal jurisdiction is waived only if it is omitted from a pre-answer motion or is not raised by motion or included in the first responsive pleading. Appellant raised lack of personal jurisdiction and insufficiency of service in his Answer, Affirmative Defenses, and Motion to Dismiss pursuant to Rule 12(b)(2), (4), and (5), SCRCP — his first responsive pleading, filed before the hearing (Reply to Opposition §§ I, III). Having properly preserved the defense there, Appellant did not waive it by subsequently appearing at the hearing after his default was set aside; jurisdiction that never attached in the first instance is not created after the fact merely because a party who timely objected also participates once ordered to. Nor is the argument foreclosed by the Master's finding that "service was made... as shown by the proofs of service filed herein" (Master's Order ¶ 3) — that finding reflects only that the mechanics of publication were carried out, not that the affidavit underlying the order authorizing publication was legally sufficient in the first place.

The record independently corroborates the affidavit's insufficiency. Appellant's own affidavit, submitted below, avers that the residence was equipped with a doorbell camera with a two-way intercom function, and that on each attempt described in the process server's affidavit, the process server knocked only on an exterior storm door and did not use the doorbell or intercom

(Browne Aff.; Reply to Opposition § III). A ready means of making contact was therefore available and unused. This is precisely the kind of unexplored, readily available avenue that distinguishes a genuine, reasonably diligent effort from a conclusory one, and it further undermines any claim that Plaintiff "made every effort" before resorting to the extraordinary remedy of publication.

VI. APPELLANT WAS DENIED DUE PROCESS WHEN THE CLAIM ADJUDICATED AT THE HEARING WAS MATERIALLY DIFFERENT FROM THE CLAIM AS ORIGINALLY PLED, AND PLAINTIFF'S FINES WERE IMPOSED WITHOUT COMPLYING WITH THE ASSOCIATION'S OWN BY-LAWS.

Due process requires that a defendant receive notice of the claim against him and a meaningful opportunity to respond to that claim. Rule 8, SCRCP requires that claims be clearly stated so a defendant may prepare a defense.

Plaintiff's original Complaint sought $16,865.71, exclusive of attorney's fees and costs; with $4,089.34 in attorney's fees, $976.06 in costs, and $209.50 in additional attorney's fees, Appellant's total exposure approached $22,140.61 (Reply to Opposition § VIII). The Master's ultimate judgment instead totaled $10,026.58 (Master's Order ¶¶ 16-17) — itemized on a different basis than the claim Appellant was required to prepare to defend against, and arrived at without any amendment to the pleadings or advance notice to Appellant of the claim actually being adjudicated. Relief is warranted under Rule 59(e), SCRCP. *Bowers v. Bowers*, 349 S.C. 85, 561 S.E.2d 610 (Ct. App. 2002); *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990).

This was not simply a case of proof falling short of the amount pled. Appellant's timely Rule 59(e) Motion argued, under its own heading, that Plaintiff's conduct manufactured the default (Rule 59(e) Motion § III.A): Plaintiff would not accept payment of the assessments Appellant did not dispute unless Appellant also paid the late fees and fines Appellant did dispute, bundled into a single demand, and then relied on nonpayment of that bundled demand as the basis for foreclosure. Plaintiff itself entered into evidence at the April 8, 2026, hearing a July 14, 2021, letter from the Association's then-President stating, in an underlined line: "The only way to avoid this Action is to pay the entire amount due on your POA account... and the total of any $50 fines on the trailer, which begins today. You may consider this letter to be the final POA communication." (Himmelsbach Letter, July 14, 2021). By Plaintiff's own submission, the Association's stated position — years before this suit was filed — was that Appellant's undisputed assessment and the disputed trailer fines had to be paid together, as a single bundled sum, or face collection action; there was no offer to separate the two, no mediation, and no hearing. Two further letters from the same President, also before the Master, follow the identical pattern: a January 2, 2022, letter demanding the account be brought current within fifteen days or be referred to the Association's attorney for a lien (Himmelsbach Letter, Jan. 2, 2022), and a March 17, 2022, letter imposing an additional $100.00 fine (Himmelsbach Letter, Mar. 17, 2022). None of these letters offers mediation, a hearing, or any process for Appellant to contest the charges before a lien or referral to counsel; each instead pairs an escalating demand with a deadline and a threat. That the bundling letter comes from Plaintiff's own evidentiary submission, rather than solely from Appellant's account, removes any dispute about what the Association's position actually was. The fines included in that demand were themselves imposed without complying with the Association's own governing documents: Section 14.3.2 of the By-

Laws requires written notice of a Board hearing — identifying the alleged violation, at least ten days' notice, an invitation to attend and present evidence, and the proposed sanction — and Section 14.3.3 requires the hearing be held in executive session, with proof of notice and the opportunity to be heard placed in the Board minutes before any sanction takes effect (Reply to Opposition § IX). None of that occurred here (Reply to Opposition § IX). The Master's own decision to decline the $300.00 in fines Plaintiff sought, for lack of corroborating evidence (Master's Order ¶ 14), is consistent with this: the fines were not properly imposed in the first place.

A plaintiff who seeks to foreclose in part on charges its own governing documents did not authorize, and who conditions acceptance of an undisputed debt on payment of amounts the debtor reasonably disputes, comes to the Court with unclean hands and should not be permitted to rely on the resulting nonpayment to justify the judgment obtained. "The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." *First Union National Bank of South Carolina v. Soden*, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998); accord *Ingram v. Kasey's Associates*, 340 S.C. 98, 531 S.E.2d 287 (2000). A foreclosure action is itself an equitable proceeding, and the same principle bars a plaintiff from obtaining the equitable remedy of foreclosure where its own pre-suit conduct — bundling an undisputed debt with fines its own governing documents did not authorize, and refusing partial payment on that basis — created the very nonpayment it now relies upon.

VII. THE $3,200.00 IN LATE FEES AWARDED BY THE MASTER IS NOT SUPPORTED BY COMPETENT EVIDENCE AND IS FACIALLY INCONSISTENT

WITH THE LATE-CHARGE FORMULA SET OUT IN THE ASSOCIATION'S OWN DECLARATION.

The Declaration of Covenants, Restrictions and Easements for Shaftesbury Green, admitted into evidence at the April 8, 2026, hearing, fixes the late charge that may be assessed against a delinquent debt: "Any assessment delinquent for a period of more than ten (10) days after the date when due shall incur a late charge of Fifty ($50.00) Dollars per month or an amount as may be determined by the Board from time to time." (Declaration § 13.8). By its plain terms, this authorizes, at most, one $50.00 late charge per month that a given assessment remains unpaid.

An account ledger reflecting Appellant's assessment and late-fee history — generated by the Association's own property manager, and entered into evidence by Appellant at the hearing — does not reflect that formula. The ledger shows Appellant's 2021 annual assessment — a single $215.00 charge, Invoice #2021-20, dated July 14, 2021 — with no fewer than eight separate "Late Fee Assessments" entries posted against it: batches of 12, 12, 12, 9, 12, 12, 5, and 12 charges of $50.00 each, totaling eighty-six (86) separate late-fee charges, or $4,300.00, all attributed to that single $215.00 debt (Appellant's Ledger Exhibit, Statement dated Jan. 1, 2024, p. 1). Even assuming continuous, unbroken non-payment of that one assessment from its due date through the date of the statement — roughly thirty months — the Declaration's one-charge-per-month formula could not generate anywhere near eighty-six charges against it. The ledger instead reflects repeated, overlapping batches of up to twelve $50.00 charges posted again and again against the same underlying debt, a pattern that cannot be reconciled with a late charge that Section 13.8 authorizes to accrue once per month, per delinquent assessment.

The Master's Order awards $3,200.00 in "Late Fees per Declaration (through March 2026)" (Master's Order ¶ 16(c)), a lower figure than the total reflected on Appellant's ledger exhibit and apparently drawn from a separate computation Plaintiff placed in evidence at the hearing. Regardless of which specific figure the Master ultimately relied on, Appellant's ledger exhibit establishes that the Association's own billing practice, as reflected in its property manager's records, does not follow the one-charge-per-month formula the Declaration itself sets out — which independently calls into question the reliability of any late-fee total calculated from that same account history, including the $3,200.00 figure adopted below. The Master's willingness to scrutinize the accuracy of a disputed charge is not in question; the Master separately declined to award $300.00 in fines for lack of corroborating evidence (Master's Order ¶ 14). The late-fee figure warrants the same scrutiny. Relief is warranted under Rule 59(e), SCRCP, for a finding resting on a misapprehension of the controlling document governing the very charge at issue. *Bowers v. Bowers*, 349 S.C. 85, 561 S.E.2d 610 (Ct. App. 2002); *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990).

VIII. APPELLANT’S PARTICIPATION AT THE HEARING DID NOT WAIVE HIS JURISDICTIONAL OBJECTION, AND THE RECORD CONTRADICTS PLAINTIFF’S CLAIM THAT NO FURTHER JURISDICTIONAL CHALLENGE WAS MADE.

Plaintiff's Opposition asserts that at the April 8, 2026, hearing, Appellant "never again raised the issue of personal jurisdiction by the court and made no further motions challenging personal jurisdiction." (Plaintiff's Opposition, Jurisdiction §). The record contradicts that assertion at every stage. Appellant's Answer, Affirmative Defenses, and Motion to Dismiss — filed before the hearing — expressly raised insufficient service of process, lack of due diligence, improper service by publication, and lack of personal jurisdiction, and sought dismissal under Rule

12(b)(2), (4), and (5), SCRCP (Reply to Opposition §§ I, III). At the April 8, 2026, hearing itself, after his request for a continuance was denied and before the merits were addressed, Appellant reaffirmed his jurisdictional objection in open court (Reply to Opposition, Preliminary Correction; § I). And after the hearing, on April 30, 2026, Appellant filed a Rule 60(b) Motion devoting its lead section to the argument that "The Court Lacked Personal Jurisdiction and the Judgment is Void" (Rule 60(b) Motion § I), with a further section arguing that "Participation at Hearing Does Not Create Jurisdiction" (Rule 60(b) Motion § II), and a Rule 59(e) Motion likewise arguing, under its own heading, that "The Court Erred in Proceeding Despite Lack of Personal Jurisdiction" (Rule 59(e) Motion § II). Both motions were served on Plaintiff's counsel before Plaintiff's Opposition was filed (Rule 60(b) Motion Certificate of Service; Rule 59(e) Motion Certificate of Service). Plaintiff's own Opposition is therefore contradicted by the very record it was responding to.

A defendant does not waive a jurisdictional defect by appearing to contest it, and Appellant did not merely appear — he raised the defect in his Answer and motion to dismiss before the hearing, reaffirmed it orally at the hearing itself, and renewed it in writing, under its own heading, in both post-trial motions, before Plaintiff ever filed its Opposition. Plaintiff's reliance on Ex Parte Cannon, 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009), and Colonial Pacific Leasing Corp. v. Taylor, 326 S.C. 529, 484 S.E.2d 595 (Ct. App. 1997), is misplaced on this record; those cases address waiver by a party who failed to preserve an objection, not a party who pressed it in writing and orally at every stage of the proceeding.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the Master's June 29, 2026, Order denying Appellant's Rule 59(e) and Rule 60(b) motions and Motion to Stay, reverse and vacate the underlying Judgment of Foreclosure and Sale as void for lack of personal jurisdiction, and remand for further proceedings requiring proper service and consideration of Appellant's motions on their merits, or grant such other relief as this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cedric Javus Browne, hereby certify that I have served a true and correct copy of the foregoing Brief of Appellant upon counsel of record for Respondent, Mark Andrew Nappier, Esquire, Joye, Nappier, Risher & Hardin, LLC, by

' U.S. Mail, first class, postage prepaid addressed to counsel's address of record, on this 12 day of August, 2026.

Cedric Javus Browne

Cedric Javus Browne, Pro Se Appellant

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