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SC Court of Appeals

THE 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. 2026-001570

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 which Cedric Javus Browne is the..... Appellant.

RETURN TO PETITION FOR REVIEW OF SECURITY FIXED ON REMAND

On April 22, 2026, Judge Clemmons filed a Master's Report and Order of Foreclosure Sale wherein he ruled that property owners Michelle Eblen ("Eblen") and Appellant Cedric Javus Browne ("Browne") owed the Respondent Shaftesbury Green Property Owners Association, Inc. ("the Association") Ten Thousand Twenty-Six and 58/100 (\$10,026.58) Dollars in past due assessments, fees and costs and ordered the property of Browne to be sold at foreclosure sale if the debt was not paid prior to the Master's Sale. Browne filed a Motion to Alter or Amend, a Motion to Stay of May 14, 2026 and a second Motion to Stay of June 11, 2026, all of which were denied by an Order filed June 29, 2026. A sales date of August 3rd, 2026 had been set, but has now been delayed until November 3, 2026. A Notice of Appeal was filed by Browne with the Horry County Clerk of Court on July 14, 2026 and an Emergency

Petition for Writ of Supersedeas was filed with the Court of Appeals on July 16, 2026. By Order dated July 22, 2026, the Court of Appeals issued an Order granting a stay and remanding the case to the Master in Equity for and expedited hearing on Appellant's petition for writ of supersedeas. The Master held a hearing on August 20th and on September 21, 2026, filed a Master's Order Imposing Appeal Bond and Approving Stay. On September 21, 2026, the Appellant filed Appellant's Notice of Master's Ruling on Petition for Writ of Supersedeas and Renewed Petition for Review of Security Fixed on Remand. This is Respondent's Return to the Petition.

I. APPELLANT'S CHALLENGES TO THE MASTER'S ORDER ARE NOT PRESERVED FOR APPELLATE REVIEW.

As an initial matter, Appellant's Petition should be denied because the issues presented to this Court were never properly preserved before the Master-in-Equity. The Master's Order for Written Undertaking was filed on September 21, 2026, yet Appellant elected not to file a motion to alter or amend pursuant to Rule 59(e), SCRCF. Instead, Appellant seeks to challenge numerous findings and conclusions of the Master for the first time before this Court.

South Carolina law is unequivocal that an issue must be both raised to and ruled upon by the lower court to be preserved for appellate review. Elam v. South Carolina Department of Transportation, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Where a lower court fails to address an issue, or where a party contends that an order omits necessary findings or contains legal error, that party must seek a ruling through a Rule 59(e) motion before appellate review may be obtained. Likewise, the South Carolina Supreme Court held in Noisette v. Ismail, 304 S.C. 56, 59, 403 S.E.2d 122, 124 (1991), that when a trial court does not explicitly rule on an issue and the aggrieved party fails to move pursuant to Rule 59(e) to obtain a ruling, the issue is not preserved for appellate review. The preservation requirement is particularly applicable here. Appellant's Petition attacks numerous components of the Master's September 21, 2026 Order, including:

- the calculation of fair rental value;
- the inclusion of taxes, insurance, and assessments;
- the calculation of interest;
- the projected length of the appeal;
- the amount of the undertaking; and
- the enforcement provisions contained within the Order.

Each of these objections challenges findings and conclusions contained in the Master's written Order. If Appellant believed the Master had misapplied S.C. Code Ann. § 18-9-170, relied upon

incorrect calculations, omitted necessary findings, or otherwise abused his discretion, Rule 59(e) provided the proper procedural vehicle for requesting reconsideration or clarification. Appellant failed to do so.

The purpose of Rule 59(e) is to afford the lower court an opportunity to correct alleged errors before appellate review is sought. As the Supreme Court explained in Elam, Rule 59(e) serves as the appropriate mechanism by which a litigant may seek reconsideration and obtain rulings necessary for preservation. By bypassing that procedure entirely, Appellant deprived the Master of the opportunity to revisit or modify the undertaking determination now under attack. Accordingly, because Appellant never sought relief pursuant to Rule 59(e), the issues presented in the Petition are not properly preserved and should not be considered by this Court. See Noisette, 304 S.C. at 59, 403 S.E.2d at 124; Elam, 361 S.C. at 24, 602 S.E.2d at 780.

II. THE MASTER PROPERLY EXERCISED HIS DISCRETION UNDER RULE 241(c)(3), SCACR.

Even if the Court reaches the merits, Appellant's challenge fails because the Master acted squarely within the authority granted by Rule 241(c)(3), which provides that the court may grant a stay pending appeal upon such conditions, including the filing of a bond or undertaking, "as it may deem appropriate." The language of the Rule is intentionally broad and vests substantial discretion in the tribunal responsible for determining the amount and conditions of a supersedeas undertaking.

Of particular significance, Browne has remained in possession of the Property since at least 2021 while paying no homeowners association assessments. He now asks this Court to permit him to remain in possession for an additional two to three years while his appeal proceeds. Rule 241(c)(3) was not intended to allow an appellant to obtain the benefits of possession while shifting all financial risks associated with the delay to the prevailing party. The Master's undertaking appropriately allocates those risks to the party seeking the stay and reflects precisely the type of discretionary determination contemplated by Rule 241(c)(3).

Rule 241(c)(3) authorizes the court to consider all reasonable factors necessary to protect the successful litigant during the pendency of the appeal. Here, the Court of Appeals remanded the matter for consideration of Appellant's request for reduced security and the application of S.C. Code Ann. § 18-9-170. The Master complied with that directive. The written Order reflects detailed findings regarding rental value, taxes, insurance premiums, assessments, accrued interest, and the anticipated duration of the appeal before establishing the amount of the undertaking. Far from ignoring Section 18-9-170, the Master evaluated the statutory requirements and then exercised the discretion expressly afforded by Rule 241(c)(3) to determine

the amount necessary to protect Respondent throughout the appeal process. The resulting undertaking represents a reasoned exercise of judicial discretion and does not constitute an abuse of that discretion.

III. THE MASTER FULLY COMPLIED WITH S.C. CODE ANN. § 18-9-170.

Appellant's principal argument appears to be that the Master failed to follow the provisions of S.C. Code Ann. § 18-9-170. That argument rests upon a fundamental misconception of both the statute and the posture of this case. As an initial matter, Respondent expressly waived any claim for a deficiency judgment in the underlying foreclosure action. Accordingly, there is no deficiency judgment to secure, no future deficiency that may be entered, and no deficiency amount against which Appellant's proposed limitation may be measured. Appellant's reliance upon statutory language concerning a deficiency is therefore misplaced because the very remedy upon which his argument depends is not at issue in this case. The undertaking ordered by the Master was not intended to secure payment of a deficiency judgment. Rather, it was intended to protect Respondent from the financial consequences resulting from Appellant's continued possession of the Property and the continued delay in enforcement of the foreclosure judgment during the pendency of the appeal. The Court of Appeals remanded this matter for determination of the amount and nature of security necessary to maintain the stay. The Master's undertaking addresses that issue.

Moreover, Appellant never presented this deficiency-based argument to the Master following entry of the September 21, 2026 Order and never filed a Rule 59(e), SCRCPP motion seeking clarification or amendment of the Master's treatment of Section 18-9-170. Consequently, any challenge based upon Appellant's current interpretation of the statute is itself unpreserved for appellate review.

The Master's Order expressly references Section 18-9-170 and addresses the categories of loss that may accrue while enforcement of the foreclosure judgment is stayed. The Order contains specific findings concerning:

- fair rental value of the property;
- taxes;
- insurance;
- assessments;
- accrued interest;
- and the anticipated duration of the appeal.

Those findings directly correspond to the purpose of Section 18-9-170, which is to protect the prevailing party against damages resulting from delayed enforcement of a judgment.

Appellant has effectively asked this Court to construe Section 18-9-170 as imposing rigid limitations upon the court's ability to fashion adequate security. Nothing in the text of the statute supports such a narrow interpretation. The statute establishes protections that an undertaking must provide; it does not prohibit a court from considering the real economic consequences of a stay pending appeal. Indeed, Appellant's interpretation would produce an inequitable result. Under Appellant's construction, a foreclosing plaintiff who expressly waives a deficiency judgment would nevertheless be denied meaningful protection during a potentially lengthy appeal despite suffering continuing losses associated with delayed enforcement, continued occupancy, unpaid assessments, taxes, insurance obligations, and other carrying costs. Nothing in Section 18-9-170 suggests the General Assembly intended such a result.

Accordingly, the Master fully complied with Section 18-9-170, properly considered the evidence presented, and fashioned security reasonably calculated to protect Respondent during the pendency of the appeal.

IV. THE MASTER PROPERLY CONSIDERED RENTAL VALUE, TAXES, INSURANCE, AND OTHER CARRYING COSTS.

Appellant further contends that the Master improperly considered fair rental value, taxes, insurance, assessments, and similar costs in calculating the undertaking. Those considerations were entirely appropriate. During the pendency of the appeal, Appellant retains possession and use of the property while Respondent remains unable to enforce the foreclosure judgment. As a result, Respondent is deprived of the benefits of possession and exposed to continuing risks and expenses associated with the property. The undertaking serves to protect against those losses. The Master's consideration of rental value, taxes, insurance, assessments, and accrued interest reflects a practical assessment of the damages that may arise during a prolonged appellate stay. Those factors are consistent with the purpose of both Rule 241 and Section 18-9-170 and fall well within the discretion afforded to the Master in determining adequate security.

V. THE ENFORCEMENT PROVISIONS OF THE ORDER ARE PROPER CONDITIONS OF SUPERSEDEAS.

Finally, Appellant challenges the provisions governing compliance with the undertaking and the consequences of default. This argument likewise fails. A stay pending

appeal is an equitable remedy conditioned upon compliance with the requirements imposed by the court. Rule 241(c)(3) expressly authorizes the court to impose such terms and conditions as it deems appropriate. The challenged provisions do not impose additional liability upon Appellant. rather, they merely establish the consequences of failing to comply with the conditions under which the stay was granted. Such provisions are essential to the effectiveness of any supersedeas order and fall squarely within the Master's discretionary authority. Accordingly, Appellant has failed to show that the Master abused his discretion in imposing the conditions contained within the September 21, 2026 Order.

CONCLUSION

Appellant failed to preserve the issues raised in the Petition by neglecting to file a Rule 59(e), SCRCP motion after entry of the Master's September 21, 2026 Order. For that reason alone, the Petition should be denied. Alternatively, the Master properly applied S.C. Code Ann. § 18-9-170 and acted within the broad discretion afforded by Rule 241(c)(3), SCACR in determining the amount and conditions of the undertaking. The Order should therefore be affirmed in all respects.

October 7, 2026

s/ Mark Nappier

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