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

**APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas**

**Mikell Scarborough  
Master-in-Equity**

**Appellate Case No. 2019-000575**

**RECEIVED**  
NOV 20 2019  
SC Court of Appeals

**Ditech Financial, LLC.....Respondent,**

**v.**

**Kevin G. Snyder, individually and  
as Personal Representative of the  
Estate of Mary Snyder .....Appellant.**

**PETITION FOR REHEARING**

Appellant Kevin G. Snyder submits this petition, pursuant to Rules 240(j) & 241(d)(7), SCACR, requesting review of Judge McDonald’s denial of his petition for supersedeas. Snyder submits the following in support of his petition:

**BACKGROUND**

This is the appeal of a contested residential foreclosure. The Respondent is the purported successor to the original Plaintiff, BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP. The Appellant is Kevin Snyder, in his individual capacity as a mortgagor of the property, and as personal representative of his late wife, who

was also a mortgagor.<sup>1</sup> BAC filed the original foreclosure Complaint and Lis Pendens on September 23, 2010, and amended the Complaint and Lis Pendens on October 13, 2010. (R. pp. 35-39, 42, 45-49, 56-57). Kevin and Mary Snyder were served a Notice Foreclosure Intervention on December 17, 2012, which was denied. (R. pp. 59-60, 63). Undersigned counsel appeared for the Snyders on May 3, 2013, filing his notice of appearance with the Clerk of Court and serving it on BAC's counsel. (R. p. 66). BAC purportedly transferred the Snyders' loan at some point shortly thereafter to Green Tree Servicing, LLC,<sup>2</sup> and on June 17, 2013, the Snyders' counsel sent Green Tree a letter informing it of the Snyders' representation, and enclosing a copy of In re Mortgage Foreclosure Actions, 396 S.C. 209, 720 S.E.2d 908 (2011) (the "Admin Order"). (R. p. 121). The Snyders' counsel followed up this letter with another letter on July 18, 2013, that enclosed a written authorization from the Snyders (requested by Green Tree) and another copy of the Admin Order. (R. pp. 144-45). BAC's attorney was copied on this letter. (R. p. 144). These opening communications inaugurated Green Tree's nearly six year period of bungled communications and foreclosure interventions, presented in detail in Argument I of Snyder's Principal Brief.

Pursuant to a September 30, 2013, status hearing, this action was stayed pending foreclosure intervention. The Snyders' counsel was not provided notice of this hearing or order. (R. p. 4). On March 12, 2014, the Master-in-Equity, without notice or hearing, granted BAC's motion to replace BAC Home Loans Servicing, LP with Green Tree Servicing, LLC as Plaintiff. (R. pp. 9-10, 179-87).

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<sup>1</sup> During the pendency of this action, Snyder's profoundly disabled daughter died (December 22, 2014), and almost a year later his wife, former Defendant Mary Snyder, died of undiagnosed lung cancer (November 23, 2015).

<sup>2</sup> However, please see Argument III of Snyder's Principal Brief, which argues that BAC (and ultimately Ditech) did not have the standing to pursue this action.

Green Tree substituted counsel on April 9, 2015, and again on July 2, 2018. The parties engaged in discovery, and Snyder filed a motion to compel on November 29, 2018 to compel Green Tree's responses to his discovery. (R. pp. 88-90, 179-87). Pursuant to a December 10, 2018, status conference (where the motion to compel was heard without a court reporter), the Master-in-Equity issued a consent scheduling order and a consent order amending the caption to replace Green Tree Servicing, LLC with Ditech Financial, LLC. (R. pp. 13-16).

Ditech filed notice of its bankruptcy on March 1, 2019 (amended May 1, 2019). (R. pp. 199-288). All parties filed motions for summary judgment on March 11, 2019. (R. pp. 291- 433). These motions were heard at a pre-trial hearing on March 18, 2019. (R. pp. 561-601). The Master-in-Equity denied Snyder's motion, granted Ditech's motion in part, and denied Snyder's motion to compel by order dated March 27, 2019. (R. pp. 19-22). Snyder timely appealed this order on March 29, 2019. (R. pp. 531-33). Though Snyder argued that the Master-in-Equity lacked jurisdiction due to the appeal (R. pp. 606-22), the Master-in-Equity proceeded with a final hearing on April 1, 2019. (R. pp. 622-60). The Master-in-Equity issued his final order on April 23, 2019, ordering the foreclosure of the mortgage and the sale of 1752 Orange Grove Shores. (R. pp. 23-32). Snyder amended his notice of appeal to include this order and also filed a motion for supersedeas on May 2, 2019. (R. pp. 436-40). Ditech filed its response to the motion on June 3, 2019. (R. pp. 554-560).

The Clerk of Court scheduled the supersedeas motion to be heard before Judge Deadra Jefferson on September 27, 2019; at hearing, Judge Jefferson denied the motion for

being filed with the “wrong Court”.<sup>3</sup> (Ex. A to Pet. for Supersedeas). The Master-in-Equity subsequently heard the motion without hearing, with the consent of the parties, and granted the motion on October 18, 2019, setting the supersedeas bond at \$25,000.00.<sup>4</sup> (Ex. B to Pet. for Supersedeas).

On October 30, 2019, Snyder filed a petition for supersedeas with this Court, which was denied on November 7, 2019, by order of Judge McDonald. This petition follows.

### **JURISDICTIONAL STATEMENT**

This is a petition for review of a decision of a single judge of this Court on a petition for supersedeas. “[A]n individual judge or justice may grant or deny any motion or petition on behalf of the court. Any review of an order issued by an individual judge or justice shall be by petition for rehearing.” Rule 240(j), SCACR. “Any party aggrieved by the decision of...an individual judge or justice [on a petition for supersedeas] may petition under this Rule for a review of that decision.” Rule 241(d)(7), SCACR.

### **STANDARD OF REVIEW**

“The purpose of a writ of supersedeas is to preserve the jurisdiction of the court or to prevent a contested matter from becoming moot by preserving the status quo.” S.C. High School League v. Richland County School District One, No. 2003-02-25-01 (S.C. Sup. Ct. Order dated Feb. 25, 2003) (citing Melton v. Walker, 209 S.C. 330, 40 S.E.2d 161 (1946)).

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<sup>3</sup> This is incorrect. Snyder’s counsel properly filed the motion with the Charleston County Clerk of Court, as he has done for his entire fourteen years of practice; the Master-in-Equity’s office does not accept written motions for filing. After the September 27, 2019 hearing the parties’ counsel provided written copies of the motion and response to the Master-in-Equity’s office, who agreed to consider the motion without re-filing and without a hearing.

<sup>4</sup> Ditech’s proposed supersedeas bond was based on Snyder’s monthly mortgage payment of \$1,396.36 multiplied by eighteen months (\$25,134.48); this bond would increase if the appeal lasted longer than eighteen months. (R. pp. 557-58).

“Supersedeas is usually granted only when necessary to avoid irreparable injury or a miscarriage of justice and only in cases where it is likely that the appellant will succeed on the merits of the case.” Id. (citing 4 C.J.S. Appeal and Error § 417 (1993)). “In order to obtain an injunction, the moving party must show that the conduct sought to be enjoined threatens the moving party with irreparable injury<sup>5</sup> for which there is no adequate remedy at law.” Id. (citing Thornton v. Arnold, 274 S.C. 1, 260 S.E.2d 179 (1979)).

## ARGUMENT

### I. **Snyder is likely to prevail on appeal.**

One of the issues before this Court is whether the Master-in-Equity properly granted summary judgment for Ditech. (App. Brief pp. 5-10). “In reviewing an order for summary judgment, the appellate court applies the same standard which governs the trial court under Rule 56 of the South Carolina Rules of Civil Procedure.” M & M Grp., Inc. v. Holmes, 379 S.C. 468, 473, 666 S.E.2d 262, 264 (Ct. App. 2008). “[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). The South Carolina Supreme Court has defined a “scintilla” as “‘a gleam,’ ‘a glimmer,’ ‘a spark,’ ‘the least particle,’ ‘the smallest trace.’” Bethea v. Floyd, 177 S.C. 521, 181 S.E. 721, 724 (1935); see also Rogers v. Norfolk Southern Corp., 356 S.C. 85, 588 S.E.2d 87 (2003)

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<sup>5</sup> A foreclosure sale constitutes irreparable injury. See e.g. Patriot-BSP City Ctr. II v. U.S. Bank Nat. Ass'n, 715 F.Supp.2d 91, 95-96 (D.D.C. 2010) (holding that a foreclosure sale was an irreparable injury); Peterson v. D.C. Lottery & Charitable Games Control Bd., No. 94-1643, 1994 WL 413357, at \*4 (D.D.C. July 28, 1994) (“It is settled beyond the need for citation...that a given piece of property is considered to be unique, and its loss is always an irreparable injury.”).

(Burnett, J., dissenting) (“A scintilla is defined as ‘a trace’ of evidence.”) (citing Black’s Law Dictionary 1347 (7th ed.1999)).

On March 11, 2019, Ditech filed a motion for summary judgment requesting, *inter alia*, the Master-in-Equity dismiss his counterclaim for civil compensatory contempt. (R. pp. 290-410). Snyder’s counterclaim was based on the South Carolina Supreme Court’s Administrative Order 2011-05-02-01, which specifically allows for the court entertaining the foreclosure action to award sanctions:

The Court having jurisdiction over the foreclosure action shall hear and determine any dispute concerning any party's compliance with this order, including without limitation, the failure of any party to act in good faith in complying with the terms of this order. In the event the Court determines that any party to the foreclosure action, or their acting agent, has failed to comply with the terms of this order, or has not attempted to reach an agreement for foreclosure intervention in good faith, the Court may, in its discretion, impose such sanctions as it determines to be reasonable and just under the circumstances, including without limitation, the assessment of reasonable attorneys' fees and costs against the culpable party.

In re Mortgage Foreclosure Actions, 396 S.C. 209, 213, 720 S.E.2d 908, 910 (2011). Due to Ditech’s bankruptcy, Snyder requested the sanction of striking Ditech’s reply and issuing a default judgment against it, or in the alternative, to strike Ditech’s demand for damages of accrued interest, fees, costs, advances, and a deficiency judgment. (R. p. 419-20). The Master-in-Equity dismissed this cause of action by order dated March 27, 2019. (R. pp. 19-22).

The Master-in-Equity’s grant of summary judgment was in error. Snyder presented the Master-in-Equity with considerable evidence of Ditech’s bad faith conduct (primarily, though not exclusively, through its legal predecessors); this evidence is reproduced in the Record on Appeal. (App. Brief pp. 5-10; R. pp. 103-178). Viewing this evidence in a light most favorable to Snyder, Snyder has made the minimal showing of a scintilla of evidence

that Ditech did not comply in good faith with Administrative Order 2011-05-02-01. The Master-in-Equity will be reversed on this issue, and therefore Snyder has made an adequate showing of likelihood of success on the merits.

**II. A bond of any amount does not serve any purpose and serves as a windfall to Ditech.**

A supersedeas or appeal bond is intended to indemnify the respondent for the value of the judgment if it is affirmed. See generally Jerome v. McCarter, 88 U.S. (21 Wall) 17, 30 (1874); Catlett v. Brodie, 22 U.S. 553, 554 (1824). Ditech has waived its right to pursue a deficiency judgment<sup>6</sup> in this matter, limiting its recovery on its \$293,930.69 judgment to the assets obtained from the sale of the residence at 1752 Orange Grove Shores. (R. pp. 27-28, 659). This property is worth perhaps \$249,883.00. (R. p. 248). Any additional damages Ditech will incur during the pendency of this appeal will be uncollectable. As Ditech has voluntarily limited its recovery to the value of the property at issue in this action (which will never conceivably satisfy or exceed Ditech's judgment), it cannot be harmed by this appeal, and bond is not necessary. Cf. Urbain v. Knapp Bros. Mfg. Co., 217 F.2d 810, 815-16 (7th Cir. 1954) (no security necessary for a preliminary injunction when no material harm can come to the party restrained).

Further, requiring Snyder to post a bond for supersedeas creates new liability for Snyder under the bond's terms and allows Ditech to collect damages via the bond that it

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<sup>6</sup> See S.C. Code § 29-3-660 (2007) (authorizing the court to direct the payment by the mortgagor of any remaining balance of the mortgage debt left unsatisfied after a sale of the mortgaged property); see also Am. Gen. Fin. Servs., Inc. v. Brown, 376 S.C. 580, 583, 658 S.E.2d 99, 100 (2008) ("[T]he general rule is that if the mortgaged premises are sold under a foreclosure decree and fail to bring a sufficient amount to satisfy the debt, the mortgagee is entitled, absent any statutory limitation or waiver on his part, to a personal judgment for the remaining deficiency." (internal quotation marks omitted)).

has previously waived. This is an impermissible windfall.

**III. The underlying action was subject to an automatic stay on March 29, 2019.**

Snyder timely appealed the Master-in-Equity's March 27, 2019, order granting summary judgment on March 29, 2019. (R. p. 531). As the March 27, 2019 order strikes Snyder's counterclaim for civil compensatory contempt and the Estate of Mary Snyder's attorney preference statute defense, it is immediately appealable. S.C. Code § 14-3-330(2)(c). Ditech apparently agrees: "Respondent does not dispute the immediate appealability of the portion of the Court's March 27, 2019 Order granting Ditech partial summary judgment and striking Appellant's defense..." (R. p. 549).

"As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision." Rule 241(a), SCACR. Upon the service of the Notice of Appeal, Rule 205, SCACR, divests the lower court of jurisdiction in matters "affected by the appeal". Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016). According to the South Carolina Supreme Court, to "affect" a matter is "'to produce an effect on; to influence in some way'". Id. (quoting Black's Law Dictionary 68 (10th ed. 2014)). This is a broad definition – the Stokes-Craven court held that even issues in other cases may be stayed if the issues in those cases depend in some way on the case appealed. Id.


Snyder's civil compensatory contempt counterclaim sought to strike Ditech's pleadings or limit its recovery (R. p. 419-20), and the Estate of Mary Snyder's attorney preference defense would have resulted in a setoff of Ditech's judgment. See Deutsche

Bank Nat. Trust Co. v. Booms, Op. No. 2015-UP-097 (S.C. Ct. App. Feb. 25, 2015) (citing S.C. Code § 37-10-105(A)). This counterclaim and defense would “affect” the underlying foreclosure action; therefore, the Master-in-Equity lost jurisdiction over the foreclosure action upon service of the March 29, 2019, notice of appeal. The underlying action should have been stayed as of that date, and this Court should enforce it by ordering the proceedings below be stayed pending appeal, without bond.

### CONCLUSION

The petition for supersedeas should be granted upon reconsideration and bond be waived or set at a nominal amount (*e.g.* \$100.00).

Dated: 11/18/2019



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**CERTIFICATE OF SERVICE**

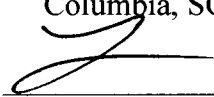
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I certify that I have served the Petition for Rehearing on the person(s) set forth below by depositing a copy of them in the United States Mail, postage prepaid, on the date set forth below:

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Dated: 18 Nov '19



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Re: *Ditech Financial, LLC v. Snyder*, 2019-000575  
Appellate Case No.: 2019-000575

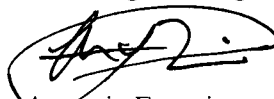
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Dear Ms. Kitchings:

Enclosed for filing please find the original and six copies of Plaintiff's Petition for Rehearing and a Certificate of Service in the above-captioned appeal as well as check number 1632 in the amount of \$50.

Please do not hesitate to contact me with any questions.

With Highest Regards,



Antonia Francis  
Law Clerk

/ayf  
Enclosures

cc: Jonathan Schulz, Attorney for Respondents (via U.S. Mail) (w/enc)

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