

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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**H. Thad White....., Respondent,**

FEB 01 2016

v.

SC Court of Appeals

**Petrel International, LLC.....Appellant.**

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**Appellate Case No.: 2014-002764**

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**RESPONDENT'S FINAL BRIEF**

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## **STATEMENT OF ISSUES ON APPEAL**

- I. THIS CASE WAS PROPERLY REFERRED TO THE SPECIAL REFEREE BY THE CLERK OF COURT
- II. APPELLANT WAS PROVIDED WITH NOTICE OF THE SPECIAL REFEREE HEARING PURSUANT TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE
- III. THE POST TRIAL MOTION TO VACATE THE DEFAULT JUDGMENT WAS NEVER PROPERLY BEFORE THE SPECIAL REFEREE
- IV. THIS APPEAL SHOULD BE DISMISSED AS BEING FRIVOLOUS PURSUANT TO SOUTH CAROLINA APPELLATE COURT RULE 269

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## STATEMENT OF CASE

This is a foreclosure action involving commercial real estate. On December 22, 2009, Appellant Petrel International, LLC executed and delivered a note and mortgage in favor of Respondent. After Appellant failed to make payments as set forth in the note and mortgage, Respondent filed a foreclosure action against Appellant on April 29, 2013. (R. pp. 20-28). Appellant filed a Pro Se Answer and Counterclaim. (R. pp. 29-33). Counsel for Respondent notified Appellant in writing that she could not represent the corporation and continuing to do so would constitute the unauthorized practice of law. Thereafter, Respondent filed a Motion for Default, and Appellant appeared Pro Se to argue the Motion. The motion was granted by the trial court on December 9, 2013, striking the Appellant's Answer and Counterclaim and holding the Appellant in default.

The Trial Court informed Appellant that she could not represent the corporation. The Appellant appealed the Order of Default pro se to the South Carolina Court of Appeals on January 21, 2014 and again on February 7, 2014. (R. pp. 50-51). After notifying the Appellant that she could not represent the Corporation, the Court of Appeals dismissed the Appeal on September 10, 2014. The Remittitur was September 30, 2014.

The Darlington County Clerk of Court appointed attorney Haigh Porter as Special Referee on November 17, 2014. The hearing was scheduled for December 1, 2014. The Notice of Hearing was filed on November 18, 2014 and deposited in the U.S. Mail via both regular and certified mail on November 20, 2014; however, no one appeared on behalf of Appellant at the hearing on

December 1, 2014. (R. p. 38). The Special Referee entered an Order and Judgment of Foreclosure and Sale filed December 8, 2014. (R. p. 42). The sale occurred January 6, 2015 after notice and publication. Appellant appeared at the sale and continued to try to represent the Corporation.

Appellant filed a second Pro Se appeal on December 29, 2014 after transferring the property from the Corporation to herself and unilaterally adding her name to the caption.

## ARGUMENT

### **I. THIS CASE WAS PROPERLY REFERRED TO THE SPECIAL REFEREE BY THE CLERK OF COURT.**

SCRCP Rule 53(b) provides, "In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. "

In the present case, not only was the Appellant in default but the case was also an action for foreclosure. Under Rule 53(b), either of these circumstances was sufficient for the clerk of court to refer the case to the special referee without the need for either a motion or a hearing.

### **II. APPELLANT WAS PROVIDED WITH NOTICE OF THE SPECIAL REFEREE HEARING PURSUANT TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.**

SCRCP 55(b)(2) provides..."If, in order to enable the Court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties if a proper demand therefore has been made pursuant to Rule 38 and not withdrawn, or when and as required by any statute. Pursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall also be given to the parties in default by first class mail to the last known address of such party whether or not such party has appeared in this action."

Under Rule 5(b)(1), "Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint."

In the present case, the Appellant was served with notice of the special referee hearing by both first class and certified mail as evidenced by the certificate of service and the return receipt signed by Appellant.

The Notice was mailed to Appellant on November 20, 2014, which was eleven days prior to the scheduled hearing. Significantly, Appellant does not complain that she did not get notice of the hearing, simply that she only received five days notice. Appellant argues this was insufficient for her to prepare or seek representation.

Pursuant to SCRPC Rule 55(b) states that "a party seeking a default judgment not involving liquidated damages must provide three days notice to the opposing side." *Tobias v. Rice*, 379 S.C. 216, 665, S.E.2d 216, 219 (Ct. App. 2008) *reversed* 386 S.C. 306, 688 S.E.2d 552 (2010). When the Defendant has not answered or otherwise appeared, there is no requirement that notice be given before entering a default judgment. However, when the relief which is sought is unliquidated damages, Rule 5(a) specifically states that "notice of any trial or hearing on unliquidated damages shall also be given to parties in default." *Beckmann Concrete Contractors, Inc. v. United Fire and Cas. Co.*, 360, S.C. 127, 600 S.E.2d 76 (Ct. App. 2004).

This foreclosure action was filed on April 29, 2013 and Appellant was informed in writing that she could not represent the corporation and that she needed to retain an attorney. In the seventeen months that followed, Appellant

did not retain an attorney to represent the corporation after being told to do so by the trial court as well as the Court of Appeals. In spite of all of this, Appellant continued to try to represent the corporation before the special referee both prior to and subsequent to the sale as well as filing a second appeal to this Court.

Also of significance is that Respondent did not seek a deficiency judgment in the foreclosure action. Appellant has not made any payments since October of 2012 and Respondent was forced to pay the property taxes to prevent the property from being sold for taxes.

**III. THE POST TRIAL MOTION TO VACATE THE DEFAULT JUDGMENT WAS NEVER PROPERLY BEFORE THE SPECIAL REFEREE.**

The trial court's order holding the Appellant in default was filed December 17, 2013. Appellant appealed the Order of Default pro se to the South Carolina Court of Appeals on January 21, 2014 and again on February 7, 2014. Subsequent to that on March 17, 2014, Appellant filed an untimely Pro Se Motion to Vacate the Default Judgment. By appealing the default order prior to obtaining a ruling on the Motion to Vacate the Default Judgment, Appellant abandoned the motion.

Furthermore, at that time, the trial court had informed Appellant that she could not represent the corporation and by continuing to file Pro Se motions on behalf of the corporation, Appellant was engaged in the unauthorized practice of law. Any Pro Se motions filed on behalf of the corporation were essentially a nullity.

**IV. THIS APPEAL SHOULD BE DISMISSED AS BEING FRIVOLOUS PURSUANT TO SOUTH CAROLINA APPELLATE COURT RULE 269.**

SCACR Rule 269 provides, "Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require."

In the present case, Appellant, who is not an attorney, filed an Answer and Counterclaim on behalf of the Defendant limited liability company on June 17, 2013. Respondent's counsel notified Appellant by letter dated July 9, 2013 that an individual cannot represent a corporation and proceeding without an attorney constitutes the unauthorized practice of law. The Appellant failed to retain an attorney, and Appellant appeared at the motion hearing to represent the Appellant's limited liability company.

The South Carolina Constitution provides the Supreme Court with the duty to regulate the practice of law in the state. See S.C. Const. art. V, § 4; *In re Unauthorized Practice of Law Rules, supra*; see also S.C. Code Ann., § 40-5-10 (1986). The generally understood definition of the practice of law embraces the preparation of pleadings and other papers indicate the actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts. *Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 773 (S.C. 2002). Further § 40-5-310 of the *South Carolina Code* provides that "No person may either practice law or solicit the legal cause of another person or

**entity** in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina. The type of conduct that is the subject of any charge filed pursuant to this section must have been defined as the unauthorized practice of law by the Supreme Court of South Carolina prior to any charge being filed. A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five year, or both.”

While South Carolina law recognizes an individual’s ability to appear *pro se* with leave of the court, corporations-which are artificial creatures of state law-do not have a right to appear *pro se* in all instances. See S.C. Code Ann. § 40-5-80 (Supp.2002) and S.C. Code Ann. § 40-5-320 (1986). Our appellate courts have granted corporations the ability to appear *pro se*, with leave of the court, in civil magistrate’s court. See *In re Unauthorized Practice of Law, supra*. However, their ability to appear *pro se* in a state circuit or appellate court has been rejected. *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 515 S.E.2d 257 (1999). Additionally the Supreme Court in *Doe v. McMaster* addressed this issue: “*Doe* argues these cases imply a corporation engages in unauthorized practice of law only where it seeks to act on behalf of others and not solely itself. We disagree. As previously stated, the *pro se* exception for corporation is strictly limited.” A Limited Liability Company, just like a corporation, is an artificial creature of state law that is a separate legal entity. A Limited Liability Company has the capacity to contract as well as the capacity to sue and be sued. Therefore, the same analysis applies to that entity.

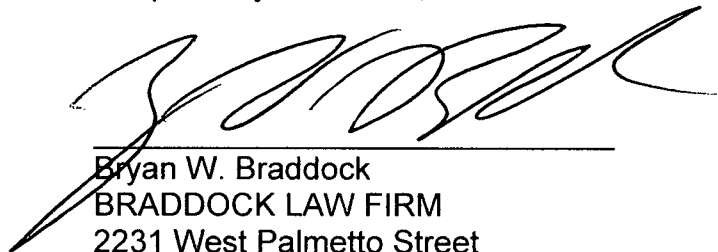
Appellant was notified by letter on July 9, 2013 that Petrel International, LLC failed to file a proper Answer and that proceeding without an attorney constituted the unauthorized practice of law. Since that time, Appellant has been informed by the trial court, the Court of Appeals as well as the special referee that she could not represent the corporation. In spite of this, Appellant has continued to make appearances, file motions and even file this second Pro Se appeal on behalf of the corporation prior to hiring Appellant's current counsel.

### **CONCLUSION**

For the reasons stated above, Respondent requests:

- (1) That this appeal be dismissed with sanctions imposed against Appellant;
- (2) That Appellant be required to post a bond in an amount sufficient to cover the interest and property taxes during the pending appeal; and/or
- (3) That the Order and Judgment of Foreclosure and Sale of the Special Referee be affirmed.

Respectfully submitted,



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January 28, 2016

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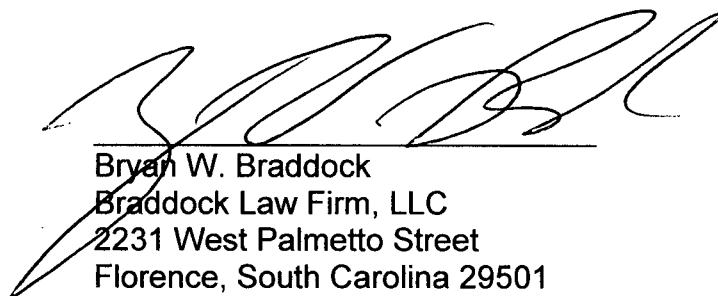
SC Court of Appeals

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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that Respondent's Final Brief complies with Rule 211(b) SCACR and the August 13, 2007 Order of the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Identifiers and Other Sensitive Information in the Appellate Court Filings."



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January 28, 2016