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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**  
MAY 12 2015  
SC Court of Appeals

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APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

James Verner, Special Referee

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Case No.: 2015-000872

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St. Paul Independent Church Pomaria, Inc., ..... Appellant,

v.

African Methodist Episcopal Church, Inc., St. Paul A.M.E. Church, Inc., Elder Joseph Postell (in his capacity as an Elder for the A.M.E. Church, Inc.), ..... Respondents,

v.

Shirley Wise, Lisa Houseal, and Thomas Flemon, in their capacities as former Trustees of St. Paul A.M.E. Church Pomaria, Inc., ..... Third Party Appellants.

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**RETURN IN OPPOSITION TO APPELLANTS'  
MOTION FOR DETERMINATION OF AUTOMATIC STAY**

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Respondents African Methodist Episcopal Church, Inc. (hereinafter "A.M.E. Church, Inc."), St. Paul A.M.E. Church, Inc., and Elder Joseph Postell (in his capacity as an Elder for the A.M.E. Church, Inc.) (hereinafter collectively "Respondents"), by and through their undersigned counsel, hereby submit this Return in Opposition to Appellants St. Paul Independent Church Pomaria, Inc., Shirley Wise, Lisa Houseal, and Thomas Flemon, in their capacities as former Trustees of St. Paul A.M.E. Church Pomaria, Inc.'s

(hereinafter collectively “Appellants”) Motion and Memorandum For Determination of Automatic Stay.

### **FACTUAL BACKGROUND**

On April 7, 2015, Special Referee James Verner issued an Order granting Summary Judgment to Respondents and, in effect, required Appellants to deliver exclusive possession of the property located at 1945 Hope Station Road, Pomaria, South Carolina (hereinafter “Subject Property”) to Respondents. On April 13, 2015, Appellants filed a Notice of Appeal of that Order to this Court.

On April 25, 2015, Appellants’ counsel informed Respondents that, in ex parte communications, the Special Referee indicated he “did not feel he had jurisdiction to rule” on whether his Order was subject to an automatic stay during the appeal. See Appellants’ Motion and Memorandum for Determination of Automatic Stay, p. 3. In response, Respondents drafted a letter to the Special Referee contending the Order was not subject to an automatic stay under 241(b)(4), SCACR, because the Order directed the delivery of real property. The Special Referee has not issued a decision on this matter.

In their Motion and Memorandum for Determination of Automatic Stay filed with this Court on May 1, 2015, Appellants petition this Court to determine whether the Special Referee’s Order granting Summary Judgment is automatically stayed during pendency of the appeal. Respondents now submit Appellants’ Motion is improperly before this Court and, in the alternative, Appellants are not entitled to an automatic stay; therefore, the Motion should be denied.

## ARGUMENT

### **I. Appellants' Motion Is Improperly Before This Court Because The Special Referee Has Not Issued A Decision Staying His Order Granting Exclusive Possession Of The Subject Property To Respondents.**

Any appeal of an order issued by a Special Referee is properly before the Court of Appeals only as provided in the South Carolina Appellate Court Rules. See Rule 53(c), SCRCR. Under the South Carolina Appellate Court Rules, an application for a writ of supersedeas "must first be made to the lower court . . . which entered the order or decision on appeal." In this instance, the Special Referee acts as the officer of the lower Court as he is vested with the same powers and authority as a circuit judge sitting without a jury. S.C. Code Ann. § 14-11-60; see also Rule 53(c), SCRCR; Exhibit 1: Motion and Order of Reference to Special Referee.

It is only after the special referee has made a final decision on an issue that a party may petition this Court for review of the referee's finding. Rule 241(d)(2), SCACR. If the party requesting a writ of supersedeas does not petition the special referee prior to bringing its petition before this Court, the petition must state the extraordinary circumstances that made it impracticable to apply for the supersedeas before the referee. Rule 241(d)(3), SCACR.

In this case, Appellants have not requested a writ of supersedeas from the Special Referee or asked the Special Referee to make any formal determination regarding Appellants' contention that an automatic stay is applicable in this matter as required by Rule 241, SCACR. Moreover, it would be improper for this Court to decide if a stay of the Special Referee's Order is appropriate when Appellants have failed to cite in their petition to this Court any extraordinary circumstances that make it impracticable to bring

this matter before the Special Referee as required by Rule 241(d)(3), SCACR.<sup>1</sup> Accordingly, because Appellants' Motion is improperly before this Court, it should be dismissed.

**II. Appellants Are Not Entitled To An Automatic Stay During The Pendency Of Appellants' Appeal, Where The Special Referee's Order Directed The Delivery Of The Subject Property To Respondents.**

Should this Court determine this matter is properly before it and hear Appellants' Motion, Appellants are not entitled to an automatic stay of the Order granting Summary Judgment because the Order delivers the possession of real property.

Pursuant to Rule 241 of the South Carolina Appellate Court Rules, generally, the service of a Notice of Appeal in a civil action acts to automatically stay matters decided in the order on appeal and to automatically stay the relief ordered. The automatic stay continues in effect for the duration of the appeal unless lifted by an order of the lower court, administrative tribunal, appellate court or judge or justice of the appellate court. Rule 241(a), SCACR. However, this general rule is subject to exceptions provided in Rule 241, SCACR, statutes, court rules, and case law. One such exception, found in Rule 241(b)(4), SCACR, provides that judgments directing the sale or delivery of possession of real property are not automatically stayed and are subject to the provisions of S.C. Code Ann. § 18-9-170.

According to S.C. Code Ann. § 18-9-170:

If 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, with two (2) sureties, to the effect that during the possession of such property by the appellant he will not commit or

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<sup>1</sup> Appellants' ex parte communication with the special referee should not be considered an extraordinary circumstance as this would allow Appellants to benefit from such communication despite having failed to file a Motion for Determination with the special referee before filing a with this Court.

suffer to be committed any waste thereon and that if judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered . . . .

The plain language of this statute indicates automatic stays do not apply to two (2) classes of judgments related to real property—those which direct a sale and those which direct delivery of possession. See Gerald v. Gerald, 31 S.C. 171, 9 S.E. 792 (1889).

Appellant St. Paul Independent Church Pomaria, Inc. assumed complete control and possession of the Subject Property at the outset of the litigation pursuant to a purported quitclaim deed and obtained an ex parte Temporary Restraining Order prohibiting Respondents from using the property on the basis of that deed. Following further proceedings, Appellants and Respondents continued in shared possession and usage of the Subject Property until issuance of the Summary Judgment Order in favor of Respondents. The Summary Judgment Order directed that all property in dispute, both real and/or personal, is fully and exclusively owned by the Trustees of St. Paul A.M.E. Church, thereby effectively requiring Appellants to surrender possession of the real property and to deliver exclusive possession of the Subject Property to Respondents. Possession follows legal title. Knight v. Hilton, 224 S.C. 452, 79 S.E.2d 871, (1954); see also Miller v. Leaird, 307 S.C. 56, 413 S.E.2d 841 (1992).

Appellants' assertion that application of S.C. Code Ann. § 18-9-170, Rule 241(b)(4), SCACR, and related case law is limited to foreclosure actions and actions explicitly ordering the sale or delivery of possession of real property, is misplaced. This Court has ruled that foreclosure orders are a "type" of order covered by S.C. Code Ann. § 18-9-170. See C-Sculptures, LLC v. Brown, 393 S.C. 27, 709 S.E.2d 705 (Ct. App.

2011). A judgment which designates one of the parties contesting ownership of real property as the exclusive owner of that real property entitles that owner to demand the delivery of possession of the real property, thereby incidentally directing the losing party to deliver possession of the real property. Compare Gerald, supra (stating a judgment of foreclosure does not entitle the party in whose favor it is rendered to demand delivery of any property). It is axiomatic that with ownership comes the right to possess.

Because the Summary Judgment Order granted in favor of Respondents directs the delivery of possession of real property, the judgment and relief ordered is not automatically stayed and is immediately enforceable without Appellants executing a written undertaking as provided by S.C. Code Ann. § 18-9-170. In this matter, Appellants failed to apply for an undertaking or bond to the Special Referee; therefore, the judgment is immediately enforceable and exclusive possession of the real property has been delivered to Respondents pursuant to the declaration of legal title found in the Order.

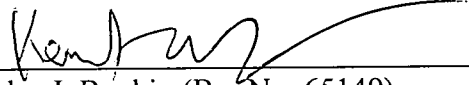
#### **CONCLUSION**

For these reasons, Respondents respectfully request that Appellants' Motion be dismissed as it is improperly before this Court or, in the alternative, denied.

**[SIGNATURE BLOCK ON NEXT PAGE]**

Respectfully Submitted,

BOYKIN & DAVIS, LLC

By:   
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Kenneth A. Davis (Bar No. 66416)

P. O. Box 11844  
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Attorneys for Respondents African Methodist  
Episcopal Church, Inc., St. Paul A.M.E. Church,  
Inc., and Elder Joseph Postell (in his capacity as an  
Elder for the A.M.E. Church, Inc.)

May 12, 2015  
Columbia, South Carolina

# **EXHIBIT A**

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

St. Paul Independent Church Pomaria, Inc.,

Plaintiff,

vs.

African Methodist Episcopal Church, Inc.,  
St. Paul AME Church Pomaria, Inc., Elder  
Joseph Postell (in his capacity as an Elder of  
the AME Church, Inc.),

Defendants.

IN THE COURT OF COMMON PLEAS  
EIGHTH JUDICIAL CIRCUIT

C.A. No. 2013-CP-36-00645

MOTION AND ORDER OF REFERENCE  
TO SPECIAL REFEREE

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SC Court of Appeals

**THIS MATTER COMES BEFORE THE COURT** upon the motion of the undersigned attorney for the Defendants that this non-jury action be referred to a Special Referee pursuant to Rule 53(b) of the S.C.R.C.P. and S.C. Code Ann. § 14-11-60. This matter, whereby both parties have requested a declaratory judgment to establish ownership of certain property located in Newberry County, is a proper matter for referral pursuant to Rule 53 of the S.C.R.C.P. and S.C. Code Ann. § 14-11-60.

**IT IS HEREBY ORDERED** that this matter is a proper matter for referral pursuant to Rule 53 of the S.C.R.C.P. and S.C. Code Ann. § 14-11-60. This matter is hereby referred to \_\_\_\_\_, Esquire as Special Referee with the authority to exercise all powers and authority of a Circuit Court judge including the entry of a final judgment in the action. In accordance with Rule 53(e) of the S.C.R.C.P. and S.C. Code Ann. § 14-11-85, any appeal from any order or judgment issued by the Special Referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

[SIGNATURES ON NEXT PAGE]

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The Honorable Eugene C. Griffith Jr.

**I SO MOVE:**

A handwritten signature in black ink, appearing to read 'Charles J. Boykin', written over a horizontal line.

Charles J. Boykin  
Kenneth A. Davis  
Matthew S. Brown  
Boykin & Davis, LLC  
P.O. Box 11844  
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January 21, 2014  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

**SC Court of Appeals**

James Verner, Special Referee

Case No.: 2015-000872

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v.

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v.

Shirley Wise, Lisa Houseal, and Thomas Flemon, in their capacities as former Trustees of St. Paul A.M.E. Church Pomaria, Inc., ..... Third Party Appellants.

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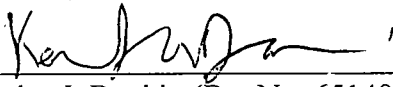
**PROOF OF SERVICE**

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The undersigned of Boykin & Davis, LLC, hereby certifies that they have served the **RETURN IN OPPOSITION TO APPELLANTS' MOTION FOR DETERMINATION OF AUTOMATIC STAY** on Appellant Counsel of record, by mailing a copy of same, postage prepaid and return address clearly indicated, addressed to the following on this 12th day of May 2015:

Stephanie R. Fajardo, Esq.  
The Fajardo Law Firm, LLC  
P.O. Box 2177  
Irmo, South Carolina 29063

**[SIGNATURE BLOCK ON FOLLOWING PAGE]**

By:   
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Elder for the A.M.E. Church, Inc.)

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May 12, 2015

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SC Court of Appeals

## VIA HAND DELIVERY

The Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

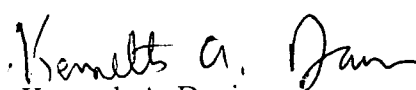
Re: St. Paul Independent Church Pomaria, Inc. vs. African Methodist Episcopal Church, Inc., St. Paul A.M.E. Church, Inc., Elder Joseph Postell (in his capacity as an Elder of the A.M.E. Church, Inc.) vs. Shirley Wise, Lisa Houseal, and Thomas Flemon, in their capacities as former Trustees of St. Paul A.M.E. Church Pomaria, Inc.  
Appellate C.A. No.: 2015-000872

Dear Ms. Kitchings:

Enclosed herewith for filing, please find the original and seven (7) copies of the Respondent's Return in Opposition to Appellants' Motion for Determination of Automatic Stay regarding the above-referenced matter. Please return a file-stamped copy of the Return to our courier.

By copy of this letter, we are serving a copy on the Appellant's counsel of record. Should you have any questions, please feel free to contact our office.

Sincerely,

  
Kenneth A. Davis

/pmt

Enclosures

cc: Stephanie R. Fajardo, Esq. (via U.S. Mail w/encls.)  
Charles J. Boykin, Esq. (w/o encls.)