THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

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Case No. 2009-CP-10-5799
Appellate Case No. 2014-002242

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Windswept Villas III
Horizontal Property Regime,

Respondent,

v.

Elaine Devlin Peery a/k/a
Elaine D. Peery

Appellant.

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# FINAL BRIEF OF APPELLANT

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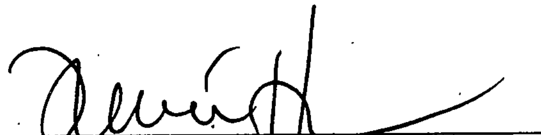

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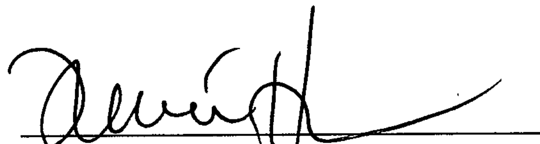

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## STATEMENT OF THE ISSUES ON APPEAL

THE MASTER IN EQUITY ERRED IN HOLDING THAT IT HAD SUBJECT MATTER JURISDICTION AS THE COURT DID NOT ESTABLISH THAT APPELLANT WAS PROPERLY SERVED WITH RESPONDENT'S CROSS CLAIM FOR ASSESSMENTS. THE APPELLANT WAS DENIED PROCEDURAL DUE PROCESS OF LAW WHEN THE LOWER COURT GRANTED RESPONDENT RELIEF ON ITS CROSS CLAIM WITOUT REQUIRNG RESPONDENT TO PROVE APPELLANT HAD BEEN SERVED WITH THE RESPONDENT'S CROSS CLAIM.

THE MASTER IN EQUITY ERRED IN AWARDING ATTORNEYS FEES TO RESPONDENT BECAUSE RESPONDENT WAS NOT ENTITLED TO JUDGMENT ON ITS CROSS CLAIM AGAINST APPELLANT. IF RESPONDENT IS TO PREVAIL, THEN THE MASTER IN EQUITY ERRED IN FAILING TO DETERMINE THE REASONABLENESS OF THE ATTORNEY'S FEES, AND IN FAILING TO SUPPORT THE RECORD WITH THE FACTORS REQUIRED FOR THE AWARD OF ATTORNEY'S FEES.

## STATEMENT OF THE CASE

This is an appeal from a decision of the Charleston County Master in Equity's Order for Judgment of Foreclosure and Sale (Deficiency Judgment Demanded against Elaine D. Peery a/k/a Elaine Devlin Peery). Appellant asks this Court to find that the Master did not have personal jurisdiction and that Appellant's right to procedural due process was denied, because Respondent failed to serve Appellant with its Cross Claim. Appellant asks that the Master's order be reversed and that the award of attorneys' fees be reversed, or remanded for a determination of reasonableness and failure to provide evidentiary support of the award of attorney's fees. This case originated as a foreclosure action filed by Bank of America on September 14, 2009 (R. pp. 49-55), against the Appellant, Elaine Peery, Kiawah Island Community Association, Inc., and Windswept Villas III Horizontal Property Regime, Inc. Bank of America served Appellant Elaine Peery on October 7, 2009 with the initial Summons and Complaint for foreclosure by personal service upon Appellant's attorney, W. Barnwell Vaughn, Appellant's attorney of record at that time, as evidenced by an Affidavit of Service filed with the Court on October 12, 2009. (R. p. 240)

Defendant Kiawah Island Community Association, Inc., failed to respond or otherwise plead, and was held in default in the Lower Court. Respondent Windswept filed an Answer against Bank of America, and a Cross Claim against Appellant Elaine Peery on September 12, 2009. Along with its Answer, Respondent filed a certificate of service to the attorney of record for Bank of America. There is no certificate of service indicating service of the Respondent's Answer and Cross Claim to the Appellant. Respondent also prepared a cover letter dated September 21, 2009 stating that service of the Respondent's pleadings were sent to Bank of America and Respondent's client, Windswept Villas III Horizontal Property Regime, Inc. (R. pp.

55-60), but not to the Appellant or her counsel of record. Respondent Windswept has never provided proof of service of its cross claim against Appellant Elaine Peery or her counsel of record.

Respondent's former counsel, Lydia Davidson, provided two affidavits, the first of which was prepared two and a half years after the filing of her Answer and Counterclaim, attesting that service was made to the Appellant of its Cross Claim. (R. p. 245)[1] Ms. Davidson's affidavit does not indicate a day, time or place with regard to service upon the Appellant. Respondent did not file an Affidavit of Default regarding its Cross Claim against the Appellant. On November 25, 2009, Appellant's counsel filed an Answer, Counterclaim and Cross Claim to the Complaint filed by Bank of America, and a Cross Claim against Respondent Windswept.

In Ms. Davidson's first affidavit, she asserts that Appellant appeared by and through her first attorney, Mr. Vaughn. (R. p. 245) However, in her second affidavit, Ms. Davidson asserts that Appellant had evaded service. (R. pp. 256-260)

On June 30, 2011, Appellant's attorney filed a Notice and Motion to be relieved as counsel for Appellant. On July 15, 2011, Respondent's counsel filed a Notice and Motion for Appointing of a Receiver and to Exclude Defendant Peery from use of the Common Areas and Recreational Facilities of Windswept Villas III. This motion, as well as Attorney Vaughn's Motion to be relieved, were both heard on August 1, 2011. The Master granted attorney Vaughn's motion to be relieved, and that order was filed on August 4, 2011. At the August 1, 2011 hearing, the Court questioned the Appellant as to whether she knew why she was present at that hearing. Appellant responded

[1] Attorney Lydia Davidson provided a second affidavit signed on May 5, 2014. This affidavit contained more specific information regarding supposed service of Respondent's Cross Claim, but neither of her affidavits contain specific information as to the time, date or place of service as required by Rules 4 of SCRCP.

that she was aware her attorney, Mr. Vaughn, wanted to be relieved as her counsel for, but other than this fact, she indicated she did not know why she was present at the Motion hearing. (R. p. 168, lines 20-23)

At the August 1, 2011 hearing, the Master made an Order relieving Mr. Vaughn as Appellant's counsel, and permitting the Respondent to move forward by appointing a receiver, essentially allowing Respondent to proceed on the Cross Claim. This is despite the fact that the Master also granted the Appellant sixty (60) days to retain other counsel, and further ordered that all matters would be stayed during that time (Order to be Relieved as Counsel, filed August 4, 2011) The Master also ordered that Appellant was to respond to discovery requests by October 24, 2011 (thirty days).[2] By this time, discovery requests were more than ten (10) months overdue, since Bank of America filed its first request for discovery on September 21, 2010. Bank of America then filed a Motion to Compel Discovery Appellant on January 7, 2011. (R. pp. 70-71) The Master issued an Order, signed on April 13, 2011, requiring the Appellant to produce the requested discovery within sixty (60) days of the date of the Order, and indicated that failure to produce the discovery could result in sanctions against the Appellant pursuant to Rule 37 of the SCRCP, as well as the possibility of the Appellant's cross claim being dismissed. Appellant became a pro se litigant as of August 1, 2011, after the Master granted the order relieving Mr. Vaughn as Appellant's counsel.[3]

[2] This was the second order issued by the Master on the issue of discovery. On April 8, 2011, the Master ordered that Defendant Peery through her attorney to produce discovery responses within sixty (60) days of the April8, 2011 order.

[3] During the pendency of this action, the Appellant was the primary caretaker of her ailing father and her terminally ill husband, who passed away in October of 2012.

On January 24, 2012, a foreclosure hearing was held. Appellant did not appear at this hearing.[4] No proof of service of notice of the foreclosure hearing was filed with the Court. Counsel for Bank of America and Respondent's former counsel, both indicated to the Court that they had made contact with an attorney who has represented Appellant and her deceased husband in other unrelated legal matters, who stated that he did not represent the Appellant in this matter. Both attorneys indicated to the Court that they spoke with this attorney the day prior to the August 1, 2011 hearing, and asked that he inform the Appellant that a hearing was scheduled for August 1, 2011. (R. p. 172, lines 5-18) Neither the attorney for Bank of America, nor the attorney for the Appellant, provided proof of service of notice of the hearing upon the Appellant. The Master noted its concern whether the Appellant knew the Court was moving forward with the foreclosure hearing on August 1, 2011. (R. p. 173, lines 6-25)(R. p. 174, lines 3-9) The hearing proceeded in the Appellant's absence, and an order and Judgment of foreclosure was issued by the Court.

[4] At a hearing held on June 20, 2014, the Master misstates that the Appellant appeared at the foreclosure hearing. The Transcript of the foreclosure hearing indicates that the Appellant was not present at that hearing.

## ARGUMENT

I. **THE MASTER IN EQUITY ERRED IN HOLDING THAT IT HAD PERSONAL JURISDICTION AS THE COURT DID NOT ESTABLISH THAT APPELLANT WAS PROPERLY SERVED WITH RESPONDENT'S CROSS CLAIM FOR ASSESSMENTS.**

The Appellant does not contest that the Trial Court had subject matter jurisdiction over the Appellant with regard to the Plaintiff Bank of America. Bank of America complied with all requirements with regard to service of the Summons and Complaint for Foreclosure, and the file is well documented that notice to the Appellant of any proceedings prosecuted by Bank of America were completed in compliance with Rule 4 of the South Carolina Rules of Civil Procedure (SCRCP). The Respondent, however, did not provide proof of service of its Cross Claim against the Appellant. "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, 502 (2006). "Rule 4, SCRCP, serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995). Although exact compliance with the rules is not required in order to perfect service, "...the Court must inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." Id at 210, 456 S.E.2d at 899.

Respondent has asserted that because the Appellant made certain appearances before the Master, this is tantamount to service of process of the Respondent's Cross Claim which complies with the requirements of Rule 4 OF SCRCP. As in this case, in *Stearns Bank Nat. Assn'n v. Glenwood Falls*, 373 S.C. 331, 338, 644 S.E.2d 793 (Ct. App. 2007) Glenwood Falls sought relief

from a relief from a default judgment because, it had not been properly served with Stearns Bank's Cross Claim. In *Stearns*, the master found that Glenwood Falls was not properly served pursuant to Rule 4(d) (g) because an unauthorized person signed the return receipt. *Supra.* In the instant case, no one, including the Appellant, was personally served with the Cross Claim. In *Stearns*, the Court further ruled that normally, this defect in service would be sufficient to grant relief from judgment under Rule 60(b) (4). However, the master in *Stearns* declined to set aside the default judgment Court found that Glenwood Falls made a voluntary appearance. *Supra*. The Court in *Stearns* found that although personal jurisdiction is commonly obtained by the service of the summons and complaint, it may also obtain personal jurisdiction if the defendant makes a voluntary appearance. In the case at bar, Appellant appeared either without counsel, as she did during the hearing held to relieve her then attorney on August 1, 2011, or when she was under duress or in danger of being held in contempt of court as was the case at the Rule to Show Cause hearing held August 29, 2014. These appearances are hardly voluntary. Rule 4(g) requires "...[T]he proof of service shall make the date, time and place of such service and, if known, the name and address of such person, and if not know, then the date, time and place of service and a description of the person actually served."

The *Stearns* is distinguishable from this case, because the Master in this case, repeatedly demanded proof of Respondent's Cross Claim, but ultimately proceeding without requiring Respondent to provide adequate proof of service.

The Affidavit of Lydia Davidson filed on March 29, 2012 (R. p. 245), swears that she served the Appellant with the Answer and Cross Claim of Windswept III, and that the Appellant appeared

by and through her attorney. However, Ms. Davidson's Affidavit contained no information regarding the date, time and place of service, nor the person served, as required by Rule 4(g) of the SCRCP. Davidson's second affidavit asserts that service was attempted by certified mail, which she asserts was returned undelivered. Aside from the fact that this assertion was not made in Ms. Davidson's first affidavit, no proof of such attempted service is included in the file or filed with the Court. This last omission regarding an appearance is material, since Appellant did appear at a hearing wherein her then counsel, W. Barnwell Vaughn, was asking the Master to relieve him as counsel for the Appellant. The second appearance was related to a Rule to Show Cause filed by Respondent well after it had obtained a judgment on the unserved Cross Claim, and while the Appellant was under duress because of her exposure to a finding of contempt of court. Respondent's assertion that Appellant's letter requesting a continuance constitutes notice is also in error.

Furthermore, Rule 5 of the SCRCP states:

> "Unless otherwise ordered by the court because of numerous defendants or other reasons, all (1) written orders; (2) pleadings subsequent to the original summons and complaint, which includes answers, counterclaims and cross claims ...shall be served upon each of the parties of record. No service need be made on parties in default for failure to appear, *except that pleadings asserting new or additional claims for relief against them shall be served upon them in a manner provided for serving of summons in Rule 4...*". (Emphasis added).

Appellant asserts that Respondent's Counter Claim is served by virtue of the fact that service of the summons and complaint was accomplished and somehow service of Respondent's Cross Claim was inferred therefrom. (R. pp. 256-260) Rule 5 of SCRCP clearly indicates that the Respondent is required to serve the Appellant with the Cross Claim separately and to provide proof thereof. Additionally, Respondent has argued that Appellant was served by service through

her attorney. The record here shows clearly that Respondent did not serve the Appellant or her counsel with the Cross Claim; rather, Respondent served the attorney for Bank of America with its Answer, Counterclaim and Cross Claim, and served Windswept, but never served the Appellant or her counsel. (R. pp. 56-61) Ms. Davidson also asserted that Appellant appeared, and filed a Counterclaim. (R. p. 245) This assertion is false. Appellant filed a Counterclaim against Bank of America, and a Cross Claim against Respondent.[5]

Ms. Davidson, also misstates that Appellant appeared by and through her attorney, and filed a counterclaim in this matter. In fact, the Appellant's counterclaim was directed at Bank of America, and the Cross Claim was filed against the Respondent. (R. pp. 62-66) Additionally, both the Court and Respondent erroneously assert that Appellant appeared at the underlying foreclosure hearing. The record clearly indicates that the Appellant was not present at this hearing. In fact the Master inquired further into whether the Appellant had notice of the foreclosure hearing, and counsel for Respondent and Bank of America each asserted that each made contact with an attorney who did not represent Appellant in this action, one day prior to the foreclosure hearing, via email, in response to the Court's inquiry. (R. pp. 268-269) In *Petty v. Weyerhaeuser Co.*, 272 S.C. 282, 251 S.E.2d 735 (1979), the Court found that "Service of notice of appearance or retainer generally by attorney for the defendant shall I all cases be deemed as appearance, and the plaintiff on filing such notice, at any time, thereafter, with proof of service thereof, may have the appearance of the defendant entered as of the time such notice was served." Id. at p. 738). In the instant case, Ms. Davidson never served the Appellant or her first

[5] Appellant's Cross Claim against Respondent was never heard by the Master. Windswept Villas III HPR, Inc., commenced a law suit against the builder(s) and recouped some of the Assessment, but has not paid Appellant her share of this award.

attorney prior to his being relieved as Appellant's counsel, with Respondent's Cross Claim. Ms. Davidson has no proof that she served Appellant's attorney, beyond her assertions in her two affidavits that service was made, and without fixing the date, time and place of service, or the person serve.

The issue of verification of proof of service of the Answer and Cross Claim of the Respondent has repeatedly been raised at various points during the litigation of this case by the Master. This issue has been challenged repeatedly, up until the final hearing on supplemental proceedings, a motion to vacate, and Rule to Show Cause hearing held in August of 2014. On April 21, 2014, five years after the initial pleadings in this case were filed, the Court again addresses the issue of proof of service by specifically requesting that the Respondent produce proof of service of the cross claim on the Appellant. However, Respondent never produced any documentation verifying proof of service, and never filed an affidavit of default. Respondent repeatedly deflected all inquiries by the Court for proof of service of the Cross Claim, and instead tried to assert that somehow service by Bank of America of the summons and complaint for foreclosure included or was tantamount to service of its Cross Claim. Yet the Master moved forward each time the issue was raised, without obtaining sufficient proof from the Respondent that proof of service of its Answer and Cross Claim upon the Appellant had ever been established.

Lydia Davidson has provided two different and conflicting affidavits in an effort to retroactively explain the lack of service of the Respondent's Cross claim. The first affidavit was done some two and one half years after the action was filed, and the second was done five years after the litigation began, in May of 2014. Ms. Davidson further asserts in paragraph 6 the second

affidavit that: On November 25, 2009, Barnwell Vaughn, Esquire, filed an Answer and Counterclaim against Bank of America and included a Cross Claim as to Windswept. This communicated to me that Ms. Peery was in receipt of our Answer and Cross Claim notwithstanding the fact that she had evaded services up until that time." Respondent's counsel has substituted personal assumptions regarding whether service was accomplished into a sworn document and has offered this as proof of service. Undoubtedly, Rule 4(g) was enacted to avert such cases as this, where counsel asserts they have effectuated service on a party, but cannot document having done so in compliance with Rule 4(g). This most certainly constitutes a violation of the Appellant's right to due process, since without proper service of the Cross Claim, she cannot respond and defend herself "in a meaningful way".

Even as late as June, 2014, and well after awarding judgment on the Cross Claim to Respondent on January 24, 2012, the Master requests proof of service of the Cross Claim. (R. pp. 189-195) The Master vigorously questioned Respondent's counsel regarding whether she could provide proof of service of Respondent's Cross Claim. At this point, Respondent's counsel asserted that Appellant appeared at the underlying foreclosure hearing. If the Master was going to rely upon an alleged appearance by the Appellant to support a finding in favor of the Appellant, it should have done so on the record, prior to finding in favor of the Respondent on the Cross Claim, not three years after the judgment was made.

## II. THE MASTER IN EQUITY DENIED APPELLANT PROCEDURAL DUE PROCESS OF LAW BY GRANTING RESPONDENT RELIEF ON THEIR CROSS CLAIM WITHOUT REQUIRNG RESPONDENT TO PROVE APPELLANT HAD BEEN SERVED WITH THE RESPONDENT'S CROSS CLAIM.

Procedural due process applies in contested cases and hearings affecting a person's property or liberty interests, and "generally include adequate notice, the opportunity to be heard at a meaningful time and in a meaningful way." *Sloan v. S.C. Bd. Of Physical Therapy Exam'rs*, 370 S.C.452, 483, 636 S.E.2d 598, 614 (2006). Appellant has a clear property interest in avoiding a monetary judgment of Respondent without being afforded the opportunity to defend herself on the matter. In this instance, Appellant is even more exposed to a loss of property because she was exposed to sanctions and in fact, was ultimately sanctioned for failing to respond to discovery. Allowing Respondent to prevail on its Cross Claim without having served it on the Appellant deprives Appellant of the opportunity to defend the Cross Claim and be heard in a meaningful way. Respondent's Cross Claim is a separate and distinct complaint from the foreclosure action filed by Bank of America. Respondent has obtained relief from the Master by riding the coat tails of Bank of America into the Lower Court without providing proof of service and allowing Appellant the opportunity to defend the Cross Claim.

Master determined that Appellant's request for a continuance represents an appearance. Appellant's letter requesting the continuance was sent after she learned from an attorney who did not represent her in the matter, that the foreclosure hearing was scheduled for the next day.

## III. THE MASTER ERRED IN AWARDING ATTORNEYS FEES TO RESPONDENT BECAUSE RESPONDENT WAS NOT ENTITLED TO JUDGMENT ON ITS CROSS CLAIM. EVEN IF THE COURT DETERMINES THAT JUDGMENT ON THE CROSS CLAIM WAS PROPER, THE MASTER ERRED IN FAILING TO DETERMINE THE REASONABLENESS OF ATTORNEY'S FEES, AND BY FAILING TO REVIEW AND SUPPORT THE RECORD WITH EVIDENTIARY FINDINGS TO SUPPORT THE RULING.

Respondent is not entitled to a judgment on its Cross Claim because it failed to serve the Appellant with the Cross Claim. This failure of service resulted in Appellant being deprived of due

process, because Appellant could not adequately defend the Cross Claim for want of proper service. Since Respondent was not entitled to judgment on its Cross Claim, Respondent was not entitled to an award of attorneys' fees, and even if this Court finds that the judgment on the Cross Claim was proper, the Master failed to determine the reasonableness of the attorneys' fees awarded, and failed to set forth its evidentiary findings for such an award and to set forth the six factors required to determine attorney's fees.

Appellant Perry reiterates her objection to the Master's award of attorney's fees, as the Master failed to establish personal jurisdiction over Appellant because Respondent failed to serve Appellant with its' Cross Claim. Appellant further asserts that if the award of attorney's fees is affirmed on appeal, the Appellant objects that the Court did not consider the reasonableness of the award and the record is absent any evidentiary support as to the reasonableness of the fees awarded. During the June 20, 2014 hearing, the Master awarded the Respondent $25,602.17, which included attorney's fees, post judgment interest, and costs. As of the date of this hearing, the Respondent represented that her attorney's fees were $20,231.00, with costs of $553.12, and post judgment interest of $4,818.05, for a total of $25,602.17. In addition to seeking attorney's fees, post judgment interest and costs, Respondent was seeking the release of $27,034.02 being held in escrow. The Master ordered that these monies held in escrow at the law office of Thurmond-Kirschner Tims, be immediately paid to the Respondent representing the amount of the underlying judgment. These monies resulted from of an award to the Appellant for a construction litigation case unrelated to this matter. The Court further ordered the Appellant to pay attorney's fees and costs of $25,602.17 to the Respondent Supplemental to the underlying judgment obtained from a Cross Claim that was never served on the Appellant. "The

law is clear that an appellate court will not reverse an award of attorney's fees unless it is based on an error of law or is without evidentiary support. *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 384, 377 S.E.2d 296 (1989). On August 29, 2014 a Rule to Show Cause Hearing was held for purposes of the Appellant to show cause regarding her failure to appear failure to respond to discovery responses pursuant to an October 31, 2013 order. The Master considered sanctions against Appellant at this hearing. The August 29, 2014 hearing was a continuation from a June 20, 2014 hearing, wherein the Respondent improperly attempted to move forward with the Rule to Show Cause Hearing absent the Appellant being served with the Contempt pleadings. After limited arguments of counsel, the Master Ordered that the Appellant was to be served at her primary residence. The Master further ordered that the Appellant be put on notice to appear at the next scheduled hearing to show cause why she failed to make previous court appearances, and the Court further ordered that any failure of the Appellant to appear would subject her to arrest through the Charleston County Sheriff's Office. (R. p. 200, lines 14-25)

The award of attorneys' fees and costs at the June 2014 and August 2014 hearings both exclude any evidentiary basis for the award of attorney's fees and costs, other than to establish that "The Court has the authority to order the additional attorney's fees on the basis that in fact attorney's fees were reasonable in the underlying action, ...and it also has the ability to award fees and costs for findings of contempt. (R. p. 199, lines 10-15) It is undisputed that the Court has the ability to award fees and costs for findings of contempt and in other judicial proceedings; however, the standard of review requires that the trial court must first consider six factors when awarding attorneys' fees: 1) the nature, extent, and difficulty of the legal services rendered; 2) the time and labor necessarily devoted to the case; 3) the professional standing of counsel; 4)

the contingency of compensation; 5) the fee customarily charged in the locality for similar legal services; and 6) the beneficial results obtained. *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).

In this case, the Master made no specific findings on any of the six elements to support his ruling of attorney's fees. In fact, the Court's reasoning for the exorbitant award was to "try to make this easier for people, not harder for people. But in this case it's turned out to be a harder method. So that's an alternative reason to award fees...And in fact, I have reviewed the requested amount in camera, and I found it to be reasonable under the circumstances." (R. p. 200, lines 11-13) The Master continuously denied the Appellant the opportunity to examine the time records of Respondent, particularly as it relates to the award of Supplemental attorney's fees beyond the amount of the initial judgment, without proof. Again, in the proceedings held in August 2014, Appellant's counsel requested that the Respondent provide the Appellant a copy of the affidavit of attorney's fees and costs with an itemized invoice. The Master again denied the Appellant the opportunity to review an itemized invoice, deferring instead to the discretion to the Respondent to provide the documents if its counsel chose to do so. This is improper, as it is the Master's responsibility to determine the reasonableness of attorneys' fees and to set forth the reasons for the award of attorneys' fees in any case, including this one. Further, the Master at each hearing elected to review attorney's fee affidavits and invoices in camera, thereby making no determination of evidentiary support on the record as to the reasonableness of the fees awarded, over the objections of the Appellant. "On appeal, absent sufficient evidentiary support on the record for each factor, the award should be reversed and the issue remanded for the Trial Court to make specific findings of fact". "This proposition has been has been interpreted by our courts

to mean that an award for attorney's fees will not be reversed due to a lack of findings in the order when the record supports the judge's determination." *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997).

Notwithstanding a lack of proof of service of the cross claim upon the Appellant, the Master granted relief to the Respondent in the amount of $27,034.02 as well as attorney's fees and costs $25,602.17 which were supplemental to the underlying foreclosure judgment. The Master found that the Appellant was in contempt of Court, and sanctioned Appellant by fining her $20,000.00 in attorney's fees, and payment of post judgment interest were to continue to accrue. Total judgment for Respondent was approximately $52,636.19, including attorney's fees and costs.

The Master failed to determine the reasonableness of the attorney's fees in this case, nor did the Court require Respondent's counsel to substantiate their fees. In addition, the record does not include the six factors required to determine the reasonableness of an award of attorney's fees at the Supplemental. Counsel for Appellant vehemently objected to Respondent's award of attorney's fees. The Master ordered that Respondent's counsel "may provide an itemized invoice of attorney's fees to the Appellant, if she chooses to do so." (R. p. 197, lines 17-23) At a hearing on supplemental proceedings, counsel for the Appellant questioned the reasonableness of the Respondent's fees, after noting that Respondent's counsel apparently was billing approximately $1,000.00 per hour, and further noting that the fees of Respondent's counsel had nearly doubled in approximately two months. The Master indicated that he had reviewed the attorney's fees affidavit in camera, and refused to order counsel for Respondent to

provide an itemized invoice regarding the attorney's fees, nor did the Master support the record by setting forth the six (6) factors addressed in *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991), that the Court must consider when contemplating an award of attorney's fees. The final order of the Master, awarding such attorney's fees to the Respondent, does not include the factors considered in making the award of attorney's fees. See also *E.D.M. v. T.A.M.*, 307 S.C. 471, 476-77, 415 S.E.2d 812, 816 (1992).

## CONCLUSION

Court rules regarding service of process and notice are clearly designed to give parties proper notice of legal actions taken against them, and to allow them adequate time to respond to litigation that may be served upon them. Cross Claims, as well as Answers and Counterclaims, are separate and distinct actions which must be served separate from the summons and complaint. In this case, troubling, ongoing issues related to service and notice of Respondent's Cross Claim and even notice of hearing, continued throughout the course of litigation which began in 2009 and has continued through 2014.

Appellant asks that this Court reverse the order of the Master with respect to Respondent's Cross Claim, for want of personal jurisdiction and procedural due process as to the Appellant, and to find the judgment of the Cross Claim void. Any award of attorney's fees resulting from this void judgment, should likewise be voided.

If this Court finds that Respondent's Cross Claim judgment was proper, then Appellant asks that the issue of attorney's fees be remanded to determine the reasonableness of the award, and to require the requisite factors and evidentiary support of the an award of attorney's fees in this case.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

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Case No. 2010-CP-10-5799
Appellate Case No. 2014-002242

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Windswept Villas III
Horizontal Property Regime,

Respondent,

v.

Elaine Devlin Peery a/k/a,
Elaine D. Peery,

Appellant.

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CERTIFICATE OF COUNSEL

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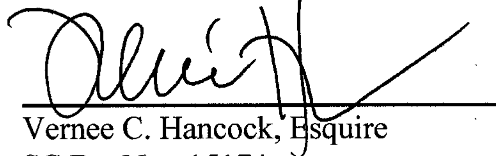
The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

August 6, 2015.

Respectfully submitted,



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PROOF OF SERVICE

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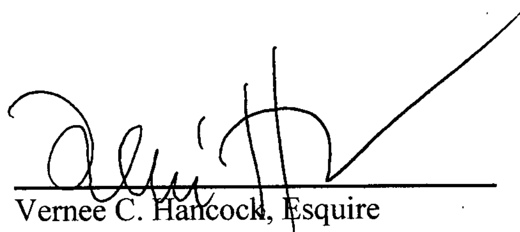
I certify that I have served the Final Brief on Katie Fowler Monoc via US First Class Mail, postage prepaid to their attorney of record, Katie Monoc, at P.O. Drawer 22247, Charleston, South Carolina, 29413-2247.

August 6, 2015.



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